

Customer Agreement

Customer Agreement Re: Use of Surfsight (“Agreement”)

Parties

Customer

Insert Customer Name
ABN: Insert ABN
Insert Address
Administrator Name: Insert Name
Administrator Email: Insert Email

Distributor

Optix Australasia Pty Ltd
ACN: 113 677 473
1/79 Dover Drive, Burleigh Heads Qld 4220 AUSTRALIA

Background

Whereas, The Customer has purchased a license to use the ‘Surfsight’ branded cloud and subscription-based software as a service product, a self-managed service that provides the Customer with video events to enable monitoring of driver behaviour (**Surfsight**) via the Reseller; and

Whereas, Surfsight is intended to be connected to monitoring hardware within vehicles used by the Customer's staff (the **Customer Users**);

Whereas, Notwithstanding the terms of the Customer's agreement with the Reseller with respect to Surfsight, the Customer agrees and acknowledges that its use of Surfsight is also governed by this agreement, which is between the Distributor, the Company, and the Customer.

Agreed Terms

The Customer agrees and acknowledges that use of Surfsight by it and its Customer Users is subject to the terms of this agreement and the Customer complying with, and ensuring the Customer Users comply with, the terms of this agreement, set out as follows:

1. The Customer acknowledges that the use of Surfsight is subject to the Company's End User License Agreement (<https://surfsight.com/eula>) and Privacy Policy (<https://surfsight.com/privacy>) (the "**Company Documents**") and hereby agrees to be bound by the terms of the Company Documents. Further, Customer represents and warrants that any Customer User with “administrator” permissions has the necessary authority to act on behalf of Customer, including without limitation the authority to agree to the Company Documents.
2. The Customer is aware that as part of its use of Surfsight, certain Personal Information about the Customer Users will be collected. The Customer determines the purposes and means of the processing of such Personal Information. Therefore, the Customer hereby declares that the Customer assumes all the responsibility toward the Customer Users as the entity controlling their Personal Information pursuant to any applicable privacy and data protection laws.
3. The Customer is also aware that as part of its use of Surfsight, the Company and Distributor may obtain and/or collect Personal Information about Customer Users on behalf of the Customer and that the Company and Distributor may use that information for the purpose of providing Surfsight and as described in the Company Documents. The Customer hereby acknowledges that with respect to the processing of Personal Information, the Customer is the data controller and the Company is a data processor.

4. The Customer at its sole discretion determines who will become a Customer User. Therefore, the Customer undertakes to:
 - i. inform such Customer Users that the Company and Distributor may collect and process Personal Information about them; and
 - ii. provide such Customer Users with a prominent and clear reference to Customer's Privacy Policy and the Surfsight Privacy Policy (<https://surfsight.com/privacy>), as well as a sufficient opportunity to ask questions and receive clarifications in relation to such documents and shall bear the sole responsibility and liability towards such Customer Users with respect to failure to comply with the above or with any privacy and data protection laws.
5. The Customer hereby releases the Company and Distributor from any liability for any allegations that may be related to them failing to provide the Customer Users a proper disclosure about the collection and processing of their Personal Information or failing to obtain their consent, if needed, in relation to such processing.
6. The allocation of responsibility between the Customer and the Company in relation to the Personal Information collected during the use of Surfsight shall be as detailed in the Company's End User License Agreement (<https://surfsight.com/eula>).
7. The Customer appoints the Administrator as its administrator for the use of Surfsight, and requests that the Company provides them with full administrator permissions and access to all Customer Data on Surfsight, including Personal Information about Customer Users and the ability to define additional users for Surfsight and their respective permissions.
8. The Customer accepts and acknowledges that any Hardware and Surfsight (collectively, the **Product**), are a driver aid only. The Product is not a substitute for a safe, conscientious driver. The Product cannot compensate for a driver that is distracted, inattentive or impaired by fatigue, drugs, or alcohol. Regardless of whether any Product is in use or not, the driver is responsible for avoiding a collision. The Customer must take appropriate measures to avoid an accident and should never wait for the Product to provide a warning before taking those measures. Failure to take, or delaying to take, appropriate measures to avoid an accident can result in serious personal injury or death or severe property damage, and the Distributor and the Company disclaim any and all liability relating to any such action or inaction. In addition, the live stream capabilities available with the Product may have a delay of several seconds. The Customer acknowledges and agrees live stream should never be used to assist a driver in operating a vehicle and the Customer agrees to provide the foregoing warning to its drivers and to regularly warn and instruct their drivers on the proper use of live stream and the Product. The Distributor and the Company disclaim all liability in connection with reliance on live stream in this manner.
9. The Customer must:
 - a. submit all communications, queries and complaints relating to the Product directly to the Reseller only and not via the Distributor or the Company; and
 - b. provide the Distributor and its Personnel with any access to its systems and premises which the Distributor reasonably requires in order to provide Surfsight.
10. The Customer must not, and must ensure that its Personnel do not:
 - a. use the Hardware or Surfsight or any part thereof:
 - i. to infringe or authorise the infringement of any Intellectual Property Rights or other rights of a third party;
 - ii. in a manner which is contrary to applicable law;
 - iii. to record or circulate content with the intent to damage, disrupt, or compromise any, network, hardware, or software of the Distributor or a third party;
 - iv. in a manner which could adversely affect the provision of Surfsight;
 - b. except where permitted by applicable law:
 - i. attempt to produce or use any counterfeit authorisation method to access Surfsight;

