

## TERMS AND CONDITIONS

The general terms and conditions governing the purchase and use by Customer ("Customer" or "You") of products and services of Bransys LLC. ("Bransys") are set forth below (hereinafter referred to as the "Agreement" or the "Terms and Conditions"). You will be required to agree to these terms and conditions by either providing an electronic signature as part of completing an electronic Order Form or by signing an Order Form for Bransys products and services. If you do not agree to these Terms and Conditions, you may not order Bransys products or services.

### 1. DEFINITIONS. When used in these Terms and Conditions, the following terms, when capitalized, shall have the meaning set forth below:

**"Accepted Order Form"** means an Order Form which has been executed by Customer and accepted by Bransys.

**"Agreement Term"** means the term of this Agreement.

**"Billing Start Date"** means the first of the month following the month the bundled Devices are shipped.

**"Confidential Information"** means any non-public or proprietary information of a party (the "Disclosing Party") which is obtained by the other party (the "Receiving Party") in the course of activity pursuant to this Agreement, including information which is disclosed on an Order Form, or in connection with the provision to, and use by, Customer of Bransys products and services, whether such information is disclosed in oral, written, graphic, electronic or any other form. Confidential Information does not include any information that:

(a) was known to the Receiving Party prior to receiving the same from the Disclosing Party;

(b) is independently developed by the Receiving Party;

(c) is acquired by the Receiving Party from another source that has the right to disclose such information without restriction as to use or disclosure; or

(d) is or becomes part of the public domain through no fault or action of the Receiving Party.

**"Customer Website Pages"** means the web pages on the Bransys Website which are designated by Bransys for use by Customer.

**"Contract Term"** means the minimum length of time a subscription and/or device is required to be active as identified on the applicable Accepted Order Form.

**"Devices"** means the Bransys wireless device or devices identified on an Accepted Order Form.

**"Fees"** mean the Device and accessory purchase prices, Device and accessory shipping fees, Device installation fees, the Bransys Service fees and any other fees payable by Customer as set forth in an Accepted Order Form.

**"Order Form"** means an order form provided by Bransys to Customer, pursuant to which Customer orders Devices, and/or Bransys Services.

**"Bransys Services"** means the services offered hereunder by Bransys, from time to time, including, but not limited to:

(a) collection of diagnostic and/or location information from a Vehicle;

(b) analysis, delivery and posting of Vehicle information to the Bransys Website;

(c) notification to Customer and/or a designated third party by e-mail of certain events or Vehicle information;

(d) Customer access and usage of Customer Website Pages;

(e) Device installation services; but only to the extent such services are identified on an Accepted Order Form;

(f) any proprietary data feed or elements thereof or any application programming interfaces (API's) provided by Bransys, ("Bransys Data Services") but only to the extent such services are identified on an Accepted Order Form; and

(g) any professional services provided by Bransys as set forth on a Professional Services Addendum attached hereto.

**"Bransys Website"** means the Bransys website currently located at [www.bransys.com](http://www.bransys.com).

**"Service Partners"** means the companies that Bransys works with, from time to time, to provide the Bransys Services, including, but not limited to, wireless service carriers, installers, website operators, mapping data providers and licensors.

**"Vehicle"** means an on-road vehicle, off-road vehicle and/or stationary or movable equipment owned or under the control of Customer, which is equipped with a Device.

### 2. ORDERS DELIVERY AND ACCEPTANCE.

Bransys will deliver the hardware device from this order for within 30 days or sooner from the signing date. Customer may not modify, rescind or cancel an Accepted Order Form, in whole or in part, without Bransys's written consent and any such actions by Customer will be of no effect. The transmittal by Bransys to Customer of an Order Form does not constitute an offer and all orders are subject to acceptance by Bransys either in writing, electronically or by shipping the Devices and/or the provisioning of the Bransys Services. Bransys will deliver the Devices to Customer FOB shipping point through a Bransys selected common carrier, and the title for such Devices will transfer to Customer upon delivery to the common carrier.

### **3. BRANSYS LICENSE.**

(a) During the time that Customer is entitled to receive Bransys Services hereunder, Bransys grants to Customer a non-exclusive, non-transferable license to

- (i) use the Bransys Services in the United States and such other countries as may be approved by Bransys in writing,
- (ii) access and use the Customer Website Pages, and
- (iii) use the firmware and software included in the Devices, solely for use in connection with the Bransys Services, and as provided in these Terms and Conditions. Redistribution or resale of the Bransys Services by the Customer is prohibited without prior written consent.

