HMS Hub – Terms of Service

Welcome to HMS Hub. Please read these terms and any other terms referenced to herein carefully.

HMS Hub is a web-based service platform that enables transfer and communication of data from HMS gateways (sold separately), as integrated in an industrial network, through different interfaces. HMS Hub includes services that, inter alia, enables secure data transfer, device management of HMS gateways, data storage, process visualisation and creation of data logs and reports, as may be further detailed and explained in the Specification (" "). HMS Hub can be accessed through www.hms-hub.com, the HMS Hub mobile application (IOS/Android) and through the Kolibri API.

By creating an HMS Hub account, through your acceptance of this Agreement by ticking the checkbox or by continuing to use HMS Hub after being notified of a change to these terms, you acknowledge your full understanding of and agree to be legally bound by this Agreement.

DEFINITIONS

"**Advertisers**" means advertisers, sponsors and other third parties that may post promotions, links and advertisements in HMS Hub;

"**Agreement**" means these terms of service, including any addendums, and any other operating rules and policies as set forth by HMS, in its own discretion, and made available to the Customer, directly or by reference, as amended from time to time;

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday) on which commercial banks are open for general banking business in the jurisdiction where HMS is incorporated, other than for Internet banking services only;

"**Confidential Information**" means any commercial or technical information furnished by one party to the other party including, but not limited to, trade secrets, information pertaining to Intellectual Property Rights, the Specification, Registration Data, technical data, inventions, formulations, testing methods, other methods and processes and all other proprietary information or materials, whether disclosed in Written or oral form. However, Confidential Information does not include any information that the Receiving Party can show (i) was known to the Receiving Party at the time of disclosure by the Disclosing Party, (ii) was in the public domain at the time of the execution of this Agreement or which has come in the public domain during the term of this Agreement through no fault or breach of the Agreement by the Receiving Party or (iii) has been, in a verifiable manner, independently developed by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party or the Disclosing Party;

"**Customer**" means the legal entity entering into this Agreement and, where relevant, its Users;

"**Customer Administrator Account**" means the Customer's principal HMS Hub account through which the Customer is able to assign access and user rights to HMS Hub to its Users, as further detailed in clause 1.2;

"**Customer Data**" means all data and information (excluding Registration Data) relating to the Customer and its operations, facilities, customers, clients, personnel, assets and programs in whatever form that may exist and whether entered into, stored in, generated by or processed through or as a part of the use of HMS Hub or to which HMS otherwise may have

access as a consequence of this Agreement, and in relation to which the Customer is data controller and HMS is data processor in accordance with the GDPR;

"**Disclosing Party**" means the party disclosing Confidential Information;

"**Force Majeure Event**" means an event beyond a party's reasonable control including, without limitation, strikes, lock-outs or other labour disturbances or disturbances by fire, flood, war, embargoes, blockades, riots, governmental interference, interruptions, loss or malfunctions of utilities, communications, hardware or software services or from defects or delays in the performance of its suppliers or subcontractors if caused by any circumstance referred to in the foregoing;

"**GDPR**" means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

"**HMS Hub**" means as described above in the preamble and includes the variant of HMS Hub which is named com.tom portal;

"**Intellectual Property Rights**" means, including without limitation, patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyrights, design rights, know-how, trade and business names and any other similar protected rights in any country, whether registered or not, as well as all drawings, plans, diagrams, specifications, programs, materials, methods, processes, techniques, technologies, data or other information;

"**Kolibri API**" means an event-based, secured protocol which enables connection to HMS Hub from any cloud based or local data system;

"**Price List**" means HMS' at each time applicable price list for HMS Hub, whether furnished in physical form or made available online;

"**Privacy Policy**" means the latest available version of HMS' Privacy Policy made in regard of HMS' processing of Registration Data in accordance with the GDPR and made available on HMS' website;

"**Receiving Party**" means the party receiving Confidential Information;

"**Registration Data**" means certain current, complete and accurate information about the Customer as requested by HMS from time to time and specifically in conjunction with the application for an HMS Hub account, and in relation to which HMS is data controller in accordance with the GDPR;

"**SCC**" means the Stockholm Chamber of Commerce;

"**Specification**" means any relevant functional, technical or commercial specification of HMS Hub and its functionalities, furnished in physical form or from within HMS Hub or otherwise made available online (such as on HMS' website or by e-mail);

"**User(s)**" means the employees, representatives, consultants, contractors, agents and customers of the Customer for whom the Customer has acquired access and user rights to HMS Hub in accordance with this Agreement; and

"**Written**" shall be defined to include paper copies, e-mails and other generally accepted electronic communications means, and the term "**Writing**" shall have a meaning correlative to the foregoing.

1.   APPLICATION, SUBSCRIPTION, USER RIGHTS

1.1   HMS Hub is solely intended for commercial use, to the exclusion of any private use. This Agreement shall therefore only apply vis-à-vis legal entities.

1.2   The Customer's initial application for an HMS Hub account is made subject to a manual verification process by HMS and, if such application is approved, a Customer Administrator Account for the Customer is assigned. The Customer will through the Customer Administrator Account be able to (i) grant each User a right to create an account in HMS Hub and (ii) decide upon the level of authorisation each User shall have with respect to actions, including the right to purchase services within HMS Hub for which the Customer will be invoiced, that can be undertaken by the User in HMS Hub. For the avoidance of doubt, the Customer acknowledges and agrees that based on the extent of rights granted to a User, such User will be able to order payed services within HMS Hub without the Customer's prior authorisation in each case and the Customer will be invoiced the amounts payable for any and all such services ordered by Users within HMS Hub.

