SHIMMER RESEARCH LTD.

PURCHASE AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY. EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH IN WRITING BETWEEN PURCHASER AND SHIMMER RESEARCH BY PURCHASING SENSORS FROM SHIMMER, PURCHASER ACCEPTS AND AGREES TO ABIDE BY THIS PURCHASE AGREEMENT (THE "AGREEMENT"). PURCHASER AGREES THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY PURCHASER. IF PURCHASER DOES NOT ACCEPT THIS AGREEMENT, PURCHASER MUST CLICK ON THE "CANCEL" BUTTON AND NOT PURCHASE THE SENSORS. WHEN USED IN THIS AGREEMENT, "PURCHASER" MEANS THE PERSON OR ENTITY THAT IS PURCHASING THE SENSORS AND "SHIMMER" MEANS SHIMMER RESEARCH LTD..

1. Sensors. Shimmer has designed and developed wireless wearable sensing devices, (in each case a "Sensor" and collectively the "Sensors"), consisting of equipment (the "Equipment") and related software (the "Software"), in each case described in the specifications for the Sensor (the "Specifications").

2. Orders

2.1 This Agreement will apply to the purchase of one (1) or more Sensors by Purchaser from Shimmer pursuant to the order form (the "Order") in accordance with the terms and specifications provided herein and in the Order. The Order will be deemed to be part of, and will be governed by all of the terms and conditions of, this Agreement. In the case of a conflict between the Order and this Agreement, except as expressly provided in the Order, the terms of this Agreement will govern.

2.2 Purchaser's completion of the Order creates no contractual or other obligation on Shimmer's behalf. Any such obligation will only be created by Shimmer's acceptance of the Order, which will be solely within Shimmer's discretion. SHIMMER RESERVES THE RIGHT TO REJECT THE ORDER. Purchaser will be solely responsible for the accuracy and truthfulness of the information it provides in the Order. Shimmer will be entitled to rely on and any all such information.

2.3 Shimmer will, and Purchaser expressly authorizes Shimmer to, use the information Purchaser provides in the Order to: (a) process the Order including, without limitation, processing payments and communicating with Licensee about the status of the Order and (b) communicate with Licensee about other products or services Shimmer offer or other topics Shimmer thinks Licensee might find of interest.

3. Delivery; Title. Shimmer will deliver Sensors to the Purchaser location specified in the Order. Delivery dates will be approximate. Risk of loss and title to Sensors (other than any Software installed on the Sensors) will pass to Purchaser upon delivery. Sensors will be deemed irrevocably accepted by Purchaser unless within ten (10) days of delivery Purchaser provides Shimmer a written notice of non-acceptance setting forth in reasonable detail the specific reasons for such non-acceptance.

4. Software License. Subject to the terms and conditions of this Agreement, Shimmer hereby grants to Purchaser a limited, non-exclusive, non-transferable license

to use the Software for the sole and exclusive purpose of using the Sensors in the manner described in the Specifications.

5.   Restrictions on Use; Ownership Rights.

5.1   Restrictions. Purchaser will not (i) de-compile or reverse engineer the Equipment or the Software; (ii) modify, create derivative or collective works from, or in any way otherwise exploit the Equipment or the Software, in whole or in part; or (iii) remove from the Equipment or the Software any copyright notices, disclaimers or other indicia of ownership or restrictions on use.

5.2   Ownership. Shimmer will own and hereby reserves and retains all right, title and interest in and to all copyrights, patents, trademarks, trade secrets and other intellectual property rights related to the Software, Equipment and Sensors, in each case including any derivatives, enhancements and/or modifications thereto. Without limitation of the foregoing, Purchaser acknowledges that the Software in source code form is a confidential trade secret of Shimmer.

6.   Price; Payment.

6.1   Price. Licensee will pay Shimmer for Sensors in the amount set forth in the Order.   Shimmer's prices do not include sales, use, value-added or similar taxes. Except as expressly set forth in this Agreement, all charges are non-refundable.

6.2   Payment. Licensee will be billed in the manner designated in the Order and Licensee hereby authorizes this billing. Shimmer reserves the right to refuse a payment method and/or require a specific payment method for the Order in its sole discretion.

7.   Warranties; Remedies; Disclaimer.

7.1   Warranty.   Shimmer warrants that, during the Support Period, each Sensor, when used in accordance with the Specifications and Shimmer's instructions, (a) will not infringe any United States patent, copyright, trademark or, to Shimmer's knowledge, other intellectual property right of any third party and (b) will perform in accordance with the Specifications in effect at the time of purchase. This warranty will not apply to, and Shimmer will have no responsibility under this Agreement for, any breach of this warranty caused by (i) any Sensor that has been modified or altered in any way by any party other than Shimmer without Shimmer's express prior written consent or (ii) any software, hardware or service not created or provided by Shimmer to Purchaser expressly for use with such Sensor.

7.2   Support.   During the Support Period, Shimmer will provide support and maintenance for Sensors in accordance with Shimmer's then current support policy. Support Period means (a) one (1) year after the date of delivery of the Sensor and (b) any additional period for which Purchaser purchases extended support.

7.3   Exclusive Remedy. For any breach of the warranties in Section 7.1, Purchaser's exclusive remedy and Shimmer's entire liability, replace the Sensor in accordance with Shimmer's then current support policy.

7.4   DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SENSORS AND ANY OTHER PRODUCTS OR SERVICES RELATED THERETO, ARE PROVIDED AS IS AND AS AVAILABLE.   TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SHIMMER AND ITS LICENSORS DISCLAIM

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ANY AND ALL WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. LICENSEE AND LICENSEE'S USERS ASSUME ALL RESPONSIBILITY FOR THEIR USE OF THE SENSORS, AND SHIMMER ASSUMES NO RESPONSIBILITY FOR SUCH USE.

8. **LIMITATIONS OF LIABILITY AND CONSEQUENTIAL DAMAGES.** IN NO EVENT WHETHER BASED UPON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE WILL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF OR COULD HAVE REASONABLY FORESEEN THE POSSIBILITY OF SUCH DAMAGES). EACH PARTY'S AGGREGATE LIABILITY ON ALL CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY SENSOR COVERED BY OR FURNISHED UNDER THIS AGREEMENT, EXCLUDING COLLECTION OF UNPAID FEES, WILL IN NO CASE EXCEED THE AMOUNT OF FEES ACTUALLY PAID TO SHIMMER BY PURCHASER FOR THE AFFECTED SENSOR.

The invalidity, in whole or part, of any of the foregoing paragraph will not affect the remainder of such paragraph. The limitations and disclaimers of Shimmer's obligations and liabilities are intended to apply to the fullest extent permitted by law, and the invalidity of application thereof to any given circumstance will not affect such application to any other circumstance. Such limitations and disclaimers are intended to prevail over any provision in this Agreement to the contrary.

9. Confidentiality

9.1   Definition. "Proprietary or Confidential Information" will mean data or information regarding: (i) either party's business operations which is not generally known to the public; (ii) either party's proprietary software or electronic media, including, but not limited to, concepts, designs, documentation, reports, data, specifications, source code, object code, flow charts, file record layouts, content formatting, databases, inventions, know-how, and other trade secrets, whether or not patentable or copyrightable; and (iii) the terms of this Agreement.

9.2   Use and Protection. Each party agrees that it has no interest in or right to use the Proprietary or Confidential Information of the other, except in accordance with the terms of this Agreement. The party receiving the Proprietary or Confidential Information will: (i) maintain it in strict confidence and take all reasonable steps to prevent its disclosure to third parties, except to the extent necessary to carry out the purposes of this Agreement, in which case consent will be obtained from the other party and these confidentiality restrictions will be imposed on third parties to whom such disclosures are made; (ii) use at least the same degree of care as it uses in maintaining the secrecy of its own Proprietary or Confidential Information (but no less than a reasonable degree of care); and (iii) prevent the removal of any proprietary, confidential, or copyright notices placed on the Proprietary or Confidential Information.

9.3   Limitation. Neither party will have any obligations concerning any Proprietary or

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Confidential Information of the other which is: (i) publicly known before or after disclosure other than through any wrongful act or omission attributable to the recipient, its employees or representatives; (ii) known to the recipient at the time of disclosure; (iii) disclosed in good faith to the recipient by a third party having a lawful right to do so; or (iv) required to be disclosed by the receiving party by law or legal process, provided that the receiving party will immediately notify the disclosing party so that it can take steps to prevent or modify the terms of its disclosure. In furtherance and not in limitation of the foregoing, Licensee agrees that any technical and related information that Shimmer gathers periodically to facilitate the provision of software updates, product maintenance and support and other services to Licensee (if any), and to verify compliance with the terms of this Agreement, will not be considered Proprietary or Confidential Information unless Licensee has notified Shimmer in writing.

10.   Term; Termination

10.1   Term. This Agreement will enter into force on the Effective Date and remain in effect until terminated as provided in this Section 10.

10.2   Termination with Cause.   Either party will have the right to terminate this Agreement or the Order upon ten (10) days written notice if the other party is in breach of any term, condition, warranty or covenant of this Agreement or the Order, unless prior to expiration of such period the breaching party cures such breach. Purchaser's non-payment of any amount when due will constitute a material breach by Purchaser.

