



Terms of Service

Last Modified: October 14, 2023

These Terms of Service (this "**Agreement**") is a binding contract between you ("**Customer**," "**you**," or "**your**") and Ubicquia, Inc. ("**Ubicquia**," "**we**," "**us**," or "**our**") and governs your access to and use of the Services (as defined below) provided by Ubicquia. Customer and Ubicquia may be referred to herein as the "**Parties**" or each individually as a "**Party**."

BY CHECKING THE "ACCEPT" BOX OR BY ACCESSING OR USING THE SERVICES YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) ACCEPT THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS; AND (C) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND, IF ENTERING INTO THIS AGREEMENT FOR AN ORGANIZATION, THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ORGANIZATION.

IF YOU DO NOT ACCEPT THESE TERMS, YOU CANNOT ACCESS OR USE THE SERVICES.

1. Definitions.

(a) "**Aggregated Statistics**" means data and information related to Customer's or Authorized Users' use of the Services, which is derived, generated, or collected by the Services and has been sufficiently aggregated with similar data obtained from Ubicquia's other customers such that it does not identify Customer, any Authorized User, or Customer's Confidential Information.

(b) "**APIs**" means application programming interfaces and any related Documentation or other materials made available to you by Ubicquia, including any Updates.

(c) "**API Key**" means the security key Ubicquia makes available to you to access the APIs.

(d) "**Approved Source**" means (i) Ubicquia or (ii) any Ubicquia authorized reseller or distributor of Products and Services, from whom you acquired the Services.

(e) "**Authorized User**" means Customer and Customer's employees, consultants, contractors, or agents who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and who acquire access credentials from Ubicquia.

(f) "**Confidential Information**" means information about a Party's business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive, non-public or proprietary information, whether disclosed

orally or in written, electronic, or other form or media, which is marked, designated, or otherwise identified as "confidential" or the like at the time of disclosure (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party without the use of or reference to the Confidential Information. Ubicquia's Confidential Information shall include any non-public information with respect to: (i) the Products, the Services and the Documentation, and (ii) the Platform Data. Customer's Confidential Information shall include Customer Data.

(g) "**Cloud Services**" means Ubicquia's UbiVu[®] interactive web portal and all data input, data output, data storage, and data processing services provided by Ubicquia through or in association with such web portal, and any related Documentation.

(h) "**Customer Data**" means raw, unprocessed information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or any other Authorized User through the Services.

(i) "**Customer Failure**" shall mean a delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under the Agreement.

(j) "**Documentation**" means user manuals, handbooks, help files, guides, any media, materials and other documentation provided to you by Ubicquia or an Approved Source, with respect to the Cloud Services, Products, Software, APIs or other products or services, either electronically or in hard copy format.

(k) "**Effective Date**" means the date you accept this Agreement or start the Services, whichever is first.

(l) "**Firmware**" means operating system software in machine-readable form as embedded in a Product at the time of Product manufacture and any Updates thereto as may be made available by Ubicquia, at its option, from time to time during the term of this Agreement.

(m) "**Force Majeure Event**" means an act or event whether or not foreseen, that: (i) is beyond the reasonable control of, and is not due to the fault or negligence of, a Party, and (ii) could not have been avoided by such Party's exercise of due diligence, including, but not limited to, a labor controversy, strike, lockout, boycott, transportation stoppage, action of a court or public authority, fire, flood, earthquake, storm, war, civil strife, terrorist action, pandemic or epidemic, or act of God; provided that a Force Majeure Event will not include economic hardship, changes in market conditions, or insufficiency of funds.

(n) "**Intellectual Property Rights**" means trademarks, service marks, trade dress, copyrights, patents, industrial or ornamental designs (whether or not registered), trade

secrets, inventions or innovations (whether or not patentable), know-how, and similar intangible property rights, whether registered or not, on a worldwide basis.

(o) "**Products**" means the Ubicquia products purchased by you in connection with which the Services are provided.

(p) "**Platform Data**" means data or information produced by a Product or the Services during its operation that informs, as applicable, regarding (i) the operational health of the Product, (ii) the status of the Product in respect of its connectivity to the Services; or (iii) information related to your use of the Services as generated by instrumentation and logging systems included in the Firmware and/or the Services. Examples of Platform Data include, but are not limited to, internal temperature data, internal data logs, memory usage, central processing unit usage, modem logs, last updated date, node identifier, serial number, name, received signal strength indication (RSSI) data, Firmware version, update frequency, node status, and tag name.

