End-User Licence Agreement

Revised: 21 July 2022

END-USER LICENSE AGREEMENT

IMPORTANT – READ CAREFULLY. Please read this End-User License Agreement ("EULA" or “Agreement”) carefully before checking the “accept” checkbox, downloading or using the Software (as defined below). By checking the “accept” checkbox, downloading, installing or otherwise using the Software, End-User agrees to be bound by the terms and conditions of this EULA. If you do not agree to the terms and conditions of this EULA, do not check the “accept” checkbox and do not download, install or use the Software.

The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold.

1. DEFINITIONS

Terms used in this EULA but not otherwise defined shall have the meaning assigned to them below:

1.1. Authorized Partner: the individual or legal entity that has been granted permission by Noldus to promote, sell or otherwise distribute the Software on behalf of Noldus.

1.2. End-User: the individual or legal entity that has acquired or uses the Software under the terms and conditions of this EULA.

1.3. EULA: this End-User License Agreement.

1.4. Indirect Losses: any indirect loss, claim, damage, liability, or expenses (including reasonable attorney's fees), including lost profits, and damage due to the stagnation of business operations.

1.5. Network License: a licensing mechanism comprising a license file and accompanying software managing the number of concurrent users of the Software.

1.6. Noldus: Noldus Information Technology BV, 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 listed in the document https://www.noldus.com/legal/noldus_corporate.pdf.

1.7. Security System: a system of software protection to limit installation and use of the Software to the authorized End-Users and computers.

1.8. Security Device: a device that forms part of or is attached to the computer, and is used as part of the Security System to control access to the Software.

1.9. Software: the software (including, but not limited to, any updates, upgrades and associated media, printed or electronic documentation and online services) provided to the End-User by Noldus or an Authorized Partner together with this EULA, that is not covered by third party terms and conditions and is included in the list under “Noldus software” in the Annex to the General Terms and Conditions (https://www.noldus.com/legal/noldus_gtc.pdf).

2. LICENSE

2.1. Upon payment by the End-User of the license fees for the Software, Noldus grants End-User a revocable, non-exclusive license to download, install and use the Software in accordance with the terms and conditions of this EULA. This EULA does not grant any rights to obtaining future upgrades, updates or supplements of the Software. If upgrades, updates or supplements of the Software are obtained, however, the use of such upgrades or updates is governed by this EULA and the amendments that may accompany them and may be subject to additional payments and conditions.

2.2. The End-User may download, install and use the Software on as many computers as is reasonably necessary, however the Software may not be shared or used concurrently on more computers than for which EULA's are granted. End-User shall take all reasonably required steps to ensure that this number is not exceeded.

2.3. End-User is allowed to store or install a copy of the Software for back-up or archival purposes.

2.4. End-User shall not (i) modify, alter, adapt, merge, decompile or reverse-engineer the Software or any part thereof nor create any derivative works based on all or any part of the Software, or (ii) remove or obscure any copyright, trademark or other ownership notices from the Software, or (iii) sub-license, sell, rent, lease, hire, loan, assign or otherwise transfer the Software or your rights in the Software or any part thereof, except as provided for in this EULA.

2.5. The Software may be protected by a Security System, including but not limited to the use of expiry dates, time-limited or feature-limited licenses, authorization codes, Security Devices and Network Licensing. End-User is prohibited to (attempt to) remove, alter or circumvent in any way any part of such Security System.

2.6. End-User is responsible for regular, frequent and effective backups of all files produced or modified while working with the Software.

3. INTELLECTUAL PROPERTY

3.1. All title, copyright and other industrial, intellectual or proprietary rights in and to the Software (including but not limited to any images, photographs, animations, video, audio, music, and text incorporated into the Software), the accompanying printed materials, and any copies of the Software are owned by Noldus or its Authorized Partners. All rights not expressly granted are reserved by Noldus.

3.2. The Software may include or make use of third party software, including open source software. Such third party software may be subject to the third party's terms and conditions provided in the documentation accompanying the Software and may contain copyright or other industrial, intellectual or proprietary rights of such third party. End-User hereby agrees to the terms and conditions for such third party software. In the absence of any third party terms and conditions, this EULA will govern the third party software in the Software.

3.3. End-User may, from time to time, provide Noldus with comments, suggestions, data, information or feedback ("Feedback") on the Software. End-User 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.

