

Nicolab Terms and Conditions

Last modified: 17th of May 2024

The Nicolab Terms and Conditions form an integral part of the Agreement between Customer and Nicolab, under which Nicolab provides its Saas (software as a service) image processing application StrokeViewer to the Customer. For the purposes of these Terms and Conditions, the contractual counterparty is the Nicolab entity with whom the Customer has concluded the Proposal. Hereinafter Nicolab and Customer may also be jointly referred to as “Parties” and individually as “Party”.

1. APPLICABILITY

- 1.1.** These Terms and Conditions are part of all agreements and apply to any relevant and prior acts or legal acts by Nicolab and the Customer.
- 1.2.** In case of inconsistency between any documentation, priority shall be given to the following documents in the order listed: (1) the Proposal, (2) the Data Processing Agreement and (3) the Terms and Conditions (4) the SLA and (5) the Implementation Plan.
- 1.3.** The applicability of Customer’s general terms and conditions, by whatever name, is explicitly rejected by Nicolab.

2. DEFINITIONS

Addendum:	an addendum to the Agreement in which amendments and/or additions and/or deviations to the Agreement are agreed upon between the Parties;
ADFS environment:	Active Directory Federation services, provides authentication and user access to systems and applications located outside an organization's boundaries;
Agreement:	includes the Proposal, the Data Processing Agreement and these Terms and Conditions, as updated from time to time as described herein;
CT:	Computed Tomography;
CTA:	Computed Tomography Angiography;
CTP:	Computed Tomography Perfusion;
Customer:	the customer as detailed in the Proposal, who wishes to make use of Nicolab’s StrokeViewer;
Data Processing Agreement:	the agreement entered into by the Parties that regulates the processing of personal data by Nicolab within the meaning of article 28 (3) of the GDPR;
Data Protection Laws:	means all applicable laws and regulations from time to time in force relating to the protection of personal information, including (where applicable) the “GDPR” General Data Protection Regulation in the European Union, “UK-GDPR” General Data Protection Regulation in the United Kingdom and Data Protection Act (DPA) 2018, “HIPAA” Health Insurance Portability & Accountability Act in the United States of America, Privacy Act 1988 of Australia, Privacy Act 2020 of New Zealand, New Federal Act on Data Protection (nFADP)

Implementation Plan:	of Switzerland, Thailand Personal Data Protection Act and the Personal Data Protection Act of Taiwan; plan for the implementation of StrokeViewer and overview of the related responsibilities of the Parties;
Initial Duration:	the license period for the use of Nicolab's StrokeViewer as set out in the Proposal;
Nicolab:	the Nicolab entity, being the contractual counterparty with whom the Customer has concluded the Proposal;
Proposal:	the proposal between Nicolab and Customer detailing the specific terms relating to products, fees, license period and any other Customer specifics;
Result(s):	result(s) of the StrokeViewer Algorithms after analyzing scans, including the visualizations;
SLA:	Service Level Agreement;
StrokeViewer:	the cloud-based solution offered by Nicolab supported by artificial intelligence, with the aim of assisting medical specialists in quickly making the right treatment choice in acute stroke care;
StrokeViewer Algorithm(s):	computational process used to analyze, enhance, transform and modify brain scans. It involves a series of steps with the goal of generating useful information from the input of brain scans;
StrokeViewer Training Document:	document signed by Parties when implementation and required training for StrokeViewer is complete;
Terms and Conditions:	these Nicolab terms and conditions, that apply between the Parties, as set out in this document;
Update(s):	a modification to existing StrokeViewer Algorithms, products and features that fixes bugs, improves performance or enhances security;
Upgrade(s):	new StrokeViewer Algorithms, products and features, additional costs might be applicable;
Viewer:	certified diagnostic viewer of DICOM images, including connected DICOM file database or DICOM file repository of StrokeViewer;

3. FORMATION OF THE AGREEMENT

- 3.1.** Nicolab will provide the Customer with the Proposal, the Data Processing Agreement and these Terms and Conditions. Customer enters into the Agreement by signing the Proposal and returning it to Nicolab. The date of the last signature of the Proposal will be the date the Agreement enters into force.
- 3.2.** Quotes and/or (price) offers impose no obligation to proceed with any business transaction and can only be considered as an invitation to negotiate. The Agreement shall not be deemed concluded until the Parties have signed the Proposal.

