

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

**1. DEFINITIONS AND INTERPRETATION**

These Terms and Conditions shall be interpreted in accordance with Schedule 1 and where applicable Schedule 2 and Schedule 3 (including the Data Processing Annex).

**2. BASIS OF PROVISION OF GOODS AND SERVICES**

- 2.1 Where the Client accepts a valid Quote from Katalyst, and Katalyst agrees to provide the Goods and/or Testing Services and/or Other Services described in the Quote, then Katalyst shall issue an Invoice that contains the particulars of the Accepted Quote. An Accepted Quote together with these Terms and Conditions constitutes a binding agreement between Katalyst and the Client, pursuant to these Standard Terms and Conditions. For the avoidance of doubt, Katalyst is not obliged to provide any Goods and/or Services upon acceptance of a Quote by the Client provided that Katalyst informs the Client within two (2) business days that it cannot or will not provide such Goods and/or Testing or Other Services.
- 2.2 Each Quote for Goods and/or Test Services and/or Other Services that is accepted by the Client shall be deemed to be an offer by the Client to purchase Goods and/or Test Services and/or Other Services subject to these Terms and Conditions.
- 2.3 Client shall be deemed to have accepted a Quote and these Terms and Conditions when a representative of the Client has accepted the Quote via Katalyst's Xero online accounting system.
- 2.4 Any variation, cancellation or waiver of these Terms and Conditions shall only be effective if made in writing and signed by a duly authorised representative of Katalyst. For the avoidance of doubt, Katalyst's delivery drivers, and on-site operational staff are not so authorised.

**3. PRICING AND PAYMENT**

- 3.1 Payment for all Goods, Test Services and Other Services are to be made in advance unless otherwise specified in the Accepted Quote and Invoice. Katalyst is **not** obliged to initiate any delivery of Goods, or provide any Testing or Other Service unless full payment has been made in advance, except where specified otherwise in the Quote.
- 3.2 Where sums due under these Terms and Conditions are not paid in full by the due date:
- a) Katalyst may, without limiting its other rights, charge interest on such sums at 8% a year above the base rate of NatWest Bank from time to time in force, and;
  - b) interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 3.3 Where the Accepted Quote does not include delivery and insurance costs, Katalyst reserves the right to charge these at standard Katalyst rates at a later date.
- 3.4 The Client shall be responsible for all costs, expenses, taxes, duties, levies and charges associated with the purchase, sale, import or delivery of the Goods and/or Testing Services and/or Other Services and shall indemnify Katalyst in relation to any claims or demands that Katalyst may receive in relation to the same.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

**4. DELIVERY OF GOODS**

- 4.1 The Parties recognise that shipping services are not always reliable, and that the Client should hold sufficient stock of Goods in case a delivery is later than expected.
- 4.2 Delivery times will be confirmed once payment has been made in full. Such delivery times may vary from the delivery times given on the Quote if there is a delay in payment.
- 4.3 Katalyst will use all reasonable efforts to meet any time or date for delivery given. Notwithstanding this, any time or date for delivery given by Katalyst is an estimate only and Katalyst will not be held liable or responsible for any delay or non-delivery on a specific day, where the delay or non-delivery is due to the courier service. In this instance Katalyst will not be liable nor for any loss, expense or damage whatsoever resulting from any such delay or non-delivery and the Client shall not be entitled to treat these Terms and Conditions as repudiated by reason of late delivery.
- 4.4 When signing for Goods from Katalyst directly or via a courier, the Client agrees to check that the quantity of Goods received agrees with the number on the packing list or delivery note and immediately to record and report to Katalyst any numerical discrepancy or obvious external damage. Katalyst will consider claims for damages, shortages or incorrect delivery only if notified within two (2) business days of receipt of the Goods and claims for non-delivery only if notified within ten (10) business days from the date of invoice. If any claim is so notified, Katalyst's sole responsibility will be limited to replacing or redelivering the goods in question or collecting excess deliveries at its expense and the Client will not be entitled to any other compensation whatsoever. Katalyst will accept no liability for any claims howsoever caused not notified within these periods nor will Katalyst have any liability in respect of damage or shortages caused by the acts or omissions of the Client.
- 4.5 Katalyst reserves the right to deliver in more than one consignment.
- 4.6 Katalyst will not accept the return of unwanted Goods correctly delivered against an Accepted Quote and Invoice.

**5. SAFETY AND RECALL**

- 5.1 Where the Client is purchasing Tests, rather than a Testing Service, the Client should satisfy itself that the persons responsible for the shipping, storage, handling and/or use of any of the Tests supplied by Katalyst have all the information required on health and safety requirements (as required by any applicable law in the Territory and conditions of storage and any health and material safety data sheets and/or summaries of product characteristics). Katalyst shall not be liable to the Client in any civil proceedings brought by the Client against Katalyst in respect of a breach of the any applicable law, shipping, storage, handling or use instructions or any other applicable health and safety legislation or any regulations, orders or directions made pursuant to such health and safety legislation in force from time to time or under any directive, regulation, order or other instrument relating to health and safety, where such exclusion of liability is permitted by law.
- 5.2 In the event of any product recall the Client will cooperate with Katalyst to enable it to fulfil its vigilance duties, in entirety, with respect to the Medical and IVD Device Directives 92/42/EEC and 98/79 EC.
- 5.3 Where the Client is purchasing Tests the Client shall maintain adequate records to enable product recall procedures to be implemented. Where the Client has purchased

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

PCR tests from Katalyst, the Client is obliged to make use of the Katalyst Test Performance Platform whenever a relevant test is run. Where a Client uses PCR tests provided by Katalyst and does not use the Katalyst Test Performance Platform, then the Client agrees and acknowledges that Katalyst will not be able to provide post-sales support to the Client and therefore Katalyst will be under no obligation to investigate suspected operational failure of the Tests.

