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## GENERAL TERMS AND CONDITIONS

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### 1. DEFINITIONS

Terms used in these General Terms and Conditions (“**General Terms**”) but not otherwise defined shall have the meaning assigned to them below.

- 1.1. **Agreement:** any oral or written agreement between Noldus and the Customer under which Noldus has agreed to supply Products to the Customer.
- 1.2. **Consultancy Conditions:** the conditions for rendering consultancy services by Noldus to Customer as set out below.
- 1.3. **Customer:** the natural or legal person with whom Noldus intends to enter into, or has entered into an Agreement.
- 1.4. **EULA:** the end-user license agreement between Noldus and Customer for the use of the Software.
- 1.5. **Force Majeure:** has the meaning assigned to it in Section 9.1.
- 1.6. **Losses:** has the meaning assigned to it in Section 10.2.
- 1.7. **Noldus:** Noldus Information Technology B.V., the user of these General Terms, with registered office at Nieuwe Kanaal 5, 6709 PA Wageningen, The Netherlands, listed in the Trade Register under Chamber of Commerce number 09094422, or its subsidiaries that are listed in the document [http://www.noldus.com/legal/noldus\\_corporate.pdf](http://www.noldus.com/legal/noldus_corporate.pdf).
- 1.8. **NoldusCare Conditions:** the conditions for the rendering of NoldusCare by Noldus to Customer as set out below.
- 1.9. **Party:** Noldus and the Customer(s), together the **Parties** that have entered or intend to enter into an Agreement.
- 1.10. **Product:** any Software, goods or services (including Services as defined in the Consultancy Conditions) to be supplied by Noldus to the Customer under the Agreement.
- 1.11. **Software:** software manufactured by Noldus (including Noldus Software as defined in the NoldusCare Conditions) or a third party provided by Noldus to Customer under the Agreement.
- 1.12. **User Documentation:** the user documentation and manuals provided with any purchased Product (including Software).

### 2. GENERAL PROVISIONS

- 2.1. These General Terms shall apply to, and form an integral part of all quotations, orders and Agreements for the sale or delivery of Products by Noldus to the Customer insofar as Parties have not deviated thereof, expressly and in writing.
- 2.2. In addition to the General Terms, the following conditions shall apply for specific Products:
  - a) the EULA, for Customers who purchase and/or make use of the Software;
  - b) the NoldusCare Conditions, for Customers who purchase or require additional services such as maintenance, support and repairs (not including services provided under the Consultancy Conditions); and
  - c) the Consultancy Conditions, for Customers who purchase or require consultancy services.In the event of conflict, the specific provisions in the EULA and/or the NoldusCare Conditions and/or the Consultancy Conditions take precedence over these General Terms.
- 2.3. These General Terms and the conditions set out under Section 2.2 above, supersede any and all prior oral and written communications, agreements and understandings of the Parties.
- 2.4. Noldus explicitly rejects the terms and conditions of the Customer or referred to by the Customer in any conditions in its quotation or acceptance. Neither Noldus’ acknowledgement of an order, the start of the performance of services or delivery of a Product shall be deemed to be an acceptance of any terms of Customer that are inconsistent with, different from or additional to the terms of these General Terms, including the conditions set out under Section 2.2 above.

### 3. QUOTATION: CONCLUSION OF THE AGREEMENT

- 3.1. Unless stated otherwise, quotations made by Noldus are without prejudice and subject to confirmation. An Agreement or changes therein binding on Noldus shall come into effect only after Noldus confirms the Customer’s order or acceptance of its quotation in writing or if delivery has commenced. An order or acceptance of the quotation will only be confirmed by Noldus if bound by reference (via the quotation number provided) and signed by an authorized representative from Customer.
- 3.2. Noldus is entitled to refuse an order at its sole discretion without indication of its reasons, or to confirm an order under the condition of prepayment or collect on delivery. A confirmed order or accepted quotation cannot be cancelled or changed without Noldus confirming such change or cancellation in writing or following applicable law.
- 3.3. If, and insofar as an Agreement has not yet been concluded in accordance with Section 3.1, the Agreement will be considered as concluded under these General Terms and the conditions referred to in Section 2.2. as applicable, as soon as Noldus supplies Products to the Customer at its written or oral request.
- 3.4. Customer cannot derive any rights from a quotation by Noldus based on information supplied by or on behalf of the Customer, if such information is incorrect or incomplete. Any information in a quotation by Noldus with regard to expected results or performance is indicative and not binding.

## 4. DELIVERY

- 4.1. Products shall be delivered by Noldus to the Customer in accordance with the shipment terms as identified in the quotation or order confirmation. Noldus shall notify Customer upon confirmation of the order or quotation of the expected delivery date and installation services, if any. Risk of loss of the Products shall transfer to Customer upon delivery at the Customer's "ship to" address in the order confirmation.
- 4.2. Any installation and training included in the order confirmation shall be provided by Noldus to Customer upon such dates as agreed between the Parties. Training of the Customer will take place within reasonable time of the delivery of the Product. If the Customer repeatedly fails to accept a proposal from Noldus to perform the training and such training has not been completed within 18 months of Noldus' first proposal, the Customer's right to such training will lapse and become unenforceable.
- 4.3. Any time or date set out in the order confirmation for the delivery of Products is indicative and not binding. Noldus shall not be liable for any Losses resulting from exceeding agreed times or dates or delivery errors and this will not entitle the Customer to changes in the terms of payment, discount or indemnity, or cancellation of the ordered Products.
- 4.4. Noldus is entitled to deliver part of the Products in an accepted order upon prior approval of the Customer. In case of a partial delivery, the Customer will only pay shipment cost once unless partial shipment takes place upon Customer's request.
- 4.5. Any Products delivered by Noldus to the Customer shall remain Noldus' property until full payment has been received of all amounts due in accordance with the Agreement. The Customer shall use the Products only encumbered with the Noldus' right to retention of title, in the context of its ordinary course of business and shall not encumber the Products with any other rights. If Customer fails to make the payments when due, Customer shall be obliged to return the Products upon first request by Noldus, at Customer's risk and expense.
- 4.6. Customer acknowledges that upon payment of the Price, Customer will not receive ownership of any Software but may use such Software upon acceptance of, and in accordance with the conditions set out in the EULA.
- 4.7. The Customer represents and warrants that the information provided to Noldus for the purpose of the sale or delivery of Products, whether or not obtained from third parties, is accurate, complete and reliable and further that Customer is entitled to disclose such information to Noldus and that it is no proprietary information of a third party. Any additional costs or damages caused by a delay in the execution of the Agreement pursuant to the Customer's failure to (timely) provide Noldus with the requested information and documentation will be borne by Customer.

