

TERMS OF SERVICE

MADx RAPTOR-SERVER

executed between

MacroArray Diagnostics GmbH

Lemböckgasse 59/Top 4
A-1230 Vienna

and

Client

Any User of the Raptor
Server Online Platform with a
User Account and valid Login

1. About

These Terms of Service ("**ToS**") apply to the use of the software „Raptor-Server“ („**Software**“), which is provided by MacroArray Diagnostics GmbH, Lemböckgasse 59/Top 4, 1230 Vienna, Austria ("**MADx**") to users of MADx products ("**Client**").

The Software is only available in connection with products of MADx, particularly Allergy Explorer ("**ALEX**"), ImageXplorer or MAX 45k ("**Automat**") and is an essential component of the overall package. The Software enables the Client to use ALEX and read the results of the ALEX-Chips via the ImageXplorer or Automat and further analyse the raw data provided therein. The Software further provides the Client with the evaluated and interpreted result. The Software in addition provides for secure data storage of all raw and evaluated data and makes data available in a readable format to the Client as well as to persons authorised by the Client (the "**Services**").

These ToS shall apply to the use of the Software and Services in form of remote access via internet (software as a service – "**SaaS**"). Future changes/adaptions of features and functionalities of the Software do not affect the applicability of these ToS.

2. Services

MADx will provide the Services as stated under section 0.

Client is granted, including all users of the client, a non-exclusive, non-sub-licensable, non-assignable and royalty-free license to use the Software for Client's internal business operations in accordance with these ToS. In

connection with such use, Client shall have the right to allow its employees to use the Software on Client's behalf, subject to their compliance with these ToS, and Client shall remain liable for any non-compliance by users. Client may use the Software on multiple devices and users ("**Tenants**").

For this purpose, MADx makes the software available to the Client on an "**AS-IS**"-**basis** via internet.

Client acknowledges that the Software operates on one or more third party cloud computing platforms and that MADx shall have the right to change or add to the cloud computing platforms on which the Software operates.

3. Availability / Subscription

Purchasing MADx products entitle to use the Software. After the purchase the Client shall name a single point of contact who will act as Tenant-Admin. Together with the Tenant-Admin the System-Admin from MADx will set up and customize the software. The Tenant-Admin may be provided with the Tenant credentials to use the software and may manage certain system settings. Support from a local distribution and service partner will be provided. Before activation of a Tenant, the Client must enter the required legal entity information and upload a copy of this agreement signed by a legal representative.

To use the Software via internet access, an "**Agent**", an additional small application, installed locally, is necessary. This Agent must be kept updated constantly.

4. Client Data and Data Protection

Client owns all right, title and interest in all data and/or content created or provided by him, although specifically excluding the below defined Aggregated Data ("**Client Data**"). Nothing in this ToS shall be interpreted to grant MADx any rights in Client Data beyond those expressly provided herein. Client agrees that MADx shall own all right, title and interest in the Aggregated Data. MADx will not retain any Client Data other than as required for the provision of the Software, except to the extent that it constitutes Aggregated Data.

Client grants MADx the limited, non-exclusive right to use the Client Data solely for the purpose of providing the Software and the Services to Client. The processing of data on behalf of the Client by MADx is governed in the Data Processing Agreement attached as **Annex 1**.

Client grants MADx the right to collect and use anonymized generic information derived from such Client Data (but not the Client Data itself) and aggregate it with statistical information from other Clients ("**Aggregated Data**") for statistical and scientific purposes (esp. evaluating allergy trends) as well as for quality control. In this regard the statistical prevalence of sensitization and its global distribution are

considered of interest, as well as the correlation of patient's symptoms as related to the enumeration. This data is only used internally by MADx for the further development of tests and allergen panels. The data will not be published without the prior written consent of the client and will under no circumstances be shared with anyone outside MADx.

