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Terms and Conditions of Sale

1. Definitions and Interpretation

- 1.1 This Agreement is made up of (i) the Purchase Order, (ii) the Terms and Conditions, and (iii) the Schedules.
- 1.2 If there is any conflict or ambiguity between the terms of the documents listed in Section 1.1, a term contained in the higher list will have priority over one listed in a document lower in that list to the extent of the conflict, provided that terms of the EULA shall always prevail over any other term of this Agreement to the extent of the conflict.
- 1.3 Section, Schedule and paragraph headings in this Agreement are intended strictly for convenience and shall not affect the interpretation of this Agreement.
- 1.4 The defined terms shall have the meanings given in Schedule A.
- 1.5 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.6 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.7 A reference to writing or written includes emails.

2. Supply of Solution

2.1 Subject to the terms of this Agreement, the Company shall provide the Solution, as set out in the Purchase Order.

3. Price and Terms of Payment

3.1 The Buyer shall pay the Company the price quoted in the Purchase Order (the “Fees”) on the date of shipment. Fees are exclusive of VAT, GST, sales, use, and excise taxes, and any other similar taxes.

3.2 All payments due under this Agreement shall be made in the currency specified in the Purchase Order by automatic bank draft or such other means as specified by the Company, immediately upon receipt of the Company’s invoice.

3.3 Default interest shall be due on the amount stated in the demand as from the invoice date at the rate of 3% per annum above the current discount rate of the major banking institution of the country in the currency of which the amount has been invoiced. Such interest shall accrue on a daily basis from the due date until the actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount. The Buyer shall be responsible and liable for all expenses incurred by the Company in collection of any overdue

amounts and interest, including reasonable legal fees.

3.4 The Company may suspend performance of this Agreement if the Buyer's account with the Company is past due or the Buyer otherwise is in breach of this Agreement. The Company may also reject any future or pending purchase orders while the Buyer's account is past due.

3.5 Any payments made by the Buyer under this Agreement shall be made without set-off, deduction or other withholding (except for tax withholding, if applicable, and to the extent required by law and not reduced by means of certificates or clearance). In addition to the payments under this Agreement, the Buyer shall be responsible for and pay all required import/export duties, licences, charges, levies, assessments and other fees of any kind imposed, if applicable, on the purchase or import/export of the Solution.

4. Delivery Shipping Charges and Taxes

4.1 The Company shall deliver the Devices following DAP incoterms. If the preceding sentence refers to Incoterms, these delivery terms shall be construed in accordance with the Incoterms as in force at the date when this Agreement came into effect. All delivery and completion dates are approximate and the Company shall not be responsible for any damage of any kind resulting from any delay.

4.2 Delivery of the Application Plans shall be made to the Buyer by provision of an Activation Key, which following activation will associate the Application Plan to the Solution. Delivery shall be deemed to have been made, upon Installation.

4.3 The Buyer shall be responsible for and pay to the Company, separate charges for shipping and handling if the Purchase Order provides that freight is excluded or separate shipping and handling charges are otherwise set forth in the Purchase Order.

4.4 The Buyer shall be responsible for and shall pay to the Company, or if requested by the Company, directly to the taxing authority, all applicable taxes, fees, levies, imports, duties, withholdings and other charges (including any interest and penalties thereon), if any, imposed by any taxing authority by reason of the sale and delivery of the Solution or any part thereof.

5. Installation and Initial Training

5.1 If indicated in the Purchase Order, the Company or an agent authorised by MSD Animal Health Intelligence will install the Solution ("**Installation**") and perform other introductory services as set forth in the Purchase Order. The Company may decide from time to time to offer additional services to the Buyer for an additional fee, which fee shall be invoiced separately, and such offer will be communicated to the Buyer at the time of offer.

5.2 If indicated in the Purchase Order, the Devices will be inspected by the Company at installation, and the Company will repair or replace any Devices with Defects at no charge.

6. Buyer Responsibilities

6.1 The Buyer shall be responsible for, at its own cost, all pre-requisites notified to it by the Company in respect of the Solution including high-speed internet access at its premises during Installation and from time to time to allow the MSD Animal Health Intelligence to perform

support and remote maintenance as provided for in this Agreement.

6.2 The Buyer shall provide the Company with all such assistance as the Company may reasonably request from time to time in order for the Company to perform its obligations under this Agreement.

