

## **BODY INTERACT™ SOFTWARE LICENSE AGREEMENT**

PLEASE CAREFULLY REVIEW THE FOLLOWING END USER LICENSE AGREEMENT OF Body Interact™ SOFTWARE (HEREINAFTER “Body Interact™”) AND ANY AND ALL TERMS OF USE THAT REFERENCE THIS AGREEMENT (HEREINAFTER “AGREEMENT”).

BODY INTERACT™ IS PROPERTY OF TAKE THE WIND S.A. COMPANY (CONTACTS BELOW).

THIS AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN SUBSCRIBER AND Body Interact™ (AS DEFINED BELOW).

THIS AGREEMENT EXPRESSLY INCORPORATES ANY AND ALL TERMS OF USE THAT REFERENCE THIS AGREEMENT. THIS AGREEMENT GOVERNS ALL USE OF Body Interact™’S CLOUD RANGE OF SERVICES, SOFTWARE AND ANY ASSOCIATED DOCUMENTATION, BOTH ONLINE AND OFFLINE.

BY CLICKING “I AGREE” OR BY DOWNLOADING OR OTHERWISE USING THE SOFTWARE OR SERVICES, SUBSCRIBER CONSENTS TO ALL OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

IF SUBSCRIBER DOES NOT AGREE TO ANY OF THE TERMS OF THIS AGREEMENT, SUBSCRIBER SHALL IMMEDIATELY STOP USING THE SERVICES AND / OR SOFTWARE.

IN THE EVENT OF ANY CONFLICT BETWEEN THIS AGREEMENT AND ANY TERMS OF USE, THE TERMS OF THIS AGREEMENT SHALL PREVAIL AND CONTROL.

Body Interact™ may modify the terms of this Agreement from time to time and shall post the most current version at [www.bodyinteract.com/cloud-user-license](http://www.bodyinteract.com/cloud-user-license); it is Subscriber’s responsibility to monitor and stay informed of any changes that Subscriber’s continued use of the Services following modification of this Agreement shall constitute and Subscriber herewith consents to be bound by the modified Agreement.

### **1. DEFINITIONS:**

- **“Account”** means the account located upon the Infrastructure, created and maintained by Subscriber in order to access the Services.

- **“Device”** means Apple®, Windows® or non- Windows servers, workstations, computers or any mobile devices upon which or through which the Services are used and/or installed.
- **“Infrastructure”** means the technical systems, hardware and all connected devices of Body Interact™ or its third Party suppliers.
- **“Order”** means the agreement to subscribe to Services as between Subscriber and Body Interact™.
- **“Services”** means the various services and components thereof, the Software, any documentation both on- and offline, as well as any modifications, derivatives, updates or upgrades as may be offered by Body Interact™ from time to time, and which are subscribed to by the Subscriber via a Subscription. A Subscriber may choose to subscribe to one or more Services under his or her Subscription as may be offered by Body Interact™ from time to time.
- **“Software”** means any downloadable client software which is provided solely for the purpose of accessing the Services.
- **“Subscriber”** means an individual or entity (including, but not limited to, that entity’s firm, company, partners, associates, employees, authorized agents and servants) to which Services are provided by and as agreed to by Body Interact™.
- **“Subscription”** means the non-exclusive, non-transferable right to use the Services as ordered by Subscriber, subject to the terms of this Agreement and the full and timely payment of the Subscription Fees.
- **“Subscription Fees”** means the fees payable in respect of an Order.

## 2. SUBSCRIPTION:

- This agreement includes the Body Interact™ Business Proposal provided by Body Interact™ or Body Interact™’s authorized Agents that provides the type, quantity and payment terms for the Body Interact™’s products purchased and the terms of purchase.
- Subject to the terms and conditions of this Agreement, Subscriber may use the Services only in accordance with any written communication by Body Interact™ to Subscriber, including any then-current product documentation as posted on [www.bodyinteract.com](http://www.bodyinteract.com) from time to time. Body Interact™ shall make commercially reasonable efforts to provide the Services to Subscriber.
- This Agreement applies to the Subscriber who uses the Services or that installs, otherwise uses or permits the installation of the Software on one or more Devices as owned, operated or overseen by Subscriber to facilitate the provision of services as provided to Subscriber by Body Interact™.
- Throughout the Subscription Period, unless terminated in accordance with the terms herein, Body Interact™ grants Subscriber the following rights only if Subscriber complies with all of the terms of this Agreement.

