

TERMS AND CONDITIONS

1. Release and Assumption of Liability. USER, on behalf of itself and others claiming through it, hereby releases and discharges SCANNEXUS, its trustees, officers, agents and employees from, and agrees to assume full responsibility for, any damages, claims, losses, suits, costs and expenses (including but not limited to reasonable attorney's fees) on account of injury or death of any person or damage to property arising directly or indirectly from acts or omissions connected with the subject matter of this Agreement, or the use of the FACILITY and SERVICES by and/or the presence upon the SCANNEXUS BUILDING of USER, it employees, agents, and other acting through it or on its behalf.
2. Indemnification. USER agrees to indemnify, defend, and hold harmless SCANNEXUS and its trustees, officers, agents and employees, from and against any suits, claims, damages, losses, costs and expenses (including but not limited to reasonable attorney's fees) on account of injury or death of any person or damage to property arising directly or indirectly from acts or omissions arising out of or connected with the subject matter of this Agreement, or the use of the FACILITY and SERVICES by and/or the presence upon the SCANNEXUS BUILDING of the USER, it employees, agents, and others acting through it or on its behalf, even if such claims, damages, losses, costs and expenses are directly related to the acts, errors, negligence, or other wrongful conduct of SCANNEXUS, its trustees, officers, agents and employees with the exception of gross negligence or willful intent.
3. Data Acquisition by Staff. By prior arrangement with the management of SCANNEXUS, a SCANNEXUS staff member, that is, a member of the MRI Support Team (as defined in the enclosed Guidelines), may sometimes acquire data, process, modify, evaluate, etc. as part of USER’S ACTIVITY without USER personnel present. Such measurement, processing, etc. is only done on a best-effort basis, and the USER assumes all liability for all damages to the USER’S property, research program, etc. including but not limited to incidental and consequential damages. For data acquired, measured, processed, etc. by SCANNEXUS employees, SCANNEXUS waives the provision of USER indemnification for damage to SCANNEXUS FACILITY provided in paragraph 2 ‘Indemnification’.

Employees of a third-party (including Graduate or undergraduate students of an academic institution) who undertake sample processing for the USER either as part of subcontracted research or as implicit or explicit employees of USER are not regarded as SCANNEXUS staff for purposes of this clause.

1. Insurance. USER shall purchase and maintain at its sole expense and with an insurance company licensed to do business in the Netherlands, the following insurance coverage:

A. Liability Insurance for injuries to persons and property occurring on or about the FACILITY (including all entrances into the BUILDING), and including, without limitation contractual coverage for the foregoing indemnity contained in Section 2 of this Agreement in an amount of at least TWO MILLION EUROS (€2,000,000.00) per occurrence and FIVE MILLION EUROS (€5,000,000.00) aggregate, or such higher amount as SCANNEXUS may reasonably require in the future.

B. Experimental Subject Insurance

People taking part in research covered by the Medical Research Involving Human Subjects Act (WMO) have to be insured against any damage that might be caused by the research. A liability insurance does not suffice. The ethical review committee (“METC”) examines whether the insurer complies with the legally conditions, essentially on the basis of the insurance certificate. Insurance cover continues until four years after the end of the study. Exemption from insurance is possible under certain conditions. Parties wishing to be exempted from insurance must request this when submitting their application to the METC.

Said policies shall be in effect throughout the duration of this agreement and a copy of the policy or certification shall be delivered with this application.

