

TERMS AND CONDITIONS

These terms and conditions (including Schedule 1 which is applicable where the Customer purchases the HERE Add-on provided by Company's sub-contractor HERE Europe BV of Kennedyplein 222-226, 5611 ZT Eindhoven, The Netherlands ("**HERE**")) shall govern the supply of the Goods and/or Services by Bodytrak Connected Solutions, Inc. ("**Company**"), to each Customer and shall apply to all dealings in relation thereto unless otherwise agreed in writing by the parties.

1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions:

"**Acknowledgement**" means a confirmation from Company that the terms of the Order are acceptable, and "**Acknowledge**" shall be construed accordingly;

"**Agreement**" has the meaning set out in Section 2.2;

"**Affiliate**" means any entity that directly or indirectly **Controls**, is **Controlled** by, or is under common **Control** with, another entity;

"**Anonymized Data**" means the anonymised Product User Data rendered anonymous in such a way that the Data Subject is not or no longer identifiable provided to Company by the Customer in accordance with Section 11;

"**Applicable Law**" means any and all international, domestic (including state and federal in the USA) and member laws, statutes, regulations, by-laws, rules, orders, ordinances and court decrees that apply to the performance and supply of the Goods and/or Services or these terms and conditions;

"**Business Day**" means any day except Saturday, Sunday, or any other day on which commercial banks located in New York, New York, USA are authorized or required by Law to be closed for business;

"**Confidential Information**" means information that the disclosing party considers confidential or proprietary, including (i) all information whether conveyed orally or in any medium which relates to a disclosing party's (and/or its Affiliates') business, services and products, developments, trade secrets, know-how, processes, methodologies, personnel, suppliers and clients

(whether or not designated as "confidential information" by the person to which it relates) together with all information derived from the foregoing; (ii) all information identified as being confidential by the disclosing party at the time of disclosure or which a reasonable person in the position of the recipient would (or ought reasonably to) understand to be confidential due to the nature, type or presentation of the information. The Anonymized Data, the Pseudonymized Data and the existence and terms of the agreement are the Confidential Information of the Company. The Product User Data is considered the Confidential Information of the Customer. Confidential Information does not include information that at the time of disclosure: is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of Section 19 by the receiving party or any of its Representatives; (b) is or becomes available to the receiving party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was known by or in the possession of the receiving party or its Representatives prior to being disclosed by or on behalf of the disclosing party; or (d) was or is independently developed by the receiving party without reference to or use of, in whole or in part, any of the disclosing party's Confidential Information.

"**Content**" means the visual and audio information, documents, data, information, graphics, software, products, processes, and services made available to Customer and its Users by Company in the course of using the Bodytrak platform.

"**Control**" (and with correlative meanings, the terms "Controlled by" and "under common Control with") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership of voting securities, by contract, or otherwise;

"**Customer**" means the person, firm or company to whom the Order is addressed;

"**Data Protection Laws**" means all Applicable Laws addressing data protection, security and

privacy and breach notification, currently in effect and as they become effective, applicable to Company and the Customer in any jurisdiction including: (a) the Data Protection Act 2018; (b) the General Data Protection Regulation (EU) 2016/679 (“**EU GDPR**”); (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003, as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and, in the case of EU GDPR, incorporated into UK law under the UK European Union (Withdrawal) Act 2018; (d) the California Consumer Privacy Act of 2018 and California Privacy Rights Act of 2020 (together the “**CCPA**”); (e) the data security breach notification laws and the data security laws of the various states of the United States pertaining to the collection, use, disclosure, security or protection of personal data, or to security breach notification; and other privacy, security, labor, biometric, and (f) consumer protection laws, as they may be adopted, implemented, or amended from time to time pertaining to the collection, use, disclosure, security or protection of personal data. The terms “**Controller**”, “**Processor**”, “**Data Subject**”, “**Personal Data**”, “**Data Protection Impact Assessment**”, “**Supervisory Authority**”, “**Personal Data Breach**” and “**Processing**” shall have the meanings given to them in the relevant Data Protection Laws and “**Process**” and “**Processed**” shall be construed accordingly; and (d) where relevant, the Health Insurance Portability and Accountability Act of 1996 Public Law 104-191, as amended by the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, Public Law 111-005 (collectively, “**HIPAA**”); and any guidance and codes of practice issued by any Supervisory Authority or other local regulatory authority responsible for administering any of the above laws or regulations;

“**Defective Products**” means goods shipped by Company to Customer pursuant to this Agreement that not conforming to the Product Warranty Section 5.1.

“**Delivery**” means the time at which Goods are deemed to be delivered to the Customer under Section 4.1;

“**Delivery Location**” means the location specified by the Customer in the Order to which Company shall deliver, or procure the delivery of, the Goods;

“**Delivery Note**” means an inventory provided

with each shipment specifying the Goods agreed to be delivered to the Customer according to the Order;

“**Extended Term**” means the extended term set out in the initial Order or any subsequent Order(s) during which the Customer will receive the Services;

“**Fees**” means the fees as set out in a Quotation;

“**Force Majeure**” means an event or sequence of events beyond a party’s reasonable control preventing or delaying it from performing its obligations under an Agreement including acts of God, storms, floods, riots, fires, pandemics (including Covid-19), epidemics, sabotage, civil commotion or civil unrest, any law or any action taken by a government or public authority (including an export or import restriction, quota or prohibition), other interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources but excluding any inability to pay;

“**Good Industry Practice**” means in relation to any undertaking and any circumstances, the exercise of the degree of skill, care, prudence and foresight which would be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances, which provides services and supplies which are best in class;

“**Goods**” means all the goods and materials covered by the Order, including the Product and any materials in the HERE Add-on;

“**HERE Add-on**” means the additional materials and services provided by HERE set out in an Order;

“**Initial Term**” means a period of twelve (12) months following the date on which an Agreement is created in accordance with Section 2.4 during which the Customer will receive the Services;

“**Intellectual Property Rights**” means copyright, patents, rights in inventions, rights in Confidential Information, Know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not; (ii) including any applications to protect or register such rights; (iii) including all renewals and extensions of such rights or applications; (iv) whether vested,

contingent or future; and (v) wherever existing;

“**Know-how**” means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to customers and suppliers (whether written or in any other form and whether confidential or not);

“**Losses**” means all losses, liabilities, costs (including legal costs), charges, expenses, actions, procedures, claims, demands and damages (including the amount of damages awarded by a court of competent jurisdiction);

“**Order**” means a purchase order placed by the Customer for the supply of the Goods and/or Services and signed by a duly authorised representative of the Customer together with any Specifications and any amendments thereto communicated by the Customer to Company;

“**Product**” means the Bodytrak® device as further described in the Specification;

“**Product Users**” means users of the Product as may be permitted by the Customer from time to time;

“**Product User Data**” means Personal Data collected from Product Users by the Product, including demographic data and physiological parameter data as set out in the Specification;

“**Pseudonymized Data**” means the processing of Personal Data in such a way that the data can no longer be attributed to a specific data subject without the use of additional information by holding the de-identified data separately from the additional information, as may be provided to Company by the Customer in accordance with Section 11;

“**Quotation**” means a formal quotation or specific statement provided to the Customer by Company setting out the Products, Services and Fees against the Customer’s requirements;

“**Services**” means the services covered by the Order, including if applicable, the Bodytrak platform;

“**Specification**” means the technical specification for the Product available on Company’s website via the following link: [Bodytrak - Smart Biometric Sensor Technology](#) or otherwise set out in any Quotation; and

“**Term**” means the Initial Term and the Extended Term.