4. RIGHT OF USE

- 4.1. Nicolab provides Customer with a revocable, non-exclusive, non-transferable, right of use of StrokeViewer, which is exclusively intended for internal use at Customer under the scope established in article 5.
- 4.2. This right of use can only be used (without further notice) for the duration of the Agreement.

5. SCOPE OF SERVICES

- 5.1. Under the scope of services, the Customer may only use StrokeViewer in the acute clinical setting. StrokeViewer functionalities include push notifications on mobile devices (iOS, Android), (mobile) DICOM viewer, network-wide image sharing, chat feature and automatic analysis of images using StrokeViewer Algorithms. The following StrokeViewer Algorithms are included under the Agreement: occlusion detection and localization on CTA (StrokeViewer LVO), detection/quantification of blood in the brain on non-contrast CT (StrokeViewer Hemorrhage), automatic assessment of collaterals status on CTA (StrokeViewer Collaterals), ASPECTS calculation on non-contrast CT and automatic assessment of core/penumbra on CT perfusion (StrokeViewer Perfusion).
- 5.2. Additionally, in the event that 2FA is not available at Customer, Nicolab can provide Customer with User Management Services (hereinafter "UMS") as set out in Attachment 1. Additional costs might be applicable for this service. In such a case, the UMS are provided as an integrated component of the services offered by Nicolab.
- 5.3. Updates of StrokeViewer regarding algorithm improvements and security patches also fall under the scope of services as described in article 5.1. Upgrades regarding potential future functionalities and analyses do not fall under this scope of services by default, and therefore additional costs might be applicable.
- 5.4. The responsibilities of the Parties with respect to the implementation of StrokeViewer are set forth in the Implementation Plan, which will be separately provided by Nicolab.
- 5.5. Nicolab reserves the right to anonymize data for the purposes of proactively monitoring the quality, reliability, security of the product, as well as for product development purposes and for modifying, adjusting, testing and/or improving StrokeViewer and the services, wherever it does not contradict any Data Protection Laws.
- 5.6. The scope of services also includes evaluation discussions between Parties, initiated by Nicolab, which will take place after implementation of StrokeViewer. Such discussions may include, but are not limited to, evaluation of existing or future products and user interface features, algorithms under development, and additional analysis of data covered under the terms of the Data Processing Agreement. Activation and provision of new features for evaluation purposes shall be done in accordance with agreements reached by Nicolab and Customer's key users.
- 5.7. In the context of the provision of services, a separate SLA will be separately provided by Nicolab.

6. PAYMENT AND BILLING

- 6.1. Nicolab shall issue the Customer with an invoice for each payment. All invoices will be provided in English.
- 6.2. All amounts and fees stated or referred to in the Agreement are exclusive of VAT, which shall be added to the Customer's invoice at the applicable rate.
- 6.3. Nicolab shall apply annual price indexation in accordance with the consumer price index of the country where Customer is located.

- 6.4. Payments will be made in accordance with this article and the payment schedule as mentioned in the Proposal.
- 6.5. The payment term is standard and within thirty (30) days of the invoice date.
- 6.6. Any objections from Customer regarding the amount of the invoice shall not exempt the Customer from its payment obligations.
- 6.7. If the payment from Customer is not made within the indicated payment term of thirty (30) days after the invoice date, Customer will be in default automatically without further notice of default being required. Customer will then also be liable for statutory commercial interest, which will be calculated on the amount due from the time that Customer is in default until the time that the full amount due is paid by Customer.
- 6.8. If Customer is in default, or in default with regard to the payment of Nicolab's due claim, all reasonable costs incurred by Nicolab in order to obtain out of court settlement shall be borne by Customer.

