

Endur ID T&C's REV 5 Revised 6/17/24

ENDUR ID STANDARD TERMS AND CONDITIONS OF SALE

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, SIGNED BY BOTH ENDUR ID ("ENDUR ID") AND BUYER, ALL SALES OF PRODUCTS OR SERVICES BY ENDUR ID (THE "PRODUCTS") ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Quotations:

A quotation may be amended or rescinded by Endur ID at any time prior to receipt by Endur ID of written notice that Buyer has accepted that quotation without change. A quotation shall expire, without further notice, if Endur ID does not receive written notice that Buyer has accepted that quotation without change no later than 5 p.m. on the sixtieth day after the date it is issued.

2. Purchase Orders:

For each proposed purchase of the Printable Band Products from Endur ID, Buyer shall present Endur ID their current form of purchase order ("Purchase Order") at least 1 week domestically before the requested delivery date and up to 2 weeks internationally. Each such Purchase Order shall identify the quantity ordered, the requested delivery date and any export/import information which Endur ID needs in order to fill it. Each such Purchase Order, whether in response to a quotation or not, shall be an offer to purchase, which may be accepted or rejected by Endur ID in its absolute discretion. Unless Buyer is notified in writing to the contrary within five (5) days after Endur ID receives a Purchase Order, such Purchase Order shall be deemed to have been accepted by Endur ID without change.

3. Prices:

A. All prices published or quoted by Endur ID are subject to change (with the exception of in contract terms GSA and contract prices). If no specific price is included in a quotation, the price charged will be Endur ID's price at the time of delivery. Any price, whether included in a written quotation, provided orally, set forth in a Purchase Order or applicable at the time of delivery, may be adjusted at the time of billing to take into account specifications, quantities, shipment arrangements and other issues which were not considered at the time of the quotation or receipt of the Purchase Order.

B. The Supplier reserves the right, by giving written notice to the Customer or Reseller at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and services which are requested by the Customer or Reseller, or any delay caused by any

instructions of the Customer or Reseller or failure of the Customer or Reseller to give the Supplier adequate information or instructions.

4. Taxes:

All federal, state, local and foreign taxes, levies and assessments imposed on either Endur ID or Buyer and arising out of the transactions involved in or the relationships and obligations established by any Purchase Order, any quotation, or the acceptance of either (with the exception of income or other taxes imposed upon Endur ID and measured by the gross or net income of Endur ID) shall be the responsibility of Buyer, and, if paid or required to be paid by Endur ID, shall be added to and become a part of the amounts immediately due from Buyer. Any charge for on-site support and customer training shall be grossed-up for any non-refundable withholding tax imposed on Endur ID. If customer has a Tax Exempt Status, Endur ID Inc. will require a copy of the corresponding Tax Exempt Certification from the Customer/Buyer at the time the PO is supplied to Endur ID in order to avoid federal, state or local tax invoicing by Endur ID.

5. Products Ordered:

Endur ID reserves the right to modify the design or method of manufacture of any of the Products that it designs or manufactures, without notice, at any time, including before and after quotation, receipt of a Purchase Order, or acceptance of a Purchase Order. Endur ID will fill a Purchase Order for any of the Products that it does not design or manufacture but instead purchases from another company, either with the Product specified, a modified version of the Product specified or, if the Product specified is unavailable, with Products other than the specific items ordered. Endur ID may fill a Purchase Order with such modified Products or with Products other than the specific items ordered, so long as the modified or substituted Products provide substantially the same function as the Products listed in the quotation or on the Purchase Order as accepted by Endur ID. Endur ID asks for a minimum order of \$150 or a single box of the product requested. Orders are shipped within 48 hours of receipt; rush shipments can be arranged upon request. Phone orders are accepted, written orders are encouraged.

Endur ID accepts MasterCard, Visa and Discover cards, EDT payments as well as Net 30 Terms with the submission of a credit application. No discounts are offered for early payment on the use of credit cards.

Accounts over 90 Days in arrears are subject to denial of further shipments of products and collection action.

6. Packaging, Shipment and Delivery:

A. In the absence of specific requests from Buyer, all methods and forms of packing and shipment will be as selected by Endur ID. Buyer shall pay additional packing and handling charges for any non-standard methods and forms of packing and shipment which Buyer requests.

B. Unless specific executed contracts dictate FOB requirements, "Delivery" occurs when Endur ID makes the Band Products available to a common carrier F.O.B. Endur ID's manufacturing facility in Hampton, New Hampshire, regardless of whether the Products leave Endur ID's premises. Title and risk of loss pass to Buyer upon delivery.

C. Unless specific executed contracts dictate FOB requirements, all Band products are sold F.O.B. Endur ID's manufacturing facility in Hampton, New Hampshire. If Buyer does not designate a common carrier for the Products covered by a Purchase Order on or before delivery, Endur ID may designate a common carrier on Buyer's behalf, and Buyer shall be responsible for payment of that common carrier's charges and all demurrage, storage, freight, insurance and other charges of any sort related to the Products from the time title passes and for making any claims against carriers, insurers, warehousemen or others after delivery.