“**User(s)**” means an individual who is authorized by Customer and Company to use the Bodytrak platform and who have been supplied user

identifications and passwords by Company.

1.2 In an Agreement

1.2.1 a reference to a “party” includes that party’s personal representatives, successors and permitted assigns;

1.2.2 a reference to a “person” includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;

1.2.3 words in the singular include the plural and vice versa;

1.2.4 any words that follow “include”, “includes”, “including”, “in particular” or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.5 any headings in an Agreement are included for convenience only and shall have no effect on the interpretation of an Agreement;

1.2.6 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time; and

1.2.7 “writing” or “written” includes any method of reproducing words in a legible and non-transitory form, including email, but not emails in respect of any notice of termination served pursuant to this Agreement or in respect of any claims.

2. **CONTRACT FORMATION AND ORDERS**

2.1 The Customer may agree to these terms and conditions by:

2.1.1 selecting a button/tick box on the website version at Section 25.1(a) confirming it agrees to be bound by these terms and conditions;

2.1.2 signing a copy of these terms and conditions in the space provided at Section 25.1(b) confirming it agrees to be bound by these terms and conditions;

2.1.3 issuing an Order to Company; or

2.1.4 making payment to Company for Goods and/or Services (if for any reason an Order was not provided).

2.2 These terms and conditions, together with the completed Order accepted pursuant to Section 2.4 and any other documents or provisions agreed by the parties and which the parties expressly agree in writing should be part of the agreement

(including any addenda to these terms and conditions), form the agreement between Company and the Customer (the “**Agreement**”). Schedule 1 shall only apply to an Agreement where the Order includes the HERE Add-on when it will be automatically incorporated in the applicable Agreement. The Agreement shall take precedence over any terms, conditions or warranties:

2.2.1 contained in or referred to in any other documentation or correspondence provided by either party (unless otherwise agreed by the parties in writing); or

2.2.2 which are implied by law, trade custom, practice or course of dealing.

The terms of an Order accepted pursuant to Section 2.4 shall take precedence over these terms and conditions (and any other written agreements between the parties). The terms of Schedule 1 shall take precedence over the Sections in these terms and conditions.

2.3 Company shall send a Quotation for the Products and Services and the Customer shall submit an Order in line with the Quotation. The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these terms and conditions. The Customer is responsible for ensuring that the particulars of each Order are complete and accurate. An Order is not binding on Company unless or until accepted by Company under Section 2.4. Once accepted, the Order cannot be cancelled by the Customer.

2.4 An Order shall only be deemed to be accepted and an Agreement created when Company issues an Acknowledgement to the Customer or, in the absence of an Acknowledgement, at the point at which Company ships the Goods to the Delivery Location or commences supply of the Services to the Customer. If Company considers there are any discrepancies with an Order (in particular when compared to the Quotation) it shall discuss such discrepancies with the Customer. Once any such discrepancies have been resolved, the Customer shall issue a revised Order.

2.5 Orders are only accepted by Company on condition that Company is entitled to cancel all or part of each Order at its absolute discretion. The Customer shall have no right to compensation in respect of any cancelled Order or part thereof.

3. SUPPLY OF PRODUCTS AND SERVICES

3.1 Company shall supply the quantities of Goods and Services detailed in the Delivery Note to the Customer.

3.2 Company may deliver the Goods by instalments, which shall be invoiced to and paid for by the Customer separately. Each instalment shall constitute a separate Agreement. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment but Company may cancel any other instalment in accordance with Section 2.5.

3.3 Any Goods loaned to the Customer as part of a proof of concept trial or evaluation must be returned to Company within the agreed period, or the Customer will be liable for the cost of such Goods and associated minimum service licence fees based on the manufacturer’s recommended retail prices that apply at the time.

3.4 Bodytrak Platform

3.4.1 Subject to the provisions of this Agreement, as well as the payment of all applicable Fees by Customer for the term of such Services in the Order, Company grants to Customer and its Users, and Customer hereby accepts, a limited, non-exclusive, non-transferable, non-sublicensable right to use the Bodytrak platform, solely for Customer’s and its Users’ own internal business purposes. All rights not expressly granted to Customer and its Users are reserved by Company. Any access granted under this Agreement is conditioned on Customer and its Users remaining in compliance with all terms this Agreement, including Customer’s (or, if applicable, User’s) full and continued payment of all fees and costs under this Agreement and any related agreements.

3.4.2 Customer and its Users shall not: (i) allow third parties to access or use the Bodytrak platform or Content, except as specifically authorized by this Agreement; (ii) provide Bodytrak platform passwords or other log-in information to any third party, except as specifically authorized by this Agreement or Company; or (iii) share non-public features or content with any third party. In the event that it suspects any breach of the requirements of this Section 3.4, including, without limitation, by Users, Company may suspend Customer’s and any User’s access to the Bodytrak platform without advance notice, in addition to such other remedies as Company may have. Nothing in this Agreement requires that Company take any action against Customer, any User, or other third party for violating the terms

of this Agreement, but Company is free to take any such action as it sees fit, in its sole discretion.

3.4.3 Customer and any User may not access the Bodytrak platform if Customer or User is or becomes a competitor of Company. In addition, Customer and User(s) may not access the Bodytrak platform for purposes of monitoring Bodytrak platform availability, performance, or functionality, or for any other benchmarking or competitive purposes.

3.4.4 Except as expressly provided in this Agreement, Customer and its Users shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, grant access to, or otherwise commercially exploit or make available to any third party the Bodytrak platform or Content, Products, login credentials, or passwords in any way; (ii) modify or make derivative works based upon the Bodytrak platform or Content; (iii) reverse engineer the Bodytrak platform, Content, or Company Technology, or (iv) access the Bodytrak platform, Content, or Products in order to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions, or graphics of the Bodytrak platform, or (3) copy the Content or any code, features, functions, ideas, text, or graphics of the Bodytrak platform. User login credentials and passwords cannot be shared or used by more than one individual User, but, subject to Company's approval, may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Bodytrak platform.

3.4.5 Customer and its Users may use the Bodytrak platform only for Customer's and Users' internal business purposes and shall not: (i) use the Bodytrak platform in violation of Applicable Laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material violative of third party intellectual property rights or privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (iv) interfere with or disrupt the integrity or performance of the Bodytrak platform or the data contained therein; or (v) attempt to gain unauthorized access to the Bodytrak platform or its related systems or networks.

3.4.6 Company and its Affiliates will not be liable for any temporary delay, outages, or interruptions of

the Bodytrak platform. Further, Company and its Affiliates are not liable for any delay or failure to perform its obligations under this Agreement where the delay or failure results from (a) scheduled maintenance; (b) acts or omissions of Customer or any User, whether authorized by Company or not; or (c) failure in Customer's or third party or Users' equipment or telecommunication lines connecting Customer and its Users to the Bodytrak platform

3.4.7 Customer and its Users voluntarily engage in the activity of Internet use and bear the risks associated with that activity. Company exercises no control over and expressly disclaims any obligation to monitor Customer, its Users and other customers and users with respect to breaches of this Agreement or any information made available for distribution via the Bodytrak platform, including without limitation any information passing through Company's host computers, network hubs, and points of presence, or the Internet. In no event will Company or its Affiliates, have any liability to any Customer, its Users, or any third party for unauthorized access to, or alteration, theft, or destruction of information distributed or made available for distribution via the Bodytrak platform through accident or fraudulent means or devices.