(b) Bransys Data Services, if applicable, are subject to the then current “Bransys Data Services Use Policy and Procedure” which is located at [www.bransys.com](http://www.bransys.com), and may be updated from time to time.

**4. INSTALLATION SERVICES.** Installation services for the device can be done by the Customer on their own responsibility.

**5. RENTAL SERVICES.** This only applies to the subscription plan in which the Customer chooses to rent the hardware from Bransys. The Customer agrees to rent the hardware from Bransys for a fee and fixed period as determined in the order. The Customer agree to pay a one-time setup fee, together with a fixed monthly lease fee, as specified by the payment schedule agreed in this Purchase Form. The Customer may purchase a rented unit at the end of the Lease term, or at any time during the rent, for the offer price provided by Bransys, together with any applicable sales tax. The Customer must return to Bransys all the rented units in good working conditions immediately upon agreement end date or cancellation. In the event of the loss or total destruction of the unit, the Customer must report the loss or destruction to Bransys immediately and the Customer is responsible for the rental/lease replacement payment.

### **6. TRAINING AND SUPPORT SERVICES.**

(a) Customer will designate one or more employee(s) to act as the coordinator(s) for Customer’s use of the Devices and the Bransys Services and will require such coordinator(s) to participate in the Device and Bransys Services training provided from time to time by Bransys.

(b) During the time Customer is entitled to receive Bransys Services, and subject to Section 8 (Exclusions), Bransys or its designee will provide Customer with reasonable amounts of telephone or e-mail consultation and technical assistance regarding the Devices and Bransys Services during Bransys’s regular working hours. Customer may call Bransys or its designee at (866) 355 5552 or e-mail inquiries to [support@bransys.com](mailto:support@bransys.com) for support services.

### **7. CUSTOMER OBLIGATIONS.**

(a) Customer shall limit its use of the Devices, Bransys Services, Bransys Website, and Customer Website Pages to their intended purposes and shall comply, and cause its employees and agents to comply, with all applicable laws and regulations and with Bransys's Website Acceptable Use Policy, and Privacy Policy which are available on the Bransys Website. Customer shall inform its drivers of Vehicles that such Vehicle has been enabled for Bransys Services and that the Bransys Services include the collection of data points associated with the Vehicle’s location and manner of operation.

### **8. LIMITED WARRANTY.**

(a) Bransys warrants to Customer that Devices will be free from defects in material and workmanship that prevent the Device from functioning in accordance with its specifications for a period of one (1) year following the initial activation of such Device.

(b) Bransys warrants to Customer that all accessories which are purchased new from Bransys by Customer will be free from defects in material and workmanship that prevent them from functioning in accordance with their specifications for a period of one (1) year from the date of shipment.

(c) Bransys warrants to Customer that installation services provided by Bransys or its authorized subcontractors will be free from defects in workmanship for a period of one (1) year following completion of such installation services. To the extent Customer purchases an extended installation warranty, Bransys warrants to Customer that any extended warranty installation services shall be free from defects in workmanship for the entire period of your uninterrupted use of the Device pursuant to this Agreement subject to such installation service, provided however, Bransys will have no obligation with respect to such extended installation warranty at any time Customer has a past due balance for unpaid Fees.

(d) Warranty claims must be made by notifying Bransys in writing promptly after Customer learns of the facts supporting a warranty claim, as specified in Bransys’s then-current applicable warranty policy. The policy is located at [www.bransys.com](http://www.bransys.com). Subject to Section 8 (Exclusions) and the provisions of Bransys's then-current applicable warranty policy, Bransys will, at its discretion, either repair or replace any non-complying Device with a Device of equivalent functionality, and, if applicable, remedy any defects in the installation of the Device.

(e) THE REMEDIES IN THIS SECTION ARE BRANSYS'S ONLY OBLIGATION AND CUSTOMER'S ONLY REMEDY FOR BREACH OF ANY WARRANTY.