- ii. tamper with any licensed component of Surfsight;
 - iii. attempt to reverse engineer, decompile, disassemble, or otherwise attempt to derive or access the source code, techniques, processes, algorithms, know-how or any other information (as applicable) from Surfsight;
 - iv. modify, integrate, create derivatives of or improvements to, decompile or otherwise attempt to access or extract the source code of Surfsight without the Distributor's express written permission;
 - v. copy, archive, download, reproduce, distribute, sell, syndicate, broadcast, display, perform or otherwise use Surfsight other than as permitted by this agreement;
 - c. create or circulate Customer Data that is illegal or illegally obtained;
 - d. remove any proprietary notices or labels from Surfsight or any Hardware;
 - e. use Surfsight or any Hardware with unsupported equipment, software, configurations;
 - f. do, cause, or authorise the doing of anything which may adversely affect the validity of the Distributor's Intellectual Property Rights in Surfsight.
11. As between the parties, the Customer retains all right, title and interest in the Customer Data and grants the Distributor and the Company a perpetual, transferable, irrevocable, non-exclusive, royalty-free licence to modify, reproduce, publish, adapt, display, distribute, transmit and otherwise use the Customer Data:
- a. to provide Surfsight;
 - b. for its product development and administrative purposes;
 - c. to action or defend against any Claim; and
 - d. to exercise any right under this agreement.
12. The Distributor may handle Customer Data in accordance with its privacy policy (<https://optix.au/surfsightprivacypolicy/>).
13. To the maximum extent permitted by law:
- a. the Distributor and the Company do not provide any guarantee or warranty or make any representation with respect to Surfsight or the Hardware;
 - b. the Distributor and the Company disclaim, and the Customer releases the Distributor and the Company from, all liability for any Claim or Loss howsoever arising directly or indirectly in connection with Surfsight and the Hardware.
14. Without limitation to clause 13, the Distributor and the Company do not warrant, represent, or guarantee that:
- a. the Hardware or Surfsight will capture all accidents or serious events;
 - b. Surfsight will be provided error-free or uninterrupted;
 - c. a Customer will be able to obtain any particular outcome or result from using Surfsight or the Hardware.
15. The Distributor and the Company limits their maximum liability for guarantees under the *Competition and Consumer Act 2010* (Cth), where applicable, to, at their option, the repair or resupply of the goods or services (as relevant) or payment of the cost of having the goods or services (as relevant) resupplied.
16. The Customer indemnifies and holds harmless the Distributor, the Company and their respective Personnel from and against any Claim or Loss suffered or incurred arising directly or indirectly out of, or in connection with:
- a. any breach of this agreement by the Customer or its Personnel;
 - b. the Customer Data;
 - c. any breach of law by the Customer or its Personnel, or by the Distributor or Company due to the Customer or its Personnel.
17. Despite any other provision of this agreement, the terms of the Customer's agreement with the Reseller, or otherwise:
- a. the Customer must not sell or attempt to sell Surfsight or otherwise use Surfsight for any purpose