1. Duty of Inspection. USER hereby acknowledges that it has inspected the FACILITY and the surrounding areas (collectively referred to as the "PREMISES"), and that by entering into this agreement acknowledges that the PREMISES are in satisfactory condition for use by USER. USER further acknowledges that during the term of this agreement it shall have a continuing obligation to inspect the PREMISES, and that the continued use of the PREMISES shall constitute an acknowledgment by USER that they are in satisfactory condition for use by USER. SCANNEXUS has made no representations to USER relating to the condition of its PREMISES except as provided in this Agreement. Additionally, USER accepts full and complete responsibility for the operation of the EQUIPMENT during said times USER is permitted use of the same, including but not limited to assuming responsibility for assuring that anyone using the EQUIPMENT through the USER is familiar with the operation of the EQUIPMENT and knows how to use it safely. USER further acknowledges that SCANNEXUS makes and has made no representation or claim as to the suitability or fitness of any EQUIPMENT, processes or practices available in its facilities for the uses, purposes, or requirements of the USER and that the duty to determine said fitness or suitability lies entirely with the USER. Safe usage of the FACILITY is described in the enclosed document “Guidelines and procedures for conducting Magnetic Resonance Imaging (MRI) experiments involving human subjects at Scannexus Scanning Facility (Oxfordlaan 55)”.
2. Drugs and Alcohol Prohibited. USER shall not possess or use alcoholic beverages and illicit drugs on the SCANNEXUS FACILITY.
3. Compliance with Laws and regulations. USER shall pay for and supply all requisite licenses and regulatory approvals (including but not limited to approval from an appropriate, certified Ethics Committee) it requires for the conduct of its ACTIVITY. It shall be the obligation of USER to assure that its use of the FACILITY, and its conduct of the ACTIVITY, complies with any and all conditions of all such licenses and with applicable laws, ordinances, regulations and orders of authorities (such as local/Dutch BROK certification). USER further agrees to comply with any SCANNEXUS rules provided to User or included within the enclosed Guidelines and regulations applicable to the use of the FACILITY and its activities under the ACTIVITY, as well as any applicable standards in the industry. USER agrees it is responsible for, and agrees to indemnify and hold SCANNEXUS harmless for and on account of any loss, cost, damage or expense, including, without limitation, reasonable attorney's fees, which SCANNEXUS may suffer or incur by reason of any such non-compliance. USER agrees to provide SCANNEXUS with copies of relevant regulatory approvals before commencing ACTIVITY.
4. Property Use Coordination. All scheduling must be coordinated with and approved by the SCANNEXUS MRI Support Team responsible for the FACILITY – according to the procedures set out in the enclosed Guidelines.
5. Repairs and maintenance. USER and SCANNEXUS shall comply with established Good Clinical Practice. USER shall not abuse the FACILITY, shall take good care of the PREMISES and shall keep the PREMISES in as good order, repair and condition, free of the accumulation of debris, dirt, litter and rubbish during the term of USER's use of the FACILITY as the same are at the commencement of said term or may be put during the continuation thereof, reasonable wear and tear excepted. USER shall not treat the FACILITY, or the remainder of the PREMISES in any manner to create either fire, health or liability hazards and shall use all reasonable precaution to prevent waste, damage, or injury to the FACILITY or any part thereof. In the event that the FACILITY, and/or the remaining portions of the PREMISES are damaged by the acts or omission of USER, its officers, servants, employees, authorized agents, licensees, or any other person or entity claiming by, through or under USER, SCANNEXUS shall repair said damage and shall be reimbursed for the cost of the same by USER. USER shall pay/reimburse SCANNEXUS for the cost of said repairs within thirty (30) days of the date of SCANNEXUS invoicing USER for the cost of said repairs. If USER shall become aware of any needed repairs, replacements or restorations to the PREMISES, notice shall be promptly given to SCANNEXUS by USER. There shall be no liability whatsoever upon SCANNEXUS arising out if its failure to make repairs in accordance with the provisions of this paragraph.
6. Publications and Publicity. The USER agrees to keep SCANNEXUS informed of the nature and progress of the ACTIVITY. The USER will acknowledge use of the SCANNEXUS FACILITY in publications or research reports and any contributions from SCANNEXUS employees will be recognized following the Vancouver Conventions for best practice in Academic authorship. The USER agrees not to use SCANNEXUS’ name, trademarks, logos, or like indicia, in connection with publication, advertising, marketing, or in any other matter without the prior written approval of SCANNEXUS.
7. Intellectual Property and Patent Rights. The primary purpose of the SCANNEXUS FACILITY is to provide a venue for MRI research. Recognizing, however that inventions and other results which are protected by intellectual property rights may be made under this agreement, the parties agree to the following:

* Any result created solely by the USER while using SCANNEXUS FACILITY , as well as the intellectual property rights in such result, shall be the property of the USER provided, however, that in the event such result constitutes an improvement to or new experimental techniques involving SCANNEXUS EQUIPMENT, the USER shall grant SCANNEXUS a royalty-free, non-exclusive license to use such inventions for the purpose of education and research, including the provision of FACILITY, EQUIPMENT and/or SERVICES to future USERS.
* If research is undertaken that is joint between the USER and a SCANNEXUS employee, that work must be covered under a different agreement that describes the ownership and revenue sharing arrangements between SCANNEXUS and USER for any intellectual property arising from that work.

1. Confidentiality. Each Party agrees and undertakes that during the Term and thereafter it will keep confidential and will not use for its own purposes except for the performance of this Agreement nor, without the prior written consent of the other Party, disclose to any third party, any Confidential Information of the other Party which may become known to it unless such information:

* is public knowledge or already known to such receiving Party at the time of disclosure other than by previous disclosure by the disclosing Party, as evidenced by written records of the receiving Party at the time of the disclosure; or
* subsequently becomes public knowledge other than by breach of this Agreement; or
* subsequently comes lawfully and in good faith into the possession of such receiving Party from a third party without an obligation of confidentiality, and so far as such receiving Party is aware such third party did not derive it directly or indirectly from the disclosing Party; or
* is independently developed by a receiving Party without the use of the disclosing party’s Confidential Information.

A. All Confidential Information will be identified as such in writing prior to or at the time of written disclosure, or within five working days of oral disclosure.

