RF CODE SOLUTION AGREEMENT

This agreement is between RF Code, Inc., a Delaware corporation (**RF Code**), and the Customer agreeing to these terms (**Customer**), and is effective as of the date of the last signature below.

1. SOLUTION.

This agreement and the applicable order provide Customer (defined below) with devices and sensors (**Hardware**), and with access to and usage of an Internet-based software service, including, without limitation, its features, functions, and user interface, and underlying software (**Service**), with which the Hardware must be used.

2. USE OF SERVICE.

a. **Customer Owned Data.** All data uploaded by Customer to the Service remains the property of Customer, as between RF Code and Customer (**Customer Data**). Customer represents and warrants to RF Code that Customer has provided all required notices and has obtained all required licenses, permissions, and consents regarding Customer Data for use within the Service under this agreement. Customer grants RF Code the right to use the Customer Data solely for purposes of performing under this agreement.

b. **Employees and Contractors.** Customer may allow its employees and contractors to use the Service, provided Customer is responsible for their compliance with the terms of this agreement, and use by its employees and contractors is solely for Customer's benefit.

c. **Customer Responsibilities.** Customer: (i) must keep its passwords secure and confidential and use industry-standard password management practices; (ii) is responsible for for its access control policies and administration of access rights to its account within the Service, the acts and omissions of its users, and the legality and accuracy of Customer Data; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify RF Code promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's user guide and applicable law.

d. **RF Code Service Support.** RF Code must provide Customer support for the Service under the terms of RF Code's Customer Support Policy (**Support**), which is located at:

    i. https://www.rfcode.com/company/legal/support-terms

e. **Third Party Service.** The Service interoperates with third party services (**Third Party Service**), and it depends on continuing availability of and access to Third Party Service, including application programming interfaces, for full functionality of the Service.

3. SERVICE LEVEL AGREEMENT AND SERVICE WARRANTY.

a. **Availability Warranty.** RF Code warrants to Customer that RF Code will maintain the availability of the Service as provided in the chart below (excluding maintenance outages, outages beyond RF Code's reasonable control, and outages that result from any Customer technology issues).

    i. **Credit for Availability Warranty.**

Less than 98% = 3% of monthly fee for each full hour of an outage (beyond the warranty). *
* Maximum amount of the credit is 100% of the fee for such month.

    ii. **CUSTOMER'S EXCLUSIVE REMEDY AND RF CODE'S SOLE OBLIGATION FOR ITS FAILURE TO MEET THIS WARRANTY WILL BE FOR RF CODE TO PROVIDE A CREDIT FOR THE APPLICABLE MONTH, AS PROVIDED IN THE CHART ABOVE (IF THIS AGREEMENT IS NOT RENEWED, THEN A REFUND FOR THE MONTH), PROVIDED THAT CUSTOMER NOTIFIES RF CODE OF SUCH BREACH WITHIN 30 DAYS OF THE END OF THAT MONTH.**

b. **Service Warranty.** RF Code warrants to Customer that: (i) RF Code will not materially decrease the overall security of the Service; (ii) the Service will perform materially in accordance with its technical documentation; and (iii) RF Code will not materially decrease the overall functionality of the Service or the scope of Support. **For any breach of this warranty, Customer's exclusive remedies are those described in the "Mutual Termination for Material Breach" and "Effect of Termination" sections set forth in this agreement.**

4. HARDWARE.

a. **Hardware.** Customer may purchase Hardware from RF Code, as further set forth under an order, to be used solely with the Service. Unless otherwise agreed under and order, Customer bears all freight, shipping and handling costs for the delivery of the Hardware to Customer, and Hardware will be shipped EXW (Incoterms 2010) RF Code's facility. Any claims for damages relating to delivery of Hardware must be filed directly with the carrier. The planned shipment date is an estimate only and RF Code will not be subject to liability for failure to ship on or before the planned shipment date under any circumstances. Any carrier selected by RF Code will not be deemed an agent of RF Code. Title to all such Hardware (other than to the firmware on the Hardware (**Firmware**)) passes to Customer upon delivery to Customer.

b. **Firmware**. RF Code grants Customer a non-exclusive, non-transferable license, for the term of the applicable order, to use the Firmware solely in connection with the use of the Hardware.

c. **Hardware Support.** When and if available, Firmware updates are pushed out to Customer's Hardware when they are pushed out to all customers.