7. Software Fixes and Upgrades

7.1 Except for necessary security upgrades and software fixes, the Buyer will not be entitled to Software upgrades unless the Buyer pays an additional fee, which fee shall be invoiced separately, and communicated to the Buyer at the time the Company offers any such Software upgrades

8. Warranty

8.1 Subject to the terms of this Agreement, the Company warrants to the Buyer that each Device as delivered to the Buyer under this Agreement shall be free from Defects during the applicable Warranty Period (such warranty, the “**Limited Warranty**”). For the avoidance of doubt, the Limited Warranty only applies to Devices manufactured by the Company. Any Devices manufactured by a third party vendor will be governed by the warranty provided from such third party vendor.

8.2 With respect to the Limited Warranty for Neck Tags, and not including Neck Tag Accessories, the Buyer may purchase from the Company, at least sixty (60) days prior to the expiration of the applicable Warranty Period, an extension of two (2) years (the “**Neck Tag Extension**”) at a price determined by the Company in its sole discretion. If the Buyer purchases the Neck Tag Extension in accordance with this Section 8.2, the Limited Warranty for Neck Tags, not including Neck Tag Accessories, shall be effective for two (2) years following the

expiration of the applicable Warranty Period.

8.3 The Company shall not be liable for a breach of the Limited Warranty if (i) the Defect arose because the Buyer or any person authorised by the Buyer failed to follow the Company’s instructions as to the storage, installation, commissioning, use, or maintenance of the Solution, (ii) the Devices have been serviced, altered, or repaired by anyone not certified by the Company or MSD Animal Health Intelligence to provide such service, or (iii) the Devices were damaged as a result of an accident, improper use, negligence, or modifications made to the Devices without the authorisation of the Company.

8.4 To make a claim under the Limited Warranty, the Buyer shall (i) notify the Company of the suspected breach of the Limited Warranty within the applicable Warranty Period, with such notice including all such information as may be requested by the Company in accordance with its warranty procedures from time to time, (ii) at the Buyer’s cost, return the relevant Devices to the Company at such location as specified by the Company in accordance with its warranty procedures from time to time, and (iii) comply with the Company’s directions in relation to the storage, handling and transportation of the relevant Devices (including in respect of any disassembly and cleaning of the Devices).

8.5 The Buyer’s sole remedy and the Company’s sole liability for a breach of the Limited Warranty, at the Company’s option, is to (i) repair or replace the malfunctioning Device(s) with a similar item at no charge, or (ii) refund the purchase price of the applicable Device, pro-rated for the duration left on the

Warranty Period at the time the Company was notified of the Defect.

8.6 Other than the Limited Warranty and express terms of the EULA, any Solution support, maintenance and service provided by the Company to the Buyer shall be outside the scope of this Agreement and shall be provided at the Company's then current rates.

9. Title and Risk

9.1 Title to the Devices purchased by the Buyer under the Purchase Order (excluding any Intellectual Property Rights), shall pass to the Buyer upon satisfaction of full payment under the Purchase Order. Prior to such payment, title of the Devices shall remain with the Company.

9.2 Risk of loss and damage regarding such Devices shall pass to the Buyer upon delivery.

10. Intellectual Property

10.1 The Buyer may use the Solution only in accordance with and subject to the provisions of the EULA and subject to the terms of this Agreement.

10.2 The Buyer acknowledges the Company and/or MSD Animal Health Intelligence retains exclusive right, title and interest in any and all Intellectual Property Rights in and to the Solution and Data ("**MSD Animal Health Intelligence IP**").

10.3 The Buyer acknowledges that it has no (and shall not acquire any) rights, title or interest to the MSD Animal Health Intelligence IP, apart from the right to use such MSD Animal Health Intelligence IP with regard to the Solution, as expressly stated in this Agreement.

11. Termination

11.1 This Agreement shall commence on the Effective Date and shall continue until terminated as set forth herein.

11.2 The Company shall have the right to terminate this Agreement if the Buyer breaches this Agreement.

11.3 The Company shall have the right to terminate this Agreement if the Buyer is unable to pay its debts when due, or becomes insolvent, or is subject to an order or resolution for its liquidation, winding-up or dissolution (other than for the purpose of solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

11.4 If the Buyer is a natural person (and not, for the avoidance of doubt, any company, association, organization, governmental body, or other entity) (an "**Individual Consumer**"), such Individual Consumer may terminate this Agreement without cause upon written notice to the Company during the Cancellation Period. In the event that the Individual Consumer exercises his or her right to terminate this Agreement pursuant to this Section 11.4, such Individual Consumer shall promptly return to the Company, at such Individual Consumer's sole cost, all Devices the Individual Consumer purchased under this Agreement. Upon receiving such Devices, the Company shall refund the Individual Consumer the Fees actually paid to the Company as of the date of such cancellation, subject to a deduction determined by the Company for any loss of value to the Devices that occurred while in the Individual Consumer's (or its successor's or assign's) possession.

