

# Lunit Americas, Inc.

## Enhancement and Support Program (ESP) - Terms and Conditions

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Payment of any invoice from Lunit Americas, Inc. (f/k/a Volpara Health, Inc.) ("Vendor"), a Washington corporation, having its principal place of business at 19000- 33<sup>rd</sup> Ave W, Suite 130, Lynnwood, WA 98036-4753, or otherwise agreeing to a legally binding agreement with Vendor, referencing these terms and conditions ("Terms and Conditions") indicates your agreement hereto. Use of any software provided pursuant to these Terms and Conditions is subject to the terms of the Vendor End User License Agreement ("EULA") for that software.

### **1. PRODUCTS**

Vendor will provide the services described in these Terms and Conditions only for software products licensed to you by Vendor (each a "Product") and shown on your invoice or other legally binding agreement.

### **2. ENHANCEMENT AND SUPPORT PROGRAM**

**A.** The enhancement and support services described in these Terms and Conditions ("Enhancement and Support") are included in the initial licensing fee for one (1) year after application/migration training but the support expires at the end of one (1) year or two (2) years after license delivery, whichever is sooner. After the initial period described above, you must pay to renew Enhancement and Support, and each payment will renew Enhancement and Support for one (1) year or the time period designated on the invoice. Lapses of coverage will require a reinstatement/upgrade fee. All fees paid under these Terms and Conditions are non-refundable.

**B.** An invoice for each forthcoming year of Enhancement and Support will be sent 45-60 days prior to the expiration of the then-current Enhancement and Support period. The invoice will:

- Reflect any additional Product(s) that have been licensed during the preceding period
- Include the dates of the period covered
- Prorate the fee to coincide with the beginning of a calendar month
- Be due and payable prior to the first day of the Enhancement and Support period

Vendor-provided options, enhancements, or upgrades that are added to an existing installation are included in the Enhancement and Support through the end of your then-current Enhancement and Support period. Vendor will decide in its sole discretion whether to release any enhancements or upgrades.

### **3. OUR RESPONSIBILITY**

WE WILL PROVIDE THE FOLLOWING ENHANCEMENT AND SUPPORT SERVICES AND BENEFITS:

#### **A. SUPPORT**

Toll-free telephone support in the fifty United States. Includes answering questions, explaining the use of specific features and helping solve technical problems related to the Products.

- Telephone support will normally be available Monday through Friday, excluding holidays, during business hours. For hours, please see [www.volparahealth.com/customer-support/help-and-support/](http://www.volparahealth.com/customer-support/help-and-support/) Changes in operating hours will be posted on our website at least seven (7) days in advance of the change. You can make support requests by telephone to Vendor's toll free support line, (800) 305-3865 or to other telephone lines that Vendor specifies.
- You can also make support requests via email to [MRSSupport@volparahealth.com](mailto:MRSSupport@volparahealth.com) or by mail to Vendor's address above.
- Vendor will usually respond to telephone inquiries from you within two (2) hours. Responses to email or mail requests may take longer.

- Remote telephone access to your computer with your authorization, if required, will be accomplished only during Vendor business hours.
- Vendor reserves the right to make additional charges for time and expenses at our normal rates for the correction of problems directly traceable to errors by your staff and hardware/software problems not related to the Products. Charges will not be incurred unless agreed to, in writing, by both parties, but Vendor may decline to provide services for those problems if there is no such agreement.

### **B. ENHANCEMENTS**

Point level enhancements for the Products that Vendor commercially releases during the Enhancement and Support period for the same version, edition and options as licensed.

### **4. SERVICES AVAILABLE FOR ADDITIONAL FEES**

ENHANCEMENT AND SUPPORT DOES NOT INCLUDE TELEPHONE TRAINING, CUSTOMIZING LETTERS, CUSTOMIZING WORKSHEETS OR DEVELOPING AD HOC QUERIES. YOU MAY OBTAIN THESE SERVICES FOR AN ADDITIONAL FEE.

### **5. CUSTOMER RESPONSIBILITIES**

#### **A. PAYMENT**

All payments will be due in accordance with both these Terms and Conditions and the terms on the invoice. Remittance will be made directly to Vendor at the address on the invoice. If your purchase order is used in conjunction with these Terms and Conditions, you agree that the following statement is automatically made part of your purchase order: "The terms and conditions of the Vendor End User License Agreement and the Enhancement and Support Program (ESP) Terms and Conditions are made a part of this purchase order and are in lieu of any other terms and conditions, express or implied, in this purchase order to the extent those other terms conflict with those Vendor documents."

#### **B. SUPERVISION**

You will be exclusively responsible for the supervision, management, and control of your use of the Products.

#### **C. SITE PREPARATION**

- You are responsible for physical site preparation and for maintenance of your hardware, operating systems and all peripheral equipment.
- If an interface is among the Products you license from Vendor, or if you opt for remote support as a method for receiving Enhancement and Support, you will allow Vendor, without charge, to remotely access your computer systems, software, hardware, and networks as may be necessary to diagnose or repair any defects and otherwise perform its obligations under these Terms and Conditions. To get remote support, Vendor requires you to provide remote access capabilities that comply with Vendor requirements. Note: Access is only possible with customer assistance.
- YOU ARE RESPONSIBLE FOR MAKING FREQUENT BACKUPS OF YOUR DATA. You acknowledge that if the

Product or related systems crash, you risk losing the data input since your last backup.

#### **D. COMPETENT PERSONNEL**

You will provide sufficient employees and/or agents to input the necessary database information required for the Products and to operate the Products. You must have at least one (1) person trained in the operation of your hardware, operating system and the Products.