To the extent required by applicable laws, Client warrants that it complies with his obligations under relevant data protection laws (especially the General Data Protection Regulation ("GDPR") and local laws to the extent applicable) in respect of its processing of personal data and in any processing instructions that Client issues to MADx, including any obligations specific to its role as data controller. Client in particular will ensure that it has all necessary consents and notices in place to enable the lawful data processing. Client is responsible for the permissibility of the processing and use of data and safeguarding of the rights of the data subjects. Client further is solely and fully responsible for the Tenants and of the transferred, processed and saved data via his Tenants and will indemnify and shall hold MADx and his deployed secondary service providers fully harmless against any third parties' claims in this regard.

5. Support

First level support will be provided by MADx local representative, e.g. a service or distribution partner.

MADx will provide electronic and telephone support during normal business hours as a second level support in case the local support team cannot solve a problem.

6. Duration/Termination

These ToS shall apply for an indefinite duration. The granted rights can be terminated by MADx in case of severe violations of these ToS or if Client decides to stop using MADx products and has therefore no further need to use the Software.

MADx may terminate the license / the right to use the Software with immediate effect by delivering notice of this circumstance to the Client if Client materially breaches any of his obligations pursuant to this ToS, especially those cited under section 9. of these ToS or if Client uses the Software beyond the granted license scope.

7. Changes

MADx reserves the right to make changes and modifications to the Software at any time, but the software development will be performed according to the IEC 62304 Standard (Medical device software – software life cycle processes). These changes

will in no case have any effect to the functionality of MADx products and will in no case restrict or limit the usage of ALEX products.

Change requests regarding the scope of the software (number and user of Tenants) must be communicated by the Tenant-Admin to the System-Admin in writing in electronic form at least ten (10) days in advance.

Client may only add/modify the Software as long as this is covered by the allowed use of Software.

8. Disruption/Impairment of accessibility

MADx will provide fixes, corrections, modifications, enhancements, upgrades and new releases to the Software to ensure the functionality of the Software and Hardware and to maintain security. Adjustments, modifications and amendments to the Software, which serve for the detection and correction of malfunctions, will only lead to a temporary interruption or impairment of accessibility, if it is absolutely essential for technical reasons. If longer maintenance work will be necessary, MADx will inform Client via e-mail about the maintenance work as soon as possible and will carry these works out according to technical conditions in the shortest time possible.

MADx is not liable for disruptions due to the above stated activities, force majeure or third-party failure to comply with their service provision, in particular of the provider of the online service platform.

9. Obligations of the client

Client shall – under all local and international laws and regulations applicable – use the Software only for legal purposes, for the dedicated purpose of the Software and in compliance with these ToS.

Client will particularly not

- upload or distribute any files that contain malware;
- modify, disassemble, decompile or reverse engineer the Software;
- probe, scan, test or hack any security mechanisms used by the Software, servers or connected services;
- copy the Software;
- use other Clients credentials to use the Software;
- access other Client's data;
- maliciously impair, compromise or damage the Software; or
- use the Software to promote, transmit, publish or otherwise spread unlawful, harassing, abusive, hateful or otherwise offensive material or material encouraging criminal offenses or cause civil liability.

Client is not entitled to allow the use of the software by a third party either with or without a fee. Hence, Client is expressly prohibited to sublease or sublicense the Software.

The Client is obligated to prevent any unauthorised third parties from accessing the protected areas of the Software by taking appropriate precautionary measures. For this purpose, Client will notify his employees of the abidance of the copyright were necessary as well as the need of prevention of unauthorised use of the software.

Client will protect the Tenant authorization credentials assigned to him and his users from unauthorised access through third parties and will not pass them on to unauthorised users. As soon as the Client sees any indication that the user and access authorisation of the Tenant could be unlawfully obtained or misused by a third party, the Client is obligated due to harm reduction purposes to inform MADx immediately about it.

10. Intellectual property

MADx is the exclusive legal owner of the Software, including all intellectual property rights including the Software itself, its code and trademarks. The licence to use the Software does not entitle the Client to use these intellectual properties. Exempted thereof are trademarks and other intellectual property rights of the Client which will be included in the Software in the course of individualizing the Frontend, reports, etc.

Client has no ownership interest in the Software or materials provided to Client. MADx owns all right, title, and interest in the Software and MADx materials, subject to any limitations associated with intellectual property rights of third parties. MADx reserves all rights although not specifically granted herein.

11. Technical requirements

Client is responsible for obtaining and maintaining all computer hardware, software and communications equipment to access the Software and shall pay all third-party access charges in this regard. Client shall further be responsible for implementing and maintaining/updating all necessary and proper software and precautions for safeguarding against computer infection, viruses and other malware. Client will hold MADx harmless against all damages occurred due to malware which infiltrated the system of MADx over Clients systems.

Client will ensure that his system at least complies with the following minimum requirements in order to use the Software:

- Microsoft Windows 7 or higher
- Google Chrome or alternative compatible browser

12. Warranty/Liability

Regarding the general functionality of the overall system, including ALEX, Automat and ImageXplorer, the General Terms and Conditions of MADx resp. the distributor shall apply as agreed upon. The Software is part of this overall system package.

ANY LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL, TORT OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF OR DAMAGE TO SOFTWARE OR DATA, LOSS OF PROFITS OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THIS ToS OR THE SOFTWARE PROVIDED HEREUNDER, EXCLUDING FOR DEATH OR PERSONAL INJURY OR DUE TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IS EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

13. Final provisions

Should individual provisions of these terms and conditions be or become ineffective/invalid then the effectiveness of the remaining provisions of the contract are not affected. Invalid terms of the agreement are to be substituted with those that economically corresponded closest to the contractual intent of the parties.

The place of jurisdiction for all disputes arising from or in connection with this agreement shall be the registered office of MADx.

Austrian law is exclusively applicable to this contract. The application of the UN Convention on Contracts for the International Sale of Goods and the IPRG is excluded.

Changes or amendments of these terms of service will be communicated in written form.

By using the services offered by MADx, the client implicitly and explicitly agrees to this ToS.

ANNEX 1

DATA PROCESSING AGREEMENT

MADx, as the Processor, grants the Client, as the Controller, the right to use of the Software in connection with the use of the purchased products of the Processor. This Data Processing Agreement ("**DPA**") shall ensure that the processing of data within the use of the Software meets all applicable legal requirements, especially pursuant to Regulation (EU) 2016/679 (General Data Protection Regulation or "GDPR") and the Austrian Data Protection Act ("**DSG**").

All terms used within this DPA shall have the meaning as defined in the Terms of Service relating thereto, subsidiarily the GDPR or further subsidiarily other applicable legislation.

1. Subject of data processing

Controller and Processor agree that personal data shall be processed in course of the use of the Software as follows.

- **Type and purpose of processing:**

Providing of Software as a Service to enable measurements using Processors products and hosting of raw data, measures, results as well as providing reports and analysis and hosting of test and raw data as well as patient related data.

- **Type and categories of personal data**

Patient data:

- General data, such as Patient Name, Date of Birth or Age, Gender or Country and place of residence;
- Specific Immunoglobulin E ("**IgE**") measurement results (> 300 allergens);
- Total IgE measurement results;
- Clinical symptoms (seasonal, perennial, episodic, multiple selections possible), such as Asthma, Rhinitis, Conjunctivitis, Urticaria, Angioedema, Oral Allergy Syndrome, Eczema, Anaphylaxis or Gastroenteric Symptoms.

Controller's employee data:

- Name
- E-mail Address

Controller's data:

- General data, such as name of Controller / entity, contact details (address telephone number, e-mail address, website);

- Legal representative(s);
 - VAT number, companies register number;
 - Contracts, Agreements, other correspondence.
- **Duration of the processing**

The duration of the processing follows the use of the Software, which will last as long as the Controller will use the products of the Processor.

2. Processing on instructions of the Controller

The Processor is obliged to process the personal data exclusively within the framework of the above stated purposes and in accordance with the terms of this agreement and documented instructions of the Controller. The processing of personal data for own purposes of the Processor is excluded. Exempted from this is the use of anonymized data (Aggregated Data) of the Controller for statistical and scientific purposes as well as for quality control. The statistical prevalence of sensitization and its global distribution are considered of interest, as well as the correlation of patient's symptoms as related to the enumeration.

Where the law of the European Union or of one of the Member States affected by the processing of personal data requires the Processor to carry out processing going beyond that, the Processor shall notify the Controller of such legal requirements prior to processing, unless the law in question prohibits such notification on important grounds of public interest.

If the Processor is of the opinion that compliance with an instruction of the Controller would violate data protection laws, the Processor must immediately inform the Controller of this.

3. Obligations of the Processor

The Processor guarantees the implementation of and compliance with all necessary technical and organisational measures pursuant to Art 28 para 3 lit c) and Art 32 GDPR. These measures must comply with the state of the art throughout the term of the contract. In particular, it must be ensured that the personal data are protected against accidental or unlawful destruction and loss, that they are used properly and that they are not accessible to unauthorised persons.

The level of protection provided by the Processor shall be appropriate with regard to the risks posed by the processing operations. The applicable technical and organizational measures are listed in the Online Services Terms ("**OST**") of Microsoft available at <https://www.microsoft.com/en-us/licensing/product-licensing/products>. These measures currently taken in this context may subsequently only be exceeded, but never undercut. The Processor shall guarantee that the technical and organisational measures specified in the OST are appropriate with regard to the risk for the persons

concerned. The Processor shall regularly review his internal processes and technical and organisational measures to ensure that the processing is carried out in accordance with all applicable legal requirements and that the rights of the data subjects are protected.

The Processor guarantees that he has committed the persons authorised to process personal data to maintain confidentiality and in particular to observe data secrecy, which must also be observed after termination of the employment contract with the Processor, and that the Processor has trained these persons accordingly in dealing with personal data.

The Processor shall support the Controller with appropriate technical and organisational measures to enable the Controller to fulfil his obligation to respond to enquiries or requests from data subjects in connection with their rights, in particular with regard to access to personal data, rectification, erasure, restriction of processing, data portability and objection. Particularly in the case of requests for access by data subjects, the Processor shall make the processed personal data of such persons available to the Controller in a structured and machine-readable format. In the event that the Processor is contacted directly by the data subject, he will inform the Controller immediately and provide appropriate assistance.

The Processor shall also assist the Controller in ensuring compliance with the obligations pursuant to Art 32 to 36 GDPR, considering the nature of processing and the information available to the Processor.

The Processor shall assist and enable the Controller to notify the supervisory authority in a timely manner in the event of breaches of the protection of personal data and shall inform the Controller without delay at least of the following: a description of the nature of the breach of the protection of personal data, indicating where possible the categories and approximate number of persons concerned, the categories of data concerned and the approximate number of personal data records involved; a description of the likely consequences of the breach of the protection of personal data and a description of the measures to be taken or at least proposed to remedy the breach of the protection of personal data and, where appropriate, possible measures to mitigate any adverse effects.

The Processor must further document all violations of the protection of personal data and all related facts, the effects and the proposed remedial measures and make this documentation available to the Controller without delay.

The Processor shall also assist the Controller to ensure that the data subjects may be notified without delay.

In addition, the Processor must take all reasonable steps to protect the personal data from further data protection violations of a similar nature and to mitigate adverse effects.

The Processor shall also inform the Controller immediately if and to what extent personal data of the Controller became or may become subject of seizure, execution measures or measures in the context of insolvency proceedings or other measures of this or similar nature. The Processor shall also immediately inform the Controller of any orders, audits or other inquiries by a supervisory authority or other authorities concerning the personal data of the Controller.