7. TERM AND END OF AGREEMENT

- 7.1. The Agreement shall enter into force on the date of last signature of the Proposal, hereinafter "Effective Agreement Date".
- 7.2. The commencement date for the use of StrokeViewer is the date of signature of the StrokeViewer Training Document, hereinafter "Effective Services Date".
- 7.3. The Agreement is entered into for the Initial Duration, with Effective Services Date being the commencement date of this period, and shall thereafter be automatically renewed for subsequent periods of one (1) year.
- 7.4. Upon expiry of the Initial Duration of the Agreement, the Parties are entitled to terminate the Agreement by giving six (6) months written notice.
- 7.5. Either Party has the right to terminate the Agreement with immediate effect (in whole or in part) without judicial intervention by means of a written notice, without incurring any liability to the other Party and without prejudice to any other right of the Party invoking the termination, if any of the following circumstances occurs:
 - a) The bankruptcy of the other Party is filed;
 - b) The other Party is declared bankrupt;
 - c) The other Party is granted a suspension of payment (temporarily or otherwise);
 - d) The enterprise of the other Party is terminated.
- 7.6. In all other cases, a Party shall only be entitled to terminate the Agreement if the other Party breaches to perform one or more material provisions of the Agreement and, after having been given a proper written notice of default which is as detailed as possible and which sets a reasonable term for remedying the breach, fails to remedy the breach.

8. STROKEVIEWER AVAILABILITY

- 8.1. Nicolab strives to improve StrokeViewer, as needed. Nicolab therefore reserves the right to update StrokeViewer and/or modify its related instructions and documentation, proactively resolve bugs and other potential issues to ensure the optimal service for Customer, when deemed necessary by Nicolab. Nicolab will make every effort, in the event of the implementation of a substantial Update and/or a substantial modification of the related instructions and documentation, to inform the Customer in a timely manner of its expected impact and the corresponding maintenance windows.
- 8.2. Nicolab will take into account the wishes of the Customer as much as possible in scheduling maintenance windows.

- 8.3.** If the Update(s) and/or modification(s) has a serious adverse impact on Customer's use of StrokeViewer, Customer will inform Nicolab of this as soon as possible and give Nicolab the opportunity to remedy this. If it appears that Nicolab is unable to remedy the serious adverse impact and the serious adverse impact is of such nature that Customer can no longer reasonably be expected to continue using StrokeViewer, Customer may terminate the Agreement in writing with due observance of the notice period in article 7.
- 8.4.** When Customer communicates suggestions and/or improvements to Nicolab regarding StrokeViewer, during or after the end of the Agreement, Nicolab is free to apply the suggestions and/or improvements in StrokeViewer or other products and/or services to be developed, without Customer being asked for permission or being able to derive rights or compensation from this.

9. WARRANTIES AND LIABILITY

- 9.1.** StrokeViewer is delivered in its current state ('as is'). Nicolab expressly disclaims all warranties, whether implied, or explicit, of any kind, with regard to StrokeViewer, or the results arising from StrokeViewer (including any "fit for use" warranty).
- 9.2.** Under no circumstances is Nicolab liable for (in)direct, incidental, or exemplary damages, or consequential damages, including claims from third parties, lost profit and missed savings, arising from or in connection with the (incorrect) use of StrokeViewer, or an (incorrect) medical judgment using the results displayed by StrokeViewer. This includes any third party claims, loss of profit or lost savings.
- 9.3.** Customer guarantees that it is aware of the provisions set forth in article 9.2 and thereby guarantees (therefore) that it will not base any (medical) decision (solely) on StrokeViewer. In addition, Customer fully guarantees and acknowledges that StrokeViewer is intended solely and exclusively to support the professional and medical knowledge of those (employees and third parties) that Customer engages in the use of StrokeViewer.
- 9.4.** Nicolab is willing to accept the liability with a maximum of €2.500.000.

