

## QSR (Chest) Cloud Services Addendum (February 2021) Declaration

QSR (Chest) Cloud Services Addendum (February 2021). Please complete the sections below to facilitate the licensing and use by you of NVivo Windows and NVivo Mac Software (released 18 March 2020) and QSR's Cloud Services.

Licensee details. Institution name: .....

Postal address: .....

Email address of signatory: .....

**Important legal notice.** Please read carefully before submitting this Addendum: the signing and submission of this Addendum creates a legally binding agreement between your institution, organisation, or company (the Licensee) and QSR (the Licensor) in relation to the licensing and use by you of NVivo Windows and NVivo Mac Software (released 18 March 2020) and QSR's Cloud Services.

**Declaration:** I understand and acknowledge that the licensing and use by the Licensee named above of NVivo Windows and NVivo Mac Software (released 18 March 2020) and QSR's Cloud Services shall be governed exclusively by the Licence terms and conditions displayed below, and that the Standard Chest Software Licence and Home Use Undertakings Annex, which Licence terms and conditions govern the use by the Licensee of earlier versions of the NVivo Software, do not apply to NVivo Windows and NVivo Mac Software (released 18 March 2020) and QSR's Cloud Services. I hereby confirm that I have the authority to make this declaration.

Printed Name ..... Signature .....

Title ..... Date.....

### Parties

QSR International (UK) Ltd of The Innovation Centre, Sci-Tech Daresbury, Keckwick Lane, Daresbury, Cheshire, WA4 4FS, United Kingdom ("QSR" / "we" / "us") and the Party named in the Chest Order ("Customer" / "you"). ("Chest" is a Jisc enterprise and service.)

### Recitals

- A QSR and the Customer have entered into a Licence Agreement ("Licence Agreement") through and under an Agreement in force between Jisc and QSR ("Agreement") in respect of certain QSR Licensed Software.
- B The Customer wishes to obtain QSR's Cloud Services to be used in conjunction with the Licensed Software pending the expiry of the Licence Agreement.
- C QSR agrees to supply and the Customer agrees to acquire the QSR Cloud Service on the terms of this Cloud Service Addendum.

### Agreement

#### 1 Definitions

In this Cloud Services Addendum, except where the contrary intention is expressed:

**Authorised Users** means (a) Students (which means any person undertaking education or research for whom the Licensee is responsible); and (b) Staff (which means: any personnel used by the Licensee to instruct or direct Students; the Licensee's research staff; and administrative and management personnel).

**Chest Order** means the order for the Cloud Service placed with Jisc using the relevant Chest Order Form.

**Commencement Date** in respect of this Cloud Services Addendum means the date specified in the relevant Chest Order.

**Data Protection Addendum** means the QSR Data Protection Addendum available at [Data Protection Addendum](#).

**Fees** means the amounts payable by the Customer for use of the Cloud Service, in the amounts and in the currency specified in the Chest Order.

**GDPR** means the EU General Data Protection Regulation 2016/679.

**NVivo™ Cloud Platform** means the IT infrastructure and networks owned, licensed, or managed by us, which are used by QSR and its service providers to provide the Cloud Service.

**myNVivo™ Portal** means the QSR Cloud Services portal at [portal.mynvivo.com](https://portal.mynvivo.com).

**Parties** means, collectively, QSR and the Customer, and “Party” means either one of them as the context may indicate.

**PAYG Service** means a Cloud Service which is provided on a pre-paid timed basis.

**Service Hours** means, in respect of a PAYG Service, the hours of use of the service acquired by you.

**Privacy Policy** means our privacy policy available at [Privacy Policy](#).

**Service Specification** means the Service Specification for the relevant Cloud Service as published on the Jisc Chest website which sets out the details of the Cloud Service and any specific terms applying to that service.

**Software Licence** means the Licence Agreement for the Licensed Software obtained through and under the Agreement in force between Jisc and QSR.

**Subscription** means a Cloud Service provided on a subscription basis for a set term.

**Subscription Term** means the initial term of a Subscription, which will be from the Commencement Date until the renewal of the Software Licence, as extended by subsequent renewal periods.

