



Matrix Master Terms and Conditions

Unless otherwise agreed to pursuant to a written contract, signed by an authorized representative of both parties, Customer agrees to the following terms and conditions for the purchase, licensing and/or support of Equipment, Software and Service from Matrix. Such agreement shall not be modified, changed, or altered in any way by Customer's submittal of a Purchase Order (whether or not accompanied by its own terms and conditions) and the terms and conditions provided for herein shall otherwise control any relationship and understanding between the parties.

1. **DEFINITIONS.** Any capitalized terms not defined herein shall have the meaning provided in the applicable Schedules.
2. **EQUIPMENT.**
 - 2.1. **Equipment Supply.** Matrix agrees to supply to Customer, and Customer will purchase from Matrix, certain collision avoidance equipment and hardware (the "**Equipment**") as set forth in a Schedule setting out the specific type and quantity of Equipment to be supplied, pricing, additional descriptions and specifications, and certain other terms and conditions governing the supply and purchase all related and applicable to the Equipment.
 - 2.2. **Third Party Equipment.** Terms and conditions apply only to Equipment sold directly by Matrix to Customer, and does not cover Customer's purchase of Equipment from a Matrix reseller or other third party outside of such direct purchases.
 - 2.3. **Equipment Updates.** Over time, Equipment may need to be upgraded or replaced in order for Customer to obtain the latest features and functionality offered by Matrix with respect to such Equipment or a newer version thereof. Customer may be responsible for costs related to any such Equipment upgrades or replacements, if applicable. For outdated Equipment that Customer chooses not to upgrade or replace, Matrix shall not be obligated to offer maintenance, support or other Services with respect to such Equipment. Matrix will notify Customer in writing as soon as reasonably practicable after determining that any such upgrades or replacements are warranted. Such notice shall include the cost associated with such upgrade or replacement.
3. **SOFTWARE.**
 - 3.1. **Software License.** If applicable, licensing terms and conditions with respect to firmware or, software embedded in or provided in connection with the Equipment (collectively, "**Software**") shall be set forth in one or more Schedules.
 - 3.2. **Third Party Software.** If Customer uses third party software not provided or recommended by Matrix with the Equipment and Software, Customer will be solely responsible for ensuring that such third party software functions and interfaces appropriately with the Equipment and Software and that the third party software is not used for any Unauthorized Purpose (as defined below). Matrix will not be liable to Customer in the event the Equipment and Software does not function properly due to Customer's use of third party software not provided or recommended by Matrix. Matrix may require testing of any such third party software prior to Customer's use with the Equipment and Software (but any such testing required by Matrix does not limit the Customer's obligations or expand Matrix's liability under these terms and conditions).
 - 3.3. **Ownership.** To the extent any Software is licensed by Matrix to Customer under a Schedule, Customer acknowledges and agrees that the Software and any documentation related thereto are licensed, not sold, to Customer by Matrix and Customer does not have under or in connection with these terms and conditions or such Schedule any ownership interest in the Software or its documentation, or in any related intellectual property rights. Matrix is the sole and exclusive owner of all intellectual property rights and interest in and to the Software and its documentation, including all intellectual property rights relating thereto, subject only to any limited license granted to Customer under a Schedule.
 - 3.4. **Reservation of Rights.** Except for the express rights and licenses granted by Matrix under the applicable Schedule, these terms and conditions do not grant to Customer or any other person any right, title, or interest by implication, estoppel, or otherwise. Without limiting the foregoing, nothing in these terms and conditions grants, by implication, waiver, estoppel or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to any of the Software or its documentation. All rights, titles, and interests not specifically and expressly granted by Matrix in these terms and conditions or any applicable Schedules are hereby reserved.



3.5 **Anti-Virus Software.** Customer is solely responsible for maintaining anti-virus software on Customer's systems that interface with the Equipment or Software. Matrix shall have no liability or responsibility for failures of Customer's systems that result from Customer's failure to comply with this section.

4. **SERVICES.**

4.1 **Technical and Other Professional Services.** Customer may purchase technical services ("**Technical Services**"), installation services ("**Installation Services**"), and professional services ("**Professional Services**"), and together with Technical Services and Installation Services, collectively "**Services**") from Matrix, which may include Equipment and/or Software support and maintenance services, including the support and maintenance set forth in any applicable Schedule. Any such Services shall be subject to and governed by Matrix's Standard Service Level Agreement [attached as Appendix [●]]. All Technical Services and Professional Services may be provided remotely unless specified otherwise in the applicable Schedule.

4.2 **Services.** If applicable, terms and conditions for the Services, including the nature, scope and applicable cost thereof, shall be set forth in one or more Schedules, which may include a Scope of Work and/or Equipment and Services Release Agreement.

