

LUMIRADX CARE SOLUTIONS UK LTD
TERMS AND CONDITIONS OF TRADING
VERSION 3 GDPR

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (the **Terms**):

Approved Device(s): Medical Device or Devices supplied by LumiraDx or a third party which is approved for use by LumiraDx and is identified on the Purchase Order(s).

Branch Sites: the branch sites of the Location(s) as set out on the Initial Purchase Order.

Caldicott Principles: the principles applying to the handling of patient-identifiable information set out in the report of the Caldicott Committee (1 December 1997), The Information Governance Review (March 2013 aka Caldicott 2) and the Review of Data Security, Consent and Opt-outs (June 2016, Caldicott 3).

Confidential Information: any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either party and all personal data and sensitive data within the meaning of Data Protection Legislation.

Contract: these Terms, the relevant Purchase Order(s) and the relevant EULA(s).

Customer: the legal entity identified on the Purchase Order(s) who purchases Products from LumiraDx on behalf of the Location(s).

Data Protection Legislation: the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Data Controller: has the meaning given to it in the GDPR.

Data Processor: has the meaning given to it in the GDPR.

Delivery Location: the Patient's address for delivery of the Device as set out in the Patient's order.

Device Fee(s): the fee or fees payable by the Customer to LumiraDx in connection with the sale or hire of the Devices as set out on the Purchase Order(s).

Devices: PSC Devices and/or any other devices, components or other goods.

Documentation: the electronic and physical document made available by LumiraDx to the Customer and the Location(s) from time to time which includes guidelines, help sites and user instructions.

Engage Software: the specialist software developed by LumiraDx to be used in connection with PSC Services.

EULA(s): LumiraDx standard end user licence agreement(s) governing the use of the Software which are attached to the Purchase Order(s).

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Hire Period: the period of hire for the PSC Devices as set out in paragraph 2 of Schedule 2.

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

Initial Purchase Order: the first purchase order issued by LumiraDx to the Customer and forming part of the Contract.

Initial Term: the initial term set out on the Purchase Order.

Licence Fee(s): the licence fee or fees payable for the Software and/or Services as set out on the Purchase Order(s).

Location(s): the relevant legal entity, including their Branch Sites, set out on the Initial Purchase Order that will be using the Software and acting as the Data Controller for that Location.

LumiraDx: LumiraDx Care Solutions UK Ltd.

LumiraDx Group: means LumiraDx, any subsidiary or any holding company from time to time of LumiraDx, and any subsidiary from time to time of a holding company of that company. Each company in the LumiraDx Group is a member of the LumiraDx Group and the term "LumiraDx Group Company" shall be construed accordingly.

Order Confirmation: an order confirmation sent by LumiraDx to the Customer in respect of the Software, the PSC Devices and/or the PSC Services.

Patient(s): an individual or individuals accessing care/medical services from a relevant Location.

Patient Contract Terms: the contractual terms between the Qualifying Patient and LumiraDx to include terms applicable to the use of the PSC Device, training and the application of the Engage Software.

Patient Data: the clinical information relating to Patients (including, but not limited to, Personal Data) collected by the Location in the course of treating Patients which is inputted by the Users, Patients or LumiraDx on the Location's behalf, onto the Software for the purpose of using the Software.

Patient Records: the number of patient records which can be uploaded onto the Software as set out in the Purchase Order(s).

Products: the Devices, Services or Software stated in the Purchase Order(s).

PSC: patient self-care that supports a Patient to manage and monitor their medical condition.

PSC Device: the device and/or component used for self-care that is approved by LumiraDx and is identified on the Purchase Order(s).

PSC Services: the services and/or programmes relating to PSC as set out on the Purchase Order(s).

Personal Data: has the meaning given to it in the GDPR.

Purchase Order(s): the purchase order or order(s) issued by LumiraDx to the Customer and forming part of the Contract.

Qualifying Patients: Patients already undertaking treatment under the supervision of clinicians under the ultimate control of the Location.