**6. MANUFACTURER'S LIMITED PRODUCT WARRANTY**

- 6.1 The Tests sold to the Client are subject to the Manufacturer's Product Warranty (MPW), which can be provided upon request and is subject to change from time-to-time without notice. Neither Katalyst nor the Manufacturer make any additional product warranty or guarantee or claim of performance with respect to the Tests sold to Client.
- 6.2 All the Tests sold to the Client must be used, transported and stored strictly in accordance with the Manufacturers' Instructions for Use, which may be updated from time-to-time without notice, and failure to follow these instructions will invalidate any claim made by the Client with respect to the MPW.
- 6.3 Where the Client wishes to exercise it's rights under the MPW it may be required to demonstrate defects by providing detailed information to Katalyst and/or the Manufacturer as required under the terms of the MPW, and strictly within the warranty period. The Client may also be required to return any suspected defective Tests to the Manufacturer to verify any such defects.
- 6.4 Given the nature of the Tests, the Tests cannot be returned for resale to either Katalyst or the Manufacturer.
- 6.5 Katalyst shall not be liable to the Client in any civil proceedings brought by the Client against Katalyst in respect of a breach of the any applicable law, shipping, storage, handling or use instructions or any other applicable health and safety legislation or any regulations, orders or directions made pursuant to such health and safety legislation in force from time to time or under any directive, regulation, order or other instrument relating to health and safety, where such exclusion of liability is permitted by law.

**7. SAFETY AND RECALL**

- 7.1 Katalyst shall provide the Client with the Manufacturer Instructions for Use documentation upon request.
- 7.2 The Client should satisfy itself that the persons responsible for the shipping, storage, handling and/or use of any the Tests supplied by Katalyst have all the information required on health and safety requirements (as required by any applicable law and conditions of storage and any health and material safety data sheets and/or summaries of product characteristics).
- 7.3 In the event of any product recall the Client, will cooperate with Katalyst to enable it to fulfil its vigilance duties, in entirety, with respect to the Medical and IVD Device Directives 92/42/EEC and 98/79 EC.
- 7.4 The Client shall keep a register and keep Katalyst informed of any complaints, of non-conforming devices and of recalls and withdrawals.
- 7.5 The Client shall maintain a register or log of any returns which should include all the Tests kit details (including LOT numbers, date of delivery details, storage details) and reasons for their return.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

**8. STORAGE, TRANSPORT AND USAGE CONDITIONS**

- 8.1 All the Tests must be stored and transported by the Client in accordance with product temperature conditions as issued or amended by the Manufacturer from time to time including in the Manufacturer's Instructions for Use. Failure to do this will invalidate the MPW.
- 8.2 The Client acknowledges that the Tests are perishable and will become denatured if they are stored or transported incorrectly.

**9. YOTI AND PERSONAL DATA**

- 9.1 Katalyst and Client agree to duly observe and comply with all applicable obligations under any relevant data protection legislation which arise in connection with the use of Goods or the provision of Test Services or Other Services by Katalyst to Client.
- 9.2 The Yoti app and the Yoti Health Platform is offered as an integrated part of the Tests, with respect to the delivery of test results. The Client is under no obligation to use the Yoti app or the Yoti Health Platform to deliver test results, however, if the Yoti testing application is not used additional charges may be applied to support alternative systems.
- 9.3 All personal data in relation to the Yoti testing application are processed by Yoti Ltd, Fountain House, 130 Fenchurch Street, London, EC3M 5DJ (company number 08998951). If required by the Client a separate data processing agreement may be agreed between the Client and Yoti should the Client choose to use the Yoti the Tests application in relation to information security and data privacy.
- 9.4 If the Client uses the Yoti Health Platform to deliver test results, then in using the Yoti Web Application, the Client is deemed to have reached an agreement with Yoti on information security and data privacy and accepted the terms of Yoti EULA in Schedule 3.

**10. TESTING SERVICES**

- 10.1 Katalyst shall provide Testing Services as defined in the Accepted Quote and Invoice in terms of dates, times and numbers of tests to be consumed.
- 10.2 All tests carried out by Katalyst are conducted on behalf of the Client, as either part of the Client's occupational health service to its employees or contractors or a service the Client has sold to its customers. As such it is entirely the responsibility of the Client to obtain and to store the documented consent of each Testee to the testing, prior to sample collection.
- 10.3 The collection of all Testee Samples and the delivery of such Testee Samples to Katalyst is the responsibility of the Client, unless specifically stated otherwise in the Accepted Quote.
- 10.4 Where Katalyst provides Testing Services, Katalyst shall process the Personal Data of Testees as a Data Controller and shall process such data in accordance with Schedule 2.
- 10.5 Katalyst shall process all tests in accordance with the Manufacturers Instructions for Use (IFU) and where required Katalyst shall report test results to the relevant health authority, for example, test results from tests carried out in England are reported daily to Public Health England.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

- 10.6 The Client acknowledges that all tests carried out by Katalyst are screening tests and not clinical diagnostic tests. Under no circumstances should clinical decisions should be made on the basis of test results that are derived from tests processed by Katalyst.
- 10.7 The number of tests committed to in the Accepted Quote shall relate to the number of tests consumed, and not the number of people tested. For the avoidance of doubt any tests that are processed, whether used to test a person or not, are deemed to be consumed and will be charged for.
- 10.8 Testing Services are provided on behalf of the Client to the Client's employees, and it is the responsibility of the Client to:
- a) carry out any risk assessment in relation to potential COVID-19 infection; and
  - b) define its own Testee management processes to fit their specific requirements, to reduce risk of COVID-19 infections, both prior and post testing (including when test results are inconclusive); and
  - c) communicate to all relevant Testees (including employees, contractors and guests) that they will be tested and how to prepare for such testing; and
  - d) inform all Testees when and where they will be tested; and
  - e) manage the flow of people to the testing area; and
  - f) dispose of all waste produced as part of the testing, including clinical waste.
- 10.9 Katalyst shall endeavour to deliver the defined number of tests per day in the time defined in the Accepted Quote and Invoice, however, where there are insufficient numbers of people to test at the agreed times, or the working conditions do not permit it, fewer people may be tested. In such circumstances, the Client shall not be due any refund.
- 10.10 Katalyst shall perform the defined number of tests between from **09:00 to 17:00**, which are Katalyst's standard Testing Service hours. These hours may be varied when specified on the Accepted Quote and Invoice. If the Client wishes Katalyst to continue testing beyond the standard Testing Service hours or any other agreed hours specified on the Accepted Quote and Invoice, Katalyst, upon its sole discretion, may choose to do so. However, additional charges may be payable by Client.
- 10.11 The Client shall be liable for any additional costs that may arise out of any change of date or time that may occur once the Testing Service Quote has been accepted by the Client.
- 10.12 All pricing provided by Katalyst for the provision of Testing Services assumes use of the Yoti Health Platform and Yoti app by Testees to receive the test results. Where testees do not use the Yoti app, or the Client does not wish to use the Yoti Health Platform, then additional charges may be applied by Katalyst.
- 10.13 The Client acknowledges and agrees that Testee Samples cannot always be analysed due to:
- a) delay to delivery of the Testee Sample to Katalyst; or
  - b) other degradation or damage to the Testee Sample in transit, or
  - c) incorrect sample collection; or
  - d) inhibitors present in the Testee Sample.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

