



PLAYERDATA INC.

**TERMS AND CONDITIONS FOR THE SUPPLY AND SUBSCRIPTION OF
SERVICES AND HARDWARE TO CLUBS**

PLAYERDATA INC. – TERMS AND CONDITIONS FOR THE SUPPLY AND SUBSCRIPTION OF SERVICES AND HARDWARE TO CLUBS

These Terms and Conditions (“Terms,” “Conditions” or “Agreement”) is entered into by and between PlayerData Inc. a Delaware corporation (“**PlayerData**”) and YOU, an organization or individual acting on behalf of the entity or organization named on the Order (“**Customer**”). PlayerData and Customer agree that the following terms and conditions will apply to the services provided under this Agreement and Orders placed thereunder. PlayerData and Customer may hereafter be referred to individually as a “Party” or collectively as the “Parties.”

Recitals

WHEREAS, PlayerData develops and provides software, hardware and applications related to the tracking and analysis of athletic performance;

WHEREAS, Customer wishes to utilize PlayerData Software, Hardware, Accessories and Services; and

WHEREAS, PlayerData and Customer wish to enter into a business relationship upon the terms and conditions hereinafter contained;

NOW, THEREFORE, in consideration of the covenants and agreements herein set forth, the Parties agree as follows:

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

“Accessories” means vests, cases, tripods and other non-electronic accessories or equipment owned by PlayerData and hired to the Customer for use in connection with the Hardware;

“**Additional Services**” means the additional services set out in the Order;

“**Agreement**” means the contract between PlayerData and the Customer for the supply of and subscription for the Services, Hardware and Accessories as set forth in these Conditions and the Order.

“**Authorized Users**” means those players, members or other users of the Customer who are authorized by the Customer to use the Services;

“**Business Day**” means a day, other than a Saturday, Sunday or public federal holiday in the United States, when banks are open for business;

“**Charges**” means the sums payable for the Services and the lease of the Hardware and/or Accessories, as set out in the Order and as may be increased by PlayerData from time to time in accordance with Clause 9.2;

“**Commencement Date**” has the meaning given in Clause 2.3;

“Customer Personal Data” means Personal Data provided by Customer to, or which is collected on behalf of Customer by, PlayerData to provide services to Customer pursuant to this Agreement.

“Data Protection Legislation” means: (i) all applicable data protection and privacy legislation (and any accompanying regulations) in force from time to time in the US which apply to a Party relating to the use of Personal Data;

“Delivery” means the transfer of physical possession of the Hardware and/or Accessories to the Customer at the location agreed between the parties;

“Extended Term” shall mean an additional period of the same length as the Initial Term unless otherwise set forth in the Order;

“Hardware” means the wearable and non-wearable technology equipment owned by PlayerData and leased to the Customer, including all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it;

“Initial Term” shall have the meaning given to it in the Order;

“Intellectual Property Rights” means all intellectual property rights, including patents, utility models, rights to inventions, copyrights, moral rights, trademarks and service marks, business names, domain names, trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Order” means the Customer’s binding order for the Services, Hardware, and/or Accessories through (1) Customer’s written acceptance of a Quote, (2) Customer’s payment of any deposit and initial Charges set out in a Quote, or (3) Customer’s submission of an online order form submitted by the Customer via the Website, or the Customer’s written acceptance of PlayerData’s quotation, as the case may be; online order form via the Website, as the case may be; provided that the same may be amended, supplemented or replaced from time to time by agreement in writing between the parties in accordance with Clause 19;

“Personal Data” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with an identified or identifiable natural person.

“Quote” means a quotation sent by PlayerData to the Customer which sets out PlayerData’s offer to provide Services, Hardware and/or Accessories;

“**Services**” means the subscription services and other ancillary services as set out in the Order;

“**Software**” means the software applications provided by PlayerData in connection with the Services or as otherwise set forth in an Order, including the EDGE Analyst software applications;

“**Virus**” means any thing or device (including any software, code, file or program) 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 program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program 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

“**Website**” means the website hosted by or on behalf of PlayerData available at www.playerdata.com.

