Terms and Conditions for the BioNsight® cloud

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

BioNsight cloud is a software environment for management and storage of machine-, 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 Devices create process parameters (e.g., pH measurements, impeller speeds, DO measurements) and events (e.g., temperature out of specifications, logins, setpoint changes). Certain parts of such data can be transferred and managed by the Service. These data can be monitored using the BioNsight cloud. Additionally, the analysis and comparison of saved datasets is possible. Certain of such data can be transferred and managed by the Service.

The Service is offered under a subscription plan. The Service is offered in a cloud environment.

Eppendorf and Customer may conclude a contract for BioNsight cloud by signing an order form ("**Order Form**") which is in any case governed by these Terms and Conditions.

1   Definitions

Admin Account	An account offered to the Customer via which an employee of the Customer can administer the Tenant and the registered users of the Customer.
Agreement	This Agreement including its annexes, appendices and any document incorporated into it by reference.
Availability	Proportion of time in which the main functions of the Service are up and running and available at the WAN-directed router output of the data centre used by Eppendorf.
BGB	German Civil Code – (*Bürgerliches Gesetzbuch*)
Customer Account	The account provided to the Customer via which the Customer can use the Service
Customer Data	Any and all data stored by Customer in connection to its Customer Account, including (but not limited to) data transferred from a Device or uploaded data and Device Performance Data.
Device	A bioprocess device produced by Eppendorf in combination with a process computer which can utilize the Service
Device Performance Data	Set points and actual values of device functions and device events, e.g. pH or temperature.

First Customer Account	The first account the Customer creates during the registration of a Tenant for one individual person. The First Customer Account is automatically an Admin Account.
First User	User of the First Customer Account.
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.
Personal Customer Data	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.
Service	Entails all services provided as part of the BioNsight cloud Service including the Software and the corresponding storage space provided by Eppendorf to the Customer as a service in the cloud and any additional services as stated in the Order Form.
Software	Means the software provided as part of the Service in the cloud (i.e. not the software installed on the Devices).
Tenant	The entity in the Service that represents the Customer. All tenant administrators and users created by administrators of this tenant have access to this and only this Tenant.
Tenant Administrator	The employee of a Customer using an Admin Account of the Tenant.
UrhG	German Copyright Act – *Urheberrechtsgesetz*
User Account	An account created by the Tenant Administrator that an employee of the Customer uses to access the Service.
Working Day	Monday to Friday except public bank holidays in North Rhine Westphalia, Germany.

2   Scope of Application

2.1   These Terms and Conditions govern the conclusion of the Order Form and the subsequent access to and use of the Service.

2.2   The Service is only offered to traders according to section 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.

2.3   This Agreement supersedes all prior and contemporaneous discussions and agreements, both written and oral, among the Parties with respect to the subject matter of this

Agreement and constitutes the sole and entire agreement among the Parties with respect to such subject matter.

2.4 The following terms and conditions also apply to all patches, updates, upgrades and bug fixes and all new functions that Eppendorf makes available to the Customer as a part of the Service, unless these are subject to a separate agreement. Eppendorf shall however not be obliged not deliver any enhancements, updates or similar changes regarding the Service.

3 Scope of Service

3.1 Eppendorf shall provide the Service to the Customer on an "as is" basis. This means that Eppendorf does not provide any warranty or guarantee for the Service beyond any statutory warranty based on applicable law. Eppendorf does in particular not make any representations or warranties regarding the quality, functionality, accuracy, usability, or reliability of the Service. All information and representations in marketing documents, on internet pages or other media outside of the Order Form or this Agreement, do not in any form constitute a warranty or guarantee.

3.2 Eppendorf shall provide the Service either by itself or through subcontractors who will act as vicarious agents (*Erfüllungsgehilfen*) pursuant to section 278 BGB. Eppendorf is free to choose such vicarious agents.