**9. EXCLUSIONS.** The Limited Warranty and Support Services provided by Bransys do not include repair, replacement or correction of any defect, damage or malfunctions caused by:

- (i) for installation not performed by Bransys or its authorized subcontractors, failure to properly install the Devices as described in the Bransys installation guides;
- (ii) accident, negligence, theft, vandalism, operator error, misuse or acts of God;
- (iii) failure of the facilities Customer uses to access the Bransys Website or failure to conform to Bransys specifications;
- (iv) modifications, attachments, repairs or unauthorized parts replacements performed by Customer or any third party not authorized by Bransys; or
- (v) use by Customer of hardware or software not provided or approved by Bransys. Customer will be responsible for the cost of Support Services provided by Bransys caused by any of the foregoing.

**10. DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE LIMITED DEVICE AND INSTALLATION WARRANTY SET FORTH IN SECTION 7, BRANSYS MAKES NO WARRANTY OR GUARANTEE OF ANY KIND WITH RESPECT TO THE DEVICES AND THE BRANSYS SERVICES. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, BRANSYS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO: IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. BRANSYS DOES NOT WARRANT THAT THE RECEIPT OF DATA, MAPPING INFORMATION, AND OTHER CONTENT FROM THE DEVICES WILL BE AVAILABLE AT ALL TIMES, AT ALL GEOGRAPHIC LOCATIONS, UNINTERRUPTED OR ERROR-FREE, OR THAT THE TRANSMISSION OF DATA, MAPPING INFORMATION, AND OTHER CONTENT FROM BRANSYS TO CUSTOMER OR TO THE CUSTOMER WEBSITE PAGES WILL ALWAYS BE ACCURATE, TIMELY OR COMPLETE.

#### **11. FEES AND PAYMENT TERMS.**

(a) Unless otherwise provided in an Accepted Order Form, or by written agreement between Bransys and Customer:

(i) The one-time charged (hardware and accessories fee, taxes, security deposit, shipping fees, etc.) are invoiced and due upon signing of the Order Form;

(ii) The subscription services fee begins at the time of the items shipment to Customer, and is invoiced monthly in advance.

(b) Unless otherwise provided in an Accepted Order Form, or by written notice by Bransys to Customer (which notice cannot provide for a payment date prior to the invoice date), payment of all fees must be made automatically via credit or debit card or ACH on the invoice date. Customer is responsible for providing updated payment authorizations if payment information changes and failure to do so may result in a suspension or termination of Bransys Services.

(c) All other fees are due and payable as set forth in the Accepted Order Form.

(d) Fees do not include applicable taxes and surcharges. Bransys may charge, and Customer agrees to be responsible for, and pay at the same time as Fees are paid, applicable state and local sales taxes and other government mandated fees in connection with the sale of the Devices and Bransys Services, unless Customer has provided satisfactory certificates or other evidence of exemption.

(e) In addition to Bransys's other rights and remedies, Bransys shall have the right to charge interest on all delinquent Fees from the due date at the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law. Bransys may accept any payment in any amount without prejudice to its right to recover the balance of the amount due.

(f) Early Termination Fee: In case of an Early Termination, Customer shall pay to Bransys a fee equal to 75% of the remaining monthly subscription fees from the contact duration.

(g) Return Policy - Bransys offers a 30 day, no question asked exchange or return policy. If for whatever reason you are not completely satisfied with your purchase, just contact us via email or phone to obtain an RMA. Refunds will be issues within 7 days of Bransys receiving the device. Devices must be in good physical condition and fully functional to qualify for a refund. If you believe you have received a damaged or defective product, or if the product ceases to function correctly after installation, please return it immediately for exchange or testing. If a device is deemed to be defective, we will ship you a replaceable unit free of charge. We are not responsible for any loss or damage to products in shipping from your location to Bransys. You are responsible for installation/maintenance/service costs associated with the equipment. No installation/maintenance/service costs will be refunded if the product is returned. Payment fees (like: credit card fee, ACH etc.) and shipping charges are not refundable.

(h) unless stated otherwise in the notes section other returns and refunds are not allowed

Customer understands and agrees that the Bransys Website contains functionality permitting changes to Customer's account, including changes which may affect the monthly charges for the Bransys Service or other fees payable to Bransys. Customer shall be responsible for all charges resulting from actions initiated through its access to the Bransys Website.