Renewal Term: the renewal term set out on the Purchase Order.

Requests for Information: a request for information or an apparent request under the FOIA.

Risk Period: the Hire Period and any further term during which the PSC Devices are in the possession, custody or control of the Customer.

Services: PSC Services and/or any other services.

Software: Engage Software and/or any other software (including software applications) owned by or licensed to LumiraDx.

Subsequent Purchase Order(s): any purchase order or orders issued after the Initial Purchase Order by LumiraDx to the Customer and forming part of the Contract.

Special Terms: the special terms which prevail over these Terms as set out in the Purchase Order(s).

Start Date: the start date set out on the Purchase Order.

Users: the Location's employees, agents and independent contractors who are authorised by the Location to use the Software.

VAT: value added tax chargeable under UK law for the time being and any similar additional tax.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include subordinate legislation made as at the date of the Contract under that statute or statutory provision.
- 1.6 A reference to writing or written includes faxes and e-mail.
- 1.7 References to clauses and Schedules are to the clauses and Schedules of this Contract and references to paragraphs are to paragraphs of the relevant Schedule.

2. APPLICATION OF TERMS

- 2.1 These Terms shall:
 - (a) apply to and be incorporated in the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on LumiraDx unless in writing and signed by a duly authorised representative of LumiraDx.
- 2.3 Any quotation is valid for a period of 30 days only and LumiraDx may withdraw it at any time by notice to the Customer. The quotation will be set out on the Purchase Order(s).

3. SCOPE OF CONTRACT

- 3.1** The Contract governs the relationship between the Customer and LumiraDx in respect of the provision of, as applicable:
- (a) Software supplied by LumiraDx to the Location(s) and/or the Customer;
 - (b) Services provided to Patients; and
 - (c) the PSC Devices.
- 3.2** The Customer appoints LumiraDx:
- (a) to provide the Software to the Location(s);
 - (b) (where applicable) to provide the PSC Services; and
 - (c) to process Patient Data on behalf of the Location(s), subject to the Customer agreeing to abide by these Terms.

4. EULA

- 4.1** In consideration of the Customer agreeing to abide by these Terms, LumiraDx hereby agrees to grant to the Location(s) and/or the Customer (if it requests a licence on the Purchase Order(s)) a non-exclusive, non-transferable right to use the Software in accordance with the terms of the relevant EULA or the third party software owner's standard end user licence agreement.
- 4.2** The Customer acknowledges that the Users will be required to click the "Accept" button and agree to the terms of the EULA and/or the third party software owner's standard end user licence agreement before using the Software. In the event that a User clicks the "Do Not Agree" button, LumiraDx will prevent such User from accessing and using the Software.

5. SERVICES

- 5.1** The following provisions shall apply to Services offered to Qualifying Patients:
- (a) the application/extent of Services shall be as set out in the Purchase Order(s);
 - (b) the Customer shall procure that, subject to a Qualifying Patient indicating an interest in proceeding with the Services and complying with the Patient Contract Terms, the Qualifying Patient's clinician carries out the required competency tests as defined in the Documentation;
 - (c) subject as provided in clause 6 below, LumiraDx shall supply to the Customer the Devices (to the relevant Delivery Location) in consideration of the payment by the Customer to LumiraDx of the Device Fees; and
 - (d) the Customer shall pay to LumiraDx the Device Fees and additional support and training costs, if any, as set out in the Purchase Order(s) in accordance with clause 12.
- 5.2** The provisions of sub-clauses 5.1(c) and 5.1(d) shall not apply in the case of any Location or Qualifying Patient that already owns or leases an Approved Device.

6. SUPPLY OF DEVICES

- 6.1** Where the Devices being supplied are PSC Devices, the PSC Devices may either be (as confirmed on the Purchase Order(s)):
- (a) sold to the Customer by LumiraDx, in which case the terms set out in Schedule 1 shall apply;

- (b) hired by the Customer from LumiraDx, in which case the terms set out Schedule 2 shall apply; or
- (c) already owned, or leased, by the Customer, Location or Qualifying Patient, provided always that the PSC Device is an Approved Device.

