

LUMEON Inc. (Lumeon)  
STANDARD TERMS AND CONDITIONS

## 1. Definitions

Capitalized terms, if not defined elsewhere in these Standard Terms and Conditions (“**Terms and Conditions**”) or other referenced documents and Schedules, shall have the respective meanings defined as follows.

“**Agreement**” means the agreement between Lumeon and Client for the provision of Product(s) and/or Services consisting of these Terms and Conditions, the Order Form, the Statement of Work, the Support Schedule and other referenced documents referred to in those documents and any future agreed variations.

“**Annual Fee**” means the fee payable annually in advance for the Product(s), Hosting, Support Service, Pass-Through Services and any other recurring charges as set out in the Order Form.

“**Authorized User(s)**” means the Client and its employees, agents, consultants, contractors or sub-contractors, and third parties who are provided with a login to use the Platform (other than the personnel of Lumeon).

“**Client**” means the client set out in the Order Form.

“**Client Data**” means, other than Resultant Data, information data or other content that Lumeon is provided access to in connection with the Product(s) and/or Services (such as but not limited to data accessed through a software-as-a-service environment, data accessed through test, development and production environment), or that incorporates or is derived from the processing of such information, data or content by or through the usage of the Product, data downloaded, collected or received directly or indirectly from the Client or the Authorized User, data belonging to the Client, including Client personalized configuration and administrative data.

“**Client Support Handbook**” means the document describing the available services offered by the different Service Levels.

“**Confidential Information**” means any confidential and proprietary information in any form or medium (whether oral, written, electronic or other) disclosed by either party to the other, which may include, but is not limited to information about technology, know-how, plans, strategies, clients, pricing, Services, operations, Products, IPR, processes, dealings, trade secrets, or the business and affairs of either party, in each case whether or not marked, designated or otherwise identified as “confidential”.

“**Disaster**” means a Force Majeure event.

“**Disaster Recovery Plan**” means a plan which sets out the procedures to be adopted by Lumeon in the

event that the Product(s) or any Client Data is damaged or becomes unavailable by reason of a Disaster (including the procedures to be taken by Lumeon in planning and providing for any such event).

“**Documentation**” means the document(s) made available to the Client by Lumeon which sets out a description and the user instruction of the Product(s) and/or Services.

“**Effective Date**” means the date set out in the Order Form upon which the Product(s) and/or Services begin, and which is the start of the Term.

“**End User**” means a patient, customer or potential patient or customer of the Client.

“**Essential Support**” has the meaning as described in the Client Support Handbook.

“**Force Majeure**” means any unforeseeable and/or exceptional situation or event beyond the reasonable control of a party, which prevents that party from performing its obligation(s) under the Agreement, provided such event could not have been avoided by the exercise of commercially reasonable diligence.

“**Harmful Code**” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or intended effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Services or Provider Systems as intended by this Agreement. Harmful Code does not include any Provider Disabling Device.

“**Hosting**” means the usage of database size, file storage and bandwidth as set out in the Order Form or SOW.

“**Incident**” means any event that is not part of the standard operation of the solution that causes or may cause an interruption or a reduction in quality of the Product and/or Services.

“**Initial Term**” means the time period specified in the Order Form starting from the Effective Date, or if no such time period is stated, then for three (3) years from the Effective Date.

“**IPR**” or “**Intellectual Property Rights**” means all registered or unregistered trademarks, service marks, patents, designs, utility models, applications for any of the foregoing, copyrights, databases, rights to inventions, or other intellectual property rights subsisting anywhere in the world.

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local, foreign government, political subdivision thereof, any arbitrator, court or tribunal of competent jurisdiction or any other laws or regulations.

**"Maintenance Window"** means a time outside the Working Hours.

**"One-time Charges"** means the amount payable by the Client to Lumeon for Professional Services (if not Time and Materials charges) and any other singular payments as set out in the Order Form.

**"Order Form"** means the Lumeon order form which sets out and particularizes the Lumeon Product(s) and/or Services which the Client has agreed to purchase, license, or subscribe to from Lumeon.

**"Pass-Through Services"** means the services identified as being provided to the Client on a pass-through basis only as set out in the Order Form.

**"Personal Information"** means any information that, individually or in combination, does or can identify a specific individual or device or by or from which a specific individual or device may be identified, contacted or located. Personal Information includes all "non-public personal information" as defined under the Gramm-Leach-Bliley Act, "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996, "Personal Data" as defined in the EU Data Protection Directive (Directive 95/46/EEC), "Personal Information" as defined under the Children's Online Privacy Protection Act of 1998 and all rules and regulations issued under any of the foregoing.

**"Platform"** means the platform set out in the Order Form, managed by Lumeon and used by the Client.

**"Product"** means the Platform and all other software set out in the Order Form made available for use by Lumeon to the Client.

**"Product Fault"** means any Product unavailability or failure of Product to operate in all material respects (Severity 1 described in the Support Handbook) in accordance with the Agreement.

**"Professional Services"** means development, configuration, consultancy, training, or other ad hoc services provided in accordance with the Order Form or an agreed SOW.

**"Process"** means to take any action or perform any operation or set of operations that Product(s) are capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalogue, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult,

use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy. **"Processing"** and **"Processed"** have correlative meanings.

**"Provider Disabling Device"** means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by Lumeon or its designee to disable Client's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of Lumeon or its designee.

**"Renewal Term"** means the automatic renewal time period as set out in the Order Form starting from the end of the Initial Term or then current Renewal Term. Unless otherwise stated in an Order Form, each Renewal Term is one (1) year and multiple Renewal Terms may occur, subject to section 17.

**"Registered Technical Contact(s)"** means those nominated Authorized Users trained by Lumeon to provide front line support and entitled to raise requests for Support Service.

**"Resultant Data"** means information, data and other content that is derived by or through the Services from processing Client Data and is de-identified in accordance with applicable Law or sufficiently different from such Client Data that such Client Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.

**"SLA"** means the Service Level Agreement set out in the Support Schedule.

**"Senior/Executive Management Team"** means a group of high level Executives of the Client that actively participate in the daily supervision, planning and administrative processes required by a business to help meet its objectives. For the avoidance of doubt, the senior/executive management team of the Client is appointed by the corporation's board of directors and approved by stockholders.

**"Services"** means any or all of the Support Services, Pass-Through Services or Professional Services.

**"Service Level"** has the meaning described in section 1.1. of the SLA.

**"Statement of Work" or "SOW"** means a written description of the Technical Requirements needed and Professional Services to be performed by Lumeon for the Client agreed in writing by Lumeon and the Client.

**"Subscription Fees"** means the subscription fees payable by the Client to Lumeon for the Subscriptions, as set out in the Order Form.