- The Subscription begins at the time the Subscriber's Subscription is activated by Body Interact™ (other than on a trial basis) and thereafter continues in effect until the date of termination as set forth hereinafter.
- A Subscription may terminate in whole or in part due to (i) Subscriber's cancellation or (ii) breach of any of terms of this Agreement including non-payment of any Fees when due or (iii) at Body Interact™'s sole discretion.
- Subscription Fees are non-refundable if Subscriber cancels or if the Subscription is terminated for cause. As of the effective date of cancellation or termination Subscriber shall no longer be able and shall have no further right to access or use the particular Services which have been canceled or terminated.
- All licenses granted hereunder shall be annual licenses and shall self-renew and self-extend for one year unless and until Subscriber notifies Body Interact™ in writing or via email actually received by Body Interact™ of Subscriber's intent to cancel.
- Subscription fees shall be chargeable and accrue on or about the same business day of subscription activation until cancellation of this Agreement by either Party.
- An active subscription is required in order to use the software or to obtain technical support, including, but not limited to, activation, re-activation, registration or re-registration and authorized transfer by subscriber of the software to another user, and termination of subscriber's subscription for services for any reason shall forthwith serve to deny access to the software and these services as aforesaid.

### **3. GRANT OF RIGHT OF USE:**

- The Software is licensed and not sold. During a Subscription Period and subject to the due payment by Subscriber and receipt by Body Interact™ of all due and payable Subscription Fees, Body Interact™ grants Subscriber a revocable, limited, non-transferable, non-exclusive license to access the Body Interact™'s Cloud Services and use the Service pursuant to the terms of this Agreement.
- This Agreement covers any updates, new releases or enhancement(s) of the Services, which Body Interact™ may make available to Subscriber from time to time.

### **4. ACCOUNT; SECURITY:**

- Body Interact™ respects Subscriber's privacy and the terms of Body Interact™ 's Privacy Policy can be found at [www.bodyinteract.com/privacy-policy](http://www.bodyinteract.com/privacy-policy).
- To access and use the Services, Subscriber will be provided with an account that is protected by a username and password (hereinafter "Account") and Subscriber must keep any passwords and other Account details secret.
- Subscriber agrees to provide Body Interact™ with accurate and complete information when registering for an Account and at all times thereafter. Body

Interact™ must be promptly notified if changes to Subscriber's information shall occur.

- Subscriber acknowledges and agrees that Subscriber is responsible for providing the following: (i) all equipment, such as a computer and modem, that shall be necessary to access the Internet; (ii) Subscriber's own access to the Internet; and (iii) payment of all Internet access, telephone, data or other fees associated with such access.
- Subscriber is solely responsible for access to use of its Account. Body Interact™ shall not be liable for any loss or damage arising from any access to, content in and use of Subscriber's Account. In the event that Subscriber believes or suspects there has been any unauthorized access to the Account, Subscriber must notify Body Interact™ immediately.

## **5. SUPPORT:**

- During a Subscription Period, Body Interact™ will provide Subscriber with the support level service terms available at [www.bodyinteract.com/support-level](http://www.bodyinteract.com/support-level).
- In Body Interact™'s sole determination, Support shall consist of: (i) telephone or electronic support to Subscriber in order to help Subscriber locate and, on Subscriber's own, correct problems with the Services and/or (ii) supplying extensions, enhancements and other changes that Body Interact™ may make to the Services from time to time and which are made publicly available, without additional charge, to other Subscribers of the Services that are entitled to Support.

## **6. SUBSCRIBER'S CONDUCT; CONTENT OF DATA:**

- Subscriber must comply at all times with any and all applicable local, state, federal and international laws and treaties.
- Subscriber warrants that it has obtained sufficient consent and rights (i) to access any third Party's or End User's systems or networks, and (ii) to access, use and store all data and files on the Infrastructure or otherwise use via the Services such data and files.
- Subscriber acknowledges that Body Interact™ has no knowledge of, and is in no way responsible for, any of the content of Subscriber's data or files.

## **7. DATA PROTECTION:**

- Each Party shall comply with its respective obligations under applicable data protection laws. Neither Party shall do any act that puts the other Party in breach of its obligations as per this Section, nor shall anything in this Agreement be deemed to prevent any Party from taking any action it reasonably deems necessary to comply with data protection laws.

- Subscriber agrees that during the course of this Agreement: (i) with respect to data Subscriber collects, accesses or otherwise uses, Subscriber alone shall determine the purposes for which and the manner in which such data are, or will be, processed; and (ii) Subscriber is the data controller with respect to all such data Subscriber may process. Body Interact™ shall at all times be in accordance with the requirements of data protection laws and Subscriber shall fully indemnify and hold Body Interact™ harmless as against any loss, damages, liability and costs (including attorney's fees) incurred by Body Interact™ as a result of any breach of data protection laws by Subscriber.
- Body Interact™ shall comply with requests for information from legitimate judicial, legal or regulatory authorities or pursuant to any court order or subpoena, discovery request or other lawful process that Body Interact™ may receive. Body Interact™ may comply with these subpoenas or court orders with or without notice to Subscriber.

## **8. RESTRICTIONS:**

Except as otherwise expressly provided under this Agreement, Subscriber shall have no right and Subscriber shall not permit any third Party to: (i) harm, disrupt or otherwise engage in activity that diminishes the Body Interact™ brand, Services, or Infrastructure; (ii) use the Services in a manner that shall result in excessive bandwidth or storage or shall exceed the Permitted Usage as solely determined by Body Interact™; (iii) transfer, assign or sublicense the limited rights granted to Subscriber in this Agreement to any other person or entity, or use the Services other than as authorized, and any such attempted transfer, assignment, sublicense or unauthorized use shall be void; (iv) make error corrections to or otherwise modify or adapt the Services or decompile, decrypt, disassemble, reverse engineer or attempt to reconstruct or discover any source code or underlying ideas, algorithms, file formats or programming or interoperability interfaces of the Services or of any files contained or generated using the Services by any means whatsoever or otherwise reduce the Services to human-readable form, except to the minimum extent expressly permitted under applicable law notwithstanding this restriction; or (v) attempt to alter, circumvent or provide the method or means to circumvent any disabling mechanism in the Services; or (vi) use the Services in any manner not expressly authorized herein; or (vii) alter, remove or fail to reproduce any proprietary notices from the Services; or (viii) misrepresent any person or entity's identity, impersonate any person or attempt to gain access to any Account, the Infrastructure or the networks or property of any third person, without authorization.

## **9. SERVICE UPDATES:**

- Body Interact™ agrees to provide to Subscriber from time to time such software updates as it deems necessary and appropriate in order to provide the most optimal Services to Subscriber.
- Such updates shall be provided to Subscriber at no additional charge.

## **10. INTELLECTUAL PROPERTY RIGHTS:**

- The Services are protected by world-wide copyright, trademark, patent and other intellectual property laws and treaties and belong to Body Interact™, its licensors and any applicable Body Interact™ authorized agent and third-Party contractor.
- Subscriber acknowledges (i) that rights in the Services are licensed and not sold to Subscriber; (ii) that Subscriber shall have no rights or title in or to the Services other than the right to use them in accordance with the terms of this Agreement; and (iii) that Open Source and/or third-Party software may be incorporated into the Services provided by Body Interact™. Body Interact™, its licensors and any applicable third Parties, own all title, copyright and other intellectual property rights in and to the Services.
- The Services, in all formats existing, are a trade secret of and proprietary to Body Interact™, its suppliers and/or licensors, including but not limited to, the specific internal code, design and structure of individual programs and software, the display and associated interface information.
- Subscriber shall not disclose the confidential aspects of the Services to unauthorized third Parties.

## **11. THIRD PARTY COMPONENTS:**

- Part of the Services may incorporate third Party proprietary services and/or software. If and to the extent such third Party services and/or software are an integral part of the Services, such third Parties shall be deemed Body Interact™ authorized Agents and the terms of this Agreement shall apply to such Body Interact™ authorized Agents.
- If and to the extent Subscriber contracts independently with independent third Parties, the terms of such third Party contract shall apply to the relationship between Subscriber and such independent contractor and Body Interact™ shall have no liability with respect thereto.
- In addition, part of the Services may incorporate and consist of third Party open source software (hereinafter “Open Source”), which Subscriber may use under the terms and conditions of the specific license under which the Open Source software is distributed.
- Subscriber agrees that Subscriber will be bound by any and all such license agreements. Title to software remains with the applicable licensor(s). Any Open Source software provided with or contained in the Services is provided AS IS and without any warranty of any kind.

## **12. SERVICE EVALUATIONS AND FREWARE:**

- With Body Interact™'s consent, Subscriber may evaluate the Services for up to fourteen (14) days at no cost, except as otherwise expressly agreed by Body Interact™.
- Subscriber may evaluate the Services only to determine whether to license the Services.
- Subscriber may only evaluate the Services once. At the end of the evaluation period, Subscriber must either license the Services or cease all use of such Services.
- Subscriber's use of the Services during an evaluation period or for any Service that is offered as freeware shall be without warranty of any kind and is provided AS IS. Body Interact™ has no duty to provide support to Subscriber during any evaluation period or for any Service offered as freeware but may do so at its sole discretion.

## **13. DISCLAIMER OF WARRANTIES:**

THE SERVICES ARE PROVIDED TO SUBSCRIBER ON AN AS IS AND ON AN AS IS AVAILABLE BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THIS WARRANTY AND THE REMEDIES HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, WHETHER ORAL, EXPRESS, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, WARRANTIES FOR LATENT OR HIDDEN DEFECTS. Body Interact™ DOES NOT WARRANT THAT THE SPECIFICATIONS OR FUNCTIONS CONTAINED IN THE SERVICES WILL MEET SUBSCRIBER'S REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SERVICES WILL BE CORRECTED. FURTHERMORE, Body Interact™ DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES PROVIDED WITH RESPECT TO CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. IF THIS EXCLUSION IS NOT PERMITTED BY LAW, Body Interact™ LIMITS ANY EXPRESS, STATUTORY OR IMPLIED WARRANTIES AS TO DURATION TO THE EXTENT OF THIS LIMITED WARRANTY AND THE REPAIR OR REPLACEMENT REMEDY AS DETERMINED BY Body Interact™ IN ITS SOLE DISCRETION.

## **14. LIMITATION OF LIABILITY:**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL Body Interact™ OR Body Interact™'s AUTHORIZED AGENTS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES



WHATSOEVER (NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, UNDER ANY THEORY OF LAW OR FAULT OF Body Interact™ OR ANY OF Body Interact™'s AUTHORIZED AGENTS, AND EVEN IF Body Interact™ OR ANY OF Body Interact™'s AUTHORIZED AGENTS shall have BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL NOT APPLY TO DEATH OR PERSONAL INJURY CLAIMS. Body Interact™ EXCLUDES ANY LIABILITY FOR FAILURE TO REPAIR ANY SERVICES. NOTWITHSTANDING THE FOREGOING, THE MAXIMUM LIABILITY THAT Body Interact™ SHALL INCUR HEREUNDER SHALL BE LIMITED TO THE ACTUAL PRICE PAID BY SUBSCRIBER FOR THE RESPECTIVE SERVICE FOR THE ONE MONTH PERIOD EMBRACING THE DATE WHEN THE APPLICABLE CLAIM AROSE.

**15. INDEMNIFICATION:**

Subscriber agrees to indemnify, defend and hold Body Interact™ and Body Interact™'s authorized Agents harmless from and against any and all damages, fines, penalties, assessments, liabilities, losses, costs and expenses (including attorney's fees, expert fees and out-of-pocket expenses) in connection with (i) Subscriber's use of the Services, (ii) Subscriber's violation of the terms of this Agreement, (iii) Subscriber's violation of any third-Party rights, including any intellectual property rights, (iv) Subscriber's misuse or fraudulent use of credit and debit cards, (v) any claims that the Services or any Party thereof were exported or otherwise shipped or transported by Subscriber in violation of applicable laws, rules and regulations, or (vi) any claim of misuse of the Services, including, but not limited to, any claim that Subscriber is storing illegal files or data in Subscriber's Account.

