

## **Cognitive Systems Corp.**

### **Terms of Sale**

This Agreement is between Cognitive Systems Corp. (“Cognitive”) and the individual (“Customer”) purchasing on [www.aurahome.com](http://www.aurahome.com) (the “Site”) an Aura®, a wireless motion-monitoring system for the home (“Product”), including all hardware and executable versions of software embedded within a Product or otherwise made available by Cognitive to facilitate Customer’s use of a Product, as from time to time updated, enhanced or otherwise modified by Cognitive, in its sole discretion, (“Software”).

Customer will be legally bound by this Agreement and should read it carefully. When prompted, Customer must check the appropriate box to accept the terms of this Agreement and purchase a Product. If Customer does not indicate its acceptance of such terms by checking the appropriate box, Customer will not be able to purchase a Product.

#### **1. Orders**

All orders for a Product received by Cognitive through the Site are subject to acceptance by Cognitive and the terms of this Agreement as well as any terms set forth on the Site (including, but not limited to, price). Cognitive may reject any such order for any reason, in its sole discretion. After Customer submits an order, Customer will receive an email message that such order has been received by Cognitive. Any such order is deemed accepted when Customer receives a second email message from Cognitive confirming acceptance of, or shipping information for, such order. If any such order relates to a Product that is unavailable or is otherwise rejected, Customer will be so notified in an email message.

#### **2. Personal Information**

In using the Site, submitting an order for a Product and using a Product, Cognitive may collect personal data and other information from Customer, Customer’s computer and the location where such Product is installed; provided, however, that Cognitive will not collect any personal data or other information relating solely to the credit card used by Customer to pay for a Product. All such personal data and other information will be held and used by Cognitive as set forth in its privacy policy, a copy of which is posted on the Site. All personal data and other information relating solely to a credit card used by Customer to pay for a Product will be collected and used by one or more Third-Party Vendors (as defined in Section 10).

#### **3. Sale**

In submitting an order for a Product through the Site that is accepted by Cognitive, Customer purchases from Cognitive the quantities of such Product (not including any software or other similar technology embedded in such Product (collectively “Software”) set forth in such order, subject to the terms of this Agreement. Customer must provide Cognitive with complete and accurate information in submitting any such order. Any Product sold on the Site is intended for

personal use (including a gift to a third party) only, and is not authorized for resale or other commercial purposes.

#### **4. License**

Cognitive grants to Customer a non-exclusive, non-transferable and revocable license to use Software solely in the United States or Canada for a Product's intended purposes. Except as expressly stated in this Agreement, all right, title and interest in Software and all documentation relating thereto remain at all times with Cognitive and Customer will not (and will not permit any third party to) copy, download, modify, prepare derivative works of, use (other than solely for the benefit of Customer as expressly provided herein), distribute, share, sell, sublicense or otherwise transfer, or disassemble, decompile, reverse engineer or otherwise attempt to learn the source code or structure of, or any algorithm or coding technique used within, Software.

#### **5. Payment**

Customer must pay for a Product, plus all other amounts payable hereunder, by using a valid credit card that Customer is authorized to use. All information provided by Customer to Cognitive regarding such credit card must be complete and accurate in all respects. Customer's credit card will not be charged for a Product until such Product is shipped to Customer.

#### **6. Shipping**

In submitting an order for a Product, Customer will have options for shipping, and Customer will be charged for shipping as set forth on the Site. All risk of loss to a Product being shipped by Cognitive transfers to Customer upon Cognitive's delivering such Product to an independent carrier at the place of business of Cognitive (or Cognitive's designee). Any dates posted on the Site for shipping or receiving a Product are only estimates and Cognitive is not responsible for any failure to ship such Product, or any failure of Customer to receive such Product, on or before such dates.

