



# General Terms & Conditions (GTC)

of Nicolaudie Group

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**LightingSoft AG** (alias **Nicolaudie Group**) and its affiliated companies ("**Supplier**") is in the business of the manufacture and supply of software and hardware related to lighting control.

The present GTC set out the terms and conditions under which you may acquire our products through our online store.

Placing an order will be considered as an acceptance of these terms. If you do not agree with any of these terms, please refrain from ordering any product.

Version: Sep 1, 2022

## 1. Definitions

"**Defect**" (or "**Defective**") means a defect in engineering design, material or workmanship (including a programming error) in any Product which is demonstrable (by reproduction or otherwise) and which causes such Product to malfunction. Unless the context demands otherwise, malfunctions shall include situations where Products do not function in conformance with Specifications.

"**Online Store**" means any digital store to buy our products attached to our domains or subdomains (eg: <https://store.nicolaudiegrou.com>). List of domains concerned: arcolis.com, daslight.com, dmxsoft.com, lightingsoft.com, lightrider-app.com, lightrider.com, lightriderapp.com, lumidesk.com, n-g.co, nicolaudie.ca, nicolaudie.ch, nicolaudie.co.uk, nicolaudie.com, nicolaudie.de, nicolaudie.es, nicolaudie.group, nicolaudie.in, nicolaudie.net, nicolaudie.org, nicolaudie.us, nicolaudieasia.com, nicolaudiegrou.com, nicolaudiegrou.ch, nicolaudiegrou.cn, nicolaudiegrou.co.uk, nicolaudiegrou.com, nicolaudiegrou.de, nicolaudiegrou.es, nicolaudiegrou.in, nicolaudiegrou.org, nicolaudiegrou.us, nicolaudiegroue.com, sunlite.pro, sunlitepro.com, sunsuitepro.com, wolfmix.com, xhlcloud.com.

"**Firmware**" means any application, BIOS (basic input output system), micro code, machine readable software (programs or data) that has been written onto read-only memory (ROM), programmable read-only memory (PROMs), erasable programmable read-only memory (EPROMs) or similar technology fixed in a Hardware Product and not removable in normal operation.

"**Force Majeure**" means a force majeure event as defined in section 18.2.

"**Good Industry Practice**" means the exercise of the skill, care, prudence and efficiency including the appropriate allocation of time, equipment, resources and staff, which would reasonably be expected from a similar supplier of products equivalent and/or comparable to the Products in the same or similar circumstances.

"**Hardware Products**" means those controllers, processors, peripherals or other devices, including Third Party Products, belonging (or not) to a Product Line listed in the relevant Order Form. Hardware Products, unless the context demands otherwise.

"**Intellectual Property Rights**" means all intellectual property rights, including but not limited to copyright (including rights in software), database rights, rights in undisclosed or

confidential information (such as know-how), patents, inventions (whether patentable or not), design rights, mask work, trademarks, trade names, service marks, business names (including internet domain names) and trade secrets, or similar proprietary rights of whatever nature (whether registered or not and including applications to register or rights to apply for registration) which may now or in the future subsist in any jurisdiction.

**“Order Form”** means any physical or electronic purchase order or similar document submitted by you to Supplier under these GTC, in which you agree to acquire Products (and whose template is set out in Annex 1)

**"Products"** means such Hardware Products and Software Products, including any modules, options, features, interfaces, parts, accessories and documentation, as are available under these GTC and acquired or to be acquired by you from Supplier.

**"Product Line"** means a single family of Products identified as such by Supplier.

**"Services"** means all or any of the services to be provided by Supplier under reference to these GTC, in particular cloud based service in accordance with Annex 3.

**“Software Products”** means those programs, modules, options, adds-on, Firmware and interfaces or similar items, including relevant Third Party Products, belonging (or not) to a Product Line listed in the Order Form. Software Products include the related documentation, containing, amongst other, detailed functional description and installation and operating instructions.

**"Specifications"** means technical information specific to Hardware and Software Products as published by Supplier in its Product manuals and technical data sheets in effect on the date Supplier ships Products.

**"Third Party Products"** means any hardware, software (including operating systems and application) or other products, components or items provided by Supplier hereunder on a resale or license basis, which are not parts or components of Supplier Products.

## 2. Structure

### 2.1 The GTC are structured as follows:

Main Body of GTC	The GTC body contains general terms for your acquisition of the lighting control devices by Supplier.
Annex 1 Order Form Template	The Order Form is the transactional document which sets out a catalog enabling you to order Hardware Products and related Software Products as well as Services. Any order may be placed online through our online store.
Annex 2 Software licensing terms	The Software licensing terms set out the terms under which the Software Products are licensed to you.
Annex 3 Cloud terms	The Cloud terms set out the terms under which you may access and use our platform enabling you to have a remote control of the Products (if you opt for this option in your order)
Annex 4 Data Processing Agreement (“DPA”)	The DPA sets out the terms under which Supplier is entitled to process the personal data you submit to us by placing an order.

**2.2** All Annexes are an integrant part to the GTC.

**2.3** We may agree to implement local variations of the GTC in a duly executed Order Form as may be required under in the concerned country or region, as and to the extent necessary to reflect mandatory local legal requirements or prevailing local market conditions. Any deviation to the GTC shall expressly indicate the provision deviated from.

### **3. Ordering**

**3.1** Any Order shall be submitted to the present GTC, and any reference to further terms and conditions therein or that you may refer to shall be of no force or effect, with the exception of local variations as contemplated in section 2.3.

**3.2** Supplier will provide you with an order acknowledgment within two (2) business days after the placing of your Order that shall be considered as an acceptance of your Order, unless provided otherwise in any such communication to you. Should you not have received any such acknowledgement within two (2) business days, you should contact Supplier to ensure receipt of your Order.

**3.3** Orders may be canceled so long as they have not been acknowledged by Supplier. Once acknowledged, Orders are binding and may not be canceled. Any change made to the Order in the sense of additional Products to be ordered shall require the placing of a new Order. Section 6.5 is hereby reserved.

**3.4** You and Supplier will adopt commercially reasonable security measures to limit access to passwords and to limit access to the sites to authorized persons. Each party will be responsible for any unauthorized use of the sites or issuance of messages caused by the failure of its security measures.

**3.5** You are solely and entirely responsible to ensure that any Order is made by duly authorized representatives. Consequently, Supplier shall consider that any Order placed has been made under your control by duly authorized representatives to that effect; provided, however, that any Order may be canceled until acknowledged, as set out in section 3.3.

## 4. Pricing

- 4.1 The relevant prices for Products and Services are the ones displayed on our online store at the time you place your Order and reflected in your Order (“Price”).
- 4.2 As a result, you understand and agree that, should you order Products as a professional:
  - 4.2.1 You bear the risks that the Products are damaged or lost during transportation;
  - 4.2.2 You are solely and entirely responsible to pay any customs fees, importation duties and local taxes applicable in the country of destination and, if any, freight charges for onwards delivery to the agreed “ship to” location that may apply in addition to the Price agreed upon in your Order in accordance with applicable law and regulation.
- 4.3 Transfer of risk shall take place upon delivery.

