

Terms and Conditions for the Sale of Goods and Services

1. DEFINITIONS AND INTERPRETATIONS

1.1. The following definitions and rules of interpretation will apply in this Agreement:

"Affiliate" any entity that directly or indirectly controls or is controlled by or is under common control with, another entity.

"Agreement" means these General Terms and Conditions

"Background IP" Intellectual Property Rights acquired or developed by Ubisense before the date of this Agreement or generated by or for Ubisense other than through this Agreement.

"Business Day" a day other than a Saturday, Sunday, or public holiday in the United States when banks in Wilmington, Delaware are open for business.

"Charges" the Goods Charges, Software Charges, Service Charges and/or Support and Maintenance Charges.

"Confidential Information" information relating to Ubisense's technology and technical applications of such technology; and any other information relating to the business, finances, affairs or Intellectual Property Rights of Ubisense (or its Affiliates), including information relating to operations, processes, know-how, inventions, patents, trade secrets, data, results, show-how, software, algorithms, plans, forecasts, analyses, evaluations, any physical items, material, compounds, components, devices, equipment and other technical, proprietary or commercial information, in each case which is disclosed either directly or indirectly by Ubisense to the Customer whether in writing, orally, visually, in the form of samples or otherwise.

"Contact Data" the Personal Data of each Party's employees or representatives engaged in relation to this Agreement, Processed by the other under, or in connection with, this Agreement.

"Customer" means any entity identified in the Purchase Order to receive Goods and/or Services.

"Data Protection Legislation" means all applicable federal and state laws and regulations relating to the direct marketing to which a Party is subject and the processing, protection, or privacy of an individual's Personal Information, including where applicable, the guidance and codes of practice issued by regulatory bodies in any relevant jurisdiction.

"Foreground IP" Intellectual Property Rights acquired, developed or generated by Ubisense as a result of, in connection with and/or arising out of this Agreement.

"Goods" means any hardware equipment provided as part of this Agreement.

"Intellectual Property Rights" any and all intellectual and/or industrial property rights of any kind including without limitation, legal rights in inventions, models and prototypes, knowledge, know-how, processes and procedures, techniques, trade secrets, designs, reports, data, Proprietary Information and other confidential information, drawings, information, drawings, circuit and schematic diagrams, printed circuit board and semiconductor mask works, computer programs and associated documentation and legal protection therefor under laws relating to patents, registered designs, trademarks and service marks, business names and domain names, copyright, database rights, registered and unregistered design rights, semiconductor chip protection, goodwill and the right to sue for passing off together with other legal rights associated therewith and all rights of protection of a similar nature or having similar or equivalent effect, in each case whether registered or unregistered and including all applications and rights to apply for registration and renewals or extensions thereof, and rights to claim priority and all similar or equivalent rights or forms of protection which subsist now or in the future in any part of the world.

"Legislation" any statute, statutory provision, regulation or any mandatory rules or guidance issued by any regulatory body having jurisdiction over the applicable Party.

"Material Breach" any breach by the Customer under this Agreement which cannot be remedied by the Customer, or which can be remedied but is not

remedied within the specified timeframe (if no timeframe is specified it will be a reasonable time). The impact of the breach is or may be substantial and adverse to Ubisense's interests.

"Party" Ubisense or the Customer, as applicable, collectively referred to as the "Parties".

"Personal Data" shall have the meaning given in Data Protection Legislation and for the purposes of this Agreement shall include Contact Data.

"Proprietary Information" trade secrets and all other confidential information of a proprietary nature, including but not limited to, all technical information, designs, data, drawings, circuit and schematic diagrams, production or test jigs, machine tool instructions, production or test processes and data, know-how, software (whether in object or source code form), in whatever form (whether human or machine readable) and whether or not marked as confidential.

"Services" means the professional services provided by Ubisense to Customer.

"Software" a software program developed and manufactured by Ubisense and installed on the Goods by Ubisense, constituting part of the Goods, excluding third-party software.

"Support and Maintenance" any support, repair work, maintenance and related services carried out by Ubisense or its representatives in connection with the Goods.

"Ubisense" means Ubisense America, LLC a company registered in Delaware with file number 7051934 or any affiliated company identified as the supplier in the Purchase Order and/or (where the context requires) all other affiliated companies.

"Ubisense Product" a product developed or manufactured by Ubisense.

