



Terms & Conditions

1. General Terms. These Terms and Conditions are applicable to any proposition, offer, order and agreement relating to the sale of any products ("Products") by Organ Recovery Systems, Inc. and its affiliates (collectively, the "Company") to customer ("Customer"). An order of any Product from Company constitutes acceptance of all applicable (as defined below). Any conflicting or additional terms or conditions in any purchase order, proposal or other writing from Customer, or in any order acknowledgement or other writing from Company, whenever transmitted or delivered, are of no binding force or effect whatsoever unless accepted in writing by a duly authorized representative of Company (a "Representative") and Customer. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to any Product.

2. Definitions. For purposes of these Terms and Conditions, the following terms have the meanings set forth below.

- a. **"Administrative Users"** means the Users designated by Customer to hold primary responsibility for Customer's use of the Services and to handle contacts between Customer and Company, including service requests.
- b. **"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with a party, whether by majority voting ownership or the ability to direct management and policies.
- c. **"Aggregated Statistics"** means statistics, analytics, derivative works, aggregated data, de-identified data, anonymized data, and other information compiled by Company regarding the LifePort™, Equipment Data, Customer Data, Products, Services, and use of the Services, provided such information does not identify Customer, Customer's Confidential Information, or other individual.
- d. **"Applicable Data Protection Laws"** means all laws and regulations applicable to a party's processing of personal data in connection with the Terms, including Regulation (EU) 2016/679, the UK GDPR and UK Data Protection Act 2018, the Swiss Federal Act on Data Protection, and applicable United States federal and state privacy, data security, breach notification, and similar laws.
- e. **"Company Partner"** means any authorized entity that directly or indirectly provides, facilitates, hosts, supports, or otherwise assists in providing Products or Services.
- f. **"Customer Data"** means all electronic data or information submitted to Company or the Services by Customer, its Affiliates, Administrative Users, or Users, excluding Equipment Data, Aggregated Statistics, and Company intellectual property.
- g. **"Electronic Communications"** means any transfer of signs, signals, text, images, sounds, data, or intelligence of any nature transmitted in whole or in part electronically and received or transmitted through the Services.
- h. **"Equipment Data"** means data collected, generated, transmitted, or stored by or through the LifePort or Services, including transporter location, GPS data, telemetry, operating parameters, status information, Product identifiers, serial numbers, errors, usage data, and information entered into the LifePort or Services, such as organ ID, blood type, time zone, cross-clamp time, UNOS number, and similar information.
- i. **"Services"** means Company's provision of the LifePort to Customer, including application services, data tracking, telemetry, dashboards, portals, alerts, reports, support, and all other functions and services Company provides in connection with the LifePort.



- j. **“Third Party Applications”** means online applications, offline software products, hosting, connectivity, cloud, carrier, implementation, customization, consulting, or other services provided by third parties that interoperate with, support, or are used in connection with the Products or Services.
- k. **“Users”** means individuals authorized by Customer or its Administrative Users to access or use the Services, including Customer’s employees, consultants, contractors, agents, transporters, clinical users, and other individuals provided user identifications, passwords, shipment information, or other access credentials.

3. Order Acceptance. THE QUANTITY AND DESCRIPTION OF PRODUCTS SHALL BE AS CONFIRMED IN WRITING BY THE COMPANY. THESE TERMS AND CONDITIONS OF SALE, TOGETHER WITH ANY PURCHASE ORDERS AND INVOICES, WARRANTY (AS DEFINED BELOW), AND FOR PURCHASES OF LOCATION AND DATA TRACKING-ENABLED LIFEPORT DEVICES, THE END USER LICENSE AGREEMENT (EULA) (COLLECTIVELY THE "TERMS"), CONSTITUTE THE ENTIRE AGREEMENT BETWEEN COMPANY AND CUSTOMER AND SUPERSEDE ANY WRITTEN OR ORAL [PROPOSALS,] AGREEMENTS OR ARRANGEMENTS BETWEEN THEM RELATING TO THE PURCHASE AND SALE OF ANY PRODUCTS. If any provision of the Terms is declared invalid or unenforceable by any court, the remainder of the Terms shall remain in effect. Every order is deemed accepted from the date of the order acceptance issued by Company. Company may accept, reject, cancel, suspend, or condition any order in whole or in part, including based on Product availability, credit risk, payment history, regulatory requirements, export controls, sanctions, supply constraints, Customer’s compliance with the Terms, or any other lawful business reason. No order is binding unless and until accepted by Company in writing or by shipment of Products.