3.4.8 User shall use and maintain reasonable security precautions in light of Customer's and its Users' use of the Bodytrak platform. Customer and its Users shall take reasonable steps to prevent unauthorized access to the Bodytrak platform, including without limitation, by protecting passwords and other login information.

3.4.9 Customer and each of its Users is responsible for all activity occurring under a User's user accounts and shall abide by all Applicable Laws, including Data Protection Laws, in connection with Users' use of the Bodytrak platform.

3.4.10 Company and its Users shall: (i) notify Company immediately of any unauthorized use of any password or account or any other known or suspected breach of security and shall use its best efforts to stop such breach; (ii) report to Company immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Customer or its Users; and (iii) not impersonate another user or provide false identity information to gain access to or use the Bodytrak platform.

3.4.11 Company may revise features and functions of the Bodytrak platform at any time, including without limitation by removing or adding such

features and functions or reducing or increasing service levels.

3.4.12 Customer and its Users acknowledge that Company does not control the transfer of data over telecommunications facilities, including the Internet, and that Company does not warrant secure operation of the Bodytrak platform or that it will be able to prevent third party disruptions of the Bodytrak platform. Customer and its Users agree that Company shall have no liability for any provision of security-related services or advice that Company may voluntarily provide to Customer or its Users that is outside the scope of this Agreement. Company and its Affiliates are not responsible for any security breaches affecting any equipment, servers, or accounts under Customer or its Users' control. If Customer or its Users' equipment or servers are responsible for or involved in an attack on or unauthorized access into another server or system, then Customer and its applicable User shall notify Company immediately, and, in any event, Company will have the right to respond accordingly, including, without limitation, the right to identify, isolate, and block the source of the attack.

3.4.13 Company and its Affiliates make no guarantees about retaining any data stored on Company' systems or servers following expiration or termination of this Agreement. Company will typically delete such data seven (7) days following termination of this Agreement by either Customer or Company. Customer and its Users will not have access to User data stored on Company' systems or servers during a suspension or following termination of this Agreement. Company reserves the right to withhold, remove, and/or discard User data without notice for any Customer or User breach, including, without limitation, Customer's (or, if applicable, User's) non-payment. Upon termination for cause, Customer and its Users' right to access or use User data immediately ceases, and Company and its Affiliates shall have no obligation to maintain or forward to Customer or any User any User data.

4. DELIVERY

4.1 The Goods shall be delivered by Company or its designated carrier to the Delivery Location at the Customer's cost and shall be deemed delivered once Company has received confirmation of the delivery.

4.2 Unless otherwise specified, the delivery of Services shall be deemed delivered at the same

date and time as the Goods.

4.3 Time of delivery is not of the essence. Company shall use its reasonable endeavours to meet any specified delivery dates but such dates are approximate only.

4.4 If the Customer, for any reason other than Force Majeure or Company's failure to comply with its obligations under the relevant Agreement, fails to accept delivery of the Goods:

4.4.1 delivery of the Goods shall be deemed to have occurred;

4.4.2 Company shall store the Goods until actual delivery takes place, and shall charge the Customer for all related costs and expenses, including, without limitation, redelivery costs should the Goods be resent out for delivery and insurance; and

4.4.3 if delivery of the Goods does not take place within the subsequent five (5) Business Days of deemed delivery, Company shall be entitled to deal with the Goods in question in any way Company sees fit with no liability to the Customer at all.

4.5 If the Customer notices any discrepancies, including inaccuracies in quantities or damage when inspecting the Goods on delivery, including against the Delivery Note, it shall report the details to Company in writing within five (5) Business Days of Delivery.

4.6 Save as set out in Section 4.5 and 5.1, the Customer shall be liable for any loss or damage it suffers or becomes aware of in relation to any Products following Delivery.

4.7 Training of the Customer's representative in the use of the Goods shall be given by Company team members only if agreed in writing by the parties.

5. WARRANTIES AND DISCLAIMER OF WARRANTIES

5.1 Subject to Section 5.2, Company shall repair or replace any Product provided under an Agreement which does not materially conform to the Specification either at the time of delivery or during a period of two (2) years from the date of delivery, unless such period is extended by the Customer by purchasing an additional third year via an Order, (the "Warranty Period") due to a fault in its manufacture (in the reasonable opinion of a competent manufacturer) ("Product Warranty"). Company shall have the option whether to repair or replace a faulty Product at its sole discretion. The Product Warranty does not

apply to: (i) any Product that has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Company; (ii) any Product that has been reconstructed, repaired, or altered by Persons other than Company or its authorized representative; (iii) has been used with any third-party products, hardware, or product that has not been previously approved in writing by Company; (iv) the HERE Add-on; and (v) intentional damage to the Product.

5.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SECTION 5.1 CONTAINS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND COMPANY'S ENTIRE LIABILITY, FOR DEFECTIVE PRODUCTS AND ANY BREACH OF THE PRODUCT WARRANTY. The Customer shall give notice in writing to Company during the Warranty Period within a reasonable time of discovery of a manufacturing fault if it wishes to seek the remedies provided under Section 5.1 and shall provide Company with a reasonable opportunity of examining the affected Products and (if requested by Company) shall return such Products to Company's place of business at the Customer's cost, which cost of return shall be reimbursed to the Customer by Company if the Products are found to have a manufacturing fault.

5.3 Company shall use reasonable skill and care in the provision of the Services. Notwithstanding the foregoing, in relation to any Services provided via the worldwide web, the Customer acknowledges and agrees that Company is reliant on third party service providers and so is unable to guarantee 100% uptime of such Services. Company shall provide any other Services in accordance with Good Industry Practice. This Section 5.3 shall not apply to any HERE Add-on.

5.4 The Customer acknowledges that any data outputs generated by the Product are only valid where applicable calibrations are carried out by Company in accordance with the applicable calibration schedule. Unless otherwise agreed, the parties shall use all reasonable endeavours to agree the format and content of the applicable calibration schedule within thirty (30) days of entering into an Agreement. Delays or failure in agreeing the applicable calibration schedule may mean that Company is delayed or unable to provide the Products to the Customer.

5.5 WARNING: THE PRODUCTS AND ANY INDIVIDUAL COMPONENTS OF THEM (INCLUDING EARBUDS) ARE NOT SUPPLIED AS AND SHOULD NOT BE USED AS PERSONAL PROTECTIVE EQUIPMENT UNLESS OTHERWISE INDICATED ON THE RELEVANT PRODUCT PACKAGING.

5.6 Customer represents and warrants to Company that:

5.6.1 it is a duly organized entity, validly existing, and in good standing under Applicable Laws;

5.6.2 it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement;

5.6.3 it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder;

5.6.4 the execution of this Agreement by its Representative whose signature is set forth at the end of this Agreement, and the delivery of this Agreement by Customer, have been duly authorized by all necessary action on the part of Customer;

5.6.5 the execution, delivery, and performance of this Agreement by Customer will not violate, conflict with, require consent under or result in any breach or default under (i) any of Customer's organizational documents, or (ii) any Applicable Law;

5.6.6 this Agreement has been executed and delivered by Customer and constitutes the legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms;

5.6.7 it is in compliance with all Applicable Laws relating to this Agreement, the Products and the operation of its business;

5.6.8 it has obtained all consents, permissions and agreements necessary under Applicable Law, including the Data Protection Laws, to allow Company to Process the Product User Data and or any other Personal Data provided by Customer to Company, pursuant to this Agreement;

5.6.9 it has obtained all licenses, authorizations, approvals, consents, or permits required by Applicable Laws to conduct its business generally and to perform its obligations under this Agreement; and

5.6.10 it is not insolvent and is paying all of its debts as they become due.

