These Terms and Conditions ("Agreement") govern the use of Butlr Technologies, Inc.'s people sensing platform including software delivered and installed in the Devices ("Software"), applications and services made available through mobile devices and/or our website ("Services") and related devices ("Devices") (collectively, the “Products”), and is entered into between Butlr Technologies Inc. ("Company") and you, the end customer and user of Company’s Products ("Customer"), either in connection with a purchase of the Products or use of the Products for evaluation purposes.

By accepting this Agreement, whether by clicking a box indicating its acceptance, navigating through a login page where a link to this Agreement is provided, or entering into a Purchase Agreement that references this Agreement, Customer agrees to the terms of this Agreement.

This Agreement is effective as of the earlier of the date that Customer accepts the terms of this Agreement as indicated above or first accesses or uses any of the Products (the “Effective Date”). Company reserves the right to modify or update the terms of this Agreement in its discretion, the effective date of which will be the earlier of (i) 30 days from the date of such update or modification and (ii) Customer’s continued use of the Products.

Company and Customer hereby agree as follows.

1. DEFINITIONS
The definitions of certain capitalized terms used in this Agreement are set forth below. Others are defined in the body of the Agreement.

“Customer Data“ means data provided by Customer via the Software; provided in no event shall any such data include personal data.


“Device as a Service” or “DAAS” means a subscription to the Products for the Term.

“Devices" means sensors, gateways and related accessories.

“License“ has the meaning ascribed to it in Section 2.1.
“Term” means the length of time indicated on the applicable Purchase Agreement Customer subscribes to use the DAAS.

“Partner” means a third-party authorized by Company to resell the Products, with whom Customer has entered into a Purchase Agreement for such Products.

“Products” means, collectively, the Software, Services, Devices, Documentation, Support, and all modifications, updates, and upgrades thereto and derivative works thereof.

“Purchase Agreement” means the order document submitted to Company (including an online purchase) by Customer (or a Partner), and accepted by Company, indicating Customer’s (or Partner’s) firm commitment to purchase the Products and for the prices listed thereon.

“Support” means the technical support services and resources available at www.butlr.io.

“Users” means employees of Customer, or other third parties, each of whom are authorized by Customer to use the Products.

2. LICENSE AND RESTRICTIONS

2.1 License to Software and Services.
Subject to the terms of this Agreement and Customer executing a Purchase Agreement, Company grants Customer a royalty-free, nonexclusive, nontransferable, worldwide subscription during each Term to the DAAS, including access and use the Services by using the applications available on www.butlr.io or its derivatives in connection with controlling and monitoring the Products (“License”). Customer must have a DAAS subscription equal to the number of devices. If Customer purchases additional DAAS subscriptions, the Term will be modified such that the Term for all Licenses purchased will terminate on the same date. The Products are not intended to be used as part of any life-saving or emergency systems, and Customer will not use the Products in any such environment.

2.2 License to Company.
During the License Term, Customer will transfer Customer Data to Company while using the Products. Customer grants Company, during the License Term, a non-exclusive right and license to use, reproduce, modify, store, and process Customer Data to provide the Products to Customer. In addition, Customer grants Company a perpetual, non-exclusive right and license to use, reproduce, modify, store, and process Customer Data to improve the Products and develop benchmarks and other metrics relevant to users or potential users. Customer represents and warrants that it possesses the necessary rights and consents to grant Company the rights set forth in this Section 2.2 with respect to Customer Data.
2.3 Restrictions.
Customer will not: (i) use (or allow a third party to use) the Products in order to monitor their availability, security, performance, or functionality, or for any other benchmarking or competitive purposes without Company’s express written consent; (ii) market, sublicense, resell, lease, loan, transfer, or otherwise commercially exploit the Products; (iii) modify, create derivative works, decompile, reverse engineer, attempt to gain access to the source code, or copy the Products or any of their components; or (iv) use the Products to conduct any fraudulent, malicious, or illegal activities or otherwise in contravention of any applicable laws or regulations (each of (i) through (iv), a “Prohibited Use”).

2.4 Title
All right, title and interest to the Products and the Services will remain with Company; except that for title for Devices shall pass Customer upon payment of the minimum term in full for the Devices as defined in the respective Purchase Agreement or Order Form.