**"Subscriptions"** means the subscriptions set out in the Order Form and paid for by the Client pursuant to section 3 which entitle Authorized Users and End

Users to access and use the Product(s) in accordance with this Agreement.

“**Support Hours**” mean the hours set out in the Client Support Handbook for the Support Tier of support ordered by the Client.

“**Support Schedule**” means the Support Service and the SLA.

“**Support Services**” means the support and maintenance of the Product(s) and/or Services.

“**Support Portal**” means the channel provided in section 4.4. of the Support Service to enable Clients to raise Incidents via web-based tool.

“**Support Tier**” means the support offers from Essential Limited to Premium support.

“**Technical Requirements**” means the technical requirements that the Client is obliged to comply with to use the Product(s) and/or the Services as set out in the SOW.

“**Term**” means the period commencing on the Effective Date for the Initial Term and shall automatically extend for any subsequent Renewal Terms, subject to section 17.

“**Termination Compensation**” means the Annual Fee to the end of the Term, which shall be pro-rated depending on when the Agreement is terminated during the Term, in order to compensate Lumeon for the loss of the Agreement if the Client wishes to terminate the Agreement for convenience pursuant to section 17.1. before the expiry of the Initial or Renewal Term.

“**Time and Material Charges**” means the amount payable by the Client to Lumeon for Professional Services as set out in the Order Form.

“**Virus**” means any thing or device (including any software, code, file or program) which may intentionally: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

“**Working Day**” means a day (other than a Saturday or Sunday or a US public holiday) on which banks are open for business in the United States.

“**Working Hours**” means 9:00 a.m - 5:30 p.m (Eastern Time) on a Working Day.

## 2. Scope

2.1 Subject to the terms and conditions of the Agreement, Lumeon shall:

2.1.1 Provide the Client and its Authorized Users the non-exclusive right to use the Product(s) as set out in section 3 and 4;

2.1.2 Provide the Client and its Authorized Users the right to permit End Users to use the Product(s) for transacting business with the Client as set out in this Agreement;

2.1.3 Provide Support Services in accordance with the Support Schedule; and

2.1.4 Perform the Professional Services in accordance with an agreed SOW or the Order Form.

## 3. Subscriptions

3.1 Subject to the Client purchasing and paying for the Subscriptions in accordance with section 4.3 and section 10, the restrictions set out in this section 3 and the other terms and conditions of the Agreement, Lumeon hereby grants to the Client:

3.1.1 a non-exclusive, non-transferable, revocable right to use the Product(s) for remote electronic access by its Authorized Users subject to limitations for Hosting and any other limitations as set out in this Agreement; and

3.1.2 a limited, non-exclusive, revocable right for two (2) Registered Technical Contacts to receive the Support Service,

during the Term solely for the Client's internal business operations. The rights granted by this section 3.1. shall not be deemed to extend to any programs or materials of Lumeon other than as contained as part of the Product(s) unless specifically agreed to in writing by Lumeon.

3.2 The Client may, as part of the Authorised Users, permit third party sub-contractors including contracted medical practitioners to use the Product(s) in connection with the Client's business. The Client shall procure compliance by each such Authorised User and sub-contractor with the Terms and Conditions of this Agreement as if they were party to the Agreement and indemnify Lumeon against any failure to do so.

3.3 The rights provided under this section 3 are granted to the Client set out in the Order Form only, and shall not be considered granted to any other entities, subsidiaries or holding company of the Client.

#### **4. Additional Subscriptions**

- 4.1 Subject to section 4.2 and section 4.3, the Client may, from time to time during the Term, purchase additional Subscriptions and/or Hosting in excess of the number set out in the Order Form and Lumeon shall grant access to the Product(s) and the Documentation to such additional Subscriptions and/or Hosting in accordance with the provisions of this Agreement.
- 4.2 If the Client wishes to purchase additional Subscriptions and/or Hosting, the Client shall notify Lumeon in writing. Lumeon shall evaluate such request for additional Subscriptions and/or Hosting within a reasonable timeframe and respond to the Client with approval or rejection of the request (such approval not to be unreasonably withheld).
- 4.3 If Lumeon approves the Client's request to purchase additional Subscriptions and/or Hosting, the Client shall, within 30 days of the date of Lumeon's invoice, pay to Lumeon the relevant Annual Fees for such additional Subscriptions and/or Hosting as set out in the Order Form and, if such additional Subscriptions and/or Hosting are purchased by the Client part way through the Initial Term or any Renewal Term (as applicable), such Annual Fees shall be pro-rated for the remainder of the Initial Term or then current Renewal Term (as applicable).

#### **5. Lumeon's obligations**

- 5.1 Lumeon shall, during the Term, provide the Product(s) and Services, and make available the Documentation to the Client on and subject to the terms of this Agreement.
- 5.2 Lumeon shall use commercially reasonable efforts to make the Product(s) accessible 24 hours a day, seven days a week, except for:
  - 5.2.1 maintenance carried out during the Maintenance Window in accordance with section 5 of the Support Schedule;
  - 5.2.2 unscheduled maintenance performed outside Working Hours, provided that Lumeon has used reasonable efforts to give the Client at least six (6) Working Hours' notice in advance;
  - 5.2.3 Planned Downtime as set out in section 5 of the Support Schedule;
  - 5.2.4 any other circumstances beyond Lumeon's reasonable control, including but not limited to any situation described under section 5.4. of this Agreement; and

5.2.5 any termination of Client's or any Authorized Users' access to or use of the Product(s) a permitted by this Agreement.

5.3 Lumeon will (i) provide the Services substantially in accordance with the description in the SOW and with reasonable skill and care, and (ii) provide Products that substantially comply with the applicable specifications in the Documentation.

5.4 Section 5.3 shall not apply to the extent any non-conformance is caused by use of the Services or Product(s) contrary to Lumeon's instructions, or modification or alteration of the Services or Product(s) by any party other than Lumeon or Lumeon's duly authorized contractors or agents. If a Service or Product does not conform with section 5.3, Lumeon will, at its expense, use all reasonable commercial efforts to repair, re-perform, or replace the non-conforming Service or Product, at Lumeon's option. If Lumeon is unable to timely repair, re-perform or replace the non-conforming Service or Product and such non-conformity is material, Client may terminate this Agreement with respect to the non-conforming Product or Service and receive a refund for any pre-paid charges for the non-conforming Product and Services and/or the period in which the non-conforming Product or Service was not available for use after such termination as Client's sole and exclusive remedy for any breach of section 5.3. Notwithstanding the foregoing, Lumeon:

5.4.1 does not warrant that the Client's use of the Product(s) or Services will be uninterrupted or error-free; or that the Product(s), Services, Documentation and/or the information obtained by the Client through the Product(s) will meet the Client's requirements;

5.4.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Product(s) and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and

5.4.3 is not responsible or liable for any Pass-Through Services including but not limited to any interruptions, Product Faults and delays a Pass-Through Service may cause.