1.3   The Customer agrees to provide and maintain Registration Data as requested by HMS. HMS reserves the right to suspend or terminate the Customer's access to HMS Hub should the Registration Data provided by the Customer be, in any way, inaccurate, incomplete or not up-to-date, with or without prior notification to the Customer.

2.   PROVISION OF HMS HUB

2.1   HMS will, during the term of this Agreement and subject to the Customer's timely payment of applicable fees and use of HMS Hub in accordance with this Agreement and the Specification, (i) provide HMS Hub to the Customer and (ii) use commercially reasonable efforts to make HMS Hub available at least ninety-nine point five per cent (99.5%) on an annual basis (based on an assumed requirement of continuous availability), except for in the event of (a) downtime for scheduled maintenance (of which prior Written notice is given to the Customer), (b) downtime for emergency maintenance (of which prior Written notice is given to the Customer if practically feasible), (c) a Force Majeure Event and/or (d) subject to clause 3.2, disruptions in the Customer's IT-systems and/or infrastructure.

2.2   HMS grants to the Customer a non-exclusive, non-transferable, revocable right for its Users to access and use HMS Hub in accordance with this Agreement and the Specification during the term of this Agreement.

2.3   HMS reserves the right to, at any time and in its own discretion, modify, update and/or upgrade, temporarily or permanently, HMS Hub (or any part thereof), provided that such modification, update and/or upgrade does not diminish the overall functionality of HMS Hub. Further, the Customer acknowledges and agrees that certain modifications, updates

and/or upgrades related to HMS Hub may require the application of new software to HMS gateways in order to enable continuous connection to HMS Hub.

3.   USE OF HMS HUB

3.1   The Customer is responsible for all activity that occurs under the Customer's accounts by or on behalf of the Customer and for all activities taken while using HMS Hub. For the avoidance of doubt, the Customer undertakes to (i) be solely responsible for all Users' activity, which at all times must be in accordance with this Agreement, (ii) be solely responsible for any and all unauthorised use of HMS Hub under any Customer accounts, (iii) be solely responsible for Customer Data (other than with respect to HMS' obligations in regard of Customer Data according to this Agreement), (iv) obtain and maintain during the term of this Agreement all necessary consents, agreements and approvals for all actual or intended use of Customer Data, information, data or other content which the Customer will use in connection with HMS Hub, (v) not use HMS Hub in any manner contrary to this Agreement including any and all instructions provided by HMS connected thereto, the Specification, applicable law or regulations in any jurisdiction where HMS Hub is used, (vi) not disrupt, disable, decompile, reverse engineer or otherwise interfere with HMS Hub, (vii) not provide access to HMS Hub to other users than the Users and (viii) use all reasonable efforts to prevent unauthorised access to, or use of, HMS Hub and notify HMS promptly of any known or anticipated unauthorised access or use.

3.2   In order to use HMS Hub, the Customer must, apart from meeting basic functional requirements for access to and use of web-based content, have or obtain access to the World Wide Web, either directly or through devices that can access web-based content such as HMS Hub. For the avoidance of doubt, the Customer is responsible for its own bandwidth and adequate internet connection.

3.3   HMS shall have the right to audit the Customer's compliance with this Agreement at any time during the term of this Agreement. If during such audit HMS, in a verifiable manner, determines that the Customer has used HMS Hub contrary to this Agreement, such as by allowing access to HMS Hub other than as permitted herein or has otherwise violated any part of this Agreement, and as a result additional fees are owed to HMS, HMS shall invoice the Customer for such discrepancies in accordance with this Agreement. The Customer shall bear the costs associated with the audit should the audit conclude the Customer's breach of this Agreement. HMS' audit right shall not limit HMS' other rights and remedies under this Agreement.

3.4   The Customer agrees that HMS may, with, if reasonably practical, prior notice to the Customer, suspend the Customer's access to HMS Hub if HMS reasonably concludes that the Customer's use of HMS Hub is causing immediate risk for and/or ongoing harm to HMS or others. HMS shall use commercially reasonable efforts to resolve the issues causing the suspension of access to HMS Hub. Consequently, the Customer agrees that HMS will not be liable to the Customer or any third parties for any suspension of access to HMS Hub under such circumstances as described in the foregoing.

4.   FEES AND PAYMENT

4.1   The Customer shall pay the relevant fees set out in the Price List in accordance with this Agreement. The fees may consist of (i) a monthly subscription fee for access to HMS Hub, (ii) one-time payments (such as for project/device registration) and (iii) recurring fees, volume-based fees and one-time payments for services ordered by the Customer in HMS

Hub (the Customer will be presented with information regarding the triggering of a cost in conjunction therewith).

4.2   Unless otherwise specified in the relevant invoice, fees will become due and payable thirty (30) days from the order date. The Customer is responsible for providing HMS with complete, accurate and up to date billing and contact information. The Customer may be invoiced by a third party appointed by HMS to market and sell subscriptions to HMS Hub as an official HMS agent on behalf of HMS. Notwithstanding the payment of fees to a third party agent appointed by HMS, HMS shall always remain the contracting party in relation to the Customer.

4.3   The Customer's payment obligations are non-cancellable and fees paid are non-refundable. Any fees owed by the Customer at the time of termination of this Agreement, howsoever occasioned, will be due and payable immediately upon first demand from HMS.

4.4   HMS may in its own discretion change the fees in the Price List for HMS Hub, including recurring subscription fees, from time to time and will communicate any price changes to the Customer in advance and, if applicable, how to accept such changes. Subject to applicable law, the Customer accepts the price change by continuing to use HMS Hub after the price change takes effect.

4.5   If any invoiced fees are not received from the Customer on the due date, then, without limiting HMS' other rights and remedies, HMS shall be entitled to late payment interest on the overdue amount at the interest rate provided under applicable law, from the date such payment was due until payment is received.

4.6   In the event of late payment of fees for HMS Hub, HMS may, at its own discretion and without limiting its other rights and remedies, discontinue the Customer's access to HMS Hub until such amounts are settled.

4.7   The fees are exclusive of all taxes, duties, levies or similar governmental assessments of any kind. The Customer is solely responsible for paying all taxes and such other assessments associated with the Customer's purchases under this Agreement.

4.8   HMS may in the future offer the Customer a combined offering regarding a subscription model involving hardware (such as HMS gateways) and HMS Hub, pursuant to a separate addendum to be agreed between the parties and to form part of this Agreement.

5.   **CUSTOMER DATA AND DATA PROTECTION**

5.1   The Customer is data controller and HMS is data processor in accordance with the GDPR in relation to the processing of personal data within Customer Data. HMS' processing of Customer Data will at all times be carried out in accordance with the personal data processor agreement, attached hereto as Schedule 1. However, the personal data processor agreement in Schedule 1 shall only apply if and when Customer Data includes personal data. Furthermore, HMS retains all ownership rights in and to the Registration Data and shall at all times be regarded as data controller in relation to Registration Data in accordance with the GDPR.

5.2   The Customer Data is and will remain the property of the Customer at all times. Except as required by applicable law, HMS will (i) not use the Customer Data for any other purpose than directly in relation to the performance of its obligations under this Agreement, (ii) not sell, exploit, assign rights in or otherwise dispose of any Customer Data and (iii) not make

any Customer Data available to any third parties except for HMS' subcontractors and then only to the extent necessary to enable the subcontractor to perform its part of HMS' obligations under this Agreement.

5.3 HMS will establish and maintain reasonable administrative, physical and technical safeguards against the destruction, loss or alteration of any Customer Data in the control of HMS.

5.4 HMS Hub is physically hosted within the European Union.

5.5 Upon Written request by the Customer made within thirty (30) days after the date of termination of this Agreement, HMS shall, at the option and reasonable expense of the Customer, either return a copy of the Customer Data in a suitable format or destroy or delete the Customer Data.

6. PARTICIPATION IN PROMOTIONS

The Customer acknowledges that the inclusion of links, promotions and/or advertisements of Advertisers in HMS Hub does not constitute HMS' endorsement of the Advertisers or their websites or offerings. HMS has no control over the content of the Advertisers' websites or the collection and usage of personal information at or by those websites and therefore cannot assume any liability whatsoever in relation to the Customer for any interaction with or transactions on such websites. The Customer may enter into correspondence with or participate in promotions of the Advertisers. Any correspondence or promotions, including the delivery of and payment for goods and services, and any other conditions, warranties or representations associated with such correspondence, promotions or transactions are solely between the Customer and the Advertiser. HMS assumes no liability, obligation or responsibility for any part of such correspondence, promotion or transaction.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 Each party's Intellectual Property Rights shall remain the property of the respective party and the other party shall have no right to nor interest therein. Nothing in this Agreement

constitutes a transfer, assignment or grant of any ownership rights in any Intellectual Property Rights.

7.2   All Intellectual Property Rights existing in HMS Hub or the Specification shall remain the Property of HMS. All Intellectual Property Rights existing in the Customer Data shall remain the property of the Customer.

8.   CONFIDENTIALITY

8.1   The Receiving Party receiving Confidential Information from the Disclosing Party undertakes to hold the Confidential Information strictly confidential and to not disclose such Confidential Information to any third party, except as provided for in this Agreement.

8.2   The Receiving Party may only use the Confidential Information within the scope of the purpose of this Agreement and shall limit access to the Confidential Information of the Disclosing Party on a need-to-know basis.

8.3   This Agreement shall not prevent the disclosure of Confidential Information to the extent such disclosure is mandatory under provisions of mandatory legislation or stock market regulations. The Receiving Party shall, to the extent permitted by mandatory legislation or stock market regulations, notify the Disclosing Party of any required disclosure and make its best reasonable efforts to reduce any damage to the Disclosing Party resulting from such mandatory disclosure.

8.4   Subject to what may otherwise be provided for in this Agreement, following the termination of this Agreement, the Receiving Party shall return or delete any and all Confidential Information and not retain any copy, duplicate, extract or reproduction in whole or in part. However, the Receiving Party shall be entitled to retain copies of the Confidential Information to the extent required by compulsory legislation, stock market regulations or other applicable rules (such as professional standards) and copies of the Confidential Information resulting from automatic back-up procedures or archival copies not accessible day-to-day and which are generated in the ordinary course.

9.   TRADE COMPLIANCE

9.1   The Customer represents and warrants that (i) the Customer and its Users shall comply with all applicable laws and regulations, including anti-bribery laws, trade and economic sanctions and export control laws, (ii) none of the Customer, its affiliates and other representatives is or is owned or controlled by any person targeted under the sanctions or export controls of the UN, US, UK, EU or any other relevant government, (iii) the Customer and its Users will not engage in any business involving a sanctioned person and (iv) the Customer will immediately inform HMS of any suspected or alleged breach of the foregoing. Following any reasonably suspected breach, HMS has the discretionary right to suspend the Customer's access to and use of HMS Hub or terminate this Agreement.