- 1.2 The terms “controller”, “processor”, “data subject”, “personal data breach”, “processing” and “appropriate technical and organizational measures” shall have the meanings given to them in the Data Protection Legislation

2. ORDERS

- 2.1 The Order constitutes a binding agreement by the Customer to subscribe to the Services and hire the Hardware and Accessories in accordance with these Conditions. The Customer acknowledges that it is responsible for ensuring that the Order is complete and accurate.
- 2.2 In the event that PlayerData submits a Quote to the Customer, the Quote shall not be binding on PlayerData until and shall only be deemed to be accepted when Customer executes or otherwise agrees to the Quote or pays the applicable deposit and/or initial Charges set forth therein (“**Acceptance**”). Any Quote given by PlayerData shall only be valid for a period of twenty (20) Business Days from its date of issue or such other longer time period as may be set forth in the Quote.
- 2.3 Upon Acceptance, the Quote becomes an Order and the Agreement shall come into existence on the date of Acceptance unless another date is mutually agreed by the parties in the Order (“**Commencement Date**”). The Customer acknowledges that the Agreement will relate only to those Services, Hardware and/or Accessories confirmed in the Order. The Customer acknowledges that the agreed units of Hardware and/or Accessories shall be as set out in the Order.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by PlayerData, and any descriptions or illustrations contained in PlayerData’s catalogues or brochures or displayed on the Website, are issued or published for the sole purpose of giving an approximate idea of the Services, Hardware and Accessories described in them. They shall not form part of the Agreement or have any contractual force.

- 2.5 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.6 Any Quote given by PlayerData shall not constitute an offer, and is only valid for a period of twenty (20) Business Days from its date of issue or such other time period as may be set forth in the Quote.
- 2.7 The Customer acknowledges that the Agreement comprises the following documents:
 - 2.7.1 the Order; and
 - 2.7.2 these Conditions.
- 2.8 If there is any conflict or ambiguity between the terms of the documents listed in Clause 2.7, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

3. COMMENCEMENT AND DURATION

The Agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with Clause 15, the Agreement shall continue for the Initial Term, and shall automatically extend for the Extended Term at the end of the Initial Term and at the end of each Extended Term unless otherwise agreed in the Order. The parties may agree in writing not later than one (1) month before the end of the Initial Term or the relevant Extended Term, to terminate the Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

4. PLAYERDATA'S RESPONSIBILITIES

- 4.1 PlayerData shall:
 - 4.1.1 supply the Services, and if requested the Additional Services, in accordance with the Agreement in all material respects and with reasonable skill and care;
 - 4.1.2 use commercially reasonable efforts to make the Software available for twenty-four (24) hours a day, seven (7) days a week, except for during planned maintenance and unscheduled maintenance.
- 4.2 As part of the Services, PlayerData shall provide:
 - 4.2.1 Access to training materials for the Customer and / or the Authorized Users describing how to use and operate the Hardware and Software; and
 - 4.2.2 Unlimited minutes of technical support including providing additional training to Authorized Users and answering specific questions from the Customer as the use of the Software or Hardware.
- 4.3 PlayerData does not warrant that the Customer's use of the Services will be uninterrupted or error-free, or that the Services obtained by the Customer will meet the Customer's requirements at all times, provided that PlayerData will use commercially reasonable efforts to: (i) avoid the aforementioned where reasonably

possible and notify the Customer of any instances where services may be interrupted in advance via email; and (ii) resolve to fix any errors that may occur over the course of the Agreement as soon as reasonably possible on being notified by the Customer.