4. Data. Customer acknowledges that all location and data tracking-enabled LifePort devices and associated Services may collect, generate, transmit, store, and process Equipment Data and Customer Data, including but not limited to location and GPS data, telemetry, operating and status information, Product identifiers and serial numbers, error and usage data, and user-entered information. Customer agrees that Company and its Affiliates, contractors, Company Partners, and service providers may collect, access, process, transmit, store, use, reproduce, display, disclose, and otherwise make available Equipment Data and Customer Data in the United States, the European Economic Area ("EEA"), the United Kingdom, Switzerland, and any other jurisdictions where the Products or Services are provided, accessed, hosted, supported, or used, including on a simultaneous or cross-border basis. Such collection and processing is subject to the EULA and applicable law. See the LifePort End User License Agreement for additional terms regarding data collection, use, ownership, and processing.

5. Price. Prices for Products shall be as set forth on the invoice for such Products provided by Company to Customer or as otherwise agreed by a Representative and Customer in writing. Unless otherwise agreed in writing, all prices given by Company exclude, and Customer shall pay, all applicable shipping and freight costs, insurance, sales, use, import, export, VAT, goods and services and other similar taxes, tariffs, customs duties, brokerage fees, clearance fees, governmental charges, and other similar amounts (excluding taxes on the net income of Company, collectively, "Charges"). A particular Charge shall not apply if Customer provides Company with valid exemption documentation with respect to the subject Charge. Company reserves the right, by giving notice to Customer at any time before delivery, to increase the price of Products to reflect any increase in the cost to Company due to any factor beyond Company's reasonable control. Company shall be entitled to invoice Customer for the price of Products together with any Charges upon acceptance of an order for Product by Company. All Charges are due and owing upon presentation of an invoice for Charges delivered by Company to Customer.



6. **Payment.** Customer shall make full payment of any amount invoiced by Company within 30 days of the date of the invoice, without set-off, counterclaim or deduction of any kind, whether arising from breach of contract, tort (including negligence), breach of statutory duty or any other matter whatsoever. If Customer fails to pay any sum when due, Company shall be entitled to charge Customer interest (both before and after any judgment) on the amount unpaid at the rate of the lesser of 1.5% per month or the maximum rate permitted by law. All payments shall be made in the currency stated in Company's invoice for Products. Customer agrees to pay any costs of collection incurred by Company for any past due amounts, including court costs and attorneys' fees and expenses. Any payables owing by Customer to Company may be assigned by Company or pledged as collateral as Company determines in its sole discretion. Company reserves the right to suspend shipment of any order of Product if any payment for any other order of Product from Customer is late. Customer hereby authorizes Company to make inquiries to obtain credit and other financial information concerning Customer and authorizes Customer's bank(s) of record to release such information regarding Customer to Company.

7. **Discount.** The pricing and economic terms of the parties, including the pricing of equipment and consumables, may be treated as a discount or other reduction in price to the extent required or permitted under applicable law, including the discount safe harbor to the federal anti-kickback statute at 42 C.F.R. § 1001.952(h). Customer is solely responsible for determining whether and how any discount, reduction in price, equipment placement value, consumable purchase price, or related cost must be reported or reflected on any claim, cost report, organ acquisition cost report, request for reimbursement, request for discount or acquisition-cost information, or other submission to any federal healthcare program, state healthcare program, commercial payor, or other third party. Customer shall fully and accurately report and appropriately reflect all such amounts as required by applicable law, regulation, contract, and payor guidance.