(q) "**Sales Order**" means the written confirmation issued by Ubicquia that constitutes Ubicquia's acceptance of a corresponding purchase order and setting forth the terms and conditions of the purchase of Products and/or Services.

(r) "**Services**" means the Cloud Services, the Software, the APIs, and any support and other services provided by Ubicquia to you and/or Authorized Users.

(s) "**Software**" means the version of UbiVu control platform software that is available for use through the Cloud Services or the APIs as of the Effective Date and any Updates thereto as may be made available by Ubicquia, at its option, from time to time during the term of this Agreement.

(t) "**Updates**" means any updates, support and maintenance releases, bug fixes, patches, or error corrections that Ubicquia generally makes available free of charge to all its customers.

(u) "**Technology**" means the Firmware, the Software, and the APIs.

(v) "**Third-Party Products**" means any products, content, services, information, websites, or other materials that are owned by third parties.

2. **Licenses.**

2.1 **License to the Firmware.** Subject to and conditioned upon payment of the Fees (as defined in Section 5 below) and compliance with all other terms and conditions of this Agreement, Ubicquia hereby grants to Customer, for so long as you own or possess the Products in which the Firmware is embedded, a limited, non-transferable (except in accordance with Section 2.1(a) below), non-exclusive, fully paid-up right and license to use the Firmware in the country in which the Products were delivered solely and exclusively in connection with your use of the Products in accordance with the Products' specifications and Documentation.

(a) The license granted in Section 2.1 (the “**Firmware License**”) specifically excludes any right to (i) extract, retrieve, or copy the Firmware from any storage device(s) in the Product, (ii) decompile, disassemble, or reverse engineer the Firmware, or (iii) distribute or prepare derivative works based upon the Firmware. You may not sublicense your rights under the Firmware License to any third party.

2.2 Software License. Subject to and conditioned upon payment of the Fees and compliance with all other terms and conditions of this Agreement, Ubicquia hereby grants Customer, for so long as you own or possess the Products, a limited, non-exclusive, non-transferable, non-sublicensable (except in accordance with Section 2.2(a) below), fully paid up right and license to use the Software through the Cloud Services solely and exclusively in connection with controlling or monitoring the operations of the Products, and solely in the manner and for the purposes described in this Agreement and the Products’, Cloud Services’, and Software Documentation.

(a) The license granted in Section 2.2 (the “**Software License**”) specifically excludes any right to (i) decompile, disassemble, or reverse engineer the Software, or (ii) copy, distribute, or prepare derivative works based upon the Software. You may not sublicense your rights under the Software License to any third party, except to an Authorized User and then only in connection with such Authorized User’s use of the Cloud Services on behalf of Customer. If you validly sublicense the Software License to an Authorized User, you shall remain liable for any breach of this Agreement by such Authorized User.

2.3 License to APIs. Subject to and conditioned upon payment of the Fees and compliance with all other terms and conditions of this Agreement, Ubicquia hereby grants to Customer, for so long as you own or possess the Products, a limited, non-exclusive, non-transferable, non-sublicensable, fully paid up right and license to access and use the API Key, the APIs and any associated Documentation for the sole purpose of internally developing one or more applications or using Third-Party Products that communicate and interoperate with the Software.

(a) The license granted in Section 2.3 (the “**API License**”) specifically excludes any right to (i) disassemble, decompile, or reverse engineer the Software, or (ii) distribute or prepare derivative works based upon any of the APIs or the Software. Customer may not sublicense or transfer the API License to any third party.

(b) From time to time, Ubicquia may change or discontinue one or more of the APIs. In such cases, Ubicquia shall use reasonable efforts to continue to support the previous versions of any changed or discontinued APIs for a period of one (1) year from the date of the respective change or discontinuation, unless Ubicquia reasonably believes that such continued support may: (i) pose a security risk or third-party intellectual property rights issue; (ii) be commercially unfeasible (whether economically or technically); or (c) be impossible or impractical as a result of a legal requirement.

2.4 Intellectual Property Rights. The Technology is licensed, not sold, to Customer. The Technology is or includes the Intellectual Property Rights of, and is owned by, Ubicquia and, as applicable, its licensors. The Technology is or may include valuable trade secrets and

Confidential Information of Ubicquia and, as applicable, its licensors. The Technology is protected by law, including but not limited to the copyright laws of the United States, Canada, and other countries, and by international treaties. Except as expressly stated in this Agreement, the licenses granted herein do not grant you any Intellectual Property Rights in the Technology, and all rights not expressly granted in this Agreement are reserved by Ubicquia and, as applicable, its licensors. All trademarks, service marks, trade names, logos, and the goodwill associated therewith included or displayed in the Documentation or the Services are the exclusive properties of Ubicquia or their respective owners. You are not permitted to use any of the trademarks, service marks, trade names, and logos without the applicable prior written consent of Ubicquia or their respective owners.