The Processor shall provide reasonable assistance to the Controller in defending claims for alleged or actual breach of data protection laws or in the event of any regulatory or other authority acting in connection with the processing of such data by the Processor or an authorised sub-processor.

The Processor shall assist the Controller in carrying out any data protection impact assessment, in particular provide the Controller with all information necessary for carrying out this data protection impact assessment. In the event that prior consultation of the supervisory authority is necessary (Art 36 GDPR), the Processor will assist the Controller to the extent possible in the consultation itself, but also already in the evaluation of whether consultation is necessary.

4. Processor's obligations after the end of the processing

After completion of the processing activities, the Processor shall – at the choice of the Controller - return the personal data to the Controller in a machine-readable format or delete them, unless there is a legal obligation for further storage.

5. Sub-processing

The Processor is generally entitled to engage another processor. The Processor will inform the Controller on any intended changes concerning the addition or replacement of any (sub-)processors, thereby giving the Controller opportunity to object to such changes. Such objection must be made in writing within ten (10) days after receiving the Processor's notification and must contain detailed reasons for the objection. In case of an objection, data processing will be limited - if possible - to processing activities not concerned by the change or addition. If limitation is not possible, provision of the Software must be ceased. If no objection is made on time, the change shall be considered as authorized. The sub-processors authorized initially are specified in **Exhibit 1**.

Pursuant to Art 28 para 4 GDPR authorised sub-processors must also comply with the requirements of this agreement, in addition to compliance with any EU standard contractual clauses that may have been concluded. The Processor has contractually imposed the obligations of this contract on all authorised sub-processors - in particular with regard to sufficient guarantees in connection with the necessary technical and organisational measures - and that he will immediately furnish proof of this to the responsible party upon request.

The Processor shall review and verify compliance of sub-processors with this Agreement on a regular basis. The Controller shall be entitled to obtain information on the essential content of the contractual basis between the Processor and its sub-processors, in particular with regard to the relevant data protection agreements.

6. Place of processing

Any processing by the Processor or any sub-processors pursuant to this agreement shall take place within the EEA or in jurisdictions with an adequate level of data protection which is guaranteed by a European Commission's adequacy decision or by other appropriate safeguards, such as standard contractual clauses.

In the event that the Processor or authorised sub-processor carries out processing activities outside the EEA, the Processor shall ensure that any necessary legal instruments (in particular standard contractual clauses) are concluded in good time.

7. Audit rights of the Controller

The Processor shall at all times ensure that the Controller is able to verify compliance with the Processor's obligations under this agreement. At the request of the Controller, the Processor shall once a year provide the Controller with all information necessary to demonstrate compliance with his obligations, esp. with regard to sub-processors by providing audit reports according to the standards and rules of the regulatory or accreditation body for each applicable control standard or framework. The Controller agrees to exercise any audit rights he may have pursuant to applicable legislation (e.g. the GDPR) by requesting an audit report as described.

If an audit report shows that the Processor (or sub-processor) does not comply with the provisions of the applicable data protection laws or this agreement, the Processor will immediately take all measures to remedy the situation.

8. Liability

Liability of the Processor is limited to damages caused by processing which did not comply with the Processor's obligations as a data processor pursuant to the GDPR and this agreement or where the Processor has acted outside or contrary to lawful instructions of the Controller.

9. Duration and termination

This agreement is valid for the time of the allowed use of the Software according to the Terms of Service in their current version.

10. General provisions

All costs in connection with the fulfilment of this contract shall be borne by each party itself.

Amendments and supplements to this contract, including its appendices, must be made in writing.

Should individual provisions of this contract be or become invalid, this shall not affect the validity of the remaining provisions. The ineffective provisions shall be replaced by the statutory provisions.

EXHIBIT 1 – Authorised sub-processors

Microsoft Corporation

One Microsoft Way
Redmond, Washington 98052
USA

including its sub-processors as stated in the Online Services Terms (OST) of Microsoft available at <https://www.microsoft.com/en-us/licensing/product-licensing/products>.