5.7 **DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES; NON-RELIANCE.**

EXCEPT FOR THE PRODUCT WARRANTY SET FORTH IN SECTION 5.1, (A) NEITHER COMPANY NOR ANY PERSON ON COMPANY'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR PERFORMANCE OF GOODS OR PRODUCTS TO STANDARDS SPECIFIC TO THE COUNTRY OF IMPORT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY COMPANY, OR ANY OTHER PERSON ON COMPANY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 5.1 OF THIS AGREEMENT.

6. **RISK AND TITLE**

6.1 Risk in the Goods shall pass to the Customer on Delivery and the Customer shall take out appropriate insurance to cover this risk.

6.2 Title to the Goods shall remain with Company until it has received payment in full for the Goods from the Customer.

6.3 The Customer shall store the Goods separately from any other goods stored at the same location, and shall clearly identify the Goods as being Company's property until such time when title in the Goods pass to the Customer.

6.4 Until title to the Goods has passed to the Customer, the Customer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and shall maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

7. **FEES**

7.1 The Fees applicable to an Agreement are a fixed price and shall not be varied unless expressly agreed in writing by a duly authorised representative of Company. However, Company shall be entitled to change its Fees applicable to future agreements from time to time and shall

notify the Customer of any such changes at the time of providing a Quotation.

7.2 The Customer is required to set out the Fees against the relevant Products and/or Services when it submits an Order to Company, in accordance with the Quotation that relates to the Order (unless otherwise varied and agreed between the parties in writing).

7.3 Unless otherwise agreed in writing or stated differently on an invoice, the Fees will be payable within thirty (30) calendar days of the date of an invoice.

7.4 Failure of the Customer to pay by the due date shall entitle Company without prejudice to any other rights it may have to:

7.4.1 suspend any future supply of Goods until settlement is made in full;

7.4.2 apply interest from the due date up to the date of actual payment in full (after as well as before judgement), at the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse Company for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees;

7.4.3 terminate any Agreements;

7.4.4 deduct amounts owed by the Customer from any sums owed by Company to the Customer; and/or

7.4.5 resell any Goods not yet delivered to the Customer.

8. **PERMITTED USE OF THE PRODUCT**

8.1 The Customer acknowledges and agrees that the Product is not intended to be used in place of existing methods of monitoring the health and safety of Product Users. The Product should not be used for medical diagnostics or any medical decision making whatsoever.

8.2 The Customer shall use the Product in accordance with the Product instructions manual supplied to the Customer.

8.3 The Customer acknowledges and agrees that:

8.3.1 the Product is not a medical CE marked device and any physiological data measured by the Product is not of a medical grade standard;

8.3.2 any data obtained through the use of the Product and associated software algorithms are not intended for medical use or for making clinical decisions; and

8.3.3 Company has not yet prepared the Product for

Intrinsic Safety (ATEX/IECEX/Ex) certification requirements and in particular, the Product is not suitable for use in, and the Customer shall not use (or permit the use of) the Products in, the following environments:

- (a) environments where there is likely contact or impact to the head area; or
- (b) flammable environments.

9. CUSTOMER RESPONSIBILITIES

In using the Product the Customer shall ensure that:

- 9.1 the Product Users:
 - 9.1.1 are fit and healthy to complete any exercise required of them.
 - 9.1.2 do not have any of the following conditions which make the Product unsuitable for use:
 - (a) hypersensitivity to silicone; or
 - (b) medical problems in the right ear which may be exacerbated by the Product (e.g. ear infections);
- 9.2 Product Users are provided with a privacy notice and consent form, if needed, and that such notice and consent satisfies the transparency disclosure and consent requirements of applicable Data Protection Laws;
- 9.3 Product Users with known hearing impediments or currently using hearing aids shall undergo additional risk assessments by the Customer to ensure their hearing and safety is not compromised by the Product. Use of the Product by such Product Users should be determined from the outcome of this assessment; and
- 9.4 no alteration is made to the Product nor any existing component(s) from the Product removed, to ensure safe operation.

10. DATA OWNERSHIP

- 10.1 Company shall own all rights, title and interest including Intellectual Property Rights in Anonymized Data and Pseudonymized Data and the Customer acknowledges that all rights, title and interest in any Anonymized Data and Pseudonymized Data and any database containing such Anonymized Data and/or Pseudonymized Data shall vest in Company.
- 10.2 The Customer hereby assigns to Company with full title guarantee free of all encumbrances all Intellectual Property Rights (including, future copyright as it arises and database rights) in the Anonymized Data and Pseudonymized Data to Company and shall execute any documents as

Company may reasonably require and otherwise do all things necessary to vest such rights in Company.

11. CREATION OF ANONYMIZED DATA AND PSEUDONYMIZED DATA

- 11.1 Anonymized Data will be created by Company automatically anonymising the Product User Data held on the Bodytrak platform by removing all personal identifiers (including identification numbers allocated by the Customer or names) if requested by the Customer in an Order or otherwise in writing or if the user ceases to be a user of the Product.
- 11.2 Pseudonymized Data will be created through the Customer's input of elements of the Product User Data into relevant data fields on the Bodytrak platform in such a way that the Product User Data can no longer be attributed to a specific data subject without the use of additional information.

12. CUSTOMER'S USE OF ANONYMIZED DATA AND PSEUDONYMIZED DATA

- 12.1 The Customer shall use or permit the use by its employees and contractors of the Anonymized Data and Pseudonymized Data during the Term solely to:
 - 12.1.1 comply with its obligations under an Agreement; and
 - 12.1.2 receive the benefit of the Goods and/or Services.
- 12.2 The Customer acknowledges that use of the Anonymized Data and Pseudonymized Data for any other purposes is expressly prohibited.

13. DATA PROTECTION

- 13.1 The Customer acknowledges that the Product User Data is Personal Data of the Product Users for the purpose of Data Protection Laws and that the Customer will be a Controller and may also be a Processor of all such Personal Data. The Customer also acknowledges that Company will be a Processor and may also be a co-Controller where the Product User Data exists on an Company server.
- 13.2 Where either party acts as a Controller or co-Controller, they shall be individually and separately responsible for complying with the obligations that apply to each of them as a Controller, and shall:
 - 13.2.1 process Personal Data of Product Users in accordance with the relevant Data Protection Laws including ensuring that there is a lawful basis on which Personal Data is Processed by it;

- 13.2.2 at all times have in place appropriate policies and procedures to ensure compliance with Data Protection Laws;
- 13.2.3 ensure that only those members of personnel who need access to the Personal Data of Product Users have access to such Personal Data, take reasonable steps to ensure the reliability of those members of personnel who have access to such Personal Data and ensure that all personnel handling such Personal Data are aware of the Customer's obligations under the Data Protection Laws;
- 13.2.4 at all times have and update as required any notification with any Supervisory Authority or other local regulatory authority that may be required under Data Protection Laws and ensure that any such notification covers all data processing contemplated by an Agreement;
- 13.2.5 at all times have in place appropriate technical and organisational security measures to ensure a level of security appropriate to the risks that are presented by the Processing, in particular from unlawful processing or accidental loss, destruction of or damage to the Personal Data of Product Users;
- 13.2.6 at no time do or permit anything to be done through act or omission that would cause the other party to be in breach of or incur any liability under Data Protection Laws; and
- 13.2.7 provide reasonable assistance, information and co-operation as regards data protection matters where requested by the other party in respect of Personal Data shared or held in common between them pursuant to an Agreement, including in respect of any claims by Product Users, any investigation or enforcement activity by any Supervisory Authority (or other local regulatory authority) or any Personal Data Breach.
- 13.3 Where either party acts as a Processor, they shall:
- 13.3.1 only act on the written instructions of the Controller and promptly inform the Controller if instructions relating to Processing infringe Data Protection Laws;
- 13.3.2 ensure that persons Processing the Personal Data are subject to a duty of confidence;
- 13.3.3 take appropriate measures to ensure the security of processing so as to ensure:
- (a) that the Processing will meet the requirements of Data Protection Laws and ensure the protection of the rights of Product Users; and
- (b) a level of security in respect of the Personal Data Processed by it under an Agreement appropriate to the risks that are presented by the Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data transmitted, stored or otherwise Processed;
- 13.3.4 only engage sub-Processors with the prior consent of the Controller and under a written contract which imposes processing obligations substantially similar to those set out in this Section 13.3. The Customer hereby gives consent for the engagement of HERE as a sub-Processor of Company and gives general consent for HERE to appoint further sub-Processors as required for the functioning of the HERE Add-on and the provisioning of the HERE Content and any services received from HERE under an Agreement. Details of HERE's sub-Processors may be obtained on request from Company;
- 13.3.5 inform the Controller of any intended changes concerning the addition or replacement of any sub-Processors thereby giving the Controller the opportunity to object to such changes;
- 13.3.6 remain liable to the Controller for the performance of its sub-Processor's obligations in respect of Processing Personal Data;
- 13.3.7 assist the Controller through appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligations to respond to requests from Product Users relating to their Personal Data;
- 13.3.8 assist the Controller in meeting its obligations under the Data Protection Laws in relation to the security of processing, the notification of Personal Data breaches to the relevant local regulatory authority or the Product Users and Data Protection Impact Assessments;
- 13.3.9 delete or return all Personal Data to the Controller as requested at the end of the contract;
- 13.3.10 submit to audits and inspections, provide the Controller with whatever information it needs to ensure that they are both meeting their Article 28 EU GDPR obligations (or obligations under other Data Protection Laws), and tell the Controller immediately if it is asked to do something in violation of the Data Protection Laws; and
- 13.3.11 notify the Controller of any breach of Personal Data related to the Services or an Agreement without undue delay and where feasible, not later than seventy two (72) hours after having become aware of it, unless such breach is unlikely to

result in a risk to the rights and freedoms of natural persons; and

13.3.12 obtain, as necessary, the Controller's prior written consent to Processing in any country outside the UK and the European Economic Area which is not the subject of an adequacy determination by the UK Secretary of State or the European Commission (as applicable) ("**Restricted Countries**") and to any additions or changes to the Restricted Countries. Where the Customer is the Controller and Company is the Processor, the Customer consents to Company's sub-processor, HERE appointing further sub-Processors who process the Customer's Personal Data in the USA. Following consent from the Controller, the Processor shall ensure that:

- (a) it has carried out any transfer adequacy assessments in respect of the proposed transfer which it is required to carry out under Data Protection Laws; and
- (b) any transfer is effected by way of a legally enforceable mechanism for the transfer of Personal Data permitted under Data Protection Laws including pursuant to a written contract containing equivalent obligations on the sub-Processor in respect of the Personal Data as apply to the Processor under an Agreement.

13.4 Where the Customer is a Covered Entity or Business Associate, as defined in HIPAA, the parties shall enter into a separate, suitable agreement if necessary.

14. **LIMITATION OF LIABILITY**

14.1 EXCEPT FOR LIABILITY RELATING TO THE HERE ADD-ON WHICH IS SET OUT IN SCHEDULE 1, IN NO EVENT SHALL COMPANY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.2 EXCEPT FOR LIABILITY RELATING TO

THE HERE ADD-ON WHICH IS SET OUT IN SCHEDULE 1, IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID, AND AMOUNTS ACCRUED BUT NOT YET PAID, TO COMPANY PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM or \$1,000,000 USD, WHICHEVER IS LESS.

14.3 The limitation of liability set forth in Section 14.2 above shall not apply to (i) liability resulting from Company's gross negligence or wilful misconduct; (ii) death or bodily injury resulting from Company's acts or omissions; or any other losses which cannot be excluded or limited by Applicable Law.

15. **INDEMNITY**

15.1 The Customer shall defend, indemnify and hold harmless, and keep indemnified and held harmless, Company and its Affiliates, and each of its and their respective officers, directors, employees, agents, subcontractors, successors and assigns (each, including Company, a "**Company Indemnitee**") against any Losses suffered or incurred by a Company Indemnitee in connection with:

15.1.1 any claim brought by a third party that the Product (other than where used strictly in accordance with an Agreement) infringes or violates any Intellectual Property Rights of any third party; and

15.1.2 any claim (including any claim alleging death, personal injury or property or environmental damage) attributable to any other breach of an Agreement by the Customer or to any intentional or negligent act or omission of the Customer, its employees, agents, or subcontractors in the performance of an Agreement,

in each case other than to the extent caused as a result of Company's negligence or breach of its obligations under the Agreement.

15.2 **Indemnification Procedure.** Company Indemnitee shall notify Customer in writing of any claim and cooperate with Customer at Customer's sole cost and expense. Customer shall immediately take control of the defence and investigation of the claim and shall employ

counsel reasonably acceptable to Company Indemnitee to handle and defend the claim, at Customer's sole cost and expense. Customer shall not settle any claim in a manner that adversely affects the rights of Company Indemnitee without Company Indemnitee's prior written consent. Company Indemnitee's failure to perform any obligations under this Section 15.2 shall not relieve Customer of its obligation under Section 15 except to the extent that Customer can demonstrate that it has been materially prejudiced as a result of the failure. Company and its Affiliates may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

16. INSURANCE

16.1 During the Term and for a period of two (2) years thereafter, Customer shall, at its own expense, maintain and carry in full force and effect commercial general liability insurance (including product liability coverage) in a sum no less than \$2,000,000 USD with financially sound and reputable insurers, and upon Company's request, shall provide Company with a certificate of insurance evidencing the insurance coverage specified in this Section. The certificate of insurance shall name Company as an additional insured. Customer shall provide Company with thirty (30) days' advance written notice in the event of a cancellation or material change in such insurance policy.

17. INTELLECTUAL PROPERTY RIGHTS

17.1 The Customer acknowledges that all Intellectual Property Rights in and relating to the Products and the Services (including any copy, translation or localisation of any accompanying documentation or any improvement or invention made in their use of the Products) belong to and shall remain vested in Company or its licensors. The Customer hereby assigns to Company with full title guarantee, free from all encumbrances, any and all right, title or interest in any modifications or improvements which it or its employees or sub-contractors may create in the Goods and/or the Services.

17.2 Company hereby grants to the Customer for the Term a non-exclusive, royalty free, worldwide, non-sublicensable, non-transferable licence of all Intellectual Property Rights in and relating to the Products and the Services to allow the Customer (and its employees and subcontractors) to:

17.2.1 use the Products in accordance with any training, documentation and/or instructions provided by

Company; and

17.2.2 receive the benefit of the Products and Services in accordance with the terms of an Agreement.