## **2 Cloud Services**

- (a) Our Cloud Services are provided as PAYG Services or as a Subscription.
- (b) The initial term of your Subscription will commence on the Commencement Date and run until the end of the term as stated in the Chest Order. If you cancel, your Subscription will terminate at the end of the then-current billing cycle, but you will not be entitled to any credits or refunds for amounts accrued or paid prior to such termination.
- (c) For PAYG Services, you must pre-purchase Service Hours. All Service Hours you purchase will have an expiry date, as specified in the relevant Service Specification.
- (d) Details of the individual Cloud Services, and any specific terms applying to a Cloud Service, are set out in the relevant Service Specification. We note that our Cloud Services may involve the use of various third-party tools and services.
- (e) We may offer a free trial of a Cloud Service, either by way of an allocation of Service Hours or a free Subscription Period ("Trial"). Contracts for a Trial are to be made through the myNVivo™ Portal.

## **3 Account Registration**

- (a) You may need to register for a QSR account in order to place Contracts or access or receive a Cloud Service.
- (b) Any registration information that you provide to us must be accurate, current, and complete.
- (c) You must also update your information so that we may send notices, statements, and other information to you by e-mail or through your account.
- (d) You are responsible for all actions taken through your accounts.

## **4 Orders**

- (a) You agree to purchase the Cloud Service as specified in the Chest Order. QSR's Cloud Service ordering documentation or purchase flow will specify your authorised scope of use for the particular Cloud Service, which may include:
  - (i) number and type of Authorised Users (as defined below);
  - (ii) storage or capacity; or
  - (iii) Service Hours or other restrictions.
- (b) Once we receive your Chest Order, we will notify you through the myNVivo™ Portal that your order has been accepted and the status of your account. We reserve the right to reject any order but will provide reasons to you via e-mail or through the myNVivo™ Portal if we do so.
- (c) In relation to NVivo Transcription, you may use the editor functionality of the Cloud Service with respect to transcribed files without charge for so long as the relevant text files are retained on the NVivo™ Cloud Platform.
- (d) QSR reserves the right to delete Customer files remaining on the NVivo™ Cloud Platform as follows:
  - (i) Audio files 90 days after first upload; and
  - (ii) Text files 90 days after transcription.

- (e) Notwithstanding any other term of the Agreement or the Chest Order, QSR gives no warranty or undertaking as to the quality of the output from the NVivo Cloud Service™ and, to that extent, the NVivo Transcription Service™ is provided "as is". Customer acknowledges that the quality of the output will depend on many factors including the clarity of the original recording, background noise and accents of the speakers.

#### **4 Authorised Users**

- (a) Only Authorised Users may access and use the Cloud Service. You are responsible for compliance with these Terms and Conditions by all Authorised Users.
- (b) In relation to usernames and passwords that allow your Authorised Users to access and use NVivo Cloud Services ("Login Credentials"):
  - (i) you are responsible for ensuring that Authorised Users take all reasonable steps to safeguard their Login Credentials. We may assume that any person accessing or using the NVivo Cloud Service using those Login Credentials is one of your Authorised Users. You must also ensure that each of your Authorised Users only uses the Login Credentials that have been allocated to them, and that no other person uses such Login Credentials; and
  - (ii) if you become aware or have reason to suspect that there has been any unauthorised use of any Login Credentials that have been allocated to your Authorised Users, you must notify QSR immediately.
- (c) We may suspend access to the Cloud Service where we reasonably believe that there has been unauthorised use of the Cloud Service by any of your Authorised Users or through any Login Credentials issued to you. Where we do so, we will notify you within a reasonable time of the suspension occurring, and the Parties will work together to resolve the matter. Nothing in this paragraph (c) limits any other rights or remedies we may have in such circumstances.

#### **5 Account Registration - Authorised Users**

Your Authorised Users will need to register for a QSR account through the myNVivo™ portal if deployed to a 'Known' or 'User Requested' user in order for the Authorised Users to access or receive the chosen Cloud Service.