5.5 Lumeon warrants that it has and will maintain all necessary licenses, consents, and

permissions necessary for the performance of its obligations under this Agreement.

- 5.6 Lumeon will, as part of the Product(s) and at no additional cost to the Client, provide the Client with Lumeon's Essential Support during Support Hours in accordance with Lumeon's Support Schedule in effect at the time that the Product(s) are provided. Lumeon may amend the Support Schedule in its sole and absolute discretion from time to time in a manner that would not cause material and adverse consequences to Client during the then-current Term. The Client may purchase enhanced Support Services separately at Lumeon's then current rates.
- 5.7 Lumeon will make Upgrade Releases as set out in section 6 of the Support Schedule.
- 5.8 Messages. Lumeon may use third party service providers for the purpose of delivering SMS and other messages using the Products and in providing the Services. In the provision of these SMS and other messages Lumeon and Client agree that:
- 5.8.1 if Lumeon's standard US SMS short code is used (89888), message and data rates may apply. No charges are associated with the use of Lumeon's Free To End User (FTEU) short code unless agreed otherwise;
- 5.8.2 neither Lumeon nor the wireless carriers will be liable for delayed or undelivered messages;
- 5.8.3 SMS and other messages will include the name of the healthcare provider sending the message;
- 5.8.4 details of customer care contact information will be included in the SMS or other message sent;
- 5.8.5 the recipient of the SMS or other message will have the right to reply STOP to opt out of SMS or other communication for Client;
- 5.8.6 message recipients will receive up to three reminder SMS or other messages per appointment.
- 5.8.7 a cell phone user can send HELP to the short code in order to receive help information.

## **6. Client's obligations**

The Client shall:

- 6.1 provide Lumeon with:
- 6.1.1 all necessary co-operation in relation to this Agreement; and
- 6.1.2 all necessary access, rights and licenses as may be required by Lumeon; in order to provide the Services and make available the Products, including but not

limited to Client Data, security access information and configuration services;

## **Subscription & Security**

6.2 The Client undertakes that:

- 6.2.1 the maximum number provided in the Order Form that authorises Client to use the Product(s) and the Documentation shall not exceed the number of Subscriptions that Client has purchased from time to time, providing that the Client may add or remove Subscriptions in accordance with the procedure set out herein;
- 6.2.2 it shall maintain a written, up to date list of Authorised Users and provide such list to Lumeon within 5 Working Days of Lumeon's written request at any time or times;
- 6.2.3 ensure that the Technical Requirements are met and its network and systems comply with the relevant specifications provided by Lumeon from time to time;
- 6.2.4 it will not provide or otherwise make available the Product(s) and/or the Services in whole or in part, in any form to any person other than the Authorised Users or End Users and hereby indemnifies Lumeon fully against all liabilities, costs and expenses, including legal expenses incurred as a result of any use by Authorised Users or End Users. For the avoidance of doubt, any additional use shall require an additional purchase of Subscriptions in accordance with the procedure set out herein and any change of use shall require a Change Request Form;
- 6.2.5 it uses all reasonable efforts to prevent any unauthorized access to, or use of, the Product(s) and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify Lumeon;
- 6.2.6 each Authorised User shall keep a secure password for his access and use of the Product(s), not share the password and Documentation and that each Authorised User shall keep his password confidential;
- 6.2.7 shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or its accidental loss, destruction or damage;
- 6.2.8 no Client Data will be sent and provided to Lumeon, its contractors, agents or other third parties via Email or Lumeon's Support Portal; and
- 6.2.9 inform Lumeon of any actual or threatened activities prohibited under this Agreement or by Law.

## **Usage & Restrictions**

- 6.3 The Client shall use the Product(s) and/or Services only for the Client's normal business purposes and only in the manner for which the Product(s) can be reasonably expected to be used. For the avoidance of doubt, the Client is exclusively and entirely responsible for the proper use of the Product(s), Documentation and the Services by its Authorized Users or End Users including but not limited to ensuring compliance with this Agreement, the Technical Requirements and any instructions provided by Lumeon for the use of the Product(s) and/or the Services and shall be exclusively and entirely responsible for the proper licensing or permission of any third party software or hardware it requires to use the Product(s) and/or Services, any Authorized User's, End Users and breach of this Agreement.
- 6.4 The Client shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Product(s) that:
- 6.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 6.4.2 facilitates illegal activity;
  - 6.4.3 depicts sexually explicit images;
  - 6.4.4 promotes unlawful violence;
  - 6.4.5 is discriminatory based on race, gender, ethnicity, religious belief, sexual orientation or identity, disability; or
  - 6.4.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;
- and Lumeon reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to the Product(s) and/or the Services for any actual or suspected breaches of the provisions of this section.
- 6.5 The Client shall not (and shall not permit others to):
- 6.5.1 except to the extent expressly permitted under the Agreement, attempt to copy, duplicate, create links to, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Product(s) and/or Documentation in any form or media or by any means (for the avoidance of doubt the Client may copy Client Data stored as part of the Product(s) for backup and any other purposes for so long as it has permission to access and use the Product(s)); or
  - 6.5.2 modify or make derivative works based upon the Product(s) and/or Documentation other than by way of creating appointments, letters, reports and other user outputs that use the content in the normal course of using the functionality of the Product(s) and/or Documentation; or
  - 6.5.3 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Product(s); or
  - 6.5.4 access all or any part of the Product(s) and Documentation in order to build a product or service which competes with the Product(s) and/or the Documentation; or
  - 6.5.5 vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Product(s) and/or Documentation; or
  - 6.5.6 use the Product(s) and/or Documentation to provide the Product(s) and/or Documentation to third parties who are not Authorized Users; or
  - 6.5.7 subject to section 21.2, license, sell, re-sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Product(s) and/or Documentation available to any third or unauthorized party, except the Authorized Users, without prior written consent from Lumeon, or
  - 6.5.8 attempt to obtain, or assist third parties, who are not Authorized Users, in obtaining, access to the Product(s) and/or Documentation, or
  - 6.5.9 impersonate another client or user or provide false identity information to gain access to or use of the Product(s); or
  - 6.5.10 access the Product(s) for purposes of monitoring its availability, performance or functionality, or to utilize the information provided by the Product(s) to create a service, including but not limited to analysis, meta-data extraction, retrieval and content categorization service or for any other benchmarking or competitive purposes, except as otherwise agreed between the Client and Lumeon in writing; or
  - 6.5.11 use the Product(s) in any way that causes, or may cause, damage to the Product(s) or impairment of the availability or accessibility of the Product(s);
  - 6.5.12 remove, delete, alter or obscure any trademarks, specifications, Documentations, warranties or disclaimers or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Product(s) or Services, including any copy thereof; or

6.5.13 access or use the Product(s) or Services in any manner or of any purposes that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any Pass-Through Services, or that violates or facilitates the violation of any applicable Law.