#### **11. TERM, SUSPENSION AND TERMINATION.**

- (a) The initial Agreement Term shall be for the Contract Term specified on the Accepted Order Form, beginning on the effective date of the Accepted Order Form. Upon expiration of the initial Agreement Term, this Agreement will automatically renew for one- month periods until either party elects to terminate by providing written notice to the other party, or the Agreement is otherwise terminated, as set forth herein.
- (b) The Contract Term begins:
- (i) upon activation for non- bundled Devices and
  - (ii) the Billing Start Date for bundled Devices.
- (c) Either party may terminate its obligations pursuant to an Accepted Order Form by giving written notice to the other party:
- (i) immediately if the other party breaches its obligations under an Accepted Order Form or these Terms and Conditions and fails to cure such breach within ten (10) days after receipt of notice for payment breach or within thirty (30) days after receipt of notice for all other types of breaches (or such later date as may be specified in the notice); or
  - (ii) without cause with sixty (60) days' advance written notice. If notice of breach is sent by Bransys, during the notice or cure period Bransys may suspend Customer's access to and use of the Customer Website Pages and/or Bransys Services with respect to all Customer Devices, without incurring any liability whatsoever, until the breach is cured, and Customer shall remain liable for all applicable Fees while access and use are suspended.
- (d) Bransys may terminate its obligations pursuant to an Accepted Order Form immediately and without limiting its other rights or remedies available at law or in equity if Customer breaches its obligations under an Accepted Order Form or these Terms and Conditions and was sent a prior notice of breach during the preceding twelve (12) months, such termination to be effective on the date specified in the notice or the date of the notice, if no effective date is specified.
- (e) In the event that Bransys terminates its obligations under an Accepted Order Form pursuant to (c)(i) above or (d) above, or Customer terminates its obligations under an Accepted Order Form pursuant to (c)(ii) above with respect to a non-bundled Device, prior to the Device being activated for at least the length of the Contract Term identified on the applicable Accepted Order Form, or for a bundled Device, prior to the Contract Term identified on the applicable Accepted Order Form with the start of the term being equal to the Billing Start Date, then with respect to such Device, Customer shall pay to Bransys as liquidated damages, and not a penalty, a fee equal to 75% of the remaining monthly subscription fees from the contact duration.
- (f) If the obligations of either party pursuant to an Accepted Order Form are terminated for any reason in accordance with this Section 11, the Bransys Services will terminate effective as of the date of the termination; Customer will pay to Bransys any Fees for Devices received or Bransys Services provided prior to the effective date of the termination; and the parties' respective rights and obligations under Sections 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20 and 21 of these Terms and Conditions will survive.

## **12. INDEMNIFICATION.**

Customer will defend, indemnify and hold Bransys and the Service Partners, and their respective affiliates, officers, employees and agents, harmless from and against any and all third party claims and all associated damages, suits, proceedings, liens, penalties, liabilities, awards or expenses (including reasonable attorneys' fees) resulting from

- (i) Customer's breach of its obligations under an Accepted Order Form or these Terms and Conditions;
  - (ii) a claim that Customer or its personnel violated applicable state or federal laws or regulations in its possession, distribution, installation or use of the Devices, the Bransys Services or the Bransys Website; or
  - (iii) a claim for any property damage, personal injury or death arising in any way from, directly or indirectly, Customer's use, failure to use, or inability to use the Devices, the Bransys Services or the Bransys Website except to the extent such claim was caused by Bransys's gross negligence or willful misconduct. Customer must consult with and get prior written consent from Bransys prior to settling any such claim which would bind Bransys to pay unreimbursed monies, admit guilt or wrongdoing on the part of Bransys, or which would otherwise materially prejudice Bransys. Bransys shall also have the right to participate in the investigation, defense and settlement negotiations of any such claim with separate counsel chosen and paid for Bransys.
- (b) Bransys shall defend, indemnify and hold Customer harmless against any third party claims, and all associated damages, suits, proceedings, liens, penalties, liabilities, awards or expenses, to the extent that such claims allege that Bransys Device or the Bransys Service infringes such third party's intellectual property rights; provided, however, that Bransys's obligations hereunder shall not apply if and to the extent that the infringement or alleged infringement is caused by or otherwise results from
- (i) the use of the Bransys Device or the Bransys Service other than as specifically authorized by Bransys,
  - (ii) the combination or use of the Bransys Device or the Bransys Service with non- Bransys products or services, including, but not limited to, Customer's products and services, or
  - (iii) any acts or omissions of Customer or any other third party; and provided further, that Customer provides Bransys written notice of the third party claim within five (5) business days after receiving notice of the claim and permits Bransys to control, and cooperates with Bransys in the defense of such claim and any related settlement negotiations. Bransys shall permit Customer to participate with its counsel in the defense of the claim at its own expense; however, nothing herein shall limit Bransys's right to control the defense.

