

Terms and Conditions for the VisioNize® Lab Suite Services

Eppendorf AG, **Barkhausenweg 1, 22339 Hamburg, Germany** (hereinafter referred to as “Eppendorf”) and the respective customer (hereinafter referred to as “Client”) each individually hereinafter referred to as a “Party” or together as the “Parties” herewith agree as follows:

Preamble

VisioNize Lab Suite Services (the Service) is a software environment for management and storage of machine- and service-related data of connectable Devices and manually added data of non-connectable Devices.

The connectable Devices create measurements (e.g., rotation speed of centrifuges, temperature of freezer, CO₂ concentration of incubator) and events (alarm: e.g., temperature out of specifications, door open, maintenance due). Certain of such data can be transferred and managed by the Service. Selected devices can also receive updated software or firmware from the Service when explicitly acknowledged by a user.

The Service is connected to other internal Eppendorf databases (e.g. dataport, CRM, etc.) to supply device attribute, service status or documentation information regarding Devices. The Service is offered in a cloud environment.

The Client is a customer of Eppendorf who uses Devices and wishes to use the Service.

1. Definitions

Acceptable Use Policy	A set of rules by Eppendorf on how the Service shall be used by the users. The Acceptable Use Policy is available here .
Admin Account	An account offered to the Client via which an employee of the Client can administer the Tenant ID and the registered users of the Client
Agreement	This Agreement including its annexes, appendices and any document incorporated into it by reference
Availability	Proportion of time in which the Service is up and running and available at the exit of the data centre used by Eppendorf
Billing Period	The Billing Period starts on the day the Client subscribes to the Service and the client-selected subscription period defines the length of the Billing Period.
Client Account	The account provided to the Client via which the Client can use the Service

Client Data	All personal data (Art. 4 No. 1 GDPR) for which the Client acts as controller pursuant to Art. 4 No. 7 GDPR and Eppendorf acts as processor according to Art. 4 No. 8 GDPR
Downtime	Time period during which the Service is unavailable
First User Account	The first account the Client creates during the registration of a Tenant ID for one individual person. The First User Account is automatically an Admin Account.
First User	User of the First User Account
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016
Device	A device produced by Eppendorf or a third-party which can utilize the Service
Service	The Service entails all VisioNize Lab Suite Services including the Software as well as the corresponding storage space provided by Eppendorf to the Client as a service in the cloud.
Software	Means the software provided as part of the Service in the cloud (i.e. not the software installed on the Devices)
Tenant	The entity in the Service that represents the Client. All tenant administrators and users created by administrators of this tenant have access to this and only this Tenant.
Tenant Administrator	The employee of a Client using an Admin Account of the Tenant.
Tenant ID	The unique identifier of the Tenant
User Account	An account created by the Tenant Administrator that an employee of the Client uses to access the Service

2. Scope of Application

- 2.1 The Service is only offered to entrepreneurs according to Sec. 14 German Civil Code – *Bürgerliches Gesetzbuch "BGB"*, i.e.; a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession. The Service is not offered to consumers.
- 2.2 The following General Terms and Conditions govern the account registration and the subsequent access to and use of the Service.
- 2.3 This Agreement supersedes all prior and contemporaneous discussions and agreements, both written and oral, among the Parties with respect to the subject matter of this Agreement and constitutes the sole and entire agreement among the Parties with respect to such subject matter.
- 2.4 The following terms and conditions also apply to all patches, updates, upgrades and bug fixes and all new functions that Eppendorf makes available to the Client as a part of the Service, unless these are subject to a separate agreement.

3. Scope of Service

- 3.1 Eppendorf shall provide the Service to the Client.
- 3.2 Eppendorf shall provide the Service either itself or through subcontractors who will act as vicarious agents (*Erfüllungsgehilfen*) pursuant to Sec. 278 BGB. Eppendorf is free to choose such vicarious agents.
- 3.3 The Client may use the Service for its internal business purposes.
- 3.4 The Service offers the possibility to receive notifications in case of certain events. Eppendorf will make commercially reasonable efforts to reliably fulfil the notifications, subject to the availability of third party infrastructure, required and emergency maintenance, availability of third party networks, services and communications facilities and force majeure events. Particularly, Eppendorf has no liability for any infrastructure outages on Client's site. Eppendorf recommends implementing additional alternative measures to notice such events such as for example two ways of receiving such notifications (e.g. via email and SMS). The list of countries where SMS notification receipt is possible can be found [here](#).
- 3.5 Eppendorf reserves its right to modify or discontinue the Service.
- 3.6 Eppendorf may at any time modify the Service if the security standard is not degraded. If and to the extent that fees must be paid for the Service, Eppendorf shall also ensure that such modifications do not disable paid functions of the Service which had been provided before the modification. Concerning current subscriptions, Eppendorf might discontinue

