

## **HARDWARE PURCHASE & SOFTWARE AS A SERVICE AGREEMENT**

**PLEASE READ CAREFULLY:** THIS AGREEMENT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS. BY SIGNING BELOW WHERE INDICATED, THIS DOCUMENT WILL BE DEEMED A LEGALLY BINDING CONTRACT BETWEEN CUSTOMER AND AETREX, INC. (“AETREX”) (AND PREAKNESS FINANCING SERVICES (“PREAKNESS”) IF THIS IS A HARDWARE INSTALLMENT PURCHASE). IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS BELOW DO NOT SIGN BELOW.

**CUSTOMER IS REFERRED TO IN THIS AGREEMENT AS “CUSTOMER”, “YOU” AND “YOUR”.**

**HARDWARE PURCHASE:** The description, purchase price and payment terms of the foot-scanning hardware you are purchasing are set forth in your Order Confirmation (including any amendments thereto) (“Hardware”) which is made part of this Agreement by reference.

### **SAAS SOFTWARE AND SERVICES:**

**SaaS Software:** Timely payment of the SaaS Fee entitles you, for the SaaS Software Term (defined below) of this Agreement, to access and use Aetrex’s proprietary foot-scanning software contained in the Hardware. In addition to any Hardware purchase payments, you also agree to pay Aetrex a separate \$160.00 per month fee during the SaaS Software Term for the SaaS Software use license and SaaS Services (the “SaaS Fee”). You do not have to pay the SaaS Fee for any calendar month(s) of the SaaS Software Term during which you activated the “Hibernation Mode” feature (which temporarily deactivates the SaaS Software) for the entirety of the month.

**Scope of SaaS Software & Services:** Timely payment of the SaaS Fee entitles you, for the SaaS Software Term of this Agreement, to the following services related to the SaaS Software (the “SaaS Services”): (i). Albert CRM (Store & customer data collection); (ii). Albert 2.0 software license & updates; (iii). Access to Aetrex Academy & fit specialist rewards program; (iv). 7-day/week remote phone support; (v). Ongoing field service & support; (vi). In-store training; (vii). Aetrex FitHQ; (viii). Access to premade digital marketing assets; and (ix). 3D printed orthotic program and (x). other available features in the Software.

**Limited License:** Subject to continuous compliance with this Agreement, Aetrex grants you a limited, non-transferable, non-exclusive, non-sublicensable, revocable license to use, operate, display, and interact with Aetrex’s SaaS Software for the SaaS Software Term of this Agreement, subject to any End User License Agreement contained in the SaaS Software, and solely for the purpose to use the SaaS Software for its intended commercial use in the ordinary course of your business.

**Customer Obligations:** You shall not: (a). reverse engineer, decompile, decode, copy, decrypt, disassemble, or attempt to derive any source code from the Aetrex’s SaaS Software; (b). modify, adapt, or create any derivative works based on the Aetrex’s SaaS Software; (c). distribute, resell, lease, sublicense, transfer, sell, license, rent, lease, transfer, or otherwise provide the Aetrex’s SaaS Software to third parties; or (d). improperly attempt to gain unauthorized access to SaaS Software or its related systems or networks, or use or attempt to use in a non-Aetrex system.

**PAYMENTS:** You are also responsible to pay all applicable taxes, if any, in addition to any Hardware payments and SaaS Fees due. You may prepay outstanding balance(s) of your Hardware installment payments at any time during the Hardware Term without additional charge or prepayment penalty. No discounts or reductions for early payment will be allowed.

**Hardware Purchase In Full:** If you purchased the Hardware in-full, payment shall be due and made to Aetrex within forty-five (45) days of invoice receipt unless otherwise mutually agreed in writing.

**Hardware Installment Purchases:** If you purchased the Hardware on an installment basis, you are acquiring the Hardware from Aetrex and the Hardware installment purchase is financed and administered by PREAKNESS FINANCING SERVICES (“Preakness”) for the Hardware Term (defined below). All installment payments shall be due and made to PREAKNESS monthly within thirty (30) days of invoice receipt.

**SaaS Fee Payments:** All SaaS Software and SaaS Software Services are acquired from and administered by Aetrex. SaaS Fee will be billed on the 1<sup>st</sup> of the month and due within thirty (30) days.

**HARDWARE TERM:** Your hardware installment payments are for a term of thirty-six (36) months (“Hardware Term”) with Preakness. The Hardware Term shall start on the date the Hardware is received by Customer and shall continue for the number of months stated above. In consideration of the special pricing and terms, this Agreement is non-cancellable, there is no early termination, and you are responsible for the entire Term.