11.5 Upon termination of this Agreement, the following provisions shall apply: (i) all outstanding amounts payable by the Buyer shall become immediately due and payable, and (ii) if this Agreement is terminated under Section 11.2, the Buyer's entitlement to any licence or any MSD Animal Health Intelligence IP under this Agreement shall terminate and the Buyer shall discontinue all further use of the Application Plans and Deliverables.

11.6 Termination or expiry of this Agreement shall not affect the accrued rights and obligations of the parties as at the date of termination or expiry.

11.7 Sections 8.4, 10.2, 10.3, 11.4, 11.6, 11.7, 12, 13, 14, 16 shall survive the termination or expiration of this Agreement.

12. Indemnification

12.1 The Buyer shall indemnify and hold harmless, and at the Company's option, defend the MSD Animal Health Intelligence Group, together with each of the MSD Animal Health Intelligence's managers, successors, employees, agents, directors, officers, and stockholders (each, an "**MSD Animal Health Intelligence Indemnitee**") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, settlements, judgments, awards, penalties, interest, fines, costs, fees and expenses of whatever kind, including reasonable attorneys' fees, incurred by an MSD Animal Health Intelligence Indemnitee arising out of or resulting from any demand, suit, action, investigation, allegation, complaint or any other proceeding, including those brought or asserted by a third party (including any governmental agency, entity or organisation) in connection with or otherwise related to, directly or indirectly (i) physical injury to or death of any person or damage to tangible

property arising from any of the Buyer's acts or omissions, (ii) the breach or the alleged breach of any of the Buyer's representations, warranties, or obligations contained in this Agreement, or (iii) any information, data, reports, documents or materials supplied by the Buyer.

13. Limitation of Liability

13.1 Nothing in this Agreement will limit or exclude the Company's liability for, (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable), (ii) fraud or fraudulent misrepresentation, or (iii) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

13.2 Subject to Section 13.1, the Company shall not be liable (whether in contract, tort (including negligence) or otherwise) to the Buyer for any (i) indirect, special or consequential damages, or (ii) any loss or damage to business earnings, lost profits or goodwill and lost or damaged data or documentation arising out of or in connection with this Agreement.

13.3 Subject to Section 13.1 and 13.2, the maximum aggregate liability of the Company arising out of or in connection with this Agreement whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to the greater of (i) the amount of the total Fees paid to the Company by the Buyer under this Agreement, and (ii) EUR 10.000.

13.4 Unless otherwise expressly stated in this Agreement and subject to Section 13.1, (i) the Company makes no warranties, express or implied with respect to the Solution and other any products, services or related materials provided under this Agreement, including, the implied

warranties of merchantability or fitness for a particular purpose, (ii) the Solution is and any products, services or related materials are provided by the Company on an “as is” and “as available” basis and the Buyer assumes all risk and liability associated with the performance, use, and results thereof.

14. Assignment

14.1 The Buyer shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Company.

15. Force Majeure

15.1 Neither party shall be liable for any default or delay if caused, directly or indirectly, by acts of God, the elements, labour disputes, accidents, pandemics, epidemics, any governmental action, prohibition or regulation, failure of any telecommunications network (including the internet), shortage or breakdown of or inability to obtain or non-arrival of any labour, material or product used in the manufacture of the Solution, failure of any party or third party to perform any contract with the Company or the Buyer relative to the Solution, or from any other cause beyond the parties’ control (collectively, the “**Force Majeure Conditions**”). If a Force Majeure Condition prevents, delays or otherwise interferes with the Company’s delivery or completion of the Solution which would cause the cost of the Solution to exceed the total purchase price, the Company shall be under no obligation to deliver the Solution unless the Buyer agrees to pay the additional costs incurred by the Company in connection with such Force Majeure Condition to complete delivery of the Solution.

16. Miscellaneous

16.1 *Confidential Information.* All non-public, confidential, or proprietary information of the Company or another MSD Animal Health Intelligence Member, including, specifications, documents, data, or business operations, disclosed by an MSD Animal Health Intelligence Member to the Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential” in connection with this Agreement, is confidential, solely for the use of performing this Agreement, and may not be disclosed or copied unless authorised in advance by the Company or MSD Animal Health Intelligence in writing or expressly provided for in this Agreement. Upon the Company or MSD Animal Health Intelligence’s request, the Buyer shall promptly return all documents and other materials received from any MSD Animal Health Intelligence Group Member. The MSD Animal Health Intelligence Group shall be entitled to injunctive relief for any breach or threatened breach of this Section. This Section does not apply to information that the Buyer can demonstrate is (i) in the public domain, (ii) known to the Buyer at the time of disclosure, or (iii) rightfully obtained by the Buyer on a non-confidential basis from a third party.