## 5. Invoicing, payment and taxes

- 5.1 The default currency is **USD** unless otherwise agreed in an Order.
- 5.2 Invoices shall be released (1) at the same time of the acknowledgment of Your Order in case of online delivery, respectively (2) at the time of delivery of the Hardware Products in case of shipping.
- 5.3 You undertake to pay the Price within **thirty (30) days** of the invoice date; provided, however, that should you be a professional, this payment term may be modified at Supplier discretion.
- 5.4 For invoices not paid within **thirty (30) days** of the invoice date or the term set out as a professional, Supplier reserves the right to charge you a late penalty charge of five percent (5%) per year applied against undisputed overdue amounts no earlier than ten (10) days after the payment was due. If Customer does not pay invoices within sixty (60) days after invoice date, Supplier shall be entitled to (1) stop the provision of the Services ordered (if any), (2) suspend any subsequent Order until full settlement of the invoice plus late interests and/or (3) cancel the related Order.
- 5.5 You will gross-up any taxes to be withheld on payments to Supplier if required to do so by any government, and will pay such taxes to the appropriate tax authority. We will cooperate in good faith to ensure as far as is reasonably possible that any taxes withheld are minimized to the greatest extent possible under the applicable law and shall assist you with all relevant information so as to enable you to claim the withholding tax refund under the applicable tax treaty, if any. Shall be considered as a withholding tax any withholding tax or other deductions and obligations imposed by whatever legal, governmental or other authority to payments made by you to Supplier.



## 6. Shipping and Delivery of Hardware Products

- 6.1** Supplier shall ship Hardware Products within **thirty (30) business days** after payment of the Price to the address referred to in the Order; provided, however, that (1) should there be any delay related to the stock availability of the concerned Hardware Products, You shall be informed accordingly.
- 6.2** If Supplier agrees to special packing or shipping instructions requested by you, charges will be billed separately to you.
- 6.3** Partial shipments may only be made upon prior express agreement between the parties.
- 6.4** Should you order the Hardware Products as a consumer, you are entitled to withdraw your order within **thirty days (30) days** upon delivery; provided, however, that the return of the Hardware Products shall be shipped at your own costs and under your responsibility. Refund shall then take place upon receipt of the Hardware Products in good order.

## 7. Acceptance of Hardware Products

- 7.1** Hardware Products shall be deemed to be accepted upon delivery to you, unless you refuse acceptance by giving Supplier written notice of a Defect no later than ten (10) days after delivery. Any refusal must state the grounds, which must be in accordance with your rights under this Agreement, or with applicable law.
- 7.2** You will bear the burden to demonstrate that the defect already existed at the time of the risk transfer, i.e. at the time of the shipping.
- 7.3** In case of a proven and substantiated defects, Supplier shall replace the Hardware Products and redeliver them at its own costs; provided, however, that you shall send back to Supplier the defective Hardware Products at Supplier costs with the shipping method we will agree upon.
- 7.4** Except as set forth in these GTC, you are solely responsible for ensuring the appropriate selection, proper use, operation, maintenance, and inspection of the Hardware Products and related Software Products, the backup and recovery of data resulting from the use of the Products (if any), the training of your personnel, and the checking of results obtained with the Products.

## 8. supplier warranty for hardware products

- 8.1** Supplier warrants that the Hardware Products shall be free from Defects. Shall be considered as free from Defect Hardware Products which conform to Specifications. Supplier warrants further that Hardware Products will be fit for their ordinary purpose and will perform in conformity with the Specifications when operated and maintained in accordance with the Supplier Product documentation.
- 8.2** Supplier does not warrant that the operation of Hardware Products will be uninterrupted or error free.
- 8.3** The Warranty period will start upon acceptance of the Hardware Products and last for two (2) years.
- 8.4** You shall give Supplier prompt written notice of any warranty claims. If any Defects or non-conformance are identified during the warranty period, Supplier shall promptly remedy them at no additional expense to you, in accordance with the following provisions.
- 8.5** Supplier will, at its option, repair or replace Defective Hardware Products (including Firmware) using Good Industry Practice. If Supplier is unable, within a reasonable time, to repair, replace or correct a Defect or non-conformance in a Hardware Product to a condition as warranted, you will be entitled to a full refund of the purchase price calculated on a three (3) year straight depreciation line, conditional upon return of the Hardware Product(s) to Supplier at Supplier's costs.
- 8.6** Refund of the purchase price in accordance with section 8.5 shall automatically lead to the termination of the related Software and/or Cloud licensing terms and the refund of any prepaid licensing Fees for the period following such termination.
- 8.7** The warranties provided herein apply only to Supplier Products. Supplier does not warrant any Third Party Products even if included with Supplier Products. Furthermore, Supplier provides all such Third Party Products "AS IS". The original manufacturer or supplier of the Third Party Products may provide their own warranties as specified in the documentation accompanying the Third Party Products.
- 8.8** Supplier warrants that it shall not knowingly introduce and that upon Delivery no Products shall contain any code intentionally designed by Supplier to disrupt, disable, harm, or otherwise impede the operation of computer systems or other devices or to disable software, whether based on the elapsing of time, the exceeding of a given number of transaction or other parameters, the running of software on a certain computer or certain type of computer or on any other basis, or code enabling Supplier to access software to cause such disablement.
- 8.9** The above warranties do not apply to Defects resulting directly from:
- Supplier's compliance with your designs, specifications or instructions;
  - Your improper or inadequate maintenance or repair unless any such action was carried out under Supplier's instruction, supervision or with its explicit consent, or where your staff strictly followed Supplier's procedures, manual and/or instructions to carry out self maintenance;

- use of non-Supplier media, supplies and other products in contravention of applicable Specifications, save where such use is authorized by Supplier;
- modification by people other than Supplier employees, Supplier subcontractors and agents;
- damage to Products in transit between your entities for which Supplier does not manage or take responsibility for the transportation;
- improper use or operation outside of the Specifications for the Product;
- improper site preparation by yourself; or
- fire or water damage or electrical disturbances outside the resilience parameters set out in Specifications or, failing that, reasonably to be expected;

The Warranty does not exclude or limit any mandatory warranty or condition that may be applicable by any law or regulation (including any applicable EC regulation). To the extent that it is possible to do so, Supplier indemnifies you if it incurs a liability under any mandatory warranty and that liability arises from any act or omission for which Supplier is responsible.

Subject to the foregoing paragraph, the above warranties are exclusive of, and in lieu of, all other warranties, written or oral, express or implied, statutory or otherwise. No implied statutory warranties of fitness for a particular purpose shall apply. Supplier shall not be liable for any incidental or consequential damages sustained by you arising from delay in the replacement or repair of Products under the above Warranty.