- 1.2. Section, Clause, Schedule and paragraph headings will not affect the interpretation of this Agreement.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether having separate legal personality or otherwise).
- 1.4. A reference to a company will include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular will include the plural and, in the plural, include the singular.
- 1.6. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7. The words "include" or "including" will be deemed to without limitation.
- 1.8. The words "writing" and "written" mean in documented form, whether electronic or hard copy, unless otherwise stated.
- 1.9. The Parties have agreed that the English language will be used for negotiating and drawing up this Agreement and all documents relating or contemplated by this Agreement. If needed by any applicable law and agreed by Ubisense, this Agreement will be translated into other languages and any local requirements such as notarization will be fulfilled. However, if there is any conflict or ambiguity between any clauses of this Agreement in the English language and the translated language, the wording of the English language will prevail.
- 1.10. This Agreement will be construed without regard to the Party or Parties responsible for the preparation of the same and will be deemed as prepared jointly by the Parties hereto. Any ambiguity or uncertainty existing herein will not be interpreted or construed against any Party hereto.

2. APPLICATIONS OF TERMS

- 2.1. This Agreement will govern the sale of Goods and/or performance of Services to the entire exclusion of any other terms and conditions (including those of the Customer).

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- 2.2. Conflicting, inconsistent or additional terms or conditions contained in any Customer order (or supporting documentation) submitted will not be binding unless Ubisense specifically accepts such terms or conditions in writing, signed by Ubisense's authorized representative.
- 2.3. The Customer must ensure that the terms of its order, any applicable specification and scope of work are complete and accurate. Ubisense will bear no liability for any errors or omissions by the Customer in the order, scope of work or otherwise connected with the order. Ubisense may accept or reject an order at its discretion.
- 2.4. Ubisense's employees, representatives or agents are not authorized to make any representations concerning the Goods or Services unless confirmed by an authorized representative of Ubisense. In entering into this Agreement with Ubisense, the Customer acknowledges that it does not rely on any representation which has not been confirmed in writing by an authorized representative.
- 2.5. In placing an order for Goods or Services pursuant to clause 3.2, the Customer confirms that it has reviewed and agreed to be bound by these Terms and Conditions.

3. PRICING, ORDERING PROCESS AND PAYMENT TERMS

- 3.1. Pricing shall be based on a formal quotation/proposal provided by Ubisense. The validity of the quotation/proposal will expire automatically after 30 days, unless otherwise stated.
 - 3.2. Customer shall issue a purchase order to Ubisense or alternatively, Customer will sign the Ubisense quotation/proposal acceptance or make an online electronic order and payment. At such point in each case the Agreement shall come into existence between the Parties.
 - 3.3. Purchase orders shall contain the following information:
 - 3.3.1. Customer billing address;
 - 3.3.2. Customer shipping address;
 - 3.3.3. Customer purchase order number;
 - 3.3.4. Customer contact name, phone number and email address;
 - 3.3.5. Confirmation of payment terms;
 - 3.3.6. Quantity, unit price and description of Goods and Services being ordered and the applicable freight charges, Support and Maintenance term and fees;
 - 3.3.7. Customer desired delivery date; and 3.3.8. total value of the purchase order
 - 3.4. Customer agrees to pay any taxes or similar charges, including but not limited to VAT and tariffs, imposed by governmental entities on the Goods or Services supplied or used pursuant to this Agreement. Customer may not deduct any withholding taxes from amounts due unless it has sought and received prior written consent from Ubisense.
 - 3.5. Where payment is made by credit card, a surcharge of four percent (4%) of the total invoiced amount will be added to cover credit card processing fees.
 - 3.6. If the Customer disputes any invoice or part thereof, the Customer will immediately notify Ubisense in writing of the reason(s) and:
 - 3.6.1. the Customer will pay the undisputed portion of the invoice and the Parties will seek to resolve the dispute within fourteen (14) days; and
 - 3.6.2. if the dispute is not resolved Clause 26 (Dispute Resolution) will apply. When the dispute is resolved, the agreed sum will be paid immediately to Ubisense, in addition to any interest due under Clause 3.6.
 - 3.7. If the Customer fails to make any payment due to Ubisense under this Agreement by the due date, Ubisense will have the right to charge interest on the overdue amount at a rate of five percent (5%) per year over the Federal Reserve discount rate or such other rate as may be prescribed by applicable Legislation (if higher) until the outstanding balance is paid in full. All interest charges will be due immediately. The Customer will also be liable to Ubisense for any expenses connected to the collection of overdue amounts, including reasonable attorney' fees and court costs.
4. **DELIVERY**
 - 4.1. Unless otherwise indicated in the Ubisense quotation, Goods (including but not limited to hardware) shall be deemed delivered by Ubisense and with risk in the Goods passing to the Customer upon receipt by the carrier for transfer to the shipping address provided in the purchase order.
 - 4.2. All delivery costs for the shipment of Goods incurred by Ubisense will be recharged to the Customer. For the avoidance of doubt, for any Goods shipped from outside the United States, the Customer shall be responsible for the payment of all import taxes, including duties and tariffs.
 - 4.3. Ubisense is only required to deliver the Goods and/or Services during its normal working hours.
 - 4.4. The Customer shall provide Ubisense with all the assistance it requires to deliver the Goods and/or Services.
 - 4.5. Ubisense shall not be liable for any delay or failure of performance caused by:
 - 4.5.1. the Customer's failure to provide Ubisense with any required information (for instance as may be necessary to procure any licenses or customs approvals) or adequate instructions for performance or delivery or otherwise relating to the Goods and/or Services; or
 - 4.5.2. any event of force majeure as detailed at Clause 22.
 - 4.6. If the Customer fails to take delivery of the Goods on the Delivery Date, then without prejudice to any other right or remedy available to Ubisense, Ubisense may store the Goods until actual delivery and charge the Customer for the costs of such storage.
 - 4.7. The Customer may request a change to the Delivery Date which will be considered and determined by Ubisense in its sole discretion.
 - 4.8. The Customer shall ensure that the conditions at the Delivery Location allow easy and safe delivery of the Goods and/or Services.
 - 4.9. It is acknowledged and agreed by the Customer that where Ubisense consents to a change in the Delivery Date, payment for such Goods and/or Services will still be due on the basis of the original Delivery Date under this Agreement, unless Ubisense agrees otherwise.
 5. **ACCEPTANCE**
 - 5.1. The Customer shall inspect the Goods immediately upon delivery to the shipping address provided in the purchase order. The Customer must notify Ubisense if on inspection the Goods are materially damaged or not of the quantity stated on an order.
 - 5.2. If the Customer fails to notify Ubisense pursuant to clause 5.1 within three (3) business days of the delivery date to the shipping address provided in the purchase order, the Goods shall be deemed accepted by the Customer.
 - 5.3. Notices under this Clause 5 may be given electronically.
 6. **WARRANTIES**
 - 6.1. Each Party warrants that:
 - 6.1.1. it has full capacity and authority to enter into and to perform its obligations in this Agreement.
 - 6.1.2. it will comply with all applicable Legislation in the performance of its obligations under this Agreement.
 7. **LIMITED WARRANTY**
 - 7.1. Where Goods are supplied, Ubisense warrants that the Goods shall be free from defects in workmanship and materials, under normal

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use and service, for a period of one year from the date of delivery as confirmed by the shipment tracking number or equivalent.

- 7.2. If the Goods do not operate as warranted during the applicable warranty period in clause 7.1, due to defects in either materials or workmanship, Ubisense shall, at its option and expense: 7.2.1. repair the defective Goods or part; or 7.2.1. deliver to the Customer an equivalent product or part to replace the defective Goods. All Goods that are swapped-out will become the property of Ubisense.
- 7.3. The warranty in clause 7.1 does not cover:
 - 7.3.1. periodic maintenance and repair or replacement of parts due to wear and tear;
 - 7.3.2. replacement of consumables, such as batteries, bulbs, etc.;
 - 7.3.3. damage or defects caused by use due to improper installation, improper testing or improper operation and failure to maintain the product in accordance with the operating instructions;
 - 7.3.4. damage or changes to the product as a result of abuse, misuse, accident, neglect, alteration, corrosion, force majeure and any acts of God;
 - 7.3.5. damage caused by repair or attempted repair by unauthorized persons;
 - 7.3.6. adjustments or adaptations without Ubisense's prior written consent, including upgrading the Goods beyond specification or features described in the instruction manual;
 - 7.3.7. modifications to the Goods to conform it to national or local technical or safety standards in countries other than those for which the Goods were specifically designed and manufactured for; or
 - 7.3.8. damage caused by accidents, fire, liquids, chemicals, other substances, flooding, vibrations, excessive heat, improper ventilation, power surges, excess or incorrect supply or input voltage, radiation, electrostatic discharges including lighting, other external forces and impacts.
- 7.4. The warranty does not cover any updates and patches necessary to fix problems that were not discovered during normal testing or to fix a problem peculiar to a Customer's site and situation. If a Goods product is found to be defective, the product may be returned with a pre-authorized return material authorization ("RMA") number and details of the purchase invoice to Ubisense. The Customer bears the cost and risks associated with delivering the defective item to Ubisense for repair. Replacement Goods may be new or reconditioned. Any replaced or repaired Goods has a ninety (90) day warranty or the remainder of the original one-year warranty period, whichever is longer. Ubisense shall not be responsible for any software, firmware, information, memory or customer data that are contained in, stored on, or integrated with any Goods returned to Ubisense pursuant to any warranty claim. To qualify for this limited Goods warranty, the Licensee must complete the product registration process, as documented during the installation and configuration of the Goods. Warranty registration must be completed and returned to Ubisense within ninety (90) days from the date of purchase. A service charge may be levied to the Customer by Ubisense for any exceptions that are not covered under the limited warranties as described above.
- 7.5. Where Software is supplied, Ubisense warrants that the Software licensed from it will perform substantially in conformance to its published specifications for a period of one year from the date of purchase from Ubisense. Ubisense warrants any media supplied by Ubisense containing software against failure during the warranty period. Neither software updates nor upgrades are provided under this warranty. Ubisense's sole obligation shall be to replace any

