

## LIVECONNECT SOFTWARE AS A SERVICE (SAAS)

### TERMS OF USE (version 27th October 2017)

#### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these Terms.

**Group company:** means Hitachi High-Tech Analytical Science Finland Oy, Hitachi High-Tech Analytical Science GmbH, Hitachi High-Tech Analytical Science Shanghai Co., Limited and Hitachi-High-Tech Analytical Science America, Inc..

**Authorised Users:** those employees, agents and independent contractors of the User who are authorised by the User to use the Services.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 9.1.

**Hitachi High-Tech Analytical Science:** means Hitachi High-Tech Analytical Science Limited whose registered office is at Tubney Woods, Abingdon, Oxon, OX13 5QX, UK.

**Services:** the LiveConnect cloud computing services provided by Hitachi High-Tech Analytical Science to the User under these Terms via <https://hha.hitachi-hightech.com/terms-and-conditions> or any other website notified to the User by Hitachi High-Tech Analytical Science from time to time.

**Software:** the online software applications provided by Hitachi High-Tech Analytical Science as part of the Services.

**Terms:** these software as a service terms of use.

**User:** means any user of the Services.

**User Data:** the data inputted by the User, Authorised Users, or Hitachi High-Tech Analytical Science on the User's behalf for the purpose of using the Services or facilitating the User's use of the Services.

**Virus:** any thing or device (including any software, code, file or programme) which may: 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 programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme 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.

## **2. SERVICES**

2.1 Subject to the restrictions set out in these Terms, Hitachi High-Tech Analytical Science hereby grants to the User a non-exclusive, non-transferable right to permit the Authorised Users to use the Services solely for the User's internal business operations.

2.2 In relation to the Authorised Users, the User undertakes that:

- (a) each Authorised User shall keep a secure password for his use of the Services, that each Authorised User shall keep his password confidential; and
- (b) it shall permit Hitachi High-Tech Analytical Science to audit the Services in order to establish the name and password of each Authorised User.

2.3 The User shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;
  - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;
- and Hitachi High-Tech Analytical Science reserves the right, without liability or prejudice to its other rights to the User, to disable the User's access to any material that breaches the provisions of this clause.

2.4 The User shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion:
  - (i) and except to the extent expressly permitted under these Terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or

distribute all or any portion of the Software in any form or media or by any means; or

- (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services in order to build a product or service which competes with the Services; or
- (c) use the Services to provide services to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause.

2.5 The User shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Hitachi High-Tech Analytical Science.

2.6 The rights provided under this clause are granted to the User only, and shall not be considered granted to any subsidiary or holding company of the User.

### **3. SERVICES**

3.1 Hitachi High-Tech Analytical Science shall provide the Services to the User on and subject to these Terms.

3.2 Hitachi High-Tech Analytical Science shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for any planned and unscheduled maintenance.

### **4. USER DATA**

4.1 The User shall own all right, title and interest in and to all of the User Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the User Data. The User hereby grants Hitachi High-Tech Analytical Science and its Group company a licence to use the User Data for any purpose, including but not limited to for the purpose of conducting diagnostic testing, performance testing of the Services, Software and its products, and generating statistics.

4.2 If Hitachi High-Tech Analytical Science and its Group company process any personal data on

the User's behalf when performing its obligations under these Terms, the User shall be the data controller and Hitachi High-Tech Analytical Science and its Group company shall be a data processor and in any such case:

(a) the User acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the User and the Authorised Users are located in order to carry out the Services and Hitachi High-Tech Analytical Science and its Group company's other obligations under these Terms;

(b) the User shall ensure that the User is entitled to transfer the relevant personal data to Hitachi High-Tech Analytical Science and its Group company so that Hitachi High-Tech Analytical Science and its Group company may lawfully use, process and transfer the personal data in accordance with these Terms on the User's behalf;

(c) the User shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and

(d) the User shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## **5. THIRD PARTY PROVIDERS**

The User acknowledges that the Services 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 it does so solely at its own risk. Hitachi High-Tech Analytical Science 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 User, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the User and the relevant third party, and not Hitachi High-Tech Analytical Science. Hitachi High-Tech Analytical Science recommends that the User refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Hitachi High-Tech Analytical Science does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **6. SUPPLIER'S OBLIGATIONS**

6.1 Hitachi High-Tech Analytical Science undertakes that the Services will be performed with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is

caused by use of the Services contrary to Hitachi High-Tech Analytical Science' instructions, or modification or alteration of the Services by any party other than Hitachi High-Tech Analytical Science

or Hitachi High-Tech Analytical Science's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the User with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the User's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, Hitachi High-Tech Analytical Science:

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

(b) 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 User acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.3 These Terms shall not prevent Hitachi High-Tech Analytical Science from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Terms.