- 8.11** In the event of Product recall for whatever reason, Supplier shall notify you at the earliest possible convenience to initiate Product replacement or reimbursement. Supplier will collaborate with you to minimize disruptions to operations and cost to the greatest possible extent. Supplier shall, compensate you for all activities, costs, losses and liabilities actually and directly incurred by you in relation to the Product recall.

Section 8.6 shall then apply *mutatis mutandis* in that case with regards to related Software licenses.

- 8.12** Supplier warrants that it has the right to distribute and/or sublicense Third Party Products (if any).

## 9. Your Warranty

- 9.1** You hereby represent and warrant that:
- 9.1.1** Any person placing an Order is duly authorized to do so;
  - 9.1.2** The delivery and use of the Products in your country is legal and shall not lead to a breach of any applicable law and regulation;
  - 9.1.3** Should you become aware of any such legal or regulatory restriction in your country, you shall immediately stop using Supplier Products in your country and inform us of any such restriction;
  - 9.1.4** You will use Supplier Products in accordance with the Specifications and Supplier instructions.
- 9.2** You shall indemnify Supplier, its directors, officers, representatives and employees for any prejudice resulting from a breach of section 9.1 (including reasonable attorney's fees).

## 10. Software Licensing

- 10.1** Software Products are licensed to you in accordance with your Order and as set out in Annex 2.

## 11. Cloud Services

- 11.1** Cloud Services may be procured to you in accordance with your Order and as set out in Annex 3.

## 12. Duration and Termination

- 12.1** Any Order will be subject to the then applicable version of the GTC, which may be updated from time to time and whose versions will be available at <https://n-g.co/policies>.
- 12.2** Termination of the Licensing terms, respectively Cloud terms are respectively addressed in Annexes 2 and 3 of the GTC.

## 13. Hardware Products' Intellectual Property Rights

- 13.1** Supplier owns all rights, title and interest, including Intellectual Property Rights, into the Hardware Products.
- 13.2** Supplier warrants that Hardware Products do not infringe any patents, copyrights or other Intellectual Property Rights of third parties in the countries where such Hardware Products are used, sold or received.

**13.3** Supplier shall defend or settle any claim and legal actions against you that Hardware Products infringe a patent, copyrights or other Intellectual Property Rights of a third party in the country where the Hardware Products are used, sold or receive support services, provided that Customer shall:

- a) where applicable and without undue delay notify Supplier in writing of any such legal actions or enjoinder of the Hardware Products;
- b) permit Supplier to solely control and direct the investigation, preparation, defense and settlement of the legal action; and
- c) reasonably assist and cooperate in the defense of same at Supplier's sole expense.

**13.4** Supplier agrees to pay any final award of damages assessed against you resulting from such legal actions, including any awarded costs and reasonable attorneys' fees, or any settlement amount agreed to by Supplier in writing. Following notice of such legal action, Supplier may, without prejudice to any representations, warranties and indemnities herein, in its sole discretion and at its option and sole cost,

- a) procure for you the right to continue to use the Hardware Products or infringing component;
- b) replace the Hardware Product or infringing component with an equivalent non-infringing Hardware Product or component of equivalent scope, function and performance and meeting the agreed Specifications and/or other technical and functional requirements; or
- c) modify the Hardware Product or component to make them non-infringing whilst continuing to be compliant with the agreed technical and functional Specifications and technical/functional scope and requirements.

**13.5** If Supplier cannot perform or start performing any of the actions referred to in section 13.4 on terms acceptable to you within fifteen (15) business days of your request to do so, or if Supplier determines that none of the alternatives of section 13.4 is reasonably available, or if you are unable to access and use, any material part of Products or Services as a result of a third party claim under section 13.3, then, at your request, Supplier will promptly refund a reasonable proportion of the prices you paid for the infringing Hardware Products. For Hardware Products, refund will be made on a three (3) year straight depreciation line. Supplier's payment will be made upon the return of such Hardware Products to Supplier.

Refund of the price in accordance with section 13.5 shall automatically lead to the termination of the related Software and/or Cloud licensing terms and the refund of any prepaid licensing Fees for the period following such termination.

**13.6** Supplier shall not be liable for infringements of third party proprietary rights or any Intellectual Property Rights of third parties caused by:

- a) Supplier's compliance with your designs, specifications or instructions,
- b) Supplier's use of technical information or technology provided by you or any third party under your instructions,
- c) the use of Products or Service prohibited by the Specifications or related application notes,

- d) a combination of Product or Service with any program, equipment, device or service not approved or supplied by Supplier or contemplated under these GTC, or
- e) any modification of Product or Service by you not authorized by or on behalf of Supplier.

These terms state Supplier's entire liability to you for claims of intellectual property infringement.

## 14. OEM Licensing

- 14.1** Should you acquire our Products as OEM, as set out in an Order Form, you hereby grant Supplier a license to brand the related Hardware Products with your trademark and logos.
- 14.2** We shall agree in written form upon the layout of such branding on such Hardware Products.

## 15. Publicity

- 15.1** Supplier shall be entitled to list your name as a user of Supplier Products on a list provided to prospective customers. This permission shall include the right to reproduce your trademark in a relevant section of Supplier website dedicated to existing customers as well as on brochures and marketing materials such as a press release, article, announcement, advertisement, text broadcast, or netcast or any other item relating to your use of Supplier Products.

## 16. Data Protection

- 16.1** Data processing resulting from the object matter of these GTC and the Services potentially provided at your request are addressed in the Data Processing Agreement, as set out in Annex 4.

## 17. Exemption of liability

- 17.1** Supplier exempts its liability to the largest extent admitted under applicable law; provided, however, that such exemption shall not apply to physical injuries or fraudulent activities.

## 18. General Provisions

### 18.1 Export regulations.

In cases where Swiss, U.S. or other national export regulations apply to the supply of Products and Services, Supplier shall not be held liable for any delay in its performance that may arise from its proper observance of Swiss, U.S. and/or other national export regulations. However, Supplier shall use reasonable commercial efforts to ensure such export regulations do not adversely impact on Product and Services delivery timescales and continuity of supply. Import, export and re-export of the Products by you may likewise be subject to prior approval by the U.S. Department of Commerce, the Import and Export section of the Swiss Department of Economy and/or other relevant export control authorities, and you shall be solely responsible for obtaining this approval, provided Supplier provide all reasonable assistance to you in securing such approval. This duty shall pass to you upon Delivery of the Products. In the event of transfer to a third party, you shall likewise demand and obtain from the transferee an undertaking in writing to observe these requirements, and hereby expressly agree to assist and support Supplier in enforcing the strict observance of these requirements.

The parties acknowledge and agree that Supplier shall have no obligation whatsoever to enter into any business transaction under these GTC, or to provide and Deliver any Product or Services to any entity which is listed on the US Department of Commerce Restricted Party List ('RPL') or on the EU Anti Terrorist List ('ATL').