#### **6 Right to Access Services**

- (a) Upon execution of this Cloud Services Addendum, and subject to payment of the Fees, we grant you a non-exclusive, non-transferable, limited licence to access and use the purchased Cloud Service solely for the lawful operation of your business and in accordance with the provisions of this Cloud Services Addendum.
- (b) It is your responsibility to ensure that you have reliable and secure access to the internet so as to be able to effectively use the purchased Cloud Service.

#### **7 Your Content**

- (a) As part of your use of the Cloud Service, you or your Authorised Users may upload to the NVivo™ Cloud Platform certain materials ("Your Content"). You must ensure that Your Content:
  - (i) does not infringe the intellectual property or other rights of another person;
  - (ii) is not defamatory, offensive, abusive, pornographic, profane or otherwise unlawful, including material that racially or religiously vilifies, incites violence or hatred, or is likely to insult or humiliate others based on race, religion, ethnicity, gender, age, sexual orientation or any physical or mental disability, unless in the context of valid lawful research;
  - (iii) does not relate to unlawful conduct, unless in the context of valid lawful research;
  - (iv) does not create a privacy or security risk to any person, including by soliciting personal information from any person;
  - (v) does not solicit money from any person;
  - (vi) is not false, misleading, or deceptive;
  - (vii) does not contain financial, legal, medical, or other professional advice;
  - (viii) is not likely to harm, abuse, harass, stalk, threaten or otherwise offend;
  - (ix) is not likely to reflect negatively on us, including our goodwill, name, and reputation;
  - (x) does not tamper with, hinder the operation of, or make unauthorised modification to the Cloud Service;
  - (xi) does not breach any applicable laws; and/or
  - (xii) does not otherwise result in civil or criminal liability for you, us, or any third-party.
- (b) You:
  - (i) grant to us a non-exclusive, worldwide, royalty-free, licence (including a right of sub-licence to our subcontractors) to disclose, use, copy and modify Your Content as required by us but only for the purpose of providing the Cloud Services and complying with our obligations under this Cloud Services Addendum;

and

- (ii) warrant that you have the right to grant such permission.
- (c) We may review Your Content and may modify or remove any of Your Content where we reasonably believe it violates this Cloud Services Addendum.
- (d) QSR will adhere to good industry practice and procedures to prevent data loss, including a daily system data back-up, but does not give any guarantees in relation to loss of Your Content.

## **8 Your Rights and Obligations**

- (a) You must ensure that you and your Authorised Users comply with this Cloud Services Addendum, and you will be liable for the acts and omissions of your Authorised Users as if they were your acts or omissions.
- (b) It is a condition of your use of the Cloud Service that you (and your Authorised Users) do not:
  - (i) sell, rent, lease, license, sublicense, display, time share or otherwise transfer the Cloud Service to, or permit the use of or access to the Cloud Service by, any third-party; and
  - (ii) remove any copyright or proprietary notice from the Cloud Service;
  - (iii) attempt to undermine the security or integrity of our computing systems or networks;
  - (iv) use the Cloud Service for any purpose that is improper or unlawful;
  - (v) use the Cloud Service in a way which may impair the functionality of the Cloud Service or other systems used to deliver it;
  - (vi) distribute viruses, spyware, corrupted files, or any other similar software or programs that may damage the operation of any computer hardware or software; and/or
  - (vii) engage in any other conduct that inhibits any other person from using or enjoying the Cloud Service.

## **9 Fees and Payment**

- (a) The prices for each of the Products and payment terms are contained in the relevant Chest Order.
- (b) The Fee is paid annually in advance as specified in the Chest order form.
- (c) Jisc is the Party responsible for invoicing and collecting the Fee.
- (d) For Pay as You Go Cloud Services these will be paid in advance as specified in Chest order form.