3. DAAS WARRANTY

3.1 Device as a Service.
Company represents to the original purchaser of the DAAS that for the Term the Devices will be substantially free of defects in materials and workmanship (“DAAS Warranty”). Customer’s sole and exclusive remedy and Company’s (and its suppliers’ and licensors’) sole and exclusive liability for a breach of the DAAS Warranty will be, in Company’s sole discretion, to replace the non-conforming Devices. Replacement may be made with a new or refurbished product or components. If the Devices or a component within it is no longer available, then Company may replace the non-conforming Device with a similar product of similar function. Any non-conforming Device that has been replaced under the DAAS Warranty will be covered by the terms of the DAAS Warranty for the Term.

3.2 Exclusion
The foregoing warranties shall not apply to any non-conformance (i) that Company cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the Devices or by using the Devices in a manner that is inconsistent with this Agreement or the Documentation; (iii) arising from the modification of the Devices by anyone other than Company; (iv) resulting from damage, or other than normal wear and tear, to the Devices by Customer; or (v) caused by any problem or error in third party software or hardware not provided by Company with Devices regardless of whether or not the Devices are designed to operate with such third party software or hardware.

3.3 Returns
To request a return under this section, Customer must notify Company (or if the Devices were purchased by Customer through a Partner, Customer may notify the Partner) during the Term. To initiate a return directly to Company, Customer must send a return request to Company at orders@butlr.io and clearly state details on where and when Customer purchased the Devices, the serial numbers of the applicable Device unit(s), Customer’s reason for returning the Devices, and Customer’s name, mailing address, email address, and daytime phone number. If approved in Company’s sole discretion, Company will provide Customer with a Return Materials Authorization (“RMA”) and prepaid shipping label via email that must be included with Customer’s return shipment.
to Company. Customer must return the Device unit(s) listed in the RMA with all included accessories with the RMA within the 14 days following the day on which Company issued the RMA. Company will replace the Devices in its sole discretion.

4. COMPANY OBLIGATIONS
4.1 General.
Company is responsible for providing the Products in conformance with this Agreement, the Purchase Agreement(s), and applicable Documentation.

4.2 Support.
If Customer experiences any errors, bugs, or other issues in its use of the Products, then Company will provide Support in order to resolve the issue or provide a suitable workaround. The fee for Support is included in the cost of the Products. As part of Company’s delivery of Support and training, Customer understands that Company may access and use Customer’s account at its request.

5. CUSTOMER OBLIGATIONS
5.1 Compliance.
Customer will use the Products only in accordance with the Documentation and in compliance with all applicable laws, including the export laws and regulations of the United States or any other country. Customer will ensure that none of the Products are directly or indirectly exported, re-exported, or used to provide services in violation of such export laws and regulations. Customer shall comply with all applicable laws.

5.2 Computing Environment.
Customer is responsible for the maintenance and security of its own network and computing environment that it uses to access the Software and Services.
6. TERM AND TERMINATION

6.1 Term.
The term of this Agreement will commence on the Effective Date and will continue for the Term set forth on the Purchase Agreement.

6.2 Termination for Cause.
Either party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of the 30-day period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

6.3 Effect of Termination.
If Customer terminates this Agreement in accordance with Section 6.2, then Company will refund Customer a pro rata portion of any prepaid fees allocable to the DAAS. The following provisions will survive any expiration or termination of the Agreement: Sections 7, 8, 9, 10, 12, and 13 and any other provisions that, by their nature, would reasonably be considered intended to survive. Upon termination of this Agreement, the License and DAAS terminates but title to the Devices will transfer to the Customer.

7. FEES AND SHIPPING

7.1 Fees.
If Customer subscribes to the DAAS directly from Company, then Customer will pay the fees set forth on the applicable Purchase Agreement as specified in this Section 7. Any terms included by Customer on a Purchase Agreement that conflict with the terms of this Agreement will not be binding on Company. If Customer subscribes to the DAAS from a Partner of Company, then all payment and shipping terms will be as agreed between Customer and such Partner.

7.2 Shipping.
Customer’s Purchase Agreement must state Customer’s account number with the intended carrier. Company will ship Devices pursuant to the applicable Purchase Agreement under the specified carrier account. If Customer does not provide its carrier account information, Company will ship under its account and invoice Customer for all related shipping costs. Following acceptance of the Purchase Agreement, and shipment of the Devices, Company will submit an invoice to Customer for the Products, and payment will be due 30 days from the date of the invoice (“Due Date”). Company will ship all Devices to the location specified on the Purchase Agreement Ex Works (INCOTERMS 2010) Company’s shipping point. If Company purchases the Devices a la carte (not DAAS), upon such shipment title and risk of loss will pass to Customer.