8. **Delivery, Title and Risk of Loss.** Unless otherwise agreed by a Representative in writing, all Products will be deemed delivered by Company to Customer FCA Facility, Incoterms 2020, when Company delivers the Products to the carrier or other person nominated by Customer at the manufacturing facility or other named place of delivery agreed in writing. Title and risk of loss or damage to Products shall pass to Customer upon delivery in accordance with the applicable shipping term, regardless of whether Customer or Company arranges for shipment. Unless otherwise agreed in writing by a Representative, Customer is responsible for arranging and paying all shipping, freight, insurance, export and import clearance, customs formalities, duties, taxes, tariffs, brokerage fees, and other Charges from the applicable delivery point and while Products are in transit. Delivery periods noted in any customer order are subject to written confirmation from Company, and once so confirmed will be deemed satisfied if Company makes the subject Products available for delivery at its facility or otherwise delivers the Products in accordance with the applicable shipping term within the time period designated for delivery. Availability of Product is on a good faith efforts basis. If a Product is in short supply, Company will allocate supply among its customers in such manner and amounts as Company determines. Company shall use reasonable efforts to completely fill accepted orders, but may ship partial orders as Company determines. Once an order for Product has been accepted by Company, it may not be rescinded or canceled by Customer for any reason unless rescission or cancellation is accepted in writing by a Representative.

9. **Limited Warranty.** Customer has been provided with Company's Limited Product Warranty for Products ("Warranty") located at www.organ-recovery.com. Company does not offer or accept any liability for any other representations, warranties or liabilities with respect to Products or services offered by Company except as



expressly set forth in the Terms. Customer shall use, store, transport, install, operate, clean, maintain, calibrate, and dispose of Products only in accordance with the Terms, the Warranty, Company's written instructions, labeling, instructions for use, manuals, training materials, and all applicable laws, rules, regulations, permits, licenses, and regulatory requirements. Customer shall not modify, misuse, alter, relabel, repackage, reverse engineer, or use Products for any purpose not authorized by Company or not consistent with applicable law. Customer shall promptly notify Company of any Product complaint, suspected defect, malfunction, adverse event, reportable event, field safety issue, cybersecurity issue, unauthorized access, loss, theft, or other issue involving Products or Services that could reasonably relate to safety, performance, quality, regulatory compliance, data security, or patient, donor, recipient, transporter, or user impact. Customer shall cooperate with Company in investigating, documenting, reporting, correcting, and remediating any such issue. The Warranty is void if any Product covered by the Warranty is used in violation of this Section, or is used or exported for any purpose not permitted hereunder or contemplated by Company. Customer shall inspect Products promptly upon receipt and shall notify Company in writing of any visible damage, shortage, nonconformity, or shipment discrepancy within five business days after delivery. If Customer does not provide timely notice, Products will be deemed accepted with respect to visible damage, shortages, nonconformities, and shipment discrepancies, without prejudice to any rights Customer may have under the Warranty.

10. **Return of Products.** No Product may be returned without Company's prior written authorization and issuance of a return material authorization or equivalent written return approval. Customer shall return Products only in accordance with Company's instructions, including packaging, shipping, decontamination, chain-of-custody, documentation, and safety requirements. Company may reject any unauthorized, contaminated, damaged, incomplete, improperly packaged, or nonconforming return.

11. **Recall.** Customer shall cooperate fully with Company in connection with any recall, correction, field safety notice, field action, safety communication, product hold, investigation, regulatory inquiry, or other corrective or preventive action relating to Products or Services. Customer shall maintain reasonable traceability and as applicable, distribution records, promptly identify affected Products and users, cease use or as applicable, distribution when instructed by Company or required by law, follow Company's return, quarantine, replacement, correction, or disposal instructions, and provide information reasonably requested by Company. Customer shall not make independent communications to regulators, customers, users, or the public regarding Company Products except as required by law and, where legally permitted, after prior coordination with the Company.

12. **Limitations.** Data, information, reports, alerts, dashboards, telemetry, geolocation, or other information made available through Products or Services is provided for informational and operational purposes only and shall not be used as a substitute for professional medical judgment. Company does not make clinical recommendations, interpretations, diagnoses, therapeutic decisions, organ suitability determinations, transplant decisions, or patient-care decisions. Customer, transplant surgeons, clinicians, and other medical professionals remain solely responsible for all clinical assessments, interpretations, decisions, actions and omissions involving donors, organs, recipients, transport, preservation, transplantation, and patient care.