## **7. USER'S OBLIGATIONS**

The User shall:

(a) provide Hitachi High-Tech Analytical Science with:

(i) all necessary co-operation in relation to these Terms; and

(ii) all necessary access to such information as may be required by Hitachi High-Tech Analytical Science;

in order to provide the Services, including but not limited to User Data, security access information and configuration services;

(b) comply with all applicable laws and regulations with respect to its activities under these Terms;

(c) carry out all other User responsibilities set out in these Terms in a timely and efficient manner.

In the event of any delays in the User's provision of such assistance as agreed by Hitachi High-Tech Analytical Science and the User, Hitachi High-Tech Analytical Science may adjust

any agreed timetable or delivery schedule as reasonably necessary;

(d) ensure that the Authorised Users use the Services in accordance with the terms and conditions of these Terms and shall be responsible for any Authorised User's breach of these Terms;

(e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Hitachi High-Tech Analytical Science, its contractors and agents to perform their obligations under these Terms, including without limitation the Services;

(f) ensure that its network and systems comply with the relevant specifications provided by Hitachi High-Tech Analytical Science from time to time; and

(g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Hitachi High-Tech Analytical Science's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the User's network connections or telecommunications links or caused by the internet.

## **8. PROPRIETARY RIGHTS**

The User acknowledges and agrees that Hitachi High-Tech Analytical Science and/or its licensors or subcontractors own all intellectual property rights in the Services and Software. Except as expressly stated herein, these Terms does not grant the User any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or Software.

## **9. CONFIDENTIALITY**

9.1 The User acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Hitachi High-Tech Analytical Science' Confidential Information.

9.2 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms. A party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party;

(b) was in the other party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

(d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

9.3 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than to perform its obligations and exercise its rights under these Terms.

9.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Terms.

9.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

9.6 No party shall make, or permit any person to make, any public announcement concerning these Terms without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## **10. INDEMNITY**

The User shall defend, indemnify and hold harmless Hitachi High-Tech Analytical Science against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the User's use of the Services.

## **11. LIMITATION OF LIABILITY**

11.1 This clause sets out the entire liability of Hitachi High-Tech Analytical Science (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the User:

- (a) arising under or in connection with these Terms;
- (b) in respect of any use made by the User of the Services or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms.

11.2 Except as expressly and specifically provided in these Terms:

- (a) the User assumes sole responsibility for results obtained from the use of the Services by the User, and for conclusions drawn from such use. Hitachi High-Tech Analytical Science shall have no liability for any damage caused by errors or omissions in any information, instructions or

scripts provided to Hitachi High-Tech Analytical Science by the User in connection with the Services, or any actions taken by Hitachi High-Tech Analytical Science at the User's direction;

(b) 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 these Terms; and

(c) the Services are provided to the User on an "as is" basis.

11.3 Nothing in these Terms excludes the liability of Hitachi High-Tech Analytical Science:

(a) for death or personal injury caused by Hitachi High-Tech Analytical Science's negligence; or

(b) for fraud or fraudulent misrepresentation.

11.4 Subject to clause 11.2 and clause 11.3, Hitachi High-Tech Analytical Science shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms.

## **12. GENERAL**

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

12.2 No failure or delay by Hitachi High-Tech Analytical Science or the User to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.3 Except as expressly provided in these Terms, the rights and remedies provided under these



Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

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

12.5 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of Hitachi High-Tech Analytical Science and the User.

12.6 These Terms constitute the whole agreement between Hitachi High-Tech Analytical Science and the User and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

12.7 The User acknowledges and agrees that it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these Terms or not) relating to the subject matter of these Terms, other than as expressly set out in these Terms.

12.8 Nothing in these Terms is intended to or shall operate to create a partnership between Hitachi High-Tech Analytical Science and the User, or authorise either Hitachi High-Tech Analytical Science or the User to act as agent for the other, and neither shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

12.9 These Terms does not confer any rights on any person or party (other Hitachi High-Tech Analytical Science and the User to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

12.10 These Terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

12.11 Hitachi High-Tech Analytical Science and the User irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or

in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).

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