D. All delivery dates stated in any quotation or Purchase Order are approximate. Endur ID will make reasonable efforts to meet delivery dates stated in any quotation or Purchase Order as accepted by Endur ID but will not be liable for failure to meet such dates. If a delivery cannot be made within thirty (30) days of the date stated in any quotation or Purchase Order as accepted by Endur ID, Endur ID may, in its absolute discretion, cancel any or all deliveries without further obligation of any kind to Buyer.

E. Endur ID reserves the right to make partial deliveries and to deliver the Products in any order. Endur ID may, in its absolute discretion, and without incurring any liability to anyone, allocate production and deliveries among its customers even though time for delivery is thereby extended, and Buyer will not thereby be relieved of any obligation to accept delivery or to make payment.

F. Endur ID may stop the Products in transit, even though title and risk of loss have passed to Buyer, and may hold the Products, in whole or in part, before or after delivery, if Buyer fails to make any payment as and when due or otherwise fails to meet its obligations under these Standard Terms and Conditions of Sale, any Purchase Order as accepted by Endur ID, any other undertaking or agreement between Endur ID and Buyer, or any provision of law.

G. Regardless of the form of any claim or action, Endur ID shall in no event be liable for any claims, costs, damages or liabilities based on any delay in delivery or any failure to deliver.

7. Payment and Credit Terms:

A. Unless specific executed contracts dictate unique and agreed to payment term requirements, the payment terms for all software, hardware and services is Terms: 100% Upon Invoicing with supplied PO. Unless specific executed contracts dictate unique and agreed to payment term requirements, the payment terms for all Secur Trac software, hardware and services is Terms: 1/3 Upon Invoice with supplied PO; 1/3 Upon completion of Installation; 1/3 Upon completion of Training

B. "Payment" means the receipt or deposit in Endur ID's bank account of currently available funds.

C. Payment will be due regardless of whether Buyer has made, or plans to make, any inspection of the Products.

D. Endur ID may, in its absolute discretion, establish a line of credit ("Line of Credit") for Buyer. If such a Line of Credit is established, Endur ID may, in its absolute discretion, either increase or decrease the maximum amount allowed thereunder at any time. At no time will the maximum amount owed by Buyer to Endur ID for outstanding accounts receivable exceed the amount of any Line of Credit. In the event a Line of Credit is established for Buyer and Buyer exceeds that Line of Credit, all amounts in excess of that Line of Credit shall be paid to Endur ID by Buyer immediately and without demand.

E. Whether a Line of Credit is established or not, all amounts due to Endur ID shall be paid in U.S. Dollars by Buyer no later than thirty (30) days after the date of delivery as defined in Section 6.B above. Endur ID reserves the right to sell Products to Buyer only on a C.O.D. basis.

F. If the Products are delivered in installments, Buyer will pay for each installment as though it were a separate order.

G. If Buyer fails to pay Endur ID any amounts as and when they are due, in addition to other remedies available to it, Endur ID may add to the amount due a late payment charge in U.S. Dollars which is equal to the lesser of: (i) 1.5% per month (compounded monthly); or (ii) the maximum lawful interest rate or late payment charge allowed by applicable law. Buyer shall also pay Endur ID all costs and expenses, including reasonable attorneys' fees, incurred by Endur ID in collecting any amounts due and other charges.

H. No part of any amount due or other charges owed to Endur ID by Buyer may be reduced by counterclaim, set-off, adjustment or other claimed right of Buyer against Endur ID. Any amounts payable by Endur ID to Buyer may be offset against any amounts due and other charges owed to Buyer by Endur ID.

8. Cancellations and Returns:

A. If Buyer cancels an order within ten (10) days prior to a scheduled delivery date, Buyer shall pay Endur ID a cancellation charge equal to 15% of the gross price and charges that would have been due upon delivery of the cancelled order.

B. In the event that any product manufactured shall not be in conformity with the specifications, Endur ID shall, at Endur ID's option, either credit the customer's account for any such nonconformity (not to exceed the purchase price paid by customer for such product), or, at Endur ID's expense, replace, repair or correct such product.

C. After delivery, no Products may be returned to Endur ID without first contacting Endur ID at 603 758 1488. In the event that any product manufactured shall be in conformity with the specifications, Buyer shall be responsible for all costs and expenses relating to the return of such delivered products and shall be subject to a restocking fee applied to the original gross price for delivered products. Buyer shall retain title and risk of loss of all delivered products which are

returned under this Section 8.B until they are accepted in writing by Endur ID at its manufacturing facility in Hampton, New Hampshire. Buyer shall also pay all costs of shipping, storage and other charges and obligations relating to the return of such delivered products until they are accepted in writing by Endur ID at its manufacturing facility in Hampton, New Hampshire. Issuance of a Return Authorization Number by Endur ID will not constitute an admission that there is a problem with the Products being returned, that any problem is covered by warranty or that Endur ID has any responsibility to repair, replace, make refund for or pay claims, costs, damages or liabilities connected with the Products being returned.

Exchanges are authorized on products. Endur ID allows 30 days in which to return items. If an item is ordered in error, the ordering agency will pay shipping costs for its return and shipment of its replacement. Endur ID will pay freight charges associated with returns shipped in error by Endur ID.