The licence terms set out in this Section 17.2 do not apply to the HERE Add-on which is subject to the licence terms set out in Schedule 1.

17.3 The Customer shall not open, take apart, disassemble, decompile, reverse engineer (including the disassociation of firmware) any Product (whether through physical inspection or via any technological means).

17.4 The Customer shall promptly notify Company of any threatened or actual infringement of, challenge to or unauthorised use of Company's Intellectual Property Rights in or relating to the Products and/or Services which may come to the Customer's notice, and acknowledges that Company shall have the sole discretion to take action (or request its licensors to take action) in respect of the same. The Customer shall, at Company's expense (subject to Company's prior written approval of the same), give every assistance reasonably requested by Company or its licensors in taking action of whatever nature to enforce or defend such rights.

17.5 Subject to the remainder of this Section 17.5, Company shall, at its own expense, defend or at its option settle any action or proceeding brought against the Customer arising out of or based upon any claim, demand or action by a third party alleging that Company's Intellectual Property Rights in the Products and/or Services or any part thereof provided under an Agreement and used within the scope of the rights and licences granted hereunder, infringe any third party Intellectual Property Rights. Company shall pay any costs, damages or awards, including reasonable legal fees, finally awarded by a court or agreed by way of settlement or compromise with respect to any such claim, demand or action provided that: (i) Company is given prompt written notice thereof; (ii) the Customer makes no admission as to liability or agreement to any settlement or compromise of the claim without Company's prior written consent; (iii) Company is given sole control of the defence and any related settlement negotiations; and (iv) Company receives from the Customer all co-operation, information and assistance reasonably required by Company in connection with the same. The Company is not obligated to indemnify or defend the Customer Party against any action or proceeding under this Section 17.5 that arise out of or result from, in whole or in part:

17.5.1 use of the Products, including use of the Products in combination with any products, materials or equipment supplied to Customer by a party other than Company, if the infringement would have been avoided by the use of the Products or use of the Products not so combined; or

17.5.2 any modifications or changes made to the Products by or on behalf of any party other than Company, if the infringement would have been avoided without such modification or change; or

This Section 17.5 will be the Customer's sole and exclusive remedy regarding third party Intellectual Property Rights infringement claims relating to the Product and/or Services.

18. TERM, TERMINATION AND EFFECT OF TERMINATION

18.1 An Agreement shall commence as set out in Section 2.4 and continue for the Term unless terminated in accordance with this Section 18.

18.2 An Agreement may be terminated by Company at any time during the Term by Company giving three (3) months' notice in writing to the Customer.

18.3 Either party may terminate an Agreement at any time by giving notice in writing to the other party if:

18.3.1 the other party commits a material breach of an Agreement and such breach is not remediable;

18.3.2 the other party commits a material breach of an Agreement which is not remedied within thirty (30) days of receiving written notice of such breach; or

18.3.3 the other party (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business..

18.4 The part of an Agreement relating to the Here Add-on may be terminated in accordance with paragraph 8 of Schedule 1.

18.5 On termination or expiry of an Agreement for any reason:

18.5.1 all licences granted by Company to the Customer shall terminate;

18.5.2 each party shall return to the other party all Confidential Information provided by and/or belonging to that other party (or where Company is the disclosing party, provided by and/or belonging to its licensors including HERE) in its possession or control including all copies and extracts;

18.5.3 Company shall delete any Pseudonymized Data relating to the Customer from the Bodytrak platform. For the avoidance of doubt, the Company may if it so chooses retain and continue to use any Anonymized Data;

18.5.4 the accrued rights and liabilities of the parties (including any rights in relation to breaches of contract) shall not be affected; and

18.5.5 terms which expressly or by implication are intended to survive termination or expiry shall remain in full force and effect.

18.6 Where an Agreement is terminated in part under Section 18.4, Section 18.5 shall apply in respect of the HERE Add-on.

18.7 Subject to paragraph 8.5 of Schedule 1, on termination or expiry of an Agreement by the Customer under Section 18.3.1 or 18.3.2, Company shall reimburse any Fees paid in advance relating to Services the Customer has not received as a result of such termination on a pro rata basis.

19. CONFIDENTIAL INFORMATION

19.1 Each party undertakes to the other that it shall treat as confidential and not at any time disclose to any person any Confidential Information of the other party, except as permitted by Section 19.2.

19.2 Each party may disclose the other party's Confidential Information:

19.2.1 to its Affiliates and to its and their respective employees, officers, representatives or advisers ("**Representatives**") who need to know such information for the purposes of carrying out the party's obligations under an Agreement, subject to each party ensuring that such Representatives comply with equivalent obligations of confidentiality as under this Section 19;

19.2.2 as may be required by Applicable Laws, a court of competent jurisdiction or any governmental or regulatory authority, provided that the receiving party gives prompt notice of the requirement of the disclosure (where it is lawful to do so) to the disclosing party to allow the disclosing party a

reasonable opportunity to seek a protective order before the required disclosure, and, to the extent lawful and practical to do so, consult with the disclosing party as to the disclosure requirement with a view to agreeing the extent, content, and timing of the disclosure;

19.3 Subject to Section 19.2, a party shall not use any other party's Confidential Information for any purpose other than to perform its obligations under an Agreement.

19.4 The obligations under this Section 19 shall continue to apply after the termination or expiry of an Agreement.

20. PUBLICATION

20.1 Neither party shall publish any aspect of this relationship, the Product User Data, the Anonymized Data and/or the Pseudonymised Data without prior written authorisation from the other party, unless required by Applicable Law.

21. NOTICES

21.1 Notices under an Agreement shall be in writing and sent to a party's registered office as set out on the first page of an Agreement, or to the or email address set out below. Notices may be given, and shall be deemed received:

21.1.1 by first-class post: two (2) Business Days after posting;

21.1.2 by airmail: seven (7) Business Days after posting;

21.1.3 by hand: on delivery;

21.1.4 by email to leon.marsh@bodytrak.co in the case of Company and the email address of the lead contact person of the Customer in the case of the Customer: on receipt of a delivery return email.

21.2 This Section does not apply to notices given in legal proceedings or arbitration.

22. FORCE MAJEURE

22.1 Neither party shall have any liability under or be deemed to be in breach of an Agreement for any delays or failures in performance of an Agreement which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the event continues for a continuous period of more than three (3) months, either party may terminate an Agreement by written notice to the other party.

23. GENERAL

23.1 These terms and conditions, together with the

completed Order accepted pursuant to Section 2.4 and any other documents or provisions agreed by the parties and which the parties expressly agree should be part of an Agreement constitute the entire agreement between Company and the Customer with respect to the Goods and/or Services to which it relates. An Agreement shall supersede any previous agreements or understandings between Company and the Customer in relation to the same Goods and/or Services whether written or oral. Each party acknowledges that it has not entered into an Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in an Agreement. Neither party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in an Agreement.

23.2 Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to an Agreement.

23.3 Company may make changes to these terms and conditions by placing a notice on its website at [Bodytrak - Smart Biometric Sensor Technology](#) advising of the changes and the date from which they are effective. Subject to Section 1.2.7, any other changes to an Agreement must be made in writing and signed by both parties.

23.4 The Customer may not assign, subcontract or encumber any right or obligation under an Agreement, in whole or in part, without Company's prior written consent. Notwithstanding the foregoing, the Customer may perform any of its obligations and exercise any of its rights granted under an Agreement through any Affiliate, provided that it gives Company prior written notice including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under an Agreement shall be deemed to be an act or omission of the Customer itself.