#### Responsibilities

6.6 Client shall:

6.6.1 Comply with all responsibilities set out in this Agreement and SOW in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, Lumeon may adjust any agreed timetable or delivery schedule as reasonably necessary;

6.6.2 be solely responsible for all information that the Client, its Authorized Users, or End Users enter into the Product(s) and/or the Services and for checking the validity of the information extracted from the Product(s) and/or the Services;

6.6.3 be entirely responsible for any clinical or other advice (including any risk and consequences which may arise) provided to End Users or other third parties on the basis of information stored in or extracted from the Product(s) and/or the Services. The Client shall ensure that it makes such information and advice available only with proper and appropriate warning and disclaimers and that nothing generated from the Products or Services constitute medical advice. Unless otherwise agreed in writing by Lumeon, Lumeon is not in any way responsible for the entering of information to, validation of, or extraction of information to or from the Product(s) and/or the Services or for any advice given based on this information. Lumeon does not warrant or purport to warrant that the Product(s) and/or Services are suitable for any specific clinical investigations, workflow and procedures or for any other purpose;

6.6.4 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Lumeon's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet;

6.6.5 be solely responsible and liable for determining the content of text messages (if any) that may be sent using the text messaging service detailed in the SOW and the content of letters sent (if any) that may be sent using the postal fulfilment service detailed in the SOW.

Client further agrees that it shall be solely responsible for determining whether or not each of these services meets the legal requirements of the Law in respect of the Client Data and Lumeon's only responsibilities in this regard are those detailed in the SOW. Lumeon shall have no liability to the Client in respect of such third party & Pass-Through Service's compliance with the Law other than, at the Client's written request, to use its reasonable commercial efforts to enforce the terms of the contracts with such third party & Pass-Through providers insofar as the terms relate to the Law with the reasonable costs of such enforcement being borne by the Client and the Client securing Lumeon to Lumeon's reasonable satisfaction from any liability that Lumeon may suffer in connection with such enforcement (including the third party's legal costs awarded against Lumeon);

6.6.6 in all legal aspects, be solely responsible for Client Data sent and provided to Lumeon, its contractors, agents or other third parties via Email or Lumeon's Support Portal.

#### Communication

6.7 Client shall be responsible for coordinating all communication with Lumeon and be entitled to make and receive any communication in relation to the Agreement on behalf of its Authorised Users.

6.8 Client shall notify Lumeon promptly on becoming aware of any unauthorized use of the whole or any part of Lumeon's IPR's, Product(s) or Services.

#### Acknowledgments

6.9 Client acknowledges and agrees,

6.9.1 Lumeon (or its licensors) has and will retain sole ownership and control over the operation, provision, maintenance and management of the Product(s);

6.9.2 that Lumeon does not, nevertheless the information is available through the Product(s) and/or Services, verify, recommend or endorse any specific tests, doctors, health care providers, procedures or information, and the Client is solely responsible for providing medical care and recommendations and determining the suitability of the Products, Services and information therein for End Users;

- 6.9.3 where the Client requires any Pass-Through Services, accept the Support Service conditions as set out in the Support Schedule and acknowledges that the same are provided without liability or responsibility on the part of Lumeon;
- 6.9.4 that the method and means of providing the Product(s) and/or Services shall be under the exclusive control, management, and supervision of Lumeon. Lumeon reserves the right, in its sole discretion, to make any changes to the Product(s) and Services that it deems necessary or useful to (a) maintain or enhance (i) the quality or delivery of Lumeon's Product(s) or Services to its Clients, (ii) the competitive strength of or market for Lumeon's Product(s) or Services or (iii) the Product(s) or Services' cost efficiency or performance; or (b) to comply with the Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Products(s) or Services. The parties shall evaluate Client requests for changes, determine if additional charges apply, and, if agreed, implement changes in accordance with the change procedure set out in the Change Request section of this Agreement;
- 6.9.5 acknowledge, that Lumeon is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay or failure in performing any of its obligations under this Agreement or in responding to Lumeon where Lumeon requires information from the Client;
- 6.9.6 not during the Term and for one (1) year after the termination thereof, directly or indirectly, recruit or solicit (or assist any other person to recruit or solicit) for employment or engagement as an employee, independent contractor or otherwise, any individual or contractor that was employed or engaged by Lumeon in connection with this Agreement during the Term. In the event of a violation of this section 6.8.6, Lumeon will be entitled to liquidate damages equal to the compensation paid by Lumeon to the applicable employee or contractor during the Term. This provision will not apply to general solicitations not targeted at Lumeon employees or contractors;
- 6.9.7 that it shall provide attribution to Lumeon within any published works that are based on or mention the Product(s), or on content generated through use of the Product(s), including but not limited to journal articles and web pages;
- 6.9.8 that it shall comply with the Law that are applicable to the use of the Product(s) and the Services supplied under this Agreement; and
- 6.9.9 and Lumeon reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access for any actual or suspected breaches of the provisions of this section.
- The Client acknowledges, that the Agreement shall not prevent Lumeon from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or Product(s) and/or Services which are similar to those provided under the Agreement.

## **7. Client Data**

- 7.1 The Client shall own all right, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data and any decisions or recommendations made based on such Client Data. Client represents and warrants that it has all rights, consents, and authorizations to provide the Client Data to Lumeon for the purposes contemplated in this Agreement.
- 7.2 Lumeon shall ensure that the Client Data is encrypted at rest and in transit using current secure standard but no less than TLS1.1 standard.
- 7.3 Lumeon shall operate a security incident management process and promptly notify the Client of any actual or suspected unauthorized disclosure of Client Data.

## **8. Third party providers**

The Client acknowledges that the Product(s) may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that Client does so solely at its own risk. Lumeon makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not Lumeon. Lumeon recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party



website. Lumeon does not endorse or approve any third-party website nor the content of any of the third-party website made available via Product(s).