D. IDSS-LTPCC PointClickCare integration customers. Customer billing will occur upon receipt of the signed off authorization forms. Charges billed are nonrefundable and non creditable, no exceptions. Therefore, it's highly recommended that you activate the purchase with PCC and complete the installation of the software ASAP.

9. Warranty:

Endur ID warrants for a period of 12 months from the date of manufacture of the product that Endur ID wristband products will conform to the specifications applicable to such product at the time of its manufacture, such product will be of good material and workmanship and free from defects for which Endur ID is responsible in the manufacture.

10. Limitations of Liability:

A. Regardless of the form of any claim or action, Endur ID's total liability to all persons, whether singly or together, for all occurrences combined, for claims, costs, damages or liabilities based on any cause whatsoever and arising from or in connection with any quotation, purchase order (either accepted or not), and any other agreement, undertaking or obligation between Endur ID and buyer, or the manufacture, distribution, promotion, sale, installation, support, maintenance, operation, servicing, use or performance of any products, or from or in connection with any delay or failure in providing such products, shall not exceed the aggregate price (without interest) paid to Endur ID by buyer for such products.

B. In no event shall Endur ID be liable to anyone for any loss of data, loss of profits or loss of use of the products or any equipment, or for any special, incidental, consequential, exemplary, punitive, multiple or other damages, arising from or in connection with the manufacture, distribution, promotion, sale, installation, support, maintenance, operation, servicing, use or performance of any of the products or from or in connection with any delay or failure in providing or delivering such products.

C. In no event shall Endur ID be liable to anyone for any claims, costs, damages or liabilities caused by: (i) buyer's failure to perform its obligations and responsibilities; (ii) improper or

defective promotion, distribution, sale, installation, support, maintenance, operation, servicing, use or performance of any products, including work performed without Endur ID's prior written consent in its absolute discretion, by a person who has not satisfactorily completed Endur ID technical training, is not a Endur ID factory certified distributor, is not a factory certified installer, or in a manner not consistent with Endur ID technical training; (iii) supply of any products by buyer for use in, or the use of any products in, any system or configuration not designed to Endur ID standards or in which buyer or any third party has substituted materials and/or goods not specified by Endur ID; or (iv) deterioration of the products during storage. this liability extends to voiding the product/system warranty and agency certifications. you will assume all liability for any deviations from the above.

D. Buyer agrees to indemnify and hold Endur ID harmless from all claims, costs, damages and liabilities asserted by anyone for any damages that are excluded and waived, or are intended to be excluded and waived, by this section 10, or which are imposed by law on behalf of buyer or anyone claiming through buyer or in connection with any relationship or transaction between Endur ID and buyer, but which are not expressly stated in these standard terms and conditions of sale.

E. The exclusions, waivers and limitations on claims, costs, damages and liabilities and any rights of indemnification set forth in this Section 10 shall be enforceable to the maximum extent allowed by law and shall not be expanded or negated in any respect by Endur ID's operation of a "Help Line" to receive and respond to telephone or dial-in inquiries about its Products, by any communications through that "Help Line" or by any actions taken by anyone following communications with Endur ID over such "Help Line." Buyer shall undertake all actions permitted or required by any laws and government-imposed rules or regulations to ensure that the exclusions, waivers and limitations on claims, costs, damages and liabilities and any rights of indemnification set forth in this Section 10 are enforceable. Buyer shall immediately inform Endur ID if Buyer becomes aware that any of the exclusions, waivers or limitations on claims, costs, damages, and liabilities or any rights of indemnification set forth in this Section 10 may not be enforceable or that claims may be made or have been made by a third party against either Endur ID or Buyer.

11. Governing Law:

These Standard Terms and Conditions of Sale (and any quotation or Purchase Order), and all questions arising out of or relating to them, shall be governed by and construed in accordance with the laws of the State of New Hampshire, without giving effect to the conflict of law's provisions thereof, and excluding the United Nations Convention on Contracts for the International Sale of Goods, the 1974 Convention on the Limitation Period in the International Sale of Goods (the "1974 Convention"), and the Protocol amending the 1974 Convention, done at Vienna April 11, 1980. Furthermore, the parties agree that any dispute or other action arising out of or in connection with these Standard Terms and Conditions of Sale or any associated contracts or Purchase Orders shall be brought in state or federal courts having competent jurisdiction located in the State of New Hampshire, which shall be the exclusive forum and venue for resolving such disputes or other actions.

12. Severability and Remedies:

The invalidity or unenforceability of any provision of these Standard Terms and Conditions of Sale (and of any quotation or Purchase Order) shall not affect the validity or enforceability of any other provision thereof.

13. Waiver:

None of these Standard Terms and Conditions of Sale may be waived except in writing signed by Endur ID. A waiver on one or more occasions of any of these Standard Terms and Conditions of Sale shall not constitute or be deemed to be a waiver of these Terms and Conditions of Sale on any other occasion. No delay or failure of a party to exercise any right or remedy under these Standard Terms and Conditions of Sale will operate as a waiver thereof; no failure to enforce or insist upon compliance with any provision of these Standard Terms and Conditions of Sale on any one occasion shall be deemed to be a waiver of the party's right to do so on another occasion; and no course of dealing between the parties will constitute a waiver, alteration, limitation or expansion of any of the parties' rights and obligations under these Standard Terms and Conditions of Sale.