- 10.14 Katalyst will make every reasonable endeavour to analyse each Testee Samples. However, where a Testee Sample cannot be analysed no Test Result shall be delivered, and no part of the cost of the test shall be refunded.
- 11. POINT-OF-CARE TESTING SERVICES (*WRAP-AROUND / HYBRID*)**
- 11.1 The Client acknowledges and agrees that where Katalyst is to perform testing at a Client's premises, i.e. Point-of-Care-Testing (which may be described as a *Wrap-Around* or *Hybrid* service in the Quote), it is the responsibility of the Client to provide suitable testing room or rooms for Katalyst personnel and equipment to set-up and operate the Testing Service. For the avoidance of doubt, testing cannot be performed in a tent or similar temporary building.
- 11.2 The Client acknowledges and agrees that if a suitable testing room is not provided, or the provided room becomes unsuitable for any reason then:
- a) Katalyst reserves the right to cease Testing Services until a suitable room is provided; and
  - b) the rate of testing may be slower than expected; and
  - c) the reliability and the veracity of the test may be compromised to the extent that all results are void.
- 11.3 The testing room/s provided by the Client must:
- a) be clean and dust-free; and
  - b) be well ventilated and climate-controlled; and
  - c) have access control, so that only Katalyst personnel and a strictly limited number of authorised Client personnel may enter (open plan offices are not suitable); and
  - d) contain one desk per PCR machine, seating, power and a reliable enterprise grade Internet connection.
- 11.4 Where the Client has not provided a suitable room/s for testing, or a room becomes unsuitable, and as a consequence Testing Services are stopped for any reason, then the Client remains liable to pay for the Testing Services as if they were fully performed by Katalyst.
- 11.5 The collection of all Testee Samples and the delivery of such Testee Samples to Katalyst is the responsibility of the Client, unless specifically stated otherwise in the Accepted Quote.
- 11.6 Katalyst shall endeavour to deliver the defined number of tests per day in the time defined in the Accepted Quote and Invoice, however, where there are insufficient numbers of people to test at the agreed times, or the working conditions do not permit it, fewer people may be tested. In such circumstances, the Client shall not be due any refund.
- 11.7 Katalyst shall perform the defined number of tests between from **09:00** to **17:00**, which are Katalyst's standard Testing Service hours. These hours may be varied when specified on the Accepted Quote and Invoice. If the Client wishes Katalyst to continue testing beyond the standard Testing Service hours or any other agreed hours specified on the Accepted Quote and Invoice, Katalyst, upon its sole discretion, may choose to do so. However, additional charges may be payable by Client.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

- 11.8 The Parties acknowledge that due to capacity constraints, where the number of people tested is below the planned number for the day, for any reason, it may not be possible to reschedule such tests on subsequent days.
- 11.9 The Client shall be liable for any additional costs that may arise out of any change of location or date or time that may occur once the Testing Service Quote has been accepted by the Client.
- 11.10 All pricing provided by Katalyst for the provision of Testing Services assumes use of the Yoti Health Platform and Yoti app by Testees to receive the test results. Where testees do not use the Yoti app, or the Client does not wish to use the Yoti Health Platform, then additional charges may be applied by Katalyst.
- 11.11 The Client acknowledges and agrees that Testee Samples cannot always be analysed due to:
- a) delay to delivery of the Testee Sample to Katalyst; or
  - b) other degradation or damage to the Testee Sample in transit, or
  - c) incorrect sample collection; or
  - d) inhibitors present in the Testee Sample.
- 11.12 Katalyst will make every reasonable endeavour to analyse each Testee Samples. However, where a Testee Sample cannot be analysed no Test Result shall be delivered, and no part of the cost of the test shall be refunded.

**12. TRAINING**

- 12.1 Katalyst shall use reasonable endeavours to supply any training defined in the accepted Order. Where this training includes POCT testing at a Client's premises, then Clause 11 above will also apply to any training where on-the-job-training is conducted while Testing Services are being performed.
- 12.2 The Client shall be liable for any additional costs that may arise out of any change of location of training address or date that may occur once the Quote has been accepted by the Client.
- 12.3 Katalyst will supply manufactures documentation, including the prevailing Instructions For Use (IFU), and the Manufacturers Material Safety Data Sheets (MSDSs) and Instructions For Use (IFU) during or before training. In addition, Katalyst will supply its own training materials. All materials to be supplied in digital form.
- 12.4 The quality of training depends on the number of tests conducted by the trainees. The Client is required to organise and provide Testee Samples in order to provide samples for training purposes. Katalyst will not be held liable or responsible for any delay or non-delivery of any training, nor for any loss or expense whatsoever resulting from any such failure of the Client to provide sufficient numbers of Testee Samples.
- 12.5 Katalyst reserves the right to change the course content of any training at any time and without notice.
- 12.6 Provided that it is specified on the Accepted Quote, and upon successful completion of the training, Katalyst will assess the trainee for competence to use the relevant test.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