3. Access and Use of the Cloud Services.

3.1 Provision of Access. Subject to and conditioned upon payment of the Fees and compliance with all other terms and conditions of this Agreement, Ubicquia hereby grants Customer a revocable, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Cloud Services solely for your internal business operations. We will provide you the necessary login information to allow you to initially access the Cloud Services. You must thereafter create a personal account to access and manage your use of the Cloud Services. You are responsible for your account information and login credentials (which may include username, passwords, tokens, certificates, keys and pins) and all activities that occur under your account, regardless of whether such activities are undertaken by you, your Authorized Users, or a third party and, except solely to the extent caused by our breach of this Agreement, we are not responsible for unauthorized access to your account. You agree to use reasonable measures to protect your credentials and you agree to contact us immediately if you suspect unauthorized use of your account or if your account information is lost or stolen.

3.2 Documentation. Subject to the terms and conditions contained in this Agreement, Ubicquia hereby grants Customer a non-exclusive, non-sublicensable, non-transferable license to use and have its Authorized Users use the Documentation solely for your internal business purposes in connection with use of the Cloud Services.

3.3 Use Restrictions. You shall not, and shall not permit any Authorized Users to, use the Cloud Services, any component thereof, or the Documentation for any purposes beyond the scope of the access granted in this Agreement. You shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or prepare derivative works based upon the Cloud Services, any component thereof or the Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, publicly display, transfer, or otherwise make available the Cloud Services or the Documentation except as expressly permitted under this Agreement; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the Cloud Services, in whole or in part; (iv) remove any proprietary notices from the Cloud Services or the Documentation; or (v) use the Cloud Services or the Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or other right(s) of any person, or that violates any applicable law, regulation, or rule.

3.4 Reservation of Rights. We reserve all rights not expressly granted to you in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement,

nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to you or any third party, any right, title, or interest in or to Ubicquia's Intellectual Property Rights in and to the Firmware, the Products, the Services, or the Documentation.

3.5 Suspension. Notwithstanding anything to the contrary in this Agreement, we may temporarily suspend your and any other Authorized User's access to any portion or all of the Services if: (i) we reasonably determine that there is a threat or attack on any of Ubicquia's Intellectual Property Rights; (ii) you or any other Authorized User's use of the Cloud Services disrupts or poses a security risk to Ubicquia's Products or Services or to any other customer or vendor of Ubicquia; (iii) you or any other Authorized User is using the Cloud Services for fraudulent or illegal activities or in violation of this Agreement (including without limitation the AUP, as defined in Section 4); (iv) provision of the Cloud Services to you or any other Authorized User is prohibited by applicable law; (v) any vendor of Ubicquia has suspended or terminated our access to or use of any third-party services or products required to enable you to access the Cloud Services; or (vi) you have failed to timely pay all Fees under Section 5 (any such suspension being a "**Service Suspension**"). We shall use commercially reasonable efforts to provide you written notice of any Service Suspension and to provide updates regarding resumption of access to the Services following any Service Suspension. We shall use commercially reasonable efforts to reinstate your access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. We will have no liability for any damage, liabilities, losses (including any loss of data, business opportunity, or profits), or any other consequences that you or any other Authorized User may incur as a direct or indirect result of a Service Suspension.

4 Customer Responsibilities

4.1 Acceptable Use Policy. The Services may not be used for unlawful, fraudulent, offensive, or obscene activity, as further described and set forth in this acceptable use policy ("**AUP**"), as such may be amended from time to time at the sole discretion of Ubicquia. You will comply with all terms and conditions of this Agreement, all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that Ubicquia may require from time to time, including this AUP. This AUP applies to anyone who uses the Services, including without limitation you and your Authorized Users. You are required to inform your Authorized Users of the following terms of this AUP:

(a) you will not modify, alter, tamper with, repair, prepare derivative works based upon, reverse engineer, decompile, translate, disassemble, or attempt to extract or generate source code of the Software, the Firmware, or any Third-Party Products included in the Services;

(b) you will not sell, resell, reframe, distribute, rent, or lease the Services, include the Services in an outsourced or service bureau offering, or otherwise commercialize the Services;

(c) you will not use or access the Services for any illegal, harmful, or offensive purpose, or to transmit, store, display, host, distribute, or otherwise make available content that is or may be deemed harmful, offensive, hateful, defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable;