defective Software with products that substantially conform to Ubisense's applicable published specifications.

- 7.6. Ubisense does not warrant that the Software will work in combination with any other Goods or software applications that are provided by third parties.
- 7.7. FOR THE AVOIDANCE OF DOUBT, THE WARRANTIES PROVIDED UNDER THIS CLAUSE 7 ARE EXCLUSIVE AND ARE THE ONLY WARRANTIES GIVEN BY UBISENSE. UBISENSE HEREBY EXCLUDES TO THE FULLEST EXTENT PERMITTED BY LAW ANY AND ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND OTHER TERMS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, CONCERNING THIS AGREEMENT, THE SOFTWARE AND GOODS, ANY OTHER GOODS SUPPLIED OR SERVICES PERFORMED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED TERMS AS TO QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, UBISENSE DOES NOT WARRANT THAT THE SOFTWARE OR GOODS (OR THE LICENSEE'S USE THEREOF) WILL BE FREE FROM ERRORS OR THAT USE WILL BE UNINTERRUPTED.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. All Background IP and Foreground IP shall remain the exclusive property of Ubisense. Ubisense grants the Customer a royalty free, worldwide, non-exclusive license during the term of this Agreement to use the Background IP or Foreground IP to the extent strictly required to use and/or maintain the Goods in accordance with this Agreement.
- 8.2. The Customer shall not sub-license, assign or otherwise transfer the license granted in Clause 8.1.
- 8.3. Ubisense shall be responsible for maintaining the validity and enforceability of and/or defending its rights in its Background IP or Foreground IP as it shall in its sole discretion decide during the term of this Agreement.
- 8.4. The Customer shall not make, or authorize the making of, any copies of any Background IP, Foreground IP, or any materials, documents, software or other item in which Ubisense's Intellectual Property Rights subsist unless in accordance with an order or with the prior written approval of Ubisense.
- 8.5. The Customer shall not do or authorize any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of Ubisense and shall not omit any act or authorize any third party to omit any act which, by its omission, would breach or invalidate Ubisense's Intellectual Property Rights.
- 8.6. The Customer shall not conduct any activities under this Agreement that give rise to any future claim on Ubisense's Intellectual Property Rights, including in or in relation to the Goods, Ubisense Products or Background IP or Foreground IP and if any such activities are conducted, the Customer shall assign all rights in them to Ubisense.
- 8.7. Each Party shall promptly give notice in writing to the other Party in the event that it becomes aware of:
 - 8.7.1. any infringement or suspected infringement of the trademarks or any other Intellectual Property Rights of Ubisense; and
 - 8.7.2. any claim that the manufacture, use, sale or other disposal of the Goods (or any part of it), infringes the Intellectual Property Rights of any third party.
- 8.8. In the case of any matter falling within Clause 8.7.1:
 - 8.8.1. Ubisense shall determine in its sole discretion what action if any shall be taken in respect of the matter; and
 - 8.8.2. Ubisense shall have sole control over and shall conduct any consequent action as it shall deem necessary; and

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8.8.3. Ubisense shall pay all costs in connection with that action and shall be entitled to all damages and other sums which may be paid or awarded as a result of any such action.