In the event of any impending or actual infringement of export regulations by you, Supplier shall have the right to discontinue and withhold performance with you with respect to the affected Products at fault under these terms and conditions until such situation is remedied.

### 18.2 Force Majeure.

Neither party shall be in breach of these GTC nor liable for delay in performing, or failure to perform, any of its obligations under these GTC or related Order Form if such delay or failure results from a Force Majeure Event.

In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that it immediately provides written notice of the Force Majeure Event to the unaffected party. If the period of delay or non-performance continues for three (3) months, the party not affected may terminate the relevant Order Form by giving ten (10) days' written notice to the other party.

For the purposes of this clause, "Force Majeure Event" means any circumstance beyond a party's reasonable control, including but not limited to: strikes, lock-outs or other industrial disputes (other than in each case by the workforce of the party seeking to rely on force majeure); epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; interruption or failure of a utility service; act of God or natural disaster; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; accident or contamination; breakdown of plant or machinery.

**18.3 Notice.**

Any notice which may be required to be given by either Party to the other hereunder may be delivered by mail to the other Party.

**18.4 Severability.**

Should any provision of this Agreement be or become null, void or illegal or should this Agreement contain an omission, the enforceability of the remaining provisions shall not be affected thereby. The Parties shall replace any such invalid provision by a provision which most nearly conforms to the original intent.

**18.5 Governing Law.**

These GTC as well as any related Order Form are subject to Swiss Law, at the exclusion of the Vienna Convention on the International Sales of Goods and the Private International Law Statute.

**18.6 Jurisdiction.**

Any dispute arising out of or related to these GTC or related Order Form shall be submitted to the exclusive jurisdiction of the Chambre Patrimoniaire du Canton de Vaud, to which the Parties hereby irrevocably agree to be submitted.



# Order Form Template (Annex 1)

This Order Form is made under the Nicolaudie Group General Terms and Conditions (GTC), which are incorporated into this Order Form and will apply to all Products that Customer orders under this Order Form, notwithstanding any references to Customer terms and conditions that may be referenced by Customer.

It is entered into between:

Supplier	<name>	<address>
Customer	<name>	<address>

Unless otherwise defined in this Order Form, defined terms used herein have the meaning given to them in the GTC.

## 1. Ordered Products and Services

### 1.1 Hardware Products

Product Line	Product Name	Specifications	Unit Price (CHF)	Number of units	Total (CHF)

### 1.2 Software Products

Customer understands that the Software Products to be selected have to be compatible with the ordered Hardware Products.

#### a) **Supplier Software Products**

1. Product name	<Software name>
2. Duration of License	<input type="checkbox"/> Perpetual <input type="checkbox"/> Yearly subscription – From <dd-mmm-yyyy> to <dd-mmm-yyyy>
3. Scope of License	<input type="checkbox"/> Unlimited license – This Product is not subject to any usage limits. <input type="checkbox"/> Limited license – This Product is subject to the following usage limits: <ul style="list-style-type: none"> <li>▪ &lt;List limitations (e.g. number of users)&gt;</li> </ul>
4. Number of Licenses	<insert number>
5. Pricing	<input type="checkbox"/> Perpetual (per license) : CHF <pricing> <input type="checkbox"/> Yearly subscription (per license): CHF <yearly fee>

**b) Third Party Products**

1. Product name	<Software name>
2. Duration of License	<input type="checkbox"/> Perpetual <input type="checkbox"/> Yearly subscription – From <dd-mmm-yyyy> to <dd-mmm-yyyy>
3. Scope of License	<input type="checkbox"/> Unlimited license – This Product is not subject to any usage limits. <input type="checkbox"/> Limited license – This Product is subject to the following usage limits: <ul style="list-style-type: none"> <li>▪ &lt;List limitations (e.g. number of users)&gt;</li> </ul>
4. Pricing	<input type="checkbox"/> Perpetual : CHF <pricing> <input type="checkbox"/> Yearly subscription. CHF <yearly fee>

## 2. Variation(s) to the GTC

### 2.1 Amendments

In accordance with section 2.3 of the GTC, parties agree that the below identified sections of the GTC shall be deviated from in the following way:

GTC Provision deviated from	Original wording	New wording

### 2.2 Additions to the GTC

The following provisions are added to the GTC:

<list each individual provision>

**For <Supplier>:**

Name:  
 Signature:  
 Title:  
 Date:  
 Name:  
 Signature:  
 Title:  
 Date:

**For <Customer>:**

Name:  
 Signature:  
 Title:  
 Date:  
 Name:  
 Signature:  
 Title:  
 Date:

# Software Licensing Terms (Annex 2)

These terms apply to the Software Products that you order along with Hardware Products and are an integral part of the GTC.

They shall not apply for any potential test period that you may be entitled to benefit from, in which case such testing period of the Software Products shall be made available "AS IS", without any warranty that would be granted by Supplier in your favor or liability resulting from such testing. As a result, such testing will be carried out at your own discretion, under your sole and exclusive liability.

In the event of a conflict between these terms and the remainder of the GTC, these terms shall prevail with regards to their object matter, namely the licensing of Software Products.

## 1. Definitions

Unless otherwise set out below, terms in capital letters shall have the meaning attributed to them in the GTC.

**"Successor Products"** means any new products, modules, options and interfaces which may be developed and/or acquired and commercialized by Supplier during the term of this Agreement, which provide functionality substantially related to the business processes supported by and aimed at by Products and which can be seen as replacements and/or enhancements of functionalities previously contained in Products.

**"Updates"** means any revised and corrected versions and enhanced and improved versions of Products and documentation (including 'patches', 'maintenance Updates' or 'functional Updates'). Updates do not include Successor Products.

**"Use"** or **"Run"** means to copy, install, use, access, display, run or otherwise interact with relevant Product.

## 2. Ordering

- 2.1** Customer shall order Software Products by duly executing an Order Form as set out in [Annex 1](#) to the GTC.
- 2.2** Customer has to ensure that the ordered Software Products are compatible with the ordered Hardware Products.

## 3. Right to Use Products and Updates, Types of Licenses

### 3.1 Licenses

- 3.1.1** In consideration of your entering into an Order Form for licenses, Supplier grants you a worldwide, transferable, sub-licensable, non-exclusive right and license to Use, respectively have the Software Products covered by the license and/or Updates Used in accordance with this Agreement, in particular to Use or have Software Products Used within the limitations set out in this section 3.
- 3.1.2** The license granted shall be either perpetual or granted on a yearly basis, as chosen by you in the Order Form.
- 3.1.3** For the avoidance of doubt, Updates delivered to you shall become part of Software Products and you shall be entitled to download and install them at your discretion.

### 3.2 Successor Products

- 3.2.1** Successor Products, including combined products which may also include software falling outside the definition of Successor Products, are not considered as Updates and will require you to enter into a new Order Form to benefit from related licenses, unless specifically agreed otherwise in the relevant Order Form.

### 3.3 Fees

- 3.3.1** The prices for acquiring Licenses shall be set out in the relevant Order Form and paid in accordance with section 5 of the GTC ("**Fees**").

## 4. Installation and acceptance

### 4.1 Delivery

- 4.1.1** Delivery of Software Products shall take place via download on related devices initiated at your discretion.
- 4.1.2** Software Products may be downloaded once you have fully paid the related Fees, as set out in an Order Form.
- 4.1.3** Product documentation may be delivered in hardcopy, or as electronic files on suitable media or via download; parts or all of documentation may be made available via on-line access only.

### 4.2 Acceptance

- 4.2.1** Products shall be deemed to be accepted upon Delivery to you unless you refuse acceptance by giving Supplier written notice no later than ten (10) days after delivery. Any rejection must state the grounds and explain the Defects encountered; shall notably be considered as defective a Software Product that fails to execute its programming instructions and does not conform to Specifications.
- 4.2.2** Supplier will remedy Defects regarding Software Products in line with Good Industry Practice. If Supplier is unable, within a reasonable time, to bring a Software Product to a condition as warranted, Customer will be entitled to a full refund of the related price, conditional upon your stopping to use the Software Products, their return to Supplier or their de-installation (if any).

### 4.3 Return

- 4.3.1** Notwithstanding the above, you shall be entitled to de-install the Software Products within thirty (30) days after Delivery, in which case any prepaid Fees shall be totally reimbursed to you; provided, however, that should the de-installation relate to adds-on, such refund shall only take place either upon return Your Products or synchronize Your Products to Supplier interface to ensure that such adds-on have duly been removed.

## 5. Warranties

### 5.1 Warranty for Software Products

- 5.1.1** Supplier warrants that for 3 (three) months following Delivery ("**Warranty Period**"), Products will be free from material reproducible programming errors

and other defects, will contain the functionality and conform to the Specifications set down in Supplier's product description and user documentation and will perform satisfactorily when operated in accordance with the parties' common intent.

- 5.1.2** Supplier will remedy defects regarding Software Products during the Warranty Period at its own costs. If Supplier is unable, within a reasonable time, to bring a Software Product to a condition as warranted, you will be entitled to a full refund of the Fees, conditional upon de-installation of the Software Products.
- 5.1.3** Following the Warranty Period, Supplier does not warrant that the operation of Software Products will be uninterrupted or error free.

## 5.2 Warranty for Updates and Support

- 5.2.1** Warranty for Updates, that you may download at your own discretion, shall be the same as for Products. In addition, Supplier warrants that Updates shall not lead to a material deterioration in stability or performance of Products compared to the version originally accepted by you.
- 5.2.2** While the installation of Updates is at your discretion, you will understand that the absence of any such upgrading may lead to the discontinuation of the support Supplier may provide to you with the latest available version of the Software Products.

## 5.3 Exclusions

- 5.3.1** Warranties shall not apply to the extent that any alleged infringement or Defect derives from (1) a combination of Software Product with any program, equipment or device not approved or supplied by Supplier; (2) any modification of Software Product by you or a third party not authorized by Supplier; (3) Customer's failure to install promptly any Updates provided by Supplier; or (4) misuse or negligence of Customer, their employees or agents.

## 5.4 No Interference

- 5.4.1** Supplier warrants that Software Products shall contain no code designed to disrupt, disable, harm, or otherwise impede the operation of computer systems or to disable software, whether based on the elapsing of time, the exceeding of a given number of transaction, the Running of software on a certain computer or certain type of computer or on any other basis, or code enabling Supplier to access software to cause such disablement.

# 6. INTELLECTUAL PROPERTY RIGHTS

## 6.1 Violation of Third Party Rights

- 6.1.1** Supplier warrants that it has the right to grant Licenses for Products and that such Products do not violate any third party's rights, notably copyright, patent or other intellectual property right ("**IP Claim**"). Supplier will, at its expense, defend, indemnify and hold the Indemnified Parties harmless against all losses,

damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by an Indemnified Party arising from an IP Claim (the "**IP Indemnity**").

**6.1.2** Supplier's obligations under section 4.1.1 are subject to Customer doing the following:

- a) You shall provide Supplier with written notice within ten (10) business days of receipt of any written threat or notice of filing of the IP Claim, whichever is sooner (the "**Claim Notice**"); and
- b) You shall provide Supplier with sole control of the defense, appeal, and/or settlement of the IP Claim; provided that you may at your sole expense engage additional counsel of your choice for the purposes of conferring with Supplier's counsel, and Supplier shall respond to any reasonable requests from you or your counsel for information about the IP Claim); and
- c) You shall reasonably cooperate with Supplier (at Supplier's cost) with respect to the defense, appeal, and/or settlement of the IP Claim; and
- d) You shall provide Supplier with requested documentation and information relevant to the IP Claim or its defense, appeal, and/or settlement as Supplier reasonably requests.

## 6.2 Remedies

**6.2.1** Supplier shall, at its own choice and costs either (a) modify or exchange Software Products such that they no longer infringe proprietary rights of third parties while continuing to meet the original specifications, or (b) procure for you the right to Use such Software Products within your Use and other contractual and legal rights with regard to Software Products. If Supplier in its discretion determines that none of the foregoing is available on a reasonable basis, on Supplier's written request to you, you will promptly stop using and de-install the affected Software Products, and Supplier will refund to you any prepaid Fees paid by you for the affected Product(s) for the period following such termination.

## 6.3 Exclusions

**6.3.1** Supplier shall not be liable for infringements of proprietary rights where caused by (1) a combination of Software Product with any program, equipment or device not approved or supplied by Supplier; (2) use or interfacing with your or third party supplied software unless Supplier has declared such software compatible with Software Products; (3) any modification of Software Product by you (or a third party) not authorized by Supplier, and (4) the absence of installation of any Upgrade that would have prevented the infringement of such proprietary rights.

## 6.4 Right to Distribute Third Party Products

**6.4.1** Supplier warrants that it has the right to distribute or sublicense Third Party Products. Where Third Party Products are licensed to you, sections 4.1 to 4.3 above shall apply unless otherwise specifically agreed. Where Third Party Products are distributed, Supplier shall assist you in dealing with the relevant

third party supplier and shall, where Customer is hindered from exercising its Use and other contractual and legal rights with regard to such Products, repay any relevant License Fees in full and repay pro rata any Maintenance Fee for the current period.

## 7. Duration and termination

This section shall apply to you if you opt for a subscription license of the Software Products in the Order Form.