16.2 *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, legal representatives and assigns, including in the case of the Buyer, a successor or assignee to all or any substantial part of the business or business assets of the Buyer, no matter the manner or form of succession or assignment and irrespective of whether

the successor or assignee has possession of all or any part of the Solution.

- 16.3 *Governing Law and Jurisdiction.* This Agreement and any dispute or claim (including any non-contractual disputes or claims) arising out of or in connection with it shall be governed by, interpreted and construed in accordance with the laws of Belgium/the Netherlands. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the courts located in Belgium/the Netherlands for the purpose of any dispute or claim (including any non-contractual disputes or claims) arising out of or in connection with this Agreement. The parties waive all objections to venue and the exercise of personal jurisdiction by such courts, and agree to accept service of process by certified mail, return receipt requested. The parties exclude the United Nations Convention on Contracts for the International Sale of Goods from this Agreement and any transaction between them that may be implemented in connection with this Agreement.
- 16.4 *Notices.* All notices which are required to be given under this Agreement shall be in writing and delivered to the address specified in the Purchase Order. Any such notice shall be delivered by hand or by certified first class mail, postage prepaid, return receipt requested, and shall be deemed given upon the date hand delivered or 3 days after mailing.
- 16.5 *Severability.* The invalidity or unenforceability of any of the provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unenforceable, it shall as far as possible be construed to make it valid and enforceable by limiting it as to time, subject or geographical scope as required under applicable law.
- 16.6 *No Waiver.* All rights, privileges and remedies afforded either party shall be deemed cumulative and not exclusive, and the exercise of any one of such remedies shall not be deemed a waiver of any other right, privilege or remedy. No term or condition of this Agreement shall be deemed to have been waived by either party, nor there any estoppel against the Company, except by written consent of either party.
- 16.7 *Third Party Rights.* No one other than a party to this Agreement shall have any right to enforce any of its terms provided that each member of the MSD Animal Health Intelligence Group may enforce the terms of this Agreement against the Buyer.
- 16.8 *Variation.* This Agreement may not be amended, modified or supplemented except in writing as agreed to and signed by both parties.
- 16.9 *Entire Agreement.* This Agreement constitutes the entire final, complete and exclusive understanding and agreement between the Buyer and the Company regarding the subject matter and supersedes all prior representations, proposals or understandings. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

Schedule A- Definitions

“Activation Key”	means a string of letters and/or numbers used to register or activate the Application Plans;
“Affiliate”	means any entity, directly or indirectly, controlling, controlled by, or under common control with a Party. For the purposes of this definition, “control” (including its cognates “controlling”, “controlled by”, and “under common control”) means: (a) ownership of more than fifty percent (+50%) of the equity capital or other ownership interest in or of an organisation or entity; (b) the power to control or otherwise direct the affairs of an organisation or entity; (c) in the case of non-stock organisation, the power to control the distribution of profits; or (d) such other relationship as, in fact, results in the actual control over the management, business, and affairs of an organisation or entity.
“Company”	Means Intervet Nederland B.V.
“MSD Animal Health Intelligence”	means Intervet Nederland B.V.
“MSD Animal Health Intelligence Group”	means MSD Animal Health Intelligence and their respective Affiliates;
“MSD Animal Health Intelligence Group Member”	means MSD Animal Health Intelligence, or any of their respective Affiliates;
“MSD Animal Health Intelligence Indemnitee”	has the meaning given in Section 12.1;
“MSD Animal Health Intelligence IP”	has the meaning given in Section 10.2;
“Application Plans”	means the Company’s software applications which are made available to the Buyer through the Solution. The Application Plans currently available are provided in the Purchase Order;
“Buyer”	means the entity specified as such in the Purchase Order;
“Cancellation Period”	means the fourteen (14) days following Installation; however, in the event that the fourteenth (14th) day following Installation is a weekend or public holiday, such Cancellation Period shall be extended to the next working day;
“Company”	means the entity specified as such in the Purchase Order;