d. **Standard Hardware Warranty.** For a period of 12 months from the Hardware order date, RF Code warrants to Customer that: (i) the Hardware will materially conform to the technical documentation for the hardware, and (ii) the Hardware is free from material defects. In the event that the Hardware does not comply with these warranties, Customer's sole remedy and RF Code's sole liability is for RF Code to replace the Hardware. The above warranties do not apply: (i) to any defect that is caused by the use of the Hardware in an environment other than for which it has been designed, (ii) to any defect that is caused by any modifications to the Hardware not made by RF Code, or (iii) if the Hardware has been subjected to abnormal physical, environmental or electrical stress, has been misused, or has been attempted to be repaired without RF Code's prior written consent. In the event that Customer purchases an extended warranty as set forth on an order, the warranty in this Section 4(d) will be extended for an additional period beyond the 12 months, which additional period is set forth in the order.

5. WARRANTY DISCLAIMER.

RF CODE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. WHILE RF CODE TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, RF CODE DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS AND AGREES THAT (I) THE SERVICE AND HARDWARE MAY NOT BE ERROR-FREE AND THE USE MAY BE INTERRUPTED, AND (II) RF CODE IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD PARTY SERVICE ISSUES.

6. PAYMENT.

a. **Payment and Taxes.** Customer must pay all fees as specified on the order, but if not specified, then within 30 days of receipt of an invoice. The fees are exclusive of sales, use, withholding, VAT and other similar taxes, and Customer is responsible for payment of such taxes at the rate and in the manner for the time being prescribed by law. If RF Code has the legal obligation to pay or collect taxes for which Customer is responsible under this section, RF Code will invoice Customer and Customer will pay that amount unless Customer provides RF Code with a valid tax exemption certificate authorized by the

appropriate taxing authority. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

b. **Nonpayment.** Any invoiced amount not received by RF Code by the due date may accrue interest at the lower rate of 1.5% per month or the maximum rate permitted by law. In addition, if an invoiced amount is 30 days or more past due, RF Code may suspend Service and Support until the amount is paid in full, provided RF Code has given Customer at least 30 days' prior written notice that its account is past due.

5. MUTUAL CONFIDENTIALITY.

a. **Definition of Confidential Information.** Confidential Information *means* all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). RF Code's Confidential Information includes, without limitation, the Service, the Firmware, and pricing information. Customer's Confidential Information includes, without limitation, the Customer Data.

b. **Protection of Confidential Information.** Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to: (i) not use any Confidential Information of Discloser for any purpose outside the scope of this agreement; and (ii) limit access to Confidential Information of Discloser to those of its employees and contractors who need that access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient containing protections not materially less protective of the Confidential Information than those in this agreement.

c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient before its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) is independently developed by the Recipient without use of or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. PROPERTY.

a. **Reservation of Rights.** RF Code and its licensors are the sole owners of the Service, Firmware, and API (as defined below) including all associated intellectual property rights, and they remain only with RF Code. Customer may not remove or modify any proprietary marking or restrictive legends in the Service. RF Code reserves all rights that are not expressly granted in this agreement.

b. **Restrictions.** Customer *may not*: (i) sell, resell, rent, or lease the Service or use it in a service-provider capacity; (ii) use the Service to store or transmit unsolicited marketing emails, libelous, or otherwise objectionable, unlawful, or tortious material, or to store or transmit infringing material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service or the Firmware except as allowed by applicable law despite this limitation; or (vi) access the Service to build a competitive service or product, or copy any feature, function, or graphic for competitive purposes. RF Code may suspend Service to Customer if RF Code believes in good faith that Customer's use of the Service poses an imminent threat to the security, availability or legality of the Service; in such event, RF Code will work with Customer to address the issue and restore Service as quickly as possible.

c. **Compiled and Collected Data.** During and after the term of this agreement, RF Code may compile statistical information related to the performance of the Service and the Hardware, and may use all aggregated and anonymized data within the Service as well as all data collected by the Hardware for purposes of performing and enhancing the Service and the Hardware, aggregated statistical analysis, technical support, and other business purposes.

7. TERM AND TERMINATION.

a. **Term.** This agreement continues until the 30th day after all orders have expired, unless earlier terminated as provided below.

b. **Term of Orders.** Unless otherwise stated in an order, (i) orders and all subscriptions under them will automatically renew for additional one-year periods unless a party notifies the other of non-renewal 30 or more days before the renewal date, (ii) an automatically renewing order will remain unchanged from the prior term except for any pricing increase of which RF Code has notified Customer 60 or more days before the renewal date, and (iii) upon automatic renewal, the per-unit pricing for any Service will not increase by more than 7% over that in the prior term unless the prior pricing was clearly designated in the order as promotional or one-time.

c. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.

d. **Effect of Termination.** If this agreement is terminated for RF Code's breach, RF Code will refund Customer fees prepaid for the remainder of the term of all orders after the termination effective date. If this agreement is terminated for Customer's breach, Customer will pay any unpaid fees for the term of all orders. Upon request, following any termination of this agreement, each party will destroy or return all of the other party's property that it holds.

8. LIABILITY LIMIT.

a. **EXCLUSION OF INDIRECT DAMAGES. TO THE MAXIMUM EXTENT ALLOWED BY LAW, RF CODE IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY; LOSS OF OR UNAUTHORIZED ACCESS TO DATA OR INFORMATION; AND LOST PROFITS, REVENUE, OR ANTICIPATED COST SAVINGS), EVEN IF IT KNOWS OF THE POSSIBILITY OR FORESEEABILITY OF SUCH DAMAGE OR LOSS.**

b. **TOTAL LIMIT ON LIABILITY. TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXCEPT FOR RF CODE'S INDEMNITY OBLIGATIONS, RF CODE'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT, OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE 12-MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE LIABILITY.**

9. INDEMNIFICATION FOR THIRD-PARTY CLAIMS.

a. RF Code will defend or settle any third-party claim against Customer to the extent that such claim alleges that RF Code technology used to provide the Service infringes a copyright, patent, trademark, or other intellectual property right, if Customer promptly notifies RF Code of the claim in writing, cooperates with RF Code in the defense, and allows RF Code to solely control the defense or settlement of the claim. ***Costs.*** RF Code will indemnify and hold harmless Customer from any infringement claim defense costs it incurs in defending Customer under this indemnity, RF Code-negotiated settlement amounts agreed to by RF Code, and court-awarded damages. ***Process.*** If such a claim appears likely, then RF Code may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If RF Code determines that none of these are reasonably available, then RF Code may terminate the Service and refund any prepaid and unused fees. ***Exclusions.*** RF Code has no obligation for any claim arising from: RF Code's compliance with Customer's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; Customer Data; or technology or aspects not provided by RF Code. **THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND RF CODE'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT.**

b. If a third party claims against RF Code that any part of the Customer Data infringes or violates that party's patent, copyright, or other right, Customer will defend RF Code against that claim at Customer's expense and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by Customer, provided that RF Code promptly notifies Customer of the claim in writing, cooperates with Customer in the defense, and allows Customer to solely control the defense or settlement of the claim.

10. GOVERNING LAW AND FORUM.

This agreement is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Travis County, Texas, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

11. OTHER TERMS.

a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise, or inducement not included in this agreement is binding. No modification or waiver of any term of this agreement is effective unless both parties sign it.

b. **No Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned, without the consent of the other party, as part of a merger or sale of all or substantially all a party's businesses, assets, not involving a competitor of the other party.

c. **Export Compliance.** The Service, Hardware, and Confidential Information may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Neither party will permit its personnel or representatives to access any Service in a U.S.-embargoed country or in violation of any applicable export law or regulation.

d. **Independent Contractors.** The parties are independent contractors with respect to each other, and neither party is an agent, employee, or partner of the other party.

e. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Neither party is liable for its non-performance due to events beyond its reasonable control, including but not limited to natural weather events and disasters, labor disruptions, and disruptions in the supply of utilities.

f. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this agreement.

g. **No Additional Terms.** RF Code rejects additional or conflicting terms of a Customer's form-purchasing document.

h. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.

i. **Survival of Terms.** All provisions of this agreement regarding payment, confidentiality, indemnification, limitations of liability, proprietary rights and such other provisions that by fair implication require performance beyond the term of this agreement must survive expiration or termination of this agreement

until fully performed or otherwise are inapplicable. The UN Convention on Contracts for the International Sale of Goods does not apply.

j. **Feedback.** If Customer provides feedback or suggestions about the Service, then RF Code (and those it allows to use its technology) may use such information without obligation to Customer.

[●] (Customer)	**RF Code, Inc. (RF Code)**
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
Address:	Address: