

**TERMS & CONDITIONS**  
**STEP SUBSCRIPTION & RENTAL OF IMEASUREU SENSORS**  
**(“TERMS”)**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The following definitions and rules of interpretation shall apply in these Terms:

<b>"Acceptance"</b>	means a written acceptance an Order issued by IMU;
<b>"Affiliate"</b>	in relation to a party, a person or entity that directly or indirectly controls, is controlled by, or is under common control with another entity;
<b>"Authorised Users"</b>	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation;
<b>"Back-Up Policy"</b>	IMU's policy for archiving Customer Data as made available at <a href="https://imeasureu.com/backup-policy/">https://imeasureu.com/backup-policy/</a> or such other website address as may be notified to the Customer from time to time;
<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
<b>"Confidential Information"</b>	information concerning the business, affairs, clients or supplies of a party or which is otherwise proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 17.7 or clause 17.8;
<b>"Contract"</b>	has the meaning given in clause 2;
<b>"Customer"</b>	the Customer named in the Order;
<b>"Customer Data"</b>	the data about Data Subjects uploaded by the Customer or its Authorised Users for the purpose of using the Services or facilitating the Customer's use of the Services;
<b>"Data Protection Legislation"</b>	means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the words " <b>controller</b> ", " <b>processor</b> ", " <b>data subject</b> ", " <b>personal data</b> ", " <b>personal data breach</b> ", " <b>processing</b> " and " <b>appropriate technical and organisational measures</b> " shall have the meaning given in the Data Protection Legislation;
<b>"Data Subject"</b>	a person whose data is uploaded by the Customer or its Authorised Users into the Software;
<b>"De-identified Data"</b>	any Customer Data (wholly or in part) Manipulated to such a degree that it:  (a) cannot be identified as originating or deriving directly from the Customer Data and cannot be reverse-engineered such that it can be so identified; and  (b) is not capable of use substantially as a substitute for the Customer Date;
<b>"Delivery"</b>	means when the Sensors have been delivered to the Customer's premises specified in the Order and " <b>Delivered</b> " shall have a corresponding meaning;
<b>"Delivery Fee"</b>	where applicable, shall be as set out in the Order;
<b>"Deposit"</b>	where applicable, shall be the amount set out in the Order;
<b>"Documentation"</b>	the documents made available to the Customer by IMU online via <a href="https://imeasureu.com/imu-downloads/">https://imeasureu.com/imu-downloads/</a> or such other web address notified by IMU to the Customer from time to time which sets out a description of the Services and the

	user instructions for the Services and/or the Sensors;
<b>“Effective Date”</b>	means the date of Acceptance;
<b>“IMU”</b>	IMEASUREU LIMITED a company incorporated in England & Wales with company number 11753894 whose registered office address is 6 Oxford Pioneer Park, Yarnton, Oxon, United Kingdom, OX5 1QU;
<b>“Initial Subscription Term”</b>	has the meaning given in the Order;
<b>“Insolvency Event”</b>	in relation to a person, means any of the following: (a) a meeting of creditors of that person being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to that person; (b) a chargeholder, receiver, administrative receiver or other similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within 7 days) on the whole or a material part of the assets of that person; (c) that person ceasing to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986; (d) that person or its directors or the holder of a qualifying floating charge giving notice of their intention to appoint, or making an application to the court for the appointment of, an administrator; (e) a petition being presented (and not being discharged within 28 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of that person; or (f) the happening in relation to that person of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets
<b>“Intellectual Property Rights”</b>	means all patents, copy rights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;
<b>“Manipulate”</b>	to combine or aggregate the Customer Data (wholly or in part) with other data or information or to adapt the Customer Data (wholly or in part);
<b>“Normal Business Hours”</b>	9.00 am to 5.00 pm local <b>UK</b> time, each Business Day;
<b>“Open-Source Software”</b>	open-source software as defined by the Open Service Initiative ( <a href="https://opensource.org/">https://opensource.org/</a> ) or the Free Software Foundation ( <a href="https://www.fsf.org/">https://www.fsf.org/</a> );
<b>“Order”</b>	means a request made by the Customer to IMU for the supply of Services and/or Sensors (as appropriate);
<b>“Privacy and Security Policy”</b>	IMU’s policy relating to the privacy and security of the Customer Data available at <a href="https://imeasureu.com/privacy-policy/">https://imeasureu.com/privacy-policy/</a> and <a href="https://imeasureu.com/cookies-policy/">https://imeasureu.com/cookies-policy/</a> or such other website address as may be notified to the Customer from time to time;
<b>“Quotation”</b>	means a non-binding written price estimate (as revised or varied by IMU from time to time in accordance with these Terms) issued by IMU to the Customer in relation to the supply of Services and rental of Sensors;
<b>“Renewal Period”</b>	the period described in clause 20.1;
<b>“Sensor(s)”</b>	means any wearable inertial measurement unit or equipment

to be rented to a Customer by IMU as set out in the Order, including any additional Sensors requested by the Customer and Delivered by IMU in accordance with the terms of this Contract;

- “Services”** the subscription services provided by IMU to the Customer under this Contract via <https://imeasureu.com/login> or any other website notified or made available to the Customer by IMU from time to time, as more particularly described in the Documentation;
- “Software”** the software provided by IMU as part of or to facilitate access to the Services (including any software embedded within the Sensors);
- “Software Licence”** means the licence for the Software set out in clause 4 of these Terms;
- “Subscription Fees”** the subscription fees payable by the Customer to IMU for the User Subscriptions and the Sensors, as set out in the Order;
- “Subscription Term”** has the meaning given in clause 20.1 (being the Initial Subscription Term together with any subsequent Renewal Periods);
- “Support Services Policy”** IMU's policy for providing support in relation to the Services as made available at <https://imeasureu.com/Support-Services-Policy/> or such other website address as may be notified to the Customer from time to time;
- “Trial Fee”** where applicable, shall be the amount specified in the Order;
- “Trial Period”** any trial period agreed between the parties and recorded in the Order;
- “UK Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
- “User Subscriptions”** the user subscriptions purchased by the Customer which entitle Authorised Users to access and use the Services and the Documentation in accordance with these Terms;
- “Virus”** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; and
- “Warranty Period”** has the meaning in clause 16.1.