**SaaS SOFTWARE TERM:** Provided Customer is in good standing and not in default of this Agreement, the Software term starts the day the SaaS Software is activated and continues in perpetuity unless and until Customer notifies Aetrex in writing it would like to terminate, at which time SaaS Software and SaaS Services will no longer be active effective the 1<sup>st</sup> of the following month (“SaaS Software Term”). If the SaaS Software is initially activated after the 15<sup>th</sup> of the first month, the SaaS Software Fee will be waived for that month.

**DEFAULT:** Upon any default of this Agreement by you Aetrex and/or Preakness may: (i). terminate your limited SaaS Software license granted hereunder immediately, cease all SaaS Software Services, and/or terminate this Agreement; (ii). Repossess the Hardware (if not paid in full), and the SaaS Software, and enter your premises during any reasonable time for that purpose; (iii). Recover from you any and all past due payments and other charges and accelerate any and all future payments due for the remainder of the Hardware Term; and/or (iv). Exercise any other legal or equitable remedies available under applicable law. You agree to cooperate in timely returning unpaid Hardware, and SaaS Software, to Aetrex and/or Preakness in the event of any termination of this Agreement and you shall be responsible for all return shipping costs.

**OWNERSHIP, TITLE & SECURITY INTEREST:**

**Hardware:** All risk of loss and damage shall be assumed by the Customer upon Aetrex’s delivery of the Hardware to the Customer at the location specified in the Order Confirmation. U n t i l title to the Hardware passes to you in full, you must reasonably care for all Hardware, excluding ordinary wear and tear. You are responsible for all Hardware damages during your possession, custody, or control prior to your obtaining title. All ownership, rights, title, and interest in and to all Hardware shall remain with Aetrex until full payment is made by you. Title to the Hardware (excluding all Software) shall pass to you upon full payment. To secure the performance of your obligations hereunder, until the full purchase price of the Hardware is paid in full, you hereby grant to Aetrex and/or Preakness a first priority lien and purchase money security interest in all Hardware purchased by you, including any replacements, additions, and improvements to the Hardware and proceeds resulting from any disposition thereof and any insurance proceeds resulting from any damage, loss or destruction. You shall not sell, encumber, or dispose of or permit the sale, encumbrance or disposal of any secured Hardware until paid in full. You hereby authorize Aetrex and/or Preakness to execute on your behalf and file a UCC-1 financing statement to evidence Aetrex’s and/or Preakness’ security interest in the Hardware until payment in full, whereupon Aetrex and Preakness shall release the UCC-1.

**SaaS Software:** Notwithstanding anything to the contrary contained in this Agreement, except for the limited license rights expressly provided in this Agreement, Aetrex shall at all times retain all ownership, rights, title and interest in and to the SaaS Software including all copies, modifications, customizations, updates, corrections, and derivative works. Customer further acknowledges and agrees that the SaaS Software is a trade secret of Aetrex, is valuable and confidential to Aetrex, and that its use and disclosure must be carefully and continuously controlled. Customer is obtaining only a limited license right to the SaaS Software and that irrespective of any use of the words, “purchase”, “sale” or like terms hereunder, no ownership rights in the SaaS Software are being conveyed to Customer under this Agreement or otherwise.

**Data Use & Ownership:** All consumer foot scan data collected by Customer using Albert® foot scanners (the “Foot Scan Data”) is accessible by Customer via the Albert® foot scanner control panel for the SaaS Software Term. Customer retains the right to use its Foot Scan Data for the SaaS Software Term provided that all such use is in accordance with applicable law. Customer acknowledges and agrees that: (i). Consumers retain at all times all ownership to their personally identifiable information that they disclose to Customer (e.g., names, addresses, e-mail addresses, phone numbers, etc.); and (ii). Aetrex may deidentify and/or aggregate Foot Scan Data so that all personally identifiable information relating an individual’s identity to the data has been removed (the “Aggregated Data”) and retains at all times exclusive ownership and use rights in and to all such Aggregated Data. Aetrex may use Aggregated Data for any purpose and agrees not to use any personally identifiable information of the Foot Scan Data that it processes for Customer for any commercial purposes. Customer may use personal identifiable information as long as it’s in accordance with applicable laws.

**DISPLAY.** During the Terms, you shall not substitute other brands of orthotics for the Aetrex orthotics recommended by the SaaS Software nor shall you place or display any other brands of orthotics on, with, or near our Hardware, products or Aetrex displays; or use any other brands of foot scanners on the same selling floor during any Term. To do so shall constitute an incurable material breach of this Agreement.