3.3 The Customer may use the Service only for its internal business purposes.

3.4 Eppendorf reserves its right to modify the Service to a reasonable degree. 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 Service, Eppendorf shall also ensure that any modifications do not disable paid functions of the Service which had been provided before the modification. Concerning current subscriptions, Eppendorf may discontinue the Service or modify it despite degrading the standard for security (or functionality if applicable) if said changes in the Service

3.4.1 are legally required or

3.4.2 are necessary for the prevention of security risks.

3.5 Eppendorf is not obliged to provide prior versions of the Service.

3.6 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 violate other terms of this Agreement.

3.7 The place of performance shall be the registered office of Eppendorf.

3.8 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 Registration of Users

4.1 The Service is made available by Eppendorf.

4.2   After Eppendorf has approved the order, Eppendorf will create the First User and a new Tenant in the Service.

4.3   The First User will receive an email with the login details for the Service via a clear URL. 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 connected separately to the Tenant by the Customer as described in the manual.

5   Obligations of Customer

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

5.2   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.

5.3   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 or process.

5.4   It is the sole obligation of the Customer to ensure the security and safety of the Devices, its associated items, biology and the Service, including with respect to the users handling them and other equipment on the Customer´s premises.

5.5   The Customer does not have the right to download or install the Service or Software, unless otherwise agreed. Likewise, the Customer may not make copies of the Service or Software, unless otherwise agreed. Furthermore, the Customer may not rent, sell, lease, sublicense, assign, distribute, frame or mirror the Service or Software and provide it to third parties for use. The Customer may not reverse engineer, decompile, disassemble, or work around technical limitations. This does not limit Customer's mandatory rights under sections 69d and 69e UrhG.

5.6   The Customer shall not use the Service for illegal purposes. In particular, the Customer may not use the Service (i) to defame (including but not limited to libel and slander), abuse, harass, stalk, threaten or otherwise violate the rights of others (including but not limited to their general right of privacy); (ii) to process, publish, distribute, or disseminate obscene, adult-oriented, pornographic or unlawful material or information to harm minors in any way; (iii) to generate code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and trojan horses; (iv) to upload materials that contain software or other copyrighted, trademarked, patented, personally owned or otherwise legally protected material to the extent that the Customer does not have the necessary rights, licenses or consents; (v) to interfere with or disrupt the Service or the networks or servers connected to Eppendorf; (vi) to interfere with the use of

the Service; (vii) to promote unlawful activities; (viii) to pursue unlawful purposes; (ix) to promote content that has been indexed as harmful to young persons; or (x) to use the Service to generate, promote or distribute disinformation, (xi) to attempt to gain unauthorized access to the Service or its related systems or networks, or (xii) to permit direct or indirect access to or use of the Service in a way that circumvents a contractual usage limit, or use the Service to access, copy or use any of Eppendorf's intellectual property except as permitted under this Agreement.

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 undertakes to take appropriate protective measures to ensure that the Service cannot cause any damage to the Customer, its affiliates or third parties.

5.9   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.

5.10   The Customer shall de-connect a Device when an unauthorized third party gains access to such Device, e.g. when the Device is sold (also see clause 9.24 with regards to IT-security).The Customer is responsible for all activities that occur under his Tenant 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 section 5.4.

5.11   If the Customer becomes aware of any infringement of any section of this Agreement, he shall immediately terminate the relevant User Account and inform Eppendorf about the infringement.

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

5.13   The Customer shall ensure that its employees and other authorized personnel using the Service also observe the Customer's obligation listed in this section 5.

5.14   In the event of a violation of this section 5, the Customer is obliged to (i) immediately notify Eppendorf of the breach and (ii) promptly delete the affected Customer Data, if stored within the Service. Eppendorf is entitled at any time to delete or block Customer Data or other data entered into by or on behalf of the Customer within the Service that, in Eppendorf's assessment, may violate the rights of third parties, this Agreement, and/or any other right. The Customer is primarily responsible for the review of Customer Data. For this purpose, the Tenant Administrator establishes procedures for deletion requests, receives requests from users for the deletion of Customer Data, and carefully reviews them. To the extent that the Tenant Administrator concludes that the Customer Data is unlawful considering the rights and legitimate interests of all parties involved, as well as the fundamental rights of the Customer and the users, the Tenant Administrator will delete the Customer Data. In cases where the administrator is unable to delete certain

Customer Data or other uncertainties exist, the Tenant Administrator will report this to Eppendorf in writing, stating the reasons for the deletion request. If Eppendorf believes that the Customer Data is unlawful, Eppendorf will delete the named Customer Data no later than five (5) Working Days after receiving the Tenant Administrator's deletion request. Eppendorf will inform the Customer in an appropriate manner about such a deletion or blocking. Eppendorf will proceed carefully, objectively, and proportionately in applying and enforcing the deletion or blocking of Customer Data, taking into account the rights and legitimate interests of all parties involved, as well as the fundamental rights of the Customer and users, which are anchored in the Charter of Fundamental Rights of the European Union, such as the right to freedom of expression, the freedom and pluralism of the media, and other fundamental rights and freedoms. However, Eppendorf is not subject to any corresponding contractual obligation to monitor, delete, or block Customer Data.

6 Professional Services

6.1 Eppendorf may perform professional services, e.g. training, support or consulting services ("**Professional Services**") as set forth in the Order Form, subject to this Agreement.

6.2 The Customer acknowledges that timely access to applicable materials, resources, personnel, equipment, or facilities necessary and appropriate for the proper performance of the Professional Services ("**Customer Materials**") is necessary for the provision of Professional Services and constitutes a contractual obligation of the Customer. The Customer agrees to provide such access and to reasonably cooperate with Eppendorf during the provision of Professional Services. Eppendorf will have no liability for any delay or deficiency to the extent resulting from the Customer's breach of its obligations under this Agreement.

6.3 Professional Services are performed as a contract for services according to Sections 611 et seqq. BGB (German Civil Code).

7 DataHow Services

Eppendorf may offer to the Customer access to DataHowLab, DataHow Training, DataHow New User Support Services or DataHow Additional Services ("**DataHow Services**") as set forth in the Order Form, subject to this Agreement. The Customer will comply with DataHow's Acceptable Use Policy in Annex 1 (DataHow AUP) when consuming DataHow Services.

8 Proprietary Rights

8.1 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.

8.2   Subject to the terms and conditions set forth in this Agreement and the Order Form, Eppendorf grants to Customer and affiliated companies with Customer within the meaning of sections 15 et seq. AktG (German Stock Corporation Act) a temporary, non-exclusive, non-transferable, and non-sub-licensable license to use the Service. The license is restricted with regard to the number and types of Devices connectable to the Service specified in the Order Form. The respective licensing model is named in the Order Form. The Customer is free to decide which Devices are to be connected to the Service, as long as the number of Devices is not exceeded.

8.3   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 under https://cloud.bionsight.eppendorf.com/licenses.html. Customer is obliged to and shall ensure that its users comply with these third-party license terms. 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.

8.4   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.

8.5   The Customer grants Eppendorf a worldwide, perpetual, irrevocable, unlimited, transferable, sub-licensable, fully paid, royalty-free license to use Device Performance Data for the purpose to improve and develop its processes, algorithms, products, services, data models, to train AI models and to create new business models and identify upselling potential, 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.

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

8.7   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.

8.8   The Customer grants Eppendorf a worldwide, perpetual, irrevocable, unlimited, transferable, sub-licensable, fully paid, royalty-free license to use Customer Data and Customer Materials for the purpose of providing the Service to the Customer. The Customer warrants that it grants Eppendorf sufficient rights to enable Eppendorf to use the Customer

Data and Customer Materials for the performance of the Agreement without infringing the intellectual property rights of third parties.

9   Data Protection and Data Security

9.1   In the course of rendering the Service, the DASGIP Information and Process Technology GmbH ("DASGIP") – as part of the Eppendorf group of undertakings according to Art. 4 No. 19 GDPR - will process personal data for which the Customer acts as controller according to Art. 4 No. 7 GDPR and which DASGIP processes as processor according to Art. 4 No. 8 GDPR. This concerns the administration of Personal Customer Data. Customers can organize individual employee accounts. DASGIP processes the related data (user ID and e-mail address) on behalf of the Customer.

9.2   For registration, data processing in the context of support services, tracking of user behavior for product improvement and location recording while using the BioNsight cloud, DASGIP itself is the controller according to Art. 4 No. 7 GDPR.

9.3   Data subjects are the people using the Service on behalf of the Customer either directly or through a Device.

9.4   The Personal Customer Data that DASGIP processes as a processor will be processed as described in this Agreement. In addition to complying with the rules of this Agreement, DASGIP and Eppendorf shall comply with its own obligations under the GDPR.

9.5   DASGIP may anonymize or aggregate the Personal Customer Data, and use such anonymized data in accordance with section 1.

9.6   DASGIP shall process the Personal Customer Data exclusively on behalf of and in accordance with the instructions of the Customer. Such instructions are contained exclusively in this Agreement. If DASGIP is required to deviate from such instructions by Union or Member State law to which DASGIP is subject; DASGIP shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

9.7   Eppendorf and DASGIP shall obligate all personnel engaged in the processing of Personal Customer Data to confidentiality with regard to processing of Personal Customer Data.

9.8   DASGIP 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 Personal 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 Personal Customer DataThe technical and organizational measures are subject to technical progress and further development. In this respect, DASGIP has the right to implement alternative adequate measures in the future. In so doing, the security level of the defined measures ust not be reduced. The controller shall be informed immediately of any significant changes which have to be documented by the processor without delay.

9.9   DASGIP is permitted to process Personal 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.

9.10   The Customer hereby authorises DASGIP 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 DASGIP 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, DASGIP 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.

9.11   The Customer grants DASGIP the general authorization to engage further processors with regard to the processing of Personal Customer Data. DASGIP shall contractually impose the same data protection obligations on each further processor as set out in the Agreement with respect to DASGIP 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.

9.12   The current subprocessors can be found here: https://cloud.bionsight.eppendorf.com/assets/documents/bionsight_privacy_policy.pdf.

9.13   DASGIP 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, DASGIP is entitled to terminate the Agreement with a notice period of 30 days.

9.14   DASGIP 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. DASGIP shall in particular inform the Customer immediately if a data subject should contact DASGIP directly with a request for exercising his or her rights in relation to Personal Customer Data and on request, provide the Customer with all information available to Eppendorf on the processing of Personal 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 deposal.

9.15   DASGIP shall notify the Customer without undue delay about personal data breaches according to Art. 33 GDPR.

9.16   DASGIP shall assist the Customer to the extent reasonable and necessary 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 DASGIP.

9.17   Upon instruction of the Customer, DASGIP shall irrevocably delete or return back the Personal Customer Data upon termination of the Agreement, unless DASGIP is obliged by law to further store the Customer. DASGIP may keep documentations, which serve as evidence of the orderly and accurate processing of Personal Customer Data, also after the termination of the Agreement.

9.18   DASGIP shall provide evidence regarding the implementation of the obligations under this Agreement in an appropriate manner at the Customer´s request.

9.19   The Customer shall be entitled to audit DASGIP with regard to compliance with the provisions of this Agreement. The Customer is entitled to access the business premises of DASGIP in which Personal 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.

9.20   DASGIP is entitled to withhold information if DASGIP would be in breach of statutory or other contractual provisions as a result of its disclosure.

9.21   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.

9.22   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 DASGIP; this includes the obligation to maintain secrecy and confidentiality. 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.

9.23   At the discretion of DASGIP, 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.

9.24   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 Personal 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 Order Form.

10.3   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.

10.4   Fees are generally invoiced in advance.

10.5   Payments are in due within thirty (30) days of date of invoice if not agreed otherwise in the Order Form.

11   Term and Termination

11.1   The term of this Agreement is stated in the Order Form. Insofar as the term is not stated in the Order Form, the Agreement shall generally begin upon the conclusion of the Invoice Form and shall have an initial term of one (1) year. Thereafter, the Agreement shall automatically renew for additional one (1) year terms, unless either Party provides written notice of termination at least three (3) months prior to the end of the then-current term.

11.2   If the Parties have explicitly agreed on a fixed term, the Agreement with a fixed term of one (1) or three (3) years will be stated as such in the Order Form and is not subject to automatic renewal. Insofar as the term is not stated in the Order Form, Agreements with a fixed term shall begin with conclusion of the Invoice Form and end after the agreed-upon fixed term of one (1) or three (3) year(s).

11.3   Termination for convenience is excluded, except as provided in section 11.1.

11.4   Eppendorf will remove all Customer Data (excluding Device Performance Data) 30 days after full termination of this Agreement. Customer is obliged to save all Customer Data within this period to its own premises. After this period, the Customer Data can not be exported or restored.

11.5   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:

11.5.1 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);

11.5.2 Eppendorf has reasonable reason to believe that the Customer violates the confidentiality obligations contained in this Agreement;

11.5.3 the Customer's invoices are outstanding for over two (2) month for any Service; or

11.5.4 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 Service 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 Service is 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 The Service is provided to Customer with an Availability on Working Days (from 8:30 a.m. to 5:00 p.m. CE(S)T) of 99,5% on an annual average (calculated in minutes). All interruption times listed in section 12.4 shall be deducted from the target availability when calculating the Availability.

12.4 The Service is not provided without interruption. Eppendorf may carry out planned and unplanned maintenance, during which the Service is not available. In addition, security and capacity problems as well as incidents beyond the control of Eppendorf (e.g. force majeure inlcuding (but not limited to) an act of god, act of government, flood, fire, earthquake, civil unrest, epidemic, pandemic (e.g. Covid-19), act of terror, strike or other labor problem) may lead to short-term disruptions or temporary suspension of the Service.

12.5 Scheduled maintenance or downtimes will be published to tenant administrators by email at least 24 hours prior to the planned downtime.

12.6 If the Customer becomes aware of an outage, malfunction or degradation of the availability of the Service, the Customer shall promptly inform Eppendorf and describe the symptoms of the issue in a detailed and reproducible manner via e-mail to the address named under https://www.eppendorf.com/us-en/service-support/services-by-product-groups/bioprocess-service/.

13 Liability

13.1 The provisions contained in this section 13.1 apply to the liability for paid services. The liability for trial 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*) by Eppendorf, a legal representative of Eppendorf or by a person deployed to perform an obligation of Eppendorf.

13.1.2 Eppendorf is liable for slight negligence (*einfache 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 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 Section 536a para. 1 first alternative BGB (non-fault based claim of lessee for damages and reimbursement of expenses due to a defect that exists at conclusion of the lease agreement) is excluded.

13.1.6 The total liability of the Eppendorf shall be limited to the overall yearly license fee to be paid by the Customer under the Agreement.

13.1.7 All further liability of Eppendorf is excluded.

13.1.8 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.

13.2 The provisions contained in this section 13.2 apply to the liability for trial 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 sections 599 and 600 BGB,

i.e., Eppendorf is only liable for wilfulintent (*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. Device Performance Data shall not be considered Confidential Information.

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 partici-pate 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 unau-thorised 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 con-tained 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 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 re-spective modification of the Agreement. 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 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 Service;

   c) to adapt the Service 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 https://cloud.bionsight.eppendorf.com/assets/documents/bionsight_privacy_policy.pdf.

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. The Customer warrants that it will not sell, export, re-export, release, transfer or otherwise transmit the Service directly or indirectly to parties for use or end-use in Afghanistan, Belarus, Cuba, Iran, North Korea, Russia, Sudan, South Sudan, or Syria.

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. Section 139 BGB shall not apply.

Last modified October 2024

Annex 1 – DataHow AUP

This policy helps us identify unacceptable use of our services, and applies to all users of all DataHow services. We refer to "our services" throughout – this means all services (including related websites) owned or operated by DataHow.

We reserve the right to take any action we feel is appropriate to enforce this policy. We may take action to prevent use of our services which goes against the spirit of this policy, even if that use is not expressly forbidden.

By using our services, you agree to abide by the latest version of this policy, which we may modify at any time.

1. In order to foster an open and welcoming environment for all users, you must not:
    - Create, upload, submit, execute, transmit, or host anything that:
        - is off-topic or otherwise disruptive;
        - is vulgar, obscene, or pornographic, or gratuitously depicts or glorifies violence.
    - Use our services to violate the privacy of others, or misuse the personal data of other users.
2. To keep DataHow, our users, and others safe you must not use our services:
    - To engage in, promote, or encourage illegal or malicious activity.
    - To violate, or encourage the violation of, the legal rights of DataHow or others.
    - To discriminate against, threaten, or otherwise exploit or harm any individual or group.
    - To harass or defame others.
    - In a deceptive or fraudulent manner, to impersonate others, or to falsely imply endorsement.
    - To obtain information for the purposes of sending unsolicited communication to users or selling users' personal data.
    - To access, modify, delete, or disseminate DataHow's or our users' confidential information.
    - In any other way that could significantly or repeatedly disrupt the experience of other users or otherwise cause harm.
3. So our services, and those of others, run securely, and without disruption, you must not:
    - Do anything to compromise, overburden, or otherwise impair our services or those of others, including using our services to mine or demonstrate proof-of-work for a cryptocurrency or blockchain, or for the primary purpose of distributing content.
    - Use our services such that your usage significantly exceeds that of other users of similar features, or in any other way that may impact our services' stability or availability.
    - Interfere with the security or integrity of, or seek to obtain unauthorized access to, any system, data or device.

- Undertake any unauthorized scans, attacks, or penetration testing on our services or DataHow users.
- Use our services to transmit spam or undertake phishing.

4. In addition, if you use any of our services that are based on artificial intelligence (including machine learning) technologies (our "AI-powered services"), you cannot use these services:
    - To attempt to circumvent any AI-powered services' safety filters, or intentionally drive the AI-powered service to respond in a manner that violates this policy.
    - To falsely represent that output generated by our AI-powered services was solely human-generated.
    - To make any automated decision that impacts material or individual rights or well-being.
    - To provide any personal data in an input to DataHow's AI-powered services.
    - In any of the following fields:
        - Medical applications.
        - Provision of legal or financial services.
        - Tracking, locating, or monitoring an individual.
        - Administration of justice, law enforcement, immigration or asylum processes.
        - Designing, promoting, or distributing weapons or other dangerous materials.
        - Political campaigning or lobbying.
        - Gambling or sports betting.
        - Adult industries or sexually explicit content and services.

5. Restrictions: Customer will not, and will not permit any third party to (not otherwise defined as a User):
    - Use the software in such a manner that would enable any third party to access the software
    - Use the software for time sharing or service bureau purposes (including without limitation, sublicensing, distributing, selling, reselling any software)
    - For any purpose other than its and its Affiliate's own internal use
    - Use the software other than in compliance with all applicable laws and regulations
    - Use the Software in any manner that: (a) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, or libelous (including without limitation, accessing any computer, computer system, network, software, or data without authorization, breaching the security of another user or system, and/or attempting to circumvent any User authentication or security process); (b) impersonates any person or entity, including without limitation any employee or representative of DataHow; (c) includes content, with respect to the use of SaaS Software, which is illegal or (d) introduces any virus, trojan horse, worm, time bomb, unsolicited bulk, commercial, or "spam" message, or other harmful computer code, file, or program (including without limitation, password guessing programs, decoders, password gatherers, keystroke

loggers, cracking tools, packet sniffers, and/or encryption circumvention programs)

- Except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile the Software or access it to: (a) build a competitive product or service, (b) build a product or service using similar ideas, features, functions or graphics of the Software, (c) copy any ideas, features, functions or graphics of the Software, or (d) determine whether the Software are within the scope of any patent.