5. **DATA COLLECTION AND USE.**

5.1 **Data Collection.** All data provided by Customer, whether captured through Customer's use of the Equipment or Software or otherwise provided by Customer, as well as all personal data relating to Customer or Customer users (regardless of whether such personal data has been further processed or analyzed by Matrix), is "**Customer Data.**" As between Matrix and Customer, Customer shall own its Customer Data. Customer Data does not, however, include any Technical Information. "**Technical Information**" means Equipment or Software technical information (such as device identifiers, status information, and other technical information that is routinely uploaded) or insights and other information, data, or content that has been calculated, processed, or derived from Customer Data, including, without limitation, through the use of algorithms, all of which are owned by Matrix and may be shared and retained by Matrix for its own business purposes. Technical Information shall not be derived (directly or indirectly) from or contain personal data.

5.2 **License to Customer Data.** Customer hereby grants Matrix a non-exclusive, perpetual right and license to access, use, and disclose Customer Data for purposes of providing the Equipment or Software to Customer, ensuring the security of the Equipment or Software, performing its obligations under this Contract, improving the Equipment or Software, or otherwise for its business purposes; provided that Matrix will (a) anonymize and deidentify Customer Data prior to sharing Customer Data with third parties (other than subcontractors, agents, representatives and employees) and (b) comply with applicable laws with respect to Customer Data.

5.3 **Use of Technical Information.** Matrix may collect, use and retain Technical Information, for its own business purposes, including sale of same, provided that Technical Information does not identify Customer.

5.4 **Compliance with Privacy Laws.** Customer agrees to comply with all applicable laws relating to privacy and the protection of personal data in any relevant jurisdiction worldwide, including (without limitation): the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act ("**CPRA**"); the General Data Protection Regulation ("**GDPR**"); any local, state, or federal privacy laws or guidelines applicable to the use of videos, cameras, or video surveillance; and any implementing or successor legislation to the foregoing; as well as any amendments and/or re-enactments of the foregoing.

5.5 **NOTIFICATION AND CONSENT. IT IS CUSTOMER'S RESPONSIBILITY AND DUTY TO INFORM CUSTOMER USERS OF (a) THE EXISTENCE OF THE EQUIPMENT AND SOFTWARE, (b) THE NATURE OF THE EQUIPMENT AND SOFTWARE AND THE VIDEOS AND DATA COLLECTED BY THE EQUIPMENT AND SOFTWARE, AND (c) CUSTOMER USERS' RIGHTS AND OBLIGATIONS ACCORDING TO ANY LAWS. WHEREVER AN EXPLICIT CONSENT OF A PERSON IS REQUIRED FOR CUSTOMER'S USE OF THE EQUIPMENT OR SOFTWARE ACCORDING TO ANY LAWS, IT IS CUSTOMER'S RESPONSIBILITY TO ATTAIN SUCH CONSENT FROM THE PERSON, IN THE FORM AND TO THE EXTENT REQUIRED.**

5.6 **RESPONSIBILITY OF EMPLOYERS. IF CUSTOMER IS AN EMPLOYER AND MAKES USE OF THE EQUIPMENT OR SOFTWARE, WITH RESPECT TO ITS EMPLOYEES OR CONTRACTORS, CUSTOMER REPRESENTS AND WARRANTS THAT**



CUSTOMER'S USE OF EQUIPMENT OR SOFTWARE COMPLIES WITH ALL APPLICABLE LAWS, INCLUDING LABOR LAWS, PRIVACY LAWS, AND VIDEO-RELATED REGULATIONS.

5.7. **Data Retention and Use.** Matrix will retain Customer Data for the period set forth in the applicable Schedule (the "Retention Period"). Matrix retains the right to automatically delete Customer Data after the Retention Period whether or not Customer has retrieved or read it. Matrix may retain and use Customer Data beyond the Retention Period: (i) if Matrix is notified by a third party to preserve such Customer Data in a civil or criminal investigation or proceeding and, in the reasonable discretion of Matrix, failure to comply with the request may subject Matrix to civil or criminal liability, provided that in such event Matrix will notify Customer of retention beyond the applicable period unless disclosure is prohibited by an investigating governmental authority or otherwise prohibited by law; (ii) for system performance anomalies, troubleshooting, maintenance, and similar needs, provided such Customer Data is deleted from Matrix servers once such use has been completed; and (iii) to verify whether or not the Equipment and Software are being used in accordance with these terms and conditions. In addition: (a) third party application providers may retain Customer Data beyond the Retention Period; (b) Matrix may use Customer Data for any other legitimate business purpose, including sharing it with third parties or improving its products or services, provided such Customer Data has been de-personalized, anonymized, and does not include any personally identifying information; and (c) Matrix may use Customer Data for the performance of Services on behalf of Customer, pursuant to any applicable Schedule to these terms and conditions.