11.   Miscellaneous

11.1   Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding that body of law known as conflicts of law, as though all acts or omissions related hereto occurred in such state. Each party hereby irrevocably agrees that any legal action or proceeding arising out of this Agreement will be brought only in the Superior Court of The Commonwealth of Massachusetts in and for Suffolk County or the United States District Court for the Eastern Division of the District of Massachusetts (or, if neither of such courts has subject matter jurisdiction over such dispute, in any other state or federal court located in the Commonwealth of Massachusetts).

11.2   Integration and Amendment.   This Agreement and the Order contains the complete agreement between the parties. All previous and collateral agreements, representations, warranties, promises and conditions relating to the subject matter of this Agreement are superseded by this Agreement. Any understanding, promise, representation, warranty or condition not incorporated in this Agreement will not be binding on either party. This Agreement may only be amended by a writing signed by both parties.

11.3   Waiver. Waiver by a party of any default by the other will not be deemed a waiver of any other default irrespective of whether such default is similar or a right at any time thereafter to require exact and strict compliance with the terms of this Agreement.

11.4   Notices.   Any notice or communication required or permitted under this Agreement will be given in writing, sent by (a) personal delivery, (b) nationally recognized overnight delivery service with proof of delivery, or (c) facsimile (provided that such facsimile is contemporaneously followed and confirmed by nationally recognized overnight delivery service in the manner previously described), addressed to

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the address first set forth above.

11.5 <u>Independent Contractor</u>. Each party to this Agreement will be deemed an independent contractor. No provision of this Agreement or any act of the parties pursuant to this Agreement will be construed to express or imply a joint venture, partnership, or relationship other than vendor and purchaser of the Sensors.

11.6 <u>No Third Party Benefits</u>. This Agreement is entered into solely for the respective benefit of the parties and their respective successors and assigns, and nothing in this Agreement will be construed as giving any entity other than the parties to this Agreement, persons and entities expressly indemnified hereunder and their respective successors and permitted assigns, any right, remedy or claim under this Agreement.

11.7 <u>Severability</u>. If any term or condition of this Agreement is adjudged to be illegal or unenforceable, all other terms will remain in force, and the term or condition held illegal or unenforceable will remain in effect as far as possible in accordance with the intention of the parties.

11.8 <u>Counterparts</u>. This Agreement may be executed in counterparts, including counterpart transmitted by facsimile, each of which will be deemed an original, and all such counterparts will constitute one and the same agreement.

11.9 <u>Section Headings</u>. The section and subsection headings used herein are for reference and convenience only, and will not enter into the interpretation hereof.

11.10 <u>Survival</u>. The parties agree that the provisions of Sections 5, 6, 7.4, 8, 9 and 11 of this Agreement will survive the expiration or earlier termination of this Agreement for any reason.

11.11 <u>Assignment</u>. This Agreement will be binding upon, and inure to the benefit of, Shimmer and Purchaser and their respective legal representatives, successors and permitted assigns. Neither party will assign, sublicense or otherwise transfer any of its rights, or delegate any of its duties, hereunder, in whole or in part, without the prior written consent of the other party.

11.12 <u>Security Interest</u>. Until the purchase price and all other sums due pursuant hereto are paid in full, Shimmer retains a security interest in the Sensors sold hereunder and in all proceeds of said Sensors. Purchaser shall execute financing statement(s) on request and irrevocably authorizes Shimmer to execute and file same.

11.13 <u>Credit Terms</u>. All orders and shipments shall at all times be subject to the approval of Shimmer's credit department. Shimmer reserves the right to decline to make shipment whenever, for any reason, there is doubt as to Purchaser's financial responsibility and Shimmer shall not in such event be liable for breach or nonperformance of this Agreement.

11.14 <u>Packaging</u>. Prices stated are based on Shimmer's standard packaging. Packaging will be standard commercial package and acceptable to commercial carrier. Special packaging will be furnished only when specified and so stated in the Order, and the cost thereof shall be borne by Purchaser.

11.15 <u>Delays</u>. All shipping dates are approximate, and are based upon availability of materials, production schedules, and prompt receipt of all necessary information. Shimmer will not be liable for any damage, loss, fault, or expenses arising out of delays

in shipment or other nonperformance of this Agreement caused by or imposed by: (a) strikes, fires, disasters, riots or acts of God, (b) acts of Purchaser, (c) shortages of labor, fuel, power, materials, supplies, transportation or manufacturing facilities, (d) governmental action, (e) subcontractor delay, or (f) any other cause or condition beyond Shimmer's reasonable control. In the event of any such delay or nonperformance, Shimmer may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.

11.16 Termination, Cancellation and Changes. Orders cannot be terminated, cancelled or modified, or shipment deferred after acceptance of Purchaser's order by Shimmer, except with Shimmer's written consent and subject to conditions then agreed upon in writing.

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