## **9. IPR, Trademarks, Service Marks, Copyright & Proprietary Rights**

- 9.1 Lumeon confirms that it has all the rights in relation to the Product(s), Documentation and Services provided hereunder that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Terms and Conditions.
- 9.2 All title, rights and interest in and to the Product(s) and Services, Documentation and any accompanying printed materials are and will remain the exclusive property of Lumeon including any images and text (other than Client Data) incorporated into the Product(s) and/or Services and any subsequent upgrades, amendments, variations or improvements made to the Product(s) and/or the Services. The Client has no right, license or authorization with respect to any of the Products and Services (including Pass-Through Services) other than the ones described within these Terms and Conditions. In furtherance of the forgoing and section 9.3., Client hereby unconditionally and irrevocably grants to Lumeon an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.
- 9.3 All IPR in the Product(s) and the Services shall, unless agreed in writing with the Client otherwise, remain or become the sole and exclusive property of Lumeon, its assignors or licensors, regardless of whether the Product(s) or the Services (or any part thereof) have been developed solely by Lumeon or jointly with the Client. The Client shall neither derive nor assert any title or interest in the Product(s) or the Services, except to the extent of the rights granted under these Terms and Conditions.
- 9.4 Client hereby grants Lumeon a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Product(s) and/or the Services any suggestions, enhancements, requests, recommendations or other feedback provided by the Client or its Authorized Users relating to the operation and development of the Product(s) and/or the Services. The Client shall sign all documents reasonably necessary or desirable to give effect to such assignment.
- 9.5 Subject to section 9.4, nothing in this Agreement shall serve to transfer from the Client to Lumeon any IPR owned by the Client and all right, title and interest in and to the existing Client IPR,

including Client Data, owned by the Client will remain exclusively with the Client.

- 9.6 Any components supplied under license to Lumeon by third parties are the exclusive property of those third parties.
- 9.7 This Agreement does not transfer or grant any implied rights to, or in, any IPR relating to the Product(s), the Services or the Documentation.
- 9.8 The Client agrees that Lumeon may retain a copy of the metadata arising from use of the Product(s). The Client hereby grants Lumeon a non-exclusive perpetual, sub-licensable and royalty-free license to that metadata. Lumeon's use of this metadata is governed by the terms of its Privacy Policy.
- 9.9 In order to improve or enhance the Product(s), or to develop new products and services, Lumeon may use the content and data, that the Client provided through the Product(s) in accordance with Lumeon's Privacy Policy. By using the Product(s), the Client agrees, and agrees to notify the Authorized Users and Client's End Users who use the Client's application and/or service, that Lumeon may access use, copy, distribute internally and extract, compile, synthesize, analyze and otherwise make derivative works of the Client's content and of the Authorized Users' and Client's End Users' content and data, with the exception of patient data that has not been de-identified. Immediately upon creation, Client expressly and irrevocably hereby assigns to Lumeon any and all right, title and interest in and to all Intellectual Property Rights in and to all improvements to the Product(s) that Client recommends, conceives, or otherwise contributes to the creation thereof, excepting any pre-existing Client IPR.
- 9.10 The provisions of this section 9 shall survive termination of this Agreement.

## **10. Fees, Payment Terms**

- 10.1 The Annual Fees and One-time Charges payable by the Client shall be as set out on the Order Form.
- 10.2 The Annual Fees shall be due on the Effective Date and on the anniversary of that date each year. Lumeon may increase its Annual Fees once a year upon 30 days notice. However, the maximum amount of an increase in the first Renewal Term shall not exceed the annual change in the Consumer Price Index (CPI) in the respective year plus 3.5%.
- 10.3 One-time Charges will be invoiced on the date set out in the Order Form and/or SOW.

- 10.4 Time and Material Charges and reimbursable expenses as described in the SOW will be invoiced monthly in arrears based on timesheets.
- 10.5 All sums payable under the Agreement shall be exclusive of all local, state and federal taxes and similar assessments. Client is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on Lumeon's income.
- 10.6 Client shall pay invoices in the currency set forth on the invoice and within 30 days of the date of the invoice.
- 10.7 If payment is made by wire or other electronic funds transfer, Client is solely responsible for any bank or other fees charged and will reimburse Lumeon for any such fees.
- 10.8 Without prejudice to any other right or remedy that Lumeon may have if the Client fails to pay on the due date, Lumeon may charge interest (calculated on a daily basis) from the date such payment was due to the date of actual payment, at a rate of one and one-half per cent (1.5%) per month or the maximum amount allowed by applicable Law, if lower, from time to time, both before and after judgement. Client shall reimburse Lumeon for all costs incurred by Lumeon in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees.
- 10.9 If Client fails to make a payment due under the Agreement and fails to correct such non-payment within seven (7) days of written notice from Lumeon, Lumeon will have the right to restrict all or part of the Product(s) and/or Services in its function to a read-only mode/access without further notice.
- 10.10 If the Client continues to fail to make a payment and pursuant to section 10.8 and 10.9. of these Terms and Conditions, Lumeon shall have the right to terminate for breach of the Agreement in accordance with section 17.6. hereof.
- 10.11 All amount payable to Lumeon under this Agreement shall be paid by the Client to Lumeon in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reasons other than disputed invoices issued pursuant to section 10.12. or any deduction or withholding of tax as may be required by applicable Law.
- 10.12 Client shall (a) notify Lumeon of all amounts it disputes on an invoice within ten (10) Working Days of receiving the associated invoice; (b)

only dispute amounts in good faith; and (c) if only part of a charge or invoice is disputed, Client shall timely pay such undisputed portion.

## **11. Data Privacy and Data Security**

### **11.1 Lumeon Responsibilities.**

#### Security Certifications

Lumeon shall,

- 11.1.1 maintain independently audited compliance with the ISO certification standard and on request provide a certificate of compliance to the Client;

#### Technical measures

- 11.1.2 take appropriate technical and organizational measures against unauthorized or unlawful processing of the Client or its accidental loss, destruction or damage;
- 11.1.3 Ensure that Client Data is encrypted at rest and in transit using current state-of-the-art standard but no less than TLS1.1 standard
- 11.1.4 ensure that commonly accepted industry security standards are met;
- 11.1.5 ensure that any data center sub-contracted to hold the Client Data uses commonly accepted industry security standards and holds a documented and recognized ISMS framework;
- 11.1.6 ensure that any payment card processing Pass-Through Service has third party certification of its compliance with the PCI-DSS standard and check annually that such certification is maintained;
- 11.1.6.1 provide data backup and a Disaster Recovery Plan in accordance with the Data Retention and Disaster Recovery Policy;
- 11.1.7 upon Clients written request and for additional costs, make a two-factor authentication for logins to Authorised Users via the Product(s) and/or Services available. Two-factor authentication requires that all login attempts have both login credentials and a second authentication factor;

#### HIPPA and Privacy Policy

- 11.1.8 in providing the Product(s), comply with HIPPA, Lumeon's Privacy Policy, and any Business Associate Agreement attached to an Order Form or otherwise executed by the parties. Such Privacy Policy may be

amended from time to time by Lumeon and in its sole discretion.

