

Terms and Conditions

1. Definitions and Interpretation
 - 1.1 This agreement (the “**Agreement**”) is made up of (i) the Purchase Order, and (ii) the Terms and Conditions including the Schedules.
 - 1.2 If there is any conflict or ambiguity between the terms of the documents listed in Section 1.1, the following order of precedence shall apply:
 - a) the Purchase Order solely with respect to its respective subject matter.
 - b) The Terms and Conditions.
 - 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 from time to time.
 - 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 the Product Offering
 - 2.1 Subject to the terms of this Agreement, the Company shall provide the Buyer the Product Offering (as specified in the Purchase Order) for the Buyer’s sole internal business use.
 - 2.2 A licence to use the Software and associated Deliverables shall be provided by the Affiliate under the EULA.
 - 2.3 The Devices and the Software shall be provided as part of the Product Offering.
3. Price and Terms of Payment
 - 3.1 As consideration for the Product Offering, the Buyer shall pay to the Company the fees set forth in the Purchase Order (the “**Fees**”) during the term indicated in the Purchase Order (the “**Term**”). Except as otherwise specified in the Purchase Order and/or the Agreement, (i) the Fees are based on the Product Offering provided and not actual usage; and (ii) unless otherwise established by the Agreement, payment obligations are non-cancellable and the Fees paid are non-refundable.
 - 3.2 Unless agreed otherwise in the Purchase Order, the Company shall issue an invoice for the Fees on a monthly basis commencing in the month after the date of the Installation. Unless agreed otherwise in the Purchase Order, the Fees shall be due and payable immediately upon the Buyer’s receipt of invoice. The Buyer shall pay the Company in the currency specified in the Purchase Order pursuant to the payment mechanism set forth in the Purchase Order.
 - 3.3 Unless agreed otherwise in the Purchase Order, the Fees shall begin to accrue on the date of the activation of the Software component of the Product Offering.
 - 3.4 The Fees shall be in effect during the Term (as defined in the Purchase Order).
 - 3.5 a) Transactional Taxes. The Fees and other prices are exclusive of sales, use, GST, VAT, excise, and other taxes, duties or charges of a similar nature imposed by any federal, state, provincial, or local government, or other taxing authority. If any sales, use, GST, VAT, excise, and other taxes, duties or charges of a similar nature shall be chargeable, the Buyer shall pay, or upon receipt of invoice from the Company, shall settle these in addition to the sums otherwise payable, at the rate in force at the due time for payment or such other time as is stipulated under the relevant legislation; b) Income Taxes. The Company shall be liable for all income taxes imposed upon any payments made by the Buyer to the Company under this Agreement; c) Withholding Taxes. If applicable laws, rules or regulations require the withholding by the Buyer of such taxes, the Buyer shall make such required withholding payments and shall subtract the amount thereof from the amount due. The Buyer shall submit to the Company appropriate proof of payment of the withheld taxes as well as the official receipts promptly. The Buyer shall provide the Company reasonable assistance in order to allow the Company to obtain the benefit of any present or future treaty against double taxation which may apply to such payments and/or to obtain credits for such payment of withholding.
 - 3.6 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).
 - 3.7 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.
4. Delivery Shipping Charges and Taxes

The Company shall deliver the Devices on DAP Incoterms® 2020 that are expressly accepted by the parties. All delivery and completion dates are approximate and the Company shall not be

responsible for any damage of any kind resulting from any delay.

5. Installation and Initial Training

5.1 The Company or an agent authorised by the Company shall install the Product Offering (“**Installation**”) and perform related services as set forth in Schedule B. All services completion dates shall be approximate and the Company shall not be responsible for any damage of any kind resulting from any delay. 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 shall be communicated to the Buyer at the time of offer and accepted by the Buyer.

5.2 The Devices shall be inspected by the Company at Installation, and the Company shall repair or replace any Devices with the Defect at no charge in case the Defect is not caused by the negligence or wilful misconduct of the Buyer.

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 Product Offering including high-speed internet access at its premises in order to use the Product Offering, receive 24/7 cloud access and allow the Company and its Affiliates to perform continuous remote maintenance.

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.

6.3 The Buyer shall be responsible for all users accessing the Product Offering (the Buyer and them each being the “**User**”), including ensuring that such users shall use the Product Offering strictly in accordance with this Agreement. Any use of the Product Offering by the Buyer or another User in breach of this Agreement, shall be deemed as a material breach by the Buyer of this Agreement.

7. Warranty

7.1 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 the Defect during the Term (such warranty, the “**Limited Warranty**”).

