

**TERMS AND CONDITIONS
(RESEARCH USE)**

1. Applicability. These terms and conditions (these "**Terms**") govern the sale and use of the products and/or services provided by Cognixion Corporation, a Delaware corporation ("**Cognixion**", "**us**", "**we**", or "**our**"), to the purchaser or other counterparty identified on the purchase order ("**you**") to which these Terms are attached or are otherwise incorporated by reference (the "**Purchase Order**"). Notwithstanding anything in these Terms to the contrary, if a written contract signed by both parties is in existence covering the sale and use of the products and/or services covered by these Terms, the terms and conditions of that contract shall prevail to the extent they are inconsistent with these Terms.

2. Use for Research Purposes Only; No Diagnosis or Medical Advice.

(a) **YOU HEREBY ACKNOWLEDGE AND AGREE THAT THE PRODUCTS AND SERVICES REFERENCED IN THE PURCHASE ORDER OR OTHERWISE PROVIDED OR MADE AVAILABLE TO YOU IN CONNECTION WITH THE PURCHASE ORDER OR THESE TERMS:**

(i) **HAVE NOT BEEN AND ARE NOT APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION OR ANY OTHER ADMINISTRATIVE AGENCY WITH REGULATORY AUTHORITY OVER MEDICAL DEVICES OR OTHERWISE; AND**

(ii) **ARE FOR RESEARCH PURPOSES ONLY AND ARE NOT FOR COMMERCIAL USE, RESALE, OR DISTRIBUTION.**

(b) **WITHOUT LIMITING THE FOREGOING, YOU HERBY ACKNOWLEDGE THAT THE AXON-R PRODUCT INCLUDING PHYSICAL HARDWARE, BUNDLED SOFTWARE AND ANY SOFTWARE THAT MAY BE DOWNLOADED OR OTHERWISE DEVELOPED OR DEPLOYED ONTO OUR DEVICES, IS STRICTLY FOR RESEARCH PURPOSES. COGNIXION MAKES NO MEDICAL CLAIMS REGARDING THE SYSTEM. USAGE OF THE SYSTEM WITH HUMAN SUBJECTS SHALL BE ENTIRELY AT YOUR DISCRETION AND YOU ARE RESPONSIBLE FOR ENSURING THAT ANY APPLICABLE REGULATORY OR REVIEW ACTIVITIES HAVE BEEN SATISFIED. YOU HEREBY ASSUME ANY AND ALL LIABILITY RELATED TO USING OUR DEVICES, SOFTWARE, OR OTHER PRODUCTS.**

(c) By accepting delivery of such products and services, you hereby agree (i) to use them strictly for research purposes for no other purposes, (ii) not to resell or distribute them, and (iii) not to use or allow them to be used for commercial purposes or for any purposes other than by you for research purposes.

(d) Without limiting any other remedies available under these Terms or pursuant to applicable law, in the event that you breach the covenants provided in this Section:

(i) We may immediately terminate your use of the products and services, cease the provision of any services, and/or require you to immediately return any products to us; and

(ii) We may seek indemnification from you pursuant to Section 18 of these Terms.

(e) Any data or information provided by our products or with respect to our services is for informational purposes only is not a diagnosis of any medical condition or matter or medical or similar advice. Only an appropriate medical professional can provide diagnostic or similar information or medical advice and we encourage you to seek that information or advice from a medical professional to the extent necessary or appropriate.

3. Order Acceptance and Cancellation. You agree that your order is an offer to buy, under these Terms, all products and/or services referenced in the Purchase Order. All orders must be accepted by us or we will not be obligated to sell or provide the products or services to you. We reserve the right to cancel your order in our sole discretion, even after we execute the Purchase Order or send you a confirmation email of your order.

4. Prices and Payment Terms.

(a) The price for our products and/or services are as set forth in the Purchase Order. The Purchase Order also provides our estimate of the applicable taxes and charges for shipping and handling, for which you will be responsible. We strive to display accurate price, tax, and shipping information, however we may, on occasion, make inadvertent typographical errors, inaccuracies or omissions related to pricing and availability. We reserve the right to correct any errors, inaccuracies, or omissions at any time and to cancel any orders arising from such occurrences. You are responsible for all sales, use and excise taxes and any other similar taxes, duties, or charges imposed with respect to the products or services.

(b) Payment must be received by us at the time(s) and in the manner specified in the Purchase Order. To the extent such information is not specified in the Purchase Order, all payments to us are due within thirty (30) days of the date of the Purchase Order and may be made by certain credit cards that we accept, wire, ACH, or check.

5. Shipments; Delivery; Title and Risk of Loss.

(a) We will arrange for shipment of the products to you in the manner provided in the Purchase Order or, if not specified in the Purchase Order, pursuant to our standard shipping methods. You will pay all shipping and handling charges unless otherwise specified in the Purchase Order.

(b) Title and risk of loss pass to you upon our transfer of the products to the carrier. Shipping and delivery dates are estimates only and cannot be guaranteed. We are not liable for any delays in shipments.

6. Returns and Refunds.

(a) We will accept a return of the products for a refund of your purchase price, less the original shipping and handling costs, provided such return is made within thirty (30) days of delivery with valid proof of purchase and provided such products are returned in their original condition. To return products, you must email our Returns Department at customercare@cognixion.com to obtain a Return Merchandise Authorization ("RMA") number before shipping your product. No returns of any type will be accepted without an RMA number.

(b) You are responsible for all shipping and handling charges on returned items. You bear the risk of loss during shipment. We therefore strongly recommend that you fully insure your return shipment against loss or damage and that you use a carrier that can provide you with proof of delivery for your protection.

(c) Refunds will be processed within approximately five (5) business days of our receipt of your merchandise. Your refund will be credited back to the same payment method used to make the original purchase on the Site.

7. Limited Warranty.

(a) We warrant to you that for a period of twelve (12) months from the date of shipment ("**Warranty Period**"), our products will materially conform to our published specifications in effect as of the date of shipment and be free from material defects in material and workmanship.

(b) We warrant to you that we will perform any services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet our obligations under these Terms.

(c) **EXCEPT FOR THE FOREGOING LIMITED WARRANTIES, WE MAKE NO WARRANTY WHATSOEVER WITH RESPECT TO OUR PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

(d) Products manufactured or developed by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, our products. Third Party Products are not covered by the limited warranties described in this Section. For the avoidance of doubt, **WE MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

(e) We shall not be liable for a breach of the limited warranties provided in this Section unless: (i) you give written notice of the defective products or services, reasonably described, to us within thirty (30) days of the time when you discover or should have discovered the defect; (ii) if applicable, we are given a reasonable opportunity after receiving the notice of breach of the warranty to examine such products and you (if we request) return such products to our place of business at your cost for the examination to take place there; and (iii) we reasonably verify your claim that the products or services are defective.

(f) We shall not be liable for a breach of the limited warranties set forth in this Section: (i) you make any further use of such products after you give such notice; (ii) the defect arises because you

failed to follow our instructions as to the storage, installation, use or maintenance of such products; or (iii) you alter or repair such products without our prior written consent.

(g) Subject to Sections 7(e) and 7(f), with respect to any product subject to a claim under the limited warranty set forth in Section 7(a) during the Warranty Period, we shall, in our sole discretion, either: (i) repair or replace such product (or the defective part) or (ii) credit or refund the amounts paid by you for such product provided that, if we so request, you shall, at your expense, return such product to us.

(h) Subject to Sections 7(e) and 7(f), with respect to any services subject to a claim under the limited warranty set forth Section 7(b), we shall, in our sole discretion, (i) repair or re-perform the applicable services or (ii) credit or refund the amounts paid by you for such services.

(i) THE REMEDIES SET FORTH IN SECTIONS 7(g) AND 7(h) SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTIONS 7(a) AND 7(b).

8. Limitation of Liability.

(a) **IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE PRODUCTS OR SERVICES TO WHICH THESE TERMS RELATE, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNTS PAID BY YOU FOR SUCH PRODUCTS AND SERVICES.**

9. Compliance with Law. You shall comply with all applicable laws, regulations, and ordinances related to your use of our products or services. You shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that you need to carry out your obligations under these Terms and your use of our products or services.

10. Goods Not for Resale or Export. Without limiting anything in these Terms, you represent and warrant that you are buying our products or services for research purposes and for your own use only, and not for commercial purposes, resell, distribution, or export. You further represent and warrant that all purchases are intended for final delivery to locations within the United States.

11. Software; Changes and Updates. Some of our products and services may allow you to download software ("**Software**") that may update automatically, which Software constitutes products and/or services under these Terms. So long as you comply with these Terms, we give you a limited, non-exclusive, non-transferable, revocable license to use the Software, solely to access or use our products and services. You agree not to reverse engineer or decompile the Software, attempt to do so, or assist anyone

in doing so. We retain the right, in our sole discretion, to implement new elements as part of and/or ancillary to our products or services, including changes that may affect the previous mode of operation of our products or services. We expect that any such modifications will enhance the overall experience with our products or services, but it is possible that you may not agree with us. We also reserve the right to establish limits to the nature or size of storage available to you, or your continued ability to access or share, and other data, and impose other limitations at any time, with or without notice. In connection with any modification of our products or services, we may automatically download software updates on your computers and devices from time to time with the intention of improving, enhancing, repairing and/or further developing our products or services. We will endeavor to provide you with the option of whether or not to install the update; however, in certain circumstances, such as security risks, we may require you to install the update to continue using our products or services. In all cases, you agree to permit us to deliver these updates to you (and you to receive them) as part of your use of our products or services.

12. Intellectual Property Ownership.

(a) You acknowledge and agree that Cognixion is and will remain the sole and exclusive owner of all intellectual property rights in and to each product and service sold or otherwise made available to you and any related specifications, instructions, documentation or other materials, including, but not limited to, all related copyrights, patents, trademarks, and other intellectual property rights. You do not and will not have or acquire any ownership of any intellectual property rights in or to the products or services sold or made available to you, or of any intellectual property rights relating to Cognixion's products or services.

(b) Without limiting the foregoing or anything else in these Terms:

(i) Any software technologies provided by Cognixion, whether in source code form or object code form, are licensed solely for customer use.

(ii) Cognixion software may not be redistributed commercially or non-commercially.

(c) You agree not to modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on any of our products or services, except as expressly permitted by us in writing. Any such unauthorized derivative use shall be considered a breach of these Terms and an infringement of our intellectual property rights.

13. No Redistribution. You agree not to reproduce, distribute, sell, rent, lease, lend, sublicense, transfer, or otherwise make available any of our products or services, or any part thereof, to any third party, except as expressly permitted by us in writing. Any such unauthorized redistribution shall be considered a breach of these Terms and an infringement of our intellectual property rights.

14. Confidential Information. All non-public, confidential or proprietary information of Cognixion, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts, or rebates, that we disclose to you, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential", is confidential, solely for the use in connection with our products or services, and may not be disclosed or copied unless authorized in advance by us writing. Upon our request, you shall promptly return to us all documents and other materials received from us. We shall be entitled to injunctive relief for any violation of this Section. This Section does not

apply to information that is: (a) in the public domain; (b) known to you at the time of disclosure; or (c) rightfully obtained by you on a non-confidential basis from a third party.

15. Privacy. We respect your privacy and are committed to protecting it. Our [Privacy Policy](#) governs the processing of all personal data collected from you in connection with your use of our products or services.