13. **Remedies.** Customer's remedies for any Product nonconformity, defect, recall, warranty claim, or other claim relating to Products are limited to the remedies expressly set forth in the Warranty and these Terms. No claim subject to the Terms may exceed the purchase price actually paid by Customer for the Product giving rise to the claim, except as otherwise expressly set forth in the Terms or required by applicable law. No claim for



liability may be brought later than 90 days following the later of (i) the date on which the event or circumstance giving rise to the claim occurred, or (ii) the date on which Customer first became aware of such event or circumstance; provided that no claim against Company may be brought later than one year after the occurrence of such event or circumstance.

14. **Product Changes.** Company reserves all rights not expressly granted to Customer in the Terms. Company reserves the right to change, without prior written notice to Customer, any Product specifications which do not materially affect performance, use or price of such Product as determined by Company.

15. **Disclaimer.** Except as expressly provided in the Warranty or these Terms, Company disclaims all other warranties, representations, conditions, and guarantees, whether express, implied, statutory, or otherwise, including any implied warranties of merchantability, fitness for a particular purpose, non-infringement, title, uninterrupted use, availability, accuracy, or results.

16. **Indemnity.** Customer hereby indemnifies, defends and holds harmless Company, its Affiliates and its and their respective officers, directors, employees, insurers, agents and representatives from and against any and all losses of any kind or nature whatsoever arising out of any claims or suits resulting from (i) Customer's acts or omissions concerning the purchase, transportation, storage or use of Products and/or Services, (ii) Customer's breach of any representation, warranty or covenant contained in the Terms, (iii) Customer's failure to comply with applicable laws, or (iv) injury or damage to any third party (including death) or damage to any property arising out of any storage, transportation or use of Products and/or Services by Customer (including its Affiliates or its or their officers, directors, employees, independent contractors or agents) or third parties.

17. **Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF GOODWILL, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, PRODUCTS, SERVICES, OR THE USE OR PERFORMANCE OF THE PRODUCTS OR SERVICES, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, WARRANTY, STATUTE, OR OTHERWISE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY'S TOTAL AGGREGATE LIABILITY TO CUSTOMER FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE TERMS, PRODUCTS, SERVICES, OR THE RELATIONSHIP BETWEEN THE PARTIES SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE PRODUCT AND/OR SERVICES GIVING RISE TO THE CLAIM. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECTIVE OR NONCONFORMING PRODUCT SHALL BE REPAIR OR REPLACEMENT OF THE DEFECTIVE OR NONCONFORMING PRODUCT, AT COMPANY'S OPTION, OR, IF COMPANY DETERMINES THAT REPAIR OR REPLACEMENT IS NOT COMMERCIALY REASONABLE OR AVAILABLE, REFUND OF THE PURCHASE PRICE ACTUALLY PAID BY CUSTOMER FOR THE DEFECTIVE OR NONCONFORMING PRODUCT.

18. **Intellectual Property.** All intellectual property rights in Products are owned by Company or third-party suppliers of Products and are protected by United States and foreign trade secret, patent and copyright laws and



international treaty provisions. Company and its suppliers retain all rights not specifically and expressly granted to Customer herein. Company and any Company Partner service marks, logos and product and service names are marks of their respective owners ("Company Marks"). Customer agrees not to display or use the Company Marks in any manner without the express prior written permission of their owner. Customer agrees it will not remove, cover, mar, deface or alter any trademarks or other intellectual property of Company or Company Partner placed on any Product. Customer agrees that all software programs contained in any Product or otherwise offered by Company (including related documentation, updates and new versions, "Software") remain the sole and exclusive property of Company, may not be copied, duplicated, reproduced, reverse-engineered, or disassembled, or otherwise used for any other purpose or for the benefit of any third party. Customer is hereby granted a non-exclusive, non-assignable, non-transferable right to use the Software only for Customer's operation of the Product for which the Software is provided and for no other purpose or use. Except for the limited rights and licenses expressly granted under the Terms, nothing in the Terms grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to Company intellectual property.