4. TRANSFER

4.1. End-User is entitled to make a one-time, permanent transfer of this EULA and Software only directly to one other End-User. This transfer must include all of the Software (including all component parts, the media and printed materials, any upgrades and this EULA). Such transfer may not be by way of consignment or any other indirect transfer and shall be subject to the following provisions:

a. End-User will provide to Noldus prior to any such transfer the full name and address details of the new End-User and the expected date of transfer in writing;
b. The new End-User understands and agrees to all the terms and conditions of this EULA in the same way as if the new End-User had obtained the Software from Noldus or an Authorized Partner;
c. End-User will destroy all (partial) copies of the Software and all accompanying materials, including but not limited to installed copies and any backup copies on data storage devices and guarantee to Noldus in writing that this has been done. If the Software is an upgrade, any transfer must include all prior versions of the Software;
d. Noldus reserves the right to levy an administrative charge upon the End-User and/or the new End-User in relation to transfer of the Software to an End-User

4.2. Any attempted transfer without prior written permission from Noldus shall constitute a material breach of this Agreement and shall be deemed null and void.

5. TERM; TERMINATION

5.1. The EULA shall enter into force on the date of acceptance by the End-User and continue until terminated in accordance with this Section 5.
5.2. If the Software is licensed on a subscription basis, the EULA shall continue until the end of the current subscription period.
5.3. Noldus is entitled to terminate the EULA immediately upon prior written notice upon:

a. the breach of any material provision of this Agreement by the End-User if (i) such breach is not curable or (ii) if curable, the End-User has not cured such breach within 30 (thirty) day period following receipt of a written notice by Noldus substantiating such breach ("ingebrekestelling");
b. the filing or institution of bankruptcy, liquidation or receivership proceedings of the End-User or in the event a receiver or custodian is appointed for the End-User's business, or if its business is discontinued or if it has a petition presented by a creditor for its winding up or if the End-User enters into any liquidation (other than for purpose of reconstruction or amalgamation.

5.4. Upon termination of the EULA, the End-User shall immediately discontinue the use of the Software and remove the software of all computers, destroy all (partial) copies of the Software from all storage media and return the documentation and materials relating to the Software to Noldus or its Authorized Partner.
5.5. Termination of this Agreement does not remove or reduce End-User's obligation to pay any outstanding license fees or other monies, all of which shall be due for payment immediately on termination of the EULA.
5.6. The following provisions shall survive termination of this EULA: Sections 3, 7, 9, 10 and this Section 5.6. In addition, any other provisions which are required to interpret and enforce the Parties' rights and obligations under the EULA shall also survive any termination or expiration of this EULA, but only to the extent required for the full observation and performance of the EULA.

6. WARRANTY

6.1. Noldus warrants that the Software as of the date of delivery to the End-User by Noldus or its Authorized Partner, the Software will, for a period of 90 days ("Warranty Period") materially conform to the specifications set out in the user documentation accompanying the Software ("Specifications"), provided that:

a. the Software is properly installed on a supported computer platform (as defined in documents that can be accessed on https://my.noldus.com) and used in accordance with the provisions of the accompanying user documentation and/or any Noldus-approved training course;
b. Noldus is notified in writing within 14 days after any non-conformity of the Software was known or should reasonably have been known to End-User and the End-User has made available all the information that might reasonably be required to allow Noldus to investigate, recreate and where possible remedy a non-conformity;
c. the Software has not been (a) altered, repaired or modified by any party other than Noldus or a third party provider approved by Noldus; or (b) used with software or a computer platform other than set out in the documents that can be accessed on https://my.noldus.com or have been subjected to negligence, or computer or electrical malfunction; or (c) were used, adjusted, or installed other than in accordance with instructions by Noldus.