**DATA PRIVACY:** This Agreement incorporates the Aetrex Data Protection Addendum (“DPA”), available here <http://aetrex.com/dpa>, and/or the Technology Agreement Addendum (“TAA”), available here <http://aetrex.com/taa> when the GDPR, CCPA, and/or other federal, state and international data privacy laws apply to your use of the Software and/or the Equipment to process Customer Personal Data (as defined in the DPA).

**HOTSPOT OPTION.** If Aetrex provides an internet hotspot option to you for the Hardware and/or SaaS Software, you shall use it for Aetrex’s Hardware and SaaS Software only. Any other use is subject to additional charges. If you terminate this Agreement or terminate the hotspot option before any Term expires, you shall pay Aetrex the sum of \$160.00 in addition to any other sums owed. Such sum is not a penalty but is liquidated damages, all parties agreeing that such sum is a reasonable and fair amount to cover our damages in the event of such termination for the Hotspot only.

**LIMITED WARRANTY:** Hardware has a limited warranty for parts & labor for a period of three (3) years and SaaS Software is under limited warranty while SaaS Software remains active. Aetrex’s sole liability under this limited warranty is to repair or replace the Hardware and/or SaaS Software at Aetrex’s sole option. This limited warranty does not cover misuse, neglect, power failures/surges, unauthorized Hardware or SaaS Software or improper access or modifications, repairs, cosmetic damage, accident, or abuse. This limited warranty is in lieu of all other warranties, both express and implied, including without limitation warranties of merchantability or fitness for a particular purpose. Neither party shall be liable for incidental, consequential, special or punitive damages, including, without limitation, lost profits.

**OTHER PURCHASES:** You agree to abide by the terms and conditions applicable to your purchases of orthotics and other products from Aetrex associated with the Hardware and SaaS Software.

**RELATIONSHIP:** The relationship of the parties to this Agreement is that of independent contractor. Customer shall not be deemed an agent or representative of the Aetrex. This Agreement shall not be construed as creating a partnership, franchise, joint venture, employment, fiduciary, or other similar relationship.

**ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the Parties and supersedes all prior discussions, agreements and understandings of every kind between them both oral and written. No modification or amendments may be made except in writing executed by both parties. This Agreement is the product of negotiations between the parties, each of whom has had the right to consult with legal counsel. Accordingly, this Agreement shall not be construed against either Party as the drafter hereof.

**SUCCESSOR LIABILITY:** This Agreement inures to the benefit of and is binding upon the parties, their respective successors in interest by way of merger, acquisition, or otherwise (subject to the other party’s consent), and their permitted assigns.

**ASSIGNMENT:** No party may assign any of its rights under this Agreement, including by merger or acquisition, without the prior written consent of the other Party.

**WAIVER & SEVERABILITY:** No waiver by either party of any breach of this Agreement shall be deemed a waiver of any subsequent breach. If any part of this Agreement is declared fully or partially invalid the remainder of this Agreement shall remain in effect, if the essential terms and conditions of this Agreement for each party remain valid.

**NOTICE:** To be effective notices shall be in writing and delivered in a receipt confirmed manner.

**GOVERNING LAW:** This Agreement was negotiated and executed in the State of New Jersey, USA. New Jersey law shall exclusively apply to all issues without regard to conflicts of law principles.

**DISPUTE RESOLUTION:** All disputes arising from or related to this Agreement shall be filed and resolved exclusively in the state or federal courts located in the State of New Jersey -- Bergen County and Newark respectively. The parties voluntarily submit to this jurisdiction and waive all objections inconvenient forum or venue. Service of process may be made in the manner pursuant to the notice provision of this Agreement. This Section shall survive and remain in effect after any expiration or termination of this Agreement.

Additional Notes:

**BY SIGNING BELOW, YOU HEREBY ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO THE TERMS AND CONDITIONS ABOVE. YOU FURTHER AGREE THAT YOUR PHOTOCOPIED, EMAILED, FAXED, OR ELECTRONIC SIGNATURE WILL BE ENFORCEABLE AS AND TO THE FULL EXTENT OF A HAND-WRITTEN SIGNATURE AS AN ORIGINAL.**

**YOU FURTHER REPRESENT AND WARRANT THAT YOU ARE THE AUTHORIZED REPRESENTATIVE WITH THE AUTHORITY TO BIND CUSTOMER.**

**CUSTOMER NAME:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**PRINT NAME/TITLE:** \_\_\_\_\_

**DATE SIGNED:** \_\_\_\_\_

**AETREX, INC:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**PRINT NAME/TITLE:** \_\_\_\_\_

**DATE SIGNED:** \_\_\_\_\_