**13. TEST RESULTS**

- 13.1 Where Katalyst is providing a Testing Service for a Notifiable Disease, Katalyst is obliged, under the Public Health (Control of Disease) Act 1984 and the Health Protection (Notification) Regulations 2010, to report test results to a proper officer of the local authority, and to Public Health England in the case of COVID-19 and SARS-COV-2. This means that the Client must ensure that Katalyst is sent the required Testee Information in the format specified by Katalyst in advance or at the same time of any sample being taken.
- 13.2 Katalyst reserves the right to withhold any test result and to make an administrative charge of **£100** per day per test result until the information has been provided by either the Testee or Client.
- 13.3 The Client acknowledges and agrees that:
- 13.3.1 professional medical advice is required to provide a diagnosis of an individual's health, and testing technology alone cannot provide such a diagnosis and is not a substitute for professional medical advice;
  - 13.3.2 all results and data provided by the Tests are for informational purposes only;
  - 13.3.3 testing for the presence of a molecular pathogen such as SARS-CoV-2 RNA is technically challenging and relies on the quality of the sample collection and the appropriate transportation and processing of the test, hence the test results will not always be 100% reliable;
  - 13.3.4 a negative test result does not mean that a tested individual stops self-isolating if the tested individual has COVID-19 symptoms or if self-isolation is required by law; and
  - 13.3.5 a test result is only valid at the time the Testee Sample was taken.
- 13.4 A positive Test Result for a COVID-19 test, indicates a suspected COVID-19 infection. Katalyst recommends that the Client should notify the Testee immediately on receipt and the Testee should discuss with their healthcare provider the Test Result along with all other available clinical information, to determine the best treatment decisions or actions required.

**14. CONFIDENTIAL INFORMATION**

- 14.1 Both Parties are aware that in the course of the negotiations, preparation, and delivery of Testing Services and/or Other Services and/or purchasing of the Tests they will each have access to and be entrusted with information in respect of the business and operation of the other and their dealings, transactions and affairs, all of which information is or may be Confidential Information, except where it is Excluded Information. Where one Party "the receiving party" obtains Confidential Information of the other Party "the disclosing party" in connection with the sale of Goods, Test Services and Other Services by Katalyst to the Client, the receiving party shall keep the Confidential Information confidential, shall only use the Confidential Information for the purposes of enabling the purchase and use of such Goods and Services and shall not disclose the Confidential Information to any third-party except where:
- 14.1.1 the disclosing party has consented in writing to the disclosure; or
  - 14.1.2 the receiving party is required to disclose by law; or



**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

14.1.3 the disclosure is made to the receiving party's contractors or Affiliates in order to fulfil its obligations under these Terms and Conditions, subject to their being bound by a duty of confidentiality equivalent to the obligation of the receiving party under these Terms and Conditions; or

14.1.4 the disclosure is made to the receiving party's professional advisors, auditors and insurers, subject to their being bound by a duty of confidentiality equivalent to the obligation of the receiving party under these Terms and Conditions.

14.2 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in these Terms and Conditions are granted to the other Party, or to be implied from this agreement. For the avoidance of doubt all pricing information is deemed to be Confidential Information.

**15. INTELLECTUAL PROPERTY**

15.1 Client acknowledges that the Intellectual Property Rights of all the marketing materials related to the Tests belong to the Manufacturer.

**16. WARRANTIES**

16.1 The Parties hereby warrant, represent and undertake to each other that they have the right to agree to, and the capacity to fully perform their obligations under these Terms and Conditions and that it will remain in full compliance with all applicable Laws and rules, including any applicable data protection or privacy laws throughout the Term.

16.2 Katalyst provides no warranties with respect to the Tests, express or implied, and all such product warranties are provided to the Client in the MPW. No Katalyst agent or employee may modify, extend or add to the MPW.

16.3 Where Katalyst is providing Test Services to the Client, the Client represents and warrants that it has obtained all the necessary documented consents from each employee, contractor or other natural person it has requested Katalyst to test.

16.4 Where Katalyst is providing Test Services to the Client, for a Notifiable Disease, such as COVID-19, the Client represents and warrants that it will ensure that all employees, contractors or other natural person it has requested Katalyst to test, will provide all the Testee Information.

16.5 The Client hereby warrants and represents that it shall not resell any the Tests supplied by Katalyst.

**17. LIABILITY AND CONSEQUENTIAL LOSS**

17.1 Subject to 17.3, Katalyst shall not in any circumstances whatsoever (whether by reason of negligence, breach of contract, misrepresentation or otherwise) be liable for any economic loss, damage or expense, whether direct, indirect or consequential (including, without prejudice to the generality of the foregoing, loss of profits, business interruption, loss of goodwill or reputation) arising out of or in any way connected with the delivery and/or sale and/or use of the Goods or Testing Service or Other Service whether by the Client or by any third party.

17.2 In no event Katalyst shall be liable for any direct, indirect, consequential or incidental damages, including loss of profits, or for any claim by any third party, arising out of the use of the Tests or the inability to use the Tests by Client.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

- 17.3 Nothing in this Clause 17 shall be taken to limit or restrict Katalyst's liability
- a) for personal injury or death resulting from the negligence of Katalyst, or its employees and agents; or
  - b) for fraud or fraudulent misrepresentation; or
  - c) Katalyst's obligations under section 12 of the Sale of Goods Act 1979 and/or section 2 of the Supply of Goods and Services Act 1982; or
  - d) for any other matter for which it would be illegal for Katalyst to exclude, limit or attempt to exclude or limit its liability.
- 17.4 The total aggregate liability of Katalyst howsoever arising in connection with any Accepted Quote whether for negligence or breach of contract or otherwise shall in no event exceed the value of the Goods and/or Testing or Other Services sold by Katalyst.
- 17.5 Client agrees to indemnify and hold Katalyst harmless from and against any claims, costs, expenses, and damage arising out of the abnormal or improper use, misuse or neglect of the Goods or any breach of these terms and conditions or default on the part of the Client.
- 17.6 Subject to Clause 17.3, Katalyst shall not be liable to the Client or the Testee whether in contract, tort (including negligence and breach of statutory duty), or otherwise for any:
- a) error or defect in the Test Result as a result of any inaccurate or incomplete information supplied by the Client;
  - b) loss of data or materials, including the Testee Sample and/or the Test Result arising as a result of the acts or omissions of the postal or courier service or any other delivery service used by the Client to transport the Testee Sample to Katalyst;
  - c) indirect or consequential loss (including lost profits, loss of revenue or sales, loss of use, diminution of goodwill, business interruption or the like) arising whether or not Katalyst has been informed or advised of the possibility of such losses.

