

LABORATORY DATA MANAGEMENT TERMS OF USE AGREEMENT

The Laboratory Data Management Terms of Use Agreement is a legal agreement made between You (hereinafter referred to as "Client") and Laboratory Corporation of America Holdings (hereinafter referred to as "Labcorp") for Client's use of the Laboratory Data Management system. As used in this Agreement, the term "Client" includes the medical group practice, the ordering physician or other person as designated by applicable laws, rules and regulations.

WHEREAS, both parties acknowledge the mutual operational efficiencies that can be derived from automated laboratory results transmission and retrieval, use of Client patient demographics for test ordering and off-hours reporting; and

WHEREAS, the parties desire to enter into an agreement whereby Labcorp will provide Laboratory Data Management Software and/or Hardware ("LDM System") to Client as set forth herein and Client will use the LDM System of Labcorp; and

WHEREAS, Client acknowledges the Restricted Use of the LDM System as hereinafter provided.

The Parties hereby agree as follows:

A. LDM System

1. The Laboratory Data Management System ("LDM System") may consist of any or all of the software, hardware and components identified in this Section A1:
 - (a) Interface. After acceptance of this Agreement by Client, Labcorp agrees to arrange with Client's Software Vendor, NextGen Healthcare, Inc., ("Vendor") for the purchase, installation and any applicable and temporary initial maintenance of the "Interface" described as follows: either a Uni-Directional Interface developed by Vendor which allows Labcorp to electronically transmit patient test results into Client's System, a Bi-Directional Interface which allows Labcorp to electronically transmit patient test results into Client's System and allow Labcorp to electronically receive laboratory test requisitions sent from Client's System or a PDF File Drop which allows formatted result reports to be delivered into a designated directory on the client system. The type of interface arranged is at the sole discretion of Labcorp.
 - (b) Transmission Component. To aid in the transmission of orders and/or results to and/or from the Interface, Labcorp may coordinate with Vendor in the development of a virtual private network ("VPN") to Client, or Labcorp may provide Client use of SFTP, TCPIP or other recognized transmission component, including but not limited to the LKTransfer connectivity software ("LKTransfer") developed by ELLKAY, LLC a New Jersey limited liability corporation ("ELLKAY").
 - (c) Necessary Equipment. Labcorp may provide Client, at no additional charge, peripheral equipment as well as Labcorp Requisition Forms, Labcorp Report Paper and Labels, and Printer Ribbons or Laser Printer Cartridges (as applicable). Client shall use such equipment and supplies for the sole purposes of ordering reference laboratory tests, and the receipt of reference laboratory test results, from Labcorp via the LDM System

Client shall provide, at its own cost, all telephone service (whether local or long distance), modems, phone lines, computers and other equipment, software, Internet access and any other items or services necessary for Client to use the LDM System.

2. Ownership of LDM System. The LDM System shall be made available to Client's facility(ies), and may not be moved or removed without Labcorp's prior written consent. Client shall attach and at all times keep affixed such labels as Labcorp may direct to show Labcorp's ownership interest in the LDM System. Client hereby grants Labcorp the right to inspect the LDM System at any reasonable time and Client shall not make any alterations, additions or improvements to the LDM System without the prior written consent of Labcorp. Client shall bear the entire risk of all loss, theft, damage or other interruption or termination of use of the LDM System from any cause whatsoever, during any term hereof and until the LDM System is returned to Labcorp. Client shall promptly notify Labcorp in writing of the occurrence of any of the above events.

B. Support, Maintenance and Installation

1. Client agrees to cooperate with Labcorp and applicable vendors in the installation of the LDM System. In the event Client fails to cooperate with such development and/or to implement the LDM System within six (6) months from the date the Vendor provides the LDM System to Client, Labcorp in its sole discretion may immediately terminate this Agreement without further notice. If this Agreement terminates as a result of Client's failure to cooperate and/or implement the LDM System, Client agrees to reimburse Labcorp the total cost of the Interface within thirty (30) days of termination of this Agreement.
2. Following the successful installation of the LDM System Software, Client shall be responsible for all maintenance, support and service fees which are related to the LDM System Software. Client shall continue to be responsible for all maintenance, support, upgrade costs and service and other fees which are related to Client's System. For the purposes of this Agreement, "Client's System" shall mean any current or future hardware and/or software purchased, leased or otherwise arranged for by Client for Client's use whether or not Labcorp arranges for the provision of the LDM System described herein, including but not limited to, Client's: operating system, office or practice management system, EMR software, word processing software, accounting software, e-mail software, central processing unit ("CPU"), monitor, keyboard, printer, router, and scanner.

