

Appendix G: KEY TERMS & CONDITIONS

A list of certain key terms and conditions to be addressed in any contractual agreement executed by FIND. The below language is given for guidance purposes only. Final language to be agreed between the parties to each agreement.

1. SOME KEY DEFINITIONS

“Global Access”	means the principles according to which diagnostic products shall be available, affordable and appropriate for use in the Territory, as further set forth in FIND's Global Access Policy available at www.finddx.org/policies , as amended from time to time;
“LMICs” or the “Territory”	means those countries defined by the World Bank as having “low-income economies”, “lower middle-income economies” or “upper middle-income economies”, as may be amended from time to time;
“Priority Countries”	shall have the meaning set forth under the Article [●];
“Private Health Sector”	means any non-governmental institute in the Territory in the health sector which operates on a for-profit basis, and which may have access to preferential access conditions to a product such as set out under Global Access, and as determined on a case-by-case basis by FIND;
“Public Health Sector”	means (i) any government in the Territory, including any government ministry of health, department or agency, or any local or regional governmental body, authority or entity, and (ii) any officially recognized, not-for-profit organization including private not-for-profit organizations, or funds, that pursue activities to relieve suffering, promote the interests of the poor, provide basic social services, or undertake community development, including, but not limited to, the World Health Organization (and other UN organizations), ICRC, UNICEF, Save the Children Fund, Médecins Sans Frontières, Unitaïd, PEPFAR, the Global Fund, FIND or its authorised designee and other funding organizations;
“QMS”	means Quality Management System;

2. QUALITY REQUIREMENTS

Quality Management Systems (“QMS”). XYZ shall ensure compliance at all times with an appropriate QMS covering *in vitro* diagnostic products, and additional quality and compliance requirements applicable to the business.

3. ADDITIONAL THIRD PARTIES

General. XYZ may use Third Parties as subcontractors in the performance of its activities undertaken in connection with this Agreement, provided; a) FIND is informed and agrees in advance in writing to such subcontractor, and; b) XYZ must obtain each subcontractor's written agreement to comply with all the applicable terms and conditions of this Agreement. In addition, FIND may require to review the relevant sections of any agreement between XYZ and the Third Party in question, solely to ensure compliance with this Article [●]. For the sake of clarity any activity and/or obligation assigned to a Third Party under this Article [●] of this Agreement shall be considered nonetheless as being assigned to XYZ and XYZ shall be wholly held accountable for the fulfilment of such activity/obligation and any failure by the Third Party to execute their obligations shall be considered the full and direct responsibility of XYZ.

4. GLOBAL ACCESS AND GENERAL PRODUCT SUPPLY CONDITIONS

General. Each Party recognizes the requirements in accordance with the Global Access to ensure that any product arising from the Agreement, will be made accessible and affordable to people living in the LMICs. Both Parties will take all reasonable and diligent actions necessary, within their scope and freedom to operate, that any product arising from the Agreement will be made available broadly in a manner that meets their respective Global Access requirements, including but not limited to; a) provide access to the product on an affordable basis, and including required in-country registrations as agreed with FIND, and local service and support. In addition, the Parties subscribe to the concept and implementation of Global Access as set out under the FIND policy at www.finddx.org/policies whereby, subject to the terms and conditions of this Agreement, specified results, data, generated pursuant to this Agreement shall be made broadly and publicly available to any and all entities including any Public Sector bodies, as well as for-profit and not-for-profit organizations, and research centers working in healthcare in, or for, resource-limited settings.

5. RECORDS

XYZ and FIND shall maintain records in sufficient detail and in good scientific manner and as appropriate for patent purposes, and in compliance with applicable laws and regulations, as properly reflects all work done and results achieved in the performance of the Agreement. Such records shall include books, records, reports, notes, charts, graphs, comments, computations, analyses, recordings, photographs, computer programs and documentation thereof, computer information storage means, samples of materials and other graphic or written data generated in connection with the Agreement.

6. INDEMNIFICATION

XYZ will be responsible for the manner in which all activities performed under or as a result of this Agreement are carried out and will indemnify and hold harmless FIND for any and all claims and liabilities (including legal fees and costs) arising or resulting from such activities carried out by XYZ, its employees, authorized agents, and subcontractors.

7. AUDITS, REVIEWS, OPERATIONAL AND TECHNICAL EVALUATIONS

FIND and/or other parties designated by FIND, may conduct or commission financial audits, reviews, or operational or technical evaluations of activities, documents or records relating the Agreement (the "Ad-hoc Audit") at any time during the lifetime of this Agreement and for a period of three (3) years following termination or expiry of this Agreement, not exceeding two (2) times per year. Such Ad-hoc Audits shall be conducted during regular business hours and upon reasonable notice to XYZ. The costs of such Ad-hoc Audits will be covered by FIND. This may include the facilitation of visits to relevant sites to review the progress made in the provision of the services and the achievement of its objectives.

For the purposes of any Ad-hoc Audit, XYZ shall maintain accurate, readily accessible operational information and documentation on the progress made in the implementation of this Agreement. XYZ shall make such operational information and documentation available at a reasonable request from FIND and shall provide the requested information, together with clarifications and satisfactory explanations to queries, in a timely manner. A copy of the final Ad-hoc Audit report will be provided to XYZ.

Environmental regulations. In addition to operational, project management and financial aspects, FIND or its donors, may require an assessment of the potential impact of the investments under this Agreement with a particular focus on environmental regulations such as those governing the control of potential pollution and management of natural resources. Prior to the commencement of any such evaluation, FIND shall indicate any supplementary information that may be required for the purposes of such evaluation.