9.2   Notwithstanding any provision of this Agreement to the contrary, HMS shall not be obliged to take any action under this Agreement if it believes in good faith that such action may

constitute a violation, or contribute to a violation, of any anti-bribery laws, trade and/or economic sanctions or export control laws.

10.   WARRANTIES AND DISCLAIMERS

10.1   Subject to the terms set out herein, HMS warrants to the Customer during the term of this Agreement that HMS Hub will comply substantially with the functionality described in the Specification and that such functionality shall substantially be maintained in subsequent modifications, updates and/or upgrades of HMS Hub in accordance with clause 2.3. The Customer's sole and exclusive remedy for HMS' breach of this warranty shall be that HMS shall use commercially reasonable efforts to correct such errors or modify HMS Hub to achieve the intended functionality within a reasonable period of time. Notwithstanding the foregoing, HMS shall have no obligation with respect to any warranty claim (i) unless notified of such claim within fifteen (15) Business Days of the first material functionality problem or (ii) where any alleged non-conformity is due to the Customer's error as reasonably determined by HMS, following amicable discussions with the Customer. For the avoidance of any doubt, no warranties are provided with respect to that HMS Hub will be free of non-material errors, bugs or interruptions, or that all such errors may be corrected.

10.2   Except as otherwise is stated in clause 10.1, HMS Hub is provided on an as-is basis and HMS does not represent that the Customer's use of HMS Hub will be secure, timely, uninterrupted or error-free, or that HMS Hub will meet the Customer's requirements or that all errors in HMS Hub will be corrected or that HMS Hub will be free of viruses or other harmful components or that HMS Hub will operate in combination with other hardware, software, systems or data not provided by HMS or the operation of HMS Hub will at all times be secure or that HMS will at all times be able to prevent third parties from accessing or destroying Customer Data or the Customer's Confidential Information. The warranty stated in clause 10.1 is the sole and exclusive warranty offered by HMS. There are no other warranties or conditions, express or implied, including without limitation, those of merchantability or fitness for a particular purpose. The Customer assumes all responsibility for determining whether HMS Hub or the information generated thereby is accurate or sufficient for the Customer's purpose.

11.   INDEMNIFICATION

The Customer will defend, indemnify and hold HMS harmless from and against any claim, demand, suit or proceeding brought against HMS by a third party (i) relating to or arising from the Customer's use of HMS Hub in violation of this Agreement, (ii) relating to or arising from HMS' permitted use of the Customer Data or (iii) the Customer's breach of any third party terms and conditions (which relevant parts of such terms and conditions, for the purposes of this clause 11, are incorporated herein by reference) in connection with or relating to HMS Hub, provided that HMS (a) promptly gives the Customer Written notice of the claim, (b) gives the Customer the sole control of the defence and settlement of the claim and (c) provides the Customer with all reasonable assistance, at the Customer's expense.

12.   LIMITATION OF LIABILITY

12.1   Each party's aggregate liability arising out of or relating to this Agreement, howsoever arising, shall not exceed the total amount of fees paid by the Customer to HMS for the Customer's access to and use of HMS Hub during the twelve (12) month period preceding

the date on which the event giving rise to the claim occurred. If the event giving rise to the claim occurred before the twelve (12) month period has elapsed, the limitation shall instead be calculated as the average monthly fees paid up until such point in time by the Customer for the Customer's access to and use of HMS Hub multiplied by twelve (12). The foregoing limitation of liability shall not apply in relation to claims under clauses 7 (Intellectual Property Rights), 8 (Confidentiality) and 11 (Indemnification) of this Agreement or if a party's liability results from gross negligence or wilful misconduct.

12.2   Neither party shall have any liability for any loss of business, revenue, profits, production, goodwill, use, data (including Customer Data), anticipated savings or other economic advantage (irrespective of if such damage is direct or indirect) as well as any consequential or indirect damages. The foregoing limitation of liability shall not apply in relation to claims under clauses 7 (Intellectual Property Rights), 8 (Confidentiality) and 11 (Indemnification) of this Agreement or if a party's liability results from gross negligence or wilful misconduct.

13.   TERM AND TERMINATION

13.1   This Agreement will continue to apply until terminated by either HMS or the Customer. HMS may terminate the Agreement or suspend a User's access to HMS Hub in the event of any actual or suspected unauthorised use of HMS Hub or otherwise due to a breach or a reasonably anticipated breach of this Agreement, as determined by HMS. The Customer may terminate this Agreement by terminating the relevant Customer account, in accordance with the instructions in the Specification. However, the termination of the Customer Administrator Account will result in the automatic suspension or termination of all Users' accounts, unless a new Customer Administrator Account for the Customer is designated within a reasonable time. The Customer acknowledges and agrees that HMS shall have no obligation to refund any amounts already paid by the Customer in the event of termination of this Agreement, howsoever occasioned.

13.2   Following the termination of this Agreement, howsoever occasioned, all rights granted to the Customer in relation to HMS Hub will immediately cease and the Customer shall stop using HMS Hub.

14.   MISCELLANEOUS

14.1   Notices under this Agreement shall be given in Written form and be provided to the other party pursuant to the contact information stated in HMS Hub and pertaining to the Customer and HMS, respectively.