8.9. In the case of any matter falling within Clause 8.7.2:

8.9.1. Ubisense shall at its own expense defend or settle as it may in its sole discretion decide, any action, demand or claim that the supply and/or possession of the Ubisense Product that forms part of the Goods and/or the use of the Ubisense Product that forms part of the Goods in accordance with this Agreement infringes the Intellectual Property Rights of any third party ("IPR Claim") and shall indemnify the Customer from and against any damages, liability, costs and expenses (including reasonable professional fees) awarded against or for which the Customer may become liable as a result of any such action, demand or claim, provided that:

- I. the Customer notifies Ubisense in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
- II. the Customer shall not make any admission of liability or agree any settlement or compromise of the relevant IPR Claim without the prior written consent of Ubisense;
- III. the Customer takes all reasonable steps to minimize and mitigate the losses that may be incurred by it or by any third party as a result of the IPR Claim;
- IV. at Ubisense's request, the Customer provides Ubisense with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer; and
- V. the claim relates to a Ubisense Product provided by Ubisense as or as part of the Goods.

8.9.2. Ubisense shall not be liable under the indemnity in Clause 8.9.1 to the extent that the alleged infringement under the IPR Claim directly or indirectly is caused by and/or is based on:

- I. any component of the Goods (including Software) that is not developed or manufactured by Ubisense (for which Clause 8.11 shall apply), including its use in or in combination with the Goods;
- II. the use of any Customer or third-party software, products or services), including their use in combination with the Goods (or any part of it);
- III. a modification of the Goods (or any part of it) by anyone other than Ubisense, unless made at the written request of Ubisense;
- IV. the collection, processing, use and/or analysis of data generated, captured or processed by the Goods, including using and/or in combination with the Goods (or any part of it), by the Customer and/or any third party, including its customers (where applicable);
- V. the marketing, use of or other dealing with the Goods (or any part of it) by the Customer and/or any third party, including its customers (where applicable) other than for the purposes of real time location sensing; 8.10. If any component of the Goods (including the Software) is not developed or manufactured by Ubisense, only the indemnity of the developer/manufacturer, if any, will apply in respect of any Intellectual Property claims relating to the third-party component of the Goods and only to the extent that Ubisense is able to claim and successfully recover under that indemnity from the developer/manufacturer.

8.10. In the event of an IPR Claim, Ubisense may at its option (but is not obliged to):

- 8.10.1. procure for the Customer the right to continue using the Goods or relevant part;
- 8.10.2. modify or replace the Goods or relevant part in whole or in part to make it non-infringing;
- 8.10.3. substitute the Goods or relevant part with a non-infringing product; or
- 8.10.4. take back the infringing Goods and refund the Charges paid by the Customer for the infringing Goods.

8.11. The Customer shall indemnify Ubisense from and against all damages, liability, costs and expenses (including reasonable professional fees) awarded against Ubisense or for which Ubisense may become liable arising out of the: (a) unauthorized marketing, use, customization, modification, alteration of and/or other dealings with the Goods (or any part of it); and (b) the use of any Customer or third party software, products or services (other than those provided by Ubisense under this Agreement), including their use in combination with the Goods (or any part of it).

8.12. The Customer shall, at the request and expense of Ubisense, provide all reasonable assistance to Ubisense (including, but not limited to, the use of its name in, or being joined as a party to, proceedings) in connection with any action to be taken by Ubisense.

9. LIMITATION OF LIABILITY

9.1. Notwithstanding any other provision of this Agreement, the liability of the Parties shall not be limited in any way in respect of the following:

- 9.1.1. death or personal injury caused by that Party's negligence;
- 9.1.2. for fraud or fraudulent misrepresentation; or
- 9.1.3. for any other losses which cannot be excluded or limited by applicable Legislation.

9.2. Subject to Clause 9.1, Ubisense shall not be liable for consequential, indirect or special losses.

9.3. Subject to Clause 9.1, Ubisense shall not be liable for any of the following (whether direct or indirect):

- 9.3.1. loss of profit;
- 9.3.2. loss of or corruption to data;
- 9.3.3. loss of use;
- 9.3.4. loss of production;
- 9.3.5. loss of contract;
- 9.3.6. loss of opportunity;
- 9.3.7. loss of savings, discount or rebate (whether actual or anticipated); and
- 9.3.8. harm to reputation or loss of goodwill.

9.4. Subject to Clauses 9.1, 9.2 and 9.3, the total aggregate liability of Ubisense shall not exceed the total amount of Charges paid or payable by the Customer to Ubisense in respect of the order under which the liability arises.

9.5. Except as expressly and specifically provided in this Agreement, all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from this Agreement.