## **13. LIMITATION OF LIABILITY.**

- (a) NEITHER PARTY, WILL BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS OR

LOST DATA, EVEN IF THAT PARTY IS INFORMED THAT THOSE DAMAGES MAY OCCUR. BRANSYS'S CUMULATIVE LIABILITY UNDER ANY LEGAL THEORY SHALL NOT EXCEED THE AMOUNT PAID TO BRANSYS UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS PRIOR TO THE DATE THE LIABILITY ACCRUES FOR A CLAIM. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY OF EITHER PARTY ARISING UNDER SECTION 12 (INDEMNIFICATION), SECTION 15 (CONFIDENTIALITY) AND/OR SECTION 16 (PROPRIETARY RIGHTS). SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THOSE PARTICULAR LIMITATIONS MAY NOT APPLY TO YOU.

(b) WITHOUT LIMITING THE FOREGOING, BRANSYS IS NOT RESPONSIBLE FOR LIABILITIES OF ANY KIND RESULTING FROM DELAYS IN DELIVERY, INSTALLATION OR PROVIDING BRANSYS OR OTHER SERVICES, REGARDLESS OF THE CAUSE OF THE DELAY. CUSTOMER UNDERSTANDS AND AGREES THAT BRANSYS CANNOT GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS, AND THAT THEY SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND RESULTING FROM AN ALLEGED OR ACTUAL LACK OF SECURITY RELATING TO CUSTOMER'S USE OF THE BRANSYS SERVICES.

(c) CUSTOMER UNDERSTANDS AND AGREES THAT:

- (i) THE DEVICE IS A WIRELESS DEVICE AND THAT THE BRANSYS SERVICES WORK BY USING WIRELESS COMMUNICATIONS NETWORKS TO CONNECT THE DEVICES WITH BRANSYS DATA CENTER AND BY USING GPS (GLOBAL POSITIONING SYSTEM) TO DETERMINE A VEHICLE'S LOCATION;
- (ii) THE BRANSYS SERVICES WILL NOT OPERATE UNLESS A VEHICLE IS IN AN AREA THAT HAS ADEQUATE WIRELESS COMMUNICATIONS COVERAGE AND, EVEN IF A VEHICLE IS IN SUCH AREA, THE BRANSYS SERVICE IS SUBJECT TO WIRELESS SERVICE NETWORK AND TRANSMISSION LIMITATIONS AND MAY BE ADVERSELY AFFECTED BY TERRAIN, SIGNAL STRENGTH, WEATHER AND ATMOSPHERIC CONDITIONS, OR OTHER THINGS THAT BRANSYS DOES NOT CONTROL; AND
- (iii) INFORMATION ABOUT A VEHICLE'S LOCATION WILL NOT BE AVAILABLE UNLESS THE DEVICE IN THE VEHICLE IS ABLE TO RECEIVE GPS SIGNALS.

#### **14. ARBITRATION.**

With the exception of any claims relating to the protection of either party's Proprietary Rights or Confidential Information, which may require immediate injunctive or other equitable relief, it is agreed that any controversy between the parties related directly or indirectly to the Devices or the Bransys Services will be settled by binding arbitration under the commercial rules of the American Arbitration Association, regardless of whether the controversy is based on contract, tort, strict liability or other legal theory. This Agreement does not allow class or collective arbitrations even if the AAA or BBB procedures or rules would. Notwithstanding any other provision of this Agreement, the arbitrator may award money or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. No class or representative or private attorney general theories of liability or prayers for relief may be maintained in any arbitration held under this Agreement. The arbitration will be held in a mutually agreed location, by one arbitrator knowledgeable and experienced in the electronic information services industry and who is a licensed attorney.