6.2. Other than set out in Section 6.1, no warranties are expressed or implied with respect Software or any element thereof, including without limitation its quality, performance, accuracy, merchantability or suitability or fitness for any purpose, whether or not that purpose has been communicated by End-User to Noldus. The Software is a general product developed by Noldus for a wide range of solutions, requirements and situations and End-User is responsible for purchasing
the Software required for his needs. Noldus explicitly does not warrant that the Software shall be entirely without error or fault nor that it will operate without interruption. End-User agrees that such errors, faults or interruptions shall not be deemed material and cause to terminate this EULA.
6.3. The warranty by Noldus set out in Section 6.1 applies only to the first installation of the Software and will not apply, resume or renew upon delivery or installation of any subsequent update or upgrade to the Software, alteration in the number of EULA's granted for use of the Software, or any other extensions, upgrades or alterations to the Software where the Software has previously been delivered to or installed by the End-User.
6.4. The warranty by Noldus set out in Section 6.1 shall further not apply to Software that is licensed or otherwise made available at no cost, or Software that is designated as 'prototype', 'alpha' or 'beta' code, all of which are provided 'as is' and without warranty, representation or liability.
6.5. Upon receipt of an End-User's written notice of the Software not conforming to the Specifications during the Warranty Period, Noldus shall at its option and in its sole discretion (i) assist the Customer in correcting or

replacing the non-conforming Software or, (ii) terminate the EULA immediately and refund the purchase price paid by the End-User. The remedies described above shall be End-User's sole and exclusive remedies. Upon expiration of the Warranty Period, Noldus shall have no obligation to provide such remedies.
6.6. Noldus and Authorized Partners, are not responsible for maintaining or supporting use of the Software or obligated to provide any updates, fixes or support to the Software unless otherwise expressly agreed in writing between End-User and Noldus or the Authorized Partners.

7. LIABILITY; INDEMNIFICATION

7.1. End-User acknowledges that the Software is intended for research or training purposes only and agrees not to use the Software for diagnosis or treatment of disease in human subjects. End-User agrees not to use the Software in any application where the failure, malfunction or inaccuracy of the Software carries the risk of death or bodily injury.
7.2. Noldus Software shall not be used for collection of biometric data from human subjects without prior informed consent from the person whose data is being captured.
7.3. Noldus does not allow the use of its Software for the following applications:
a. Active defense, i.e. embedding Noldus Software in a weapon system.
b. Biometric data collection in criminal, security-related or similar investigations or procedures.
c. Surveillance of people in public spaces for security purposes.
d. Any other use that may potentially violate fundamental human rights (https://www.un.org/en/about-us/universal-declaration-of-human-rights).
7.4. If Noldus notices that its Software is used for applications that it does not approve, this may lead to discontinuation of customer support and termination of the EULA.
7.5. To the fullest extent permitted by law, and not withstanding any other provision of this EULA to the contrary:
a. In no event will Noldus or the Authorized Partners be liable to the End-User for Indirect Losses or for special, incidental, consequential, exemplary, enhanced, or punitive damages, including without limitation, any damages resulting from interruption of business, loss of use, loss of profits or revenue, or loss of business, arising out of or in connection with this EULA, the Software, or the performance of Noldus, the Authorized Partners, or third parties engaged by Noldus in the performance of this EULA, regardless of whether Noldus, the Authorized Partners, End-User, or any other person or entity has been advised of (or could have reasonably foreseen) the possibility of such damages or Indirect Losses. If, despite the provisions in this EULA, liability exists anyway, only direct damage will be eligible for reimbursement
INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
7.6. Noldus' and Authorized Partners' liability shall also be excluded, and Noldus and the Authorized Partners shall not have any liability under this EULA in the event of:
a. End-User's use of the Software other than in accordance with Section 7.1;
b. in the event of direct and indirect consequences of the End-User's failing to adhere strictly to the user documentation provided or made available by Noldus or the Authorized Partner; or
c. any loss of or damage to files or data howsoever caused.
7.7. A liability claim will be unenforceable and lapse unless Noldus or the Authorized Partner 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.
7.8. Noldus will hold harmless, defend, and indemnify End?User from and against all losses, damages, claims, liabilities, and expenses incurred by End?User that arise out of, relate to, or are caused by any third party claim that End?User's use of the Software, pursuant to the terms of the this EULA, infringes the intellectual property rights of such third party. If such a claim is made or appears likely to be made, Noldus, at its option, will have the right to either (i) procure for the End?User the right to continue to use the Software, (ii) modify or replace the Software so that it is no longer infringing (in a manner that substantially retains its functionality and quality), or (iii) require End?User to terminate the use of and return the Software and refund a pro rata portion, if any, of the amount paid by End?User to Noldus for the infringing Software. Notwithstanding the foregoing, Noldus will have no liability to End?User if the infringement results from use of the Software in combination with software not provided by Noldus or from modifications made by Noldus to conform to specifications provided by End?User. The indemnification obligations in this section are subject to: (i) End?User giving Noldus prompt written notice of any claim (provided that End?User's failure to provide prompt written notice will only relieve Noldus of its obligations under this Section to the extent such failure materially limits or prejudices Noldus' ability to defend or