14. Notices:

All notices and communications required or permitted to be provided under these Standard Terms and Conditions of Sale shall either be delivered personally, sent by reputable overnight delivery service (such as UPS or DHL) or sent by telecopy, with confirmation of receipt, to the addresses provided by each party in writing from time to time or to the then current fax number of the intended recipient. Notices shall be deemed to be received on the date of personal delivery, one day after deposit with a reputable overnight delivery service or, if sent by telecopier, upon return of confirmation of receipt. Either party may change its address for notice purposes by sending a written notice of change in accordance with this Section 14.

15. Additional or Inconsistent Terms:

Any term or condition of any Purchase Order or of any other document that is provided to Endur ID by Buyer which is in any way different from, inconsistent with or in addition to these Standard Terms and Conditions of Sale will not become a part of any contract between Endur ID and Buyer or be binding upon Endur ID, regardless of whether Endur ID specifically advises Buyer that it will not. To the extent that these Standard Terms and Conditions of Sale are part of an acceptance by Endur ID of an offer by Buyer, that acceptance is expressly conditioned upon Buyer's agreement to these Standard Terms and Conditions of Sale. Endur ID shall have no obligation to note any difference between these Standard Terms and Conditions of Sale and any additional or modified terms contained in any communication from Buyer, and Endur ID's failure to object to any such additional or modified terms will not constitute a waiver of any of these Standard Terms and Conditions of Sale or an acceptance of any such additional or modified terms. Buyer may not condition any acceptance of delivery or retention of the Products upon the waiver or modification of any of these Standard Terms and Conditions of Sale. In addition to all other factors, any act of control or retention over the Products which is exercised

by Buyer after delivery shall constitute a confirmation by Buyer that only these Terms and Conditions of Sale apply to the transaction. When applicable, Endur ID, will require copies of the original quote and purchase order from the customer facility. See Endur ID “Standard Terms and Conditions of Sale” Section 2 for additional instruction or explanation.

[PDF FORMAT](#)

BlueTrac® Parolee/Probation
Terms and Conditions of Sale

THESE TERMS AND CONDITIONS (THESE “TERMS”) FORM AN INTEGRAL PART OF EVERY PURCHASE ORDER ACCEPTED BY ENDUR ID INC. (“ENDUR ID”) FOR ENDUR ID® BLUETRAC® PRODUCTS. BY ORDERING SUCH PRODUCTS, THE CUSTOMER AGREES TO THESE TERMS.

1. Definitions. As used herein:

(a) “Activated” means, with respect to a Product, that the Product’s radio has been turned on and communicates with the BlueTrac® mobile app on a Supervised Releasee’s smart phone (whether or not the Product has been physically fastened to the Supervised Releasee).

(b) “Agreement” means, with respect to a purchase of Products by a Customer, the relevant Order, these Terms and the Endur ID Privacy Policy.

(c) “Applicable Fee” means, with respect to each Product purchased hereunder at the relevant time, the Idling Fee or the Usage Fee.

(d) “Customer” means the entity named as the customer on the relevant Order.

(e) “Documentation” means, at any given time and with respect to any Product, the latest revision of any and all specifications and user documentation made available by Endur ID to users of such Product.

(f) “Idling Fee” means, with respect to each Product that has been shipped to Customer, a daily fee set forth on the relevant Order (or, if not set forth in the Order, the Idling Fee on Endur ID’s standard price list in effect on the date of the Order) that shall accrue for each entire 24-hour calendar day during which the Product has been not Activated, commencing on the date of commencing on the date of delivery FOB Hampton (see Section 9) and ending at the end of the Product’s useful life (see Documentation).

(g) “Order” means a purchase order submitted by Customer accepted in writing by Endur ID or other written agreement between Customer and Endur ID, in each case documenting Customer’s agreement to purchase Products.

(h) The “Platform” means an Internet-based user portal and/or mobile app made available to Customer by Endur ID to enable Customer to monitor the location of each Product that, at the relevant time, is Activated.

(i) “Platform Fee” means the annual fee for use of the Platform set forth on the Order (or, if not set forth in the Order, the Platform Fee on Endur ID’s standard price list in effect on the date of the Order); *provided* that, if Customer is party to multiple Orders that include Platform Fees for the same Subscription Year, Customer shall be required to pay only one Platform Fee for such Subscription Year, which shall be the Platform Fee quoted in or applicable

to the most recent such Order; and *provided further* that, if the first Subscription Year is shorter than 12 months, the Platform Fee for such Subscription Year shall be accordingly pro-rated.

(j) “Product” means an Endur ID® BlueTrac® wearable tracking devices for deployment on a Supervised Releasee and, when used in combination with the Platform, for monitoring the location of such Supervised Releasee. Each Product includes a radio and the band and clasp with which it is to be assembled into a wearable unit. For the avoidance of doubt, Endur ID® products for other market sectors (*e.g.*, healthcare, corrections) are not subject to these Terms.