**16. EFFECT OF TERMINATION:**

Without prejudice to any other rights, Body Interact™ may suspend or terminate, in part or in whole, without notice, Subscriber's use of the Services and this Agreement if Subscriber does not abide by its terms, or in Body Interact™'s sole discretion in which case Subscriber must cease all use of the Services. Sections 6, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19 and 20 shall survive any termination of this Agreement.

**17. ENTIRE AGREEMENT:**



- This Agreement (as may be amended from time to time) is the entire agreement between Subscriber and Body Interact™ relating to the Services and the Support Services and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Services or Support services.
- To the extent the terms of any Body Interact™ Terms of Use, policies or programs conflict with the terms of this Agreement, the terms of this Agreement shall prevail and control.
- In addition, the terms set out in this Agreement shall prevail and control over any and all additional or conflicting terms or provisions contained in any document of Subscriber's, whether set out in a business proposal, purchase order or alternative license, and any and all such additional or conflicting terms shall be void *ab initio* and shall have no effect.
- If this License is translated into a language other than English and there are conflicts between the translations, the English version shall prevail and control.

## **18. GOVERNING LAW:**

This Agreement shall be governed by and construed and enforced in accordance with the European Union Regulation 593/2008, with court of Coimbra, Portugal. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable then the provision shall be severed and the other provisions shall remain in full force and effect.

## **19. TAXES:**

Any sales, use, value added or other taxes (including applicable withholding taxes), shall be borne by the Subscriber. Accordingly, Subscriber shall pay or, if paid by Body Interact™, shall reimburse Body Interact™ for all such taxes based on this License or any fees payable hereunder (but not any taxes based upon Body Interact™'s revenues or income), together with any interest and penalties on such taxes if not due to Body Interact™'s delay.

## **20. EQUITABLE RELIEF:**

The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to equitable relief, including injunctive relief or specific performance of the terms hereof (without any requirement to post bond or guarantee), in addition to any other remedy to which they are entitled at law or in equity.

## **21. MISCELLANEOUS:**

- The delay or failure of Body Interact™ to exercise any right provided in this Agreement shall not be deemed a waiver of that right.
- This Agreement may not be amended by Subscriber, but Body Interact™ may amend this Agreement from time to time and shall post any amended Agreement on its website at [www.bodyinteract.com/cloud-user-license](http://www.bodyinteract.com/cloud-user-license).
- This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement and supersedes all written and oral prior agreements, negotiations and discussions between the Parties relating to it.
- This Agreement is for the sole benefit of Body Interact™ and Subscriber and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- If any provision of this Agreement shall be held to be illegal, void or unenforceable by any court of competent jurisdiction or by arbitral tribunal, such provision shall be of no force and effect and shall not impair the enforceability of any other provision of this Agreement and the Parties agree that the relevant provision shall be deemed replaced by such provision which is binding and enforceable and which differs as little as possible from the non-binding and/or non-enforceable provision, taking into effect the object and purpose of this Agreement.
- The remedies of the Parties under this Agreement are cumulative and will not exclude any other remedies to which the respective Party may be lawfully entitled.
- All notices must be in writing and shall be mailed by registered or certified mail (effective on the third day following the date of mailing), or sent via email to [legal@bodyinteract.com](mailto:legal@bodyinteract.com) (with evidence of effective transmission).
- Subscriber may not assign, pledge or otherwise transfer this Agreement, or any rights or obligations hereunder in whole or in part to any other entity. Paragraph headings are for convenience and shall have no effect on interpretation.
- Third-Party software shall be exclusively subject to the terms and conditions between the Third-Party software provider and Third-Party software Customer. Body Interact™ shall have no liability for Third-Party software.

**FOR MORE INFORMATION, PLEASE CONTACT:**

TAKE THE WIND, S.A. HEADQUARTERS:

RUA PEDRO NUNES, INSTITUTO PEDRO NUNES, TECBIS, ED. D.  
3030-199 COIMBRA, PORTUGAL

Tel. +351 239 090 850  
info@takethewind.com  
www.takethewind.com

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