23.5 Each party must pay all sums that it owes to the other party under an Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by Applicable Law.

23.6 Nothing in an Agreement constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.

23.7 If any provision of an Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of an Agreement shall not be affected.

23.8 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under an Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under an Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

23.9 Except for Company Indemnitees, no one other than a party to an Agreement, their successors and permitted assignees shall have any right to enforce any of its provisions except that the Affiliates of Company shall have the right to enforce and take the benefit of the provisions of an Agreement and HERE (and its Affiliates) shall be entitled to enforce and take the benefit of the provisions set out in Schedule 1.

23.10 In the event of dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, “**Dispute**”), the party seeking to settle the Dispute shall deliver a written notice (each, a “**Dispute Notice**”) of the dispute to the other party. The matter shall be referred to senior representatives of each party who shall use their reasonable endeavours to resolve it. The parties shall negotiate in good faith to resolve the Dispute. If the parties are unable to resolve any Dispute within thirty (30) calendar days after the applicable Dispute Notice’s delivery, then the matter will be exclusively settled by arbitration in the State of Delaware, USA in accordance with the International Arbitration Rules of the American Arbitration Association (“**AAA**”) (or such other arbitration service as the parties may agree upon), and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of this Agreement shall be governed by and construed with the laws of the State of Delaware, USA, without giving effect to any other choice of law or conflict-of-laws rules or provisions, and will be conducted in English. The number of arbitrator shall be one. The arbitration award shall be final and binding upon the parties. All such controversies, disputes or

claims shall be settled in this manner in lieu of an action at law or equity; provided however, that nothing in this Section shall be construed as precluding the bringing an action for injunctive relief or other equitable relief for breach of this Agreement.

24. LAW AND JURISDICTION

An Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of the State of Delaware, USA.

25. ACCEPTANCE OF THESE TERMS AND CONDITIONS

25.1 The Customer hereby agrees to be bound by these terms and conditions:

- (a) For website acceptance, please tick/click the box .
- (b) For digital or hard copy acceptance, please sign below:

.....

Signed for and on behalf of the Customer

.....

Dated

**SCHEDULE 1
HERE ADDENDUM**

This Schedule applies to the HERE Add-on.

1. DEFINITIONS

1.1 In this Schedule:

“**Floor Plans**” means data and information relating to floor plans submitted by or for the Customer to Company, including computer aided design drawings, blueprints, maps and other information in various formats; and

“**HERE Content**” means the map content (including indoor maps) and/or other content licensed to the Customer as made available to the Customer by Company from HERE.

2. INTELLECTUAL PROPERTY RIGHTS

2.1 All right, title, and interest in and to the Here Add-on including the HERE Content are the property of HERE, its licensors and/or Affiliates. Except as explicitly granted in this Schedule 1, no other rights or licences, express or implied, are granted under these terms and conditions, including any technologies that may be necessary for use or enablement of the HERE Add-on or HERE Content. The HERE Add-on and HERE Content and any other products and services provided by HERE are the valuable trade secrets and confidential information of HERE, its licensors, and/or Affiliates and the Customer acknowledges and agrees that Section 19 of the Agreement shall apply to such trade secrets and confidential information of HERE mutatis mutandis.

2.2 The Customer shall not remove or obfuscate any trade marks or copyright notices affixed to or included in the Here Add-on or any information delivered by the HERE Add-on.

2.3 The Customer shall provide to Company the Floor Plans for the creation of any indoor maps forming part of the HERE Content (“**Indoor Maps**”) and now grants to Company with the right to sublicense to HERE and its Affiliates, a non-exclusive, perpetual, irrevocable, worldwide licence to use the Floor Plans to copy, incorporate, display, modify, process, reproduce, enhance, compile, and/or organise all or any portion of Floor Plan into Indoor Maps or other HERE products.

3. RESTRICTIONS ON USE OF HERE CONTENT

3.1 The Customer is:

3.1.1 permitted to use the HERE Content only with the

Product and related Services;

3.1.2 not permitted to:

(a) use the HERE Content with geographic data from competitors of HERE;

(b) reverse-engineer, make derivative works based on and/or archive the HERE Content;

(c) export the HERE Content (or derivative thereof) except in compliance with applicable export laws, rules, and regulations;

(d) use the HERE Content in connection with a machine learning or artificial intelligence (“AI”) system, including models used in connection with natural language processing, algorithm optimization and training, logical AI/inferencing, machine learning, deep learning, behavioral learning, artificial neural networks, machine perception and motion manipulation, predictive analytics, generative AI, and data extrapolation;

(e) use the HERE Content for: (i) benchmarking of third-party data sets, or (ii) a reference to create, enhance, or improve a product or service competitive to HERE;

(f) provide HERE Content to another person or entity; and

3.1.3 required to cease using the HERE Content if the Customer fails to comply with paragraph 4.

3.2 Use of the HERE Content is subject to the applicable regulatory and third-party supplier restrictions and obligations (including copyright notices) set out in the following link: <https://legal.here.com/terms/general-content-supplier/terms-and-notices/> (or as notified by Company to the Customer from time to time).

3.3 Notice is hereby given to any Customer which forms part of the United States Government (or wishes to claim similar rights) that the HERE Content is a "commercial item," as that term is defined at 48 C.F.R. 2.101, and is licensed in accordance with this Schedule 1.

3.4 The Customer’s attention is drawn to the instructions, warnings, disclaimers, and safety information relating to the use of the Product which uses the HERE Content contained in Section 8 and the instructions manual supplied to the Customer.

3.5 The Customer shall comply with:

3.5.1 such terms as required by Company in order for Company to be in compliance with its obligations to HERE; and

3.5.2 HERE's Acceptable Use Policy available at <https://legal.here.com/terms/acceptable-use-policy>.

4. END USER TERMS

4.1 The Customer acknowledges and agrees that if any personal data of the Customer is delivered to HERE through the Customer's use of the Products or if the Customer is directly connected to any services provided by HERE Services, HERE's end user terms from time to time available at <https://legal.here.com/terms/here-end-user-terms> and HERE's privacy policy from time to time available at [Privacy Policy | Legal, security, privacy and compliance \(here.com\)](#) shall apply.

5. AVAILABILITY

5.1 The Here Add-on may not be available in, or accessible from, all locations, regions, or territories. Without liability from Company to the Customer, Company may suspend, limit, or throttle access to, and availability of, the HERE Add-on or all or any portion of HERE Content: (i) to address an emergency, misuse, or actual or perceived threat to the operation of the HERE Add-on or any HERE Content; (ii) in the event of a breach of an Agreement, including a payment default; (iii) to comply with Applicable Laws, including trade compliance and export control laws and regulations; (iv) to respond to requests or demands of a government entity or authority; and/or (v) pursuant to any privacy concerns, copyright "notice and take down" requests, or violation of Intellectual Property Rights or other third-party rights. Company will inform the Customer of such suspension or limitation without undue delay.

5.2 Company may amend, change, deprecate, or discontinue the HERE Add-on and/or HERE Content or any part thereof, from time to time by providing a notification to you. Any such action will become effective on the date specified in the notification.