10. (INTELLECTUAL) PROPERTY

- 10.1.** StrokeViewer, its instructions and documentation on and all intellectual property rights thereof, including, but not limited to, copyright, trade secrets, patents, design rights, trademarks and database rights, are and will remain the exclusive property of Nicolab.
- 10.2.** Nicolab is the sole owner of the intellectual property rights related to StrokeViewer and all associated materials including but not limited to the StrokeViewer Algorithms and look and feel of StrokeViewer related to the scans uploaded by Customer under the Agreement.
- 10.3.** Customer will use the Results solely for internal use under the scope established in article 5 and not for product improvement, internal research and development, or other purposes. Customer is not permitted to use StrokeViewer and/or the Results in scientific studies and/or publications without prior written permission from Nicolab.
- 10.4.** No other right(s) and/or title is granted to Customer than provided for in the Agreement.

11. RESTRICTIONS OF USE

- 11.1.** Customer shall not use, attempt to use, apply, or authorize a third party to use StrokeViewer and its related instructions and documentation in any manner other than as expressly permitted and prescribed under the Agreement.
- 11.2.** Customer is expressly prohibited from copying, modifying, distributing, making available to third parties, transferring, renting, damaging, impairing, or attempting to discover the source code and create derivative works of StrokeViewer and its related instructions and documentation, either in part or in whole.

- 11.3.** Customer will refrain from removing Nicolab's trademark, trade name, copyrights or any copyright designation with regard to StrokeViewer and its related instructions and documentation.
- 11.4.** Customer is liable for the consequences of actions by persons whom Customer provides access to StrokeViewer by granting authorization.
- 11.5.** Customer further undertakes to take adequate technical and organizational security measures so that (internal) unauthorized persons cannot use, or misuse, or access StrokeViewer. In line with the requirements of ISO information security, Customer ensures that user authentications take place according to 2 factor authentication (2FA) within the ADFS environment or a similar system. This allows users to securely and quickly access StrokeViewer from their (mobile) devices. In the event that 2FA is not available at Customer, Customer will be provided with UMS by Nicolab, additional costs might be applicable.
- 11.6.** To ensure speed within the clinical workflow, it is required that the patient scans are automatically forwarded to StrokeViewer so that no additional manual action is needed.
- 11.7.** In the event that Customer does not take adequate technical and organizational security measures (including but not limited to articles 11.5 and 11.6) according to the standards of the applicable Data Protection Law(s) or attempts to violate the security measures put in place by Nicolab, or acts in conflict with the obligations imposed on Customer under the Agreement, Customer will be fully responsible for the related consequences and privacy violations. In that case, Nicolab reserves the right to block or suspend the use of StrokeViewer and/or terminate the Agreement immediately.
- 11.8.** Nicolab guarantees that third parties, other than the authorized users of Customer and Nicolab within the scope of the Agreement, will not be able to use (whether or not) anonymized (whether or not) processed patient scans of Customer that are saved or have been saved in Viewer and/or StrokeViewer, without Customer's express written permission.

12. CONFIDENTIAL INFORMATION AND MEDICAL DATA

- 12.1.** Parties are obliged to keep confidential information received from the other Party secret and not to make it available to third parties without the prior written consent of the other Party. This obligation shall not apply to information which the receiving Party demonstrates is (i) in the public domain; (ii) in its possession prior to the Agreement; (iii) received by it from a third party without breach of an obligation of confidentiality to the other Party; (iv) independently developed by it and that independent development can be demonstrated by documented evidence; (v) required to be disclosed by law, by a court of competent jurisdiction or by any other regulatory authority.
- 12.2.** Customer acknowledges that StrokeViewer and its related instructions and documentation contain valuable trade secrets and/or confidential information of Nicolab.
- 12.3.** Customer will take adequate technical and organizational security measures to prevent a possible violation of Nicolab's trade secrets and confidential information and to this end will limit the dissemination of confidential information from Nicolab to those who should become aware of it by virtue of their involvement in the use of StrokeViewer and guarantees that those it engages in the use of StrokeViewer (employees and third parties) have committed in writing to confidentiality of confidential information prior to becoming aware of it.
- 12.4.** Nicolab's StrokeViewer processes medical data of patients of Customer for Customer, for which Parties have a separate Data Processing Agreement in place.