7.2 The Company shall not be liable for a breach of the Limited Warranty if (i) the Defect arose because the Buyer, the User 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 Devices, (ii) the Devices have been serviced, altered, or repaired by anyone not certified by the Company or the Affiliate 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 (each, the “**Default**”).

7.3 To make a claim under the Limited Warranty, the Buyer shall (i) notify the Company in writing of the suspected breach of the Limited Warranty during the Term, 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 Company’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).

7.4 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 Term at the time the Company was notified of the Defect.

7.5 Other than the Limited Warranty and express terms of the Terms and Conditions, any Product Offering 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.

8. Title and Risk

8.1 Title to the Devices provided to the Buyer under the Agreement (excluding any Intellectual Property Rights), shall pass to the Buyer on the delivery date. Prior to such date, title of the Devices shall remain with the Company.

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

9. Intellectual Property

9.1 The Buyer may use the Product Offering only in accordance with and subject to the provisions of the Agreement.

9.2 The Buyer acknowledges the Company and/or one of its Affiliates retains all right, title and interest in any and all Intellectual Property Rights in and to the Product Offering and Data (“**Company Group IP**”).

9.3 The Buyer acknowledges that it has no (and shall not acquire any) rights, title or interest to the Company Group IP, apart from the right to use such Company Group IP with regard to the Product Offering, as expressly stated in this Agreement.

10. Term

10.1 This Agreement shall commence on the Effective Date and shall continue for the Term until terminated as set forth in the Agreement.



- 10.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement for cause if the other party materially breaches this Agreement (i) upon written notice if such breach is incapable of cure or (ii) if such breach is capable of cure, upon 30 days' written notice to the other party of such breach if the breach remains uncured at the expiration of the notice period.
- 10.3 If the Buyer is a natural person (and not, for the avoidance of doubt, any company, association, organization, governmental body, or other entity) (the "**Individual Consumer**"), such Individual Consumer may terminate this Agreement for convenience upon written notice to the Company during the Cancellation Period. In the event that the Individual Consumer exercises their right to terminate this Agreement pursuant to this Section 10.3, the Company shall refund the Individual Consumer the Fees actually paid to the Company as of the date of such cancellation.
- 10.4 To the extent permitted by applicable law, 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.
- 10.5 The Agreement shall automatically terminate on the same terms on which the EULA is terminated.
- 10.6 Upon termination or expiry of this Agreement, the following provisions shall apply: (i) all outstanding amounts payable by the Buyer shall become immediately due and payable; and (ii) the Buyer's entitlement to any license or any Company Group IP under this Agreement shall terminate and the Buyer shall discontinue all further use of the Product Offering.
- 10.7 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.
- 10.8 Sections 9.2, 9.3, 10.7-10.8, 11, 13 and 16 shall survive the termination or expiration of this Agreement.
11. Indemnification
- 11.1 The Buyer shall indemnify and hold harmless, and at the Company's option, defend the Company Group, together with each of the Company Group's managers, successors, employees, agents, directors, officers, and stockholders (each, a "**Company 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 a Company 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, and (iii) any information, data, reports, documents or materials supplied by the Buyer.

12. Availability

The Company undertakes that it shall use its reasonable efforts to attempt to provide the access to the Product Offering 24 hours a day, 7 days a week. However, there shall be occasions when access to the Product Offering shall be interrupted, including for security and maintenance purposes, updates and repairs, which the Buyer acknowledges that the aforementioned is a necessary function conducted by the Company, or as a result of failure of telecommunications links and equipment that are beyond the Company's control. To the extent permitted by applicable law, the Company shall bear neither responsibility nor liability for any loss of revenue or the User Data that may result therefrom. THE BUYER ACKNOWLEDGES AND AGREES THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE TO ACCESS THE PRODUCT OFFERING IS TO TERMINATE THIS AGREEMENT BY NOTICE TO THE COMPANY AS ESTABLISHED BY SECTION 10.2 OF THE TERMS AND CONDITIONS. The Company may modify or discontinue, temporarily or permanently the Product Offering or any portion thereof, at any time in its sole discretion upon provision of a reasonable prior notice to the Buyer. The Company has no obligation to store, maintain or provide the Buyer a copy of any content that the Buyer provides when using the Product Offering. The Buyer shall be responsible for securing and maintaining its User Data.

13. Limitation of Liability

- 13.1 Nothing in this Agreement shall 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, (iii) gross negligence, wilful misconduct and breach of obligations deriving from public order rules; and (iv) 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, 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, shall be limited by the amount of the total Fees paid to the Company by the Buyer under this Agreement during twelve (12) months preceding the first incident out of which the liability arose.