5.8. **Data Restoration.** Customer Data that has been deleted cannot be retrieved or recreated. Customer is solely responsible for establishing any long-term data retention requirements for Customer Data storage at Customer's own facilities and Customer is responsible for archiving any Customer Data it is required to maintain for legal, regulatory compliance or other purposes. Matrix is not responsible for, and does not guarantee, restoration of any Customer Data or other information, including Customer Data or information stored on any third-party software or devices, or an external hard drive, whether or not the Equipment is under warranty, or returned for repair or service. Customer is solely responsible for making backup copies of such Customer Data or information.

5.9. **Modifications.** Matrix may modify any of its privacy notices and data management policy at its discretion or for legal and regulatory compliance purposes.

6. **INVOICING AND PAYMENT; TAXES.**

6.1. **Invoicing and Payment.** Unless otherwise set forth in a Schedule, Matrix will invoice for Equipment (inclusive of its Software) upon shipment. Any charges for Services may be invoiced with the Equipment or at the time of completion. All dollar amounts shall be stated in U.S. dollars. All invoices are due and payable immediately upon receipt. If payment is not received within thirty (30) days from receipt of the applicable invoice, Matrix may charge a late fee equal to the lesser of 1.5% per month or the maximum amount permitted by law on past due accounts until paid in full. Customer shall pay all reasonable costs and expenses, including but not limited to attorneys' fees, court costs and service charges, incurred in collecting payment. If Customer becomes delinquent by greater than sixty (60) days for any sum due, Matrix will not be obligated to continue performance under these terms and conditions (including any applicable Schedule). The pricing for the Equipment, Software and Services shall be set forth in the applicable Schedule. Matrix may offer Customer discounts from the stated pricing contingent on Customer fulfilling certain obligations under the applicable Schedules. If Customer does not fulfill any such obligations in a Schedule, Matrix may discontinue discounts without notice. Unless otherwise stated in an applicable Schedule, commencing twelve (12) months after the Effective Date of these terms and conditions or the effective date of the applicable Schedule, Matrix may increase the prices and fees set forth in these terms and conditions on an annual basis with thirty (30) days' prior written notice.

6.2. **Taxes.** All prices exclude sales tax, use tax, withholding tax, duties, consumption, value-added, gross receipts, excise and any other taxes, surcharges or similar levies imposed by any government authority ("Taxes"). In the event that any Taxes are applicable to any of the transactions contemplated by these terms and conditions, Customer will be responsible for payment of such Taxes whether concurrently invoiced with the original invoiced amount or subsequently invoiced based on a review of the facts affecting Customer's tax status or determination that the laws of the applicable state(s) or jurisdiction(s) require assessment and collection of any such Taxes.

6.3. **Expenses.** Customer shall reimburse Matrix for reasonable and actual out-of-pocket expenses incurred by Matrix in the performance of the Services in accordance with the applicable Schedule.



7. **Confidentiality of Information.** Any business, operations, technical, or product information disclosed by either Party which is marked with a confidential or proprietary data/information legend or which by its nature ought to be considered as confidential or proprietary is the confidential information of the disclosing Party (collectively the “**Confidential Information**”). In the course of providing Equipment, Software or Services, the parties may exchange Confidential Information. Customer Data is Customer Confidential Information. These terms and conditions, including any Schedules and pricing, are Matrix Confidential Information. The receiving Party will: (i) hold Confidential Information received from the disclosing Party in confidence; (ii) use Confidential Information only for the purpose of performance under these terms and conditions; (iii) reproduce Confidential Information only to the extent necessary for such purpose; (iv) restrict disclosure of Confidential Information except to its parents, subsidiaries, affiliates and its or their employees, contractors and consultants with a need to know in the course of fulfilling their scope of work, provided the receiving Party advises them of, and they agree to, confidentiality obligations no less restrictive than the confidentiality obligations set forth in this Section; (v) not disclose Information to any third party without prior written approval of the disclosing Party (unless required by law as set forth in (v) below), and (vi) take commercially reasonable precautions to safeguard the confidentiality of the Confidential Information and exercise at least the same degree of care for this purpose that it so exercises to protect the confidentiality of its own proprietary information.