10. INDEMNIFICATION

10.1. The Customer agrees to indemnify and hold Ubisense harmless against all liabilities, awards, claims, losses, damages, costs and expenses (including reasonable legal fees) related to the Customer's use of the Goods, breach or Material Breach of this Agreement, or to any negligent, grossly negligent, willful or

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unlawful actions or omissions by the Customer, its employees, officers, agents, subcontractors, dealers or representatives in connection with or arising out of this Agreement.

- 10.2. The Customer agrees to indemnify and hold Ubisense harmless against all liabilities, awards, claims, losses, damages, costs and expenses (including reasonable legal fees) related to any personal injury or property damage suffered by Ubisense and/or Ubisense's personnel and other representatives which occurs on the Customer's premises.

11. TERMINATION

- 11.1. Ubisense may terminate this Agreement at any time by giving not less than three (3) months' written notice to the Customer.
- 11.2. Without prejudice to any other right or remedy available to Ubisense, Ubisense may terminate this Agreement at any time with immediate effect by giving written notice to the Customer if:
- 11.2.1. the Customer commits a Material Breach of this Agreement which cannot be remedied or is not remedied within seven (7) days of receiving written notice of such Material Breach; or
- 11.2.2. the Customer has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid for a period of thirty (30) days after Ubisense has given notification that the payment is overdue.
- 11.3. Without prejudice to any other right or remedy available to it, Ubisense may terminate this Agreement at any time by giving notice in writing to the Customer if:
- 11.3.1. the Customer suspends or threatens to suspend payment of its debts or is unable to pay its debts when due;
- 11.3.2. the Customer suspends, threatens to suspend, or ceases to carry on all or a substantial part of its business;
- 11.3.3. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 11.3.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or connected with the winding up of the Customer;
- 11.3.5. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer; or
- 11.3.6. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above.
- 11.4. The right of Ubisense to terminate this Agreement pursuant to Clause 11.3 shall not apply to the extent that the relevant procedure is entered into for the purpose of solvent amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged Customer agrees to adhere to this Agreement.

12. EFFECTS OF TERMINATION

- 12.1. Upon termination or expiry of this Agreement for any reason:
- 12.1.1. The obligations of the Parties under Clauses 1, 3, 7, 8, 9, 10, 12, 13, 14, 15, 16, 20, 23, 26, 32, 34 and 36 shall survive unless expressly stated otherwise;
- 12.1.2. Any accrued rights of the Parties at termination, or the continuation of any provision stated to survive after termination or implicitly surviving termination will not be affected or prejudiced;

- 12.1.3. All outstanding balances owed by the Customer to Ubisense will be due immediately; and

- 12.1.4. Subject to the foregoing provisions of this Clause 12.1, all rights and licenses granted to the Customer under this Agreement shall terminate, and where appropriate, revert to Ubisense.

- 12.2. Ubisense shall have no liability to the Customer by reason of any termination by Ubisense. The Customer shall indemnify and hold harmless Ubisense from and against any and all liability, loss, damages and costs (including reasonable attorneys' fees) arising out of any claim by the Customer.

13. COMMERCIAL CONFIDENTIALITY AND INFORMATION SECURITY

- 13.1. The Customer will not use, copy, publish or divulge the Confidential Information of Ubisense to any third-party and shall only use the same as required to perform this Agreement. The provisions of this Clause shall not apply to:
- 13.1.1. any information already in the public domain;
- 13.1.2. any information which is independently developed by the Customer without using information supplied by Ubisense; or
- 13.1.3. any disclosure required by law or a regulatory authority or otherwise by the provisions of this Agreement.
- 13.2. Any Confidential Information disclosures made will in no way affect the ownership of such Confidential Information.
- 13.3. The Customer shall implement and maintain appropriate:
- 13.3.1. technical and organizational measures; and
- 13.3.2. adequate security programs and procedures, to ensure a level of security appropriate to the risk.
- 13.4. The Customer shall:
- 13.4.1. investigate all (i) accidental, unauthorized or unlawful access to, processing, destruction, loss, alteration, damage or disclosure of Ubisense's Confidential Information and/or any cyber-attacks on the Goods or the Customer's IT systems ("Security Incidents"); and (ii) suspected Security Incidents; and
- 13.4.2. Notify Ubisense without delay of any security incident.
- 13.5. If an incident referred to in Clause 13.4 occurs due to the Customer's act or omission, the Customer shall, at its own cost, provide all necessary assistance as requested by Ubisense, including with notifications that may be required under applicable law.
- 13.6. On termination of this Agreement for any reason whatsoever, or on receipt of notice, the Customer will immediately cease use of and deliver to Ubisense all material and media relating to Ubisense's Confidential Information.