## **10 Privacy and Your Data**

- (a) QSR's collection, use and disclosure of personal information or any other data the Customer provides to QSR will be governed by QSR's Privacy Policy.
- (b) For the purposes of this clause 10, "Personal Data" means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person; and "Applicable Data Protection Laws" means all laws, regulations, binding legislative and regulatory requirements and codes of practice relating to data protection and the processing of Personal Data, as may be applicable to either Party or to the Cloud Service, including, without limitation: the Australian Privacy Act 1988 (Cth); the UK Data Protection Act 2018; the GDPR; and the Japanese Act on the Protection of Personal Information 2003.
- (c) The Data Protection Addendum, which includes the standard contractual clauses as required under article 28 of the GDPR, forms part of this Cloud Services Addendum.
- (d) You agree that QSR may use the services of third parties to provide part of the Cloud Service ("sub-processor") and that the sub-processor may, as required for the purposes of providing the Cloud Service, process Personal Data provided to us by you.
- (e) Each Party warrants to the other that in relation to this Cloud Services Addendum, it will comply strictly with all requirements of any Applicable Data Protection Laws, whether enacted as at the Commencement Date or enacted subsequently.
- (f) In using the Cloud Service, you must ensure that you are permitted to provide us with any Personal Data you provide to us, and that you have made any disclosures or obtained any consents necessary under any Applicable Data Protection Laws. Subject to this Cloud Services Addendum, we will establish and maintain appropriate, reasonable technical and organisational security measures in accordance with good industry practice to keep Your Content secure.
- (g) We may only transfer any Personal Data you provide to us across a country border in the event that such action is required for the purpose of providing the Cloud Service and complying with our obligations under this Cloud Services Addendum. We will further ensure that the transfer of any Personal Data across a country border

complies with Applicable Data Protection Laws.

- (h) We may use and disclose to our service providers anonymous data about your use of the Cloud Service for the purpose of helping us to improve the Cloud Service. Any such disclosure will not include details of your identity or the identity of your associates unless prior consent has been provided for such disclosure.

## **11 Security**

- (a) You acknowledge that the internet is an insecure public network which means there are risks that information sent to or from the Cloud Service may be intercepted, corrupted or modified by third parties.
- (b) Notwithstanding the foregoing, we will take all steps that a prudent and competent provider of services such as the Cloud Service would be expected to take to maintain the security and the integrity of the Cloud Service. Specifically, we will:
  - (i) implement administrative, physical, and technical safeguards to protect Your Content that are no less rigorous than accepted industry information security best practices;
  - (ii) as soon as we become aware that any virus, malware, or other harmful code ("Harmful Code") is contained in or affects the Cloud Service provided to you and/or that any of Your Content may have been, or may be subject to unauthorised access, immediately notify you and take all reasonable steps to remedy the problem, secure Your Content, remove the Harmful Code, as applicable, and prevent the situation's reoccurrence;
  - (iii) use commercially reasonable efforts to:
    - (A) prevent any Harmful Code being contained in, or affecting the Cloud Service used by you;
    - (B) prevent unauthorised access to Your Content;
    - (C) prevent any unauthorised access of, and/or Harmful Code being introduced into, your IT systems.

## **12 Intellectual Property**

- (a) The Cloud Services are made available on a limited licence or access basis, and no ownership right is conveyed to you, irrespective of the use of terms such as "purchase" or "sale".
- (b) QSR and its licensors have and retain all right, title and interest, including all intellectual property rights, in and to the Cloud Service, its "look and feel", any and all related or underlying technology, and any modifications or derivative works of the foregoing created by or for QSR.
- (c) NVivo, myNVivo and Cloud are trademarks of QSR.

## **13 Warranties**

- (a) We represent and warrant that if a Cloud Service fails to operate substantially as described in the relevant Service Specification and you notify us of this failure, we will:
  - (i) at our cost, correct the failure in the Cloud Service; or
  - (ii) if we are unable to correct the failure in a commercially reasonable manner, you may terminate the relevant Subscription and we will refund to you a pro-rated portion of the Fees previously paid for the terminated Subscription taking into account the unexpired Subscription Term for which the Fees were paid.
- (b) If we breach the warranty under this clause, your exclusive remedy and our entire liability for breach of this warranty will be the remedy set out in this clause. The warranty will not apply if the failure of the Cloud Service resulted from improper use or a defect in or failure of any device, communications link or software used to access the Cloud Service.
- (c) QSR does not warrant, represent or guarantee that the Cloud Services:
  - (i) will be continuously available or free of any fault or harmful code; or
  - (ii) are suitable for your purposes or business.
- (d) If any guarantee, warranty, term or condition is implied or imposed in relation to this Cloud Services Addendum under the Australian Consumer Law or any other applicable legislation and cannot be excluded (a "Non-Excludable Provision"), and QSR is able to limit your remedy for a breach of the Non-Excludable Provision, then QSR's liability for breach of the Non-Excludable Provision is limited to the resupply of the Cloud Services or the cost of having Cloud Services supplied, at QSR's election.