## 5. ACCEPTANCE

- 5.1. Customer is obligated to inspect any Products upon receipt and to inform Noldus in writing on any visible non-conformity within 5 calendar days of receipt of the Products and to state such non-conformity on the packing list, airway bill and other shipping documents in writing. Customer will forfeit the right to invoke any visible non-conformity if it does not act in accordance with the foregoing. Any Product will be deemed accepted by Customer within 5 calendar days of receipt, unless by this date Noldus has received written notification of non-acceptance. Customer's acceptance of Products under this Agreement shall be final and irrevocable. Except as provided in this Article 5 and Article 8, Customer shall have no right to return accepted Products.
- 5.2. Upon receipt of a Customer's written notice of visible non-conformity, Noldus shall at its option and in its sole discretion (i) provide remote assistance to fix the non-conformity in the Product, or (ii) repair the Product on site, or (iii) request Customer to return the Product for repair or replacement. If options (i) and (ii) with respect to a Product are not successful within a reasonable timeframe, Noldus will provide Customer with a return merchandise authorization ("RMA") for the non-conforming Product. Within ten (10) calendar days of receiving the RMA, Customer shall return the non-conforming Product to Noldus' designated repair facility. At Noldus' option, Noldus will either (I) exchange such Product for a new one of the same type (in which case, the freight for such replacement Product shall be paid by Noldus) or (II) terminate the order (and refund the purchase price if Customer has already paid the applicable invoice for such non-conforming Product). The remedies described in (I) and (II) above shall be Customer's sole and exclusive remedies to cancel, reject or claim remedy for a visible non-conforming Product.
- 5.3. Noldus shall decide on the shipping method and shall pay for shipping costs as set out in the RMA as referred to in Section 5.2.
- 5.4. If Noldus during the repair or replacement activities set out in Section 5.2 determines that the Product has been (i) modified or altered by Customer, (ii) abused or misused, or (iii) used in a manner or in operating environment other than that for which it is designed to operate, the Product shall be deemed to be accepted by the Customer. Such acceptance will be final and irrevocable, and the Product shall at Customer's option be returned to the Customer at Customer's cost or be returned to Noldus without refund.

## 6. PRICE AND PAYMENT

- 6.1. Customer shall pay Noldus the price for the Product set out in the quotation or order confirmed by Noldus, which price shall include (i) any license fees for the Software provided under the EULA, (ii) the installation and training for operation of the Product if indicated in the Agreement and (iii) any additional options offered by Noldus and accepted by Customer (the "Price"). The Price set out in the Agreement does not include (i) the VAT payable in the context of the Agreement or (ii) shipping costs, taxes, custom duties, handling and similar charges for delivery of the Product, unless otherwise agreed in writing between the Parties.

- 6.2. Products ordered from Noldus shall be paid in advance by the Customer without any deduction, discount or debt settlement. If Noldus has, in its sole discretion, granted Customer credit approval, payment shall be made by the Customer within 30 days from the date of invoice. Noldus reserves the right to terminate or modify any credit terms granted to Customer when, in Noldus' sole discretion, Noldus believes that such action is warranted.
- 6.3. All payments will be made in the currency indicated in the quotation or order confirmed by Noldus, by wire transfer or by check, as per the instructions indicated by Noldus.
- 6.4. Customer will pay (i) a late fee of 1,5% per month on any overdue amounts, counted from the due date and (ii) an administration fee without further notice. Noldus may, without Customer's consent, assign and/or transfer its rights to receive payments hereunder.
- 6.5. All charges involved in the collection of outstanding debts are for the account of Customer. In case Customer does not pay the outstanding amount or cessation of business by Customer, Noldus is entitled to dissolve any Agreement and to reclaim any Products delivered but not (fully) paid with settlement of amount already paid.

## 7. INTELLECTUAL PROPERTY; CONFIDENTIALITY

- 7.1. Noldus' background technology and all files, software, data, information, know-how, methodologies, or processes used by Noldus in its Products under the Agreement or developed by Noldus to provide its Products to the Customer under the Agreement and any improvements thereof or any copyrights, trademarks, patents, trade secrets, or any other proprietary rights thereon ("**Noldus IP**") shall remain the sole and exclusive property of Noldus, or the third parties engaged by Noldus.
- 7.2. Customer acknowledges that the content, including any Software, of the Products is protected by copyright and/or as a trade secret of Noldus and Customer agrees that it will not reverse engineer, decompile or disassemble the Product or attempt to discover how a Product operates or is designed and in particular shall not attempt to derive the source code of any software embedded in the Product, and shall impose these restrictions to any of its employees, students or contractors working with the Product(s).
- 7.3. Customer agrees that he will not remove, move, cover-up, deface or otherwise interfere with any Noldus patent markings, copyright notices or trademarks as such appear or are placed on the Product or (attempt to) create any works based or derived from (part of) the Product.
- 7.4. Customer shall ensure that any person who is permitted access to the Product or any part thereof does not disclose or use it in any manner contrary to the Agreement.
- 7.5. Customer may, from time to time, provide Noldus with comments, suggestions, data, information or feedback ("**Feedback**") on the Product. Customer acknowledges and agrees that such Feedback may be freely used by Noldus, at its sole discretion, for the design, development, improvement, marketing and commercialization of its Products and Services, without any restrictions based on confidentiality or intellectual property rights. Customer further agrees that Noldus may use as Feedback any information transmitted with a warranty claim made by Customer.