- 4.4 PlayerData 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 may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:

5.1.1 co-operate with PlayerData in all matters relating to the Services, including by providing any information, data or other materials reasonably requested by PlayerData in order to permit PlayerData to provide the Services;

5.1.2 keep and maintain the Hardware and Accessories in good working condition, make no alteration to the Hardware (including removal of component(s)) or Accessories, and not dispose of or use the Hardware or Accessories other than in accordance with PlayerData's written instructions or authorization;

5.1.3 ensure that the Hardware, Accessories and Software are kept and operated in a suitable environment, used only for the purposes for which they were designed, and operated in a proper manner and, under no circumstances, operated in an unlawful manner;

5.1.4 not, without the prior written consent of PlayerData, part with control of, sell or offer for sale, sublease, rent or lend the Hardware, Accessories or Software or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

5.1.5 prevent any unauthorized access to, or use of, the Software and/or the Hardware and, in the event of any such unauthorized access or use, promptly notify PlayerData; and

5.1.6 collect all required consent for any individuals it is gathering and processing data for under this agreement.

- 5.2 The Customer acknowledges that PlayerData shall not be responsible for any loss of or damage to the Hardware or Accessories arising out of or in connection with any negligence, misuse, mishandling of the Hardware or Accessories or otherwise caused by the acts or omissions of Customer or its Authorized Users or any other players, members, officers, employees, agents and contractors of Customer, and the Customer shall reimburse PlayerData on demand for any costs (including cost of replacement), damages or liabilities incurred by PlayerData as a result of such negligence, misuse, mishandling or acts or omissions. Customer shall indemnify, defend and hold PlayerData and its affiliates and officers, directors, employees, contractors and agents, harmless 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 the Agreement or its gross negligence, willful misconduct, or violation of applicable law.

6. HARDWARE; ACCESSORIES

- 6.1 The Customer shall lease the Hardware or Accessories from PlayerData for the Initial Term and each Extended Term, as appropriate.
- 6.2 Delivery of the Hardware or Accessories shall be made by PlayerData. PlayerData shall use commercially reasonable efforts to effect Delivery by the date and time agreed between the parties. Title and risk shall be governed by Clause 8 of the Agreement.
- 6.3 Acceptance of Delivery of the Hardware by the Customer shall constitute conclusive evidence that the Customer has examined the Hardware and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by PlayerData, the Customer shall sign a receipt confirming such acceptance.
- 6.4 PlayerData shall use commercially reasonable efforts to remedy, without additional charge, any material defect in the Hardware which manifests itself within the Initial Term or an Extended Term, provided that:
 - 6.4.1 the Customer notifies PlayerData of any defect in writing within ten (10) Business Days of the defect occurring or of becoming aware of the defect;
 - 6.4.2 PlayerData is permitted to make a full examination of the alleged defect;
 - 6.4.3 the defect does not result from misuse, neglect, alteration, mishandling or unauthorized manipulation by any person other than PlayerData's authorized personnel or otherwise from the acts or omissions of Customer or its Authorized Users or any other players, members, officers, employees, agents and contractors of Customer;
 - 6.4.4 the defect is directly attributable to defective material, workmanship or design.
- 6.5 If the Customer does not comply with requirements of Clause 6.4 with respect to any alleged defect, PlayerData shall use commercially reasonable efforts to remedy the defect and such remedy shall be at the Customer's expense.
- 6.6 If the defect described under Clauses 6.4 and 6.5 cannot be remedied, PlayerData may replace the Hardware.
- 6.7 If the defect results from the misuse, neglect, alteration, mishandling or unauthorized manipulation by any person other than PlayerData's authorized personnel or otherwise from the acts or omissions of Customer or its Authorized Users or any other players, members, officers, employees, agents and contractors of Customer, Customer shall be responsible for the cost of repair or replacement of the Hardware. For the avoidance of doubt, the replacement cost will be in addition to the monthly Charges payable for the Services.

- 6.8 Insofar as the Hardware comprises or contains equipment or components which were not manufactured or produced by PlayerData, the Customer shall be entitled only to such warranty or other benefit as PlayerData has received from the manufacturer.

