

1. Definitions

- 1.1. SMADE and Customer are each referred to as a "Party" and collectively as the "Parties" in the Agreement.
- 1.2. The **Agreement** consists of these terms and conditions and the accepted quotation by the Customer.
- 1.3. SMADE is a IoMT company which provides smart trackers embedded in surgical trays and instruments (the "**Smart Trackers**") as well as an online platform (the "**S-HUB Platform**"), to help medical device manufacturers and healthcare organizations in their daily decision-making (together the "**Smart Tracking Solution**").
- 1.4. Customer is the legal entity that validates the quotation. Customer is a medical equipment manufacturer which markets surgical trays ("**Customer Products**").

2. Provision of the Smart Tracking Solution

- 2.1. The Smart Tracking Solution consists in the provision by SMADE to Customer of the Smart Trackers as well as a right of access to and use of the S-HUB Platform.

3. Smart Trackers

- 3.1. The Smart Trackers are owned by SMADE and shall be made available to Customer for the duration of this Agreement, subject to the payment of the Fee (as defined below). Nothing in the Agreement shall be construed as a transfer of ownership of the Smart Trackers to Customer.
- 3.2. The number and type of Smart Trackers to be provided by SMADE to Customer, as well as the details of their delivery, are specified in quotation.
- 3.3. Customer shall be solely responsible for the installation of the Smart Trackers within Customer Products and shall comply with any documentation made available to Customer on the S-HUB Platform (the "**Documentation**"). Customer's association of Smart Trackers with specific units of Customer Products shall trigger the activation of the concerned Smart Trackers. Without prejudice to the foregoing, SMADE shall automatically activate all non-activated Smart Trackers 1 month after the Shipment Date.
- 3.4. Customer shall only use, and shall ensure that its own clients only use, the Smart Trackers for the purposes for which they are intended, and in accordance with the Documentation. Where applicable, Customer shall be responsible for performing routine maintenance or repair work described in the Documentation.
- 3.5. Customer shall not, nor permit or encourage any third party to, directly or indirectly (i) reverse engineer, disassemble or otherwise attempt to discover or derive the content and underlying structure of the Smart Trackers; (ii) make any modification to the Smart Trackers; (iii) commingle, combine, merge or incorporate the Smart Trackers with any third party product other than the Customer Products, without SMADE's prior written consent or (iv) use the Smart Trackers in any manner to assist or take part in the development, marketing or sale of a product potentially competitive with the Smart Tracking Solution.
- 3.6. SMADE shall provide technical maintenance on the Smart Trackers for any issue that (i) cannot be remedied by Customer through routing maintenance or repair work described in the Documentation; (ii) is not caused by Customer's improper installation of the Smart Trackers, or by Customer or Customer's clients improper use and handling of the Smart Trackers. SMADE shall freely choose the way in which the maintenance operations are conducted, including but not limited to by freely deciding whether the affected Smart Trackers must be replaced or can be repaired. By exception to the foregoing, SMADE shall replace any Smart Tracker that ceases functioning or that SMADE determines is about to cease functioning due to discharged batteries. The procedure for repair or replacement shall be communicated by SMADE to Customer as applicable.

4. S-HUB Platform

- 4.1. SMADE hereby grants Customer a non-exclusive, non-sublicensable, non-transferable license allowing the access and use of the S-HUB Platform, for a maximum of five (5) end-users (the "**Authorized Users**") and in accordance with the Documentation.

- 4.2. Customer shall provide SMADE with complete name and contact information (first name, last name, title, e-mail address) for each of the five (5) Authorized Users and shall update such information as soon as it becomes aware of any change. SMADE shall create an individual account for each Authorized User and communicate to Customer the corresponding account log-in information. Customer shall ensure that Authorized Users are, at all times, fully informed and trained by Customer for the proper use of the S-HUB Platform, in accordance with the Documentation. Customer shall be fully liable for any act or omission of the Authorized Users in breach of the Agreement or the Documentation.
- 4.3. Customer shall not, nor permit or encourage any third party to, directly or indirectly (i) resell, license or otherwise provide or disclose the S-HUB Platform to any third party; (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover or derive the source code, object code or underlying structure, ideas, know-how or algorithms relevant to a S-HUB Platform, documentation or data related to such S-HUB Platform; (iii) modify, translate, or create derivative works based on a S-HUB Platform; (iv) commingle, combine, merge or incorporate the S-HUB Platform with any third party product without SMADE's prior written consent or (v) use the S-HUB Platform in any manner to assist or take part in the development, marketing or sale of a product potentially competitive with such S-HUB Platform.
- 4.4. The S-HUB Platform is solely provided to Customer "as-a-service" SMADE may, in its sole discretion make any changes to the S-HUB Platform that it deems necessary or useful to (i) enhance (a) the quality or delivery of SMADE's products or services to its customers, (b) the competitive strength of, or market for, SMADE's products or services, (c) the S-HUB Platform cost efficiency or performance, or (ii) to comply with applicable law, court decisions or other enforcement actions, as well as regulatory guidance or industry standards.
- 4.5. SMADE shall be responsible for the hosting and maintenance of the S-HUB Platform. Customer shall be responsible for maintaining both the functionality and security of any equipment and ancillary services needed to connect to, access or otherwise use the S-HUB Platform, including modems, hardware, servers, software, operating systems, networking, web servers and the like.

5. Intellectual Property

- 5.1. SMADE owns or controls and will retain all intellectual property rights in and to (i) the Smart Tracking Solution; and (ii) any content and data, other than Customer Data (as defined below), forming part of or included in the S-HUB Platform.
- 5.2. Customer owns or controls and will retain all rights in and to the Customer Products – excluding the Smart Trackers – and to the data collected through the Smart Trackers and made accessible to Customer through the S-HUB Platform (the "**Customer Data**"). SMADE may access, process, or otherwise use Customer Data as necessary to provide the Services. SMADE may also access, process, or otherwise use Customer data for product improvement purposes and/or the conduct of internal studies and the production of statistics, provided that all direct links between such data and Customer are removed by SMADE.

6. Data protection

- 6.1. As part of the performance of the Agreement and of the administration of the commercial relationship between them, each Party may collect certain personal data relating to the other Party's employees, agents and/or legal representatives. Such data shall only be collected and processed by each Party, as independent data controllers.
- 6.2. In this context, the Parties undertake to comply with all applicable laws and regulations pertaining to data protection, and in particular to the (i) European Regulation 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; and where applicable (ii) any other national or European legislation or regulation on personal data applicable during the term of the Contract.

7. Confidentiality

7.1. The non-disclosure agreement separately signed by the Parties on August 25 2022 shall cover the business, technical or financial information of one Party, disclosed to or acquired by the other Party as part of this Agreement, as well as SMADE's data and content, the Smart Trackers and the S-HUB Platform, and any information regarding the Smart Tracking Solution and the features, functionality and performance thereto.

8. Fee

8.1. Customer shall pay SMADE the fee described in quotation (the "Fee").

8.2. Full payment of the Fee must be made by Customer within thirty (30) days from the corresponding invoice, which shall be sent by SMADE on the Effective Date. In case full payment by Customer is not received by SMADE in due time, SMADE reserves the right to postpone and/or suspend the activation of the Smart Trackers as well as Customer's access to the S-HUB Platform, without prejudice to the possibility of terminating this Agreement for cause in accordance with the provisions of article 8 below.

8.3. SMADE is not considered as having a sales tax nexus in any of the States of the United States of America (the "US"). Therefore, in all States, SMADE is not considered as having a sales tax nexus in the purchaser's or user's State and is therefore not required to collect and remit sales tax on sales made to clients located or using our products and services in the US. Certain consumers are required to file a sale and use tax return remitting any unpaid taxes. Please refer to your tax advisor and to the regulations of the State where the property or services are used, consumed, distributed, or stored to determine if you are required to file such returns.

8.4. Amounts due under this Agreement are payable to SMADE without deduction of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value-added tax, whether or not withheld at the source and for which Customer shall be liable (collectively, "Sales Tax"). Except as forbidden by applicable law, SMADE may require that Customer submit applicable Sales Taxes to SMADE. By default, our invoices will be issued based on the assumptions that you do not have a Sales Tax Exemption Certificate nor a Sales Tax Multiple Points of Use Certificate, nor any other equivalent certificates. Therefore, we will issue our invoices with the sales tax amount based on the shipping or service addresses. If you have a Sales Tax Exemption Certificate, a Sales Tax Multiple Points of Use Certificate, or any other equivalent certificate ("the Certificates"), please provide it to us before the starting date of the performance of our services or before the date of delivery of our products (the "Dates"). If Certificates are not provided before the Dates, our invoices will still be issued based on the shipping or service addresses.

9. Term and termination

9.1. This Agreement shall commence as of the Effective Date and shall continue for seven months. If the Parties wish to continue their collaboration after the end of this Agreement, they shall sign a new, long-form, agreement.

9.2. Either party may terminate this Agreement if the other party fails to pay any amount when due or otherwise breaches this Agreement and fails to cure such breach within thirty (30) days or as agreed upon by both parties, after receipt of written notice of such breach from the non-breaching party. For the purpose of this clause, a written notice shall mean a formal letter sent by regular mail with acknowledgement of receipt.

9.3. Upon termination of the Agreement, for any reason whatsoever, and except if the Parties have decided to continue their collaboration through the signature of a new, long-form, agreement:

- SMADE will immediately deactivate all access to the S-HUB Platform of Customer and its Authorized Users and Customer shall immediately cease all use of, and all access to, the S-HUB Platform.
- SMADE will deactivate the Smart Trackers, and Customer shall safely uninstall and return all the Smart Trackers to SMADE within a maximum of 30 days following the date of termination of the Agreement, in accordance with any instruction communicated by SMADE. SMADE will carry out a close inspection of the Smart

Trackers and reserves the right to invoice Customer for the cost of any fee necessary to repair or replace damaged Smart Trackers.

9.4. Upon termination of the Agreement, if the Parties have decided to continue their collaboration through the signature of a new, long-form, agreement:

- SMADE may suspend Customer's access to the S-HUB Platform during the time-gap between the date of termination of this Agreement and the actual effective date of the new agreement (if any).
- SMADE may, at its own discretion, either authorize the Customer to keep the same Smart Trackers or decide to replace all or part of the Smart Trackers, in which case Customer shall safely uninstall and return the concerned Smart Trackers to SMADE in accordance with SMADE's instructions.

10. Warranties

10.1. SMADE warrants that (i) the S-HUB Platform does not violate third-party's intellectual property rights; (ii) the Smart Trackers will be exempt of hidden defects and will operate normally for their intended use. However, SMADE exclude all warranty in the following cases:

- Customer's improper installation of the Smart Trackers.
- Customer and/or Customer's clients' use of the Smart Trackers in breach of this Agreement or not in strict accordance with the Documentation.
- Customer access and use of the S-HUB Platform in violation of this Agreement or not in strict accordance with the Documentation.
- Any defect or incident caused by an anomaly in Customer's systems – e.g., internet connection, failing computers or software (other than the S-HUB Platform), etc.
- Any misconduct or negligence of the Customer or of Customer's clients.

10.2. For the avoidance of doubt, SMADE excludes all warranty relating to the performance and maintenance of the Customer Products themselves (including without limitation of the medical devices inside or part of Customer Products).

10.3. Customer warrants that:

- Customer owns or is otherwise fully authorized to use the Customer Data.
- The provision and use of Customer Data in the context of the Services does not and shall not violate any third party's rights.
- The installation of the Smart Trackers in Customer Products, as well as the commercialization of the Customer Products, will be made in compliance with all applicable laws and regulation.

11. Limitation of liability

11.1. SMADE's liability arising out of or related to this Agreement shall not exceed the Fee, such amount being intended as a cumulative cap and not per incident.

11.2. In no event shall SMADE have any liability: (i) in case Customer does not strictly follow the Documentation and/or Customer or Customer's own clients make any improper use of the Smart Trackers; and (ii) in relation to the performance or maintenance of the Customer Products themselves (including without limitation of the equipment inside or part of the Customers Products).

11.3. In no event shall either party have any liability to the other for any indirect damages.

12. Miscellaneous

12.1. This Agreement shall be governed by the laws of France. Each Party hereby agrees to the jurisdiction of the competent courts of Lyon.

12.2. Neither party may assign this Agreement to any third party without the prior written consent of the other. By way of exception to the foregoing, SMADE may freely assign this Agreement to an affiliate or in connection with any merger, reorganization, consolidation, sale of assets or similar transaction.

12.3. SMADE may subcontract all or part of the Services to any third party of its choice, which the Customer accepts. SMADE will remain responsible to the Customer for the performance of their obligations by the subcontractors.