1.2 A **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's permitted assignees and a reference to a **“company”** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.3 A reference to a “**holding company**” and “**subsidiary**” means a holding company or a subsidiary as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a statute, statutory instrument or statutory provision is a reference to it as it is in force as at the date of this Contract and shall include all subordinate legislation made as at the date of this Contract under that statute or statutory provision.
- 1.6 A reference to “**writing**” or “**written**” includes fax and e-mail.
- 1.7 Any obligation in a Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.8 References to time are to UK time.
- 1.9 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, descriptions, definition, phrase or term preceding those terms.

## **2. APPLICATION OF TERMS**

- 2.1 These Terms shall apply to any Contract made between IMU and the Customer for the supply of Services and rental of Sensors, including during any Trial Period.
- 2.2 A Contract made between IMU and a Customer shall consist of these Terms and the Acceptance. If there is any inconsistency between those documents, then the Acceptance shall take precedence. No terms or conditions proposed by the Customer shall apply unless IMU has expressly agreed to those terms in writing. In particular, no terms and conditions endorsed upon, delivered with or contained in the Order, tender document or materials provided by the Customer shall form part of the Contract, unless expressly agreed in writing and signed by a duly authorized person on behalf of each of the Customer and IMU.

## **3. QUOTATIONS AND ORDERS**

- 3.1 Any Quotation given by IMU shall be in writing or shall subsequently be confirmed in writing and shall be provided with a copy of these Terms.
- 3.2 When an Order is placed by a Customer in response to a Quotation, that Order shall constitute an offer made by the Customer to IMU and be subject to these Terms. Such an offer shall be treated as the Customer's acceptance of these Terms. The Order may be accepted or rejected by IMU.
- 3.3 When an enquiry is submitted by a Customer otherwise than in response to a Quotation, for example in the form of a request for responses to a proposal, IMU shall provide to the Customer a Quotation and a copy of these Terms. The Customer may then place an Order in response to that Quotation and that Order shall constitute an offer made by the Customer to IMU. Such an Offer shall be treated as the Customer's acceptance of these Terms. The Order may be accepted or rejected by IMU.
- 3.4 In both cases 3.2 and 3.3 above, an Order shall be accepted by IMU only if an Acceptance is issued by IMU in relation to that Order or the relevant Services or Sensors are provided. In no case shall issuing a Quotation constitute an Acceptance.

3.5 An Order shall (in the absence of any contrary stipulation by IMU) be deemed to incorporate the price stated in the most recent Quotation (as subsequently revised or varied).

#### **4. USER SUBSCRIPTIONS & SOFTWARE LICENCE**

4.1 Subject to the Customer making such payments as required pursuant to the Order and clause 13 of these Terms, the restrictions set out in this clause 4 and the other terms and conditions of this Contract, IMU grants to the Customer a non-exclusive, non-transferrable, terminable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Software in accordance with the Documentation during the Subscription Term solely for the Customer's internal business operations.

4.2 The Customer undertakes to keep a secure password for the Authorised Users' use of the Services and the Documentation and shall procure that each Authorised User shall keep the password confidential.

4.3 The Customer undertakes that:

4.3.1 it shall permit IMU or IMU's designated auditor to audit the Services in order to establish the name and password of each Authorised User to audit compliance with this Contract. Each such audit may be conducted no more than once per quarter, at IMU's expense, and this right shall be exercised with reasonable prior written notice, in such manner as not to substantially interfere with the Customer's normal conduct of business;

4.3.2 if any of the audits referred to in clause 4.3.1 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to IMU's other rights, the Customer shall promptly disable such passwords and IMU shall not issue new passwords to such individual; and

4.3.3 if any of the audits referred to in clause 4.3.1 reveal that the Customer has underpaid Subscription Fees to IMU, then without prejudice to IMU's other rights, the Customer shall pay to IMU an amount equal to such underpayment as calculated in accordance with clause 14 and the Order.

4.4 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

4.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

4.4.2 facilitates illegal activity;

4.4.3 depicts sexually explicit images;

4.4.4 promotes unlawful violence;

4.4.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

4.4.6 is otherwise illegal or causes damage or injury to any person or property;  
and IMU reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

4.5 The Customer shall not:

4.5.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Contract:

(a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

4.5.2 access all or any part of the Software, the Services, the Sensors or the Documentation in order to build a product or service which competes with the Software, the Services, the Sensors and/or the Documentation; or

4.5.3 use the Software, the Services and/or the Documentation to provide services to third parties; or