6. EXCLUSION OF WARRANTIES

1.1 EXCEPT AS OTHERWISE PROVIDED IN THESE TERMS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE HERE ADD-ON INCLUDING THE HERE CONTENT IS PROVIDED ON AN "AS IS," AND "AS AVAILABLE" BASIS WITH ALL DEFECTS. INOVA TOGETHER WITH HERE, ITS AFFILIATES, AND LICENSORS MAKE NO WARRANTY THAT THE HERE ADD-ON INCLUDING THE HERE CONTENT WILL BE

UNINTERRUPTED, SECURE, OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. EXCEPT AS PROVIDED IN THESE TERMS. INOVA TOGETHER WITH HERE, ITS AFFILIATES, AND THEIR LICENSORS SPECIFICALLY DISCLAIM, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY AND ALL REPRESENTATIONS, WARRANTIES, TERMS AND CONDITIONS, WHETHER EXPRESS OR IMPLIED BY STATUTE OR COMMON LAW OR OTHERWISE (INCLUDING UNDER SS 13-15 SALE OF GOODS ACT 1979 AND SS 8-10 SALE OF GOODS AND SERVICES ACT 1982), REGARDING THE HERE ADD-ON INCLUDING THE HERE CONTENT, INCLUDING ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, TITLE, OR ANY IMPLIED WARRANTIES ARISING FROM LAW, COURSE OF DEALING, PERFORMANCE, OR OTHERWISE. HERE IS NOT RESPONSIBLE FOR AND WILL NOT HAVE ANY LIABILITY FOR HARDWARE, SOFTWARE, TECHNOLOGY, OR ANY OTHER ITEMS OR SERVICES NOT PROVIDED BY HERE.

7. LIMITATION OF LIABILITY

7.1 COMPANY'S LIABILITY IN CONNECTION WITH THE HERE ADD-ON IS CONTAINED IN THIS PARAGRAPH 7 AND SECTION 14 SHALL NOT APPLY TO THE HERE ADD-ON EXCEPT THAT ANY LIABILITY OF COMPANY UNDER THIS PARAGRAPH 7 SHALL CONTRIBUTE TO AND COUNT TOWARDS ANY LIABILITY ACCRUED BY COMPANY UNDER SECTION 14.

7.2 COMPANY'S TOTAL LIABILITY IN CONNECTION WITH A HERE ADD-ON AND/OR UNDER THIS SCHEDULE 1 WHETHER ARISING IN OR CAUSED BY BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, SHALL IN NO CIRCUMSTANCES EXCEED THE PORTION OF THE FEES RELATING TO THE HERE ADD-ON PAID BY THE CUSTOMER IN THE TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT FROM WHICH THE CLAIM AROSE.

7.3 TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER FOR ANY:

7.3.1 CLAIM, DEMAND, OR ACTION, IRRESPECTIVE OF THE NATURE OF THE

CAUSE OF THE CLAIM, DEMAND, OR ACTION, ARISING OUT OF THE USE OR POSSESSION OF THE HERE ADD-ON INCLUDING THE HERE CONTENT;

7.3.2 CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE

7.3.3 DIRECT OR INDIRECT LOSS OF PROFIT, REVENUE, CONTRACTS, ACTUAL OR ANTICIPATED SAVINGS, DISCOUNTS OR REBATES, DATA, USE, PRODUCTION, OPPORTUNITY, HARM TO REPUTATION, DAMAGE TO GOODWILL OR ANY OTHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE HERE ADD-ON INCLUDING THE HERE CONTENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND/OR

7.3.4 DEFECT OR INACCURACY IN THE HERE ADD-ON INCLUDING THE HERE CONTENT, ABILITY TO USE THE HERE CONTENT, OR THE BREACH OF THESE TERMS OR CONDITIONS, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.4 FOR THE AVOIDANCE OF DOUBT, NOTHING IN THESE TERMS AND CONDITIONS (INCLUDING THIS SCHEDULE 1) AND/OR IN ANY AGREEMENT PROVIDES OR IMPLIES ANY WARRANTIES, TERMS AND CONDITIONS ON BEHALF OF HERE, ITS AFFILIATES OR THEIR DATA SUPPLIERS OR PROVIDES ANY RIGHT OF RECOURSE, LIABILITY OR INDEMNITY AGAINST HERE, ITS AFFILIATES OR THEIR DATA SUPPLIERS.

8. TERMINATION AND EFFECT OF TERMINATION

8.1 The part of an Agreement relating to the HERE

Add-on (including this Schedule 1) may be terminated by Company on giving immediate written notice to the Customer at any time during the Term. Company shall use its reasonable endeavours to give as much notice to the Customer as possible.

8.2 From the date of termination under paragraph 8.1:

8.2.1 Company shall cease to make the HERE Add-on and HERE Content available to the Customer and the Customer shall discontinue all use of the HERE Add-on and HERE Content; and

8.2.2 Within thirty (30) days of the date of termination under paragraph 8.1, Company shall delete the Customer's content relating to the HERE Add-on and the Customer shall uninstall, delete, and destroy all software, backup copies, and all other materials related to the HERE Add-on.

8.3 If Company terminates the part of an Agreement relating to the HERE Add-on, the remainder of an Agreement shall continue unless and until terminated by either party in accordance with Section 12.

8.4 For the avoidance of doubt, this Schedule 1 shall automatically terminate if either party terminates an Agreement in accordance with Section 18.

8.5 Company shall be under no obligation to refund or return any payments made by the Customer in relation to the HERE Add-on up until the time of termination of this Schedule or termination or expiry of an Agreement nor shall termination or expiry affect accrued payment obligations. However, the Customer shall be entitled to a refund of any payments made to Company in advance which relate to any period after the time of termination of this Schedule or termination or expiry of an Agreement.

9. SUSPENSION

9.1 If Company is required by HERE to remove Indoor Maps or receives information that the Indoor Maps provided to the Customer may breach Applicable Law or third-party rights, Company will notify the Customer, who will promptly remove such Indoor Maps from its systems.

9.2 If the Customer does not take required action in accordance with paragraph 9.1, Company may disable access to Indoor Map(s) where applicable, or the HERE Content and/or HERE Add-on until the potential breach is resolved.

9.3 Company may, without liability, suspend or limit

access to address any emergency or threat to the operation of equipment supporting the HERE Add-on, to comply with the Applicable Law: (i) for payment default; (ii) to respond to requests or demands of a government entity; and/or (iii) pursuant to a “notice and take down” policy for third party privacy or Intellectual Property Rights. Company will inform the Customer of suspension when practical.

10. INDEMNITY

- 10.1 The Customer (as “**Indemnitor**”) shall defend, indemnify and hold harmless, and keep indemnified and held harmless, Company, HERE and their Affiliates, and each of its and their respective officers, directors, employees, agents, contractors, suppliers, successors and assigns (as “Indemnitees”) from and against any losses, liabilities, costs (including legal costs), charges, expenses, actions, procedures, claims, demands and damages (including the amount of damages awarded by a court of competent jurisdiction) arising from any third party claims alleging that Floor Plans provided under this Schedule 1 infringe or misappropriate such third party’s Intellectual Property Rights.
- 10.2 Indemnitee shall notify Customer in writing of any claim under paragraph 10.1 and cooperate with Customer at Customer's sole cost and expense. Customer shall immediately take control of the defence and investigation of the claim and shall employ counsel reasonably acceptable to Indemnitee to handle and defend the claim, at Customer's sole cost and expense. Customer shall not settle any claim in a manner that adversely affects the rights of Indemnitee without Indemnitee’s prior written consent. Indemnitee’s failure to perform any obligations under this paragraph 10.2 shall not relieve Customer of its obligation under paragraph 10.1 except to the extent that Customer can demonstrate that it has been materially prejudiced as a result of the failure. Indemnitee’s and thier Affiliates may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.