14.2   The Customer may not, wholly or partly, assign, pledge or otherwise dispose of its rights and/or obligations (including by way of mergers and demergers completed in accordance with applicable law) under this Agreement without HMS' prior Written consent. HMS may without prior notice to the Customer, wholly or partly, assign its rights and/or obligations to an affiliate.

14.3   English language terms used in this Agreement shall be interpreted solely with reference to legal usage, traditions and the laws of Sweden and not with reference to the legal usage, traditions or laws of any other country.

14.4   Neither party shall be deprived of any right under this Agreement because of its failure to exercise any right under this Agreement or failure to notify the infringing party of a breach

in connection with the Agreement. Notwithstanding the foregoing, rules on complaints and limitation periods, such as in clause 10.1, shall apply.

14.5   Terms which by their nature extend beyond the term of this Agreement shall survive the termination of this Agreement.

15.   GOVERNING LAW AND DISPUTE RESOLUTION

15.1   This Agreement shall be governed by the substantive laws of Sweden, without regard to its conflict of laws rules.

15.2   Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the SCC. The Arbitration Rules by the SCC shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that Rules for Expedited Arbitrations shall apply. In the former case, the Arbitral Tribunal shall be composed of three (3) arbitrators.

15.3   The seat of arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall be English. The confidentiality undertaking in this Agreement shall, *mutatis mutandis*, apply to the arbitral proceedings, the arbitral award and the fact that arbitration has been initiated.

If you have any questions regarding HMS Hub or the Agreement, please contact us by visiting the Contact section on our website.

Contracting Entity: HMS Industrial Networks AB
Stationsgatan 37, SE-302 50 Halmstad
Sweden
SE-556529-9251

SCHEDULE 1 – PERSONAL DATA PROCESSOR AGREEMENT

BETWEEN

Customer, hereinafter referred to as the "**Controller**",

AND

HMS Industrial Networks AB, VAT No. SE 556529925101, a company incorporated under the laws of Sweden with its head office located at Stationsgatan 37, 302 50 Halmstad, SWEDEN, hereinafter referred to as the "**Processor**",

Together referred to as the "**Parties**".

WHEREAS

A.   The Controller collects and manages Personal Data that the Processor processes as part of the service provided by the Processor to the Controller according to the Agreement.

B.   The applicable Data Protection legislation (i.e. for example the General Data Protection Regulation and national data protection laws) requires the Controller to enter into a data processing agreement with the Processor.

C.   The Processor will process Personal Data included in Customer Data (as defined in the Agreement) on behalf of the Controller.

D.   The Controller guarantees that no Special Categories of Personal Data, as defined in Article 1, is processed in relation to this agreement.

HAVE AGREED AS FOLLOWS

1.   **DEFINITIONS**

"**Data Processing Agreement**" means the present data processing agreement including its annexes;

"**Agreement**" means the HMS Hub Terms of Service;

"**Biometric Data**" means Personal Data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopy data;

"**Customer**" means the Customer set out in the Agreement;

"**Data Concerning Health**" means Personal Data related to the physical or mental health of a natural person, including data concerning the provision of health care services, which reveal information about his or her health status, including a patient number, medical services, blood levels, etc.;

"**Data Subject(s)**" means the identifiable or identified natural person(s) whose Personal Data is or are processed;

"**General Data Protection Regulation**" or "**GDPR**" means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

"**Genetic Data**" means Personal Data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;

"**Judicial Data**" means Personal Data in related to judicial convictions, allegations and prosecutions regarding criminal offenses, proceedings pending before administrative authorities or courts, administrative sanctions and safety measures;

"**Personal Data**" means any information which the Processor processes on behalf of the Controller within the framework of the Agreement and which can directly or indirectly identify the Data Subject;

"**Personal Data Breach**" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;

"**Sensitive Data**" means Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or revealing a trade union membership, as well as data regarding a person's sexual behaviour or sexual orientation; and

"**Special Categories of Personal Data**" means one or more of the following categories of Personal Data: Data Concerning Health, Sensitive Data (including data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, data concerning a natural person's sex life or sexual orientation), Genetic Data, Biometric Data or Judicial Data.

2.   OBJECT

2.1   The Processor shall exclusively and always process the Personal Data in the name and on behalf of the Controller. The Processor is not allowed to process the Personal Data for his own account nor for the account of a third party. The Processor has no control on the purpose of the processing of Personal Data, nor may he independently take decisions concerning the use or disclosure of the Personal Data, unless and to the extent it has been expressly agreed upon in the Data Processing Agreement, or instructed by the Controller, or when Processor in good faith makes the assessment that disclosure is reasonably necessary to comply with a law, regulation or compulsory legal request.

2.2   The Controller shall ensure that any disclosure of Personal Data to Processor is Personal Data that has been collected lawfully, i.e. processed based on a legal basis as described in the articles 6-10 of the GDPR. The Controller shall indemnify Processor against all losses, expenses and liabilities incurred by Processor arising directly or indirectly from the Controller's breach of this obligation.

2.3   The subject, duration, nature and purpose of the processing, as well as the type of Personal Data being processed and the categories of Data Subjects, are listed in Annex 1. Any change in one of the elements listed in Annex 1, will result in an amendment of Annex 1, as mutually agreed by the Parties. If the Processor or Controller is aware of the fact that one of the

elements listed in <u>Annex 1</u> will be changed, the Party must promptly inform the other Party hereof in writing.

2.4   The Processor only processes the Personal Data for the performance of its obligations under the Agreement, in accordance with the Data Processing Agreement and the written instructions of the Controller and shall perform the processing at all times with state of the art security measures and at all times in accordance with the organisational and technical security measures as set out in <u>Annex 2</u> to this Data Processing Agreement. The Processor may not edit (nor have anyone edit) the Personal Data (such as but not limited to copying, printing, forwarding, enriching, modifying, etc.) unless and to the extent necessary for the performance of the Agreement and the Data Processing Agreement.

2.5   The Parties will, each in their respective capacity, process the Personal Data in accordance with the GDPR, and any other applicable regulation to which the respective Party is subject.

2.6   The Processor acknowledges being granted or subject to the Processor-oriented rights and obligations under the GDPR. The Processor acknowledges that the Controller is granted or subject to the Controller-oriented rights and obligations under the GDPR.

3.   CONFIDENTIALITY AND SUB-CONTRACTORS

3.1   Regardless the type of Personal Data entrusted by Controller to Processor, the Processor shall treat the existence of the processing in name of and on behalf of the Controller, and the Personal Data, as strictly confidential.

3.2   The Processor shall not disclose, in any form (including in the form of anonymous or anonymized Personal Data) or manner whatsoever, the Personal Data to third parties or grant third parties access to Personal Data, including to sub-processors, except in the cases and under the conditions provided for in Article 3.3.

3.3   The Processor may grant third parties access to the Personal Data in the event:

(a)   the Controller gave its prior and explicit written approval – the Controller hereby agrees that access to the Personal Data is being granted to third parties listed in <u>Annex 1</u>.

(b)   Should the Processor wish to engage a new sub-contractor, it shall notify the Controller in advance. The Controller may always, within five (5) business days from receipt of the notification, object to the Processor appointing that specific sub-contractor. Should the Controller's objection(s) result in any additional costs or expenses for the Processor e.g. if the engagement of another sub-contractor than the one initially proposed by the Processor would result in additional or increased costs or expenses by the Processor, the Processor shall be compensated for such additional and/or increased costs and expenses.

(c)   The Processor is required to grant such access if access is required under law that the Processor is subject to. In this case unless such notification is prohibited by law or by overriding reasons of general interest, the Processor shall notify the Controller in advance and in writing about the request to access Personal Data, the relevant mandatory provision and the response the Processor intends to give to this request.

3.4   Except in the cases set out in Article 3.3 (a), in the event the Processor grants third parties access to the Personal Data, it undertakes that each third party will be subject to contractual

obligations at least equivalent to the ones to which the Processor is itself subject vis-à-vis the Controller under this Data Processing Agreement. The Processor guarantees that each third party, to whom it grants access to the Personal data, shall comply with these obligations. The Processor provides to Controller, on its request and without undue delay, a copy of the sub-processing agreement(s).

3.5   The Processor can grant its employees access to the Personal Data in accordance with the need-to-know principle, i.e. to the extent the employees need such access to the Personal Data in order to allow a proper performance of the Processor's obligations under the Agreement and under the Data Processing Agreement.

3.6   The Processor shall be responsible for complying with the duty of confidentiality by all people (i.e. employees and contractors) who are involved in the processing of Personal Data under this Data Processing Agreement. This duty of confidentiality also continues to apply indefinitely after termination of present Data Processing Agreement.

3.7   The Processor shall guarantee the confidentiality of the personal data to be processed and will take the necessary organisational and technical security measures as described in Annex 2 to this Data Processing agreement.

4.   OBLIGATION TO ASSIST

4.1   The Processor commits to assist the Controller in ensuring compliance with its legal obligations pursuant to Articles 32 to 36 under the GDPR taking into account the nature of the processing and the information available to the Processor. In this regard the Processor shall provide assistance upon a timely request from the Controller.. In the event the Processor is of the opinion that a Controller's request or instruction infringes the GDPR, the Processor will immediately notify the Controller. This assistance provided by the Processor to the Controller shall be subject to reasonable compensation.

4.2   Upon the Controller's request, the Processor shall inform the Controller about the modalities of its Personal Data's processing and shall during normal business hours and upon reasonable notice (whereby a notice period of twenty (20) business days always shall be deemed reasonable) grant access to the processed Personal Data and to all documents, buildings, systems, software, hardware, databases, installations and infrastructure necessary to enable the Controller to verify compliance with this Data Processing Agreement.

4.3   Upon the Controller's request, the Processor shall accept and cooperate during audits and inspections of the processing of the Controller's Personal Data so that the Controller is able to verify whether the Processor complies with its obligations following this Data Processing Agreement and the applicable data protection laws (GDPR and national data protection laws) relevant for the fulfilment of this Data Processing Agreement. The Controller may itself carry out these audits and inspections or mandate an independent third party that is approved by the Processor thereto. If the Controller mandates a third party, such third party shall agree to be bound by confidentiality obligations that are no less protective than those set out in Article 3 of the Data Processing Agreement.

4.4   The Processor shall without undue delay transfer to the Controller any Data Subject's request or question in connection with the (processing of) Personal data. The Controller shall decide on the response to be given in that regard. On request of the Controller, the Processor shall assist and support the Controller in responding to such data subject's requests insofar reasonably possible for the Processor. In particular, the Processor shall, if and to the extent that it falls within its technical capabilities and powers under the Data Processing Agreement,

comply within ten (10) business days with any Controller's request regarding the response or execution of the Data Subjects' requests. The Processor shall be entitled to reasonable compensation for this assistance.

4.5   To the extent that the Processor itself has communicated Personal Data to third parties, it shall without undue delay transfer to these third parties every Personal Data's alteration, erasure or restriction of which it becomes aware.

4.6   If the Controller is of the opinion that a data protection impact assessment must be conducted, the Processor commits itself to assist the Controller, upon its written request, with providing information that is available to the Processor and shall only begin the processing after receipt of the Controller's written instructions in this regard. The Processor shall be entitled to reasonable compensation for this assistance. For the avoidance of doubt, the Processor will not be responsible for any disruptions in the service provided under the Agreement caused by the Controller's request to stop processing the Personal Data during the execution of the data protection impact assessment.

4.7   In the event a Data Subject wishes to exercise her/his right to data portability regarding Personal Data processed by the Processor in the name of and on behalf of the Controller, the Processor shall communicate the relevant Personal Data in a structured, standard and machine-readable form to the Controller or, at the request of the Controller, to the Data Subject. The Processor shall be entitled to reasonable compensation for this assistance.

5.   PERSONAL DATA BREACH

5.1   If a Personal Data Breach occurs or has occurred, the Processor shall, without undue delay after becoming aware of it, notify the Controller by telephone or by e-mail according to contact information provided in HMS Hub.

5.2   The Processor provides the Controller upon the notification of the incident, or if this is not feasible without undue delay after the notification of the Personal Data Breach, with the following information regarding the Personal Data Breach:

(a)   the nature of the Personal Data Breach,

(b)   where possible the categories of Data Subject(s),

(c)   the estimated amount of Data Subject(s),

(d)   the categories of Personal Data,

(e)   the estimated amount of Personal Data,

(f)   the name and contact details of the data protection officer if the Processor has appointed such an officer, or in the event that there is no data protection officer, another contact point where more information on the Personal Data Breach can be obtained,

(g)   the likely consequences and risks, including the likely consequences and risks for the Data Subjects, and

(h)   the measures taken to address the Personal Data Breach, including, where appropriate, the measures to mitigate its possible adverse effects.

5.3   The Processor shall respond on a priority basis to any question/request from the Controller regarding the Personal Data Breach.

6.   ORGANISATIONAL AND TECHNICAL SECURITY MEASURES

6.1   The Processor undertakes to implement and comply with the appropriate technical and organisational security measures necessary for the Personal Data's protection as defined in article 32 in the GDPR.

6.2   The Processor shall take into account the information provided by the Controller regarding the processing activities conducted on behalf of the Controller, when determining the appropriate technical and organisational security measures, (i) the state of the art, (ii) the implementation costs related to these measures, (iii) the nature, scope, context and purposes of processing, and (iv) the risks involved for the Data Subjects' rights and freedoms, in particular in case of accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or non-authorised access to Personal Data transmitted, stored or otherwise processed.

6.3   The Parties agree that the security measures taken by the Processor listed in Annex 2 fulfils the Processor's undertakings under article 32 of the GDPR on the effective date of this Data Processing Agreement.

7.   LIABILITY

7.1   Each Party shall compensate the other Party for all losses due to claims from third parties resulting from, arising out of or relating to any breach by such first-mentioned Party of this Agreement.

7.2   Notwithstanding the above, the Processor shall not be held liable for indirect losses, including damages and/or consequential damages such as loss of profit or revenue, or other economic losses incurred pursuant to this Agreement, except in cases of wilful intent or gross negligence on part of the Processor. The Processor's total liability towards the Controller shall never exceed the amount paid to the Processor pursuant to the Agreement during the last twelve (12) months' period.

8.   FORCE MAJEURE

8.1   Either Party shall not be liable for any default or delay in the performance of its obligations under this Data Processing Agreement if and to the extent the default or delay is caused by circumstances that are outside the Party's control and that the Party could not reasonably have foreseen or prevented by reasonable precaution. Such circumstances include, but are not limited to, labour disputes and all other circumstances, such as fire, mobilisation, seizure, embargo, ban on currency transfer, revolt, a shortage of modes of transport, general scarcity of raw materials, limitations in energy use.

8.2   The Party that is unable to fulfil its obligations due to circumstances described above in 8.1 must immediately inform the other Party of the commencement as well as of the end of the force majeure circumstances in writing.

9.   **TRANSFER OF PERSONAL DATA**

9.1   The Processor cannot transfer Personal Data to a country outside the European Economic Area unless that country or the undertaking(s) concerned (including companies linked to the Processor) to which the Personal Data are transferred guarantee(s) an adequate level of protection of Personal Data, and the Controller has given its prior written consent to the transfer. The Controller agrees to the transfer of personal data to the countries listed in Annex 1.

9.2   A transfer to a country outside the European Economic Area is authorised without the Controller's written consent if this transfer is necessary on the basis of a rule of law which is mandatory under law. In such case, the Processor shall notify the Controller in advance and in writing about the legal provision on the basis of which the Processor is obliged to transfer the Personal Data, unless the relevant legislation prohibits such notification for reasons of public interest.

9.3   The Processor guarantees that the country or the undertaking, to which the Personal Data are transferred, ensures an adequate level of protection of Personal Data.