(d) you will not use or access the Services to commit or encourage fraudulent or other illegal activities in violation of any applicable law, regulation, government order or decree, legal agreement, or Ubicquia's published policies or specifications;

(e) you will not use the Services as a sole source of, primary source of, or final confirmation of information that protects the life, limb, or property of yours, any Authorized User, or any third party. For the avoidance of doubt, the information of this Section 4.1(e) includes, but is not limited to, measures or indication of time, temperature, location, pressure, voltage, current, power, lightning, plasma, humidity, moisture, water level, gas (e.g., carbon monoxide, carbon dioxide, methane, natural gas), particulate matter (e.g., pollution), or any other such parameter; and a non-exhaustive, non-limiting exemplary list of such information includes a presence or absence of stray voltage, a measure of stray voltage, an indication of a luminaire's illumination state, a measure of pressure or indication of over- or under-pressure in a pressurized vessel (e.g., a distribution transformer), a temperature reading or temperature threshold indication, a measure or indication of tilt, or the like);

(f) you will not infringe or misappropriate any copyright, trademark, or other Intellectual Property Rights of Ubicquia or others;

(g) you will not use the Services to transmit any material that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including adware, malware, spyware, software viruses, or any other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;

(h) you will not work around any technical limitations in the Services that only allow you or your Authorized Users to use the Services in certain ways;

(i) you will not download or otherwise remove copies of software (if such are made available to you), including source code and executable code, from the Services unless explicitly authorized in writing by Ubicquia;

(j) you will not make the functionality of the Services available to third parties, whether as an application service provider, or on a rental, service bureau, cloud service, hosted service, or other similar basis without the express prior written consent of Ubicquia;

(k) you will not interfere with, disrupt, or attempt to gain unauthorized access to the Services or servers or networks connected to the Services, or disobey any requirements, procedures, policies, or regulations of networks connected to the Services;

(l) you will not remove, circumvent, disable, damage, or otherwise interfere with security-related features of the Services;

(m) you will not access or probe any network, computer or communications system, software application, or network or computing device without written authorization of Ubicquia, including but not limited to breaches, vulnerability scans, or penetration testing;

(n) unless expressly permitted otherwise by Ubicquia in writing, you will not release the results of any performance or functional evaluation of any of the Services to any third party; and

(o) you will comply with all applicable laws or regulations or accompanying user or technical manuals, training materials, specifications, or other Documentation pertaining to any Services provided by Ubicquia or its Approved Source from time to time.

Ubicquia reserves the right, but does not assume the obligation, to monitor and investigate any violation of the AUP or any misuse of the Services by you, your Authorized Users, or any third party. Failure to comply with or a breach of the AUP may result in warnings, Service Suspension, termination of the Agreement, legal proceedings, and/or any other action Ubicquia reasonably deems appropriate. You agree to indemnify, defend, and hold Ubicquia harmless for any claims, liabilities, demands, damages, and costs (including attorneys' fees) arising from violations of the AUP by you or your Authorized Users. Neither you nor any Authorized User may use the Services in any manner or for any purpose other than as expressly permitted by this Agreement. All rights granted to you in this Agreement are conditioned upon your compliance with this Agreement and will terminate automatically if you do not comply with any term or condition thereof.

4.2 Account Use. You are responsible and liable for all uses of the Services and the Documentation resulting from access provided by you, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, you are responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by you will be deemed a breach of this Agreement by you. You shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services and shall cause Authorized Users to comply with such provisions.

4.3 Customer Data. You hereby grant to Ubicquia (a) a non-exclusive, royalty-free, irrevocable, worldwide license, with right to grant sublicenses, to access, reproduce, distribute, copy, use, perform, process, and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for us to directly or indirectly provide, perform, improve, and support the Services; and (b) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license, with right to grant sublicenses, to reproduce, distribute, copy, modify, process, use, and display the Customer Data to directly or indirectly produce Aggregated Statistics. You warrant that you own all right, title, and interest, including all Intellectual Property Rights, in and to the Customer Data and that both the Customer Data and your use of the Services are in compliance with the AUP. You must assure the accuracy, completeness, and legality of the Customer Data, the means by which it was acquired by you, and the use of the Customer Data with the Services. You shall also ensure that the Customer Data and any Authorized User's use of the Customer Data will not violate any policy or terms referenced in or incorporated into this Agreement or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of the Customer Data. The Services do not replace the need for you to maintain regular data backups or redundant data archives. You are responsible for taking your own measures to maintain appropriate security, protection, and backup of the Customer Data.