14. COMPLIANCE WITH LAWS AND REGULATIONS

- 14.1. Each Party agrees that it shall comply with, and nothing in this Agreement shall require any Party to take any action or perform any obligation which would contravene, any applicable laws, statutes, regulations, decrees, ordinances and orders, to the extent only that they apply to that Party, including related to export controls, foreign trade controls, trade sanctions compliance, non-proliferation, anti-terrorism and otherwise governing the export, re-export and transfer in country of goods, services, software or technology.
- 14.2. Where any performance by Ubisense is or could constitute a breach of clause 14.1 above, Ubisense shall, as soon as reasonably practicable, give notice to the Customer of its inability to perform.
- 14.3. The Customer agrees to indemnify and hold Ubisense harmless from and against any and all actions, awards, claims, losses,

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damages, costs and expenses (including reasonable legal fees) attributable to any breach by it of this Clause 14.

15. ANTI-BRIBERY AND CORRUPTION

15.1. In connection with this Agreement, Ubisense and the Customer each represent, warrant, and covenant that it has complied and shall comply with applicable anti-bribery and anti-money laundering laws specifically including the laws of the laws of the United States of America (such as the Foreign Corrupt Practices Act of 1977), the United Kingdom (such as the Bribery Act 2010) and all successor legislation.

15.2. Notwithstanding provisions to the contrary, if either Party reasonably believes in good faith that the other Party has breached the provisions within Clause 15.1, or that such breach is imminent, the non-breaching Party shall have the right to suspend or terminate this Agreement immediately upon written notice to the breaching Party. Upon termination, the breaching Party shall not be entitled to claim compensation or any further remuneration, regardless of any activities before termination.

16. PROTECTION AND PROCESSING OF PERSONAL DATA

16.1. The Parties shall at all times comply with the Data Protection Legislation in their performance of this Agreement.

16.2. Given the nature of this Agreement, the Parties do not envision that either Party will Process any Personal Data for or on behalf of the other Party acting as a Processor, under or in connection with this Agreement. Where and to the extent that in undertaking the obligations set out in this Agreement or providing a service, either Party anticipates that the other will Process any Personal Data for and on behalf of the relevant Party acting as a Processor it shall notify the other Party and the Parties shall agree a variation to this Agreement to incorporate appropriate provisions required by Data Protection Legislation.

16.3. For the purposes of this Agreement, the terms "Process", and "Processor" shall have the meaning given to them under the applicable Data Protection Legislation from time to time.

17. DEFAULT AND REMEDIES

17.1. If the Customer is in default of this Agreement, Ubisense may: a) declare the entire balance of any unpaid Charges immediately due and payable to Ubisense; and/or b) require that the Customer immediately return the Goods to Ubisense or Ubisense may peaceably repossess it. Any return or repossession will not be considered a termination or cancellation of this Agreement.

18. PUBLICITY

18.1. The Customer will not without the prior written consent of Ubisense:

18.1.1. Make use of Ubisense's name;

18.1.2. Make use of the name of any of Ubisense's personnel, customers or agents;

18.1.3. Make use of any information obtained under this Agreement for publicity purposes; or

18.1.4. Refer to Ubisense, the work or this Agreement in any advertisement or public announcement or notice except to the extent required by law or any competent regulatory body.

19. DESCRIPTION

19.1. Ubisense's marketing materials are issued for the sole purpose of giving an approximate idea of the matters described in them and will not form part of this Agreement.

20. UBISENSE PERSONNEL

20.1. The Customer undertakes during the term of this Agreement and for a twelve (12) month period after its expiration not to solicit or make an offer of employment (or an offer for services) to any

Ubisense employee, officer, agent or representative engaged in the performance of this Agreement.

21. SUB-CONTRACTS

21.1. Ubisense reserves the right to subcontract the performance of the work or any part thereof.

22. FORCE MAJURE

22.1. Ubisense will not be in breach of this Agreement nor will Ubisense be liable for any delay in performing or failing to perform any of its obligations if the delay results from circumstances beyond its control. This will include, without limitation: any act of God, war, epidemic, pandemic, riot, civil commotion, malicious damage, fire, flood, storm, compliance with any law or governmental order, accident, breakdown of machinery, failure of its suppliers to perform or sub-contractors strikes, failure of a utility service or transport or telecommunications network, the delay of any trial or test caused by adverse weather or unsafe conditions.