C. Compliance with All Laws and Restricted Use

- ~~1~~ Labcorp is transmitting result reports to Client's Vendor, and into Vendor's system, at Client's direction and authorization and Client maintains the relationship with Vendor. The LDM System shall communicate exclusively with Labcorp, shall relate directly to laboratory services being provided by Labcorp to Client and shall not be used by Client for any other purpose. Client is being provided the LDM System for the sole purpose of receiving Labcorp test results and use of Client patient demographics for test ordering via the LDM System. Client agrees it shall make no other use of the LDM System and agrees further to execute and abide by the terms contained in any additional agreement required by Labcorp or any LDM System software and hardware vendor.
- ~~2~~ It is the intent of the parties hereto to comply with all federal, state and local statutes, regulations and ordinances, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Section 1877 of the Social Security Act (commonly known as the "Stark Provisions") and the anti-kickback provisions set forth in the fraud and abuse sections of 42 U.S.C. 1320(a), as well as any regulations issued thereunder and any applicable similar state laws and regulations. The parties agree that pursuant to this Agreement, Labcorp shall only provide items, devices, or supplies that are used solely to order or communicate the results of, tests or procedures provided for Client, and that any benefit, consideration or remuneration conferred upon Client by virtue of this Agreement is not conditioned upon the referral of Medicare or Medicaid testing to Labcorp.
- ~~3~~ Each of the parties represents and warrants to the other party, with respect to all protected health information (as that term is defined under the HIPAA privacy regulation, as amended from time to time), that it is a covered entity and not a business associate of the other party under the HIPAA privacy regulation and that it

shall protect the privacy, integrity, security, confidentiality and availability of the protected health information disclosed to, used by, or exchanged by the parties by implementing appropriate privacy and security policies, procedures, and practices and physical and technological safeguards and security mechanisms, all as required by, and set forth more specifically in, the HIPAA privacy regulations and the HIPAA security regulations.

4. Should either party reasonably conclude that any portion of this Agreement is or may be in violation of such requirements or subsequent enactments by federal, state or local authorities, this Agreement shall terminate immediately by written notice thereof to other party unless the parties agree to such modifications of the Agreement as may be necessary to establish compliance with all federal, state, and local statutes, regulations and ordinances. Otherwise, if Client fails to comply fully with the requirements set forth in this Section C, Labcorp shall have the right to immediately remove the LDM System, demand repayment, and terminate this Agreement.
5. Neither party shall use the other's name, trademark, logos, or otherwise refer to the other in any press release, marketing materials, advertisements or other broadcast or communication of any kind without first obtaining that party's advance written consent. Any unauthorized use under this Section shall be considered a material breach of this Agreement.

D. Warranty/Liability

1. Client agrees that any claims related to the establishment or functioning of the LDM System shall be brought to the attention of Labcorp. Labcorp shall not be responsible for any claim in connection with the establishment or performance of the LDM System. Client agrees that any claims related to the establishment or functioning of the Transmission Component shall be brought to the attention of Labcorp. Client hereby expressly releases Labcorp and agrees to indemnify and hold Labcorp harmless from any and all claims, including any and all claims for property damage, personal injuries and/or consequential, punitive or other damages which arise, or are alleged to have arisen, in connection with the establishment, operation or functioning of the LDM System to the extent that such costs and liabilities are proximately caused by the negligence or misconduct of Client.
2. Unless otherwise specifically agreed to by the parties in a Web-Based Laboratory Services Agreement Client represents and warrants that it shall not use the LDM System, or other Labcorp connectivity solutions, to provide or support web-based laboratory testing services directly to patients or consumers, either through its own website(s), or in support of other websites that offer such direct to consumer testing. In the event of a breach of this section, Labcorp may immediately terminate this Agreement and disconnect the LDM System.

E. Term and Termination

1. This Agreement shall remain in force and effect for successive annual periods unless terminated. Client and Labcorp shall have the right to terminate this Agreement, with or without cause, by giving the other party a thirty (30) day prior written notice. In addition, if Client should at any time discontinue using Labcorp's laboratory services, the parties acknowledge that there shall be no further need for Client to have the LDM System and this Agreement shall terminate immediately.
2. Client agrees that, in the event of the termination of this Agreement, with or without cause, by either party, the LDM System will be returned to Labcorp, at Labcorp's expense, and Client shall remove or disable the transmission component (if applicable) and return or destroy all copies of any documentation and materials accompanying the LDM System.

F. Assignment

Client may not assign this Agreement without the prior written consent of Labcorp.

G. Notices

Except as otherwise expressly set forth in the Agreement, all notices, requests, consents, claims, demands, waivers and other communications under the Agreement have binding legal effect only if in writing and addressed to a party at the address set forth below (or to such other address or such other person that such party may designate from time to time in accordance with this **Section G**). Notices sent in accordance with this **Section G** will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; and (c) on the fifth day after the date mailed by certified or registered mail, return receipt requested, postage prepaid. Client shall submit all notices to Provider at 531 South Spring Street, Burlington NC, 27215, Attention: Law Department with a copy to Client's primary Labcorp business contact. Provider shall submit all notices to Client at the address associated with Client's account number, the address listed on Client's public website, or such other address as Client may request from time to time in accordance with the provisions of this **Section G**.

H. Entire Agreement

This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter herein and no amendment or modification of its terms shall be valid or binding upon any party unless reduced to writing and signed by authorized representatives of the parties hereto. Any applicable provisions required by federal, state, or local law are hereby incorporated by reference.

I. Electronic Signature & Counterparts

This Agreement may be executed in two or more counterparts. The signatures of all the parties do not need to be on the same counterpart for it to be effective. Delivery of an executed counterpart of this Agreement, by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in any portion of this Agreement are intended to authenticate this writing and to have the same binding force and effect as manual signatures. For the purpose of any part of this Agreement, electronic signatures include any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including electronically checking a box or other electronic button indicating such party's acceptance of this Agreement, including when they are presented in click-through format. This Agreement may be presented to Client as a click-through agreement, and Client will be bound by this Agreement if it accepts the click-through version. The person either signing or clicking through this Agreement on behalf of Client represents and warrants that such person is authorized to bind Client to this Agreement.