## 8. LIMITED WARRANTY

- 8.1. Noldus warrants to Customer that during 1 year from delivery of the Product to the Customer or such longer term for which the Customer purchased NoldusCare (the "**Warranty Period**"), the Product will meet the published specifications set forth in Noldus' User Documentation for the Product ("**Specifications**"); and, (ii) if the Product is delivered on USB stick, such medium shall be free from defects and faulty workmanship under normal use, provided that normal wear and tear of the Product is excluded. Notwithstanding anything contained in this 8.1, Customer acknowledges that the warranty does not extend to Products that are consumable material.
- 8.2. Noldus does not make any warranties, express or implied, by operation of law or otherwise, other than set out in this Section 8.1. Noldus explicitly does not warrant that the Product will meet Customer's requirements or will operate in combinations with other hardware, software or non-supported platforms/operating systems/databases, which may be selected for use by Customer, or that the operation of the Product will be uninterrupted or error-free.
- 8.3. Any warranties and remedies in this Article 8 are exclusive, personal and non-transferable, and in lieu of all other warranties, express or implied, including warranties of merchantability, fitness for a particular purpose, correspondence with description, and non-infringement, all of which are expressly disclaimed.
- 8.4. The warranty granted by Noldus under Section 8.1 shall apply only during the Warranty Period and provided that (i) Noldus is notified in writing within 14 days after the defect or non-conformity of the Product was known or should reasonably have been known to Customer, (ii) Customer acts conform Noldus' instructions for the return of the non-conforming Products, and (iii) the Products have not been (a) altered, repaired or modified by any party other than Noldus or a third party provider approved by Noldus; (b) subjected to negligence, or computer or electrical malfunction; or (c) used, adjusted, or installed other than in accordance with instructions by Noldus.
- 8.5. Upon receipt of a Customer's written notice of a Product not conforming to the Specifications during the Warranty Period, Noldus shall at its option and in its sole discretion either by itself or through a third party engaged by it (i) assist the Customer in correcting any non-conformity in the Product, (ii) replace the non-conforming Products or part thereof with Products conform the Specifications or, (iii) terminate the Agreement immediately and upon receipt by the non-conforming Product refund the Price and any maintenance fees paid by Customer minus a restocking fee and a pro rata amount equal to any

training, support and maintenance which Customer actually received. The remedies described in (i), (ii) and (iii) above shall be Customer's sole and exclusive remedies.

- 8.6. Noldus shall be responsible for the costs of shipment of the Product to the Customer and any replacement parts within the scope of the warranty. If a Product needs to be shipped to Noldus, Customer will be responsible for the shipping cost and follow the procedure set out in the RMA provided by Noldus. Within ten (10) calendar days of receiving the RMA, Customer shall return the defective Product to Noldus' designated repair facility. Any Noldus Hardware used with animals must be fully decontaminated (by autoclave, hydrogen peroxide or disinfecting solvents) prior to sending it to Noldus. If any organic tissue is left on the Noldus Hardware upon receipt at Noldus, Noldus is entitled to destroy such Hardware without compensation.
- 8.7. The Warranty Period of a (part of a) Product repaired or replaced by Noldus under the warranty shall be the longer of (ii) the remainder of the original Warranty Period or (ii) the standard warranty for (part of the) repaired or replaced Product indicated below in Section 8.8.
- 8.8. If a Product is repaired or replaced by Noldus outside the scope of the warranty or the Warranty Period, such repair or replacement shall be performed in a competent and workmanlike manner and the (parts of the) repaired Product will comply with Specifications. The Warranty Period for such (parts of the) repaired or replaced Product will be 180 days as of receipt by the Customer of the repaired or replaced (part of the) Product subject to the terms contained in Sections 8.2 through 8.5.

## 9. FORCE MAJEURE

- 9.1. Noldus shall not be liable for any Losses arising out of Noldus failure to fulfil any obligations arising under these General Terms, the applicable conditions as referred to under Section 2.2, or an Agreement, including any deadlines, if this is caused by an event of Force Majeure. **Force Majeure** shall include any event or circumstance beyond the reasonable control of Noldus, including but not limited to: fire, (the threat of) war or terrorism, unofficial or organized strikes, blockades, riots or other disturbances of the peace, fuel shortage, energy shortage, transport restrictions or problems, industrial accidents, weather conditions, natural disasters including floods, earthquakes, epidemics, quarantine measures, restrictions on the granting of permits, sickness of Noldus' staff or failure by third party suppliers to fulfill their contractual obligations.
- 9.2. As soon as an event of force majeure arises, Noldus shall be entitled to extend any agreed periods, dates or deadlines as is reasonable in connection with the factor(s) of the Force Majeure event.

## 10. USE LIMITATION; LIABILITY; INDEMNIFICATION

- 10.1. Customer acknowledges that the Products are intended for research purposes only and agrees not to use the Products for clinical applications, for the purpose of diagnosis or treatment of humans. The Products cannot be used in any application where the failure, malfunction or inaccuracy of the Product carries the risk of death or serious bodily injury.
- 10.2. In no event will Noldus be liable to Customer for any indirect loss, claim, damage, liability or expenses (including reasonable attorney's fees) ("**Losses**"), including lost profits, and damage due to the stagnation of business operations caused by the performance of Noldus or the third parties engaged by Noldus in the execution of the Agreement, unless for and to the extent that such loss or damages are due to negligence or willful misconduct on the part of the Noldus. If, despite the provisions in these General Terms, liability exists anyway, only direct damage will be eligible for reimbursement.
- 10.3. Noldus' liability shall also be excluded in the event of:
  - a. Customer's use of the Product other than in accordance with Section 10.1;
  - b. Direct and indirect consequences of the Customer's failing to adhere strictly to the User Documentation;
  - c. Normal wear and damage and/or wear due to improper use or any other form of abnormal use.
- 10.4. Save for gross negligence or willful misconduct of Noldus in the execution of the Agreement, any and all liability of Noldus is limited to an amount equal to the Price paid by the Customer for the specific Product order from which the liability arises. In any event, a claim will be unenforceable and lapse unless Noldus receives a written notice thereof no later than 6 months after the discovery of an event or circumstance that gives or may give rise to that claim.
- 10.5. Customer shall indemnify, and hold harmless Noldus or the third parties engaged by Noldus in the execution of the Agreement, from and against any and all Losses caused by (a) any third party rights included in the information provided by Customer or in the Product returned by Customer, (b) any failure in the performance of the obligations of the Customer under the law, these General Terms, the applicable conditions as referred to in Section 2.2 or the Agreement, (c) circumstances which cannot be attributed to Noldus otherwise.
- 10.6. Except where willful misconduct or gross negligence of Noldus is concerned, the Customer shall indemnify Noldus against all third party claims on any grounds whatsoever in respect of compensation for any Losses, directly or indirectly related to the performance of the Agreement, including such claims arising as a result of the Customer's use of the Product.