9.4   In the event of a transfer of Personal Data by the Processor to a country outside the European Economic Area, the adequate level of protection is guaranteed by the signature of the European Commission Standard Contractual Clauses. The Parties acknowledge the lack of European Commission Standard Contractual Clauses for transfers "processor to sub-processor". This particular transfer will only take place if (i) the European Commission Standard Contractual Clauses "controller-processor" are entered into between the Controller and the sub-processor, or (ii) the European Commission Standard Clauses "controller-processor" are entered into with the sub-contractor by the Processor on behalf of the Controller. In both cases, the Processor shall indemnify the Controller for all damages and claims arising from the sub-processor's non-compliance with the European Commission Standard Contractual Clauses.

10.   **DURATION AND TERMINATION**

10.1   The Data Processing Agreement shall enter into force on the date of its signature, if the Customer Data includes Personal Data. In other cases, the Data Processing Agreement shall enter into force on the date when Personal Data is included in Customer Data by the Controller.

10.2   The Data Processing Agreement shall remain in force for the duration of the Agreement. This Data Processing Agreement shall terminate automatically if the Agreement terminates.

10.3   In case of a breach of one of the provisions of this Data Processing Agreement by a Party, it can be terminated immediately by the other Party at the expense of the Party that remains in default. Furthermore, this Data Processing Agreement can be terminated at any time with a two-month notice period, provided that the termination is communicated by registered letter.

10.4   Upon termination of the Data Processing Agreement, all Personal Data and any physical or electronic copies thereof must be, at the choice of the Controller, provided to the Controller

or be deleted, together with all existing copies, unless the storage of the Personal Data is required on the basis of EU law and/or EU Member State law.

11.   APPLICABLE LAW & COMPETENT COURT

11.1   This Data Processing Agreement shall be exclusively governed by Swedish law.

11.2   All disputes arising from this Data Processing Agreement shall be settled in accordance with the Agreement.

12.   MISCELLANEOUS

12.1   The Data Processing Agreement is severable. If one or more provisions that do not affect the essence of the Data Processing Agreement are declared fully or partially invalid, void or unenforceable, this shall not affect the validity and enforceability of the remaining provisions of this Data Processing Agreement nor of the entire Agreement. The Data Processing Agreement will remain in force between the Parties, as if the invalid, void or unenforceable provision never existed.

12.2   In the aforementioned case, the Parties undertake to renegotiate in good faith the Data Processing Agreement in order to modify or replace the (fully or partially) void, invalid or unenforceable provision by a provision that most closely matches the purpose of the invalid, void or unenforceable provision.

12.3   The modifications of and supplements to the Data Processing Agreement are valid only if they are expressly agreed in writing between the Parties.

12.4   If a provision of the Agreement is incompatible or contradictory to the provisions of this Data Processing Agreement, the Data Processing Agreement will prevail.

12.5   If the Personal Data or the relationship between the Parties is subject to new (European) legislation or case law, the Parties agree to renegotiate in good faith the Data Processing Agreement, and to bring the Data Processing Agreement in line with the new (European) legislation or case law.

12.6   This Agreement has been executed in two copies by the duly authorized representative of each party and shall be effective on the date of the last signing of this Agreement.

This Agreement has been executed in two (2) copies by the duly authorized representative of each party and shall be effective on the date of the last signing of this Agreement.

_____   _____

For the Controller   For the Processor
Customer   HMS Industrial Networks AB

Name Printed: Name Printed:

Title: Title:

Date: Date:

ANNEX 1
OVERVIEW OF THE AGREEMENT AND THE PROCESSING OPERATIONS

A. Name and date of the Agreement	HMS Hub Terms of Service.
B. Subject matter of the Agreement	Provision of HMS Hub as described in the HMS Hub Terms of Service.
C. Duration of the processing	The Processor will process Personal Data during the term of the Agreement.
D. Nature and purposes of the processing	The Processor will process Personal Data within Customer Data for the purpose of providing services to the Controller (*i.e.* the Customer) under the Agreement. The personal data may be subject to basic processing activities such as storage, transmission, viewing, deletion, etc.
E. Type of Personal Data that are processed	The types of Personal Data that will be processed are the types of Personal Data that the Controller decides to include in HMS Hub. Such Personal Data may include *e.g.* log data, employee identification numbers, time stamps, and any other Personal Data that the Controller includes in HMS Hub. The inclusion of personal data in HMS Hub by the Controller shall be construed as an instruction to the processor to process such Personal Data.
F. Types of Special Categories of Personal Data	Not processed under this Data Processing Agreement
G. Categories of Data Subjects	Categories of Data Subjects may consist of Controller employees, consultants that may be engaged by the Controller and other individuals whose Personal Data the Controller includes in HMS Hub.
H. Location(s) of the processing of Personal Data, including countries outside the EU/EEA	All Personal Data is processed within the EU/EEA or other country that guarantee(s) an adequate level of protection of Personal Data.
I. Third parties	- Wusys, and - SMS4.de

ANNEX 2
TECHNICAL AND ORGANISATIONAL SECURITY MEASURES

The Processor shall install and provide the following security measures in order to protect the personal data:

Organisational measures
- IT and IT Security policy
- Raising staff's awareness through information and training
- Notification procedure in case of physical/technical incidents
- Emergency plan in case of, among others, physical/technical incidents
Technical measures
- Back-up system
- Measures in case of fire-, burglary-, or water damage, or physical/technical incidents
- Control of access (physically and logical)
- Authentication system
- Password policy
- Patching
- Anti-virus
- Fire wall
- Network security
- Surveillance, examination and maintenance of the systems
- Subcontractor agreements