the Service or modify it despite degrading the standard for security (or functionality if applicable) if said changes in the Service

- (a) are legally required or
- (b) are necessary for the prevention of security risks

- 3.7 Eppendorf is not obliged to provide prior versions of the Service.
- 3.8 Eppendorf may suspend the Client's use of the Services if this is reasonably needed to prevent unauthorized access to Client Data, maintain data security, or if the Client or its employees or authorized personal do not abide by the Acceptable Use Policy or violate other terms of this Agreement.
- 3.9 The place of performance shall be the registered office of Eppendorf AG, Barkhausenweg 1, 22339 Hamburg, Germany.

4. Conclusion of Agreement and Registration of Users and Devices

- 4.1 The Service is made available by Eppendorf and its distribution network. The registration constitutes a binding legal offer subject to the provisions of this Agreement by the Client.
- 4.2 After Eppendorf has approved the order, Eppendorf will create the First User based on the data provided during the registration and will create a Tenant in the Service.
- 4.3 The First User will receive an email with the login details for the Service via a clear URL. This confirmation email constitutes the acceptance of the Client's offer by Eppendorf. The First User has to create the further Admin and User Accounts for employees of the Client afterwards.
- 4.4 Every Device will have to be registered separately under the Tenant ID via an Admin Account, either in the Service itself or on the Device if such a Device offers this function.
- 4.5 On specific Devices a local user management may be available. This depends on the specific Device.

5. Obligations of Client

- 5.1 The Client may use the Service only in accordance with the Agreement.
- 5.2 The Client may not provide the Service to third parties except to affiliates of the client.
- 5.3 The Client shall ensure that its hardware and software match the requirements to use the Service. In particular, the client requires a constant internet connection to use the Service.
- 5.4 The Client may not reverse engineer, decompile, disassemble, or work around technical limitations. This does not limit Client's rights under sec. 69d and 69e of the German Copyright Act (*Urheberrechtsgesetz, "UrHG"*).

- 5.5 The Client shall store all access credentials carefully and protect them against unauthorized access by state of the art security measures.
- 5.6 The Client shall not gain access to the Service by any other mean than through his user/administrator credentials, especially not by circumventing or disclosing the authentication or security checks implemented in the Service. The Client may not use false identity or other's credentials to gain said access.
- 5.7 The Client is responsible for all activities that occur under his Tenant ID as these were the Client's own acts, except where third parties have used such credentials even though the Client had implemented the security measures required according to Sec. 5.5 of these T&Cs.
- 5.8 If the Client becomes aware of any infringement of the Acceptable Use Policy or any section of this Agreement, he shall immediately terminate the relevant person's account and inform Eppendorf about the infringement.
- 5.9 The Client shall accept all patches, updates, upgrades and bug fixes provided by Eppendorf without undue delay ("*unverzüglich*"). Eppendorf shall not be responsible for issues suffered by the Client or its affiliates, including any performance or security issues, that result from the Client's failure to accept patches, updates, upgrades and bug fixes.
- 5.10 The Client remains responsible for the security of all of its systems, software and onsite hardware.
- 5.11 The Client shall ensure that its employees and other authorized personnel using the Service also observe the Client's obligation listed in this section 5.