7. SOFTWARE USE

- 7.1 PlayerData hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licenses, to use, and permit the Authorized Users to use, the Software, as part of the Services, solely for the Customer's internal business operations.
- 7.2 The Customer shall not (and shall use commercially reasonable efforts to ensure its Authorized Users shall not) access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that: (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, color, religious belief, sexual orientation, disability; or (f) is otherwise illegal or causes damage or injury to any person or property, and PlayerData reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access (or that of an Authorized User) to any material that breaches the provisions of this Clause 7.2.
- 7.3 The Customer shall not (and shall ensure its Authorized Users shall not):
- 7.3.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
 - 7.3.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software (except to the extent expressly permitted by applicable law and then only with prior notice to PlayerData).

8. TITLE, RISK AND INSURANCE

- 8.1 Unless otherwise specified in an Order, the Hardware and Accessories shall at all times remain the property of PlayerData and the Customer shall have no right, title or interest in or to the Hardware or Accessories (other than the limited right to possess and use of the Hardware and Accessories subject to the terms and conditions of the Agreement).
- 8.2 The risk of loss, theft, damage or destruction of the Hardware and Accessories shall pass to the Customer on Delivery. The Hardware and Accessories shall remain at the sole risk of the Customer during the Initial Term and each Extended Term and any further term during which the Hardware or Accessories are in the possession, custody or control of the Customer until such time as the Hardware and Accessories are redelivered to PlayerData.
- 8.3 The Customer shall give written notice within 48 hours to PlayerData in the event of any loss, accident or damage to the Hardware or Accessories arising out of or in

connection with the Customer's (or its Authorized Users; or any other players; members; officers; employees; agents; or contractors) possession or use of the Hardware or Accessories.

9. CHARGES AND PAYMENT

- 9.1 In consideration of the provision of the Services (to avoid doubt including the Software and Hardware) by PlayerData, the Customer shall pay the Charges.
- 9.2 PlayerData may increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Consumer Price Index for All Urban Consumers, as reported by the US Department of Labor's Bureau of Labor Statistics, in the preceding 12-month period and shall provide advance notice if the Charges will increase.
- 9.3 The Customer shall provide to PlayerData valid, up-to-date and complete credit card or bank transfer details acceptable to PlayerData and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides its credit card details to PlayerData, the Customer hereby authorizes PlayerData to bill such credit card:
 - 9.3.1 for Charges for the Services and any Additional Services in accordance with the payment schedule as set forth in the Order (and if not specified in an Order, Charges are payable annually upfront);
 - 9.3.2 for the initial deposit on or before the Commencement Date or other date as required by PlayerData; and
 - 9.3.3 for any additional expenses reasonably incurred by PlayerData and owed by the Customer, including any applicable expenses under Clause 6, rates for which are included in the "Charges" section of the Order.
- 9.4 Without prejudice to any other right or remedy that it may have, if PlayerData has not received payment of any sum due under the Agreement on the due date:
 - 9.4.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 9.4.1 will accrue each day at 1.5% per month;
 - 9.4.2 PlayerData may suspend the Customer's access to all or part of the Services until payment has been made in full and PlayerData shall be under no obligation to provide any or all of the Services while the sums due remain unpaid.
- 9.5 All sums payable to PlayerData under the Agreement:
 - 9.5.1 are subject to any sales, use, GST, value-added, withholding, or similar taxes or levies that apply to Orders, whether domestic or foreign, other than PlayerData's income tax; and

9.5.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. INTELLECTUAL PROPERTY RIGHTS

The Customer acknowledges and agrees that PlayerData and/or its licensors own all Intellectual Property Rights in the Software, Hardware and Accessories and which arise as a result of delivery of the Services. Except as expressly stated herein, the Agreement does not grant the Customer any rights to, under or in, any Intellectual Property Rights, or any other rights or licenses in respect of the Software, Hardware, Accessories or Services.

11. DATA PROTECTION

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.

11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, in complying with its obligations under the Agreement, PlayerData may take on the role of either controller or processor depending on the nature and purpose of the processing. For further information, please see PlayerData's privacy notice, a copy of which can be made available to the Customer from time to time.