19. **Authorized Use.** Customer shall ensure that Products and Services are accessed and used only by properly trained, qualified, and authorized personnel, Administrative Users, and Users. Customer is responsible for all access credentials, passwords, account activity, Electronic Communications, and use of Products or Services by or through Customer, its Administrative Users, or Users. Customer shall maintain reasonable administrative, technical, and physical safeguards designed to protect Products, Services, Customer Data, Equipment Data, accounts, and access credentials from unauthorized access, use, disclosure, alteration, loss, or destruction. Customer shall not interfere with, disable, bypass, compromise, test, scan, disrupt, or circumvent any software, firmware, connectivity, security, telemetry, GPS, data transmission, access control, update, patch, alert, or monitoring feature of any Product or Service. Customer shall notify Company within twenty-four (24) hours after becoming aware of any suspected or actual cybersecurity incident, unauthorized access, credential compromise, malware, vulnerability, disruption, or other security issue affecting Products, Services, Customer Data, Equipment Data, or any Customer environment connected to or used with the Products or Services.

20. **Third Party Applications.** Products and Services may depend on Third Party Applications, cellular networks, Wi-Fi, GPS, cloud services, hosting providers, carriers, internet access, Customer systems, and other third-party products or services. Company does not control and is not responsible for third-party coverage, availability, latency, outages, delays, errors, interruptions, cybersecurity events, data transmission failures, or other conditions outside Company's reasonable control. Unless expressly agreed in writing by a duly authorized officer of Company, Company does not provide any uptime, service level, connectivity, response-time, or availability commitment for Products or Services.

21. **Data Ownership and License.** As between Company and Customer, Customer retains all right, title, and interest in and to Customer Data. Company owns all right, title, and interest in and to Equipment Data, Aggregated Statistics, and Company intellectual property, excluding Customer records, Customer-provided information and personal data, where ownership is not transferred under the Terms or applicable law. Customer grants Company a worldwide, non-exclusive, royalty-free right and license to use, access, collect, process, store, reproduce, display, transmit, disclose, and otherwise make available Customer Data and Equipment Data as necessary or useful for: (i) providing, supporting, maintaining, monitoring, securing, troubleshooting, developing, and improving the Products or Services; (ii) verifying Customer's compliance with the Terms; (iii) responding to service, quality, regulatory, safety, complaint, and support needs; (iv) analytics, research, marketing, and internal



business operations; and (v) creating, using, disclosing, commercializing, and otherwise exploiting Aggregated Statistics for any lawful purpose, provided that such Aggregated Statistics do not identify Customer, Customer's Confidential Information, or any individual.

22. **Privacy and Data Protection.** For purposes of the Terms, "Applicable Data Protection Laws" means all laws and regulations applicable to a party's processing of personal data in connection with the Terms, including without limitation: Regulation (EU) 2016/679 (the "EU GDPR"); the EU GDPR as retained in UK law ("UK GDPR") and the UK Data Protection Act 2018; the Swiss Federal Act on Data Protection; and applicable United States federal and state privacy, data security, breach notification, and similar laws. Each party shall comply with its obligations under Applicable Data Protection Laws in connection with the performance of the Terms. Customer shall not enter, upload, transmit, submit, or otherwise make available Protected Health Information or other sensitive personal data through open text fields or other non-designated portions of the Products or Services unless expressly authorized by Company in writing and permitted by applicable law. Customer is responsible for providing all notices, obtaining all consents, authorizations, and permissions from Users and data subjects as required under Applicable Data Protection Laws for geolocation tracking, telemetry, cross-border access and transfers, and all processing described in the Terms and/or the EULA. Depending on the processing activity, Company may act as a processor or service provider where Company processes personal data on behalf of Customer pursuant to Customer's instructions, or as a controller or business where Company processes personal data for its own compliance, security, quality, regulatory, safety, analytics, product improvement, research, marketing, internal business, legal, or other lawful purposes described in the Terms and/or the EULA. To the extent that personal data is transferred from the EEA, United Kingdom, or Switzerland to a jurisdiction that has not received an adequacy determination, such transfers will rely on lawful transfer mechanisms, such as the Standard Contractual Clauses approved by the European Commission or other valid transfer mechanisms, as applicable and where required by Applicable Data Protection Laws. Company may retain Customer Data, Equipment Data, Aggregated Statistics, service records, support records, quality records, regulatory records, security records, complaint files, audit records, and other information as reasonably necessary or appropriate for Company's legal, regulatory, quality-system, safety, product-support, cybersecurity, tax, accounting, archival, backup, dispute-resolution, enforcement, research, analytics, marketing, and internal business purposes, subject to applicable law.

23. **Export Control Laws.** Customer acknowledges that any Products supplied to Customer may be subject to export control laws and regulations of the United States and other jurisdictions, and that such laws and regulations may prohibit or delay future delivery of Products. Customer agrees to comply, in the United States and worldwide, with all export laws, trade sanctions, regulations and restrictions of the United States or any foreign government or entity which regulates their shipment (collectively "Export Control Laws"). Customer further agrees to ensure that Products will not be re-exported, sold or otherwise transferred to countries or persons in violation of any Export Control Laws. Customer certifies that neither Products nor information supplied by Company shall be used in the development, production, stockpiling or use of any weapons by Customer or anyone acting for Customer.

24. **Compliance.** Customer shall comply with all applicable anti-bribery, anti-corruption, healthcare fraud and abuse, anti-kickback, transparency, false claims, procurement, conflicts-of-interest, sanctions, export control, import, customs, and trade compliance laws and regulations in connection with the purchase, resale, transfer, transport, storage, use, and disposition of Products and Services. Customer shall not offer, promise, authorize,



solicit, pay, receive, or provide anything of value in violation of applicable law or in a manner intended to improperly influence any healthcare professional, government official, customer, purchaser, referral source, or other person. Customer represents and warrants that Customer, its Affiliates, Users, and any party to whom Customer resells, transfers, ships, exports, re-exports, or otherwise provides Products or Services are not located in, organized under the laws of, ordinarily resident in, or acting on behalf of any country, region, person, or entity subject to applicable embargoes, sanctions, restricted-party lists, or trade restrictions. Customer shall not sell, transfer, export, re-export, provide, or make available Products, Services, Software, technical data, or Equipment Data in violation of Export Control Laws, sanctions, or other applicable trade laws.

25. **No Waiver.** Customer agrees that Company's failure at any time to require compliance by Customer of any of the provisions of the Terms shall not operate as a waiver of Company's right to require strict performance of the same or like provisions at a later time.

26. **Miscellaneous Matters; Applicable Law and Jurisdiction**

- (a) The Terms may not be amended or waived in any respect unless agreed to in writing by a duly authorized officer of Company. Headings are for convenience only and may not be used to construe or interpret the Terms or the intentions of the parties.
- (b) Each party will treat the other party's proprietary and confidential information as confidential and will not use or disclose it to any third parties unless expressly permitted under the Terms, mutually agreed in writing by the parties, required by applicable law, rule, regulation, subpoena, court order, or governmental authority, or appropriate to enforce or defend its rights under the Terms. Confidential information does not include information that the receiving party can demonstrate is or becomes publicly available without breach of the Terms, was lawfully known to the receiving party without restriction before receipt, is independently developed without use of or reference to the disclosing party's confidential information, or is lawfully received from a third party without restriction. Where legally permitted, the receiving party shall provide prompt notice and reasonable cooperation so the disclosing party may seek protective treatment. Each party's confidentiality obligations survive for five years after disclosure.
- (c) Customer may not assign, delegate or otherwise transfer its rights and obligations hereunder or the Warranty or these Terms except with the prior written consent of a duly authorized officer of Company.
- (d) The Terms represent the entire agreement between Company and Customer and supersede in their entirety all prior agreements, proposals, quotations, purchase orders, acknowledgements, communications, and understandings concerning the subject matter hereof and thereof. Any oral or written representation, warranty, course of dealing, usage of trade, or Customer purchase order term not expressly set forth in the Terms shall not be binding unless expressly accepted in writing by a duly authorized Representative of Company. Company offers no warranties or guarantees of any kind with respect to Products or Services except as set forth in the Warranty, the EULA, these Terms, or a separate written agreement executed by duly authorized officers or representatives of Company and Customer. In the event of a conflict between these Terms and Conditions, the EULA, and the Warranty, the EULA, then these Terms and Conditions, and then the Warranty shall be the order in which the respective terms prevail. Without limiting the foregoing, for location and data tracking-enabled LifePort devices and related Services, the EULA shall control over these Terms and Conditions to the extent of any conflict regarding access to or use of the Services, Equipment Data, Customer Data, Aggregated Statistics, privacy and data protection, telemetry, geolocation, and similar data matters.
- (e) Company is not liable for any failure or delay in performing any obligation under the Terms, and shall not be deemed to be in breach of its obligations hereunder, if such failure, delay or breach is due to any cause



beyond the reasonable control of Company (a "Force Majeure Event"). Such non-performance shall be excused for as long as the particular Force Majeure Event is continuing, provided that Company has so notified Customer.