**18. MISCELLANEOUS PROVISIONS**

- 18.1 **Publicity and Announcements:** From the date of the Accepted Quote, and unless specifically prohibited in the Accepted Quote and Invoice, then the Client may publicly refer to Katalyst as a supplier and Katalyst may publicly refer to Client as a client.
- 18.2 **Indemnity:** The Parties shall fully indemnify and hold each other and the officers, directors and employees of the same harmless from and against any and all claims, damages, liabilities, costs and expenses (including reasonable legal fees and related costs) arising out of the breach of any representation, warranty, agreement or undertaking made by the indemnifying Party under these Terms and Conditions.
- 18.3 **Non-Partnership:** Nothing contained herein shall be deemed to create, and Katalyst and Client do not intend to create, any relationship of agency or other fiduciary relationship, partnership or joint venture, nor shall any similar relationship be deemed to exist between Katalyst and Client other than the contractual relationship expressly provided in these Terms and Conditions. This applies notwithstanding any title that may be given to Katalyst in its performance of the Services.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

- 18.4 **Entire Agreement:** These Terms and Conditions represents the entire understanding, and constitutes the whole agreement, in relation to the subject matter, and supersedes any previous agreement between the parties with respect thereto and without prejudice to the generality of the foregoing excludes any warranty, condition or other undertaking implied at law or by custom. Each Party confirms that, except as provided in these Terms and Conditions and without prejudice to any liability for fraudulent misrepresentation, no Party has relied on any representation or warranty or undertaking which is not contained in these Terms and Conditions or any document referred to in it or which was made by any other party who is not a party these Terms and Conditions and no Party shall have any remedy in respect of misrepresentation or untrue statement made by any other party unless and to the extent that a claim lies under these Terms and Conditions.
- 18.5 **Waiver:** A waiver by either party of a breach of any term or condition of these Terms and Conditions in any one instance shall be in writing and shall not be deemed as a continuing waiver or a waiver of any subsequent breach unless the written notice so provides. No failure or delay by any party to exercise its rights under these Terms and Conditions shall be deemed a waiver of such rights unless such rights are expressly waived in writing.
- 18.6 **Third Party Rights:** The Parties do not intend that any terms of these Terms and Conditions should be enforceable, under the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party hereto, nor is any term intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise).
- 18.7 **Governing Law and Jurisdiction:** These Terms and Conditions (including any non-contractual matters and obligations) shall be governed by and construed in accordance with English law and the Parties hereby submit to the exclusive jurisdiction of the English Courts in respect of any dispute arising under or in connection with these Terms and Conditions.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

**SCHEDULE 1 – DEFINITIONS AND INTERPRETATIONS**

In these Terms and Conditions unless the subject or context otherwise, requires the following expressions shall have the following meanings:

**1. DEFINED TERMS**

<b>"Affiliate"</b>	shall mean an entity which controls, is controlled by, or is under common control with a party;
<b>"Accepted Quote "</b>	shall mean any Quote that describes the proposed sales of Goods and/or Services that has been accepted by the Client, such acceptance being given via Katalyst's Xero online accounting system or via other means in writing;
<b>"Business Day/s"</b>	shall mean Monday to Friday except where such days fall on Bank or Public Holidays;
<b>"Client "</b>	shall mean the entity described as the Client on the Invoice and Accepted Quote, that has engaged Katalyst to provide the Goods and Services;
<b>"Confidential Information "</b>	shall mean, all non-public information, other than Excluded Information, and data disclosed (whether in writing, orally, or in any form whatever) by or on behalf of the disclosing Party to the receiving Party or any of its representatives, including but not limited to any information or data relating to the business operations, processes, systems, intentions, products, services, methodologies, know-how, intellectual property rights, market opportunities, customers and business affairs of the disclosing Party which is expressly stated to be of a manifestly confidential nature, or which the receiving Party ought reasonably to have known was of a manifestly confidential nature;
<b>"Excluded Information"</b>	shall mean information that: (i) is or becomes common knowledge other than as a result of the information being disclosed by a breach or non-performance of these Terms and Conditions by the receiving Party; or (ii) was already known to the receiving Party prior to the date of these Terms and Conditions; or (iii) the disclosing Party has agreed in writing is not Confidential Information; or (iv) the receiving Party receives from a third-party who is not in breach of a duty of confidentiality; or (v) is required to be disclosed by Law or the valid order of a court of competent jurisdiction, the request or direction of any governmental or other regulatory authority or agency;
<b>"Invoice"</b>	shall mean the Invoice issued by Katalyst to Client that describes the proposed sale of Goods and/or Services, including pricing, as defined in the Accepted Quote;
<b>"Goods "</b>	shall mean any goods, including Tests, supplied by Katalyst to the Client as defined in the Accepted Quote;

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

<b>"Katalyst "</b>	shall mean Katalyst Communications Limited, a company registered in England and Wales (No. 4693984) whose registered office is at 9 Elettra Avenue, Stratfield Park, Waterlooville, Hants PO7 7XN United Kingdom;
<b>"Katalyst Test Performance Platform"</b>	shall mean the test performance web service found at <a href="https://performance.katalystlaboratories.com">https://performance.katalystlaboratories.com</a> , provided by Katalyst to Clients that have purchased PCR tests for use in their own laboratories;
<b>"Manufacturer"</b>	shall mean the registered manufacturer of the Tests sold to the Client by Katalyst or used by Katalyst to provide the Testing Service to the Client;
<b>"Manufacturers Product Warranty"</b>	shall mean the product warranty of the Tests as provided by the Manufacturer;
<b>"Notifiable Disease"</b>	shall mean any notifiable infectious disease or causative agent listed by Public Health England from time-to-time. For the avoidance of doubt COVID-19 is such a notifiable infectious disease and SARS-CoV-2 is such a notifiable causative agent;
<b>"Point-of-Care-Test" or "POCT"</b>	shall mean a Testing Service that is conducted on the Client premises or other space provided by the Client, this will include Testing Services described as Wrap-Around or Hybrid on the Quote;
<b>"Quote"</b>	shall mean the Quote sent to the Client that defines the Goods and/or Test or Other Services, and associated prices and details from Katalyst to Client;
<b>"Required Testee Information"</b>	shall mean the personal data required to be provided in the reporting of a Notifiable Disease, this includes, full-name, date of birth, gender, home address, mobile telephone number, NHS number, and ethnicity;
<b>"Other Service"</b>	shall mean any service, other than testing (such as project management or training) to be delivered by Katalyst as described in the Accepted Quote;
<b>"Testee"</b>	shall mean the natural person whose sample has been provided to Katalyst for analysis;
<b>"Testee Sample"</b>	shall mean the biological sample that has been taken from a Testee for Katalyst to test;
<b>"Testee Personal Data"</b>	shall mean the personal information of a Testee processed by Katalyst;
<b>"Test Service" or "Testing Service"</b>	shall mean a service provided by Katalyst where it runs a diagnostic test on Testee Samples;
<b>"Test" or "Tests"</b>	shall mean the tests as defined in the Order Form that are manufactured by the Manufacturer;