6.2 The following terms shall apply to any Devices which are sold or hired to the Customer by LumiraDx:

- (a) LumiraDx agrees that it will store, at its premises, stocks of Devices until such Devices are ordered by Patients;
- (b) following receipt of an order by a Patient, LumiraDx shall deliver the Device to the Delivery Location; and
- (c) delivery of the Device shall be completed on delivery at the Delivery Location.

6.3 In the event of any product recall of any Devices, the Customer agrees that it shall cooperate with LumiraDX to enable it (and its third party suppliers) to fulfil its vigilance duties, in entirety, with respect to the Medical and IVD Device Directives 92/42/EEC and 98/79 EC.

7. CUSTOMER OBLIGATIONS

7.1 The Customer shall:

- (a) ensure that the Software is only used for the purposes outlined in the EULA(s) or the third party software owner's standard end user licence agreement (if applicable);
- (b) ensure that the Location(s) comply with the acceptable use policy, procedures and guidelines set out in the Documentation relating to the use of the Products;
- (c) at all times co-operate with LumiraDx and provide information as may be reasonably required by LumiraDx;
- (d) at all times comply with the Caldicott Principles in so far as it handles any patient-identifiable information;
- (e) appoint the relevant representatives as set out on the Purchase Order(s);
- (f) ensure that each of the Location(s) appoint the relevant representatives as set out on the Purchase Order(s);
- (g) in the event that the Customer is a separate legal entity and processes Patient Data on behalf of the Location(s):
 - (i) enter into a written contract with each of the Location(s) (the Data Controller of the Patient Data) setting out the nature and purposes for which the Customer (acting as a Data Processor) is permitted to use the Patient Data, the duration for which the Customer is permitted to use the Patient Data, the security measures which must be put in place by the Customer and the procedures which must be followed if there is a security breach;
 - (ii) act only on documented instructions from the Location(s), including instructions to return or destroy the copies of the Patient Data held by the Customer at the end of the term of their contractual relationship;
 - (iii) at all times comply with its obligations under the Data Protection Legislation;
 - (iv) ensure that it has in place appropriate technical, contractual and organisational measures to ensure the security of the Patient Data and provide the Location(s) with all information necessary to demonstrate compliance with its obligations under the Data Protection Legislation;

- (v) ensure it has appropriate measures in place to assist the Location(s) in complying with Patient rights under the Data Protection Legislation;
- (vi) maintain good information governance standards and practices, by complying with level 2 of the Information Governance Toolkit requirements;
- (vii) not disclose the Patient Data to any third party without obtaining the prior written consent of the Location(s);
- (viii) not sub-contract the processing of the Patient Data without obtaining the prior written consent of the Location(s). Such sub-contract must be on the same terms and impose the same data protection obligations on the sub-processor as those set out in the written contract between the Customer and Location(s); and
- (ix) not transfer the Patient Data outside the European Economic Area (EEA).

7.2 If LumiraDx's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to LumiraDx on demand all reasonable costs, charges or losses sustained or incurred by it, subject to LumiraDx confirming such costs, charges and losses to the Customer in writing.

7.3 The Customer shall not, without the prior written consent of LumiraDx, at any time from the date of the Contract to the expiry of six months after termination of the Contract, solicit or entice away from LumiraDx or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of LumiraDx.

7.4 The Customer shall be liable for all acts and omissions of the Location(s) and shall indemnify LumiraDx against all costs, expenses, claims, loss or damage incurred or suffered by LumiraDx, or for which LumiraDx may become liable (whether direct, indirect or consequential and including any economic loss or other loss of profits, business or goodwill) arising out of any act or omission of the Location(s).