4.4 Passwords and Access Credentials. You are responsible for keeping your passwords and access credentials associated with the Services confidential and secure. You shall not sell or transfer your passwords and access credentials to any other person or entity. You shall

exercise reasonable efforts to prevent unauthorized access to or use of the Services. You will promptly notify us about any unauthorized access to your passwords or access credentials.

4.5 **Third-Party Products.** You are responsible for obtaining and maintaining all equipment and services needed for access to, and use of, the Services and for paying all charges related thereto. The Services may permit access to Third-Party Products. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions presented to you for acceptance by website link or otherwise. Your use of such Third-Party Products shall be subject to one or more separate agreements directly between you and the Third-Party Products provider(s). If you do not agree to abide by the applicable terms for using any such Third-Party Products, then you should not install, access, or use such Third-Party Products. The Third-Party Products provider is solely responsible for the Third-Party Products and Ubicquia shall have no liability in relation to any Third-Party Products you choose to access. UBIQUA PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THIRD-PARTY PRODUCTS, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY WITH RESPECT TO FUNCTIONALITY OF THIRD-PARTY PRODUCTS WITH ANY UBIQUA PRODUCTS OR SERVICES. Ubicquia does not provide any warranty, maintenance, technical, or other support for any Third-Party Products or their use on or with any of the Products or the Services.

5 **Fees and Payment.** You shall pay the fees for the Services as described on the Sales Order or any other applicable agreement between you and Ubicquia ("**Fees**") within thirty (30) days from the invoice date without offset or deduction. You shall make all payments hereunder in U.S. dollars on or before the due date. If you fail to make any payment when due, without limiting our other rights and remedies: (i) we may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) you shall reimburse us for all costs incurred by us in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for thirty (30) days or more, we may suspend, in accordance with Section 3.5, your and all Authorized Users' access to any portion or all of the Services until such amounts are paid in full. All Fees and other amounts payable under this Agreement are exclusive of taxes and similar assessments. You are responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by you hereunder, other than any taxes imposed on Ubicquia's income.

(a) In the event you dispute an invoice, you must notify Ubicquia in writing of such dispute within thirty (30) days of the invoice date and timely pay all undisputed amounts as required under Section 5. Ubicquia will not charge late interest on any disputed amounts if you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. You agree that your purchase of the Services is not contingent on the delivery of any future functionality or features.

6 **Free Trial and Beta Versions.** If you receive Ubicquia Product(s) for trial or evaluation purposes or other limited, temporary use as authorized by Ubicquia ("**Trial Product**"), your use of the Trial Product(s), the grants of the Firmware License, the Software License, and the API License, and your right to use the Cloud Services as set forth in Section 3 are only permitted for

the period stated by Ubicquia (“**Trial Period**”). All Trial Products and the Services are provided “AS-IS” during the Trial Period, without support or warranty of any kind, expressed or implied. Ubicquia does not assume any liability arising from any use of the Trial Product(s) or the Services during the Trial Period. From time to time, Ubicquia may offer you access to certain beta, test, or evaluation Services (“**Beta Services**”) at no charge, unless otherwise specified by Ubicquia. Beta Services are intended for evaluation purposes and not for production or commercial use, are unsupported, and may contain errors, bugs, or other issues. You may choose to try such Beta Services at your sole discretion, and you accept the Beta Services “AS-IS” and AT YOUR OWN RISK. Ubicquia is not responsible for any issues related to your use of the Beta Services. Ubicquia may discontinue, limit, suspend, or terminate your access to any portion of the Beta Services at any time and for any reason, in its sole discretion, and Ubicquia may delete your data or any other data maintained in the Beta Services environment. Ubicquia will have no liability for any harm or damage arising out of or in connection with any Beta Services.

7 Automatic Updates; Upgrades and Changes to the Services.

7.1 Automatic Updates & Optional Upgrades. Ubicquia warrants that for the duration of the applicable Product warranty as set forth in Section 13.1 below, the functionality of the Firmware for the Product will conform in all material respects to the applicable Product Documentation available at the start of the Product Warranty period. In support to such warranty, or as otherwise so desired by Ubicquia, Ubicquia may, from time to time and at its sole option, provide Updates, support and maintenance releases, or other modifications to the Services or the Firmware, which items shall be deemed part of the Services or Firmware, as applicable. YOU HEREBY CONSENT TO ANY AND ALL SUCH AUTOMATIC UPDATES. Updates may be automatically installed without providing any additional notice to you or receiving your prior consent. If you do not consent to Updates to the Services, your sole and exclusive remedy is to terminate your account and stop using the Services. Ubicquia may from time to time offer enhancements or upgrades to the Services (“**Upgrades**”) to you. Upgrades may be offered for an additional fee or at no charge to you. You must notify Ubicquia in writing should you choose to purchase any Upgrades.