## 11. MISCELLANEOUS

- 11.1. Parties may communicate with each other by electronic mail. Parties recognize the risks associated with electronic mail and declare that they shall not hold each other liable for any damage incurred by either of them as a result of the use of electronic mail. If a Party is in doubt as to the content of an electronic message received, the content of the message originating with the sender shall be decisive.
- 11.2. The invalidity or unenforceability of any provision these General Terms, the applicable conditions as referred to under Section 2.2 or an Agreement shall not affect or limit the validity or enforceability of any other provisions thereof. Any such invalid or

unenforceable provision shall be deemed to be substituted by a provision that is considered to be valid and enforceable. The interpretation of the substituting provision shall be as close as possible to the economic, legal and commercial objectives of the severed provision.

- 11.3. Failure by Noldus to enforce any of its rights under these General Terms, the applicable conditions as referred to under Section 2.2 or an Agreement or quotation by Noldus shall not constitute a waiver of such rights thereunder and shall not relieve Customer to comply with such provisions. No waiver or amendment of any provisions therein shall be effective unless signed in writing by a Noldus representative. Any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
- 11.4. In case of conflict between these General Terms and an Agreement, the provisions of the Agreement shall prevail.
- 11.5. Amendments or changes to these General Terms or an Agreement can only be agreed upon in writing between the Parties.
- 11.6. The General Terms and the Agreement shall be binding upon the Parties thereto, their legal representatives, successors and assigns. Customer shall not assign any right or obligation arising out of these General Terms or Agreement without the prior written consent of Noldus. Any attempt by Customer to assign or delegate any obligation hereunder shall be deemed null and void.

#### 12. **GOVERNING LAW: CUSTOMERS USA OR CANADA**

- 12.1. These General Terms, any and all Agreements or quotations made by Noldus are exclusively governed by the law of the Commonwealth of Virginia for Customers having their principal place of business in the United States of America or Canada. The United National Convention for Contracts on the International Sale of Goods is expressly excluded.
- 12.2. Any disputes arising out or in connection with these General Terms, an Agreement or quotation made by Noldus that cannot be solved amicably within a reasonable period of time will be submitted to the competent court in Loudoun County, Virginia for Customers residing or having its business address in the United States of America or Canada.

#### 13. **GOVERNING LAW: CUSTOMERS OTHER COUNTRIES**

- 13.1. These General Terms, any and all Agreements or quotations made by Noldus are exclusively governed by the law of the Netherlands for Customers having their principal place of business in any country other than the United States of America or Canada. The United National Convention for Contracts on the International Sale of Goods is expressly excluded.
- 13.2. Any disputes arising out or in connection with these General Terms, an Agreement or quotation made by Noldus that cannot be solved amicably within a reasonable period of time will be submitted to the competent court in Arnhem, the Netherlands for any dispute with a Customer having its principal place of business in the European Union. In the event that a Customer has its principal place of business outside the European Union, the United States of America or Canada, any dispute shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. Location shall be Arnhem, the Netherlands. The arbitration procedure shall be conducted by one (1) arbiter in the English language.

#### 14. **COPY**

- 14.1. A copy of these General Terms will be provided upon request and can also be accessed online ([http://www.noldus.com/legal/noldus\\_gtc.pdf](http://www.noldus.com/legal/noldus_gtc.pdf)).

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## NOLDUSCARE CONDITIONS

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### 1. DEFINITIONS

Terms used in these NoldusCare Conditions and not defined in the General Terms and Conditions shall have the meaning assigned to them below.

- 1.1. **Co-User:** person working at the same legal entity as the Registered User, who has been authorized by the Registered User to request Services from Noldus.
- 1.2. **End of Support:** the termination of NoldusCare for any Product, three (3) years after such Product has been replaced by a successor Product.
- 1.3. **Noldus Hardware:** any hardware manufactured by or on behalf of Noldus as included in the Annex to the General Terms and Conditions.
- 1.4. **Noldus Software:** any software manufactured by or on behalf of Noldus as included in the Annex to the General Terms and Conditions.
- 1.5. **Registered User:** the person in whose name the Software, Hardware or Third Party Products are registered in Noldus' CRM system.
- 1.6. **Third Party:** the third parties included in the Annex to the General Terms and Conditions.
- 1.7. **Third Party Software / Third Party Hardware:** software or hardware manufactured by a Third Party and provided by Noldus to Customer under an Agreement.

### 2. GENERAL PROVISIONS

- 2.1. In addition to Noldus' General Terms and Conditions, these NoldusCare Conditions apply to the additional services purchased by the Customer for maintenance and support by Noldus ("**NoldusCare**") and shall form an integral part of the Agreement insofar as Parties have not deviated thereof, expressly and in writing. NoldusCare includes, but is not limited to:
  - a. Professional support (article 3);
  - b. Software upgrades and updates (article 4);
  - c. Extension of the warranty as provided under Noldus' General Terms and Conditions.
- 2.2. In the event of conflict between the General Terms and the NoldusCare Conditions, the NoldusCare Conditions shall take precedence over the General Terms.

### 3. PROFESSIONAL SUPPORT

- 3.1. Professional support includes:
  - a. personal technical support for the Registered User or Co-User of Noldus Software and Noldus Hardware via phone, e-mail or a remote assistance tool;
  - b. tips and tricks to facilitate the effective use of Noldus Software and Noldus Hardware;
  - c. explanation of basic functionality and specifications and diagnosis and analysis of technical problems related to the Noldus Software and Noldus Hardware;
  - d. suggestions for workarounds if possible;Third Party Software and Hardware is supported as far as Noldus has working knowledge on the Product. If required, Noldus may consult such Third Party Supplier.
- 3.2. Professional support shall not include any of the following services:
  - a. consultancy about the application of the software specific to the Customer's research or business process;
  - b. custom Software development;
  - c. NoldusCare at the Customer's location unless agreed otherwise between Noldus and Customer;
  - d. NoldusCare on Products that have reached End of Support;
  - e. NoldusCare for use of Software or Hardware other than in accordance with the applicable User Documentation by the Customer, including removal or alteration of operating components the use of operating systems or networks not supported by Software, or using hardware or software not supported by Noldus.
  - f. services or consultancy delivered by a trainer or software engineer related to functionality that is not described in the User Documentation of the Product;
  - g. services for products that were not purchased from Noldus;
  - h. cleaning and decontamination of returned Hardware.
- 3.3. Customer shall inform Noldus in writing of the name and contact details of the Registered User and any Co-User(s).
- 3.4. Customer, through its Registered User or its Co-User(s), shall be entitled to a maximum total of 80 hours of professional support per year.
- 3.5. Professional support is available to Customer on Monday through Friday, except on public holidays in the country in which the Noldus office is located where the Customer purchased the Product, during the opening hours listed on <http://www.noldus.com/support-center>. NoldusCare will use its best efforts to reply to requests for NoldusCare within 24 hours on working days. Customer can access the knowledge basis on the Noldus website for technical support at any time.