11.2 **Client Responsibility.** In addition to other obligations mentioned in this Agreement, the Client shall:

11.2.1 comply with Law with respect to its activities under the Agreement including but not limited to its obligations under HIPPA, and shall not infringe the IPR or other legal rights of any person;

11.2.2 obtain and maintain all legally required and necessary licenses, consents, and permissions necessary for its, its Authorized Users', and End Users' relationships and its and their use of the Product(s) and/or Services, including without limitation the right to process, transfer and store Client Data;

11.2.3 not send Client Data via e-mail, communication-enabling services such as messages or Lumeon's Support Portal;

#### Privacy Policy

11.2.4 acknowledge and agree, and if necessary obtain consent, approval and authorization, to Lumeon's Privacy Policy;

#### Technical Requirements

11.2.5 employ all physical, administrative and technical controls, screening and security procedures and other safeguards to (a) securely administer the distribution and use of all passwords and Authorized Users and protect against any unauthorized access to or use of the Product(s); and (b) control the content and use of Client Data, including the provision of Client Data for Processing by the Product(s) or Services;

11.2.6 ensure that the Technical Requirements are met, and its network and systems comply with the relevant specifications provided by Lumeon from time to time;

11.2.7 shall take appropriate technical and organizational measures to prevent unauthorized or unlawful processing of the Personal Information or its accidental loss, destruction or damage;

11.2.8 ensure that Authorised Users are provided with training on how to identify phishing emails, and do not click links or open attachments in suspicious emails;

11.2.9 ensure that Authorised Users never open emails from unknown sources; and

11.2.10 ensure that Authorised Users comply with strong password security practices including but not limited to resetting passwords every 90 days, and requiring that passwords be of a minimum length of 8-10 characters.

11.3 The provisions of this section 11 shall survive termination of the Agreement.

#### **12. Confidentiality**

12.1 Each of the parties has and/or may from time to time disclosed to the other party Confidential Information. Each of the parties hereby agrees that it will:

12.1.1 treat the Confidential Information with the same degree of care to avoid disclosure to third parties as is used by the recipient party with respect to its own similar Confidential Information, but not less than a reasonable degree of care;

12.1.2 use the Confidential Information, solely for the duration of the Agreement, to exercise its rights or perform its obligations under and in accordance with the Agreement;

12.1.3 disclose the Confidential Information only to those employees, agents and sub-contractors of a party who have a need to know it and are under a binding obligation of confidentiality not less onerous than the terms of this section 12;

12.1.4 except as provided in 12.1.3 above, not disclose, whether directly or indirectly, the Confidential Information to any third party;

12.1.5 return and destroy all Confidential Information and all copies made thereof and erase all Confidential Information from its computer and communications systems and devices used by it upon written request. Nothing in this section 12 shall require the receiving party to return or destroy any Confidential Information that the receiving party is required to retain by applicable Law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction; and

12.1.6 be responsible and liable for any of its employees, agents, representatives and sub-contractors' non-compliance with the terms of this section 12.

12.2 The foregoing provision shall not prevent the disclosure or use by the parties of any information which is already known or becomes rightfully known through a third

- party, or is independently developed by that party, is or hereafter through no fault of that party becomes public knowledge or to the extent permitted by Law.
- 12.3 The Client acknowledges that details of the terms and conditions set forth in the Agreement, Product(s), Documentation, Services and the results of any performance tests of the Product(s) constitute Lumeon's Confidential Information.
- 12.4 Lumeon acknowledges that the Client Data is the Confidential Information of the Client.
- 12.5 If one or both parties are compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable Law, the compelled party shall (a) promptly, and prior to such disclosure, notify the other party in writing of such requirement so that the other party can seek a protective order or other remedy or waive its rights; and (b) the other party, at its expense, shall provide reasonable assistance to the compelled party in opposing such disclosure or seeking a protective order or other limitations on disclosure. The compelled party who is required by applicable Law to disclose any Confidential Information shall only disclose that portion of the Confidential Information that such party, on the advice of counsel, is legally required to disclose.
- 12.6 Neither party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as stated in the Privacy Policy or required by Law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or order of any court or other authority of competent jurisdiction.
- 12.7 The provisions of this section 12 shall survive termination of the Agreement.

### **13. Warranties**

- 13.1 Each party warrants that the execution of the Agreement by its representative whose signature is set on the Order Form has been duly authorized by all necessary corporate or organizational action of such party.
- 13.2 Lumeon shall have no warranty obligations in respect of any of the following:
- 13.2.1 circumstances not described in the Agreement;
- 13.2.2 unauthorized use of the Product(s) and/or the Services;
- 13.2.3 modified Product(s) and/or Services where the Client has made such modification without the prior consent of Lumeon;
- 13.2.4 any access or use of the Product(s) and/or Services in a manner not in accordance with the Documentation;
- 13.2.5 all problems caused by Client's access or use of the Product(s) and/or Services via hardware or software other than the hardware or software specified in the Technical Requirements;
- 13.2.6 problems which are caused by errors, defects or failures of the Client's hardware, software or other services; and
- 13.2.7 Pass-Through-Services.
- 13.3 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS, ALL PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND LUMEON HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND LUMEON SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, LUMEON MAKES NO WARRANTY OF ANY KIND THAT THE PRODUCTS OR SERVICES OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S NEEDS OR REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER PRODUCTS OR SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL PASS-THROUGH SERVICES ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY PASS-THROUGH SERVICES ARE STRICTLY BETWEEN CLIENT AND THE PASS-THROUGH SERVICE OWNER OR DISTRIBUTOR OF THE PASS-THROUGH SERVICES.
- 13.4 THE PLATFORM, PRODUCTS AND SERVICES ARE NOT, AND DO NOT

PROVIDE, CLINICAL, MEDICAL ADVICE, SERVICE, OR CARE. CLIENT AND ITS AUTHORIZED USERS AND END USERS SHOULD NOT RELY ON THE PLATFORM, PRODUCTS OR SERVICES FOR THE DIAGNOSIS OR TREATMENT OF ANY HEALTH CONDITION, PROBLEM OR DISEASE. CLIENT SHALL MAKE ITS AUTHORIZED USERS AND END USERS AWARE OF THE FOREGOING.

#### **14. Liability**

- 14.1 Lumeon shall not be liable for any product(s) or services not being part of this Agreement, any Pass-Through Services, any defects or non-performance or events or circumstances outside its reasonable control and for any damage caused by errors or omissions in any information, instructions or scripts provided to Lumeon by the Client in connection with the Product(s) or Services, or any actions taken by Lumeon at the Client's direction.
- 14.2 To the fullest extent permitted by Law, Lumeon shall in no event be liable to the Client, Authorized User(s), End Users or any third party for costs of cover, or for indirect, special, consequential, exemplary, punitive or incidental loss or damage including, without limitation, loss of profits, anticipated savings, business opportunity, goodwill, or loss of data of any kind arising out of or in connection with the Agreement, including without limitation the Products and Services, their use, and Lumeon's performance of the terms and conditions of the Agreement, however arising or caused and on any theory of liability (whether in contract, tort (including negligence), strict liability or otherwise).
- 14.3 To the fullest extent permitted by Law, Lumeon's total and cumulative liability shall not exceed the amounts paid by Client to Lumeon for the particular Order Form or SOW giving rise to liability in the prior twelve (12) months from the event first giving rise to liability (or twelve (12) months fees if not related to any particular Product or Service). This cap is an aggregate cap and not a per claim or event cap.
- 14.4 In no event will Lumeon be liable or responsible to the Client or be deemed to have defaulted under or breached this Agreement when and to the extent such failure or delay is caused by any Force Majeure event.
- 14.5 Client assumes sole responsibility for all medical care, decisions and recommendations and the results obtained from the use of the

Product(s) and the Documentation and for conclusions drawn from such use.