7.2 Changes to the Services. Ubicquia may freely add, enhance, change, or remove features or functionality of the Services from time to time provided such change does not materially reduce the core functionality of the Services. In the event a change by Ubicquia is expected to materially reduce the core functionality of the Services, we shall provide you with thirty (30) days’ advance notice detailing the impact we expect the change will have on the Services. In the event a change does have a materially adverse effect on your use of the Services, you shall notify Ubicquia in writing, and we shall attempt to provide a reasonably satisfactory resolution in a timely manner. In the event we are not able to provide a timely resolution, or you are not satisfied with the resolution, you may terminate your access to and use of the Services upon written notice to Ubicquia. You may be entitled to receive a pro-rated refund of any Fees paid in advance for the terminated Services.

7.3 Notwithstanding any other provision of this Agreement, you are not permitted to use the Upgrades or Updates unless you, at the time of acquiring such Update or Upgrade: (i) already have agreed to the terms of this Agreement, (ii) are in compliance with the terms of this

Agreement, including without limitation the AUP, and (iii) for an Upgrade, have paid the applicable Fees (if any) for the Upgrade.

8 Data Ownership.

8.1 Customer Data. As between you and Ubicquia, you own and retain all right, title, and interest in and to the Customer Data. Except as provided in Section 4.3, Ubicquia acquires no right, title, or interest from you or your Authorized Users to the Customer Data, including any related Intellectual Property Rights.

8.2 Aggregated Statistics. As between Ubicquia and you, Ubicquia owns and retains all right, title, and interest in and to Aggregated Statistics, and all Intellectual Property Rights therein. You acknowledge that Ubicquia may compile Aggregated Statistics based on Customer Data input into the Services. You agree that we may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law.

8.3 Platform Data. As between Ubicquia and you, Ubicquia owns and retains all right, title, and interest in and to the Platform Data, and all Intellectual Property Rights therein. You acknowledge and agree that we shall be permitted to use the Platform Data for any purposes without restriction to the extent such data is not personally identifiable information.

9 Confidential Information. A Party receiving Confidential Information of the other Party will maintain confidentiality of the received Confidential Information using the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but not less than reasonable care). The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees, agents, or subcontractors who have a need to know the Confidential Information to enable the receiving Party to exercise its rights or perform its obligations under this Agreement and who are required to protect the Confidential Information in a manner no less stringent than required under this Agreement. Notwithstanding the foregoing, each Party may disclose Confidential Information of the other Party solely and exclusively to the limited extent required (i) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party (unless prohibited from doing so by the order) and made a reasonable effort to obtain a protective order or other confidential treatment of the Confidential Information; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. A Party's obligations under this Section 9 as to any particular Confidential Information received from or on behalf of the other Party will remain in effect for a period of five (5) years following the date of receipt of such Confidential Information from or on behalf of the other Party and, to the extent necessary, such obligations shall survive any termination of this Agreement for such time period. A Party's obligations under this Section 9 as to any Confidential Information received from or on behalf of the other Party, which qualifies as a trade secret under applicable law, shall survive any termination of this Agreement and continue in effect for so long as the such Confidential Information remains a trade secret of the other Party under applicable law.

10 Privacy Policy. Ubicquia shall comply with its privacy policy, available at <https://www.ubicquia.com/privacy-policy> ("**Privacy Policy**"), in providing the Services. The Privacy Policy is subject to change as described therein. By accessing, using, and providing information to or through the Services, you acknowledge that you have reviewed and accepted our Privacy Policy, and you consent to all actions taken by us with respect to your information in compliance with the then-current version of our Privacy Policy. Where legally permissible, Ubicquia may process, transfer, copy, backup, and store the Customer Data in the United States or other countries or jurisdictions outside of the country where it was collected. You are responsible for providing any required consent necessary to such processing and transfer of Customer Data, including international transfers, if or where applicable.