### 7.1 Duration

- 7.1.1** Should you opt for a subscription License as set out in an Order Form, the License granted shall automatically renew on a yearly basis, unless otherwise terminated with a three months' prior written notice.
- 7.1.2** Supplier is entitled to increase the Fees to (1) 5% per year or (2) a higher percentage; provided however that, in that case, such increase shall be notified in advance to you so as to enable you to terminate your subscription with a three months' prior written notice.

### 7.2 Termination for breach

- 7.2.1** Either party may terminate this licensing agreement forthwith by written notice to the defaulting party in case the defaulting party has breached these terms and the breach was not cured by such party within thirty (30) days of its receipt of written notice to that effect. Such termination will not trigger any entitlement to get refunded.

### 7.3 Immediate termination

- 7.3.1** Either party will have the right to terminate these terms, immediately by written notice to the other party, if the other party:
  - a) is unable to pay its debts or becomes insolvent;
  - b) is the subject of an order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction);
  - c) has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets;
  - d) enters into or proposes any composition or arrangement with its creditors generally; or
  - e) is the subject of any events or circumstances analogous to any of the foregoing in any applicable jurisdiction.
- 7.3.2** Supplier shall have the right to terminate those terms if it decides to discontinue the commercialization of the Software Products, respectively the related support.



**7.3.3** The Licenses shall also terminate under the circumstances contemplated in sections 8.6, 8.11 and 13.5 of the GTC.

## 7.4 Effect of termination by Supplier

**7.4.1** Upon termination, your Licenses shall cease and you shall (i) discontinue using the Software Products, (ii) purge all Software Products from computers where it is in productive Use (if applicable); and (iii) if so requested, certify to Supplier in writing that you have complied with the foregoing obligations.

**7.4.2** Termination of these terms shall not have any impact upon your entitlement to further use the acquired Hardware Products, although termination of the licensing terms will have an impact upon the use of such Hardware Products.

# Cloud Service Terms (Annex 3)

These terms apply if you decide to opt in an Order Form for the cloud services that Supplier enables you to benefit from, so as to remotely control the Hardware Products that you order.

These terms are an integral part of the GTC. In the event of a conflict between these terms and the remainder of the GTC, these terms shall prevail with regards to their object matter, namely your access and use of our cloud services.

## 1. Definitions

Unless otherwise set out below, terms in capital letters shall have the meaning attributed to them in the GTC.

“**Content**” consists of all data, software, and information that you or your authorized users provides, authorizes access to, or inputs to the Platform.

## 2. CLOUD SERVICES

- 2.1 Nicolaudie Cloud** is a cloud-hosted platform which enable you to remotely control Supplier Hardware Products (“**Platform**”). The Platform is designed to be available 24/7, subject to maintenance. Client may be notified of scheduled maintenance by subscribing to our dedicated page at <https://status.nicolaudiegrou.com>.
- 2.2** Supplier will provide, operate, maintain and support the equipment, software, systems and other resources required to provide the Platform and generally available documentation to support your use of the Platform.
- 2.3** You will provide hardware, software and connectivity to access and use the Platform.
- 2.4** You are responsible for access and use of the Platform by any individuals authorized by yourself (“**Authorized Users**”) to access and use the Platform. You shall be solely responsible for the security of passwords created by or issued to each Authorized User. You shall inform Supplier promptly of any actual or imminent unauthorized access to a password or to the Platform.
- 2.5** You are responsible to assess the suitability of the Platform for your intended use and Content. By using the Platform, you acknowledge that it meets your requirements and processing instructions.
- 2.6** In case you intend to access and use the Platform with connected devices, you may access the Platform only to the extent of authorizations duly acquired by Client through the execution of relevant Order Forms.
- 2.7** The Platform may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent Content or activity, such as advocating or causing harm, interfering

with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights. In addition, Client may not: i) reverse engineer any portion of OneLab; ii) assign or resell direct access to OneLab to a third party outside Client's Enterprise; or iii) combine OneLab with Client's value add to create a commercially available Client branded solution that Client markets to its end user customers unless otherwise agreed.

### 3 Content

- 3.1** Supplier acknowledges that you own all rights, title and interest in and to the Content, and that the use of the Platform will not affect your ownership or license rights in such Content. Supplier, its affiliates, and contractors of either, may access and use your Content solely for the purpose of providing and managing the Platform. Supplier will treat all Content as confidential by not disclosing Content except to Supplier's employees and contractors and only to the extent necessary to deliver the Services.
- 3.2** Supplier will return or remove Content from the Platform upon the expiration or cancellation of the Cloud Service, or earlier upon your request. Supplier may charge for certain activities performed at Client's request (such as delivering Content in a specific format). Supplier does not archive Content, however some Content may remain in Cloud Service backup files until expiration of such files in accordance with Supplier backup cleaning cycles.

### 4 CHANGES

- 4.1** Supplier reserves the right to modify the Cloud Services from time to time at its sole discretion notably through updates that will automatically become part of the Platform. You understand and agree that such changes may result in the addition of new features or removal of existing ones, without entitling you to any form of compensation. In most instances, updates will take place to: i) improve or clarify existing commitments; ii) maintain alignment to current adopted standards and applicable laws; or iii) provide additional features and functionality. Modifications will not degrade the security or data protection features of the Platform.
- 4.2** Supplier may modify these Cloud Service Terms from time to time and shall notify you accordingly. Changes are not retroactive and will only apply as of the effective date, respectively upon renewal of your subscription. Client therefore accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice.
- 4.3** Supplier may decide to stop providing a Cloud Service at its discretion on four months' notice. Supplier will continue to provide the Cloud Service for the remainder of your subscription term.

## 5 Warranties

- 5.1 Supplier warrants that it provides the Platform using commercially reasonable care and skill.
- 5.2 Supplier does not warrant uninterrupted or error-free operation of the Platform or that Supplier will correct all defects or prevent third party disruptions or unauthorized third party access. These warranties are the exclusive warranties from Supplier and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. These warranties will not apply if there has been misuse, modification, damage not caused by Supplier, or failure to comply with instructions provided by Supplier.

## 6 Licences

### 6.1 Right of use

In return for the subscription Fees set out in the Order Form, Supplier entitles you to:

- 6.1.1 use, and allow authorized users to access and use the Platform and the documentation provided to you ;
- 6.1.2 where and if applicable, input and permit authorized users to input Content into the Platform, and upload and download Content available through the Platform and freely use/share such Content amongst Authorized Users; and
- 6.1.3 allow you and authorized users to use the available functions of the Platform.

### 6.2 Use restrictions

You shall not, and shall not permit authorized users to:

- a) use the Cloud Services for purposes other than those set out in these terms and the relevant Order Form;
- b) attempt to extract, download, copy, recreate, disassemble, modify, translate, reverse engineer or decompile the Cloud Service, unless any express permission is provided by Supplier or by any applicable law;
- c) remove, alter or obscure any copyright or other proprietary notices on Supplier Web Portal;
- d) sell, rent, lease or sublicense or otherwise transfer your right to use the Cloud Services except as set out in the GTC;
- e) use the Cloud Services for the benefit of third parties except as may have been agreed in the relevant Order Form; or
- f) use the Cloud Services to transmit or store any spam or obscene material.