- (f) The Terms are provided solely by and between, and may be enforced only by, Company and Customer (and their respective successors and permitted assigns) and are not intended to confer on any third party or person any rights, remedies, obligations or liabilities under or by reason of the Terms or the purchase and sale of Products.
- (g) Company and Customer are independent contractors, and shall not be deemed to be partners, joint venturers or otherwise be in any similar relationship, and neither party shall be deemed to be an agent of the other party.
- (h) If any provision of the Terms or the application thereof is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other provision hereof and the remaining provisions of the Terms, as applicable, shall remain in full force and effect and shall not be affected or invalidated. Failure by a party to enforce any rights it may have under the Terms shall not be construed as a waiver of such rights nor shall a waiver by either party in any one instance be construed as constituting a waiver in any other instance
- (i) THE TERMS AND CONDITIONS ARE SUBJECT TO THE LAWS OF THE STATE OF ILLINOIS, U.S.A., WITHOUT APPLICATION OF CONFLICT OF LAW PRINCIPLES.
- (j) Notwithstanding the foregoing, except as set forth in subsection (c) below, any dispute, claim or controversy arising out of or relating in any way to this Agreement, any other aspect of the relationship between Company and Customer or their respective affiliates and subsidiaries, the interpretation, application, enforcement, breach, termination or validity thereof (including any claim of inducement of these Terms by fraud and a determination of the scope or applicability of this agreement to arbitrate), or its subject matter (collectively, "Disputes") shall be determined by binding arbitration before one arbitrator. The arbitration shall be administered by JAMS and conducted in accordance with the expedited procedures set forth in the JAMS Comprehensive Arbitration Rules and Procedures as those Rules exist on the effective date of this Agreement. Notwithstanding anything to the contrary in this Agreement, the Federal Arbitration Act shall govern the arbitrability of all Disputes. The arbitration shall be held in Chicago, Illinois, and it shall be conducted in the English language. The parties shall maintain the confidential nature of the arbitration proceedings and any award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. The arbitrator shall have authority to award compensatory damages only and shall not award any punitive, exemplary, or multiple damages, and the parties waive any right to recover any such damages. Judgment on any award in arbitration may be entered in any court of competent jurisdiction. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also, without waiving any remedy under this agreement, may seek from any U.S. Court having personal and subject matter jurisdiction over the parties any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitration tribunal. This specifically includes the right to seek temporary restraining orders, preliminary injunctions, writs of prejudgment attachment and other security liens, and orders of mandamus or prohibition, but specifically precludes the right to seek monetary damages of any kind outside of the arbitration proceeding. (c) Each party shall pay their own expenses in connection with the resolution of Disputes, including reasonable attorneys' fees. Notwithstanding the foregoing sentence, should any party to this Agreement hereafter



institute any legal action or administrative proceeding against the other by any method other than set forth in this paragraph, the responding party shall be entitled to recover from the initiating party all damages, costs, expenses, and attorneys' fees incurred as a result of such action. (d) IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES, WHETHER IT RESULTS IN PROCEEDINGS IN ANY COURT IN ANY JURISDICTION OR IN ARBITRATION, THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE OR ARBITRATOR WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. To the extent applicable, in the event of any lawsuit between the parties arising out of or related to this Agreement, the parties agree to prepare and to timely file in the applicable court a mutual consent to waive any statutory or other requirements for a trial by jury.

27. **Survival.** Any provision that by its nature should survive completion, cancellation, expiration, termination, or fulfillment of an order shall survive, including provisions relating to payment, taxes, collection costs, ownership, intellectual property, Software, data rights, confidentiality, indemnity, limitations of liability, disclaimers, regulatory cooperation, recalls, complaint handling, export controls, sanctions, privacy, cybersecurity, governing law, arbitration, equitable relief, notices, and enforcement.