The restrictions on the Receiving Party’s use and disclosure of Confidential Information will not apply to any Confidential Information which the receiving Party can demonstrate: (i) is wholly and independently developed by the receiving Party without the use of Information of the disclosing Party; (ii) is or has become generally available to the public other than as a result of disclosure by the receiving Party in breach of this Section; (iii) at the time of disclosure, was known by the receiving Party free of restriction; (iv) is lawfully received by the receiving Party from third parties without restriction or violation of any obligation of confidentiality; or (v) is approved for release by written authorization of the disclosing Party. Disclosure of Information in response to a valid order of a court or other governmental agency will not be a breach of this Section, if the disclosure is limited to the extent of and for the purposes of such order; provided, however, that the receiving Party will first notify the disclosing Party in writing of the order and permit the disclosing Party to seek a protective order, unless such notification is otherwise prohibited by law. Each Party will promptly return to the other Party or destroy (and certify such destruction) all Confidential Information received hereunder upon request from the Disclosing Party.

If the Parties have executed a separate Non-Disclosure Agreement for the protection of confidential or proprietary information, the terms and conditions of the Non-Disclosure Agreement **will** take precedence over this Section.

8. **Unauthorized Use.** Customer shall not use the Equipment or Software for an Unauthorized Purpose. In the event Customer uses the Equipment or Software for an Unauthorized Purpose, Matrix may take any and all actions, up to and including cancellation of Customer’s order for any Equipment or Software and involvement of government authorities, as Matrix deems necessary or appropriate.

“**Unauthorized Purpose**” means: (i) use with intent to avoid payment of charges due under these terms and conditions; (ii) access to, use of, alteration of, or destruction of the files, programs, procedures or information of any other Matrix customer; (iii) use with the intent to copy, modify, create derivative works of, distribute, decompile, or reverse engineer or clone the Equipment or Software or any component thereof; (iv) use that harasses, threatens or harms any person; (v) use to transmit content or data which interferes with any proprietary rights of another person or company, or contains viruses, “worms”, “trojan horses”, spambots, or other harmful code that might disrupt the functionality of the Equipment or Software or any of their components; (vi) use in such a manner as to interfere with, restrict, inhibit, degrade, disable, circumvent or limit the security of the Equipment or Software, or any component thereof; (vii) use for any illegal, unlawful or fraudulent purpose, or for any other objectionable purpose as determined by Matrix; (viii) use the Equipment or Software or any component thereof in a manner that violates or infringes any rights of any third party, including but not limited to, privacy rights, publicity rights or intellectual property rights; (ix) remove, modify or take any other action which would obscure the patent, copyright or trademark notices contained in or on the Equipment, or Software or any component thereof; (x) adopt, use, register or apply for registration of, whether as a corporate name, trademark, service mark or other indication of origin, any Matrix trademark, service mark or trade name, or any word or mark confusingly similar to them in any jurisdiction; or (xii) contest, in any court or other jurisdiction, the validity of any of the Matrix property.



9. Limitation of Liability and Remedies.

9.1. Limitations of liability of Matrix and Customer's sole and exclusive remedies for any damages (whether in contract, tort or otherwise) arising from the performance or nonperformance under a Schedule may be set forth in a Schedule.

9.2. **NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN ANY SCHEDULE, IN NO EVENT WILL MATRIX, ITS AFFILIATES, ITS SERVICE PROVIDERS, OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, NON-COMPENSATORY, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, LOSS OF DATA OR BUSINESS OPPORTUNITY OR OTHER INCIDENTAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE EQUIPMENT OR SOFTWARE PROVIDED UNDER THESE TERMS AND CONDITIONS, EVEN IF MATRIX, ITS AFFILIATES, ITS SERVICE PROVIDERS, OR ITS LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A LIMITED REMEDY SET FORTH IN THESE TERMS AND CONDITIONS FAILS OF ITS ESSENTIAL PURPOSE.**

9.3. **UNDER NO CIRCUMSTANCES WILL MATRIX, ITS AFFILIATES, ITS SERVICE PROVIDERS OR ITS LICENSORS OR SUPPLIERS BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE EQUIPMENT OR THE SOFTWARE OR THE INFORMATION CONTAINED THEREIN. TO THE MAXIMUM EXTENT PERMITTED BY LAWS, MATRIX ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, OMISSIONS, MISTAKES, OR INACCURACIES OR RESULTS THAT ARE OBTAINED FROM USE OF THE EQUIPMENT, OR SOFTWARE (E.G., DATA, INFORMATION, LOCATION, DRIVING BEHAVIOR, ACCIDENTS, COLLISIONS, ETC.); (II) PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM CUSTOMER'S ACCESS TO OR USE OF THE EQUIPMENT OR SOFTWARE; (III) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE EQUIPMENT OR SOFTWARE; (IV) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH THE EQUIPMENT OR SOFTWARE BY ANY THIRD PARTY; (V) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE EQUIPMENT OR SOFTWARE; (VI) DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF CUSTOMER OR ANY PERSON OR THIRD PARTY; AND/OR (VII) ANY ACTION OR INACTION OF THIRD PARTIES. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN ANY SCHEDULE, IN NO EVENT WILL MATRIX'S CUMULATIVE LIABILITY FOR ALL CLAIMS UNDER THIS CONTRACT EXCEED THE AMOUNT PAID BY CUSTOMER TO MATRIX UNDER THE APPLICABLE SCHEDULE DURING THE IMMEDIATELY PRECEDING THREE (3) MONTHS. THE PARTIES HAVE ACCEPTED THE LIMITATIONS OF LIABILITY SET FORTH HEREIN AS PART OF THE EXCHANGE OF CONSIDERATION UNDER THESE TERMS AND CONDITIONS, AND CUSTOMER EXPRESSLY ACKNOWLEDGES THAT THE PRICES FOR THE EQUIPMENT OR SOFTWARE WOULD BE HIGHER IF MATRIX WERE REQUESTED TO BEAR ADDITIONAL LIABILITY FOR DAMAGES. THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF MATRIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAWS IN THE APPLICABLE JURISDICTION.**