## 7 Intellectual property rights

- 7.1 Supplier warrants that it has the right to grant access and use to the Platform and that such access and use does not violate any third party's rights, notably copyright, patent or other intellectual property right ("**IP Claim**"). Supplier will, at its expense, defend, indemnify and hold the Indemnified Parties harmless

against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by an Indemnified Party arising from an IP Claim (the "**IP Indemnity**").

- 7.2** Supplier's obligations under section 6.1 are subject to your doing the following:
- a) You shall provide Supplier with written notice within ten (10) business days of receipt of any written threat or notice of filing of the IP Claim, whichever is sooner (the "**Claim Notice**"); and
  - b) You shall provide Supplier with sole control of the defense, appeal, and/or settlement of the IP Claim; provided that you may at your sole expense engage additional counsel of your choice for the purposes of conferring with Supplier's counsel, and Supplier shall respond to any reasonable requests from you or your counsel for information about the IP Claim); and
  - c) You shall reasonably cooperate with Supplier (at Supplier's cost) with respect to the defense, appeal, and/or settlement of the IP Claim; and
  - d) You shall provide Supplier with requested documentation and information relevant to the IP Claim or its defense, appeal, and/or settlement as Supplier reasonably requests.
- 7.3** Supplier shall, at its own choice and costs either (a) modify the Platform such that it no longer infringes proprietary rights of third parties while continuing to meet the original specifications, or (b) procure for you the right to use such Platform within your use and other contractual and legal rights with regard to the Platform. If Supplier in its discretion determines that none of the foregoing is available on a reasonable basis, on Supplier's written request to you, you will promptly stop using the Platform, and Supplier will refund to you any prepaid Fees paid by you for the period following such termination.

## 8 Duration and termination

### 8.1 Duration

- 8.1.1** Should you opt for a yearly cloud-based subscription as set out in an Order Form, your subscription shall automatically renew on a yearly basis, unless otherwise terminated with a three months' prior written notice.
- 8.1.2** Supplier is entitled to increase the Fees to (1) 5% per year or (2) a higher percentage; provided however that, in that case, such increase shall be notified in advance to you so as to enable you to terminate your subscription with a three months' prior written notice.

### 8.2 Termination for breach

- 8.2.1** Either party may terminate the cloud-based subscription forthwith by written notice to the defaulting party in case the defaulting party has breached these terms and the breach was not cured by such party within thirty (30) days of its receipt of written notice to that effect. Such termination will not trigger any entitlement to get refunded.

**8.2.2** In addition to its entitlement to terminate for breach, Supplier shall be entitled to suspend access and use of the Platform if it determines there is a material breach of your obligations, a security breach, or violation of law.

### 8.3 Immediate termination

**8.3.1** Either party will have the right to terminate these terms, immediately by written notice to the other party, if the other party:

- a) is unable to pay its debts or becomes insolvent;
- b) is the subject of an order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction);
- c) has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets;
- d) enters into or proposes any composition or arrangement with its creditors generally; or
- e) is the subject of any events or circumstances analogous to any of the foregoing in any applicable jurisdiction.

**8.3.2** You may terminate its subscription on one month's notice (i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the Cloud Service; (ii) if Supplier modification to the computing environment used to provide the Cloud Service causes you to be noncompliant with applicable laws. Supplier shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination.

**8.3.3** Supplier shall have the right to terminate those terms if it decides to discontinue the commercialization of the Cloud Service, respectively the related support, or that such Service appears to be in breach of applicable laws and regulation in your jurisdiction. Supplier shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination.

### 8.4 Effect of termination by Supplier

**8.4.1** Upon termination, your right to access and use the Platform shall be revoked.

**8.4.2** Within thirty (30) days upon the effective termination date of your subscription, you shall be entitled to retrieve and export your Content from the Platform. Absent any such export by yourself but in any case no later than thirty (30) days upon the effective termination date of your subscription, Supplier will destroy all your Content stored on the Platform, without incurring any form of liability towards the Client for such deletion

**8.4.3** Termination of these terms shall not have any impact upon your entitlement to further use the acquired Hardware Products and related Software Products.

# Data Processing Agreement (DPA) (Annex 4)

## 1. Definitions

The following terms shall have the following meanings under this Agreement:

**“Applicable Data Protection Laws”** means the Swiss Data Protection Act of 19 June 1992 and/or the Regulation 2016/279 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data together with their respective amendments or subsequent pieces of legislation.

**“Controller, Processor, Data Subject, Personal Data and Process/Processing”** have the meanings set out in Regulation 2016/279, as amended, repealed or replaced from time to time, regardless of whether that Regulation is applicable in any particular circumstance.

**“Effective Date”** means the date both parties have signed this data processing agreement.

**“Information Security Incident”** means (i) the actual unauthorized acquisition, access, use, Processing, loss or disclosure of data; (ii) the suspicion or reasonable belief that there has been an unauthorized acquisition, access, use, Processing, loss, disclosure of data or (iii) the unauthorized use of the Supplier’s systems to gain access to any Customer system.

**“Personal Data”** means any information relating to an identified or identifiable individual.

**“Subcontractor”** means any third party contractor, agent or partner of Supplier used in the performance of any services (including for the processing of any Personal Data).

**“Customer”** means you, as Supplier’s client, that has ordered Products and Services involving the Processing of Customer Personal Data.

## 2. Instructions.

**Supplier**, acting as Data Processor, will Process Customer Personal Data (a) in accordance with the prior documented instructions from Customer and (b) only to the extent necessary to perform its obligations under the agreement. Appendix I of this Annex 4 (Personal Data) sets forth a high-level description of the Processing of Personal Data (if any) that, as of the Effective Date, the Parties contemplate that Supplier will perform under the Agreement.

## 3. Inability to Comply with Instructions.

If Supplier becomes unable to comply with the instructions of Customer, Supplier will promptly: (a) inform Customer of such inability, identifying the instructions with which it

cannot comply and the reasons why it cannot comply; and (b) cease all Processing of the affected Customer Personal Data (other than merely storing and maintaining the security of such Customer Personal Data) until such time as Customer issues new instructions with which Supplier is able to comply.

#### **4. Compliance with Law.**

In relation to the Processing of Customer Personal Data, Supplier will: (a) comply with all Applicable Data Protection Laws; (b) take reasonable steps to ensure that its Processing of Personal Data in connection with this Agreement does not place Customer in breach of any applicable Law; and (c) implement and maintain appropriate technical and organizational measures required by Applicable Data Protection Laws, such as the measures required by Article 32 of the GDPR, in order to protect against Information Security Incidents.