B. To the extent necessary to implement the provisions of this Agreement and conduct the ACTIVITY under this Agreement, SCANNEXUS may disclose the Confidential Information of the USER to such of its employees, sub-contractors and/or agents as may be reasonably necessary provided that before any such disclosure SCANNEXUS shall make such employees, sub-contractors and/or agents aware of its obligations of confidentiality under this Agreement, and that SCANNEXUS shall be responsible for any breach of such obligation of confidentiality by its employees, sub-contractors and/or agents.

C. Each Party may disclose Confidential Information to the extent it is required to do so by law, regulation or legal process to a governmental authority or by order of a court of competent jurisdiction, provided that such Party shall make reasonable endeavours to ensure that such disclosure is subject to all applicable governmental or judicial protection available for like material and reasonable advance notice is given to the other Party (if permitted by the relevant law).

D. All obligations of confidentiality under this Agreement will terminate five (5) years after the end of the Term.

1. Data Protection. Each Party shall comply with the Dutch and EU Data Protection Legislation in respect of any processing of data.
2. USER Assignment. USER is prohibited from assigning the rights conferred pursuant to this Agreement for any purpose or function without the written consent of SCANNEXUS. In the event of any such assignment, all of the terms and conditions of this Agreement shall be binding upon the assignee as they are to USER.
3. SCANNEXUS Assignment. With prior agreement of the USER, SCANNEXUS may sub-contract specific components of the ACTIVITY described within this Agreement to a third-party. In the event of any such assignment, all of the terms and conditions of this Agreement shall be binding on the assignee as they are to SCANNEXUS.
4. Default. SCANNEXUS shall have the unilateral and unrestricted right to cancel the ACTIVITY, terminate this Agreement, and terminate SCANNEXUS’ obligations hereunder, without liability to USER and without prejudice to SCANNEXUS’ other rights and remedies, and without relieving USERS of its obligations and duties under this agreement, if USER shall fail to make payment when due or in the case of USER's failure to perform and observe all the covenants and agreements contained in this Agreement and fails to repair such breach within ten (10) days after notification by SCANNEXUS. Upon termination of this agreement, USER shall immediately vacate, quit and surrender its rights to the use of the FACILITY for the ACTIVITY, remove all its items and possessions from the FACILITY, and return to SCANNEXUS all items belonging to SCANNEXUS. User shall have the right to terminate this agreement, without liability to SCANNEXUS, in case of breach by SCANNEXUS of any obligation in this agreement which SCANNEXUS fails to repair within 10 days after notification by SCANNEXUS.
5. Term and Termination. This Agreement will become effective on the date of the last signature below and is entered into for the period described in Article 4 (“ Term”). SCANNEXUS and the USER shall each have the right to cancel the ACTIVITY, terminate this Agreement, and terminate the parties obligations hereunder for valid reasons of good cause upon giving of thirty (30) days’ notice of termination to the other party, provided however that obligations pursuant to Articles 1, 2, 3, 4, 10, 11, 12, 13, 18, 19 and 20 of this agreement shall survive any such termination/expiration of the agreement. Upon termination of this agreement, USER shall immediately vacate, quit and surrender its rights to the use of the Facility for the ACTIVITY, remove all its items and possessions from the FACILITY, and return to SCANNEXUS all items belonging to SCANNEXUS. In the event of termination pursuant to this Article 17, USER shall be obligated to make payment for fees pro-rated as of the date of termination.
6. Limitation of SCANNEXUS' Liability. Any liability of SCANNEXUS to USER arising out of this Agreement or SCANNEXUS’ performance or non-performance of its obligations hereunder, whether such liability is based on warranty, negligence, strict liability or otherwise, shall be limited to the amount of the fees to be paid pursuant to Paragraph 8.a. hereof. SCANNEXUS shall not be liable to USER for loss of anticipated profits, loss resulting from the cancellation/termination of this Agreement or USER's inability to use the PROPERTY, or incidental or consequential loss or damage of any nature arising from any cause whatsoever. This limitation of liability does not apply in case of breach of article 20, intent or gross negligence by SCANNEXUS.
7. Integration. SCANNEXUS and USER acknowledge that this Agreement supersedes and merges all prior proposals, understandings, and agreements, oral and/or written between the parties relating to the ACTIVITY. This Agreement may not be modified or altered except by a written instrument executed by authorised representatives of both parties.
8. Governing Law & Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of The Netherlands and that any and all proceedings relating to the subject matter hereof shall be maintained exclusively to the court of Limburg., the Netherlands..
9. Cumulative Remedies. The remedies expressly provided in this Agreement to SCANNEXUS shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of SCANNEXUS now or hereafter existing at law or equity.
10. Waiver. Parties agrees that the failure of the other party to insist in any one or more instance upon the strict and literal performance of any of the covenants, terms or conditions of this Agreement shall not be construed as a waiver for the future of such covenant, term, or condition, but the same shall continue and remain in full force and effect. No waiver of any covenant, term or condition shall be deemed to have been made by a party, unless made or acknowledged in writing by an authorised representative of such party.
11. Severability. If any provision of this Agreement is held invalid, illegal or otherwise unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.