11.3 Where PlayerData is acting as a processor of Customer Personal Data:

11.3.1 PlayerData will:

(1) Only process Personal Data for the purposes set forth in this Agreement, and upon termination of this Agreement will discontinue processing and will destroy or return Customer Personal Data in its possession upon request from Customer, unless obligated to retain Customer Personal Data by law;

(2) Ensure that its employees, agents, subcontractors, and sub-processors are subject to a duty of confidentiality with respect to Customer Personal Data; and

(3) Provide commercially reasonable assistance to Customer for the fulfillment of Customer's obligations to respond to consumer requests under Data Protection Legislation.

11.3.2 each party has the right to take reasonable and appropriate steps to ensure that Customer Personal Data is being handled in compliance with Data Protection Legislation and shall have the obligation to notify the other party in the event that it determines that it can no longer meet its obligations under Data Protection Legislation;

11.3.3 each party agrees to implement and maintain no less than commercially reasonable security procedures and practices, appropriate to the nature of the information, to protect Customer Personal Data from unauthorized access, destruction, use, modification, or disclosure; and

11.3.4 the Customer will ensure that it has all necessary appropriate consents and notices (in respect of Authorized Users and otherwise) in place to enable lawful transfer of the personal data to PlayerData for the duration and purposes of the Agreement.

12. CONFIDENTIALITY

12.1 “**Confidential Information**” means information disclosed to the receiving party (“**Recipient**”) under this Agreement that is designated by the disclosing party (“**Discloser**”) as proprietary or confidential or that should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. PlayerData’s Confidential Information includes the terms and conditions of this Agreement and any technical or performance information about the Services. For the avoidance of doubt, to the extent of any overlap or conflict between this Clause 12 and Clause 11 with respect to Personal Data, the protections and obligations of Clause 11 shall apply and govern with respect to Personal Data.

12.2 As Recipient, each party will: (a) hold Confidential Information in confidence and not disclose it to third parties except as permitted in this Agreement; and (b) only use Confidential Information to fulfill its obligations and exercise its rights in this Agreement. At Discloser’s request, Recipient will delete all Confidential Information, except, in the case where PlayerData is the Recipient, PlayerData may retain the Customer’s Confidential Information to the extent required to continue to provide the Services. Recipient may disclose Confidential Information to its employees, agents, contractors, and other representatives having a legitimate need to know (including, for PlayerData, its subcontractors), provided it remains responsible for their compliance with this Clause 12 and they are bound to confidentiality obligations no less protective than this Clause 12.

12.3 These confidentiality obligations do not apply to information that Recipient can document: (a) is or becomes public knowledge through no fault of the receiving party; (b) it rightfully knew or possessed prior to receipt under this Agreement; (c) it rightfully received from a third party without breach of confidentiality obligations; or (d) it independently developed without using Confidential Information.

12.4 Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. Each party may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this Clause 12.

13. Nothing in this Agreement prohibits either party from making disclosures of Confidential Information, if required by applicable law, subpoena, or court order, provided (if permitted by applicable law) it notifies the other party in advance and cooperates in any effort to obtain confidential treatment.

14. LIMITATION OF LIABILITY

14.1 Nothing in the Agreement shall limit or exclude either party’s liability for: (i) its gross negligence or willful misconduct; (ii) fraud; or (iii) any other liability which cannot be limited or excluded by applicable law.

- 14.2 SUBJECT TO CLAUSE 14.1, PLAYERDATA (AND ITS SUPPLIERS OR LICENSORS) WILL HAVE NO LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF USE, LOST DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THEIR POSSIBILITY IN ADVANCE.
- 14.3 SUBJECT TO CLAUSE 14.1, PLAYERDATA'S TOTAL AGGREGATE LIABILITY TO THE CUSTOMER, WHETHER IN CONTRACT, FOR BREACH OF STATUTORY DUTY, OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH THE AGREEMENT SHALL BE LIMITED TO THE CHARGES ACTUALLY PAID IN THE TWELVE MONTHS PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY.