10. Limited Warranties and Disclaimer of Warranties.

10.1. **Limited Services Warranty.** With respect to Services performed by Matrix pursuant to these terms and conditions, Matrix warrants that such Services shall be performed and completed in accordance with the terms of these terms and conditions (including any attachments hereto) and all applicable federal, state, and local laws, ordinances, rules, and regulations and that such Services performed under these terms and conditions shall conform in all respects to applicable specifications including, but not limited to, any requirements imposed by government agencies. Such Services shall be of commercially reasonable quality and consistent with applicable industry standards. If within six (6) months after the performance of such Services under these terms and conditions, such Services fail to conform to the foregoing limited services warranty, Matrix shall promptly correct, at its own expense, such nonconformance after receipt of notice from Customer and verification of the same.

10.2. **Limited Equipment Warranty.**

10.2.1. **Matrix warrants the Equipment identified and purchased pursuant to these terms and conditions to be free from defects in workmanship and materials, under normal use and conditions for the lesser of: a period of fifteen**



(15) months from the original ship date to Customer or twelve (12) months from the delivery date to Customer's site, with proof of delivery. This Equipment Warranty is to Customer and is non-transferable to any other party. Matrix agrees, at its option during the warranty period, to engage in commercially reasonable efforts to repair any failure of the Equipment which is deemed a defect in materials or workmanship or to furnish to Customer a refurbished or new product, without charge. Such repair or replacement is subject to verification of the defect or failure through the evaluation of the Equipment by Matrix's technicians, received and processed through Matrix's RMA protocols.

10.2.2. **Equipment Warranty Limitations.** This Equipment Warranty does not cover or otherwise include: (i) ANY FAILURE RESULTING FROM OTHER THAN MANUFACTURER RECOMMENDED USE FOR WHICH THE EQUIPMENT WAS INTENDED, DESIGNED OR SOLD; (ii) ANY FAILURE RESULTING FROM IMPROPER INSTALLATION, INCORRECT OR INADEQUATE MAINTENANCE OR CARE (ACCORDING TO INSTRUCTIONS PROVIDED BY MATRIX IN WRITING) OR UNAPPROVED USE OF THE EQUIPMENT; (iii) DAMAGE RESULTING FROM MISUSE, ABUSE, NEGLIGENCE, ACCIDENTS, OR SHIPPING DAMAGE; (iv) ANY FAILURE DUE TO CUSTOMER USE OR AN INSPECTION THAT IS DEEMED AS CUSTOMER TAMPERING WITH THE EQUIPMENT, AS DETERMINED BY AN EVALUATING TECHNICIAN; (v) NORMAL WEAR AND TEAR DUE TO CONDITIONS OF USE OR EXCESSIVE WEAR AND TEAR WHILE USED BY CUSTOMER AND THAT ARE NOT COVERED BY THIS WARRANTY.