13.4 Unless otherwise expressly stated in this Agreement and subject to Section 13.1, (i) the Company makes no warranties, express or implied (whether by statute, common law, or otherwise) with respect to the Product Offering and any other products, services or related materials provided under this Agreement, including, the implied warranties of merchantability or fitness for a particular purpose, all of which are hereby excluded to the fullest extent permissible by law, (ii) the Product Offering 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 sell, assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Company.

14.2 The Company shall have the right to assign or otherwise transfer any of its rights or obligations under this Agreement to any of its Affiliates without the prior written consent of the Company.

15. Force Majeure

The Company shall not 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 Product Offering, failure of any party or third party to perform any contract with the Company or the Buyer relative to the Product Offering, or from any other cause beyond the Company's 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 Product Offering which would cause the cost of the

Product Offering to exceed the total purchase price, the Company shall be under no obligation to deliver the Product Offering 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 Product Offering.

16. Miscellaneous

16.1 Confidential Information. All non-public, confidential, or proprietary information of the Company and/or the Affiliate, including, specifications, documents, data, or business operations, disclosed by the Company and/or the Affiliate to the Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, whether or not 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 in writing or expressly provided for in this Agreement. Upon the Company's request, the Buyer shall promptly return all documents and other materials received from the Company and/or the Affiliate. The Company 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 Product Offering.

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 THE STATE OF NEW YORK EXCLUDING PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, WITHOUT REGARD TO CHOICE OR CONFLICT OF LAW PRINCIPLES. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS LOCATED IN THE STATE OF NEW YORK 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.

- 16.4 Notices. All notices which are required to be given under this Agreement, unless otherwise specified, shall be in writing and delivered to the address specified by you in the Purchase Order. Any such notice shall be delivered by email, by hand or by certified first class mail, postage prepaid, return receipt requested, and shall be deemed given upon a business date emailed, hand delivered or three (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 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 the Company 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 the Company, nor there any estoppel against the Company, except by written consent of the Company.
- 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 Affiliate 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. If the Parties wish to increase the quantity of the Devices to be provided by the Company to the Buyer under this Agreement or modify the Buyer's application plan indicated in the Purchase Order, the parties may agree to such amendment by executing a new Purchase Order setting forth the new quantity of the Devices and/or new application plan (as applicable) and the Fees shall be adjusted accordingly for the remaining Term. If the Buyer wishes to decrease the quantity of the Devices to be delivered by the Company to the Buyer under this Agreement, the parties shall enter into a new Agreement setting forth the new quantity of the Devices and the Fees associated therewith; provided, that the Buyer shall immediately pay to the Company a fee in an amount equal to thirty percent (30%) of the reduction of the Fees per month as a result of such change times the number of months remaining in the Term upon such amendment.

- 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

“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.
“Agreement”	has the meaning given in Section 1.1;
“Application”	has the meaning given in the Purchase Order;
“Buyer”	means the entity specified as such in the Purchase Order;
“Cancellation Period”	means fourteen (14) days following the Installation; however, in the event that the fourteenth (14th) day following the 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;
“Company Group”	means the Company and its respective Affiliates;
“Company Indemnitee”	has the meaning given in Section 11.1;
“Company Group IP”	has the meaning given in Section 9.2;
“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”;
“Default”	has the meaning given in Section Error! Reference source not found. ;
“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 Product Offering;
“Devices”	means all devices and hardware delivered by the Company to the Buyer in connection with the Product Offering, including those set forth in the Purchase Order;
“Effective Date”	means, with respect to any fully executed Purchase Order, the date specified as such in the Purchase Order;
“Fees”	has the meaning given in Section 3.1;
“Force Majeure Conditions”	has the meaning given in Section 0;
“Individual Consumer”	has the meaning given in Section 10.3;
“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 semi-conductor 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 7.1;
- “Location(s)”** means locations of the Devices as specified in the Purchase Order;
- “Privacy Policy”** means the privacy policy that sets out, among other things, how the Company and/or its Affiliate collects and uses the Buyer’s personal data (available via the Application);
- “Product Offering”** means the product offering described in the Purchase Order;
- “Purchase Order”** means the purchase order signed by the Company and the Buyer;
- “Software”** means the Affiliate’s proprietary and generic software provided to the Buyer in connection with the Product Offering as described in the Purchase Order;
- “Term”** has the meaning given in Section 3.1;
- “Terms and Conditions”** has the meaning given in the Purchase Order;
- “User”** has the meaning given in Section 6.3;
- “User Data”** means the Data that the Buyer provides or which is otherwise input into the Product Offering by the Buyer, excluding any Buyer personal data as defined under the Privacy Policy.