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

<b>“Test Result”</b>	shall mean the result of the test, being either, positive, negative, inconclusive or void (no result) and associated Testee Personal Data.
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The terms, "**Controller**", "**Data Subject**", "**Member State**", "**Personal Data**", "**Personal Data Breach**", "**Pseudonymised**", "**Processor**", "**Processing**" and "**Supervisory Authority**" shall have the same meaning as in the Data Protection Act 2018, and their cognate terms shall be construed accordingly

**2. INTERPRETATION**

- 2.1 In these Terms and Conditions where the context admits:
  - 2.1.1 references to " these Terms and Conditions" or to any other agreement or document referred to in these Terms and Conditions mean these terms and conditions or such other agreement or document as amended, varied, supplemented, modified or novated from time to time (in a form agreed between the Parties), and includes the Schedules;
  - 2.1.2 references to any of the parties include any person who at any time is entitled, by assignment, novation, merger, division, reconstruction, reorganisation or otherwise, to such party's rights under these Terms and Conditions or any interest in those rights, or who, as an insolvency practitioner or otherwise, is entitled to exercise those rights (and, in the case of a novation or similar event, references herein to rights shall include the novated rights to which another person is entitled as a result of that event);
  - 2.1.3 references to "Law" or "Laws" shall include any provision of any treaty, legislation, statute, directive, regulation, judgement, decision, decree, order, instrument, by-law, or any other law of, or having effect in, any applicable jurisdiction and shall be construed also as references to all other Laws made under the Law referred to, and to all such Laws as amended, re-enacted, consolidated or replaced or as their application is modified by other Laws from time to time, and whether before or after the date of these Terms and Conditions;
  - 2.1.4 references to Clauses and Schedules are references to clauses of and schedules to these Terms and Conditions, references to Paragraphs are, unless otherwise stated, references to paragraphs of the Schedule in which the reference appears;
  - 2.1.5 references to the singular shall include the plural and vice versa and references to the masculine, the feminine and the neuter shall include each other such gender;
  - 2.1.6 "company" includes any body corporate; and
  - 2.1.7 in these Terms and Conditions "includes" or "including" shall be interpreted as meaning "includes (or including, as applicable) without limitation" and the use of these words shall not limit the meaning of general words.
- 2.2 The headings in these Terms and Conditions have been inserted for convenience only and shall not affect its construction.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

- 2.3 In the event, and to the extent only, of any conflict between the Clauses and the Schedules, the Clauses shall prevail.
- 2.4 Each of the schedules shall have effect as if set out in the body of these Terms and Conditions.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

**SCHEDULE 2 – USE OF PERSONAL DATA AS PART OF TESTING SERVICES**

**1. PURPOSE OF PROCESSING PERSONAL DATA**

- 1.1 Where the Client has agreed for Katalyst to provide Testing Services, in accordance with these Terms and Condition, Katalyst shall process the Personal Data of Testees strictly to deliver the results to the Testee, and where applicable to deliver the result to the Client and Testee. In addition, where the test is for a Notifiable Disease, Katalyst shall share the Test Result to a proper officer of the local authority, and to Public Health England in the case of COVID-19 and SARS-COV-2.
- 1.2 Katalyst is responsible for its own legal compliance and provision of rights to the data subject with respect to the Data Protection Act 2018.

**2. PROCESSING OF TESTEE PERSONAL DATA**

- 2.1 Katalyst shall:
- 2.1.1 only process Testee Personal Data as required by these Terms and Conditions, unless additionally required to do so by Data Protection Act 2018, in which case Katalyst shall to the extent permitted by the Data Protection Act 2018 inform the Client and/or Testee as relevant, of that legal requirement before the relevant Processing of that Testee Personal Data; and
  - 2.1.2 comply with the Data Protection Act 2018 in the Processing of Testee Personal Data; and
  - 2.1.3 implement appropriate technical and organisational measures, insofar as this is possible, in order that natural persons cannot be directly or indirectly identified as part of the data processing; and
  - 2.1.4 delete all Testee Personal Data 30-days after the Test Result has been sent.

**3. KATALYST PERSONNEL**

- 3.1 Katalyst shall take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to the Testee Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Personal Data, as strictly necessary for the purposes of these Terms and Conditions, and to comply with Data Protection Act 2018 in the context of that individual's duties to Katalyst, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

**4. SECURITY**

- 4.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Katalyst shall in relation to the Testee Personal Data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk.
- 4.2 In assessing the appropriate level of security, Katalyst shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.



**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

**5. DATA PROCESSORS**

- 5.1 Katalyst may appoint (and permit each Sub-Processor in accordance with this clause 5 to appoint) Processors in accordance with this Clause 5 and any restrictions in these Terms and Conditions.
- 5.2 Katalyst, shall before the appointment of a Processor:
- 5.2.1 carry out adequate due diligence to ensure that the Processor is capable of providing the level of protection for Testee Personal Data required by these Terms and Conditions; and
  - 5.2.2 ensure that the arrangement between Katalyst and the Processor, is governed by a written contract including terms which offer at least the same level of protection for Testee Personal Data as those set out in these Terms and Conditions and meet the requirements the Data Protection Act 2018.