22.2. If any such delay occurs, Ubisense will take reasonable steps to mitigate the delay. The performance of this Agreement will be suspended for the duration of the delay.

22.3. If this delay continues for ninety (90) days, either Party may terminate this Agreement by giving the other Party thirty (30) days' written notice. If this Agreement is terminated under this Clause, the Customer will pay to Ubisense within seven (7) days of the termination date: (i) all outstanding payments up to the date of termination; and (ii) in addition a fair and reasonable price for all work done or work in progress that has not been invoiced prior to the date of termination (including the balance of any unpaid Charges).

23. WAIVER

23.1. No failure or delay by a Party to use any right or remedy provided under this Agreement or by law will constitute a waiver of that right or remedy, nor will it prevent or restrict the further use of that right or remedy or any other right or remedy.

23.2. No use or partial use of such right or remedy will prevent or restrict the further use of that or any other right or remedy.

24. ASSIGNMENT

24.1. The Customer will not assign, transfer, subcontract or encumber any of its rights or obligations under this Agreement without the prior written and signed agreement of a duly authorized representative of Ubisense. Any assignment, transfer, subcontract or encumbrance attempted without such written and signed agreement by a duly authorized representative of Ubisense shall be void and of no legal effect.

24.2. This Agreement shall be binding upon the Parties' respective successors and permitted assigns.

25. SEVERANCE

25.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 25 shall not affect the validity and enforceability of the rest of this Agreement.

26. DISPUTE RESOLUTION

26.1. If any dispute arises out of or in connection with this Agreement, including any question regarding its existence, validity or termination, which cannot be amicably resolved by the Parties ("Dispute"), the Parties will have the Dispute settled by arbitration in accordance with the Federal Arbitration Act ("FAA"). The language of the arbitration shall be English and the place of arbitration shall be Denver, Colorado, United States.

27. EQUITABLE RELIEF

Terms and Conditions for the Sale of Goods and Services

27.1. Each Party recognizes that any breach or threatened breach of this Agreement may cause the other Party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the other Party, each Party acknowledges and agrees that the other Party is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

28. ENTIRE AGREEMENT

28.1. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

28.2. Each Party acknowledges that in entering into this Agreement it does not rely on, and 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.

28.3. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

28.4. Nothing in this Clause 28 shall limit or exclude any liability for fraud.

29. VARIATION

29.1. No variation of this Agreement shall be effective unless it is in writing and signed by the duly authorized representative of Ubisense (or their authorized persons).

30. NO PARTNERSHIP OR AGENCY

30.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any Party the agent of another Party, nor authorize any Party to make or enter into any commitments for or on behalf of any other Party.

30.2. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

31. COUNTERPARTS

31.1. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute an original, but all the counterparts shall together constitute the one Agreement.

31.2. The transmission of an executed counterpart of this Agreement (but for the avoidance of doubt, not just a signature page) shall take effect as delivery of an executed counterpart of this Agreement.

31.3. No counterpart shall be effective until each Party has executed at least one counterpart.

32. THIRD PARTY RIGHTS

32.1. No one other than a Party to this Agreement shall have any right to enforce any of its terms.

33. RIGHTS AND REMEDIES

33.1. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law unless expressly stated in this Agreement.

34. NOTICES

34.1. Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid recorded first-class post or other courier delivery service at its registered office (if a company) or its principal place of business (in any other case).

34.2. Any notice shall be deemed to have been received:

34.2.1. if delivered by hand, at the time the notice is left at the proper address.

34.2.2. if sent by pre-paid recorded first-class post or other courier delivery service, at the time recorded by the delivery service as having been received.

34.3. This Clause 34 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause 34, "writing" shall include e-mail.

35. OTHER

35.1. All manuals, specifications, documentation, instructions, written materials, including all Software or otherwise supplied by Ubisense connected with the Goods will be in the English language.

35.2. Ubisense gives no guarantee on the quality, accuracy or validity of the services or products provided by third parties.

35.3. Ubisense does not accept any liability for any action, choice or purchase made by the Customer, which is based on any recommendation or advice provided by Ubisense.

36. GOVERNING LAW AND JURISDICTION

36.1. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of the state of Delaware.

36.2. For any dispute or claim found non-arbitrable under the Federal Arbitration Act and Clause 26.1 of this Agreement, the Parties irrevocably agree that the state and federal courts found in Delaware have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Agreement, its subject matter or its formation (including non-contractual disputes or claims).