11 Intellectual Property Ownership; Feedback. As between you and Ubicquia, (a) Ubicquia owns all right, title, and interest, including all Intellectual Property Rights, in and to the Products, the Firmware, and the Services and (b) you own all right, title, and interest, including all Intellectual Property Rights, in and to the Customer Data. If you or any of your employees, contractors, or agents, or any Authorized User sends or transmits any communications or materials to us (whether by mail, email, telephone, or otherwise), suggesting or recommending changes to the Products or the Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), we are free to use such Feedback without any accounting, compensation, or other liability to you irrespective of any other obligation or limitation between you and us governing such Feedback. All Feedback is and will be treated as non-confidential. You hereby assign to us, on your behalf and on behalf of your Authorized Users, and shall cause your employees, contractors, and agents to assign to us, all right, title, and interest in and to the Feedback, and we shall be free to use, without any attribution or compensation to you or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever.

12 Service Levels and Support.

12.1 Service Levels. Subject to the terms and conditions of this Agreement, Ubicquia shall use commercially reasonable efforts to make the Services available 99.1% of the time as measured over the course of each calendar month, subject to the following exceptions: (i) Customer Failure; (ii) loss of Internet or wireless network connectivity; (iii) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other element not supplied by Ubicquia; (iv) scheduled downtime; (v) disabling, suspension, or termination of the Services as permitted under this Agreement; or (vi) a Force Majeure Event.

12.2 Support. Ubicquia provides standard customer support during business hours with the Services.

12.3 Vulnerability Disclosure Policy. Ubicquia is committed to the security of the Services and our customers. Our Vulnerability Disclosure Policy is available [here](#). To submit a vulnerability report, please contact us via email at vulnerability@ubicquia.com.

13 Limited Warranty and Warranty Disclaimer.

13.1 Products Warranty. The Products are subject to the hardware warranty available at <https://www.ubicquia.com/sites/default/files/Ubicquia-Warranty-Policy.pdf>.

13.2 EXCEPT AS PROVIDED IN SECTION 12, THE SERVICES ARE PROVIDED “AS IS” AND WITH ALL FAULTS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER UBICQUIA NOR ITS AFFILIATES, SUPPLIERS, OR LICENSORS MAKE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND TO YOU OR ANY OTHER PARTY, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO ANY SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, ACCURACY, NON-INFRINGEMENT, OR SYSTEM INTEGRABILITY. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE SERVICES AND THEIR FEATURES OR FUNCTIONALITY, AND ANY COMMUNICATION WITH YOU, IS FOR INFORMATIONAL PURPOSES ONLY, AND DOES NOT CONSTITUTE A WARRANTY OR REPRESENTATION. WITHOUT LIMITING THE FOREGOING, UBICQUIA MAKES NO REPRESENTATION OR WARRANTY THAT (I) THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (II) THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, ACCURATE, RELIABLE, OR COMPLETE; (III) THE SERVICES WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE NOT EXPLICITLY SPECIFIED IN THE DOCUMENTATION; OR (IV) UBICQUIA OR ANY THIRD PARTY WILL RESOLVE ANY PARTICULAR SUPPORT REQUEST OR FIX ANY ERRORS OR THAT SUCH RESOLUTION WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. TO REMOVE ALL REMAINING DOUBT, IF ANY, THIS SECTION 13.2 APPLIES, *INTER ALIA*, TO THE CLOUD SERVICES, THE SOFTWARE, THE APIS, AND ANY SUPPORT AND OTHER SERVICES PROVIDED BY UBICQUIA TO YOUR AND/OR AUTHORIZED USERS. NO APPROVED SOURCE OF UBICQUIA IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF UBICQUIA AS SET FORTH IN THIS AGREEMENT.

14 Indemnification.

14.1 Ubicquia Indemnification. Ubicquia shall defend you against any third-party claim, demand, suit, action, or proceeding ("**Third-Party Claim**"), provided that such third party is not affiliated with you, brought against you alleging that your use of the Services directly infringes the third party’s patent, copyright, or trademark, or misappropriates the third party’s trade secret, and will indemnify you against (i) damages finally awarded against you by a court of competent jurisdiction or (ii) a settlement entered into by Ubicquia on your behalf; provided that you promptly notifies us in writing of the Third-Party Claim, cooperate with us, and we have the sole authority to control the defense and settlement of such Third-Party Claim.

- (a) If such a Third-Party Claim is made or we reasonably anticipate such a Third-Party Claim will be made, we may, in our sole discretion, (i) modify or replace the Services, or any component or part thereof, to make it non-infringing or to exclude the third-party trade secret, or (ii) obtain the right for you to continue use of the Services. If we determine that neither alternative is reasonably available, we may terminate this Agreement, in its entirety or with respect to the affected component or part of the Services, effective immediately on written notice to you and refund

you a pro-rated amount of the prepaid Fee received for the Services (or portion thereof).