#### **5. Subprocessors.**

Supplier has the right to perform the services or share Customer Personal Data between its Affiliates as well as with the Subprocessors provided in Appendix II to this DPA. It shall ensure that each Subprocessor is subject to binding and enforceable contractual obligations that are no less protective of Customer Personal Data than the provisions of this DPA.

Supplier shall notify Customer of any changes to its Subprocessors, providing Customer with a prior opportunity to object to any new Subprocessor on duly documented grounds (whereupon Supplier shall use reasonable endeavors to provide an alternative Processing solution which avoids use of the objected-to Subprocessor, absent of which Customer shall be entitled to terminate the Agreement and get refunded for any pre-paid fees for the period following such termination).

#### **6. Supplier Personal Data.**

Where Supplier provides Personal Data to Customer, Supplier will ensure that it is legally entitled to, and has taken the necessary steps to enable it to: (a) provide such Personal Data to Customer; and (b) authorize Customer to Process such Personal Data for the purposes of this DPA (including by transferring such data to third parties located in countries which do not ensure an adequate level of protection of Personal Data for the purposes of Applicable Data Protection Laws).

#### **7. Transfer Limitations.**

Supplier will not transfer any Customer Personal Data to any recipient located outside Switzerland, the European Economic Area (EEA) or the jurisdiction in which these Personal Data were collected and that is your home residence without the prior written consent of Customer. If such consent is granted, Supplier will ensure that adequate safeguards are in place for any such transfers, in accordance with all Applicable Data Protection Laws.



## 8. Transfers of EEA Personal Data.

- (a) Standard Clauses. Where the transfer of Customer Personal Data from any European Economic Area (EEA) Member State, the United Kingdom or Switzerland to any country or recipient (other than a Subprocessor) not recognized by the European Commission and the Swiss Federal Data Protection and Information Commissioner as providing an adequate level of protection for Personal Data is contemplated, Customer and Supplier will enter into the applicable standard contractual clauses, referred to in Appendix I (Personal Data) Section 2 (the “Standard Clauses”). To the extent that there is a conflict between this DPA and the Standard Clauses, the Standard Clauses will prevail.
- (b) Subprocessors. Supplier may only transfer such Customer Personal Data to a Subprocessor located outside the EEA if one of the following transfer mechanisms applies: (i) the Subprocessor is located in a country recognized by the European Commission and the Swiss Federal Data Protection and Information Commissioner as offering an adequate level of protection; (ii) Supplier has entered into Standard Clauses with the Subprocessor, in which case Supplier will provide Customer with a copy of such signed Standard Clauses at Customer’s request.

## 9. Communications with Data Subjects.

If Supplier receives any communication from a Data Subject, governmental authority, or any other third party, which relates to the Processing of Customer Personal Data, Supplier will notify Customer in writing and provide a copy of such communication within forty-eight (48) hours of receipt of the communication. Supplier will provide Customer with full cooperation and assistance in relation to any such communication. Supplier will provide any relevant Customer Personal Data to the requestor only in accordance with Customer explicit prior written instructions. If and to the extent that Customer does not explicitly instruct Supplier in writing to disclose Customer Personal Data to a third party, Supplier will not make any such disclosure unless required by law.

## 10. Breach Notifications.

Supplier will notify Customer of any Information Security Incident involving Customer Personal Data within seventy-two (72) hours of becoming aware of the Information Security Incident and providing the information set forth in Appendix 1 (Personal Data) Section 3:

LightingSoft AG  
Chemin des Oisillons 5  
1009 Pully  
[security@nicolaudiegroupp.com](mailto:security@nicolaudiegroupp.com)  
+41 (0)21 512 24 30

## 11. Cooperation.

Supplier will, promptly upon request, provide Customer with all information and reasonable assistance necessary to enable Customer to comply with Applicable Data Protection Laws, in particular with respect to (a) giving effect to the rights of Data

Subjects (such as under Chapter III of the GDPR), (b) notifying governmental authorities and/or Data Subjects of Information Security Incidents affecting Customer Personal Data (such as under Articles 33 and 34 of the GDPR) and (c) conducting data protection impact assessments, reviewing associated Processing to ensure it is performed in accordance with such assessments, and consulting with and obtaining any necessary authorisations from governmental authorities to Process Customer Personal Data (such as under Articles 35 and 36 of the GDPR).

## **12. Inspections:**

Supplier will make available to Customer all information necessary to demonstrate compliance with the obligations laid down in this DPA. Should Customer still consider such documentation to be unsatisfactory in a documented way, Supplier shall allow for and contribute to audits, including inspections, conducted by a third party independent auditor mandated by and at Customer's costs.

## **13. Conflict:**

In the event of any inconsistency between the provisions of this DPA and the GTC or its further Annexes, the provisions of this DPA shall prevail.

## **14. Changes in Law.**

To the extent that Applicable Data Protection Laws impose any additional compliance obligations that are not sufficiently addressed in this Agreement, Supplier will, and will procure that its Subcontractors will enter into all such further agreements, and take all such steps, as may be reasonably necessary to achieve compliance with those Applicable Data Protection Laws.

## **15. Termination:**

Breach by the Supplier of the obligations contained in this DPA or under Applicable Data Protection Laws shall be considered a material breach entitling Customer to terminate the contractual relations between the parties at no cost subject with immediate effects, in which case Customer shall be entitled to get refunded of any pre-paid fees for the period following such termination.

## **16. Governing Law and jurisdiction:**

This Agreement is governed by the laws of Switzerland, at the exclusion of its conflict of laws provisions. Any dispute arising out of or related to this Agreement shall be brought exclusively before the competent court of the State of Vaud, Switzerland, to which the parties hereby irrevocably agree to be submitted.



# Appendix I

## 1. Processing of Personal Data Contemplated as of the Effective Date

Supplier is performing the following processing activities on behalf, and on instructions, of Customer:

## 2. Standard Clauses (as adopted on 4 June 2021 by the EC Commission)

Refer to:

[https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/model-clauses-transfer-personal-data-third-countries\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/model-clauses-transfer-personal-data-third-countries_en).

## 3. Personal Data Breach Notice

Entities affected by the breach (usually Customer):

.....

Subprocessors involved in the breach, if any:

.....

Facts surrounding the breach:

.....

Date of discovery of the breach:

.....

Suspected date of occurrence of the breach:

.....

Consequences and effects of the breach:

.....

Nature of the breach, including the categories and number of Data Subjects and data records concerned:

.....

Identity and contact details of the data protection officer, if any, or another contact point where more information can be obtained:

.....

Measures proposed or taken to mitigate the possible adverse effects of breach and address it:

.....

## Appendix II

### 1. Description of Processing

No.	Category of Data Subject	Types of Personal Data Processed	Description/Purpose of Processing	Data Flow
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### 2. Approved Subprocessors

No.	Subprocessor	Scope of Processing	Data Flow to Subprocessor	Transfer Mechanism (Supplier to Subprocessor)
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