#### **E. INSTALLATION AND TRAINING COSTS**

Any installation and training costs will be your responsibility and are not included as part of the Enhancement and Support fees.

#### **F. CROSS-TERMINATION**

These Terms and Conditions automatically terminate if the EULA is terminated.

#### **6. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES**

VENDOR WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES (INCLUDING LOST PROFITS) INCURRED BY YOU ARISING FROM THESE TERMS AND CONDITIONS, UNDER ANY LEGAL THEORY, EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL VENDOR'S TOTAL LIABILITY ARISING FROM OR IN CONNECTION WITH THESE TERMS AND CONDITIONS UNDER ANY LEGAL THEORY EXCEED THE TOTAL AMOUNT PAID UNDER THESE TERMS AND CONDITIONS.

VENDOR DISCLAIMS ALL WARRANTIES, (EXPRESS, IMPLIED, OR STATUTORY) WITH RESPECT TO THE ENHANCEMENT AND SUPPORT OR ANY OTHER RELATED MATERIAL PROVIDED BY VENDOR UNDER THESE TERMS AND CONDITIONS, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF TITLE, OR WARRANTIES OF NON-INFRINGEMENT OR FOR A LACK OF NEGLIGENCE. FOR EXAMPLE, VENDOR DISCLAIMS ANY WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM ENHANCEMENT AND SUPPORT. FURTHER, NO WARRANTY IS MADE THAT ENHANCEMENT AND SUPPORT WILL PRODUCE ALL RESULTS AT ALL DESIRED OR ANTICIPATED TIMES.

Your rights with respect to any software provided pursuant to these Terms and Conditions will be provided under the EULA. These Terms and Conditions provide no rights or warranties with respect to such software.

#### **7. GENERAL PROVISIONS**

##### **A. GOVERNING LAW AND FORUM; ATTORNEYS' FEES**

These Terms and Conditions will be governed by and interpreted in accordance with the laws of the State of Washington as all Enhancement and Support is provided in Lynnwood, Washington. If one party commences legal action against the other party (the "Responding Party") concerning a dispute arising under, in connection with, or incident to these Terms and Conditions or concerning their interpretation, then each party agrees that all claims and disputes arising in connection with this Agreement or the transactions contemplated hereby, shall be governed and construed in accordance with the laws of the State of Washington, and that the exclusive jurisdiction and venue of the state and federal courts of Snohomish County, Washington, if Vendor is the Responding Party, or of your home county in Washington, if you are the Responding Party.

##### **B. SEVERABILITY**

If any provision of these Terms and Conditions is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the

remainder of these Terms and Conditions will remain in full force and effect.

#### **C. EXCLUSIVENESS OF TERMS**

No salesman, agent or subcontractor has made, or is authorized to make, any representation or agreement with respect to the Products, Enhancement and Support of the Products, or other subject matter addressed by these Terms and Conditions, except as those representations are actually set forth in these Terms and Conditions.

#### **D. TAXES**

You agree to pay and be responsible for all foreign, U.S. federal, state, local, or other taxes, or other governmental fees or charges, arising out of or in connection with our provision of Enhancement and Support contemplated under these Terms and Conditions including, without limitation, any state or local sales or use taxes now or hereafter imposed on the provision of goods and services to you by Vendor, regardless of whether the same are separately stated by Vendor. You also agree to indemnify, defend and hold Vendor harmless from any such taxes or claims, causes of action, costs (including, without limitation, reasonable attorneys' fees) and any other liabilities of any nature whatsoever related to such taxes. Notwithstanding the foregoing, you will not be responsible for Vendor's property taxes and taxes imposed on Vendor's net income, nor will you be responsible for foreign tax withholding substantiated by documents necessary to enable Vendor to claim a U.S. Foreign Tax Credit. This tax paragraph does not apply for the applicable period of time covered by an exemption certificate provided by you with respect to those taxes that do not apply to you because of the exemption certificate.

#### **E. MODIFICATIONS TO THESE TERMS AND CONDITIONS**

Vendor has the right to modify these Terms and Conditions, effective beginning at each renewal of the Enhancement and Support period. A copy of any modified Terms and Conditions will be included with each invoice. However, you may object to Vendor's changes, and if Vendor fails to address your written objections to any changes, then (1) by giving Vendor notice before the renewal date you may choose not to renew, or (2) you may cancel by giving Vendor notice within 45 days of the renewal date, if you renewed. If you choose not to renew or you choose to cancel, then these Terms and Conditions will terminate on the date of your notice to Vendor.

#### **F. ASSIGNMENT**

You will not assign these Terms and Conditions without Vendor's prior written consent (not to be unreasonably withheld). However, you may assign these Terms and Conditions without Vendor's prior written consent (a) to an affiliate or (b) as part of a merger or a sale or transfer of all or substantially all your assets. For this Section 7(F)'s purposes, "affiliate" means any other entity directly or indirectly controlling, controlled by, or under common control with you, and "control" means having the power to direct the management and policies of a legally recognizable entity.

#### **G. COMPLETE TERMS AND CONDITIONS**

You acknowledge that you have read these Terms and Conditions, understand them, and agree to be bound by them. Further, you agree that these Terms and Conditions, together with the invoice and the EULA, are the complete and exclusive understanding between you and Vendor, superseding all proposals or prior agreements, oral or written, and all other communications between you and Vendor relating to the subject matter of the Terms and Conditions. The captions in these Terms and Conditions are provided for convenience only and will not be used in construing the meaning of these Terms and Conditions. If an inconsistency exists between these Terms and Conditions and any attached schedule or exhibit, or the EULA, the provisions in these Terms and Conditions will prevail to the extent of that conflict.