8. DATA PROTECTION

8.1 LumiraDx and the Customer shall duly observe and comply with all applicable obligations under the Data Protection Legislation which arise in connection with the Contract. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

8.2 LumiraDx may use Personal Data relating to the Customer's employees, agents and independent contractors in accordance with its privacy policy as displayed on its website from time to time. For the purposes of this clause 8.2, LumiraDx is the Data Controller of such Personal Data.

8.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Location(s) (who may also be the Customer) is the Data Controller and LumiraDx is the Data Processor of the Patient Data and other related Personal Data provided by the Location(s) to LumiraDx for processing in accordance with clauses 8.5 and 8.6. Schedule 3 sets out the scope, nature and purpose of processing by LumiraDx, the duration of the processing and the types of Personal Data and categories of Data Subject (as defined in the Data Protection Legislation).

8.4 Without prejudice to the generality of clause 8.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to LumiraDx for the duration and purposes of the Contract.

- 8.5** Notwithstanding the general obligation in clause 8.1, where LumiraDx is processing Personal Data as a Data Processor for the Location(s), LumiraDx shall:
- (a) only process that Personal Data on the written instructions of the Customer unless LumiraDx is required by the laws of any member of the European Union or by the laws of the European Union applicable to LumiraDx to process Personal Data (**Applicable Laws**). Where LumiraDx is relying on Applicable Laws as the basis for processing Personal Data, LumiraDx shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit LumiraDx from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical, contractual and organisational measures to protect against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (e) notify the Customer without undue delay on becoming aware of a breach of Personal Data;
 - (f) ensure it does not knowingly or negligently do or omit to do anything which places the Location in breach of the Location's obligations under the Data Protection Legislation;
 - (g) maintain complete and accurate written records and information of its Personal Data processing activities to demonstrate compliance with this clause 8 and clause 10; and
 - (h) not transfer any Personal Data outside the EEA unless the Customer's prior written consent is obtained and appropriate safeguards have been put in place. The Customer agrees that Personal Data relating to the Customer's employees, agents or independent contractors may be transferred outside the EEA provided that appropriate safeguards in relation to the transfer are in place and LumiraDx ensures that an adequate level of protection is provided to all Personal Data transferred.
- 8.6** The Customer consents (or where the Customer is a separate legal entity to the Locations(s), the Customer shall obtain the consent of the Location(s)) to LumiraDx appointing third party data repository providers (which includes any member of the LumiraDx Group), third party mobile application providers and third party delivery providers as a third party processor of Personal Data under the Contract. LumiraDx confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement substantially on that third party's standard terms of business. As between the Customer and LumiraDx, LumiraDx shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 8.6.

9. ANONYMISED DATA

The Customer agrees that LumiraDx may create anonymised data from the Patient Data inputted into the Software by the Location(s) provided that ISB1523 Anonymisation Standards for Publishing Health Care Data is observed.

10. PERSONAL AND PATIENT DATA

10.1 LumiraDx, and any member of the LumiraDx Group, is permitted to use the Patient Data, which it processes on behalf of the Location(s), for the following purposes:

- (a) to provide the Products and Services to the Customer, the Location(s) or the Patients (as the case maybe);
- (b) support, maintenance and patient safety (including the investigation of faults);
- (c) to improve the performance or features of the Software;
- (d) to provide feedback to the Location(s) and/or Patient and improve the performance of the service that the Location(s) provide; Such feedback may also be disclosed to the Customer, provided that a suitable data sharing agreement has been entered into between the Location(s) and Customer;
- (e) to improve or develop any Devices, Services or Software;
- (f) to improve the understanding, treatment, outcomes and choice for Patients and healthcare professionals; and
- (g) to comply with any relevant statutory or regulatory requirement imposed on LumiraDx from time to time.

10.2 LumiraDx may only use the Patient Data for the Term (as defined in clause 17.1). At the end of the Term, and at the written direction of the Customer, LumiraDx shall return (to the Customer or the Location(s)) or destroy copies of any Patient Data (unless a longer retention period is required by Applicable Law). The Customer acknowledges and agrees that it may be required to store copies of the Patient Data after the end of the Term for the purpose of complying with Applicable Law relating to clinical data and preventing clinical risks.