- 4.5.4 subject to clause 29.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, the Services and/or the Documentation available to any third party except the Authorised Users; or
- 4.5.5 attempt to obtain, or assist third parties in obtaining, access to the Software, the Services and/or the Documentation, other than as provided under this clause 4.
- 4.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software, the Services, the Sensors and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify IMU.
- 4.7 The Customer is entirely responsible for its use of the Sensors, the Software and the Services and for anyone it permits or allows to use the Sensors, the Software and/or the Services. The Customer shall be liable to IMU for the actions or omissions of such persons as if they were the actions or omissions of the Customer and, without prejudice to and in addition to any other remedies that IMU may have, the Customer hereby agrees and undertakes to indemnify IMU for any losses, claims, demands, liabilities and expenses of whatever nature (including, without limitation, legal fees reasonably and properly incurred) arising directly or indirectly out of a breach by the Customer of its obligations contained in this clause.
- 4.8 The Customer shall comply with any notice issued by IMU regarding the Customer's use of the Sensors.
- 4.9 The Software Licence automatically terminates if the Customer fails to comply with any provision of these Terms.
- 4.10 Except as expressly set out in these Terms, no conditions, warranties or other terms apply to the Software or to anything supplied or provided by IMU under these Terms and all implied conditions, warranties or other terms (including without limitation any implied terms as to satisfactory quality or fitness for purpose) are, to the fullest extent permitted by law, hereby excluded.
- 4.11 The rights provided under this clause 4 are granted to the Customer only, and shall not be considered granted to any Affiliate of the Customer.

## **5. SERVICES**

- 5.1 IMU shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Contract.
- 5.2 IMU shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
  - 5.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am; and
  - 5.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that IMU has used reasonable endeavours to give the Customer at least 2 Normal Business Hours' notice in advance.
- 5.3 IMU will, as part of the Services and provide the Customer with IMU's standard customer support services during Normal Business Hours in accordance with IMU's Support Services Policy in effect at the time that the Services are provided

## **6. SENSOR RENTAL**

- 6.1 Subject to the Customer making such payments as required pursuant to the Order and clause 14 of these Terms and complying with the other terms and conditions of this Contract, IMU shall rent the Sensors to the Customer for the Subscription Term, solely for the Customer's internal business operations.

## **7. DELIVERY, RISK AND TITLE**

- 7.1 Delivery of the Sensors shall be made by IMU following the issue of an Acceptance. IMU will use its reasonable endeavours to effect Delivery by the date set out in the Acceptance.

However, time shall not be of the essence and IMU shall not be liable for any loss arising out of any delay or failure in Delivery.

- 7.2 The Customer will inspect the Sensors on arrival at the Customer's premises and, within 3 days of arrival, notify IMU in writing, of any damage to the Sensors or any discrepancy between the Sensors and the items listed in the Order, which is or should be apparent from inspection. If there is such damage or discrepancy, IMU shall be given a reasonable opportunity to inspect the Sensors concerned.
- 7.3 Where there is damage to the Sensors or a discrepancy in the Sensors provided, the Customer shall (i) notify IMU of that damage or discrepancy as soon as reasonably practicable and in any event within 7 days of Delivery; and (ii) provide IMU with sufficient details of the damage and/or discrepancy. IMU shall then, at its sole option, either repair or replace the affected Sensors in accordance with clause 16.2. This shall be IMU's sole obligation and the Customer's sole remedy in the event of damage or discrepancy on Delivery.
- 7.4 The Sensors shall at all times remain the property of IMU, and the Customer shall have no right, title or interest in or to the Sensors.
- 7.5 If the Customer is in breach of these Terms, if an Insolvency Event occurs in relation to the Customer during the Subscription Term or if the Contract terminates for any reason, IMU is authorised (without prejudice to any other rights available to it) to enter the Customer's premises (and where the Sensors or any of them are located other than at the Customer's premises, the Customer shall ensure that IMU is authorised to access those other premises) and remove the Sensors and take whatever steps are reasonably necessary to effect such entry and removal.
- 7.6 The risk of loss, theft, damage or destruction of the Sensors shall pass to the Customer on Delivery. The Sensors shall remain at the sole risk of the Customer during the entire Subscription Term (including any Renewal Terms) and any further term during which the Sensors are the possession, custody or control of the Customer ("**Risk Period**") until such time as the Sensors are redelivered to IMU. During the Subscription Term and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:
- 7.6.1 insurance of the Sensors to a value not less than their full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as IMU may from time to time nominate in writing;
- 7.6.2 insurance for such amounts as a prudent owner or operator of the Sensors would insure for, or such amount as IMU may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Sensors; and
- 7.6.3 insurance against such other or further risks relating to the Sensors as may be required by law, together with such other insurance as IMU may from time to time consider reasonably necessary and advise to the Customer.
- 7.7 The Customer shall give immediate written notice to IMU in the event of any loss, accident or damage to the Sensors arising out of or in connection with the Customer's possession or use of the Sensors.
- 7.8 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to IMU and proof of premium payment to IMU to confirm the insurance arrangements. If the Customer fails to effect or maintain any of the insurances required under these Terms, IMU shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

## **8. TRIAL PERIOD**

- 8.1 During any Trial Period, IMU shall provide the Services and make available the Sensors and the Documentation to the Customer on and subject to the Terms as amended or varied by this clause 8. References in these Terms to "Subscription Term" shall be deemed to be references to the 'Trial Period' during any relevant Trial Period.