16. Acceptable Use. You agree not to misuse any of our products or services. For example, you must not, and must not attempt to do the following:

- (a) Use our products or services to diagnose or treat any medical condition;
- (b) Probe, scan, or test the vulnerability of any system or network;
- (c) Breach or otherwise circumvent any security or authentication measures;
- (d) Access, tamper with, or use non-public areas or parts of our products or services, or shared areas of our products or services you have not been invited to;
- (e) Send unsolicited communications, promotions or advertisements, or spam; or
- (f) Violate the law in any way including violating the privacy or infringing the rights of others.

17. Force Majeure. No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing any term of the Purchase Order or these Terms (except for any of your obligations to make payments to us hereunder or thereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of these Terms, (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; (i) epidemics or pandemics, and (i) other events beyond the reasonable control of the Impacted Party.

18. Indemnification. You agree to and shall defend, indemnify and hold harmless Cognixion, its subsidiaries, affiliates, licensors and service providers, and its and their respective directors, officers, employees, contractors, agents, licensors, suppliers, successors, and assigns from, against, and with respect to any and all claims, liabilities, damages (actual and consequential), judgements, awards, losses, costs, expenses or fees (including legal and other professional fees) arising from or in any way related to any violation of these Terms (including, without limitation, your use of our products or services for any purpose other than research purposes, reselling or distributing our products or services, or allowing our products or services to be used for commercial purposes) or your use of our products or services.

19. Miscellaneous.

(a) Resolving Disputes. We want to address your concerns without needing a formal legal case. Before filing a claim against us, you agree to try to resolve the dispute informally by contacting customercare@cognixion.com. We will attempt to resolve the dispute informally by contacting you via email. If a dispute is not resolved within 15 days of submission, you or Cognixion may bring a formal proceeding.

(b) Governing Law and Jurisdiction. All matters arising out of or relating to these Terms or your use of our products or services are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action, or proceeding arising out of or relating to these Terms or your use of our products or services shall be instituted in the courts of the State of California located in the City of Santa Barbara and County of Santa Barbara, California (or, in the case of federal jurisdiction, the United States District Court for the Central District of California) and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(c) Assignment. You will not assign any of your rights or delegate any of your obligations under these Terms without our prior written consent. Any purported assignment or delegation in violation of this Section 19(c) is null and void. No assignment or delegation relieves you of any of your obligations under these Terms.

(d) No Waivers. The failure by us to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of Cognixion.

(e) No Third-Party Beneficiaries. These Terms do not and are not intended to confer any rights or remedies upon any person or entity other than you and us.

(f) Notices. Notices may be provided under these Terms by: (a) sending a message to the email address specified for a party in the Purchase Order, or (b) sending a notice by the US Postal Service or a private courier (e.g., FedEx, UPS, DHL, etc.) to the address specified for a party in the Purchase Order, or, in either case, an updated email or physical address provided by a party to the other party in writing. Notices sent by email will be effective when transmitted by email, notices sent by the US Postal Service will be effective three (3) days after deposit with the US Postal Service, and notices sent by private courier for overnight delivery will be effective one (1) day after deposit with the private courier. It is your responsibility to keep your email and address current.

(g) Severability. If any provision of these Terms is invalid, illegal, void or unenforceable, then that provision will be deemed severed from these Terms and will not affect the validity or enforceability of the remaining provisions of these Terms.

(h) Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of these Terms including, but not limited to, the following provisions: Sections 2 ("Use for Research Purposes Only; No Diagnosis or Medical Advice"), 7 ("Limited Warranty"), 8 ("Limitation of Liability"), 9 ("Compliance with Law"), 12 ("Intellectual Property Ownership"), 14 ("Confidential Information"), 18 ("Indemnification"), and 19 ("Miscellaneous").

(i) Entire Agreement. The Purchase Order, these Terms, our Website Terms of Use and our Privacy Policy in effect from time-to-time, and any license agreement we provide or that is otherwise binding on you with respect to the use of our software or similar products, will be deemed the final and integrated agreement between you and us on the matters contained in these Terms. In addition, you agree to use our products and services in accordance with any instructions, manuals, or similar documentation applicable to such products or services.

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