Cambridge Cancer Genomics
Software License

This Software License (the “Agreement”) is a binding legal agreement between Cambridge Cancer Genomics, Ltd. (“CCG”) and the company, academic institution, or other entity (“Licensor”) that downloads and uses the Software as set forth herein.

The individual clicking on the “REQUEST” button (“Licensor’s Representative”) hereby represents and warrants that they are authorized to bind Licensor to the terms of this Agreement and agrees on behalf of Licensor to be bound by the terms of this Agreement. If Licensor’s Representative is not authorized to bind Licensor to the terms of this Agreement, or if Licensor does not agree to be bound by the terms of this Agreement, then Licensor’s Representative may not click the “REQUEST” button or otherwise access or utilize the Software.

1. Background. Licensee wishes to use CCG’s SomaticNET software package and its related user documentation provided in electronic form (the “Software”) which is designed to analyze certain data related to medical treatments for cancer, and CCG is willing to authorize such use as further set forth herein.

2. License Grant. Subject to Licensee’s compliance with all the terms and conditions of this Agreement, CCG hereby grants Licensee a non-exclusive, non-transferable, non-sublicensable, revocable, royalty-free, limited license under CCG’s rights in the Software to use, execute, and modify the Software, and to make copies of the Software as reasonably necessary for such use, execution, and modification, in each case, only for Licensee’s internal business purposes.

3. License Restrictions. Licensee may not rent, lease, sublicense, sell, assign, loan, or otherwise transfer or distribute the Software or any derivative work thereof to any third party. Licensee may not remove or destroy any copyright notices or other proprietary markings attached to, incorporated within, or displayed by the Software.

4. No Clinical Use of Free Version. If the Software is provided to Licensee at no charge, then in addition to the license restrictions set forth in Section 3, Licensee additionally may not use the Software in the provision of health care to any person, including for the diagnosis or treatment of any disease or other medical condition of any person.

5. Ownership. Except for the limited license expressly granted herein, CCG retains all (and Licensee does not acquire any) intellectual property rights in and to the Software. No implied licenses are granted under this Agreement, whether by implication, estoppel, or otherwise.

6. Fees. Licensee will pay license fees to CCG as set forth in an applicable purchase order or quote mutually agreed by the parties. CCG may choose, at CCG’s sole discretion, to waive such license fees on a case-by-case basis if Licensee is a research university or other educational institution, public benefit organization, or noncommercial research laboratory.

7. Warranty and Waivers. If CCG provides the Software to Licensee at no charge, then CCG makes no warranties of any kind to Licensee. If CCG provides the Software pursuant to
Licensee’s payment of license fees, then CCG warrants that the Software will perform substantially in accordance with its documentation for a period of 90 days after the Effective Date, provided that CCG’s entire liability and Licensee’s exclusive remedy under this warranty will be, at CCG’s option, to either (i) repair or replace the Software that fails to meet the warranty set forth herein or (ii) refund the license fee paid by Licensee. Such limited warranty will be void if such failure of the Software results from any misuse or misapplication of the Software by Licensee, any modification of the Software not made by CCG, or any combination of the Software with other software not provided by CCG. Any replacement Software provided to Licensee under this section will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. Except for the warranty expressly set forth in this section, the Software is provided to Licensee “as is” and without warranty or support of any kind. Licensee assumes all responsibilities for selection of the Software to achieve Licensee’s intended results, and for the use of the Software and the results obtained therefrom. To the maximum extent permitted by applicable law, CCG disclaims all warranties whether express, statutory, or implied, including but not limited to any implied warranties of merchantability, noninfringement, quality, accuracy, and fitness for a particular purpose.

8. Limitation of Liability. Except with respect to personal injury or death arising from CCG’s negligence, under no circumstances will (i) CCG be liable for any consequential, special, indirect, incidental or punitive damages whatsoever (including, without limitation, damages for business interruption or loss of data) arising out of the use of or inability to use the Software, even if CCG has been advised of the possibility of such damages or (ii) CCG’s aggregate liability for any and all damages related to the Software or arising out of this Agreement exceed the greater of the fees paid to CCG by Licensee for the Software or one hundred British pounds (£100). The limitations set forth in the preceding sentence are independent of each other and will apply notwithstanding any failure of essential purpose of any limited remedy. The parties agree that the limitations of liability set forth in this Section 8 are an essential element of the bargain between the parties, and but for these limitations of liability, the price charged for the Software would have been higher.

9. Term and Termination. This Agreement becomes effective on the first day Licensee downloads, installs, or uses the Software (“Effective Date”). If CCG has provided the Software to Licensee at no charge, then the Agreement will continue until terminated, and either party may terminate this Agreement for any reason or no reason by providing the other party with at least 10 days’ prior notice in writing. If CCG provides the Software pursuant to Licensee’s payment of license fees, then the Agreement will continue during the period that such license fees are agreed upon by the parties and paid by Licensee, and either party may terminate this Agreement only if the other party breaches this Agreement and fails to cure such breach within 30 days after receiving written notice thereof. Upon termination of this Agreement for any reason, Licensee will uninstall and will destroy or return to CCG all copies of the Software in Licensee’s possession. After any termination of this Agreement, the following obligations will survive: (i) any obligation of either party, accrued prior to such termination, to pay money to the other party, (ii) Sections 8, 10, 11, 12, 14, and 18, and (iii) this sentence describing the obligations that survive after termination.
10. Infringement Indemnity. Only if CCG provides the Software pursuant to Licensee’s payment of license fees, then subject to Section 12, CCG will indemnify and hold Licensee harmless from and against any and all costs, losses, liability and expenses, including reasonable attorneys’ fees, to the extent resulting from any third-party claim or allegation that the Software when used in accordance with this Agreement infringes or misappropriates any UK or US copyright, patent, or trade secret; but not including such claims arising from modifications to the Software made by any person other than CCG or combinations of the Software with any other software, components, or technology not provided by CCG, unless such claim also arises in the original unmodified and uncombined software provided by CCG. For clarity, the foregoing sentence does not apply if CCG provides the Software to Licensee at no charge. This Section 10 sets forth the entire liability of CCG with respect to infringement or misappropriation of any patent, copyright, trade secret, or other proprietary right.

11. Licensor Indemnity. Subject to Section 12, Licensee will indemnify and hold CCG harmless from and against any and all costs, losses, liability and expenses, including reasonable attorneys’ fees, to the extent arising from any third-party claim that results from Licensee’s (i) breach of this Agreement, (ii) negligence or willful misconduct, (iii) violation of any applicable law or regulation, or (iv) modification of the Software.

12. Indemnification Procedure. The obligations set forth in Sections 10 and 11 are subject to the party seeking indemnification (“Indemnified Party”) giving the other party (“Indemnifying Party”) (i) prompt written notice of any claim for which indemnification is or will be sought; (ii) sole control of the defense or settlement of such claim, provided however that Indemnifying Party will not without Indemnified Party’s consent settle such claim on terms that acknowledge any wrongdoing by Indemnified Party or impose any obligation on Indemnified Party; and (iii) information and assistance reasonably necessary to defend and settle such claim.

13. Remediation. If CCG believes that the Software may be subject to a third-party claim of infringement or misappropriation, CCG may, at its sole expense, (i) procure for Licensor the right to continue using the Software, (ii) modify or replace the Software, in which case Licensor will promptly cease using the potentially infringing version of the Software once a revised version has been provided, or (iii) only if the foregoing (i) and (ii) are not commercially practicable, terminate this Agreement.

14. Feedback. If Licensee provides CCG with bug reports, comments, suggestions, technical information, or proposed modifications about the Software or other CCG products (collectively, “Feedback”), CCG may use such Feedback for any purpose, including to improve its products or develop new products. Accordingly, Licensee hereby grants CCG a nonexclusive, perpetual, irrevocable, transferrable, sublicensable, fully paid, royalty-free license to use Feedback for any purpose. For clarity, nothing in this section obligates Licensee to provide any Feedback to CCG.

15. Third Party Software. The Software may be provided to Licensee together with certain third party software components provided under open source license terms (“Third Party Components”). The Software is provided pursuant to this Agreement, but Licensee may have
additional rights to obtain and use such Third Party Components under the license terms applicable to each such Third Party Component. Nothing in this Agreement limits or is intended to limit such rights.

16. Export Restrictions. Licensee may not export the Software without (i) the prior written consent of CCG and (ii) complying with all applicable export control laws and obtaining any required authorizations and permissions.

17. Government Licensing. The Software is deemed to be “commercial computer software” (and the documentation therein, “commercial computer software documentation”) pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performance, display, or disclosure of the Software by the United States Government will be governed solely by the terms of this Agreement.

18. General. Licensee may not assign this Agreement or any of Licensee’s rights or obligations under this Agreement, whether expressly, by operation of law, or otherwise, without the prior written consent of CCG, and any such assignment without such consent is void. This Agreement is governed by the laws of the State of California, but excluding its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of this Agreement will be resolved exclusively in the state and federal courts located in San Francisco, California, and the parties hereby submit to personal jurisdiction in such courts and waive any motions or objections related to inconvenient forum or venue in such courts. Except as set forth in Section 6, this Agreement constitutes the entire agreement between Licensee and CCG related to the Software and supersedes any and all other communications with respect to the Software. This Agreement may be modified only by a writing executed by both parties. Neither party will be deemed to have waived any of its rights under this Agreement unless such waiver is in writing and signed by the party against whom the waiver is asserted. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will continue in full force and effect.