#### **7. Return Policy**

If Customer is not satisfied with any Product ordered by Customer through the Site, Customer may return such Product to Cognitive for any reason within 30 days after such Product is shipped to Customer by Cognitive (or Cognitive's designee) for a complete refund of the price plus taxes paid by Customer (not including any charges for shipping). If any Product ordered by Customer through the Site does not satisfy the warranty set forth in Section 18 in any material respect, Customer may return such Product to Cognitive at any time within one year after such Product is shipped to Customer by Cognitive (or Cognitive's designee) for repair or replacement, in the sole discretion of Cognitive; provided, however, that Customer must first receive from Cognitive a "return merchandise authorization" in writing (including email) from Cognitive. Additional instructions for returning a Product will be provided to Customer along with the shipment of such Product or can be found at [www.aurahome.com](http://www.aurahome.com).

## **8. Account**

In submitting an order through the Site for a Product, Customer must establish an account with Cognitive that is accessible using a user name and password selected by Customer. Customer's user name and password must comply with whatever protocol is from time to time established by Cognitive for user names and passwords, and must not be disclosed by Customer to third parties. Customer (a) is responsible for maintaining the confidentiality of Customer's user name and password, and (b) must immediately notify Cognitive in writing of any loss, or any unauthorized access, disclosure or use, of Customer's user name or password. Cognitive will not have any liability to Customer or any third party arising from Customer's failure to keep Customer's user name or password confidential and may at any time, in its sole discretion and without notice to Customer, terminate or temporarily disable Customer's access to such account. In addition, Cognitive may rely on any use of Customer's user name or password, whether by Customer or any third party, as having been authorized by Customer, unless (a) Customer previously notified Cognitive in writing of any loss, or any unauthorized access, disclosure or use, of Customer's user name or password, (b) Cognitive has had a reasonable opportunity of not less than five days to act on such notice and (c) Cognitive's acting on such notice would have clearly avoided any third-party use of such account that was not authorized by Customer. All orders submitted by Customer while logged into Customer's account will be associated with such account.

## **9. Content**

All right, title and interest in any content (including, but not limited to, all intellectual property rights therein) made available through the Site or a Product (collectively "Content") belongs to, or is licensed by, Cognitive, unless stated otherwise in writing by Cognitive. Customer may access and use any Content solely in connection with Customer's authorized use of a Product, and for no other purpose; provided, however, that Customer may not, in any case, use any Content for any purpose prohibited by (a) Cognitive, in its sole discretion, after Customer receives notice of such prohibition, (b) this Agreement, or (c) any applicable law. Customer must at all times use reasonable efforts to keep all Content confidential, and not disclose it to any third party, unless such third party needs to know such Content in connection with Customer's use of a Product as permitted by this Agreement or as required by applicable law. Customer may make copies of any Content only (a) in connection with Customer's use of a Product as permitted by this Agreement, (b) as required by any applicable law, or (c) as otherwise authorized in writing by Cognitive.

## **10. Third-Party Vendors**

Cognitive may rely on third parties to provide products, services and content in connection with a Product, the Site or this Agreement (collectively "Third-Party Vendors"), and Cognitive will have no responsibility or liability with respect to Third-Party Vendors or their products, services or content. Third-Party Vendors may impose additional terms upon Customer's use of such products, services and content, and Customer will be bound by such terms just as though they are set forth in this Agreement in their entirety. If Customer desires to receive a copy of such terms, Customer should request one in writing from Cognitive as set forth in Section 24.

## **11. Customer's Responsibilities**

Customer is solely responsible and liable for (a) obtaining and maintaining all third-party equipment, software and services necessary to use the Site and a Product, (b) protecting access to, and security of, all equipment, software and services used to connect to the Site, (c) performing all of Customer's obligations pursuant to this Agreement, (d) obtaining and maintaining appropriate licenses and rights for use of any third-party products (including, but not limited to, web-browser software), equipment or services in connection with using the Site or a Product, and for paying all fees associated therewith, (e) all fees payable pursuant to this Agreement as a result of the use by Customer or any third party of Customer's account, user name or password, except as set forth in Section 8, (f) promptly reporting to Cognitive in writing any defect or error in, shortcoming of, and other problem with, the Site or a Product, (g) Customer's compliance with all applicable law in connection with all matters for which Customer is responsible hereunder, and (h) obtaining from any third party any required approval, authorization, consent, license, permission and permit to use the Site or a Product as contemplated herein.

## **12. Right to Monitor**

Cognitive may monitor Customer's use of a Product to confirm that Customer is complying with Customer's obligations pursuant to this Agreement or for other legitimate commercial purposes; provided, however, that Cognitive has no obligation to do so and any such monitoring will be at Cognitive's sole discretion. Cognitive will have no liability to Customer or any third party in connection with its monitoring (or not monitoring) such use.

## **13. Third-Party Sites**

A Product may contain links to other websites that are not maintained by Cognitive. Cognitive is not responsible for any content contained on such other websites or otherwise with respect to such other websites. No link from a Product to another website, or from another website to a Product, is an endorsement, sponsorship or recommendation by Cognitive of such other website and the link is provided only for Customer's convenience. Cognitive will have no responsibility or liability to Customer or any third party arising from any link between a Product and another website.

## **14. Enhancements**

Cognitive may from time to time make available to Customer additional products and services relating to a Product through software that is made available on the Site, in an authorized app store or as otherwise authorized by Cognitive. All such products and services will be subject to the terms (including, but not limited to, price) made available to Customer at the time such products or services are acquired by Customer.

## **15. Taxes**

All sales and use taxes, plus any other federal, state, county or local duty, surcharge, tax, tariff or other government-imposed fee (except for any tax on the income of Cognitive) assessed or payable upon an order for a Product or otherwise relating to this Agreement shall be payable by Customer, even if such government-imposed fee is not collected by Cognitive at the time an order for a Product is submitted to Cognitive.

#### **16. Term**

This Agreement shall be in effect as of the date Customer accepts the terms of this Agreement and continue in effect until the earlier of (a) all users authorized pursuant to the applicable Terms of Use to use a Product purchased hereunder permanently terminate their use of such Product or their accounts with Cognitive or (b) Cognitive's sending notice to Customer that Customer has failed to perform any obligation pursuant to this Agreement or any other obligation Customer has to Cognitive, whether pursuant to contract, applicable law or otherwise. All provisions of this Agreement that, by their nature, are intended to survive termination of this Agreement shall survive any such termination and may be enforced by a party at any time after such termination, subject only to any applicable statute of limitations.

#### **17. Indemnification**

Customer shall indemnify, defend and hold harmless Cognitive from all costs, damages, expenses, fines, liabilities, losses, penalties and other payments (including, but not limited to, fees and disbursements of counsel to Cognitive) resulting from, or relating to, (a) Customer's failure to perform any obligation or assume any responsibility pursuant to this Agreement, (b) any warranty or representation made by Customer in this Agreement being untrue or misleading in any respect, (c) any unauthorized use of a Product by Customer, (d) any unauthorized use by a third-party of Customer's account, user name or password, except as set forth in Section 8, (e) any products, services or content of Third-Party Vendors, or (f) except to the extent Cognitive is grossly negligent or engages in intentional misconduct, any action taken, or not taken, by Customer or any third party in reliance on a Product or any other use of a Product.

#### **18. Warranty**

So long as Customer uses and maintains a Product in accordance with all instructions and other documentation published by Cognitive with respect to such Product, Cognitive warrants only to Customer that such Product (not including Software) will perform in all material respects as described in any technical documentation published by Cognitive (not including any marketing or other similar documentation) for not less than one year from the date a Product is shipped by Cognitive (or Cognitive's designee) to Customer. If any Product fails to so perform, Customer may return such Product to Cognitive as set forth in Section 7 for repair or replacement. After a Product is repaired or replaced by Cognitive, the repaired or replacement Product will continue to be covered by such warranty only for the balance of the original warranty period. In repairing any Product pursuant to this Section, Cognitive may, in its sole discretion, use new, refurbished or used parts in good working condition. If for any reason Cognitive cannot, in its sole discretion, repair or replace a Product after using commercially reasonable efforts, Cognitive will

promptly refund to Customer the price plus taxes paid by Customer for such Product (not including any charges for shipping).