11. FREEDOM OF INFORMATION

11.1 LumiraDx acknowledges that the Customer may be subject to the requirements of the FOIA and shall assist and co-operate with the Customer (at the Customer's expense) to enable the Customer to comply with these information disclosure requirements.

11.2 LumiraDx shall:

- (a) transfer any Request for Information to the Customer as soon as practicable after receipt and in any event within five days of receiving a Request for Information;
- (b) provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within ten days (or such other period as the Customer may specify) of the Customer requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.

11.3 In no event shall LumiraDx respond directly to a Request for Information.

12. PRICE AND PAYMENT

- 12.1** The Licence Fees and the Device Fees shall be as stated on the Purchase Order(s). The Licence Fees and Device Fees are payable by the Customer on the payment dates set out on the Purchase Order(s). The Customer shall pay the Licence Fees and the Device Fees to LumiraDx in accordance with this clause 12.
- 12.2** The Device Fees exclude the costs and charges relating to packaging, insurance and transport of the Devices.
- 12.3** All amounts, Licence Fees and Device Fees stated or referred to in the Contract:
- (a) shall be payable in pounds sterling; and
 - (b) are non-cancellable and non-refundable.
- 12.4** LumiraDx may invoice the Customer for the Licence Fees and the Device Fees at any time after the Start Date. The Customer shall pay each invoice submitted to it by LumiraDx in full, and in cleared funds within 30 days of receipt. Time for payment of the Licence Fees and the Device Fees shall be of the essence of the Contract.
- 12.5** If LumiraDx has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of LumiraDx:
- (a) LumiraDx may, contact the Location(s) and request that the Location(s) pay the outstanding Licence Fee and/or Device Fee. In the event that the Location(s) pays outstanding Licence Fee and/or Device Fee, the Contract will continue in full force and effect, as if it had been entered into between LumiraDx and the Location(s), to the exclusion of the Customer. In complying with this clause 12.5(a), LumiraDx does not waive any breach of these Terms or default under these Terms by the Customer;
 - (b) in the event of non-payment of the Licence Fees, LumiraDx may, without liability to the Customer, disable the Location'(s) and/or Customer's access to all or part of the Software and suspend the provision of any Services on providing reasonable prior written notice to the Customer and LumiraDx shall be under no obligation to provide any or all of the Software or the Services while the outstanding Licence Fees remain unpaid;
 - (c) in the event that the Location does not pay the outstanding Licence Fee or Device Fee in accordance with clause 12.5(a) above interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 12.6** All amounts and fees stated or referred to in these Terms are exclusive of value added tax, which shall be added to LumiraDx's invoice(s) at the appropriate rate.
- 12.7** All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 12.8** LumiraDx shall be entitled to increase the Licence Fees, the Device Fees and the fees payable for additional Patient Records and additional Devices upon providing one months' prior notice to the Customer.
- 12.9** All sums payable to LumiraDx under the Contract shall become due immediately on termination, despite any other provision of the Contract. This clause 12.9 is without prejudice to any right to claim for interest under the law, or any right under the Contract.

13. ADDITIONAL PATIENT RECORDS

The Customer may from time to time purchase additional Patient Records in excess of the number set out on the Purchase Order. Following receipt of a written order from the Customer, LumiraDx shall allow the Location(s) to use the Software to upload additional Patient Records in accordance with the terms of the relevant EULA.

14. LIMITATION OF LIABILITY

- 14.1** The Customer agrees that the Location(s) and/or Customer (if relevant) will assume sole responsibility for results obtained from the use of the Software by the Location(s) and/or Customer or the use of any Device by a Patient, and for conclusions drawn from such use. LumiraDx shall have no liability for any damage caused by errors or omissions in any information provided by the Location(s) or the Patient, or any actions taken by LumiraDx at the Location(s)' direction.
- 14.2** If any Device should prove to be not fit for its intended purpose within 12 months of the date of the relevant invoice (or with their expiry date if earlier or later) when stored and used correctly, LumiraDx will either replace or, at its sole option, refund the purchase price but shall have no liability to the Customer for any other consequential loss, damage or expense.
- 14.3** LumiraDx shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of income, loss of profits or contracts, loss of business, business interruption, loss of money or anticipated savings, loss of or depletion of opportunity, goodwill, reputation and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract.
- 14.4** Other than the losses set out in clause 14.3 (for which LumiraDx is not liable), LumiraDx's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total fees paid by the Customer to LumiraDx during the 12 months immediately preceding the date on which the claim arose.
- 14.5** Nothing in these Terms excludes LumiraDx's liability for:
- (a) death or personal injury caused by negligence;
 - (b) for fraud or fraudulent misrepresentation;
 - (c) where the Devices have been sold to the Customer, breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) any other matter in respect of which it would be unlawful for LumiraDx to exclude or restrict liability.
- 14.6** These Terms sets out the full extent of LumiraDx's liabilities. Except as expressly stated in these Terms, there are no conditions, warranties, representations or other terms, express or implied, that are binding on LumiraDx. Any condition, warranty, representation or other terms implied into, or incorporated in, the Contract whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.
- 14.7** The Customer agrees to indemnify and hold LumiraDx harmless from and against any claims, costs, expenses, and damages arising out of the abnormal or improper use, misuse or neglect of the Devices or any breach of these Terms or default on the part of the Customer.

15. PROPRIETARY RIGHTS

The Customer acknowledges that LumiraDx and/or its licensors own all Intellectual Property Rights in the Software. Except as expressly stated herein, this Contract does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software.

16. CONFIDENTIALITY

16.1 Subject to clause 16.2, the parties shall keep confidential the Confidential Information of the other party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of the Confidential Information.

16.2 Clause 16.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 11 shall apply to any disclosures required under the FOIA;
- (b) that is reasonably required by persons engaged by a party in the performance of that party's obligations under the Contract;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 16.1;
- (d) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (e) by a party when the other party has given its prior written consent to disclosure.

16.3 This condition 16 shall survive termination of the Contract, however arising.

17. TERM AND TERMINATION

17.1 The Contract shall commence on the Start Date and shall, unless otherwise terminated as provided in this clause 17, continue for the Initial Term and, thereafter, shall be automatically renewed for successive Renewal Terms, unless:

- (a) the Customer notifies LumiraDx, in writing, at least 60 days before the end of the Initial Term or any Renewal Term; or
- (b) otherwise terminated in accordance with these Terms.

and the Initial Term together with any subsequent Renewal Term shall constitute the **Term**.

17.2 The Customer acknowledges that LumiraDx, without liability to the Customer, may terminate a EULA or a third party software owner's standard end user licence agreement with one or more of the Locations or the Customer in accordance with the terms of the relevant EULA or the third party software owner's standard end user licence agreement. Termination of a EULA or the third party software owner's standard end user licence agreement shall not affect any other EULA or third party software owner's standard end user licence agreement granted to other Locations or the Customer pursuant to this Contract.

17.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (f) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (g) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

17.4 Upon termination of this agreement, however caused the Customer shall pay to LumiraDx on demand:

- (a) all Device Fees and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 12.5(c); and
- (b) any costs and expenses incurred by LumiraDx in recovering the Devices and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

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

17.6 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

18. PRECEDENCE OF DOCUMENTS

In the event of, and only to the extent of, any conflict or inconsistency between the terms of the Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the Purchase Order(s);
- (b) these Terms; and
- (c) the terms of the EULA(s) or the third party software owner's standard end user licence agreement. In the event that LumiraDx grants a licence to use more than one piece of Software, the order of priority shall reflect the order in which the Software is listed on the Purchase Order.

19. FORCE MAJEURE

LumiraDx shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of LumiraDx or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Licensee is notified of such an event and its expected duration.

20. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. SEVERANCE

21.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

21.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

22. ENTIRE CONTRACT

22.1 The Contract constitutes the entire Contract between the parties and supersedes and extinguishes all previous Contracts, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each party acknowledges that in entering into this Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

23. ASSIGNMENT

23.1 The Customer shall not, without the prior written consent of LumiraDx, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

23.2 LumiraDx may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

24. THIRD PARTY RIGHTS

No one other than a party to this Contract, their successors and permitted assignees and any member of the LumiraDx Group, shall have any right to enforce any of its terms.

25. NOTICES

- 25.1** Any notice required to be given under this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its postal address set out on the Purchase Order(s), or such other address as may have been notified by that party for such purposes.
- 25.2** A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

26. GOVERNING LAW AND JURISDICTION

- 26.1** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 26.2** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

Device Sale Terms

1. DEVICE SALES

If confirmed on the Purchase Order(s), LumiraDx shall sell the Devices to the Customer subject to the terms of this Schedule 1. For the avoidance of doubt, the number and type of Devices to be supplied by LumiraDx shall be as set out on the Purchase Order(s).

2. TITLE AND RISK

2.1 The risk of damage to or loss of the Devices shall pass to the Customer on completion of delivery at the Delivery Location.

2.2 The title to the Devices shall pass to the Customer only on payment in full (in cash or cleared funds) of the Device Fees.

2.3 Until title to the Devices has passed to the Customer, the Customer shall:

- (a) not remove, deface or obscure any identifying mark on or relating to the Devices;
- (b) maintain the Devices in satisfactory condition and keep it insured against all risks for its full price from the date of delivery; and
- (c) notify LumiraDx immediately if it becomes subject to any of the events listed in clauses 17.3(c), 17.3(d), 17.3(e), 17.3(f) or 17.3(g).

2.4 LumiraDx may recover Devices in which title has not passed to the Customer. The Customer irrevocably licenses LumiraDx, its officers, employees and agents, to enter any premises of the Customer, in order to satisfy itself that the Customer is complying with the obligations in paragraph 2.3 of this Schedule 1 and to recover any Devices in which property has not passed to the Customer.

3. MANUFACTURER'S WARRANTIES

3.1 To the extent that the benefit of any warranties made by the manufacturer the Devices can be assigned to the Customer, LumiraDx shall, if requested by the Customer and at cost of the Customer, assign them to the Customer.

3.2 Until such assignment, LumiraDx shall co-operate with the Customer in any reasonable arrangements to provide the Customer with the benefit of such warranties at the cost of and for the benefit of the Customer.

SCHEDULE 2

Device Hire Terms

1. DEVICE HIRE

If confirmed on the Purchase Order(s), LumiraDx shall hire the Devices to the Customer subject to the terms of this Schedule 2. For the avoidance of doubt, the number and type of Devices shall be as set out on the Purchase Order(s).

2. HIRE PERIOD

The Hire Period starts on the Start Date and shall continue for the term set out at clause 17.1.

3. HIRE PAYMENTS

The Customer agrees pay the Device Fee for each Device to LumiraDx in accordance with clause 12. For the avoidance of doubt, the Device Fees shall be payable by the Customer on the payment dates set out on the relevant Purchase Order(s).

4. TITLE, RISK AND INSURANCE

4.1 The Devices shall at all times remain the property of LumiraDx, and the Customer shall have no right, title or interest in or to the Devices (save the right to possession and use of the Devices).

4.2 The risk of loss, theft, damage or destruction of the Devices shall pass to the Customer on completion of delivery at the Delivery Location. The Devices shall remain at the sole risk of the Customer during the Risk Period until such time as the Devices are redelivered to LumiraDx. During the Hire Period and the Risk Period the Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of each Devices to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as LumiraDx may from time to time nominate in writing;
- (b) insurance for such amounts as a prudent owner or operator of the Devices would insure for, or such amount as LumiraDx may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Devices; and
- (c) insurance against such other or further risks relating to the Devices as may be required by law, together with such other insurance as LumiraDx may from time to time consider reasonably necessary and advise to the Customer.