- 8.2 During any Trial Period, clause 14 of these Terms (Charges and Payment) shall not apply and, in substitution, the Customer shall pay the Trial Fee, the Deposit and the Delivery Fee as specified in the Order to IMU.
- 8.3 The Deposit is a deposit against any loss or damage caused to the Sensors and, in such circumstances, IMU shall be entitled to apply the Deposit against such loss or damage. The Customer shall pay to IMU any sums deducted from the Deposit within ten (10) Business Days of a demand. The Deposit (or balance thereof) shall be refundable within ten (10) Business Days at the end of the Trial Period.
- 8.4 IMU shall invoice the Customer on or after the Effective Date for the Delivery Fee, the Trial Fee and the Deposit and the Customer shall pay such invoice within 7 days after the date of such invoice, in full and cleared funds to IMU's bank account as set out in the invoice.
- 8.5 All amounts and fees stated or referred to in this clause:
- 8.5.1 shall be payable in the currency specified in the relevant Order;
  - 8.5.2 are non-cancellable and non-refundable; and
  - 8.5.3 are exclusive of value added tax, which shall be added to IMU's invoice(s) at the appropriate rate.
- 8.6 During any Trial Period, the following clauses of these Terms shall not apply:
- 8.6.1 clause 5 (Services);
  - 8.6.2 clause 9 (Additional User Subscriptions);
  - 8.6.3 clause 10.2 (Customer Data); and
  - 8.6.4 clauses 13.1 and 13.2 (inclusive) (IMU Obligations)
- 8.7 Either party may terminate this Contract by one week's notice in writing to the other party at any time and for any reason, during any Trial Period.
- 8.8 Where a Contract is terminated for any reason during a Trial Period and the Customer fails to return the Sensors to IMU in accordance with clause 21.1.3, IMU may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Sensors and for this purpose may enter any premises at which the Sensors are located and the Customer shall pay to IMU any costs and expenses shared by IMU in recovering the Sensors.
- 8.9 During any Trial Period, IMU's liability as described in clause 19.7.2 of these Terms shall be limited to £1,000 or the Trial Fee, whichever is the lesser.
- 8.10 If following a Trial Period, the Customer wishes to subscribe for the Services and rent the Sensors on an ongoing basis, the indicative terms set out in Section 3 of the relevant Order Form will apply. These Terms will continue to apply to any Contract formed in such circumstances and the Customer's confirmation of its wish to subscribe for the Services on an ongoing basis shall constitute its acceptance of these Terms.

## **9. ADDITIONAL USER SUBSCRIPTIONS & SENSORS**

- 9.1 Subject to clause 9.2 and clause 9.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions and/or additional Sensors and IMU shall grant access to the Services and the Documentation to such additional Authorised Users or deliver such additional Sensors to the Customer in accordance with the provisions of this Contract.
- 9.2 If the Customer wishes to purchase additional User Subscriptions or Sensors, the Customer shall notify IMU in writing. IMU shall evaluate such request for additional User Subscriptions and/or Sensors and shall respond to the Customer with approval or rejection of the request within a reasonable period. Where IMU approves the request, IMU shall:
- 9.2.1 activate the additional User Subscriptions within 2 Business Days of its approval of the Customer's request; and/or
  - 9.2.2 deliver the additional Sensors to the Customer's premises as soon as reasonably practicable following such approval.



- 9.3 If IMU approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of IMU's invoice, pay to IMU the relevant fees for such additional User Subscriptions as set out in the Order.
- 9.4 If additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), the relevant fees shall be pro-rated from the date of activation by IMU for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).
- 9.5 If additional Sensors are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), the fees shall be calculated by reference to the remaining term of the relevant period.

## **10. CUSTOMER DATA**

- 10.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 10.2 IMU shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy, as such document may be amended by IMU in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for IMU to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by IMU in accordance with the archiving procedure described in its Back-Up Policy. IMU shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 10.3 IMU shall, in providing the Services, comply with its Privacy and Security Policy, as such document may be amended from time to time by IMU in its sole discretion.
- 10.4 IMU and the Customer shall comply with all applicable requirements of the Data Protection Legislation.
- 10.5 If IMU processes any personal data on the Customer's behalf when performing its obligations under this Contract, the Customer shall be the data controller and IMU shall be a data processor for the purposes of the Data Protection Legislation and in any such case:
- 10.5.1 the Order shall set out the scope, nature and purpose of processing by IMU, the duration of the processing and the types of personal data and categories of data subject;
- 10.5.2 the Customer acknowledges and agrees that (subject to clause 10.5.6 below) the personal data may be transferred or stored outside the United Kingdom or the country where the Customer and the Authorised Users are located in order to carry out the Services and IMU's other obligations under this Contract;
- 10.5.3 the Customer shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to IMU for the duration and purposes of this Contract so that IMU may lawfully use, process and transfer the personal data in accordance with this Contract on the Customer's behalf;
- 10.5.4 the Customer consents to IMU appointing any cloud platform provider to process personal data under this Contract for the purposes of providing the Services;
- 10.5.5 this Contract constitutes the written instructions of the Customer to IMU process the personal data and IMU shall process the personal data only on such instructions of the Customer unless IMU is required by the laws of any member of the European Union or by the laws of the European Union applicable to IMU and/or Domestic UK Law (where Domestic UK Law means the UK Data Protection Legislations and any other law that applies in the UK) to process personal data (Applicable Laws). Where IMU is relying on Applicable Laws as the basis for processing personal data, IMU shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit IMU from so notifying the Customer;
- 10.5.6 IMU shall not transfer any personal data outside of the European Economic Area and the United Kingdom unless a finding of adequacy has been made in respect of the