(k) “Subscription Year” means a twelve- (12-) month period for which Customer has subscribed to use the Platform by paying the Platform Fee. Subscription Years shall be calendar years; *provided* that if the date on which the first Subscription Year commences is not January 1, such Subscription Year shall comprise the period commencing on such date and ending at the end of the calendar year in which such date occurs.

(l) “Supervised Releasee” means an individual subject to parole, probation, sex offender registration or a restraining order.

(m) “Term” has the meaning given in Section 17 below.

(n) “Usage Fee” means, with respect to each Product that has been shipped to Customer, a daily fee set forth on the relevant Order (or, if not set forth in the Order, the Usage Fee on Endur ID’s standard price list in effect on the date of the Order) that shall accrue for each calendar day during any portion of which the Product has been Activated.

2. Purchase of Products; Subscription to Use Platform. Customer hereby agrees to purchase, and Endur ID agrees to sell to Customer:

(a) the quantities of Products, for the Applicable Fees, specified in the Order; and

(b) a subscription to use the Platform, for the Platform Fee per Subscription Year specified in the Order, subject to subsection 5(c) below.

3. Use of Products on Supervised Releasees; Data. (a) Customer represents and warrants that: (a) Customer is an entity authorized under applicable law to monitor the location of Supervised Releasees on which Products will be deployed; (b) Customer shall have obtained all applicable case-specific authorizations and consents for such deployment and monitoring, including from such Supervised Releasee if required; and (c) Customer has not received or relied upon any advice from Endur ID or its agents with respect to the lawful use of Products.

(b) The Platform will enable Customer to generate reports and download data at any time with respect to the location of Supervised Releasees on whom Products are deployed. Endur ID may delete such data from the Platform after five (5) years or, if earlier, the expiration or termination of this Agreement, subject to Section 17(c)(iv).

4. The Products. Customer acknowledges that: (a) Products can be used only in combination with the Platform; and (b) each Product has a limited useful life, as described in the Documentation. Endur ID may revise, update or replace the Platform, in whole or in part, at any time in its sole discretion; *provided* that no such action shall result in a material reduction in the functionality of the Platform during any Subscription Year for which Customer has paid the applicable Platform Fee.

5. Accrual of Fees. The Platform Fee shall accrue upon delivery of the Products for the first (1st) Subscription Year and thereafter immediately prior to the beginning of each Subscription Year. Applicable Fees shall accrue on a daily basis.

6. Payment. For so long as there are accrued and unpaid Applicable Fees hereunder, Endur ID shall make available to Customer, on the Platform or by email, a monthly report (the “Monthly Fee Report”) of (i) Applicable Fees and the Platform Fee, if any, accrued during the calendar month then ended, (ii) any unpaid Applicable Fees or Platform Fee accrued during prior periods and (iii) the total amount due from Customer. Customer shall pay the indicated balance due using one of the following payment methods, as selected on the Order:

- (a) ACH debit upon issuance of the Monthly Fee Report;
- (b) MasterCard, Visa and Discover card; or
- (c) wire transfer or check within thirty (30) days after issuance of the Monthly Fee Report (or, if required by Customer, Endur ID’s invoice), subject to Endur ID’s acceptance in its sole discretion of Customer’s credit application, which Endur ID may revoke at any time.

All amounts hereunder shall be paid in US Dollars. Under no circumstances may Customer set off against or otherwise reduce any payment due hereunder. While any balance remains overdue hereunder, in addition to any other remedies available to Endur ID, Endur ID may: (x) apply late payment charges thereon equal to the lesser of 1.5% per month or the maximum interest rate under applicable law; and (y) suspend all performance under this Agreement and any other Order or agreement between Endur ID and Customer. Customer shall pay Endur ID all costs and expenses, including reasonable attorneys’ fees, incurred by Endur ID in collecting any amounts due and other charges.

7. Taxes. All prices hereunder are net of all sales, use, service, value added and similar taxes, duties and other assessments of any kind (other than income taxes imposed upon Endur ID), which shall be borne by Customer. If Endur ID is required to collect or pay any such tax or duty, the amount thereof, shall be added to and become a part of the amounts immediately due from Customer. If Customer has a tax-exempt status, Endur ID will require a copy of the corresponding certificate of exemption from Customer at the time of the Order.

8. Orders; Acceptance. Endur ID shall not have any obligation with respect to any proposed Order unless and until Endur ID has affirmatively accepted such proposed Order in writing. Endur ID asks for a minimum order of 25 Products (one box).

9. Shipment; Delivery. Endur ID shall use reasonable efforts to deliver the Products in accordance with the delivery date, if any, specified in the Order but will not be liable for failure to meet such date. Unless otherwise specified in the Order: (a) all Products shall be delivered FOB Endur ID's facility in Hampton, New Hampshire, and title in, and risk of loss of or damage to, the Products shall pass to Customer upon such delivery; (b) Endur ID may designate a common carrier on Customer's behalf, and Customer shall be responsible for payment of all charges of such common carrier; and (c) the Products shall be packed and shipped in accordance with Endur ID's standard practice and Customer may be charged for any requested non-standard methods and forms of packing and shipment (standard ground shipment is standard).

10. Intellectual Property. All intellectual property rights in the Products (including the Platform) and Documentation, including rights over any software and designs included therein, shall remain the exclusive property of Endur ID and its licensors. Notwithstanding the foregoing, Customer shall have a non-exclusive, royalty-free, non-assignable license to use the Platform and the Documentation to the extent reasonably necessary to ensure that the Products can be operated by Customer as contemplated hereby. Customer shall not, and shall not permit any party to: (a) alter or remove any logo or other trademark, or any safety information, from any Product; or (b) attempt to reverse-engineer or make unauthorized copies of any of the Products, Platform or Documentation.

11. Warranty. Endur ID warrants that each Product: (a) when delivered hereunder, shall be new (or, if so specified on the Order, factory reconditioned), of good workmanship and free of material defects; and (b) will perform substantially as described in the Documentation during its intended useful life as described in the Documentation.

CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS ARE BATTERY-POWERED AND, TO ENSURE THE EFFECTIVENESS OF EACH PRODUCT, ITS USEFUL LIFE SHALL BE LIMITED TO THE PERIOD SET FORTH IN THE DOCUMENTATION.

ENDUR ID DOES NOT GUARANTEE THAT THE PLATFORM WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT ENDUR ID WILL CORRECT ALL ERRORS. CUSTOMER ACKNOWLEDGES THAT ENDUR ID DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE PLATFORM MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ENDUR ID IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

TO THE EXTENT NOT PROHIBITED BY LAW, THE FOREGOING WARRANTY IS EXCLUSIVE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

12. Limitations of Liability. IN NO EVENT SHALL ENDUR ID BE LIABLE IN

CONNECTION WITH ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PERFORMANCE, BREACH OR DELAY IN PERFORMANCE HEREUNDER, OR THE TERMINATION HEREOF FOR:

(A) ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND; OR

(B) ANY AMOUNT EXCEEDING IN THE AGGREGATE THE PLATFORM FEES, IDLING FEES AND USAGE FEES RECEIVED BY ENDUR ID UNDER THE RELEVANT ORDER IN RESPECT OF THE TWELVE (12) MONTHS UP TO AND INCLUDING THE DATE THE CLAIM AROSE.

THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY (I) CAUSED BY ENDUR ID'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (II) DEATH OR PERSONAL INJURY CAUSED BY ENDUR ID'S NEGLIGENCE, OR (III) UNDER ARTICLE 14 (*Indemnification*) HEREOF.

13. Warranty Claims; Returns. (a) If a Product fails to perform as warranted in Section 11 above, as Customer's sole remedy therefor, Customer may return the Product to Endur ID for repair, replacement or refund, in Endur ID's sole discretion. Such return must be made in accordance with Endur ID's then current Return Merchandise Authorization (RMA) policy as posted on Endur ID's website. Returns must be made within the time limits set forth in the RMA policy.

(b) A Product that is repaired or replaced shall continue to be warranted under Section 11 above only for the original useful life of the Product that was returned.

(c) While a returned Product is in Endur ID's custody, the Applicable Fee for such Product shall be suspended. If Endur ID determines that the returned Product was not defective, such fees shall be charged retroactively to the date of suspension. If the warranty issue is confirmed, then the Applicable Fee will resume only when the Product or its replacement is delivered to Customer.

(d) Endur ID may in its sole discretion refuse any return except for warranty claims.

14. Indemnification. (a) *Indemnification by Customer.* Customer shall indemnify, defend and hold harmless Endur ID, its affiliates and their respective officers, directors, employees, agents and stockholders (each an "Endur ID Indemnitee") from and against all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) (collectively, "Losses") arising out of any claim or action by a third party (a "Claim") arising out of or resulting from infringement of the use or misuse of any Product furnished to Customer hereunder, including without limitation as to the legality of such use, the validity of any consent (by a Supervised Releasee or any other party) to such use, or the safety or privacy of any Supervised Releasee or any other person, even if such Claim is based upon the defective design or manufacture of such Product or the Platform.

(b) *Indemnification by Endur ID.* Endur ID shall indemnify, defend and hold harmless the other party, its affiliates and their respective officers, directors, employees, agents and stockholders (each a “Customer Indemnatee”) from and against all Losses arising out of any Claim arising out of or resulting from infringement of the third-party claimant’s intellectual property rights by products, services or material furnished hereunder by a Product, the Platform or the Documentation (“Endur ID Material”), except to the extent such Claim could have been avoided but for: (i) the unauthorized modification of Endur ID Material by or with the consent of any Customer Indemnatee; (ii) Endur ID’s compliance with or use of specifications, instructions, technology or information provided by any Customer Indemnatee; or (iii) use of Endur ID Material in combination with products or services not supplied or approved by Endur ID. If Endur ID believes, or it is determined, that the Endur ID Material infringes the rights of the third-party claimant, then Endur ID, at its sole option and expense, may: (x) procure for Customer the right to continue use of the Endur ID Material; (y) modify the Endur ID Material or replace the infringing part thereof with other non-infringing Endur ID Material having substantially the same or better capabilities; or (z) if Endur ID is unable to carry out the remedies described in the foregoing clauses (x) and (y) on commercially reasonable terms, terminate this Agreement upon at least thirty (30) days’ advance notice to Customer, refunding to Customer any prepaid fees for subsequent periods.

(c) *Procedure.* An Endur ID Indemnatee or a Customer Indemnatee, as the case may be (an “Indemnatee”), seeking indemnification hereunder shall promptly notify the party obligated to indemnify under the foregoing subsection (a) or (b), as applicable (“Indemnitor”), of the Claim; *provided* that the failure so to notify shall not excuse Indemnitor from its obligations under this Article 14 except to the extent Indemnitor’s ability to defend the Claim has been prejudiced thereby. At Indemnitor’s request and expense, Indemnitees shall (i) permit Indemnitor to assume and control the defense or settlement thereof and (ii) provide reasonable cooperation to Indemnitor in the defense of the Claim. Indemnitor shall obtain the prior written consent of each Indemnatee, not to be unreasonably withheld or delayed, for any settlement of a Claim that imposes any liability or other obligations on such Indemnatee.

(d) *Exclusive Remedy.* THIS ARTICLE 14 STATES THE SOLE REMEDY AND THE ENTIRE LIABILITY OF ENDUR ID HEREUNDER FOR INTELLECTUAL PROPERTY INFRINGEMENT.

15. Confidentiality. Each party hereto (“Recipient”) acknowledges that, in connection with discussion, negotiation and performance of this Agreement, it has had and will have access to information of the other party and its affiliates (collectively, “Discloser”) that comprises Confidential Information. As used herein, “Confidential Information” means information that is proprietary to Discloser, whether or not reduced to writing or other tangible medium, and whether or not protected or protectable by patent, trade secrecy or copyright, including the terms of this Agreement, technical information and other information relating to intellectual property, business and marketing plans, financial matters, products, services, processes, methods, specifications, designs, costs, sources of supply, pricing, sales, profits, personnel and business relationships. Confidential Information shall include, if Discloser is: (i) Endur ID, any software embedded in Products and the Platform and any documentation relating to the design,

installation, maintenance or use thereof; or (ii) Customer, any personal data relating to Supervised Releasees or Customer's personnel. Notwithstanding the foregoing, Confidential Information shall not include information that is: (a) acquired from a third party rightfully having such information and under no obligation to not disclose it to Recipient; (b) available or becomes available to the public without the fault, breach or negligence of Recipient; (c) lawfully in Recipient's possession without an obligation of confidentiality before receipt of such information from Discloser, or (d) independently developed by Recipient without any use of confidential information of Discloser.

During and after the Term, Recipient shall, and shall cause its affiliates and its and their respective employees, officers, directors, representatives, assigns and subcontractors (collectively, "Representatives"), to: (i) retain all Confidential Information in strict confidence; (ii) not disclose any Confidential Information to any third party without the Discloser's written consent; (iii) limit access to Confidential Information to those Representatives who have a need to know the Confidential Information for the business purposes of this Agreement and are subject to obligations of confidentiality with respect to the Confidential Information at least as protective as this Agreement; and (iv) use measures to protect the confidentiality of Confidential Information at least as secure as it uses to protect its own similar information and in no case less than reasonable care.

Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by governmental authority or court of competent jurisdiction; *provided* that Recipient has (x) made reasonable efforts to obtain confidential treatment of such disclosure and (y) given reasonable advance notice of such disclosure to Discloser, to the extent legally permissible. Upon the expiration or termination of this Agreement, Recipient shall promptly return to Discloser or, at Discloser's request, destroy any and all copies of Confidential Information in its possession or control and delete any Confidential Information stored in its electronic media; *provided* that (i) Recipient shall not be required to delete electronic back-up files created and retained in accordance Recipient's back-up procedures and not accessed or restored to general accessibility and (ii) Recipient's legal counsel may retain copies of the Confidential Information which shall be used solely as archival copies for the purpose of defending any claim that Recipient breached its obligations hereunder with respect to such Confidential Information. Notwithstanding the return or deletion of the Confidential Information, Recipient will continue to be bound by such Recipient's obligations hereunder with respect to such Confidential Information.

16. Force Majeure. A party shall not be responsible for failure or delay of performance hereunder (other than payment obligations) if caused by a circumstance or event outside its reasonable control ("Force Majeure"), including without limitation an act of war, epidemic, terrorism or sabotage, act of God, electrical, internet, or telecommunication outage that is not caused by such party, or government restrictions (including the denial or cancellation of any export or other license).

17. Term; Termination. (a) *Term*. Unless earlier terminated in accordance with these Terms, the term of this Agreement (the "Term") shall be the Subscription Year(s) specified on the relevant Order.