13. DISPUTE RESOLUTION AND APPLICABLE LAW

- 13.1.** The Agreement shall be governed and construed solely in accordance with the laws of the country in which Nicolab is located, and the Parties irrevocably submit to the jurisdiction of the courts of that country and to the appeal courts from them.

14. AMENDMENTS & SEVERABILITY

- 14.1.** Nicolab reserves the right, in its sole discretion, to amend or update these Terms and Conditions at any time. Nicolab will notify the Customer of updates with notifications to Customers who have provided their email address for such purpose and by posting the update of the Terms and Conditions on www.nicolab.com. The Customer should review these Terms and Conditions periodically.
- 14.2.** An amendment to these Terms and Conditions shall become effective thirty (30) days after notifying the Customer. If Customer does not consent to an amendment notified by Nicolab, the Customer shall inform Nicolab thereof in writing no later than thirty (30) days after receiving the notification of the amendment.
- 14.3.** If one or more provisions (or part of a provision) in the Agreement are found invalid, to be unenforceable or illegal by any court or administrative body of competent jurisdiction, the other provisions shall remain in force.
- 14.4.** If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the intention of the Parties.

15. OTHER REQUIREMENTS

- 15.1.** Notifications given by the Parties under the Agreement must be provided exclusively in writing.
- 15.2.** Any verbal promises and agreements shall have no effect unless confirmed in writing by Parties.
- 15.3.** Parties agree that the Proposal and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on the Proposal or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
- 15.4.** The failure of a Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 15.5.** Provisions which by their nature are intended to continue even after the termination or expiry of the Agreement will remain in force.

Attachment 1 – User Management Services

1. User Management Services description

- 1.1** The UMS provides a comprehensive identity and access management solution for Customer, enabling secure user registration, authentication, and authorization. It offers features such as user profile management, identity verification with multi-factor authentication, and role-based access control. The UMS aims to streamline onboarding, enhance security, and improve user experience.

2. User registration and authentication

- 2.1** To access the UMS, Customer must complete the registration process by providing accurate and up to date information. It is solely and exclusively the responsibility of Customer to provide Nicolab with a list of (internal) authorized persons who need to be able to use and access StrokeViewer. In the event that the list of (internal) authorized persons needs to be modified, it is solely and exclusively the responsibility of Customer to provide these updates to Nicolab timely, by emailing to itsupport@nicolab.com.
- 2.2** Users are required to create a unique username, which should be their email address, and set a password that meets the specified complexity requirements. Additionally, to ensure enhanced security, multi-factor authentication is mandatory and must be enabled by all users.

3. Liability

- 3.1** In case Customer fails to meet its responsibilities as described in article 2 in this Attachment 1, and as a consequence unauthorized persons can use, misuse or access StrokeViewer and relevant personal data, Nicolab is indemnified from any liability and cannot be held accountable for any damages suffered as a result.

4. Data collection and usage

- 4.1** During the registration process and subsequent use of the UMS, certain user data will be collected, including but not limited to name, email address, mobile number, and user preferences. This data is collected solely for the purpose of providing and improving the UMS, enhancing user experience, and ensuring the security of user accounts. Nicolab is committed to protecting user data and adheres to applicable data protection laws and regulations.

5. Privacy and security

- 5.1** Nicolab respects user privacy and employs industry-standard security measures to safeguard user data. All collected user data is stored securely and is accessed only by authorized personnel for legitimate business purposes. Nicolab may use anonymized and aggregated data for analytical and statistical purposes, ensuring individual user privacy is maintained. Nicolab will not disclose user data to third parties unless required by law or with the explicit consent of Customer.

6. Intellectual property

- 6.1** The UMS, including all associated trademarks, copyrights, patents, and intellectual property rights, are owned by Nicolab. Customer acknowledges and agrees that they do not acquire any ownership rights or licenses to the UMS, except as expressly granted in this Attachment 1. The Customer shall not reproduce, modify, distribute, or create derivative works based on the UMS.