#### **15. CONFIDENTIALITY.**

Each party as a Receiving Party will protect Confidential Information of the Disclosing Party against any unauthorized use or disclosure to the same extent that the Receiving Party protects its own Confidential Information of a similar nature against unauthorized use or disclosure, but in no event will Receiving Party use less than a reasonable standard of care to protect such Confidential Information. The Receiving Party will not use or disclose any Confidential Information of the Disclosing Party for any purpose other than as: (a) reasonably necessary to perform its obligations under this Agreement;

(b) expressly permitted by this Agreement;

(c) required by applicable law (provided that the Receiving Party shall notify the Disclosing Party of such required disclosure promptly and cooperate with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit such required disclosure; or

(d) consented to in writing by the Disclosing Party. The parties further agree that any obligations to protect Confidential Information set forth herein shall survive termination of this Agreement for a period of three (3) years from the termination of this Agreement, except that as to any Confidential Information deemed a "trade secret" under applicable law, such obligations shall continue for so long as such information is deemed a trade secret. The provisions of this Section 15 are necessary for the protection of the business and goodwill of the Disclosing Party and are considered by the Receiving Party to be reasonable for such purpose. The Receiving Party agrees that any breach of these provisions may cause the Disclosing Party substantial and irreparable damages and, therefore, in the event of any such breach, in addition to other remedies which may be available, the Disclosing Party shall have the right to seek specific performance and other injunctive and equitable relief.

#### **16. PROPRIETARY RIGHTS.**

Customer acknowledges and agrees that the Devices, the Bransys Service and the Bransys Website may include patent, copyright,

trademark, service mark, trade secrets, or other intellectual property rights (collectively "Proprietary Rights") of Bransys, its affiliates or the Service Partners (including, with respect to the Bransys Website, materials that may be proprietary to Tele Atlas or its suppliers), and that Bransys, its affiliates and/or the Service Partners retain title to and ownership of those Proprietary Rights and any and all improvements, modifications, fixes or enhancements made by or for Bransys, its affiliates and/or the Service Partners to the Devices, the Bransys Service or the Bransys Website, regardless of whether such items or services are created or suggested by Customer. Customer will not copy, modify, reverse-engineer, disassemble, translate, convert or decompile any software or firmware included in any Device, the Bransys Website or Bransys Services, or otherwise provided to Customer by or on behalf of Bransys, and will not disclose such software or provide access to the Devices, such software or any Bransys Services to any third party for such a purpose. Customer agrees that with respect to Bransys Services, it shall not, nor shall it permit any third party to (a) assign, transfer, lease, rent, sell, distribute or import such Bransys Services to any third party; (b) except with the express written consent of Bransys, combine, embed or incorporate the Bransys Services into any other product or service other than any Customer-owned or developed interface for purposes of receiving the data feed delivered from the Bransys Devices; (c) remove or alter any proprietary notices in the Bransys Services; (d) use the Bransys Services in connection with the transmission, sale, license, or delivery of any infringing, defamatory, offensive, or illegal products, services, or materials; (e) use the Bransys Services in any manner that threatens the integrity, performance, or availability of the Bransys Service; or (f) use the Bransys Service in any manner that violates local, state or federal laws, regulations or orders.

#### **17. MODIFICATIONS; WEBSITE MAINTENANCE.**

Bransys may alter or modify all or part of the Devices, the Bransys Services or the Bransys Website from time to time; provided that Bransys shall not intend for such alterations or modifications to materially adversely affect Customer's use of the Bransys Services or Bransys Website. Subject to the foregoing, such alterations and modifications, or both, may include, without limitation the addition or withdrawal of features, information, products, services, software or changes in instructions. Bransys reserves the right to perform scheduled maintenance for the Bransys Services and Bransys Website from time to time. This may include application and database maintenance as well as general website maintenance and may or may not involve Bransys Website and Bransys Services unavailability.

#### **18. DATA.**

Customer represents and warrants that it has all necessary rights and authority with respect to the data collected from Customer and its vehicles and transmitted through Customer's use of the Devices, the Bransys Services and the Bransys Website ("Business Data") and that Customer approves and grants to Bransys, its affiliates and the Service Partners the nonexclusive license and right to collect, access, copy and use the Business Data in the course of performing the Bransys Services. Customer further grants to Bransys and its affiliates the perpetual right and license to use such Business Data as needed to analyze, measure and optimize the performance of the Devices and the Bransys Services and to develop new offerings for Customer and others, including the development of data products provided, however, that such use of Business Data shall be in an anonymous form.