7.3 Overdue Charges.
If any undisputed, invoiced amount is not received by Company by the Due Date, then (i) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and (ii) Company may condition the purchase of future Products on receipt of payment for previous Product and/or payment terms shorter than those specified on the previous Purchase Agreement.
7.4 Taxes.
The fees payable hereunder are exclusive of any sales taxes (unless included on the invoice), or similar governmental sales tax type assessments, excluding any income or franchise taxes on Company (collectively, “Taxes”) with respect to the Products provided to Customer. Customer is solely responsible for paying all Taxes associated with or arising from this Agreement and shall indemnify, hold harmless and reimburse Company for all Taxes paid or payable by, demanded from, or assessed upon Company.

8. CONFIDENTIALITY
8.1 Confidential Information.
Except as explicitly excluded below, any information of a confidential or proprietary nature provided by a party (“Disclosing Party”) to the other party (“Receiving Party”) constitutes the Disclosing Party’s confidential and proprietary information (“Confidential Information”). Company’s Confidential Information includes the Products and any information conveyed to Customer in connection with Support. Confidential Information does not include information which is (i) already known by the Receiving Party without an obligation of confidentiality other than pursuant to this Agreement; (ii) publicly known or becomes publicly known through no unauthorized act of the Receiving Party; (iii) rightfully received from a third party without a confidentiality obligation to the Disclosing Party; or (iv) independently developed by the Receiving Party without access to the Disclosing Party’s Confidential Information.

8.2 Confidentiality Obligations.
Each party will use the Confidential Information of the other party only as necessary to perform its obligations under this Agreement, will not disclose the Confidential Information to any third party, and will protect the confidentiality of the Disclosing Party’s Confidential Information with the same standard of care as the Receiving Party uses or would use to protect its own Confidential Information, but in no event will the Receiving Party use less than a reasonable standard of care. Notwithstanding the foregoing, the Receiving Party may share the other party’s Confidential Information with those of its employees, agents and representatives who have a need to know such information and who are bound by confidentiality obligations at least as restrictive as those contained herein (each, a “Representative”). Each party shall be responsible for any breach of confidentiality by any of its Representatives.

8.3 Additional Exclusions.
A Receiving Party will not violate its confidentiality obligations if it discloses the Disclosing Party’s Confidential Information if required by applicable laws, including by court subpoena or similar instrument so long as the Receiving Party provides the Disclosing Party with written notice of the required disclosure so as to allow the Disclosing Party to contest or seek to limit the disclosure or obtain a protective order. If no protective order or other remedy is obtained, the Receiving Party will furnish only that portion of the Confidential Information that is legally required, and agrees to exercise reasonable efforts to ensure that confidential treatment will be accorded to the Confidential Information so disclosed.
9. DATA PROTECTION

9.1 Security.
Company will use administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Customer Data.

9.2 No Access.
Company does not (and will not) collect, process, store, or otherwise have access to any information or data, including personal information, about Users, or users of Customer’s products or services. Customer will ensure that no personal information is provided to Company in connection with the Products.

10. OWNERSHIP

10.1 Company Property.
Company owns and retains all right, title, and interest in and to the Software, Services, and all intellectual property embodied in the Devices. Except for the limited license granted to Customer in Section 2.1, Company does not, by means of this Agreement or otherwise, transfer any rights in the Products to Customer (other than as provided in Section 6.2 hereof), and Customer will take no action inconsistent with Company’s intellectual property rights in the Products.

10.2 Customer Property.
Customer owns and retains all right, title, and interest in and to the Customer Data and does not, by means this Agreement or otherwise, transfer any rights in the Customer Data to Company, except for the limited license set forth in Section 2.2.

11. INDEMNIFICATION

11.1 By Company.
Company will defend Customer, its affiliates, and their respective owners, directors, members, officers, and employees (collectively, “Customer Indemnitees”) against any claim, action, demand, suit or proceeding made or brought by a third party against any of the Customer Indemnitees alleging that Customer’s use of the Products infringes or misappropriates any patent, trademark, copyright, or trade secret of a third party (each, a “Claim”). Company will indemnify and hold Customer Indemnitees harmless from any damages finally awarded against any Customer Indemnitees by a court of competent jurisdiction as a result of any such Claim, or any final settlement of such Claim, so long as Customer (i) gives Company prompt written notice of the Claim, (ii) gives Company sole control of the defense and settlement of the Claim, and (iii) provides to Company all reasonable assistance, at Company’s request and expense. If Customer’s right to use the Products hereunder is, or in Company’s opinion is likely to be, enjoined as the result of a Claim, then Company may, at Company’s sole option and expense procure for Customer the right to continue using the Products under the terms of this Agreement, or replace or modify the Products so as to be non-infringing and substantially equivalent in function to the claimed infringing or enjoined Products. Company will have no indemnification obligations under this Section 11.1 to the extent that a Claim is based on or arises from:
(a) use of the Products in a manner other than as expressly permitted in this Agreement; (b) any alteration or modification of the Products except as expressly authorized by Company; (c) the combination of the Products with any other software, product, or services (to the extent that the alleged infringement arises from such combination); or (d) where the Claim arises out of specifications provided by Customer. This Section 11.1 sets forth Company’s sole and exclusive liability, and Customer’s exclusive remedies, for any Claim of infringement or misappropriation of intellectual property.

11.2 By Customer.
Customer will indemnify, defend, and hold harmless Company, its affiliates, and their respective owners, directors, members, officers, and employees (together, the “Company Indemnitees”) from and against any Claim related to (a) Customer’s or a User’s engaging in a Prohibited Use, and (b) Customer’s breach of its obligations in Section 5.1. Customer will pay any settlement of and any damages finally awarded against any Company Indemnitee by a court of competent jurisdiction as a result of any such Claim so long as Company (i) gives Customer prompt written notice of the Claim, (ii) gives Customer sole control of the defense and settlement of the Claim, and (iii) provides to Customer all reasonable assistance, at Customer’s request and expense.

12. LIMITATIONS OF LIABILITY

12.1 Disclaimer.
EXCEPT FOR THE WARRANTIES EXPLICITLY SET FORTH IN THIS AGREEMENT, COMPANY MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING OR RELATING TO THE PRODUCTS FURNISHED OR PROVIDED TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT, INCLUDING UPDATES OR SUPPORT. WITHOUT LIMITING THE FOREGOING, COMPANY HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR TITLE. COMPANY DOES NOT WARRANT THAT THE PRODUCTS WILL MEET CUSTOMER’S NEEDS OR EXPECTATIONS, THAT USE OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS WILL BE CORRECTED.

12.2 Limitation of Liability.
EACH PARTY HERETO AGREES THAT WITH THE EXCEPTION OF COMPANY’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11 AND BREACH OF COMPANY’S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 8 (COLLECTIVELY, “EXCLUDED CLAIMS”), AND ABSENT GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, COMPANY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES WILL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, THAT MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE CUSTOMER HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR COSTS OCCURRING AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.
12.3 Liability Cap.
EXCEPT WITH RESPECT TO EXCLUDED CLAIMS, IN NO EVENT WILL THE COLLECTIVE LIABILITY OF COMPANY, OR ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS AND REPRESENTATIVES, TO THE CUSTOMER FOR ANY AND ALL DAMAGES, INJURIES, AND LOSSES ARISING FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING OUT OF, BASED ON, RESULTING FROM, OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO COMPANY UNDER THIS AGREEMENT DURING THE 12-MONTH PERIOD PRECEDING THE DATE OF THE CLAIM. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES WHICH WILL BE THE CLAIMANT’S SOLE AND EXCLUSIVE REMEDY.

13. MISCELLANEOUS
Company may identify Customer as a customer on its website or in other materials. This Agreement is the entire agreement between Customer and Company and supersedes all prior agreements and understandings concerning the subject matter hereof and may not be amended or modified except by a writing signed by authorized personnel by both parties. Customer and Company are independent contractors, and this Agreement will not establish any relationship of partnership, joint venture, or agency between Customer and Company. Failure to exercise any right under this Agreement will not constitute a waiver. There are no third-party beneficiaries to this Agreement. This Agreement is governed by the laws of California without reference to conflicts of law rules. For any dispute relating to this Agreement, the Parties consent to personal jurisdiction and the exclusive venue of the courts in San Francisco County, California. Any notice provided by one party to the other under this Agreement will be in writing and sent either (i) by overnight courier or certified mail (receipt requested), in the case of Customer to Customer’s address on record in Company’s account information and in the case of Company, to the address listed above, or (ii) by electronic mail to Customer’s email address on record in Company’s account information or to Company at legal@butl.io. If any provision of this Agreement is found unenforceable, the Agreement will be construed as if such provision had not been included. Neither party may assign this Agreement without the prior, written consent of the other party, except that either party may assign this Agreement without such consent in connection with an acquisition of the assigning party or a sale of all or substantially all of its assets.