**EXCEPT AS EXPRESSLY STATED IN THE IMMEDIATELY PRECEDING PARAGRAPH, A PRODUCT IS MADE AVAILABLE TO CUSTOMER “AS IS” AND WITHOUT ANY WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE IMMEDIATELY PRECEDING SENTENCE, COGNITIVE DOES NOT WARRANT OR REPRESENT THAT (A) ANY USE OF SOFTWARE WILL BE UNINTERRUPTED OR SOFTWARE WILL BE ERROR-FREE, (B) DEFECTS IN SOFTWARE WILL BE CORRECTED, (C) SOFTWARE IS FREE OF MALWARE, VIRUSES OR OTHER HARMFUL CODE, (D) ANY FUNCTIONALITY OF A PRODUCT WILL COMPLY WITH ANY APPLICABLE LAW OR OTHER CRITERION, (E) SOFTWARE IS SUFFICIENT FOR CUSTOMER’S PURPOSES OR THE PURPOSES OF ANY THIRD PARTY, (F) SOFTWARE IS COMPATIBLE WITH ANY PRODUCTS OR SERVICES OF THIRD PARTIES, OR (G) ANY INFORMATION OF CUSTOMER (OR OTHER USER OF A PRODUCT) WILL BE SAFE FROM LOSS OR UNAUTHORIZED ACCESS, DISCLOSURE OR USE. IN ADDITION, COGNITIVE EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES (INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE).**

Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Customer.

**19. Limitation of Liability**

**COGNITIVE WILL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY WITH RESPECT TO A PRODUCT, THE SITE, THIS AGREEMENT OR OTHERWISE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGE TO, OR LOSS OF, PROPERTY). EXCEPT ONLY IN THE CASE OF ANY GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT BY COGNITIVE, IN NO EVENT WILL ANY LIABILITY OF COGNITIVE WITH RESPECT TO SOFTWARE, A PRODUCT, THE SITE, THIS AGREEMENT OR OTHERWISE EXCEED THE LESSER OF (A) ALL DIRECT DAMAGES ACTUALLY INCURRED BY CUSTOMER OR (B) THE TOTAL AMOUNT PAID BY CUSTOMER TO COGNITIVE FOR A PRODUCT (NOT INCLUDING ANY CHARGES FOR SHIPPING). THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION SHALL APPLY REGARDLESS OF ANY THEORY OF LIABILITY (INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT OR TORT), EVEN IF THE POSSIBILITY OF ANY DAMAGES SHOULD HAVE BEEN FORESEEN BY COGNITIVE, AND EVEN IF ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.**

**Some jurisdictions do not allow the limitations or exclusions of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to Customer.**

**20. Export**

Customer may not export or re-export, whether directly or indirectly, any Product or any technical information relating to a Product (including, but not limited to, Software) from Canada or the United States, as applicable, to any other country without complying with all applicable law.

**21. Severability**

Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If, however, any such provision is prohibited by or invalid under such law, it will be deemed modified to conform to the minimum requirements of such law, or if for any reason it is not deemed so modified, it will be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder of such provision, or any other provision of this Agreement, being prohibited or invalid.

**22. Amendments**

This Agreement will not be amended by any conduct pursued by the parties or any third party, but may only be amended in a writing signed by Cognitive and Customer or as otherwise set forth herein. Any terms (including, but not limited to, price) relating to an order for a Product through the Site after the effective date of this Agreement may be unilaterally amended by Cognitive, in its sole discretion, at any time and such amendment will apply to all orders submitted by Customer through the Site after the date of such amendment.