- 3.6. The costs associated with any NoldusCare for Hardware that proves to be conform to the Specifications during inspection (*i.e.* not defective) are for account of the Customer.

#### 4. SOFTWARE UPGRADES AND UPDATES

- 4.1. Noldus shall notify and provide Registered Users with any Noldus Software upgrades (new releases with functional changes and additions), updates (new releases with bug fixes) and new User Documentation. Such notification shall include information on how to download and install the Noldus Software.
- 4.2. If new Noldus Hardware or a new operating system is necessary to install the Noldus Software, the associated costs are for account of the Customer.
- 4.3. Third Party Software upgrades and updates are provided solely in accordance with the terms and conditions of such Third Party Software supplier. If Third Party Software upgrades and updates are included, this is specified in the Agreement.

#### 5. FEES; EXPENSES

- 5.1. Customer shall pay Noldus the fees set out in the Agreement for NoldusCare in advance. Any services not covered by the Agreement will be invoiced separately to the Customer. The hourly rates applied for such additional services will be communicated to Customer before such services are provided.
- 5.2. Fees specified in the Agreement do not include (i) actual, reasonable travel and out-of-pocket expenses, (ii) expense claims filed by third parties engaged by Noldus, (iii) value added tax and (iv) custom duties or other government levies, unless stated otherwise in the Agreement. Customer will reimburse Noldus for such additional expenses.
- 5.3. Unless otherwise stated in the Agreement, payment will be made, without any deduction, discount or debt settlement, within thirty (30) days of receipt of an invoice by Customer. Payment shall be into the bank account mentioned in the invoice.
- 5.4. The services under NoldusCare may be suspended by Noldus when any payment due under the Agreement remains outstanding without prejudice to the rights of Noldus set out under Section 5.5. In the event that Noldus suspends NoldusCare such suspension shall be lifted upon receipt by Noldus of the outstanding payment and as of that moment Noldus shall continue the services under the NoldusCare for the remainder of the period (*i.e.* NoldusCare shall not be extended to compensate for the period under suspension).
- 5.5. Customer will pay (i) a late fee of 1,5% per month on any overdue amounts, counted from the due date and (ii) an administration fee without further notice. Noldus may, without Customer's consent, assign and/or transfer its rights to receive payments hereunder.
- 5.6. All charges involved in the collection of outstanding debts are for the account of Customer. In case Customer does not pay the outstanding amount or cessation of business by Customer, Noldus is entitled to dissolve any Agreement and to reclaim any Products delivered but not (fully) paid with settlement of amount already paid.
- 5.7. Noldus is entitled to adjust the fees and the hourly rates as referred to under Section 5.1 applicable to each twelve-month period by written notice to the Customer, not later than three months before the start of such twelve-month period (*e.g.* to compensate for inflation). If, between the signing of the Agreement and its completion, any parameter set out in the Agreement relevant to the calculation of said fees and hourly rates as referred to in Section 5.1 will be subject to change, Noldus will have the right to adjust the fees and hourly rates accordingly.

#### 6. PARTIES OBLIGATIONS

- 6.1. Customer agrees to use the Products in accordance with the User Documentation provided with the Products.
- 6.2. Customer shall not permit the Products to be used or operated by other than properly qualified or trained operators employed by or under control of Customer.
- 6.3. Customer shall timely appropriately provide Noldus with all required information to perform the services included in the NoldusCare on the Products and shall provide remote access via an internet connection if requested. If such remote access cannot be provided, any additional costs associated with a visit of Noldus to the Customer's location will be borne by Customer.
- 6.4. Noldus shall perform the services included in the NoldusCare with reasonable skill, care and diligence in accordance with the Agreement and professional standards.
- 6.5. In the event of on-site performance of NoldusCare, Noldus shall take reasonable steps to minimize interference with the business of Customer and shall at all times comply with the applicable rules and regulations at the premises that have been notified to Noldus by Customer prior to the visit. Noldus shall not be required to engage in the handling of animals while providing the services on site.

#### 7. CONFIDENTIALITY

- 7.1. Parties agree to keep secret, and shall not disclose any information of a confidential nature, including any information concerning the operations, plans, know-how, trade secrets, business transactions and affairs received or acquired by the other Party in the course of the Agreement ("**Confidential Information**") and shall not use this Confidential Information for any purpose other than set out in the Agreement. Parties will impose such confidentiality obligations on their employees or affiliates.
- 7.2. The foregoing shall not apply to Confidential Information that demonstrable (i) is or has become part of the public domain without fault on the part of the receiving Party; (ii) was already known by receiving Party, other than under an obligation of

confidentiality, at the time of disclosure by the disclosing Party; (iii) is lawfully acquired by the receiving Party from a third party on a non-confidential basis; or (iv) that a Party is required to disclose pursuant to any law, lawful governmental, quasi-governmental, judicial order or legal process.

- 7.3. Customer allows Noldus within the scope of the Agreement to process Confidential Information concerning the Customer and/or its employees, affiliates and Customers or third parties, and allows Noldus, under confidentiality, to share the Confidential Information with (i) it's employees that have a need to know in view of the execution of NoldusCare and, if required, (ii) a third party subcontractor it wishes to engage for activities under the Agreement.
- 7.4. Noldus will process any personal data of the Customer in accordance with the applicable (inter)national laws and regulations concerning the protection of personal data.