## **14 Confidentiality**

- (a) Each Party (the "Receiving Party") may only use the Confidential Information disclosed or revealed by the other Party (the "Disclosing Party") for the purposes of performing its obligations or exercising its rights under this Cloud Services Addendum and must keep such Confidential Information confidential.
- (b) For purposes of this Addendum, "Confidential Information" means any information of whatever kind disclosed or revealed by the Disclosing Party to the Receiving Party under or in relation to this Cloud Services Addendum that:

- (i) is by its nature confidential;
- (ii) is designated by the Disclosing Party as confidential; or
- (iii) the Receiving Party knows or reasonably ought to know is confidential; including:
  - (iv) where we are the Disclosing Party, any part of the Cloud Service that is not otherwise publicly available; and
  - (v) where you are the Disclosing Party, any of Your Content entered or uploaded to the Cloud Service; but does not include information that:
    - (vi) is published or has otherwise entered the public domain without a breach of this Cloud Services Addendum;
    - (vii) is obtained from a third-party who has no obligation of confidentiality to the Disclosing Party; or
    - (viii) is independently developed or obtained without breach of this Cloud Services Addendum.
- (c) The Receiving Party may disclose the Confidential Information of the Disclosing Party:
  - (i) to those members, directors, employees, agents, contractors, representatives and/or advisors of the Receiving Party ("Representatives") reasonably requiring it on a need-to-know basis, provided that the Receiving Party ensures that such Representatives keep such Confidential Information confidential in accordance with this clause 14(c);
  - (ii) to the extent required by law; or
  - (iii) with the prior written consent of the Disclosing Party.
- (d) We may refer to the fact that you are a client of ours and a user of the Cloud Service in marketing and promotional materials.

## **15 Term and Termination**

- (a) For purposes of this clause 15:
 

"Insolvency Event" means in relation to either Party, any one or more of the following events or circumstances occurring in relation to such Party (or any person comprising such Party): being in liquidation or provisional liquidation or under administration; having a controller or analogous person appointed to it or any of its property; being unable to pay its debts or being otherwise insolvent; entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; and any analogous event or circumstance under the laws of any jurisdiction.
- (b) Either Party may terminate this Cloud Services Addendum by notifying the other accordingly:
  - (i) where the other Party materially breaches this Cloud Services Addendum, and fails to remedy that breach within 30 days of receiving notice of the breach; or
  - (ii) where the other Party suffers an Insolvency Event.
- (c) If this Cloud Services Addendum is terminated in accordance with this clause 15, you must pay us the Fees for any Cloud Services performed and/or provided to you up to and until the date of termination, whether or not an invoice has been issued for those services as at the date of termination.
- (d) Upon expiry or termination of this Cloud Services Addendum, we will either (at our option):
  - (i) provide to you; or
  - (ii) make available for your download for a period of 30 days following termination, all of Your Content in machine readable format, that is stored at that time on the NVivo™ Cloud Platform. After having done so, we may delete any of Your Content.
- (e) If this Cloud Services Addendum expires or is terminated for any reason, the rights and licences provided to you under this Cloud Services Addendum will cease immediately.
- (f) If a Party exercises a right of termination of this Cloud Services Addendum, this Cloud Services Addendum terminates in its entirety for all Parties.