6. Proprietary Rights

- 6.1 All rights, title and interests in and to the Service, including any know-how and any part and improvement thereof, and all intellectual property rights and copyrights in or to the foregoing shall remain wholly vested in Eppendorf, its business partners, and/or licensors.
- 6.2 Subject to the terms and conditions set forth in this Agreement, Eppendorf grants to Client a temporary, non-exclusive, non-transferable, and non-sublicensable license to use the Software in the cloud.
- 6.3 The Software contains third-party components including open source software. Parts of such third-party components are subject to deviating third-party license terms. A list of such third-party components and its respective third-party license terms are available [here](#). No stipulation in this Agreement is intended to impose further restrictions on Client's use of such third-party components licensed under third-party license terms. Eppendorf reserves the right to introduce deviating or additional third-party license terms in the course of modifica-

tions and in case of updates of the Service and its Software to the extent necessary due to additional third-party components or due to changed third-party license terms.

- 6.4 The Client grants Eppendorf a worldwide, perpetual, irrevocable, unlimited, transferable, sublicensable, fully paid, royalty-free license to use any suggestion, recommendation, feature request, or other feedback provided by it or on its behalf related to the Service, including especially, the right of reproduction in any form, the right of distribution in any form, the right to public disclosure and other public communication in any form, as well as unknown types of use. Further, the Client grants Eppendorf a worldwide, perpetual, irrevocable, unlimited, transferable, sub-licensable, fully paid, royalty-free license to use aggregated and non-aggregated mere machine-related data collected when fulfilling the Service for the purpose to improve and develop its processes, algorithms, products, services, data models and to create new business models, including the right of reproduction in any form, the right of distribution in any form, the right to public disclosure and other public communication in any form, as well as unknown types of use.
- 6.5 The Client will not attempt nor permit anyone else to attempt to modify, copy for distribution, reverse engineer, reverse compile, or disassemble the code of the Software. This does not limit Client's rights under sec. 69d and 69e of the German Copyright Act (*Urheberrechtsgesetz*).
- 6.6 The Client agrees to include Eppendorf's trademarks, copyrights, and other proprietary notices whenever referring to the Services, the Software or parts thereof.
- 6.7 The Client may not publicly disclose directly or through a third party the results of any comparative or compatibility testing, benchmarking, or evaluation of the Service, unless the disclosure includes all information necessary for Eppendorf or a third party to replicate the test.

7. Data Processing, Data Protection and Data Security

- 7.1 In the course of rendering the Service, Eppendorf will process personal data for which the Client acts as controller according to Art. 4 No. 7 GDPR and which Eppendorf processes as processor according to Art. 4 No. 8 GDPR.
- 7.2 Data subjects are the people using the Service on behalf of the Client either directly or through a Device.
- 7.3 Eppendorf will process the following types of personal data: name of the user, business email address, business telephone number; where applicable data generated by the Devices insofar as such might relate to certain employees (e.g., if the temperature changes during a certain period of time and the Client can connect this information with the employee operating the Device during this time). Eppendorf will also process all further personal data provided by the user when using the Service.

- 7.4 The Client Data will be processed as described in this Agreement.
- 7.5 The Client Data is processed for the purpose of providing the Service.
- 7.6 Eppendorf may anonymize or aggregate the Client Data, and use such anonymized data for its own business purposes, e.g., for improving the Service.
- 7.7 Eppendorf may process and use the Client Data for its own purposes as controller to the extent permitted by a statutory permission or consent by the data subject, e.g., Eppendorf might process the registration and login-data for its own IT-security purposes.
- 7.8 Eppendorf shall process the Client Data exclusively on behalf of and in accordance with the instructions of the Client. Such instructions are contained exclusively in this Agreement. If Eppendorf is required to deviate from such instructions by Union or Member State law to which Eppendorf is subject; Eppendorf shall inform the Client of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 7.9 Eppendorf shall obligate all personnel engaged in the processing of Client Data to confidentiality with regard to processing of Client Data.
- 7.10 Eppendorf shall take all appropriate technical and organisational measures, taking into account the state of the art, the implementation costs and the nature, the scope, circumstances and purposes of the processing of Client Data, as well as the different likelihood and severity of the risk to the rights and freedoms of the data subject, in order to ensure a level of protection appropriate to the risk of Client Data. Eppendorf shall have the right to modify technical and organisational measures during the term of the Agreement as long as they continue to comply with the statutory requirements.
- 7.11 Eppendorf is permitted to process Client Data in accordance with the provisions of this Agreement outside the European Economic Area if it observes the requirements stipulated in Art. 44 to 49 GDPR.
- 7.12 The Client hereby authorises Eppendorf to conclude an agreement with another processor on behalf of the Client based on the standard contractual clauses for the transfer of personal data to processors in third countries pursuant to the decision of the European Commission of February 5th in 2010 to the extent this is deemed sensible by Eppendorf to fulfil the requirements stipulated in Art. 44 to 49 GDPR. The Client declares his willingness to cooperate in fulfilling the requirements of Art. 49 GDPR to the extent necessary.
- 7.13 The Client grants Eppendorf the general authorization to engage further processors with regard to the processing of Client Data. Eppendorf shall contractually impose the same data protection obligations on each further processor as set out in the Agreement with respect to Eppendorf as required according to Art. 28 para. 4 GDPR. The Parties agree that they deem this requirement fulfilled if the respective (sub-) processing agreement grants an equivalent level of protection corresponding to the Agreement. I.e., the specific measures may differ depending on the scope of the respective (sub-)processing.
- 7.14 The current subprocessors can be found [here](#).
- 7.15 Eppendorf shall notify the Client of any intended changes in or replacement of further processors. The Client may object to the instruction of such further processors. If the Client does not object within 30 days after receipt of the notification, his right to object to the corresponding engagement lapses. If the Client objects, Eppendorf is entitled to terminate the Agreement with a notice period of 30 days.
- 7.16 Eppendorf shall support the Client within reason by virtue of technical and organisational measures in fulfilling the latter's obligation to respond to requests for exercising data subject's rights against a reasonable fee. Eppendorf shall in particular inform the Client immediately if a data subject should contact Eppendorf directly with a request for exercising his or her rights in relation to Client Data and on request, provide the Client with all information available to Eppendorf on the processing of Client Data which the Client required in order to respond to the request of a data subject and which the Client does not have at its disposal.
- 7.17 Eppendorf shall notify the Client without undue delay about personal data breaches according to Art. 33 GDPR.
- 7.18 Eppendorf shall assist the Client to the extent reasonable and necessary in return for a reasonable fee in conducting data protection impact assessments and, if necessary, subsequent consultations with the supervisory authority taking into account the nature of the processing and the information available to Eppendorf.
- 7.19 Upon instruction of the Client, Eppendorf shall irrevocably delete or return back the Client Data upon termination of the Agreement, unless Eppendorf is obliged by law to further store the Client. Eppendorf may keep documentations, which serve as evidence of the orderly and accurate processing of Client Data, also after the termination of the Agreement.
- 7.20 Eppendorf shall provide evidence regarding the implementation of the obligations under this Agreement in an appropriate manner at the Client's request.
- 7.21 The Client shall be entitled to audit Eppendorf with regard to compliance with the provisions of this Agreement. The Client is entitled to access the business premises of Eppendorf in which Client Data is processed at his own expense without disruption of the course of business and under strict secrecy of Eppendorf's business and trade secrets within the usual business hours after a notice to be given at least 60 days

in advance in writing. Such audits are subject to additional fees which will be provided to the Client after the Client has requested the audit and specified its scope. The Client may generally carry out one audit per calendar year. The Client may carry out additional audits if concrete incidents lead to the reasonable suspicion that Eppendorf violates its obligations according to this clause 7.

- 7.22 Eppendorf is entitled to withhold information if Eppendorf would be in breach of statutory or other contractual provisions as a result of its disclosure.
- 7.23 The Client is not entitled to get access to data or information about Eppendorf's other clients, cost information, quality control and contract management reports, or any other confidential data of Eppendorf that is not directly relevant for the agreed audit purposes.
- 7.24 If the Client commissions a third party to carry out the audit, the Client shall obligate the third party in writing the same way as the Client is obliged to Eppendorf; this includes the obligation to maintain secrecy and confidentiality. At Eppendorf's request, the Client shall immediately submit the corresponding confidentiality agreements. The Client may not commission any of Eppendorf's competitors to carry out the audit.
- 7.25 At the discretion of Eppendorf, proof of compliance with the obligations under the Agreement may be provided, instead of an inspection, by submitting an appropriate, current opinion or report from an independent authority or a suitable certification by way of IT security or data protection audits conducted by an independent auditor except if the Client has material reasons why an audit by the Client itself is required.

8. Fees

- 8.1 Eppendorf offers the Service as a subscription and software-as-a-service (SaaS).
- 8.2 A description of all available services and your specific prices can be found at the subscription [webpage](#).
- 8.3 Fees might be subject to change with the beginning of a new subscription period subject to the regulations described in sections 15 and 10.
- 8.4 Exclusively the prices and currencies set forth in Eppendorf's order are determinative. All prices are understood to be net prices without added taxes which Eppendorf must additionally pay in the respective statutory amount.
- 8.5 All fees associated are charged in advance of use of the Service except for device licenses, which may be billed afterwards. By choosing to connect additional devices to VisioNize Lab Suite, the client agrees to pay additional fees as set forth in the price list.

8.6 Subscription renews automatically for an additional Billing Period, depending on user selected payment period, unless terminated by either Party prior to renewal.

9. Payment Terms

Payments are in general due within thirty (30) days of date of invoice. Exceptions may apply.

10. Term and Termination

- 10.1 The term of this Agreement will begin with the completion of the Registration of the Tenant ID of the Services Account and continue until the Agreement is terminated as set forth in this section.
- 10.2 This Agreement can be terminated by the user by unsubscribing from all services with a deadline of 5 working days prior to the end of the current Billing Period.
- 10.3 Individual services can be unsubscribed with a deadline of 5 working days prior to the end of the current Billing Period. Devices must be disconnected from tenant and corresponding device licenses unsubscribed prior to next Billing Period.
- 10.4 Failure to make any payment due after two consecutive months will result in termination of the Service by Eppendorf.
- 10.5 This Agreement can be terminated by Eppendorf in writing with a notice period of two (2) weeks for failure to comply with terms as dictated in this Agreement or in the Acceptable Use Policy.
- 10.6 Eppendorf will remove all configuration of customer tenant 30 days after full termination of this Agreement.
- 10.7 Either Party's right to terminate this Agreement for cause (aus wichtigem Grund) shall remain unaffected.

11. Interruption and Impairment of Accessibility and Availability

- 11.1 Eppendorf will use commercially reasonable efforts to make the Services accessible to Client, subject to the availability of third party infrastructure, required and emergency maintenance, availability of third party networks and communications facilities and force majeure events. The Services are hosted on a shared third-party infrastructure environment.
- 11.2 Adjustments, changes and additions to the Service as well as measures which serve to identify and remedy malfunctions may lead to a temporary interruption or impairment of accessibility.
- 11.3 Scheduled maintenance or downtimes will be published to tenant administrators by email at a minimum of 24 hours prior to the planned downtime.
- 11.4 Quarterly releases will require scheduled downtime.

12. Liability

- 12.1 Both Parties shall be liable to each other according to the statutory provisions. In case of Eppendorf the Parties agree that these are the provisions applying to gratuitous loans (*Leihe*), in particular Sec. 599 and 600 BGB, i.e., Eppendorf is only liable for wilful intent ("*Vorsatz*") and gross negligence ("*grobe Fahrlässigkeit*").
- 12.2 Any liability on the part of Eppendorf for issued guarantees – which have to be expressly designated as such in order to be warranties in a legal sense – remains unaffected.
- 12.3 The Client is required to notify Eppendorf without undue delay about any damage within the meaning of the above provisions on liability or to have Eppendorf record such damages so that Eppendorf is informed as early as possible and can still mitigate the harm together with the Customer.
- 12.4 The limitations of liability pursuant to the above sections apply also in favour of the employees, officers, directors, representatives, suppliers, subcontractors, and any person used by Eppendorf in performing any of its obligations.

13. Indemnity

- 13.1 Upon first request, the Client shall indemnify Eppendorf from all third party claims asserted against Eppendorf based on a culpable violation of a responsibility, obligation or guarantee by the Client as well as from the necessary expenses for legal defence. The necessary expenses include in particular reasonable attorney fees incurred for the defence, which are not limited to statutory fees.
- 13.2 The provisions of this section 13 shall apply mutatis mutandis to fines as well as other regulatory or judicial orders and claims.

14. Confidentiality

- 14.1 For the purposes of this Agreement "**Confidential Information**" shall include but not be limited to the Software, including all specifications, any documents including but not limited to the terms and conditions of the Agreement, all information concerning either party's technical operations including, without limitation, computer systems, equipment, and facilities, and either Parties' financial, business, and commercial information. Confidential Information shall not include information that is or comes in to the public domain or is independently created or obtained by a Party other than where such resulted from a disclosure by a third party in breach of confidentiality obligations.
- 14.2 Each Party agrees that it shall not sell, transfer, publish, disclose, display, or otherwise make available to third parties the Confidential Information of the other Party without prior written consent of such other Party. Each Party agrees to secure and protect Confidential Information and to take appropriate action by written agreement with its employees,

agents, and/or subcontractors with permitted access to such Confidential Information to satisfy its obligations hereunder.

- 14.3 This section 14 imposes no obligations with respect to information which: (a) was in a Party's possession before receipt from the respective other Party; (b) is or becomes a matter of public knowledge through no fault of the Party receiving the information; (c) was rightfully disclosed to the Party by a third Party without restriction on disclosure; or (d) is developed by the Party without use of the Confidential Information as can be shown by documentary evidence.
- 14.4 Each Party may make disclosures to the extent required by law or court order, provided the Party makes commercially reasonable efforts to provide the Party which provided the Confidential Information with notice of such disclosure as promptly as possible and uses diligent efforts to limit such disclosure and obtain confidential treatment or a protective order and has allowed the Party which provided the Confidential Information to participate in the proceeding.
- 14.5 Each Party further agrees that it shall promptly notify the other as soon as it becomes aware of any breach of confidentiality obligations pursuant to an Agreement and give the other Party all reasonable assistance in connection with investigation of the same. Each Party shall use its best efforts to assist the other in identifying and preventing any unauthorised use or disclosure of any portion of Confidential Information. Neither Party shall disclose any Confidential Information of the other to any third party unless it has (a) obtained the prior written consent of that Party and (b) provided that the third party has executed a confidentiality and non-disclosure agreement directly with the other Party.
- 14.6 Obligations and undertakings relating to confidentiality and non-disclosure, whether contained in this clause or elsewhere in the Agreement, shall survive for five years after termination of the Agreement.

15. Modification of Terms

- 15.1 Eppendorf AG reserves the right to modify these terms at any time taking into account the justified interests of the Client. Eppendorf will inform the Client of any proposed modification of these terms, provide him with the proposed new version of these terms and notify the Client of the date when these new terms will apply to the Agreement.
- 15.2 Any modification of the Agreement is subject to a prior written notice or – at Eppendorf's sole discretion – notice in text form via email or electronic means in an appropriate period of time before the respective new terms shall apply. If the Customer does not expressly refuse the respective modification within a reasonable period of time granted after receipt of such notice, the Client is deemed to have approved the respective modification of the Agreement. In the aforementioned notice about the modification of the Terms, Eppendorf will inform the Client expressly and specifically about the right to object within the notice period and the

consequences of not expressly refusing the proposed modification. In case the Client objects, the Agreement will continue under the previous conditions but Eppendorf or the Client might still choose to terminate it.

16. Miscellaneous

- 16.1 Further information on Eppendorf's use of personal data can be found in the Data Protection Information available [here](#).
- 16.2 The Client agrees to comply with all applicable export and sanction laws during the registration and use of the Service, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and enduser, end-use and destination restrictions issued by U.S. and other governments.
- 16.3 The language of the Agreement is English. The Parties agree that English expressions which are followed by a German term in this Agreement – e.g.: “gross negligence (grobe Fahrlässigkeit)” – shall have the meaning the German term has in German law”.
- 16.4 Amendments, supplements and additions to this contract shall only be valid if they have been agreed upon in writing between the Parties.
- 16.5 These Terms are subject to German law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the German conflict of law provisions.
- 16.6 The courts of Hamburg, Germany have exclusive jurisdiction over any disputes arising out of or in connection with this Agreement.
- 16.7 Should any provision of these Terms be deemed invalid, void or for any reasons unenforceable, the provision shall be deemed severable and shall not affect the validity of and enforceability of any remaining provisions. The provision in question shall be replaced by a valid provision which comes as close as possible to the economic purpose of the invalid provision. The same shall apply in the event of a contractual gap.

Last modified 5 February 2021