## 8. EXTENDED WARRANTY

- 8.1. Upon purchase of a Product, the Customer receives a 1-year warranty in accordance with the terms and conditions set out in Article 8 of the General Terms. For Noldus Hardware, Customer may separately purchase an extension of the Warranty Period for the second and/or third year after the date of delivery. For avoidance of doubt, the Warranty Period for Noldus Hardware can be extended to a maximum of three years after the date that such Noldus Hardware was delivered.
- 8.2. During the (extended) Warranty Period, repair or replacement of Noldus Hardware is provided subject to the terms and conditions of Article 8, but excluding Section 8.5 (iii) and Section 8.7 and 8.8 of the General Terms.
- 8.3. The warranty applicable to Third Party Hardware is subject to the warranty conditions provided by the Third Party that manufactures such Third Party Hardware. Customer may contact Noldus for more information on the scope and duration of such warranty by the Third Party. Customer may separately purchase an extension of the Warranty Period for the Third Party Hardware subject to the conditions of the Third Party's warranty conditions, for a maximum period of three years after the date that such Third Party Hardware was delivered.
- 8.4. During the (extended) Warranty Period for Third Party Hardware, repair or replacement of non-conforming Third Party Hardware shall be performed by Noldus or the Third Party. In the event of non-conforming Third Party Hardware, Customer will inform Noldus in writing of such non-conformity. If required and covered by the Third Party warranty, Noldus will request Customer to ship the non-conforming Third Party Hardware to Noldus at Customer's cost pursuant to the procedure set out in de RMA provided by Noldus. Within ten (10) calendar days of receiving the RMA, Customer shall return the non-conforming Third Party Hardware to Noldus' designated repair facility. Noldus will ship the Third Party Hardware to Customer after repair or replacement at its cost.
- 8.5. Noldus is entitled to use alternative (parts of the) Noldus Hardware or the Third Party Hardware with comparable functionality, if such (parts of the) said Hardware are not available.

## 9. LIABILITY

- 9.1. In addition to Sections 10.2 – 10.3 of the General Terms the liability of Noldus and the Third Parties shall also be excluded, to the extent permitted by the applicable law, in the event of:
  - a. Losses caused by damage to any software (including Noldus Software or Third Party Software) or data or reproduction thereof;
  - b. Losses caused by damage to or by software or hardware not supplied by Noldus or Third Parties;
  - c. Losses caused by damage to property, personal injury or death in the performance of, or resulting from NoldusCare services.
- 9.2. Save for gross negligence or willful misconduct of Noldus or its officers, or the third parties engaged by Noldus in the execution of the Agreement, any and all liability of Noldus under these NoldusCare Conditions is limited to an amount equal to the fees paid by the Customer for the specific part of NoldusCare from which the liability arises. In any event, a claim will be unenforceable and lapse unless Noldus receives a written notice thereof no later than 6 months after the discovery of an event or circumstance that gives or may give rise to that claim.
- 9.3. In addition to Section 10.6 of the General Terms, Customer shall further indemnify, and hold harmless Noldus or the Third Parties engaged by Noldus in the execution of the Agreement, from and against any and all Losses caused by (a) any third party rights included in the information provided by Customer or in the Noldus Software, Third Party Software, Noldus Hardware or Third Party Hardware returned by Customer, (b) any failure in the performance of the obligations of the Customer under the law, these NoldusCare Conditions and the General Terms or the Agreement, (c) any and all third party claims on any grounds, directly or indirectly related to the performance by Noldus or Third Parties engaged by Noldus in relation to NoldusCare under the Agreement.

## 10. TERM; TERMINATION

- 10.1. NoldusCare shall continue for the term agreed in the Agreement or so much longer as NoldusCare is extended by the Parties, unless terminated earlier in accordance with this Article 10.
- 10.2. Noldus is entitled to suspend any NoldusCare if (i) the Product is used other than in accordance with the applicable User Documentation, (ii) modification, maintenance or repair is performed by others than Noldus except with Noldus' prior written consent, (iii) the invoice for NoldusCare is not paid within 30 days of receipt by Customer, (iv) Customer does not comply with the provisions of Sections 6.1-6.3 or (v) in the event of Force Majeure. In the event that Noldus suspends NoldusCare under

(iii) above, such suspension shall be lifted upon receipt by Noldus of the outstanding payment and as of that moment Noldus shall continue the services under the NoldusCare for the remainder of the period (i.e. NoldusCare shall not be extended to compensate for the period under suspension).

- 10.3. Either Party may forthwith terminate the NoldusCare with prior written notice upon:
  - a. the breach of any material provision of this Agreement by the other Party if (i) such breach is not curable or (ii) if curable, the breaching Party has not cured such breach within 30 (thirty) day period following receipt of a written notice by the non-breaching Party substantiating such breach ("*ingebrekestelling*");
  - b. the filing or institution of bankruptcy, liquidation or receivership proceedings of the other Party or in the event a receiver or custodian is appointed for the other Party's business, or if its business is discontinued.
- 10.4. Noldus may forthwith (partially) terminate NoldusCare upon prior written notice to the Customer in the event that the Product is withdrawn from the market.
- 10.5. If Noldus suspends Nolduscare pursuant to Section 10.2, except for Force Majeure, or terminates the Agreement pursuant to Section 10.3, any amount outstanding to Noldus for NoldusCare under the Agreement shall immediately become due and payable, and Customer shall be liable for any interest over such outstanding amount without prejudice to Noldus' right to demand compensation or Noldus' right to retention on the Products.
- 10.6. If Customer terminates the Agreement pursuant to Section 10.3 or Noldus (partially) terminates the Agreement pursuant to Section 10.4, any amount that that the Customer owes to Noldus until the date of termination shall immediately become due and payable, and Customer shall be liable for any interest over such outstanding amount without prejudice to Noldus' right to demand compensation or Noldus' right to retention on the Products.
- 10.7. The terms of Articles 2.2, 7, 8, 10, 12 – 13 of the General Terms and the terms of Articles 7, 8, 9 and Section 10.7 of these NoldusCare Conditions shall survive termination or expiration of the Agreement. In addition, any other provisions which are required to interpret and enforce the Parties' rights and obligations under the Agreement shall also survive any termination or expiration of this Agreement, but only to the extent required for the full observation and performance of the Agreement.
- 10.8. Noldus will, at request of the Customer, return all information and documentation provided by the Customer upon termination or completion of the Agreement.

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## CONSULTANCY CONDITIONS

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### 1. DEFINITIONS

Terms used in these Consultancy Conditions and not defined in the General Terms and Conditions shall have the meaning assigned to them below:

- 1.1. **Customer Information:** has the meaning assigned to it in Article 4.1 hereof.
- 1.2. **Services:** all consultancy services to be performed by Noldus to the Customer under the Agreement, including, but not limited to: study design, data collection, data integration, data analysis, and reporting of results.

### 2. GENERAL PROVISIONS

- 2.1. These Consultancy Conditions apply to any and all Services rendered by Noldus to the Customer under the Agreement, insofar as Parties have not deviated thereof, expressly and in writing.
- 2.2. In the event of conflict between the General Terms and the Consultancy Conditions, the Consultancy Conditions shall take precedence over the General Terms.

### 3. CUSTOMER OBLIGATIONS

- 3.1. Customer shall timely and appropriately provide Noldus with any and all documentation and information in the agreed form and quality, that Noldus requires for the proper and timely performance of the Services under the Agreement (“**Customer Information**”). Customer is obliged to inform Noldus immediately of facts and circumstances which could be important in connection with the execution of the Services.
- 3.2. Noldus shall be entitled to postpone its Services under the Agreement or revise the scheduled Services until the required Customer Information is received by Noldus. Any damages or losses caused by a delay in the execution of the Agreement as result from the Customer’s failure to (timely) provide Noldus with the requested information and documentation will be for account of the Customer.
- 3.3. Customer guarantees that it is entitled to disclose to Noldus the Customer Information and that the Customer Information is not proprietary to any third party.
- 3.4. Customer further guarantees that the Customer Information does not contain any personal data (with regard to the applicability of Directive 95/46/EC), and that the Customer Information is accurate, complete and reliable, even if this Customer Information has been obtained from third parties.

### 4. EXECUTION OF THE AGREEMENT

- 4.1. Noldus shall carry out all Services with reasonable skill, care and diligence in accordance with the Agreement and professional standards and with due observance of the applicable (inter)national laws and regulations. Noldus shall not, under any circumstance, be required to commit any act or omission that is in conflict or incompatible with the aforementioned laws and regulations.
- 4.2. Any times or dates set forth in the Agreement for provision or completion by Noldus of the Services are estimates and no strict deadlines, unless this has been agreed upon in advance and in writing.
- 4.3. Noldus will (i) determine the manner in which the Agreement will be executed and by whom, and will be entitled to replace any employees rendering the Services and (ii) will be entitled to be entitled to engage third parties as subcontractor in the execution of the Agreement without any notice to the Customer.
- 4.4. In the event that Noldus second its employees and/or the employees of its affiliates, and/or the employees of third parties engaged by Noldus to the Customer for the performance of Services, such secondment will take place under art. 7:400 of the Dutch Civil Code.

### 5. FEES; EXPENSES

- 5.1. Customer shall pay to Noldus the fees specified in the Agreement in accordance with the payment schedule (in absence of such payment schedule, Noldus may require payment in advance or issue interim invoices). All prices are in euros (€), unless specified otherwise. If, prior to the execution of the Services, the exchange rate to the currency of the country where (part of) the Services are executed changes relative to the euro, Customer will reimburse Noldus for this change even if a fixed price has been agreed and without Customer being entitled to cancel any approved order for the Services.
- 5.2. Fees specified in the Agreement do not include (i) actual, reasonable travel and out-of-pocket expenses, (ii) expense claims filed by third parties engaged by Noldus, (iii) value added tax and (iv) custom duties or other government levies, unless stated otherwise in the Agreement. Customer will reimburse Noldus for such additional expenses.
- 5.3. Unless otherwise stated in the Agreement, payment will be made, without any deduction, discount or debt settlement, within thirty (30) days of receipt of an invoice, submitted monthly in arrears, for Services performed. Payment shall be into the bank account mentioned in the invoice.

- 5.4. Customer will pay (i) a late fee of 1,5% per month on any overdue amounts, counted from the due date and (ii) and an administration fee without further notice. Noldus may, without Customer's consent, assign and/or transfer its rights to receive payments hereunder. All other charges involved in the collection of outstanding debts are for the account of Customer.
- 5.5. Customer shall immediately at the request of Noldus provide sound security (in the form of pledge, surety or otherwise) for the payment(s) owed and/or make an advance payment. If the Customer fails to provide such a security or advance payment, Noldus has the right to immediately suspend (further) execution of the Agreement, and all amounts owed by the Customer will become immediately due and payable.

## 6. RESULTS; IP

- 6.1. Customer acknowledges that the quality of the results of the Services will depend on the quality of the Customer Information provided.
- 6.2. Customer will own the results of the Services performed (other than any Noldus IP) fully and freely, from the moment that the results have been made available to the Customer.
- 6.3. Customer is explicitly prohibited to reproduce, publish or use for research or commercial purposes any Noldus IP without Noldus prior written consent.

## 7. CONFIDENTIALITY

- 7.1. Noldus shall keep secret, and shall not disclose any information of a confidential nature ("**Confidential Information**") of the Customer, including Customer Information obtained in relation to the Agreement or during its execution. Noldus shall procure that its employees, affiliates or third parties engaged by it will keep secret and not disclose such Confidential Information.
- 7.2. The foregoing shall not apply to Confidential Information which (i) is or becomes part of the public domain without fault on the part of Noldus; (ii) was already known by Noldus, other than under an obligation of confidentiality, at the time of disclosure by the Customer; (iii) is lawfully acquired by Noldus from a third party on a non-confidential basis, (iv) is demonstrably developed independently by Noldus without any use of the Confidential Information of Customer, and (v) confidential information that Noldus is required to disclose pursuant to any law, lawful governmental, quasi-governmental, judicial order or legal process.
- 7.3. Within the scope of the Agreement, Customer allows Noldus to process its Confidential Information and allows Noldus, under confidentiality obligations, to share the Confidential Information with (i) Noldus' employees that have a need to know in view of the Services and, if required, (ii) a third party subcontractor Noldus wishes to engage for activities under the Agreement.
- 7.4. Noldus shall archive any Confidential Information of Customer during the Agreement and for 1 year thereafter.
- 7.5. Customer agrees not to:
  - a) use the content of any quotation or proposal provided to it by Noldus concerning any Services for another purpose than the evaluation of the acceptance of such quotation or proposal, and shall not disclose such quotation or proposal to any third party;
  - b) disclose any of Noldus' Confidential Information to third parties, or provide such third parties with any information concerning the Agreement, the content of reports, opinions or any other written or oral statements issued by Noldus without its prior, written consent, except if required by (inter)national laws or regulations.
- 7.6. Parties will impose their obligations under this Article 7 to any third party engaged by them.