**23. Dispute Resolution**

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario, without regard to its principles of conflict of laws. Any complaint of Customer relating to a Product or this Agreement must first be submitted to Cognitive as set forth in Section 24, and Cognitive must be given a reasonable opportunity of not less than 30 days to investigate and respond to such complaint. Upon Cognitive's completing such investigation and so responding, Customer and Cognitive must then attempt, in good faith, to promptly resolve any remaining aspects of such complaint. If any aspect of such complaint remains unresolved after a reasonable period of time of not less than 30 days, and Customer desires to pursue other remedies, Customer may, within one year after Cognitive received Customer's initial complaint, commence litigation against Cognitive in connection with the unresolved portion of such complaint only in a court located in a county in the United States in which Cognitive has a place of business (or if there is no such county, in any state of the United States in which Cognitive has qualified as a foreign corporation to do business) and having subject matter jurisdiction over such complaint. Customer consents to any such court being a proper venue for such complaint, and waives any right to object to such court being an improper

venue, whether for inconvenience or otherwise. If any such complaint is submitted to a court as set forth herein, Customer (a) waives any right Customer may have to a jury trial, (b) consents to all findings of fact being determined by the presiding judge, (c) waives any right to bring or join any claim against Cognitive as a member or other participant in any class action or other similar form of litigation, and (d) disclaims the applicability of the United Nations Convention on Contracts for the International Sale of Goods to any order for a Product pursuant to this Agreement.

#### **24. Notices**

Customer must send all notices to Cognitive relating to a Product or this Agreement at 560 Westmount Road North, Waterloo, Ontario N2L 0A9. Any such notice will be effective upon actual receipt by Cognitive. Cognitive may send notices to Customer through e-mail, regular mail or a general posting on the Site. Any such notice will be effective (a) immediately upon Cognitive's sending such notice to the address it has in its records for Customer in the case of e-mail, (b) five days after Cognitive's sending such notice to the address it has in its records for Customer in the case of regular mail, and (c) immediately upon Customer's entering the Site after such notice is posted on the Site.

#### **25. Waivers**

No failure of Cognitive to exercise, and no delay by Cognitive in exercising, any right or remedy under this Agreement shall be a waiver of such right or remedy. No waiver of any such right or remedy shall be effective unless made in a writing signed by Cognitive, and specifically referring to each such right or remedy being waived.

#### **26. Equitable Remedies**

Customer acknowledges that a remedy at law will be inadequate if Customer violates any provision of Section 4, 9, 10, 11, 12, 16, 20, 23, 26, 27 or 28, and if Cognitive reasonably believes Customer has violated any such provision, consents to Cognitive's obtaining from a court having jurisdiction an injunction, a restraining order, specific performance or other equitable remedy against Customer. The right of Cognitive to obtain any such equitable remedy shall be in addition to, and not in lieu of, each other right or remedy available to Cognitive under this Agreement or any applicable law.

#### **27. Third-Party Beneficiaries**

There are no third-party beneficiaries of this Agreement, and no provision of this Agreement can be enforced or relied upon by any third party.

#### **28. Miscellaneous**

This Agreement (a) inures to the benefit of, and is binding upon, Customer and Cognitive and each of Customer's and Cognitive's successors and assignees, except that Customer may not assign any of Customer's rights or obligations under this Agreement without first obtaining the



written consent of Cognitive, and (b) constitutes the entire agreement between Customer and Cognitive with respect to the subject matter of this Agreement, and supersedes all prior oral and written proposals, representations, understandings and agreements. Any attempt by Customer to assign to a third party any right or remedy hereunder will be null and of no effect. Cognitive may, in its sole discretion, assign or otherwise transfer to a third party (including, but not limited to, an affiliate of Cognitive) this Agreement or any order for a Product arising hereunder. To the extent there is any conflict or inconsistency between any provision of this Agreement and any provision contained on the Site (not including the Terms of Use), the former will control.

**Customer represents and warrants to Cognitive that Customer (1) has carefully read this Agreement, (2) is entering into this Agreement on Customer's own behalf, and (3) has sufficient capacity to enter into this Agreement.**

**After reading this Agreement carefully, Customer must click "I Agree" below to accept the terms of this Agreement. If Customer does not accept the terms of this Agreement, Customer must click "I Decline" below or exit the Site, in which case Customer will not be able to order a Product.**

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