**6. DATA SUBJECT RIGHTS**

- 6.1 Taking into account the nature of the Testing Services and the way the test results are delivered; Data Subjects are automatically provided with all their Personal Data held by Katalyst via the Yoti app.
- 6.2 In any case, Katalyst shall directly respond to each request as required by the Data Protection Act 2018.

**7. DATA BREACH**

- 7.1 Katalyst shall notify the Client and all affected Testees without undue delay upon Katalyst becoming aware of a Personal Data Breach affecting Testee Personal Data as required under the Data Protection Act 2018.
- 7.2 Katalyst shall take such reasonable commercial steps to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

**8. DELETION OF TESTEE PERSONAL DATA**

- 8.1 Subject to its obligations under the Data Protection Act 2018, Katalyst shall delete all copies of Testee Personal Data 30-days after the delivery of each test result.

**9. CLIENT OBLIGATION TO INFORM DATA SUBJECTS**

- 9.1 The Client will fully inform all Testees that Katalyst is an independent Data Controller of their Personal Data.
- 9.2 The Client will provide a link to Katalyst's Privacy Notice within the Privacy Notice of the Client.

**10. RESTRICTED TRANSFERS**

- 10.1 Katalyst warrants and represents that it will not export any Testee Personal Data to a country outside of the UK or EEA.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

**SCHEDULE 3 – YOTI END USER LICENCE AGREEMENT**

**1. YOTI END USER LICENCE AGREEMENT**

“Yoti” means Yoti Limited, a company registered in England and Wales under company number 08998951 with its address at Fountain House, 130 Fenchurch St, London, EC3M 5DJ

“Client” means the entity which has agreed to purchase the Tests from Katalyst or an appointed distributor of Katalyst along with the Digital Identity Services.

In using either the Web Application or the Yoti application to process and store Test Result Credentials the Client is deemed to accept the terms of this EULA. The Client may not use the Digital Identity Services if the Client does not agree to be bound by the terms of this EULA.

As between the parties it is understood that the Client is the data controller and Yoti is a data processor of testing subject's personal data and test results.

In this EULA the following words have the following meaning:

<b>“Digital Identity Services”</b>	means: (a) the storage, share and display of Testing Result Credentials on the Yoti application by testing subjects tested by the Client using the Testing Kits; and/or (b) the supply of the Web Application;
<b>“EULA”</b>	means this End User Licence Agreement;
<b>“Katalyst”</b>	means Katalyst Communications Limited, the authorised distributor of the Tests;
<b>“Software”</b>	means any SDK or API provided by Yoti for an integration of the Yoti system with the Client;
<b>“Tests”</b>	means the testing kits for Covid-19 sold by Katalyst that can be processed on the Web Application;
<b>“Test Result Credential”</b>	means the credentials held on the Yoti application showing the the Tests test results;
<b>“Web Application”</b>	means the interface that allows the Tests to be processed and shared with the test subjects either through the Yoti application or another means.

- 1.1 The Client may choose to receive verified identity attributes (e.g. name and phone number) from test subjects via the Yoti application. Yoti will use its reasonable skill and care in verifying or authenticating identity attributes from test subjects, but will have no liability to the Client, and hereby disclaims to the fullest extent possible under applicable laws all implied representations, warranties, conditions and terms in respect of the accuracy of any identity attributes, whether verified by Yoti or not; all identity attributes are acquired and used by the Client at its own risk;
- 1.2 Yoti receives Test Result Credentials from the results of the Tests. Yoti does not manufacture, provide or operate the Tests and is not liable to the Client for the

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

performance or operation of the Tests or the accuracy or reliability of the Testing Result Credential.

- 1.3 The Client must not require a testing subject to use the Yoti application to receive Test Result Credentials but must offer an alternative method as provided for in the Web Application (eg email).
- 1.4 Pool testing: unless explicitly authorised by either Yoti, Katalyst or an appointed distributor of Katalyst, the Client must not use the Web Application to do pool testing. If pool testing is authorised, it is limited to six testing subjects per pool test. The Web Application will report on the number of pool testing subjects and the Client may be invoiced by its supplier of the Tests based on that report.
- 1.5 If the Client is integrating the Software then Yoti shall provide a reasonable level of technical integration support but reserves the right to charge for support if it goes beyond the level that Yoti considers is reasonable.
- 1.6 Except (a) as necessary to provide testing services to its own clients; (b) in reporting to Public Health England or other health bodies; or (c) with the prior written consent of Yoti, the Client may not resell, sublicense, lease, share, transfer, make representations about or otherwise make available any identity attributes, Test Result Credentials, Yoti timestamped data or any information gleaned from the foregoing to any third party or as part of any joint venture or partnership with any third party.
- 1.7 In relation to the Client's use of the Digital Identity Services and the Software, either during the term of this EULA or at any time afterwards, the Client must:
  - a) only use them in compliance with all applicable laws;
  - b) only use them for proper and lawful business purposes and otherwise in accordance with this EULA;
  - c) only make backup copies of them for lawful use;
  - d) take all reasonable steps to prevent unauthorised copying of them;
  - e) not modify, copy, adapt, translate or create derivative works based on them;
  - f) not attempt to discover any source code or underlying ideas or algorithms or reverse engineer, decompile or disassemble them for any purpose;
  - g) not attempt to gain, or gain, unauthorised access to, or disrupt the integrity or performance of them or the Test Result Credentials;
  - h) not use them to commit, or with the intention to commit, any unlawful, fraudulent, dishonest, threatening, invasive or improper behaviour;
  - i) not and is not permitted to sub-license, assign, hold on trust or novate this EULA to or on behalf of any person;
  - j) provide all cooperation and information reasonably required by Yoti in relation to them, including all information and materials reasonably required by Yoti to make the Digital Identity Services available to the Client. The Client must ensure that such information is up-to-date and accurate in all material respects;
  - k) not provide a service which is the same as or similar to them, or use them to build a competitive product or service or copy its features, technology or user interface; and

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

- l) not act or omit to act in any way that results in damage to Yoti's business or reputation.
- 1.8 If shared with the Client using the Yoti application, the Client must only use identity attributes and Test Result Credentials for its lawful purposes and in accordance with its data protection responsibilities to the test subject.
- 1.9 The supply of the Digital Identity Services is "as is" and "as available" and Yoti makes no guarantee of uptime or that the Digital Identity Services will perform error free or that the Digital Identity Services were designed for the Client's requirements.
- 1.10 Subject to Yoti's obligations in clause 1.17, Yoti hereby disclaims all warranties, representations, conditions and implied terms that the Digital Identity Services are fit for the Client's purpose, is suitable for the Client's industry or is legal under applicable laws that apply to the Client.
- 1.11 Yoti is not liable under contract, tort (including negligence) or statute to the Client for any of the following loss or damages: (i) loss of revenue, business or opportunity; (ii) loss of profits; (iii) replacement goods cost; (iv) loss of data; (v) loss of goodwill or reputation; (vi) any loss arising because the Yoti app is not accepted by any third party as proof of test status; (vii) any indirect, consequential or incidental loss.
- 1.12 The maximum aggregate liability of Yoti to the Client, any of the Client's affiliates, group companies or clients, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise shall be capped at:
  - a) £10,000 to recompense for either (i) fine(s) issued against the Client or the Client's affiliates by the ICO or other data protection regulator or (ii) compensation payable to a testing subject, as a direct result of a breach by Yoti of clause 1.17 or the Data Processing Annex; and
  - b) for all other losses the lower of: (i) £1,000; and (ii) a sum equal to 125% of the fees actually paid by the Client for the Digital Identity Services in the previous 12 months.
- 1.13 Because the Yoti application is entirely 'self-serve' by users Yoti is not liable to the Client if a Yoti user decides to delete their Yoti application or any credentials stored in the Yoti application.
- 1.14 The Client shall itself revoke, or require Yoti to revoke, any Testing Result Credentials in the Yoti application if it has actual or constructive knowledge that the Testing Result Credentials are no longer accurate or correct.
- 1.15 Nothing in this EULA shall limit or exclude the liability of Yoti for fraud, fraudulent misrepresentation, death or personal injury caused by Yoti's negligence or any head of loss that may not be limited by applicable law.
- 1.16 If any term of this EULA 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 section shall not affect the validity and enforceability of the rest of the EULA.
- 1.17 Yoti shall comply with the terms of the Data Protection Annex in its processing of Personal Data (defined in the Data Protection Annex) of users who the Clients asks to undertake a Test. The Personal Data collected includes name, contact details and the

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

Test results. The purpose of the data processing is for the Client to receive the Test results in an electronic format.

- 1.18 If the Client breaches any of its obligations in this EULA or Yoti is no longer contracted to provide the Digital Identity Services to Katalyst or its appointed distributor, then Yoti may:
- a) immediately stop providing the Digital Identity Service to the Client; and/or
  - b) require the Client to stop: (i) using the Web Application; (ii) issuing Test Result Credentials onto the Yoti application; and (iii) receiving the Digital Identity Services.
- 1.19 Yoti owns and shall continue to own all intellectual property rights in the Digital Identity Services, the Software, identity attributes and Testing Result Credentials stored on the Yoti application. Yoti shall own all intellectual property rights in any modifications, improvements or amendments to the foregoing even if made for the Client or at the Client's suggestion.
- 1.20 There is no minimum term of this EULA and either party may terminate this EULA at any time on 30 days' written notice to the other party. Notice may be by email to the other party's signatory below, or by registered post to the other party's registered address.
- 1.21 This EULA is the entire agreement between the parties for the use of the Digital Identity Services, the Software and storage by Yoti of the Test Result Credentials. Neither party has relied on any prior agreement, document or representation (including innocent and negligent misrepresentations) in entering into this EULA. Nothing in this clause shall operate to exclude or limit a party's liability for fraud or fraudulent misrepresentation.
- 1.22 Unless specifically prohibited on an order form for the Tests, Yoti may publicise the Client's use of the Yoti application in any marketing and publicity materials and may use the Clients' name and logo in good faith and accurately for this purpose.
- 1.23 This EULA, and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by, and construed in accordance with the laws of England and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this EULA or the Client's use of the Digital Identity Services.

**Katalyst Laboratories Standard Terms and Conditions for the  
Sale of Goods and Provision of Services**

**Data Processing Annex**

In this Annex: “**Privacy Laws**” means the UK General Data Protection Regulation 2016 and the Data Protection Act 2018, and other applicable and equivalent local data protection laws, and “**Data Controller**”, “**Data Processor**” and “**Personal Data**” have the meaning given in the Privacy Laws.

Yoti shall, as a Data Processor:

- a) only use the Personal Data for the legitimate purposes of performing its obligations under this EULA and for no other purposes unless instructed to do so by the Client;
- b) act only on written lawful and reasonable instructions from the Client in relation to the Personal Data;
- c) comply with all the relevant requirements of the Privacy Laws;
- d) not sub-contract the processing of any of the Personal Data to any third party without the Client’s prior consent. The Client agrees that Yoti may use AWS (UK instances) as a sub-processor;
- e) ensure that appropriate technical and organisational security measures are in place against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data in accordance with the Privacy Laws;
- f) take reasonable steps to ensure the reliability of any of its employees, agents and contractors who have access to the Personal Data;
- g) only transfer Personal Data outside of the European Economic Area in compliance with Privacy Laws;
- h) assist the Client with an Individual’s rights request to the extent Yoti can;
- i) either delete Personal Data as soon as the relevant service is provided, or provide the Client with the ability to export or delete the Personal Data;
- j) reasonably demonstrate compliance with this Annex on request by the Client; and
- k) inform the Client promptly on becoming aware of a breach of security in relation to the Client’s Personal Data.

Yoti shall use its reasonable endeavours to assist, as needed and as far as it technically can, the Client to demonstrate its compliance with its obligations under Privacy Laws (in connection to this EULA) relating to:

- a) security;
- b) breach notifications;
- c) data protection impact assessments; and
- d) prior consultation.