8. CONFIDENTIALITY AND DATA PRIVACY

General. Each Party agrees to hold in confidence and not disclose or transfer in any manner any Confidential Information received from the other Party under this Agreement, except that Confidential Information may be disclosed which: (i) was in a Party's possession or control prior to the date of disclosure; (ii) was in the public domain or enters into the public domain through no improper act on any Party's part or on the part of any of a Party's employees; or (iii) is rightfully given to from sources independent of the Party in question.

Disclosure by Law. In the event the receiving Party is required by judicial or administrative process to disclose Confidential Information, it shall promptly notify the disclosing Party thereof so that the disclosing Party may seek to oppose such process or reduce the scope of such disclosure.

Terms of the Agreement. No Party shall disclose any terms or conditions of this Agreement to any Third Party other than non-confidential details which refer to the existence and general type of agreement, without the prior consent of the other Parties; provided, however, that a Party may disclose the terms or conditions of this Agreement, (i) on a need-to-know basis to its legal and financial advisors to the extent such disclosure is reasonably necessary, (ii) to a Third Party in connection with (a) a merger, consolidation or similar transaction by such Party, or (b) the sale of all or substantially all of the assets of such Party or (iii) as otherwise required by law. FIND will be entitled to share this Agreement with its donors, and FIND shall request its donors to treat such information as confidential.

Term of Confidentiality. These confidentiality obligations shall survive the expiration or termination of this Agreement and will expire five (5) years after such termination or expiration.

Effect of Termination. Upon request made by the disclosing Party, following termination or expiration of this Agreement, the receiving Party shall return all Confidential Information received except that the receiving Party may retain in its confidential files one copy of written Information for record purposes only.

Personal Data Privacy. The Parties shall comply with applicable data protection legislation including the EU Regulation 2016/679, including any future amendment, and the UK Data Protection Act 2018, including any future amendment, and relevant international regulations, and any and all Personal Data shall not be disclosed between the Parties. For the sake of clarity, "Personal Data" means any information relating to an identified or identifiable natural person (or "Data Subject") in particular an identifier such as a name, an identification number, location data, or an online identifier and/or medical data such as found in a personal medical record, held by a medical practitioner or a clinical facility. The duration of confidentiality of Personal Data shall be without a time limit unless otherwise agreed between the Data Subject and the affected Party in writing.

9. INDEPENDENT CONTRACTOR RELATIONSHIP

For the purpose of this Agreement, the Parties hereto are independent contractors and nothing contained in this Agreement shall be construed to place any of the Parties in the relationship of partners, principal and agent, employer/employee or joint venture. No Party shall have the power nor the right to bind or obligate another Party, and no Party shall hold itself out as having such authority.

10. COMPLIANCE WITH FIND POLICIES

Code of Conduct and Ethics: FIND has established a Code of Conduct and Ethics (the "Code") as set forth under the FIND site at <https://www.finddx.org/policies>. By executing this Agreement, XYZ acknowledges it has read and understood the contents of the Code, has informed the appropriate personnel of the Code's existence and agrees to abide with the Code terms and conditions, or warrants that it has its own code of conduct which is substantially equivalent and that such own code of conduct is currently applied to XYZ.

Anti-Terrorism: XYZ will not participate, directly or indirectly, in support of activities (a) related to terrorism; (b) with persons or entities that appear on the United Nations Security Council Consolidated List; or the sanctions list of donor countries including the UK, The Netherlands, Germany, USA, Canada and Australia; (c) with countries or territories against which the U.N. maintains comprehensive sanctions, under applicable law unless specifically approved by FIND in writing, at FIND's sole discretion.

Anti-Corruption & Anti-Bribery: XYZ will not offer or provide money, gifts, or any other things of value directly or indirectly to anyone in order to improperly influence any act or decision by FIND, including by assisting any party to secure an improper advantage.

Political Activity & Advocacy: XYZ may not use funds to influence the outcome of any election for public office in any country, or to carry on any voter registration drive.

Child Safeguarding: XYZ is committed to comply with all relevant local law on child rights and welfare in order to provide what is in ‘best interest of the child’ including employment law that apply to children and shall not use any funds under this Agreement to support the contrary.

Anti-Trafficking: XYZ is committed to comply will all relevant local, national and international laws and regulations to prevent and fight againts “Trafficking in Persons” including, but not limited to the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

Specific warranty regarding tobacco and arms. XYZ has, and currently has not had during the past four (4) years, any relations or linkages, with the tobacco or arms industry, or any subsidiary of a tobacco or arms company or commercial entity involved with the manufacture, sale, or distribution of tobacco/arms or tobacco/arms products, including, but not limited to, financial interests, controlling interests, or commercial relations resulting in licensing agreements, programmes, initiatives, research, or projects funded by the tobacco/arms industry, jointly administered with tobacco/arms-affiliated entities, or done for the tobacco/arms industry.

11. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be governed by and construed in accordance with the laws of Switzerland.

The Parties hereto undertake to settle any dispute concerning the validity, interpretation, and/or performance of this Agreement in an amicable manner. To the extent practical, the Parties shall continue to work under the Agreement pending the final outcome of any dispute. If the Parties fail to resolve such dispute, controversy or difference through good faith negotiations, any dispute, controversy, or claim arising under, out of, or relating to this Agreement or any task and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the ICC Mediation Rules. The commencement of proceedings under the ICC Mediation Rules shall not prevent any disputing party from commencing arbitration in accordance with the following paragraph. All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The number of arbitrators shall be three (3). The place of arbitration shall be Geneva, Switzerland. The language of the arbitration shall be English.