## 8. ACCEPTANCE

- 8.1. The Services under the Agreement will be deemed accepted by Customer within 14 calendar days of receipt, unless by this date Noldus has received Customer's written notification of non-acceptance. Such notice shall include the grounds for the complaint or non-acceptance.
- 8.2. The notification of non-acceptance, as referred to in Section 8.1 above, shall not suspend the Customer's obligation to pay any fee or additional costs due. The Customer is not entitled, by virtue of a complaint in respect of a certain Service, to defer or refuse payment for other Services provided by Noldus to which the complaint does not relate.
- 8.3. If Noldus determines that the Customer has filed a legitimate and timely notification of non-acceptance, the Customer may choose either for an adjustment of the fee charged or to terminate the Agreement and receive a (partial) refund of the fee already paid.

## 9. LIABILITY

- 9.1. In lieu of Section 10.4 of the General Terms, any and all liability of Noldus for the Services under the Agreement is limited to an amount equal to the Price paid by the Customer for the specific Service from which the liability arises, except in case of gross negligence or willful misconduct of Noldus. In any event, a claim will be unenforceable and lapse unless Noldus receives a written notice thereof no later than 6 months after the discovery of an event or circumstance that gives or may give rise to that claim.
- 9.2. In addition to Sections 10.5 – 10.6, Customer shall indemnify, and hold harmless Noldus or the third parties engaged by Noldus in the execution of the Agreement, from and against any and all Losses caused by (a) any third party rights included in Customer Information, (b) any and all third party claims on any grounds, directly or indirectly related to the performance by Noldus or third parties engaged by Noldus under in relation to the performance of the Services under the Agreement, (c) any use of the results by the Customer.

**10. TERM; TERMINATION**

- 10.1. Except as otherwise provided in the Agreement, the Agreement shall expire at the moment that all Services have been executed and completed, unless the Agreement is terminated as provided in Section 10.2 or 10.3.
- 10.2. Either Party may forthwith terminate this Agreement upon prior written notice upon:
  - a) the breach of any material provision of this Agreement by the other Party if (i) such breach is not curable or (ii) if curable, the breaching Party has not cured such breach within 30 (thirty) day period following receipt of a written notice by the non-breaching Party substantiating such breach ("*ingebrekestelling*");
  - b) the filing or institution of bankruptcy, liquidation or receivership proceedings of the other Party or in the event a receiver or custodian is appointed for the other Party's business, or if its business is discontinued.
- 10.3. If Customer terminates the Agreement pursuant to Section 10.2, any amount that that the Customer owes to Noldus until the date of termination shall immediately become due and payable, and Customer shall be liable for any interest over such outstanding amount. Customer shall, furthermore, reimburse to Noldus all (out of pocket and internal) costs that will be reasonably incurred by Noldus after the effective date of termination of the Agreement pursuant to commitments entered into by Noldus prior to the effective date of termination provided, however, that Noldus will use commercially reasonable efforts to mitigate such costs.
- 10.4. If Noldus terminates the Agreement pursuant to Section 10.2, any amount that that the Customer owes to Noldus outstanding under the Agreement shall immediately become due and payable, and Customer shall be liable for any interest over such outstanding amount. Customer shall, furthermore, reimburse to Noldus all (out of pocket and internal) costs that will be reasonably incurred by Noldus after the effective date of termination of the Agreement pursuant to commitments entered into by Noldus prior to the effective date of termination provided, however, that Noldus will use commercially reasonable efforts to mitigate such costs.
- 10.5. The terms of Articles 7, 8, 10, 12-13 of the General Terms and the terms of Articles 6, 7, 8, 9 and Section 10.5-10.7 shall survive termination or expiration of the Agreement. In addition, any other provisions which are required to interpret and enforce the Parties' rights and obligations under the Agreement shall also survive any termination or expiration of this Agreement, but only to the extent required for the full observation and performance of the Agreement.
- 10.6. Noldus will, at request of the Customer, return all information and documentation provided by the Customer upon termination or completion of the Agreement.
- 10.7. Customer agrees, during the execution of the Agreement and a year thereafter, not to attempt to entice away, conduct negotiations on employment or employ persons who are or were involved in the execution of the Agreement on behalf of the other Noldus.

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## ANNEX TO THE GENERAL TERMS AND CONDITIONS

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### NOLDUS SOFTWARE

The following software products, manufactured by Noldus, are covered by NoldusCare:

- The Observer XT
- Pocket Observer
- EthoVision XT
- UltraVox XT
- FaceReader
- ErasmusLadder
- Catwalk XT
- MediaRecorder
- Viso
- DanioScope
- TrackLab

### NOLDUS HARDWARE

The following hardware products are covered by NoldusCare:

- PhenoTyper cage and peripheral devices
- DanioVision observation chamber, temperature control unit and peripheral devices
- Catwalk XT walkway and goal box
- ErasmusLadder
- UltraVox microphones
- Dell computers (listed here because these are supplied with 3-year Dell next business day on-site warranty)
- Integrated audio and video equipment as described in the quotation

### THIRD-PARTY SUPPLIERS

- Biopac Systems Inc.
- Data Sciences International Inc.
- Eagle Vision Systems BV
- Maze Engineers Inc.
- Med Associates Inc.
- Mind Media BV
- Mindware Technologies Ltd
- PhenoSys GmbH
- Prizmatix Ltd
- SensoMotoric Instruments GmbH
- Smart Eye AB
- Synaptologics BV (Sylics)
- Tobii Technology AB
- Ubisense plc
- Ugo Basile s.r.l.
- Other manufacturers specifically mentioned in the quotation as third-party suppliers