settle such claim); (ii) the transfer of sole control of the defense and any related settlement negotiations to Noldus; and (iii) End?User's cooperation, at Noldus' expense, in the defense of such claim. THIS SECTION STATES END?USER'S SOLE AND EXCLUSIVE REMEDIES FOR THIRD PARTY INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
7.9. End-User shall indemnify and hold harmless Noldus, the Authorized Partners, and the third parties engaged by Noldus from and against any and all losses (including Indirect Losses and special, incidental, consequential, exemplary, enhanced, or punitive damages) arising out of or caused by (i) any failure in the performance of the obligations of the End-User under the law, this EULA, or Noldus' General Terms and Conditions, or (ii) any and all third party claims on any grounds whatsoever, directly or indirectly related to the End-User's use of the Software, the contents thereof, or any results or materials generated by the Software.
7.10. THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS SECTION 7 SHALL APPLY EVEN IF END-USER'S REMEDIES UNDER THIS EULA FAIL OF THEIR ESSENTIAL PURPOSE.
7.11. Noldus and End-User acknowledge and agree that the parties entered into this EULA in reliance upon the limitations of liability set forth in this Section 7, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

8.MISCELLANEOUS

8.1. 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.
8.2. The invalidity or unenforceability of any provision this EULA 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.
8.3. Failure by Noldus or the Authorized Partner to enforce any of its rights under the EULA shall not constitute a waiver of such rights thereunder and shall not relieve End-User of its obligation 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.
8.4. Amendments or changes to this EULA can only be agreed upon in writing between the Parties.
8.5. The EULA shall be binding upon the Parties thereto, their legal representatives, successors and assigns. End-User shall not assign any right or obligation arising out of this EULA without the prior written consent of Noldus. Any attempt by End-User to assign or delegate any obligation hereunder shall be deemed null and void.

9.GOVERNING LAW: END-USERS USA OR CANADA

9.1. If End-User is a legal entity and its principal place of business is located in the United States of America or Canada, or if End-User is an individual whose primary residence is located in the United States of America or Canada:
a. This EULA is exclusively governed by the laws of the Commonwealth of Virginia and the applicable federal laws of the United States of America, without regard to the conflicts of law provisions of any jurisdiction. Without limiting the previous sentence, End-User and Noldus expressly agree: (i) that the Virginia Uniform Computer Information Transactions Act, Virginia Code §§ 59.1-501.1 et seq. ("UCITA"), and the United Nations Convention on Contracts for the International Sale of Goods ("CISG") are expressly excluded from this EULA, (ii) that any and all terms contained in UCITA or CISG will have no force or effect on any portion of this EULA, and (iii) that UCITA and CISG do not apply to this EULA or the Software.
b. Any and all claims and disputes arising out of or in connection with this EULA, the Software, or the performance or non-performance by either party of any of its obligations under this EULA, which End-User and Noldus cannot resolve amicably within a reasonable period of time, will be commenced and maintained only in a state or federal court of competent subject matter jurisdiction situated or located in the United States of America. Noldus and End-User consent to the exclusive personal jurisdiction of and venue in any such court.
c. To the extent permitted by law: End-User must commence or file any claim or action arising out of or relating to this EULA or the Software within six months after the cause of action accrues, otherwise, such claim or cause of

action is permanently barred. To the extent permitted by law, End-User expressly waives the right to commence or file any such claim or action under any longer statute of limitations.

10.GOVERNING LAW: END-USERS OTHER COUNTRIES

10.1. If End-User is a legal entity and its principal place of business is located in any country other than the United States of America or Canada, or if End-User is an individual whose primary residence is located in any country other than the United States of America or Canada:
a. This EULA is exclusively governed by the laws of The Netherlands. The United National Convention for Contracts on the International Sale of Goods is expressly excluded.
b. Any disputes arising out or in connection with this EULA 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 End-Users having their principal place of business in the European Union. In the event that an End-User 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.

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