4.3 The Customer shall give immediate written notice to LumiraDx in the event of any loss, accident or damage to the Devices arising out of or in connection with the Customer's, the Location's or the Patient's possession or use of the Devices.

4.4 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to LumiraDx and proof of premium payment to LumiraDx to confirm the insurance arrangements.

5. MANUFACTURER'S WARRANTIES

- 5.1** The Customer acknowledges and agrees that the Devices are not manufactured or produced by LumiraDx. LumiraDx shall endeavour to ensure that the Customer shall be entitled to such warranty or other benefit as LumiraDx has received from the manufacturer of the Devices.
- 5.2** The Customer shall notify LumiraDx of any defect in the Device in writing within 15 Business Days of the defect occurring and shall permit LumiraDx, or its authorised agent, to examine the alleged defect.

6. THE CUSTOMER'S HIRE RESPONSIBILITIES

- 6.1** The Customer shall during the term of this agreement:
- (a) ensure that the Devices are used only for the purposes for which it is designed, and operated in a proper manner by fully trained Patients in accordance with any operating instructions;
 - (b) maintain at its own expense the Devices in good and substantial repair in order to keep it in good operating condition;
 - (c) make no alteration to the Devices and shall not remove any existing component(s) from the Devices without the prior written consent of LumiraDx;
 - (d) maintain records of the Locations and Patients using the Devices and make copies of such records readily available to LumiraDx, together with such additional information as LumiraDx may reasonably require;
 - (e) deliver up the Devices at the end of the Hire Period or on earlier termination of this agreement at such address as LumiraDx requires; and
 - (f) not do or permit to be done anything which could invalidate the insurances referred to in paragraph 4 of this Schedule 2.

SCHEDULE 3

Processing, Personal Data and Data Subjects

1. PROCESSING BY LUMIRADx

1.1 Nature and Purpose of processing

LumiraDx, and any member of the LumiraDx Group, may process Personal Data:

- to provide the Products and Services to the Customer, the Location(s) or the Patients (as the case maybe);
- support, maintenance and patient safety (including the investigation of faults);
- to improve the performance or features of the Software;
- to provide feedback to the Location(s) and/or Patient and improve the performance of the service that the Location(s) provide. Such feedback may also be disclosed to the Customer, provided that a suitable data sharing agreement has been entered into between the Location(s) and Customer;
- to improve or develop any Devices, Services or Software;
- to improve the understanding, treatment, outcomes and choice for Patients and healthcare professionals; and
- to comply with any relevant statutory or regulatory requirement imposed on LumiraDx from time to time.

LumiraDx may create anonymised data from the Patient Data inputted into the Software by the Location(s) provided that ISB1523 Anonymisation Standards for Publishing Health Care Data is observed.

1.2 Subject matter and duration of the processing

The subject matter and duration of the processing are set out in the Contract. For the avoidance of doubt, at the end of the Term, and at the written direction of the Customer, LumiraDx shall return (to the Customer or the Location(s)) or destroy copies of any Patient Data (unless a longer retention period is required by Applicable Law). The Customer acknowledges and agrees that it may be required to store copies of the Patient Data after the end of the Term for the purpose of complying with Applicable Law relating to clinical data and preventing clinical risks.

2. TYPES OF PERSONAL DATA

- Personal data including name and contact information (email address, telephone number and postal address);
- Financial details; and
- data concerning health including healthcare conditions affecting Patients and any prescribed medical and dosage requirements.

3. CATEGORIES OF DATA SUBJECT

- the Customer's and Location's employees, agents and independent contractors;
- Patient(s);

- Parent or Guardian of a Patient;
- a person with authority to make decisions on a Patient's behalf (e.g with Power of Attorney);
- a Patient's carer; and
- a Patient's next of kin.

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