- relevant country or, in the absence of a finding of adequacy, adequate protective procedures are in place in accordance with applicable Data Protection Legislation;
- 10.5.7 IMU shall assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 10.5.8 IMU shall notify the Customer without undue delay on becoming aware of a personal data breach;
  - 10.5.9 IMU shall at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of this Contract unless required by Applicable Law to store the personal data;
  - 10.5.10 IMU shall maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and inform the Customer if, in the opinion of IMU, an instruction infringes the Data Protection Legislation; and
  - 10.5.11 each party will ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an accident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

## **11. LICENCE OF CUSTOMER DATA**

- 11.1 In further consideration of IMU making the Services available to the Customer, the Customer grants to IMU a non-exclusive irrevocable perpetual licence to:
  - 11.1.1 access, view and Manipulate Customer Data for the purpose of creating De-identified Data;
  - 11.1.2 store De-identified Data on its own computer systems; and
  - 11.1.3 distribute De-identified Data to employees, officers, and consultants of IMU and its Affiliates.
- 11.2 IMU shall own all Intellectual Property Rights in any De-identified Data and shall be free to use the De-identified Data for any purposes provided it shall not disclose to any third party any Manipulated Customer Data which is not De-identified Data.

## **12. IMU'S OBLIGATIONS**

- 12.1 IMU undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 12.2 The undertaking at clause 12.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to IMU's instructions, or modification or alteration of the Services by any party other than IMU or IMU's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, IMU will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 12.1. Notwithstanding the foregoing, IMU:
  - 12.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
  - 12.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

12.3 IMU warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract.

### **13. CUSTOMER'S OBLIGATIONS**

13.1 In respect of the Services, the Customer shall:

13.1.1 provide IMU with:

- (a) all necessary co-operation in relation to this Contract; and
- (b) all necessary access to such information as may be required by IMU; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

13.1.2 without affecting its other obligations under this Contract, comply with all applicable laws and regulations with respect to its activities under this Contract;

13.1.3 carry out all other Customer responsibilities set out in this Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, IMU may adjust any agreed timetable or delivery schedule as reasonably necessary;

13.1.4 ensure that the Authorised Users (and anyone else it permits or allows to) use the Services and the Documentation in accordance with the terms and conditions of this Contract and shall be responsible for any Authorised User's breach of this Contract;

13.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for IMU, its contractors and agents to perform their obligations under this Contract, including without limitation the Services;

13.1.6 comply with any notice issued by IMU regarding the Customer's use of the Services;

13.1.7 ensure that its network and systems comply with the relevant specifications provided by IMU from time to time; and

13.1.8 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to IMU's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

13.2 In respect of the Sensors, the Customer shall:

13.2.1 ensure that the Sensors are kept and operated in a suitable environment, used only for the purposes for which they are designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;

13.2.2 take such steps (including compliance with all safety and usage instructions provided by IMU) as may be necessary to ensure, so far as reasonably practicable, that the Sensors are at all times safe and without risk to health when being set, used, cleaned or maintained by a person at work;

13.2.3 maintain at its own expense the Sensors in good and substantial repair in order to keep them in as good an operating condition as they were on the date of Delivery;

13.2.4 make no alteration to the Sensors and shall not remove any existing component(s) from the Sensors nor use the Sensors with any hardware or software unless this use has been expressly approved by IMU;

13.2.5 not, reverse engineer or decompile any software embedded in the Sensors;

13.2.6 not, without the prior written consent of IMU, part with control of, sell or offer for sale, underlet or lend the Sensors or allow the creation of any encumbrance in respect of them or suffer or permit the Sensors to be confiscated or seized or otherwise do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of IMU in the Sensors;

13.2.7 not use the Sensors for any unlawful purpose; and

13.2.8 deliver up the Sensors on or before the end of the Subscription Term or on earlier termination of this Contract at such address as IMU requires, or if necessary allow IMU or its representatives access to the premises where the Sensors are located for the purpose of removing the Sensors.

13.3 The Customer acknowledges that IMU shall not be responsible for any loss of or damage to the Sensors arising out of or in connection with any negligence, misuse, mishandling of the Sensors or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature

otherwise arising out of or in connection with any failure by the Customer to comply with the terms of this Contract.

#### **14. CHARGES AND PAYMENT**

- 14.1 The Customer shall pay the following Subscription Fees to IMU in accordance with this clause 14:
- 14.1.1 for the User Subscriptions, fees calculated by reference to the number of Data Subjects on the basis set out in the Order;
  - 14.1.2 for the rental of the Sensors, the fees set out in the Order; and
  - 14.1.3 where specified in the Order, the support fees in accordance with clause 5.3.
- 14.2 The Customer shall on the Effective Date provide to IMU approved purchase order information acceptable to IMU and any other relevant valid, up-to-date and complete contact and billing details, including the number of User Subscriptions, Data Subjects and Sensors.
- 14.3 If the Customer provides its approved purchase order information to IMU, IMU shall invoice the Customer:
- 14.3.1 on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term;
  - 14.3.2 subject to clause 20.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period; and
  - 14.3.3 at any time for any Subscription Fees payable pursuant to clause 14.5, and the Customer shall pay each invoice within 30 days after the date of such invoice by way of electronic bank transfer.
- 14.4 Subject to clause 14.5, the Customer may, at least 30 days prior to each anniversary of the Effective Date:
- 14.4.1 notify IMU of any changes in the number of User Subscriptions and Data Subjects for the following Renewal Period and the Subscription Fees shall be adjusted accordingly;
  - 14.4.2 return any Sensors to IMU for the following Renewal Period and the Subscription Fees shall be adjusted accordingly.
- 14.5 If the Customer uses the Services for Data Subjects in excess of the number requested pursuant to clause or clause 14.4 and such number would incur different Subscription Fees pursuant to the Order, IMU shall invoice the Customer for the difference between the Subscription Fees already paid and Subscription Fees payable for that number of Data Subjects, pro-rated from the date upon which such Data Subjects were added for the remainder of the Initial Subscription Term or the then current Renewal Period (as applicable). The Customer shall pay each invoice within 30 days after the date of such invoice. The Customer is not entitled to a refund of Subscription Fees if the number of Data Subjects or Sensors is reduced during the Initial Subscription Term or a Renewal Period (as applicable).
- 14.6 If IMU has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of IMU:
- 14.6.1 IMU may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and IMU shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - 14.6.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of National Westminster Bank (NatWest) from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 14.7 All amounts and fees stated or referred to in this Contract:
- 14.7.1 shall be payable in the currency specified in the Order;
  - 14.7.2 are, subject to clause 19.7.2, non-cancellable and non-refundable;
  - 14.7.3 are exclusive of value added tax, which shall be added to IMU's invoice(s) at the appropriate rate.

14.8 IMU shall be entitled to increase the Subscription Fees and the support fees payable pursuant to clause 5.3 at the start of each Renewal Period upon 120 days' prior notice to the Customer and the Order shall be deemed to have been amended accordingly.

## 15. PROPRIETARY RIGHTS

15.1 The Customer acknowledges and agrees that IMU and/or its Affiliates and/or its licensors own all Intellectual Property Rights in the Services, the Sensors and the Documentation. Except as expressly stated herein, this Contract does not grant the Customer any rights or licences in respect of the Services, the Sensors or the Documentation.

15.2 IMU confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Contract.

15.3 IMU (and its Affiliates and licensors as appropriate) reserve and retain full ownership of and interest in all inventions, designs, copyrights, processes and any other Intellectual Property Rights of whatever nature relevant to the Sensors. The Intellectual Property Rights in all drawings, specifications and manuals created or issued by or on behalf of IMU belong to IMU (or its Affiliates and licensors as appropriate) and are considered by IMU to be confidential. The Customer may not reproduce or disclose these drawings, specifications and manuals to anyone without IMU's prior written consent. This obligation of confidentiality shall remain in force in perpetuity.

## 16. LIMITED WARRANTIES

16.1 Subject to clause 18.4 and the remainder of this clause 16, IMU warrants that the Sensors shall, during the Warranty Period (unless an alternative period is agreed in writing between the parties) be free from material defects in design, materials and workmanship under normal conditions of use. In these Terms, the "**Warranty Period**" shall be the 12 month period commencing on Delivery.

16.2 If the warranty in clause 16.1 is breached, the Customer will notify IMU in writing as soon as is reasonably possible giving sufficient information as to the nature and extent of the breach and (where relevant) the uses to which the Sensors have been put prior to the problem arising. The Customer must give IMU a reasonable time to fix the problem and (if necessary) to repair or replace the relevant Sensors (together a "**Remedy**"). This will be done without any additional charge to the Customer, except that IMU may require the Customer to return the Sensors, at its own expense to IMU's premises (or such other address as nominated by IMU) with a full description of the alleged defect which is causing the breach. This shall be IMU's sole responsibility and Customer's sole remedy in the event of breach of the warranties in clause 16.1.

16.3 Where a Sensor is replaced by IMU in accordance with this clause, these Terms (including the warranties in clause 16.1) shall apply to the new Sensor (including any parts).

16.4 Except as expressly set out in these Terms, no conditions, warranties or other terms apply to the Sensors or any other goods or services supplied or to be supplied by IMU. Subject to clause 19.6, no implied conditions, warranties or other terms apply (including any implied terms as to quality, fitness for purpose or conformance with description). Customer is responsible for deciding whether or not the Sensors and the Services are suitable for the Customer's purpose and IMU will not be responsible for this.

16.5 In relation to the Software, IMU does not represent or warrant that the Software or its operation will be entirely free from errors.

16.6 If IMU carries out any repair or replacement to a Sensor as specified in clause 16.2 but in circumstances where the relevant defect or malfunction has been caused by an accident, by the improper or abnormal use of the Sensor by the Customer, or for one of the reasons that IMU is not responsible under clause 18.4 or otherwise, the Customer shall pay for such repair or replacement at IMU's then current rates, within 30 days of IMU issuing an invoice for that work.

## **17. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 17.1 References in this clause 17 to IMU's Confidential Information shall be deemed to include IMU's Affiliates' Confidential Information.
- 17.2 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Contract. A party's Confidential Information shall not be deemed to include information that:
- 17.2.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 17.2.2 was in the other party's lawful possession before the disclosure;
  - 17.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 17.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 17.3 Subject to clause 17.5, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Contract.
- 17.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.
- 17.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 17.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 17.6 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 17.7 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute IMU's Confidential Information.
- 17.8 IMU acknowledges that the Customer Data is the Confidential Information of the Customer.
- 17.9 No party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 17.10 The above provisions of this clause 17 shall survive termination of this Contract, however arising.

## **18. INDEMNITY**

- 18.1 The Customer shall defend, indemnify and hold harmless IMU against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, the Software, the Sensors or the Documentation, provided that:
- 18.1.1 the Customer is given prompt notice of any such claim;
  - 18.1.2 IMU provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - 18.1.3 the Customer is given sole authority to defend or settle the claim.
- 18.2 IMU shall defend the Customer, its officers, directors and employees against any claim that the Services, the Software, the Sensors or the Documentation infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and

shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that the Customer:

- 18.2.1 at IMU's request and expense, allows IMU (or an Affiliate) to conduct the defence of the claim (including settlement);
  - 18.2.2 makes no admission in relation to the claim without the prior consent of IMU;
  - 18.2.3 notifies IMU as soon as is reasonably practicable of the claim setting out full details thereof;
  - 18.2.4 takes all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the claim; and
  - 18.2.5 at the expense of IMU, co-operates and assists to a reasonable extent with IMU's (or its Affiliate's) defence of the claim.
- 18.3 In the defence or settlement of any claim, IMU may procure the right for the Customer to continue using the Services, the Software and/or the Sensors, replace or modify the Services, the Software or the Sensors so that they become non-infringing or, if such remedies are not reasonably available, terminate this Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 18.4 In no event shall IMU, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on the Customer (or anyone the Customer permits to use the Services, the Software or the Sensors):
- 18.4.1 modifying, altering, adapting, disassembling or reverse engineering the Software or the Sensors without the consent of IMU;
  - 18.4.2 using of the Services, the Software, the Sensors or the Documentation in a manner contrary to the instructions given to the Customer by IMU;
  - 18.4.3 failing to use items which update the Software or the Sensors, the use of which would have avoided the infringement;
  - 18.4.4 failing to comply with the terms of any end user licence agreement in respect of the Software;
  - 18.4.5 relying on information, specifications, documents, facilities or items supplied by the Customer to IMU;
  - 18.4.6 using the Services, the Software, the Sensors or the Documentation after notice of the alleged or actual infringement from IMU or any appropriate authority, and the Customer shall indemnify IMU against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by IMU in connection with any claim arising from such circumstances.
- 18.5 Notwithstanding any other provision in this Contract, clause 18.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the use of any Open-Source Software incorporated into the Software.
- 18.6 The foregoing and clause 19.7.2 state the Customer's sole and exclusive rights and remedies, and IMU's (including IMU's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **19. LIMITATION OF LIABILITY**

- 19.1 The Customer acknowledges and accepts that the Services and the Sensors are not intended to replace the clinical skill of a medical or sports practitioner or his/her independent professional judgement of individual clinical circumstances to make a diagnosis and/or determine treatment. The Sensors and the Services should only be used by those who have been appropriately trained in its operation, functions, capabilities and limitations, and in any event should not be relied upon, by itself, as the sole method of making any diagnosis or determining any treatment.
- 19.2 Except as expressly and specifically provided in this Contract:
- 19.2.1 the Customer assumes sole responsibility for the selection of the Services and the Sensors and for the results obtained from the use of the Services and the Sensors by the Customer, and for conclusions drawn from such use. IMU shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts

- provided to IMU by the Customer in connection with the Services, or any actions taken by IMU at the Customer's direction;
- 19.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract;
- 19.2.3 the Services, the Software, the Sensors and the Documentation are provided to the Customer on an "as is" basis.
- 19.3 IMU does not warrant that the use of the Services will be uninterrupted or error-free or that the Services, the Software, the Sensors or the Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements.
- 19.4 The Customer acknowledges that:
- 19.4.1 IMU is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and the Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
- 19.4.2 electronic databases are subject to errors, tampering and break-ins. While IMU agrees to take reasonable security precautions to avoid such occurrences, it does not guarantee or warrant that such events will not take place.
- 19.5 Any Open-Source Software provided by IMU may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 19.2.2.
- 19.6 Nothing in this Contract shall limit or exclude a party's liability for:
- 19.6.1 death or personal injury caused by that party's negligence or the negligence of one of its employees, agents or subcontractors; or
- 19.6.2 fraud or fraudulent misrepresentation;
- 19.6.3 any liability which cannot under applicable law be excluded or limited by agreement.
- 19.7 Subject to clause 19.2 and clause 19.6:
- 19.7.1 IMU shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, for:
- (a) any losses or damage which may be suffered by the Customer, whether the same are suffered directly or indirectly or are immediate or consequential, which fall within the following categories:
- (i) loss of profits or revenue;
- (ii) loss of customers or contracts;
- (iii) loss of business or business opportunity;
- (iv) depletion of goodwill and/or similar losses;
- (v) loss or corruption of data or information;
- (vi) pure economic loss; or
- (b) any special, indirect or consequential loss, costs, damages, charges or expenses which may be suffered by the Customer however arising under this Contract; and
- 19.7.2 IMU's total aggregate liability in contract (including in respect of any indemnity including the indemnity at clause 18.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the total Subscription Fees paid for the User Subscriptions and the Sensors during the 12 months immediately preceding the date on which the claim arose.
- 19.8 IMU will not be liable for breach of any of these Terms (including breach of any warranty) to the extent that the breach concerned arises from or as a consequence of:
- 19.8.1 use of the Sensors other than in accordance with normal operating procedures as described in the manuals or as otherwise notified to the Customer by IMU;
- 19.8.2 any alterations to any Sensors made by anyone other than IMU or someone authorised by IMU;
- 19.8.3 any abnormal or incorrect operating conditions;



- 19.8.4 any other hardware, equipment or software being used with or in relation to any Sensors, unless this use has been expressly approved by IMU;
  - 19.8.5 fair wear and tear, wilful damage, negligence or could be expected to arise in the normal course of use of the Sensors; or
  - 19.8.6 the Customer using the Sensors after notifying IMU that they do not comply with the warranties contained in clause 16.1.
- 19.9 All dates supplied by IMU to the Customer shall be treated as approximate only. IMU shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 19.10 This clause 19 shall survive termination of this Contract.

## 20. TERM AND TERMINATION

- 20.1 This Contract shall, unless otherwise terminated as provided in this clause 20, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Contract shall be automatically renewed for successive periods of 12 months (each a **“Renewal Period”**), unless:
- 20.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
  - 20.1.2 otherwise terminated in accordance with the provisions of this Contract; and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **“Subscription Term”**.
- 20.2 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
- 20.2.1 the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 20.2.2 the other party commits a material breach of any other term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - 20.2.3 the other party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
  - 20.2.4 an Insolvency Event occurs in relation to the other party; or
  - 20.2.5 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## 21. CONSEQUENCES OF TERMINATION

- 21.1 On termination of this Contract for any reason:
- 21.1.1 the Customer shall immediately pay to IMU any sums due to IMU under this Contract. For the avoidance of doubt, unless the Contract is terminated as a result of material breach by IMU, IMU shall not be under any obligation to repay or refund any sums paid by the Customer in advance;
  - 21.1.2 all licences granted under this Contract shall immediately terminate and the Customer shall immediately cease all use of the Services, the Sensors and/or the Documentation;
  - 21.1.3 the Customer shall (at its own cost) return all Sensors to IMU as soon as reasonably practicable (and in any event, within 10 days) following the effective date of termination of the Contract;
  - 21.1.4 each party shall return and make no further use of any other equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - 21.1.5 notwithstanding the above, IMU may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 10.5.9 unless IMU receives, no later than ten days after the effective date of the termination of this Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. IMU shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges

- outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by IMU in returning or disposing of Customer Data;
- 21.1.6 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination shall not be affected or prejudiced; and
- 21.1.7 the following clauses shall continue in force:
- (a) clause 1 (Definitions and Interpretation);
  - (b) clause 17 (Confidentiality);
  - (c) clause 19 (Limitations on Liability);
  - (d) clause 21 (Consequences of Termination); and
  - (e) clause 33 (Governing Law and Jurisdiction),
- and any other provision expressed to survive termination.

## **22. MARKETING AND ADVERTISING**

- 22.1 The Customer grants to IMU a non-exclusive irrevocable and perpetual licence to use the Customer's name (or business/trading name) and logo in IMU's marketing and promotional materials (including on its website).

## **23. FORCE MAJEURE**

- 23.1 IMU shall have no liability to the Customer under this Contract if it is prevented from or delayed in performing its obligations under this Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of IMU or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

## **24. VARIATION**

- 24.1 Subject to the terms of the Order and except as provided in clause 14.8, no variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **25. WAIVER**

- 25.1 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 25.2 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 25.3 A party that waives a right or remedy provided under this Contract or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

## **26. RIGHTS AND REMEDIES**

- 26.1 Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 26.2 The Customer recognises that any breach or threatened breach of these Terms may cause IMU irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to IMU, the Customer acknowledges and agrees that IMU is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **27. SEVERANCE**

- 27.1 If any provision or part-provision of this Contract 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 shall not affect the validity and enforceability of the rest of this Contract.
- 27.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **28. ENTIRE AGREEMENT**

- 28.1 A Contract 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 Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether written or oral and whether made innocently or negligently) that is not set out in this Contract.
- 28.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in an Order.
- 28.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **29. ASSIGNMENT AND OTHER DEALINGS**

- 29.1 The Customer shall not, without the prior written consent of IMU, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.
- 29.2 IMU may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

## **30. NO PARTNERSHIP OR AGENCY**

- 30.1 Nothing in a Contract is intended to or shall operate to create or establish a partnership or joint venture between the parties, or authorise either party to act as the agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise make or enter into any commitments or bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 30.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **31. THIRD PARTY RIGHTS**

- 31.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 31.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract is not subject to the consent of any person that is not a party to this Contract.

## **32. NOTICES**

- 32.1 Any notice to be given under or in connection with this Contract shall be in writing in English and shall be:
- 32.1.1 delivered by hand or sent by pre-paid first-class post or other next day delivery service or by pre-paid airmail to the other party at its registered office (if a company)

- or its principal place of business (in any other case), or such other address as may have been notified by that party for such purposes; or
- 32.1.2 sent by fax or email to the fax number or email address given by each party to the other for such purpose; and
- 32.1.3 marked for the attention of:

- (a) In the case of IMU: the IMU representative set out in the Order; and
- (b) in the case of the Customer: the Customer representative set out in the Order,

each as named in the Order or such other person as may have been notified by that party for such purposes and each party warrants to the other that the persons named above have authority to bind that party and enter into contracts and arrangements in relation to the Services on its behalf.

- 32.2 Any notice shall be deemed to have been duly received:
- 32.2.1 if delivered by hand, when delivered (or if delivery is not in business hours, at 9:00am on the first Business Day following delivery);
  - 32.2.2 if correctly addressed and sent by pre-paid first-class post or other next day delivery service and having proof of postage, at 9:00am on the second Business Day after posting;
  - 32.2.3 if correctly addressed and sent by airmail and having proof of postage, 9:00am on the fifth Business Day after posting; or
  - 32.2.4 if sent by fax or email, at the time of transmission as shown by the timed printout obtained by the sender (or if transmission is not during business hours, at 9:00am on the First Business Day following transmission).
- 32.3 This clause shall 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.

### **33. GOVERNING LAW AND JURISDICTION**

- 33.1 This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.
- 33.2 Each party irrevocably agrees, for the benefit of IMU that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation. Nothing in this clause shall limit the right of IMU to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.