- other than its internal driver monitoring and fleet management purposes;
- b. without limitation to its rights, the Distributor may terminate the Customer and Customer Users access to Surfsight at any time including if the terms of this agreement are breached;
- c. this agreement does not impart any obligation or liability on the Distributor or the Company;
- d. this agreement does not oblige the Distributor or the Company to provide Surfsight to the Customer or Customer Users and the Customer acknowledges that the Customer's contractual relationship is solely with the Reseller for this purpose.

18. If a provision of this document is for the benefit of a person that is not a party to this document (**Third Party**), the party to this document that receives that promise and any assignee of that party (**Promisee**):
- a. does so not only in its own capacity but also as trustee for the Third Party;
 - b. must permit the Third Party to enforce the provision in the Promisee's name on giving full indemnity and any reasonable security the Promisee requires;
 - c. assumes no other duty or liability to the Third Party, including no duty to inform the Third Party of anything, to supervise, to monitor or to claim anything; and
 - d. may revoke the trust or vary or cancel the provision at its discretion without the consent of and without considering the interests of or being responsible for any detriment to any Third Party.

19. In this agreement, the following definitions will apply:

Administrator	means the person identified as the 'Administrator' for the Customer, the details of whom are outlined in the 'Parties' section of this agreement.
Claim	means any claim, counterclaim, demand, cause of action or proceedings (whether based in contract, tort, or statute) and any defence to a claim, counterclaim, demand, cause of action or proceedings.
Company	means Lytx, Inc. of 9785 Towne Centre Drive, San Diego, California 92121 USA.
Customer Data	means any raw output data in any form (including but not limited to images, video or audio files and metadata), which is captured or generated by the Hardware or Surfsight and includes all Intellectual Property Rights therein.
Consequential Loss	means any consequential losses or damages, including but not limited to, loss of profits, loss of savings, loss of income or revenue, loss in connection with revenue not meeting targets or certain levels, loss in connection with uptime or availability of internet connectivity or the ability of third parties to access a website, loss of opportunity or loss due to loss or corruption of data.
Hardware	means any hardware used in connection with Surfsight that is purchased by the Reseller from the Distributor and resold to the Customer.
Intellectual Property Rights	means: a. all present and future industrial, intellectual, or proprietary rights conferred by statute, at common law or in equity anywhere in the world, whether issued or pending, registered or unregistered, including all forms of copyright, patents, trademarks, algorithms, designs, trade secrets, inventions, discoveries, know-how, confidential information, plant varieties and circuit layouts, including any modifications, adaptations, and improvements thereto; and b. all statutory and common law rights including the right to sue for damages and other remedies against third parties for infringement or misuse of the related intellectual property, whether or not the infringement or misuse took place before the date of this agreement and retain all amounts recovered in any action (whether as to damages or following an account of profits or on any other basis) obtained as a result of any such action.
Loss	includes losses, damages, costs (including legal costs), expenses and liabilities, however arising (regardless of whether those losses were foreseeable or not), including, but not limited to, special, indirect, punitive, unascertainable, contingent, prospective and Consequential Losses.
Personal Information	has that meaning given to it in the Privacy Act.

Personnel	means the contractors, officers, agents, and employees of a party.
Privacy Act	means the <i>Privacy Act 1988</i> (Cth) as amended from time to time and including all regulations and schedules relating thereto.
Reseller	means insert Reseller name and address .

Executed as a deed, on behalf of the Customer, by the below signatories who confirm they have authority to bind the Customer under this agreement, and hereby agree to the foregoing terms and conditions:

Authorised Signature

Name:

Title:

Date: