

# Terms and Conditions for the VisioNize® Lab Suite Services

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

## Preamble

VisioNize Lab Suite Services is a software environment for management and storage of machine-, workflow-, experiment- and service-related data of connectable Devices as well as manually added data, such as of non-connectable Devices or annotations during an experiment. The Service is offered under different subscription plans and optional Individual Services which the Customer can choose.

The connectable Devices create measurements (e.g., rotation speed of centrifuges, temperature of freezer, CO<sub>2</sub> 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. At the Customer’s request, the Devices may be configured remotely as well, given the Customer the option to reset and change information pertaining to the device, such as its nickname.

The Service is connected to other internal Eppendorf databases (e.g. subscription portal) to supply device attribute, service status or documentation information regarding Devices.

The Service is offered in a cloud environment.

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

## 1 Definitions

<b>Acceptable Use Policy</b>	A set of rules by Eppendorf on how the Service shall be used by the users. The Acceptable Use Policy is available here: <a href="http://www.eppendorf.com/visionize-acceptableuse">www.eppendorf.com/visionize-acceptableuse</a> .
<b>Admin Account</b>	An account offered to the Customer via which an employee of the Customer can administer the Tenant and the registered users of the Customer.
<b>Agreement</b>	This Agreement including its annexes, appendices and any document incorporated into it by reference.
<b>Availability</b>	Proportion of time in which the Respective Service is up and running and available at the exit of the data centre used by Eppendorf.
<b>BGB German Civil Code</b>	Bürgerliches Gesetzbuch
<b>Billing Period</b>	The Billing Period starts on the day the Customer subscribes to the Respective Service and the subscription period selected by the Customer defines the length of the Billing Period.

<b>Customer Account</b>	The account provided to the Customer via which the Customer can use the Service
<b>Customer Data</b>	All personal data (Art. 4 No. 1 GDPR) for which the Customer acts as controller pursuant to Art. 4 No. 7 GDPR and Eppendorf acts as processor according to Art. 4 No. 8 GDPR.
<b>Device</b>	A device produced by Eppendorf or a third-party which can utilize the Service
<b>Device Performance Data</b>	Set points and actual values of device functions and device events, e.g. centrifuge speed or temperature.
<b>Downtime</b>	Time period during which the Respective Service is unavailable.
<b>Experiment Process Data</b>	Experiment documentation with individual steps performed and approval state.
<b>Experiment Workflow Data</b>	Protocols and workflows generated by the Customer
<b>First Customer Account</b>	The first account the Customer creates during the registration of a Tenant ID for one individual person. The First Customer Account is automatically an Admin Account.
<b>First User</b>	User of the First Customer Account.
<b>Free Subscription Plan</b>	Free Subscription Plans entail all subscription plans for which Eppendorf receives no remuneration.
<b>GDPR</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.
<b>Individual Service</b>	Any service which can be individually booked in addition to the subscription plans.
<b>Paid Subscription Plans</b>	Paid Subscription Plans entail all subscription plans for which Eppendorf receives a remuneration.
<b>Respective Service</b>	The Service as provided under the respective subscription plan plus the

	respective Individual Services booked by the respective Customer.	
<b>Sample-related Device Data</b>	Measurements performed on samples, e.g. sequencing data, plate reader data.	
<b>Scientific Data</b>	Scientific results listed in the scientific result section of the documentation and all interpretation of such data in scientific sense.	
<b>Service</b>	Entails all services provided as part of the VisioNize Lab Suite Service under the Free Subscription Plans, Paid Subscription Plans and the Individual Services including the Software and the corresponding storage space provided by Eppendorf to the Customer as a service in the cloud.	
<b>Software</b>	Means the software provided as part of the Service in the cloud (i.e. not the software installed on the Devices).	
<b>Software Performance Data</b>	Information on usage of the Service (daily usage, time spent within specific applications, click paths)	
<b>Tenant</b>	The entity in the Service that represents the Customer. All tenant administrators and users created by administrators of this tenant have access to this and only this Tenant.	
<b>Tenant Administrator</b>	The employee of a Customer using an Admin Account of the Tenant.	
<b>Tenant ID</b>	The unique identifier of the Tenant.	
<b>UrhG</b>	German Copyright Act – Urheberrechtsgesetz	
<b>User Account</b>	An account created by the Tenant Administrator that an employee of the Customer uses to access the Service.	
<b>User Defined Device Data</b>	Individual information about the Device or its use, made by the Customer or other users. This includes the nicknames of the Devices as well as all individual records and annotations when using the Devices.	
<b>Working Day</b>	Monday to Friday except public bank holidays in Hamburg, Germany.	
		<p><b>2 Scope of Application</b></p> <p><b>2.1</b> The Service is only offered to entrepreneurs according to Sec. 14 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.</p> <p><b>2.2</b> The following General Terms and Conditions govern the account registration and the subsequent access to and use of the Service.</p> <p><b>2.3</b> 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.</p> <p><b>2.4</b> 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 Customer as a part of the Service, unless these are subject to a separate agreement.</p> <p><b>3 Scope of Service</b></p> <p><b>3.1</b> Eppendorf shall provide the Service to the Customer.</p> <p><b>3.2</b> 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.</p> <p><b>3.3</b> The Customer may use the Service for its internal business purposes.</p> <p><b>3.4</b> 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 Customer'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: <a href="https://www.eppendorf.com/visionize-SMS">https://www.eppendorf.com/visionize-SMS</a></p> <p><b>3.5</b> Eppendorf reserves its right to modify the Service to a reasonable degree or discontinue Free Subscription Plans entirely. Eppendorf may at any time modify the IT security measures if the security standard is not degraded. If and to the extent that fees must be paid for the Respective Service, Eppendorf shall also ensure that any modifications do not disable paid functions of the Respective Service which had been provided before the modification. Concerning current subscriptions, Eppendorf may discontinue the Respective Service or modify it despite degrading the standard for security (or functionality if applicable) if said changes in the</p>

Respective Service

- 3.5.1 are legally required or
- 3.5.2 are necessary for the prevention of security risks

- 3.6 Eppendorf is not obliged to provide prior versions of the Respective Service.
- 3.7 Eppendorf may suspend the Customer's use of the Service if this is reasonably needed to prevent unauthorized access to Customer Data, maintain data security, or if the Customer or its employees or authorized personnel do not abide by the Acceptable Use Policy or violate other terms of this Agreement.
- 3.8 The place of performance shall be the registered office of Eppendorf SE, Barkhausenweg 1, 22339 Hamburg, Germany.
- 3.9 Eppendorf will only be responsible for the Service as provided at the exit point of the data center on which the Service is hosted.

#### 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 Customer.
- 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 Customer's offer by Eppendorf. The First User has to create the further Admin and Customer Accounts for employees of the Customer 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.
- 4.6 Together with or subsequent to the first registration in accordance with this section 4, the Customer may purchase a Paid Subscription Plan and Individual Services. The Paid Subscription Plan and Individual Services will be invoiced according to section 10.

#### 5 Obligations of Customer

- 5.1 The Customer may use the Service only in accordance with the Agreement.

- 5.2 The Customer may not provide the Service to third parties except to affiliates of the Customer.
- 5.3 The Customer shall ensure that its hardware and software match the requirements to use the Service. In particular, the Customer requires a constant internet connection to use the Service. For connection of some Devices additional hardware from Eppendorf or third party providers may be required. The Customer shall order such hardware separately.
- 5.4 The Customer shall ensure that all workflows the Customer uses as a part of the Service fulfil the Customer's requirements for the respective process. It is the sole responsibility of the customer to ensure that each workflow is suitable to guarantee correct results of the respective experiment.
- 5.5 It is the sole obligation of the Customer to ensure the security and safety of the Devices, it's associated items, liquids and the Services, including with respect to the users handling them and other equipment on the Customer's premises.
- 5.6 The Customer may not reverse engineer, decompile, disassemble, or work around technical limitations. This does not limit Customer's rights under sec. 69d and 69e UrhG.
- 5.7 The Customer shall store all access credentials carefully and protect them against unauthorized access by state of the art security measures.
- 5.8 The Customer shall not gain access to the Service by any other means than through his user/administrator credentials, especially not by circumventing or disclosing the authentication or security checks implemented in the Service. The Customer may not use false identity or other's credentials to gain said access.
- 5.9 The Customer shall de-register a connectable Device when an unauthorized third party gains access to such Device, e.g. when the Device is sold (also see clause 9.26 with regards to IT-security).
- 5.10 The Customer is responsible for all activities that occur under his Tenant ID as these were the Customer's own acts, except where third parties have used such credentials even though the Customer had implemented the security measures required according to Sec. 5.5 of these T&Cs.
- 5.11 If the Customer 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.
- 5.12 The Customer 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 Customer or its affiliates, including any performance or security issues, that result from the Customer's failure to accept patches, updates, upgrades and bug fixes.

**5.13** The Customer remains responsible for the security of all of its systems, software and on-site hardware.

**5.14** The Customer shall ensure that its employees and other authorized personnel using the Service also observe the Customer's obligation listed in this section 4.5.

## **6 Ordering and Using the Service via Third Parties**

**6.1** Customer may be able to order and use the Service via third parties, in particular platforms.

**6.2** The available features when accessing the Service via a third party may be limited. It is the Customer's obligation to check the information provided by Eppendorf to assess whether all features relevant to the Customer are indeed available via the third party.

**6.3** A direct contractual relationship governed by this Agreement arises when the Customer accesses the Service via third parties. Additional terms and conditions may apply.

**6.4** Eppendorf is not liable for the third party and does not warrant or guarantee the Service's availability when accessed via a third party.

**6.5** Eppendorf will only be liable for the Service as provided at the exit point of the data center on which the Service is hosted even if the Customer accesses the Service via a third party.

## **7 Proprietary Rights**

**7.1** 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.

**7.2** Subject to the terms and conditions set forth in this Agreement, Eppendorf grants to Customer a temporary, non-exclusive, non-transferable, and non-sub-licensable license to use the Software in the cloud. The license is restricted with regard to the number and types of Devices connectable to the Respective Service and in case of certain Paid Subscription Plans and Individual Services with regard to the number of users of the Services to the amount specified in the ordering process. The respective licensing model is named during the ordering process. The Customer is free to decide which Devices are to be connected to the Service, as long as the agreed type and/or number of Devices is not exceeded.

**7.3** 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: <https://www.eppendorf.com/visionize-licenses>  
No stipulation in this Agreement is intended to impose further restrictions on Customer'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 modifications 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.

**7.4** The Customer grants Eppendorf a worldwide, perpetual, irrevocable, unlimited, transferable, sub-licensable, 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 Customer 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.

**7.5** The Customer 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 Customer's rights under sec. 69d and 69e UrhG.

**7.6** The Customer agrees to include Eppendorf's trademarks, copyrights, and other proprietary notices whenever referring to the Service, the Software or parts thereof.

**7.7** The Customer 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.

## **8 Use of Data**

**8.1** Eppendorf may use all data processed in the service for the purpose of providing the service to the Customer.

**8.2** Subject to the provisions on data protection contained in section 9 of this Agreement, Eppendorf may use Device Performance Data and Software Performance Data to improve the Service or other Eppendorf services, develop new services, identify upselling potential and provide guidance as to specific product features in the product to specific users (e.g. referring to features which the user has not yet used but might be of interest to such user in the Service).

**8.3** For the avoidance of doubt it shall be clarified that Eppendorf will not use Experiment Workflow Data, Experiment Process Data, Scientific Data or Sample-related Device Data for any other purpose than providing the Service to the Customer. This clause prevails over all conflicting

clauses in this Agreement.

## 9 Data Protection and Data Security

- 9.1** In the course of rendering the Service, Eppendorf will process personal data for which the Customer acts as controller according to Art. 4 No. 7 GDPR and which Eppendorf processes as processor according to Art. 4 No. 8 GDPR.
- 9.2** Data subjects are the people using the Service on behalf of the Customer either directly or through a Device.
- 9.3** To the extent such categories of data include personal data in the individual case, Eppendorf will process Device Performance Data, Experiment Workflow Data, Experiment Process Data, Scientific Data, Sample-related Device Data and User Defined Device Data as a processor. This might particularly 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 Customer 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.
- 9.4** The Customer Data will be processed as described in this Agreement.
- 9.5** The Customer Data is processed only for the purpose of providing the Service (e.g. for sending alerts to the Customer) or supplementary services (e.g. accessing Customer Data during trouble shooting or data recovery).
- 9.6** Eppendorf may anonymize or aggregate the Customer Data, and use such anonymized data in accordance with section 8 of this Agreement.
- 9.7** Eppendorf may process and use the 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. Furthermore, Eppendorf will process Software Performance Data as a controller.
- 9.8** Eppendorf shall process the Customer Data exclusively on behalf of and in accordance with the instructions of the Customer. 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 Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 9.9** Eppendorf shall obligate all personnel engaged in the processing of Customer Data to confidentiality with regard to processing of Customer Data.
- 9.10** 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 Customer 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 Customer 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.
- 9.11** Eppendorf is permitted to process Customer 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.
- 9.12** The Customer hereby authorises Eppendorf to conclude an agreement with another processor on behalf of the Customer 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 as long as these are still valid. The Customer declares his willingness to cooperate in fulfilling the requirements of Art. 49 GDPR to the extent necessary. Alternatively, Eppendorf may conclude the standard contractual clauses for data transfers between EU and non-EU countries as published on June 4th 2021 in the appropriate model or any newer version of such clauses as updated by the European Commission from time to time.
- 9.13** The Customer grants Eppendorf the general authorization to engage further processors with regard to the processing of Customer 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.
- 9.14** The current subprocessors can be found here: <https://www.eppendorf.com/visionize-subprocessor>
- 9.15** Eppendorf shall notify the Customer of any intended changes in or replacement of further processors. The Customer may object to the instruction of such further processors. If the Customer does not object within 30 days after receipt of the notification, his right to object to the corresponding engagement lapses. If the Customer objects, Eppendorf is entitled to terminate the Agreement with a notice period of 30 days.
- 9.16** Eppendorf shall support the Customer 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 Customer immediately if a data subject should contact Eppendorf directly with a request for exercising his or her rights in relation to Customer Data and on request, provide the Customer with all information available to Eppendorf on the processing of Customer Data which the Customer required in order to respond to the request of a data subject and which the Customer does not have at its disposal.

- 9.17** Eppendorf shall notify the Customer without undue delay about personal data breaches according to Art. 33 GDPR.
- 9.18** Eppendorf shall assist the Customer 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.
- 9.19** Upon instruction of the Customer, Eppendorf shall irrevocably delete or return back the Customer Data upon termination of the Agreement, unless Eppendorf is obliged by law to further store the Customer. Eppendorf may keep documentations, which serve as evidence of the orderly and accurate processing of Customer Data, also after the termination of the Agreement.
- 9.20** Eppendorf shall provide evidence regarding the implementation of the obligations under this Agreement in an appropriate manner at the Customer's request.
- 9.21** The Customer shall be entitled to audit Eppendorf with regard to compliance with the provisions of this Agreement. The Customer is entitled to access the business premises of Eppendorf in which Customer 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 Customer after the Customer has requested the audit and specified its scope. The Customer may generally carry out one audit per calendar year. The Customer may carry out additional audits if concrete incidents lead to the reasonable suspicion that Eppendorf violates its obligations according to this clause 7.
- 9.22** Eppendorf is entitled to withhold information if Eppendorf would be in breach of statutory or other contractual provisions as a result of its disclosure.
- 9.23** The Customer is not entitled to get access to data or information about Eppendorf's other Customers, 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.
- 9.24** If the Customer commissions a third party to carry out the audit, the Customer shall obligate the third party in writing the same way as the Customer is obliged to Eppendorf; this includes the obligation to maintain secrecy and confidential-

ality. At Eppendorf's request, the Customer shall immediately submit the corresponding confidentiality agreements. The Customer may not commission any of Eppendorf's competitors to carry out the audit.

- 9.25** 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 Customer has material reasons why an audit by the Customer itself is required.

- 9.26** Customer shall ensure that no unauthorized third party gains access to the connectable Devices. If a third party gains such access, it might also be able to gain access to Customer Data or any other data available in the Service.

## **10 Fees and Payment Terms**

- 10.1** Eppendorf offers the Service as a subscription and software-as-a-service (SaaS).
- 10.2** Fees are agreed upon in the subscription process.
- 10.3** Fees might be subject to change with the beginning of a new subscription period subject to the regulations described in sections 16 and 11.
- 10.4** All prices are understood to be net prices without added taxes (e.g. value added tax) which must be paid additionally in the respective statutory amount.
- 10.5** Fees for the respective billing period are generally invoiced in advance.
- 10.6** Payments are in due within thirty (30) days of date of invoice if not agreed otherwise in the individual case.

## **11 Term and Termination**

- 11.1** The term of this Agreement will begin with the completion of the Registration of the Tenant ID in the Admin Account and continue until the Agreement is terminated as set forth in this section.
- 11.2** Subscription renews automatically for an additional Billing Period, depending on the payment period, which the Customer selected, unless terminated by either Party prior to renewal.
- 11.3** The Customer can terminate this Agreement and each Respective Service overall (full termination) or only with regard to a subscription plan or Individual Services or specific Devices by unsubscribing from such part of the Respective Service at least five (5) Working Days prior to the end of the current Billing Period. After termination, the respective number of Devices, must be disconnected from tenant and corresponding device licenses unsubscribed prior to next Billing Period.

- 11.4 Eppendorf may terminate the Respective Service with a notice period of 1 month to the end of a Billing Period.
- 11.5 Eppendorf will remove all configuration of customer tenant 60 days after full termination of this Agreement. After this period, the previous configurations can not be transferred onto an alternative Respective Service booked thereafter.
- 11.6 Either Party's right to terminate this Agreement in its entirety for cause (aus wichtigem Grund) shall remain unaffected. Good cause for termination exists in particular (without limitation) if:

- 11.6.1 There is reasonable reason to believe that the access to the Solution was used in an abusive manner (e.g. if there was an attempt to circumvent IT-security measures or to unlawfully access intellectual property);
- 11.6.2 Eppendorf has reasonable reason to believe that the Customer violates the confidentiality obligations contained in this Agreement;
- 11.6.3 the Customer's outstanding payments amount to at least two monthly fees for any Respective Service; or
- 11.6.4 insolvency proceedings have been opened regarding the assets of the other contractual party, or the opening of such proceedings is imminent.

**12 Interruption and Impairment of Accessibility and Availability**

- 12.1 Eppendorf will use commercially reasonable efforts to make the Services accessible to Customer, 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.
- 12.2 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.
- 12.3 Scheduled maintenance or downtimes will be published to tenant administrators by email at least 24 hours prior to the planned downtime.
- 12.4 Quarterly releases will require scheduled downtime.

**13 Liability for Paid and Free Services**

13.1 The provisions contained in this section 13.1 apply to the liability for paid services. The liability for free services is governed by section 13.2.

- 13.1.1 The Parties shall be liable without limitation for intent (Vorsatz) and gross negligence (grobe Fahrlässigkeit).
- 13.1.2 Eppendorf is liable for slight negligence (ein-

fache Fahrlässigkeit) only in case of a breach of an essential contractual obligation (Kardinalpflicht) as well as for damages resulting from injury to life, body or health. Essential contractual obligations are such obligations whose observance is necessary to properly perform the Agreement including the Respective Service and which Customer can normally rely on being complied with. In case of a slight negligent breach of an essential contractual obligation, Eppendorf's liability is limited to the typical foreseeable damage under this Agreement which is the yearly license fee to be paid by the Customer under the Agreement.

- 13.1.3 The limitations of liability pursuant to the above sections also apply in favour of the employees, agents or other personnel of Eppendorf.
- 13.1.4 Any liability on the part of Eppendorf for issued guarantees (Garantien) – which have to be expressly designated as such in order to be warranties in a legal sense – as well as for claims due to the German Product Liability Act (Produkthaftungsgesetz, "ProdHaftG"), remains unaffected.
- 13.1.5 The total liability of the Eppendorf shall be limited to the overall yearly license fee to be paid by the Customer under the Agreement. All further liability of Eppendorf is excluded.
- 13.1.6 Customer is obliged to notify Eppendorf without undue delay about any damage or tangible risk 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 may undertake measures of mitigation of damages in reasonable co-operation with Customer.
- 13.1.7

13.2 The provisions contained in this section 13.1 apply to the liability for free services. The liability for paid services is governed by section 13.1.

- 13.2.1 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").
- 13.2.2 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.
- 13.2.3 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.

**13.3** The limitations of liability pursuant to this section 13 apply also in favour of the employees, officers, directors, representatives, suppliers, subcontractors, and any person used by Eppendorf in performing any of its obligations.

## **14 Indemnity**

**14.1** Upon first request, the Customer shall indemnify Eppendorf from all third party claims asserted against Eppendorf based on a culpable violation of a responsibility, obligation or guarantee by the Customer 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.

**14.2** The provisions of this section 14 shall apply mutatis mutandis to fines as well as other regulatory or judicial orders and claims.

## **15 Confidentiality**

**15.1** 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.

**15.2** 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.

**15.3** This section 15 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.

**15.4** 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.

**15.5** 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.

**15.6** 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.

## **16 Modification of Terms**

**16.1** Eppendorf SE reserves the right to modify these terms at any time taking into account the justified interests of the Customer. Eppendorf will inform the Customer of any proposed modification of these terms, provide him with the proposed new version of these terms and notify the Customer of the date when these new terms will apply to the Agreement.

**16.2** The 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 but no later than four (4) weeks before the respective new terms shall apply. If the Customer does not expressly refuse the respective modification within this timeframe granted after receipt of such notice, the Customer 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 Customer 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 Customer objects, the Agreement will continue under the previous conditions but Eppendorf or the Customer might still choose to terminate it.

**16.3** With regard to paid services, the Agreement may only be modified:

- a) in order to comply with applicable law and related case law or due to a change in applicable law or related case law;
- b) to ensure or improve IT security and the technical performance of the Services;
- c) to adapt the Services to existing or new market-specific needs of the Customer base or Eppendorf; or
- d) due to actual business reasons of Eppendorf, such as the optimization of its own operating processes or changes to the business model, provided that the legitimate interests of the Customer are sufficiently taken



into account.

The modification shall not significantly alter the main performance obligations (Hauptleistungspflichten) to the detriment of the Customer.

## 17 Miscellaneous

**17.1** Further information on Eppendorf's use of personal data can be found in the Data Protection Information available at: [www.eppendorf.com/visionize-privacy](http://www.eppendorf.com/visionize-privacy)

**17.2** The Customer 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 end-user, end-use and destination restrictions issued by U.S. and other governments.

**17.3** 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".

**17.4** Amendments, supplements and additions to this contract shall only be valid if they have been agreed upon in writing between the Parties.

**17.5** 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.

**17.6** The courts of Hamburg, Germany have exclusive jurisdiction over any disputes arising out of or in connection with this Agreement.

**17.7** 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.