## **16 Limitation of Liability**

- (a) To the maximum extent permitted by law:
  - (i) neither Party (nor its suppliers) will be liable to the other for any indirect, special, incidental or consequential loss or damage or damages for loss of profits, goodwill, revenue, savings or opportunity or for loss of use, lost or inaccurate data, failure of security mechanisms, interruption of business or costs of delay arising under or in connection with this agreement or its subject matter, whether in contract, tort (including negligence), in equity or under statute, even if informed of the possibility of such damages in advance;
  - (ii) except as provided for at clause 16 (a) (iv) below and for a Party's liability under or in connection with

clause 8(b) or in connection with an infringement of any intellectual property rights of the other Party or its licensors, each Party's maximum aggregate liability for all claims under or in connection with this agreement or its subject matter arising in each consecutive 12 month period commencing on the date of first use of the subscription services is limited to an amount equal to the fees payable by you under this agreement in respect of such 12 month period, provided that any obligation to pay outstanding fees or to refund prepaid fees will not be considered for the purposes of this limitation on liability; and

- (iii) to the maximum extent permitted by law, no suppliers of any third-party components included in the products will be liable to you for any damages whatsoever.
- (iv) Notwithstanding any provision in this clause 16, to the extent QSR may have access to the Customer's Confidential Information or may have control or access to Customer's systems, or in respect of any breach of QSR's obligations under clause 10 or the Data Protection Addendum, QSR shall maintain Network Security & Privacy Liability (Cyber) insurance coverage of not less than USD \$5,000,000 per claim and cover all sums up to that amount that the Customer shall be legally obligated to pay because of claims alleging a security failure (including but not limited to failure of a computer system, unauthorised access / use of a computer system, virus transmission, denial of service, physical theft of hardware) or a privacy event (including but not limited to failure to protect the Customer's Confidential Information and Personal Data); where such failure is due to a breach by QSR of its obligations under this Addendum. Coverage shall include cost to provide notification and credit monitoring to affected or potentially affected persons. Coverage for occurrences during the performance of the Cloud Services shall be maintained in full force and effect for a period of at least three (3) years following the termination of the Cloud Services. This insurance shall include Customer and its subsidiaries, agents, officers, directors, and employees as additional insured parties.

- (b) A Party's liability under this Cloud Services Addendum will be reduced to the extent that the other Party's acts or omissions (or, unless otherwise stated in this Cloud Services Addendum, those of a third-party) contribute to or cause the loss or liability.
- (c) The Parties agree that the limitations specified in this clause 16 (Limitation of Liability) will survive and apply even if any limited remedy specified in this Cloud Services Addendum is found to have failed of its essential purpose.

## **17 Dispute Resolution**

- (a) If a dispute arises out of or relates to this Cloud Services Addendum, a Party may not commence any court proceedings relating to the dispute unless it complies with this clause 17 (Dispute Resolution), except where a Party seeks urgent interlocutory relief.
- (b) A Party claiming that a dispute has arisen under or in relation to this Cloud Services Addendum must give written notice to the other Party specifying the nature of the dispute. On receipt of that notice by that other Party, the Parties must endeavour in good faith to resolve the dispute expeditiously using mediation in accordance with the mediation rules of the International Institute for Conflict Prevention and Resolution. If the dispute is not resolved within 15 days after the mediator is appointed, or at any other time that the Parties agree to in writing, the mediation ceases and either Party may commence legal proceedings in relation to the dispute.

## **18 General**

- (a) Governing law and jurisdiction: this Cloud Services Addendum is governed by the law of the Commonwealth of Massachusetts, United States of America, and the Parties consent to the exclusive jurisdiction of the courts of Massachusetts for the purposes of resolving any dispute under this Cloud Services Addendum.
- (b) Notices: any notices, consent, or any other communication given under this Cloud Services Addendum is only effective if it is in writing, signed by or on behalf of the Party giving it and received in full and legible form at the addressee's address. Each Party's contact details are as specified in the initial Order, unless either Party gives notice to the other Party of an alternative address, fax number or e-mail address.
- (c) Severable Provisions: any term of this Cloud Services Addendum which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable.
- (d) Survival: clauses 8, 10, 12, 14, 15 and 16 survive termination or expiry of this Cloud Services Addendum together with any other provision which by its nature is intended to do so.
- (e) Cumulative rights: except as expressly provided in this Cloud Services Addendum, the rights of a Party under this Cloud Services Addendum are in addition to and do not exclude or limit any other rights or remedies provided by law.