15. TERMINATION

- 15.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if the other party:
- 15.1.1 commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
 - 15.1.2 repeatedly breaches any of the terms of the Agreement 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 the Agreement; or
 - 15.1.3 ceases operation without a successor or seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days.
- 15.2 Without affecting any other right or remedy available to it, PlayerData may terminate the Agreement with immediate effect by giving written notice to the Customer if:
- 15.2.1 the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified to make such payment; or
 - 15.2.2 there is a change of control of the Customer.

16. CONSEQUENCES OF TERMINATION

- 16.1 On termination or expiration of the Agreement:
- 16.1.1 the Customer shall immediately pay to PlayerData all of PlayerData's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, PlayerData may submit an invoice, which shall be payable immediately on receipt;

16.1.2 the Customer shall deliver up the Hardware and Accessories (other than those which the Order indicates are purchased and not hired) within 7 days of the end of the term being either the end of the Initial Term or Extended Term as agreed between the parties in accordance with Clause 3 or on earlier termination of the Agreement. The returned Hardware must correspond with the inventory provided by PlayerData at Delivery. Any missing or damaged Hardware (excluding wear and tear) shall be charged;

16.1.3 the following Clauses shall continue in force: 1, 2, 5.2, 8, 9 10, and 12 through 29.

16.2 On termination or expiration of the Agreement, PlayerData shall give the Customer twelve (12) months read-only access to the “PlayerData app” for downloading any data before removing the Customer’s account, unless Customer requests that PlayerData delete any such data prior to the expiration of such twelve (12) months.

16.3 Termination or expiration of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiration, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiration.

17. FORCE MAJEURE

PlayerData shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, 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 PlayerData 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.

18. ASSIGNMENT AND OTHER DEALINGS

18.1 The Agreement is personal to the Customer and the Customer shall not assign, transfer, or subcontract any of its rights and obligations under the Agreement without PlayerData’s prior written consent.

18.2 PlayerData may assign or transfer this Agreement (and its rights under this Agreement) without Customer’s consent to a PlayerData affiliate or in connection with a merger, reorganization, change in control or sale of all or substantially all of the assets of PlayerData.

19. AMENDMENT

Subject to Clause 9.2, no amendment or modification of the Agreement shall be effective unless it is in writing and signed by the authorized representatives of both parties.

20. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. SEVERANCE

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

22. ENTIRE AGREEMENT

- 22.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 22.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Agreement.

23. NO PARTNERSHIP OR AGENCY

- 23.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter into any commitments for or on behalf of any other party.
- 23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24. THIRD PARTY RIGHTS

A person who is not a party to the Agreement shall not have any rights to enforce its terms.

25. NOTICES

- 25.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be:
 - 25.1.1 delivered by pre-paid first-class mail or other next Business Day delivery service at its principal place of business; or

25.1.2 sent by email to the address specified in the Order or otherwise provided to the other party in writing for notice purposes (with a copy provided by mail or next Business Day delivery service for any legal notices).

25.2 Any notice shall be deemed to have been received:

25.2.1 if sent by pre-paid first-class mail or other next Business Day delivery service, at 09:00 on the second Business Day after posting;

25.2.2 if sent by email, at 09:00 on the next Business Day after transmission.

25.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26. GOVERNING LAW AND JURISDICTION

These Terms are governed by the laws of the State of Delaware without regard to conflicts of law provisions. The Parties submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Wilmington, Delaware for resolution of any lawsuit or court proceeding related to or arising from these Terms.

27. ADVICE OF COUNSEL

Each Party has been represented by independent counsel, performed its own independent investigation, and executes this Agreement after consultation with its independent counsel.

28. HEADINGS AND CAPTIONS

All headings and captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement, and shall not in any way define, limit, extend or describe the scope or intent of any provision hereof.

29. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one agreement binding on all the Parties notwithstanding that all the Parties are not signatories to the original or the same counterpart.