“Controller”	means the controller hardware devices delivered in connection with the Solution, including, but not limited to, those listed in the Purchase Order, or later generations of such controller hardware devices;
“Data”	means all data, text, drawings and other materials which are collected, embodied, processed, generated or developed in any medium whatsoever, including all electronic, optical, magnetic or tangible media, during any part of the processing lifecycle of end user data, including the development of Deliverables, except that the definition of “Data” shall not include any “User Data”;
“Defect”	means, with respect to a Device, a material defect caused by defective material or workmanship resulting in a failure of such Device;
“Deliverables”	means the analysis and reports generated by, or being the output of, the Solution;
“Device”	means a Tag Device, a Controller, or an Other Device;
“Documentation”	means the materials provided to the Buyer by the Company describing the use and/or functionality of the Application Plans or any part thereof. Documentation may be provided, in any form, such as electronic, print or other media, and includes product user manuals, reference manuals and installation guides or on-line help;
“Ear Tags”	means MSD Animal Health Intelligence’s eSense Flex hardware devices;
“Effective Date”	means, with respect to any fully executed Purchase Order, the date of the Purchase Order;
“EULA”	means MSD Animal Health Intelligence’s end user licence agreement for the Solution, a current version of which the Company or MSD Animal Health Intelligence will provide to the Buyer in connection with the Buyer’s registration for an Application Plan;
“Fees”	has the meaning given in Section 3.1;
“Force Majeure Conditions”	has the meaning given in Section 15.1;
“Incoterms”	means the terms of the same name as published by the International Chamber of Commerce from time to time;
“Individual Consumer”	has the meaning given in Section 11.4;
“Installation”	has the meaning given in Section 5.1;
“Intellectual Property Rights”	means all current and future worldwide intellectual property rights whether registered or unregistered including, rights to inventions and creations, copyrights, mask work rights, rights in semiconductor topography, trade secrets and know-how, trademarks, trade names, and service marks, domain names and URLs, copyrights and copyrightable works, designs, formulas, algorithms, procedures, methods, techniques, programs and other similar materials, and all recordings, graphs, drawings, reports, analyses,

specifications, other writings, computer software programs (in both source and object code form, and including any programmers' or developers' notes, flow charts, memoranda and design documents), application programming interfaces, protocols, moral rights, and any other embodiment of the foregoing, in any form, whether or not specifically listed herein, which may subsist in any applicable jurisdiction, and applications and registrations for and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from any of the foregoing and all similar or equivalent rights or forms of protection together with all related rights and powers arising or accrued, including the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of these rights, in each case whether subsisting now or in the future;

“Limited Warranty”	has the meaning given in Section 8.1;
“Location(s)”	means the Buyer’s physical locations in which the Application Plans are installed;
“Neck Tag Accessories”	means the belt, buckle, and weight parts of Neck Tags;
“Neck Tag Extension”	has the meaning given in Section 8.2;
“Neck Tags”	means MSD Animal Health Intelligence’s cSense Flex hardware devices;
“Other Devices”	means a hardware device supplied by the Company to the Buyer under this Agreement, as specified in the Purchase Order, that is not a Tag Device or the Controller;
“Purchase Order”	means the purchase order, quotation or any other agreement to which the Terms and Conditions are attached;
“Software”	means the MSD Animal Health Intelligence Group’s proprietary and generic software (in object code only), embedded into the Tag Device and on MSD Animal Health Intelligence’s servers, which is given to the Buyer before, on or after the Effective Date (including on a CD or other device to load on a PC or provided via the internet in the “cloud”);
“Solution”	means the MSD Animal Health Intelligence’s livestock identification and monitoring offering, including the Software, the Application Plan, the Devices, Solution Terminals, the Documentation and the Deliverables;
“Solution Terminals”	means the MSD Animal Health Intelligence’s proprietary computing and communicating Device and Software collecting User Data and/or Data from the Tag Devices, which may be provided to the Buyer in different forms, such as a (i) single box terminal that may be mounted on a wall, or (ii) software component that is uploaded on the Buyer’s PC;

- “Tag Device”** means any hardware infrastructure (including Ear Tags and Neck Tags) supplied by MSD Animal Health Intelligence and placed on the livestock;
- “User Data”** means the Data that the Buyer provides or which is otherwise input into the Tag Devices by the Buyer or by virtue of the animal’s movements which constitutes the raw, unprocessed data of the animal’s movements, excluding any personal data as defined under the Privacy Policy; and
- “Warranty Period”** means the period of time starting on the date the Device is installed at the Location, and lasting, with respect to:
- (a) the Controller, three (3) years;
 - (b) Ear Tags, thirty (30) months;
 - (c) Ear Tags eSense V2 , four (4) yrs
 - (d) Neck Tags, excluding the Neck Tag Accessories, three (3) years;
 - (e) Neck Tag Accessories, two (2) years; and
 - (f) Other Devices, two (2) years.