10.3. **Disclaimer of Warranties.** CUSTOMER ACKNOWLEDGES AND AGREES THAT THE EQUIPMENT AND SOFTWARE ARE OPERATOR ASSISTANCE TECHNOLOGY ONLY. THEY ARE NOT A SUBSTITUTE FOR A SAFE, CONSCIENTIOUS EQUIPMENT OPERATOR. THEY CANNOT COMPENSATE FOR AN OPERATOR THAT IS DISTRACTED, INATTENTIVE OR IMPAIRED BY FATIGUE, DRUGS OR ALCOHOL. WHETHER THE EQUIPMENT OR SOFTWARE ARE IN USE OR NOT, THE OPERATOR IS SOLELY RESPONSIBLE FOR AVOIDING ACCIDENTS. CUSTOMER'S OPERATORS, USERS OR OTHER EMPLOYEES, CONTRACTORS, INVITEES OR OTHER PERSONNEL SHOULD NEVER WAIT FOR THE EQUIPMENT OR SOFTWARE TO PROVIDE A WARNING BEFORE TAKING MEASURES TO AVOID AN ACCIDENT. FAILURE TO DO SO CAN RESULT IN SERIOUS PERSONAL INJURY OR DEATH OR SEVERE PROPERTY DAMAGE, AND MATRIX DISCLAIMS ANY AND ALL LIABILITY RELATING TO ANY SUCH ACTIONS. CUSTOMER AGREES TO PROVIDE THE FOREGOING WARNING TO ITS USERS AND TO REGULARLY WARN AND INSTRUCT ALL OPERATORS ON PROPER USE OF THE EQUIPMENT AND SOFTWARE. EXCEPT FOR THE WARRANTIES SPECIFICALLY SET FORTH IN THESE TERMS AND CONDITIONS, IF ANY, ALL EQUIPMENT, SOFTWARE AND SERVICES UNDER THESE TERMS AND CONDITIONS ARE PROVIDED "AS IS", "WHERE IS" AND "AS AVAILABLE" AND THERE ARE NO OTHER WARRANTIES MADE BY MATRIX, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO NON-INFRINGEMENT, TITLE, OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING OUT OF A COURSE OF DEALING, USAGE OF TRADE OR TRADE PRACTICE.

MATRIX MAKES NO WARRANTY THAT (A) THE EQUIPMENT OR SOFTWARE WILL WORK IN COMBINATION WITH ANY HARDWARE OR SOFTWARE PRODUCTS PROVIDED BY CUSTOMER OR THIRD PARTIES, (B) THE OPERATION OF THE EQUIPMENT AND SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, (C) THE EQUIPMENT AND SOFTWARE WILL BE FREE FROM DEFECTS, (D) ALL DEFECTS IN THE EQUIPMENT OR SOFTWARE CAN BE CORRECTED, OR ANY SPECIFIC RESULT OR OUTCOME WILL BE ACHIEVED BY UTILIZING THE EQUIPMENT OR SOFTWARE.

11. **Indemnification.**

11.1. Customer will defend, indemnify and hold harmless Matrix, its affiliates, successors and assigns and each of their respective directors, officers, employees and agents against any and all losses, claims, damages or expenses (including attorneys' fees) (collectively a "Claim") that arise or result from: (i) any personal injury to or death of any person or persons, any loss or damage of any property or any interruption of services which are caused or claimed to have been caused directly or indirectly from Customer (including Customer's employees' or independent contractors') use of the Equipment, Software, or Services; (ii) any use of the Equipment, Software, or the Services by Customer for an Unauthorized Purpose; (iii) use of any mounting bracket or equipment not provided or approved by Matrix; (iv) data or other information provided or transmitted by Customer, Customer's employees or Customer's independent contractors, (v) Customer's breach of these terms and conditions or any applicable laws; or (b) Customer's violation of any third party right through Customer's use of the Equipment, Software, or Services in a manner inconsistent with these terms and conditions or not permitted by laws, including, without limitation, any privacy rights, employment and labor rights, or copyright and other intellectual property rights, (v) the action or inaction of Customer drivers, operators or other users of vehicles or equipment on which the



Equipment or Software is installed, or (vi) Customer's use of any third-party equipment, software, or services, in connection with the Equipment or Software.

11.2 **Indemnification Procedures.** In the event of any Claim giving rise to an indemnification obligation hereunder, (i) the person requesting indemnification will promptly notify Customer of any such Claim or potential Claim of which such party has knowledge, provided, however, that any failure to provide such notification will not relieve Customer from indemnification obligation except to the extent that Customer was prejudiced by such failure to provide notice; (ii) the indemnified party will tender to Customer sole control of the defense of the Claim and any related settlement negotiations, provided, however, that Customer will not enter into any settlement that imposes any duties or obligations on the indemnified party, monetary or otherwise, or requires the indemnified party to make any admissions, without the indemnified party's express prior written consent; and (iii) the indemnified party will provide reasonable assistance to Customer, upon its reasonable request and at Customer's cost and expense, in defending and settling such Claim. Without derogating from or excusing Customer's obligations under Section 8.6, Matrix reserves the right, but is not under any obligation, to assume the exclusive defense and control of any matter which is subject to an indemnification obligation by Customer if Customer chooses not to or cannot adequately defend or settle it (in Matrix's reasonable discretion).

12. **Insurance.**

12.1 Each Party agrees to procure and maintain policies of insurance at its own expense and with an insurance company or self-insured program satisfactory to the other, the types and minimum amounts of insurance specified in Exhibit [•].

12.2 Prior to commencing services under these terms and conditions, each Party shall furnish to the Other Party certificates of insurance including any endorsement) evidencing the insurance required hereunder and upon request shall furnish renewal certificates and true copies of the actual policies. Each certificate shall provide that **thirty(30) days' prior written notice** shall be given to the Other Party in the event of cancellation or material change in the policies.

12.3 **Named Additional Insured.** Each certificate (including endorsements) shall specify that the Other Party, its parent, subsidiaries, and affiliates are named as additional insureds in all policies except workers' compensation.

12.4 Customer shall provide immediate notification in written form to Matrix of any accident or occurrence resulting from injury to persons or property potentially arising out of or otherwise related to Customer's operations and/or its use of the Equipment or Software.

13. **Subcontractors.** Matrix shall obtain Customer's permission before subcontracting any portion of Services performed under these terms and conditions. As applicable, the terms and conditions of these terms and conditions apply to permitted subcontractors, including but not limited to insurance, indemnification, Mine Safety and Health Administration or Occupational Safety and Health Administration regulations, safety training, and environmental regulatory requirements. Nothing contained herein shall create or deem any contractual relationship to have formed between subcontractor and Customer.

14. **Delivery, Title, and Risk of Loss.** Each shipment of Equipment or Software by Matrix to Customer shall be F.O.B. point of origin, with title to each such shipment passing to Customer on the date of shipment, and with all risk of loss or damage, including damage in transit, on Customer. Matrix shall invoice the cost of shipping to Customer.

15. **Governing Law and Venue.** In purchasing Equipment, Software, or Services pursuant to these terms and conditions, Customer agrees that all performance, rights and obligations hereto shall be governed and construed in accordance with the substantive laws of the State of Indiana, without regard to choice of law provisions. The parties further agree and consent to the exclusive jurisdiction and venue of the state and federal courts located in the State of Indiana. EACH PARTY IRREVOCABLY WAIVES THE RIGHT TO JURY TRIAL IN ANY SUIT ARISING OUT OF THESE TERMS AND CONDITIONS. If either party commences an action arising out of or in connection with these terms and conditions, the prevailing party is entitled



to recover from the losing party reasonable attorneys' fees and costs of suit. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these terms and conditions.

16. **Assignability.** Customer is prohibited from assigning, transferring, subcontracting or sublicensing Equipment, Software, or Services, as well as any rights, duties or interest herein, without the prior written consent of Matrix. Any such action is void ab initio.

17. **Severability: Waiver.** If any of the provisions of these terms and conditions are determined to be unenforceable, the enforceability of the remaining provisions will not in any way be affected or impaired, and the parties will substitute an enforceable provision for the affected provision which approximates the intent and economic effect of the affected provision as closely as possible. The waiver by any party of a breach of any of the provisions of these terms and conditions will not operate as a waiver of any subsequent breach.

18. **Survivability.** All provisions which by their terms survive termination of these terms and conditions shall survive termination of any relationship between the parties, including without limitation, the following provisions: 3.3 (Ownership of Software), 3.4 (Reservation of Rights), 5 (Data Collection and Use), 6 (Invoicing and Payment; Taxes), 7.3 (Effect of Early Termination), and 8 (Other Terms) and such other surviving provisions of the Schedules.

19. **Notices.** All notices must be in writing and will be deemed given: (i) when delivered personally; (ii) when delivered by email or facsimile if confirmation of receipt is obtained; (iii) one (1) day after having been mailed by overnight mail with a reliable express mail courier, fees prepaid. Notices will be addressed or delivered to Customer's corporate address on Page 1, or via email to Kevin.Kerr@matrixteam.com, with a copy to Matrix Design Group, LLC, 3299 Tower Drive, Newburgh, IN 47630, Attn: Matrix Legal Department, or via email to gary.mccollum@arlp.com, or via facsimile at (859) 223-3057.

20. **Force Majeure.** Except for the payment of money, neither Party will be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by circumstances beyond such Party's reasonable control, including acts of God, natural disasters, strikes, acts of terrorism, war (declared or undeclared), riot or other civil disturbances, compliance with governmental laws or orders, delay or performance failure of third parties (including suppliers), or events that are unforeseeable or unavoidable and beyond remedy if foreseen; provided, that such party gives prompt written notice of such condition and resumes its performance as soon as reasonably possible.

21. **Compliance with Law: Export Compliance Assurance.** Customer shall comply with all applicable laws, regulations, ordinances and product documentation, including without limitation any laws that restrict the use of any devices while driving, and the maintenance of all licenses, permissions, authorizations, consents and permits necessary to carry out Customer's obligations under this Contract. Customer acknowledges that hardware, software, source code and technology (collectively, "**Products**") obtained from Matrix may be subject to US government export control and economic sanctions laws. Customer represents and warrants that Customer and Customer's subsidiaries, affiliates, employees and contractors will not directly or indirectly export, re-export, transfer or release (collectively, "**export**") any Equipment or Software, or any derivative thereof to any destination, person, entity or end-use prohibited or restricted under US laws without prior US government authorization to the extent required by applicable regulation.

22. **No Right to Distribute, Resell or Remarket.** Customer has no right under these terms and conditions and agrees not to act as a distributor, reseller or remarketer of the Equipment or Software without the prior written consent of Matrix. Matrix and its applicable licensors retain all intellectual property rights in and to the Equipment and/or Software provided under these terms and conditions, including but not limited to all copyright, patent, trade secret and other intellectual or proprietary rights. Customer may not remove any copyright notices or any confidential or proprietary legends.

23. **No Third Party Beneficiaries.** These terms and conditions are for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party. Notwithstanding the above, to the extent any third-party material is incorporated in the Equipment or Software, Customer acknowledges and agrees that such third party material supplier is considered an intended third-party beneficiary to these terms and conditions to the extent permitted by applicable law, and, as such, may independently enforce the terms of these terms and conditions, with respect to the third party materials.

24. **No Contingencies.** Customer agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Matrix regarding future functionality or



features. Unless expressly provided in a Schedule or otherwise, fees paid or payable for Equipment and/or Software are not contingent under any circumstances upon the performance of any Services.

25. **Independent Contractors.** Matrix and Customer are entering these terms and conditions as independent contractors, and these terms and conditions will not be construed to create a partnership, joint venture, franchise or employment relationship between them. Neither Party will represent itself to be an employee or agent of the other, or enter into any agreement on the other's behalf or in the other's name.

26. **Entire Agreement.** These terms and conditions, along with any Schedule(s), any amendments executed by the parties, terms of use or additional terms executed by the parties under these terms and conditions, if applicable, constitutes the entire agreement between the Parties. All future purchases of Matrix products and services shall be governed by these terms and conditions. These terms and conditions comprise the entire understanding, agreement and representations of the parties and supersedes all prior writings, discussions, representations and understandings with respect to the Equipment, Software and Services, including any previous contract executed between the parties. Any additional or different terms or conditions Customer proposes or which are contained in any purchase order are rejected by Matrix and will be of no force and effect unless expressly agreed to in writing by Matrix, via separate written agreement. In order to be binding, any amendment or modification of any of the provisions of these terms and conditions must be in writing and signed by a duly authorized representative of each Party. In no event will email be considered a writing for the purposes of amending or modifying these terms and conditions. In the event of a conflict between the above terms and conditions and any written amendment or modification, the document later in time will prevail.



MATRIX

MINIMUM INSURANCE REQUIREMENTS

Required Insurance Coverage

Workers' Compensation	Statutory
Employers' Liability (per accident)	\$1,000,000
Commercial General Liability (per occurrence) Bodily Injury & Property Damage	\$1,000,000 CSL (Combined Single Limit)
Automobile Liability Bodily Injury & Property Damage	\$1,000,000 CSL (Combined Single Limit)
Excess or Umbrella Liability (In addition to above limits)	\$5,000,000 CSL (Combined Single Limit)

The following apply to all policies:

1. Each Party shall see that the Other Party, its parent, subsidiaries and affiliates and their agents, directors, officers and employees, shall be included as additional insureds on all policies (including endorsements) (except Workers' Compensation coverage)
2. Each Party shall receive thirty days written notice of cancellation or any material change
3. All insurance shall be with insurers acceptable to the Other Party (Insurer shall be a licensed or registered company in the state where contract operations are conducted and must have a Best's rating of at least B+7)

A. Workers' Compensation and Employers' Liability shall include:

1. Statutory Workers' Compensation for state of hire or operation [for mining entities: inclusive of Federal Black Lung Benefits Act coverage]
2. Employers' Liability

B. Commercial General Liability (Occurrence Form) shall include:

1. Premises/Operations
2. Independent Contractors
3. Personal Injury
4. Products/Completed Operations (five years following completion)
5. Blanket Contractual Liability
6. Cross Liability/Severability of Interests
7. Governmental claim
8. Defamation\libel\slander
9. [for mining entities: inclusive of Explosion, Collapse and Underground endorsements]

C. Comprehensive Automobile Liability shall include

1. Owned vehicles
2. Non-Owned vehicles
3. Hired vehicles

D. Excess Liability, (Occurrence Form) shall include and be in addition to the following underlying coverage:

1. Employer's Liability
2. Commercial General Liability
3. Comprehensive Automobile Liability

Both Parties reserve the right to require certified copies of any or all policies (including endorsements).