#### **19. SERVICE PARTNERS.**

Nothing set forth in an Accepted Order Form or in these Terms and Conditions gives Customer any specific rights with respect to, nor does it create a contract between Customer and the Service Partners. The Service Partners have no legal, equitable or other liability of any kind to Customer, and Customer hereby waives any and all claims or demands therefor. Customer is not a third-party beneficiary of any agreement between or among Bransys and the Service Partners, but the Service Partners are intended third party beneficiaries of this Agreement, and the protections set forth in these Terms and Conditions, including, among other things, the disclaimers of warranties, limitations of liability, and indemnification provisions, do apply to the Service Partners.

#### **20. EXPORT CONTROL.**

Customer understands and agrees that:

- (i) the software used in connection with the Service is controlled by U.S. export control laws;
- (ii) further transfer or export of the software may be subject to U.S. export control laws or similar laws of other countries;
- (iii) Customer will abide by such laws; and
- (iv) Customer will not re-export or divert the software to a country or activity in contravention of U.S. law. Customer represents and warrant that Customer is not, nor does Customer anticipate being, listed on any U.S. Government, United Nations or other country's prohibited parties list (including, but not limited to the U.S. Department of Commerce Denied Persons List or Entity List and the U.S. Treasury Department's Specially Designated Nationals, Terrorists or Narcotics Traffickers List).

#### **21. GENERAL.**

- (a) No amendment, change, modification or waiver to any provision of any Accepted Order Form or these Terms and Conditions will be binding unless signed by an authorized representative of each party.
- (b) The provisions of an Accepted Order Form, including without limitation, these Terms and Conditions, and any action related thereto will be governed and interpreted under the laws of the State of Delaware without giving effect to any conflicts of law principles to the

contrary. (c) EACH PART OF THESE TERMS AND CONDITIONS THAT LIMITS LIABILITY, DISCLAIMS WARRANTIES OR GUARANTEES, OR EXCLUDES DAMAGES IS SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND IS TO BE ENFORCED IN SUCH MANNER. IF ANY REMEDY FAILS TO FULFILL ITS ESSENTIAL PURPOSE, THE LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES REMAIN IN EFFECT TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

- (d) Except as otherwise expressly permitted in these Terms and Conditions, each party must deliver all notices or other communications required or permitted under an Accepted Order Form or these Terms and Conditions to the other party, in the case of Bransys to Bransys LLC 900 Jorie Blvd, STE 36, Oak Brook, IL 60523 attention: Bransys Contracts; e-mail: usa@bransys.com; and in the case of Customer at the address listed on the signature page of the Accepted Order Form, by courier, by certified or registered mail (postage prepaid and return receipt requested), electronically with proof of receipt, or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) Business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party.
- (e) Customer may not assign, sublease, sublicense or in any way transfer or assign any of its rights and obligations under this Agreement without Bransys's prior written consent, including by operation of law, change of control, merger or otherwise.
- (f) These Terms and Conditions, together with any Accepted Order Form and any documents or policies referred to herein or in an Accepted Order Form, constitute the entire agreement between Customer and Bransys with respect to the Devices and the Bransys Services and prevail over all prior or contemporaneous oral and written communications or agreements between Customer and Bransys. In the event of any conflict or inconsistency between the provisions of these Terms and Conditions, an Accepted Order Form, or any documents or policies referred to herein or in an Accepted Order Form, the parties agree that any such conflict or inconsistency shall be resolved first in favor of an Accepted Order Form, and next in favor of these Terms and Conditions. Bransys will not be bound by, and specifically objects to, any term, condition or other provision that is different from or in addition to the provisions of these Terms and Conditions or an Accepted Order Form which is proffered by Customer in any purchase order, receipt, acceptance, confirmation, and correspondence or otherwise, unless Bransys specifically agrees in writing.
- (g) Any waiver or failure to enforce any provision of these Terms and Conditions or an Accepted Order Form on one occasion will not be deemed a waiver of any such provision or any other provision on any other occasion.
- (h) In any arbitration, mediation or other legal action or proceeding to enforce any right or remedy under an Accepted Order Form or these Terms and Conditions, the prevailing party will be entitled to recover, in addition to any other relief to which it may be entitled, its reasonable attorneys' fees and other costs incurred in that action or proceeding.
- (i) If any provision of an Accepted Order Form or these Terms and Conditions is held by a court of competent jurisdiction to be unenforceable, the enforceability of the remaining provisions of the Accepted Order Form and these Terms and Conditions will not be affected and the unenforceable provision will be deemed modified such that it is enforceable and accomplishes the intention of the parties to the fullest extent possible.