- 14.6 All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable Law, excluded from this Agreement.
- 14.7 The provisions of this section 14 shall survive termination of the Agreement.

#### **15. Indemnification**

- 15.1 Lumeon agrees to:
- 15.1.1 defend and/or handle (at its own expense) any third party claim or action against the Client as a result of or in connection with any claim of infringement or misappropriation of a third party IPR by the Product(s), Documentation and/or Services, when used in accordance with this Agreement; and
- 15.1.2 indemnify and hold the Client harmless from and against all liabilities, costs, losses, damages and expenses (including reasonable legal fees) associated with such claim or action, provided that:
- (a) Lumeon is promptly notified in writing of such claim or action;
  - (c) Lumeon shall have the exclusive right to control the defense of such claim or action;
  - (d) the Client, at Lumeon's request and costs, shall provide Lumeon with all reasonable assistance in connection with such defense; and
  - (e) the Client shall under no circumstances settle such claim or action without Lumeon's prior written consent.
- 15.2 In the event of any such claim, action, or threat thereof, Lumeon (at its sole discretion, expense and providing as much notice to Client as reasonably possible) may (a) procure for Client the right of use; or (b) replace or modify the Product(s) and/or the Service with functionally compatible, non-infringing software or documentation provided that Client's use of the replaced or modified Product(s) and/or Service is not materially and adversely affected; or (c) if Lumeon determines that neither option (a) nor (b) are reasonably practicable, terminate the Product(s) and Services and refund to Client the portion of any pre-paid Annual Fees relating to the period that the Product(s) and/or the Services are unavailable to the Client as a result thereof. The foregoing shall be the Client's sole and exclusive remedy for any infringement or misappropriation of a third party's IPR.

- 15.3 Notwithstanding anything to the contrary, Lumeon has no obligation to defend, indemnify or hold the Client harmless if the claim or action arises from (i) unauthorized use, (ii) modification of the Product, Documentation, or Service by other than Lumeon, or (iii) combination or integration with any other software, hardware, service, product, or data not supplied by Lumeon (each an “**IPR Exclusion**”).
- 15.4 The Client shall defend, indemnify and hold Lumeon and its affiliates and each of their officers, directors, employees, and contractors harmless against any claims, actions, liabilities, damages, fines, penalties and losses arising from or related to (i) IPR Exclusions, (ii) Client’s or Authorized Users’ relationship with End Users, (iii) medical care, recommendations, and decisions, including acts or omissions relating to medical care and any resulting personal injury or death, or (iv) allegations that any text messages sent by or on behalf of Client were transmitted without the consent of the recipients or were otherwise sent in violation of the Telephone Consumer Protection Act, 47 U.S.C. section 227, or any other law or regulation governing the transmission of text messages, except to the extent arising solely from Lumeon’s gross negligence or willful misconduct.
- 16. Change Request**
- 16.1 If the Client wishes to make any changes to the Product(s) and/or Services, it shall use the Change Request form.
- 17. Period of Agreement, Restrictions and Termination**
- 17.1 Where the Client wishes to terminate this Agreement in whole or in part, for convenience:
- 17.1.1 the Client must give not less than three months (90 days) prior written notice to Lumeon; and
- 17.1.2 in the event of such termination taking effect before the end of the Term, the Client shall be obliged to pay the Termination Compensation to Lumeon.
- 17.2 Either party may at any time during the Term, but no later than three months (90 days) before the end of the Term, give written notice that they do not wish to renew the Agreement. For the avoidance of doubt any notice given during the Term will result in the Agreement coming to an end on the expiry of the Term.
- In the absence of any such notice the Agreement will automatically renew for successive Renewal Term(s).
- 17.3 Lumeon may terminate the Agreement and impacted Order Forms upon notice, if Lumeon receives a judicial or other governmental demand or order, subpoena or Law enforcement request that expressly or by reasonable implication requires Lumeon to do so or if Lumeon has a good faith belief that its continued performance or delivery of Product(s) and/or Services violates then current Law. Upon any such termination, Lumeon will refund any pre-paid Annual Fees relating to the period that the Product(s) and/or the Service is unavailable to the Client as a result thereof.
- 17.4 Either party may terminate the Agreement giving notice in writing, if the other party is in material breach of the Agreement (but in the event of a breach which is capable of remedy, the breaching party is allowed a period of 30 days of the non-breaching party’s notice thereof to cure such breach) or a petition in bankruptcy is filed by or against the other party that is not dismissed within 30 days, or the other party is declared bankrupt or becomes insolvent; or proceedings are initiated by or against the other party seeking appointment of a receiver, reorganization, liquidation, dissolution or any other similar relief with respect to the other party that is not dismissed within 30 days, other than in respect of solvent reconstruction or amalgamation; or the Client or its Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or a Force Majeure event lasts for a period of at least three (3) consecutive months, which affects the other party’s ability to fulfil its obligations under this Agreement.
- 17.5 Except as otherwise stated in this section 17, any termination of the Agreement for any reason whatsoever shall not affect the accrued rights and liabilities of either party.
- 17.6 Pursuant to section 10.10. and/or in the event misuse of the Product(s) and/or Services and/or violation of the applicable limitations and restrictions under this Agreement, Lumeon may, in addition to pursuing other remedies available hereunder, restrict performance of any or all Product(s) or Services and/or terminate any or all of the Services and the Product(s) within 14 days of notice. Any restriction or termination under this section 17 shall not relieve the Client of its on-going payment obligations.

- 17.7 Upon termination or non-renewal of the Agreement, all rights and licenses to the Product(s), Services and Pass-Through Services granted hereunder, consents and authorizations granted by either party to the other hereunder will immediately terminate and Lumeon shall upon request from the Client (such request to be made no later than 60 days after termination or non-renewal) provide to the Client within a reasonable period of time, without charge, the SQL dump and Client Data stored on the Platform. Notwithstanding the foregoing, the return of the Client's SQL dump and Client Data is conditional upon full payment of all amounts invoiced. Lumeon shall have no obligation to maintain the Client Data or make it available to the Client other than as set out in this section.
- 17.8 Upon termination or non-renewal of the Agreement, Client shall immediately cease all use of any Products and Services and promptly return to Lumeon, or at Lumeon's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Lumeon's Confidential Information or IPR.
- 17.9 Notwithstanding section 17.7 and 17.8, the parties may retain Confidential Information and Lumeon may retain Client Data to the extent and for so long as required by applicable Law.
- 17.10 This section 17 does not limit any of Lumeon's other rights or remedies, whether in law, in equity or under this Agreement.
- 17.11 The provisions of this section 17 shall survive termination of the Agreement.

## **18. Audit rights**

- 18.1 Lumeon shall be entitled upon reasonable notice (and no more than once per year) and during ordinary Working Hours for itself or its agents to either (i) be given remote access; or (ii) visit and inspect the sites where the Product(s) and/or Services are made available and ensure compliance with the Subscriptions and terms of this Agreement. Such inspection shall be conducted at Lumeon's own expense and restricted in scope, manner and duration to that reasonably necessary to verify compliance. The Client shall upon Lumeon's request provide information to Lumeon (as applicable) relating to the usage and licensing of the Product(s) and the Services.
- 18.2 In the event of non-compliance or breach of these Terms and Conditions, the Order Form, Statement of Work and other referenced documents referred to in those documents and

any future agreed variations, Lumeon shall have the right to invoice in accordance with the payment terms of section 10 any incurred costs in conducting the audit. For greater certainty, a material breach of the Standard Terms & Conditions includes, but is not limited to the Client's use of more than the authorized maximum number of Subscriptions.

- 18.3 if any of the audits referred to in section 18 reveal that the Client has underpaid Annual Fees for the Subscription, Hosting or One-Time Charges to Lumeon, then without prejudice to Lumeon's other rights, the Client shall (i) be immediately due, to pay to Lumeon an amount equal to such underpayment as calculated in accordance with the prices set out in the applicable Order Form within ten (10) Working Days of the date of the relevant audit; and (ii) pay in the future a deposit worth the outstanding amount on top of the Annual Fee annually in advance.

## **19. NOTICES**

- 19.1 Client shall serve notice to Lumeon under or in connection with the Agreement in writing via email to [notice@lumeon.com](mailto:notice@lumeon.com).
- 19.2 Lumeon shall serve notice to its Client under or in connection with the Agreement in writing and sent to the Client at the address or email address given in the Order Form or as otherwise notified in writing.
- 19.3 The following sets out methods by which a notice may be sent and its corresponding deemed delivery date and time:
- 19.3.1 Delivery by hand - On signature of a delivery receipt; or
- 19.3.2 Pre-paid first-class post or other next working day delivery service providing proof of delivery - 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or
- 19.3.3 Pre-paid airmail providing proof of delivery - 9.00 am on the fifth Working Day after posting or at the time recorded by the delivery service; or
- 19.3.4 Email - At the time of transmission.
- 19.4 For the purpose section 19.2 and calculating deemed receipt, all references to time are to local time in the place of deemed receipt.

## **20. Dispute Resolution**

- 20.1 In the event of a concern or dispute arising, out of or in connection with this Agreement, or the performance, validity or enforceability of it, the parties agree to try and resolve the concern or

dispute informally, initially through their respective management. Subject to section 19, either party shall notify the other party of written demand including their name, address, how to contact the party raising the concern or dispute, what the concern or dispute is and what the claiming party wants.

- 20.2 If a concern or dispute is not resolved within 60 days of submission and subject to section 20.3, the party seeking relief shall have the right to pursue all remedies available at law and as set out in this Agreement. Each of the parties agrees to submit any litigation related and arising out of this Agreement to the personal and exclusive jurisdiction of the state and federal courts located in New York, New York. Notwithstanding the foregoing, each of the parties acknowledges that a breach of a party's Intellectual Property Rights or of Lumeon's proprietary or confidential rights may cause irreparable harm to the other party or its licensors for which a remedy at law would be inadequate, and therefore the parties agree that the aggrieved party shall have the right to seek immediate injunctive relief in any court of competent jurisdiction, in addition to any other rights and remedies that it or its licensors may have.
- 20.3 This Agreement and any litigation related to this Agreement shall be governed by and construed under the laws of the State of New York, excluding (a) its conflicts of laws principles; (b) the United Nations Convention on Contracts for the International Sale of Goods; (c) the 1974 Convention on the Limitation Period in the International Sale of Goods (the "1974 Convention"); (d) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980; and (e) the Uniform Computer Information Transactions Act (UCITA) as adopted by any state.
- 20.4 Except for disputes relating to the IPR of a party or to Confidential Information, each party shall continue to perform its obligations during the solution of any Dispute or disagreement, including during any period of arbitration.

## **21. General**

- 21.1 In the event of a conflict or ambiguity between these Terms and Conditions, the Order Form, the SOW and other referenced documents referred to in those documents and any future agreed amendment, the order of precedence shall be as follows:
- (1) Latest agreed amendment (whether referenced in an Order Form or as a separate document);

- (2) These Terms and Conditions;
- (3) Other referenced document in the Agreement;
- (4) Order Form;
- (5) SOW.
- 21.2 Any proposed assignment of this Agreement by Client shall require the consent of Lumeon, which shall not be unreasonably withheld or delayed. Lumeon may freely assign this Agreement without Client's consent in connection with any merger, acquisition, reorganization, or sale of all or substantially all of its assets relating to this Agreement. Any assignment in violation of this section is null and void.
- 21.3 The Agreement constitutes the entire agreement between the parties and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings including any representations and statements pertaining to future functionality or the direction of development of the Product(s) and/or the Services.
- 21.4 No change in, addition to, or waiver of any of the provisions of the Agreement shall be binding upon either party unless in writing signed by an authorized representative of such party. No waiver by either party of any breach by the other party of any of the provisions of the Agreement shall be construed as a waiver of such breach.
- 21.5 If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Agreement and the remainder of the provision in question shall not be affected thereby.
- 21.6 The parties do not intend any term of the Agreement to be enforceable by a person or company or entity who is not a party to this Agreement and there are no third party beneficiaries under the Agreement.
- 21.7 Where not expressly provided, any term contained in the Agreement that could by its nature reasonably be construed to survive the expiration or termination of the Agreement shall so survive and enforcement thereof shall not be subject to any conditions precedent.
- 21.8 If Client is a branch or agency of the United States Government, the following provision applies. The Platform, Products and Services are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policy



set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

21.9 The Platform, Products, Services and related technology are subject to U.S. export control

laws and may be subject to export or import regulations in other countries. Client agrees not to export, re-export, or transfer, directly or indirectly, any U.S. technical data acquired from Lumeon, or any products utilizing such data, in violation of the United States export laws or regulations.