(b) *Termination.* In addition to the termination rights specified elsewhere in this Agreement, this Agreement may be terminated by either party:

(i) upon at least thirty (30) days' advance notice to the other, if the non-terminating party has breached a material term of this Agreement described in such notice and failed to correct such breach before the effective date of termination specified in such notice. By way of example but not limitation, any of the following shall be deemed material breaches by Customer: (A) providing access to the Platform to parties other than Customer's authorized personnel; (B) failure to pay any undisputed amount due under any Order; and (C) breach of Section 15 above (*Confidentiality*). By way of example but not limitation, any of the following shall be deemed material breaches by Endur ID: (X) materially decreasing the functionality specified in the Documentation as it relates to the Customer's during the relevant Subscription Year; (Y) materially decreasing the overall security of the Platform during the relevant Subscription Year; and (Z) breach of Section 15 above (*Confidentiality*); or

(ii) immediately upon notice to the other, if the other (A) ceases to conduct its business in the ordinary course; (B) becomes insolvent; (C) makes an assignment for the benefit of creditors; (D) petitions, applies for, or suffers (with or without its consent) the appointment of a custodian, receiver, trustee in bankruptcy or similar officer for all or any substantial part of its business or assets; or (E) avails itself of or becomes subject to any proceeding relating to bankruptcy, insolvency, reorganization, receivership, arrangement, adjustment of debts, dissolution or liquidation, which proceeding, if involuntary, is not dismissed within sixty (60) days of commencement thereof; or

(c) *Consequences of Termination or Expiration.* In the event of the expiration or termination of this Agreement for any reason:

(i) Customer must pay, within thirty (30) days after receipt of invoice therefor, any and all amounts accrued and unpaid prior thereto, plus any related taxes and expenses;

(ii) if this Agreement was terminated due to Customer's breach during the first four (4) month's after a Product is shipped to Customer, Customer must pay to Endur ID, upon receipt of invoice therefor, Idling Fees for the remainder of such four- (4-) month period for such Product;

(iii) if such expiration or termination was due to Customer's failure to pay Platform Fees or Applicable Fees, upon the request of Customer, Endur ID may in its discretion allow Customer to renew this Agreement, subject to payment of all amounts that would have been paid hereunder had the lapse not occurred; and

(iv) Endur ID shall refrain from deleting Customer's data for a period of at least sixty (60) days, *after which Customer's data may be irretrievably deleted from the Platform.* During such period, and provided that Customer has satisfied all payment obligations hereunder, Endur ID may permit Customer to access the Platform solely to the extent necessary

for Customer to retrieve a file of Customer's data then in the Platform environment.

Customer represents to Endur ID that, in entering into this Agreement, Customer has not relied on the availability of any services, programs or updates after the Term.

18. General.

(a) *Anti-Corruption.* Customer hereby acknowledges that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Endur ID's employees or agents in connection with this Agreement. If Customer learns of any violation of the foregoing restriction, Customer will promptly notify Endur ID thereof.

(b) *Notices.* Any notice required or permitted under this Agreement from one party to the other shall be in writing and addressed to the receiving party's address, to the attention of the contact person, set forth on the Order, or to such updated address and contact person as such party may designate by notice hereunder. Notices shall be deemed given (i) ten (10) business days after being sent by certified or registered mail with return receipt, (ii) two (2) business days after being sent by reputable express courier service with tracking capability, or (iii) upon successful transmission by email with confirmation of receipt.

(c) *Governing Law; Disputes.* This Agreement is governed by the laws of New Hampshire, excluding the United Nations Convention on Contracts for the International Sale of Goods. Any dispute arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the state courts sitting in Rockingham County, and the federal courts sitting in Concord, New Hampshire.

(d) *Independent Contractors.* Endur ID and Customer are independent contractors and this Agreement does not create any partnership, joint-venture, or agency relationship between them.

(e) *Amendment.* The Order may not be amended except by a writing signed by Customer and Endur ID. These Terms may be amended by Endur ID at any time; *provided* that any such change that would materially reduce the level of protection or service provided to Customer shall not be binding upon Customer during the then current Subscription Year. Customer is encouraged to review the then current version of these Terms before entering into any Order. Access to and use of the Platform may be conditioned upon Customer's confirmation of its acceptance of these Terms, as amended, at any time.

(f) *Integration.* This Agreement sets forth the entire agreement, and supersedes all prior or contemporaneous understandings or representations, written or oral, between the parties regarding the subject matter hereof. This Agreement shall not be modified, conditioned or supplemented by any standard terms, provisions or conditions or any purchase order, acknowledgment or other business document which Customer may use in connection with any Order, regardless of any failure by Endur ID to object to such terms, provisions or conditions. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the Order; (2) these Terms; (3) the Endur ID Privacy Policy; and (4) the

Documentation.

(g) *Severability.* If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and such invalid or unenforceable provision shall be reformed so that it is valid and enforceable to the fullest extent permitted by law.

(h) *Assignment.* This Agreement may not be assigned, in whole or in part, by either party; *provided* that Endur ID may (i) assign this Agreement (A) to its affiliate or (B) in connection with the sale of all or substantially all its assets relating to the Products and (ii) use subcontractors.

(i) *Waiver.* A waiver by a party hereto of the performance or breach of any provision of this Agreement must be in writing and shall not constitute a waiver of any subsequent performance or breach of the same or any other provision hereof.

(j) *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(k) *Survival.* The provisions of Sections 1 (*Definitions*), 7 (*Taxes*), 10 (*Intellectual Property*), 12 (*Limitation of Liability*), 14 (*Indemnification*), 15 (*Confidentiality*), 17(c) (*Consequences of Termination or Expiration*), and 18 (*General*) shall survive the expiration or termination of this Agreement.