- (b) This Section 14.1 will not apply to the extent that any such Third-Party Claim arises from Customer Data or Third-Party Products. Furthermore, Ubicquia shall have no responsibility for, and no obligation to defend or indemnify you for, any Third-Party Claim resulting or arising from: (i) modifications of the Services that were not performed by or on behalf of Ubicquia; (ii) the combination, operation, or use of the Services with hardware, software, services, or processes not provided or authorized by Ubicquia; (iii) Ubicquia's compliance with any of your written specifications or directions, including the incorporation of any materials, processes, or Third-Party Products provided by or requested by you or on your behalf; or (iv) your continued use of non-current or unsupported versions of the Services after Ubicquia expressly requested that you use Updates to the Services or asked you to cease using the current version of the Services. This Section 14.1 states Ubicquia's sole obligation and exclusive liability and your sole remedy for any Third-Party Claims.

14.2 Customer Indemnification. Customer shall indemnify, hold harmless, and, at Ubicquia's option, defend Ubicquia and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses arising from or relating to any Third-Party Claim alleging (i) that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's Intellectual Property Rights or was otherwise unlawful; (ii) that your or Authorized Users' use of the Services violates applicable law due to or as a result of such use being in a manner not authorized by this Agreement; (iii) that your or any Authorized User's actions or omissions were negligent or caused damages intentionally, or (iv) that you caused damages to an Authorized User or an Authorized User caused damages to you; provided that you may not settle any Third-Party Claim against us unless we consent to such settlement, and further provided that we will have the right, at our option, to defend ourselves against any such Third-Party Claim or to participate in the defense thereof by counsel of our own choice.

15 Limitations of Liability. IN NO EVENT WILL UBICQUIA BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER UBICQUIA WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL UBICQUIA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EXCEED THE

TOTAL AMOUNTS PAID TO UBICQUIA UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$ 1,000,000.00, WHICHEVER IS LESS. THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM.

16 Term and Termination; Deactivation of the Services.

16.1 Term. The term of this Agreement begins on the Effective Date and continues until the end of the period of the pre-paid Services purchased by you in a purchase order or as terminated by either party hereunder. This Agreement will not automatically renew unless and until the Services are renewed by you and you pay the renewal fee to access and use such Services. You will be offered an opportunity to renew the Services at least thirty (30) days prior to the end of the then applicable term. Any such renewal shall be subject to a new purchase order.

16.2 Termination. In addition to any other express termination right set forth in this Agreement, either Party may terminate this Agreement by providing written notice to the other Party if: (i) the other Party materially breaches this Agreement and does not cure such breach within thirty (30) days after receiving written notice of such breach (except with respect to a violation of the AUP, in which case Ubicquia may immediately suspend or terminate your access to the Services); or (ii) the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

16.3 Refund or Payment upon Termination. You may cease using the Services at any time; provided that all Fees you paid shall be non-refundable. YOUR PURCHASE IS FINAL. IF YOU CANCEL YOU WILL NOT RECEIVE A REFUND OF OR CREDIT FOR ANY PORTION OF THE FEES PAID FOR THE THEN CURRENT SERVICES PERIOD. In the event you terminate the Services with respect to some but not all of the Products, or you cease to use some but not all of the Services, access to the terminated and unused Services shall cease, and any accompanying licenses with respect to the corresponding Products shall cease. You shall not be entitled to a refund for the terminated or unused Services (or portion thereof). If you terminate this Agreement for cause under Section 16.2(i), you shall be entitled to a pro-rated refund of any prepaid Fee paid to Ubicquia for the remainder of the subscription term after the date of termination.

16.4 Effect of Termination. Upon termination of this Agreement, you shall immediately discontinue use of the Services. You shall immediately destroy all copies of the Documentation and Ubicquia's Confidential Information in your possession or control. No expiration or termination of this Agreement will affect your obligation to pay all Fees that may have become due before such expiration or termination, or entitle you to any refund unless permitted under Section 16.3.

16.5 Data. Upon your written request made within thirty (30) days after the effective date of termination of this Agreement, and subject to compensation for any additional costs and expenses Ubicquia may incur, we will make any stored Customer Data available for you to export or download, as applicable. Thereafter, Ubicquia shall have no obligation to maintain or store any Customer Data or make Customer Data otherwise available to you, and Ubicquia shall have the

option to delete or destroy all copies of the Customer Data in its possession to the extent legally permissible.

16.6 **Deactivation of the Services.** If you do not opt to renew the Services pursuant to Section 16.1 above, we will discontinue access to your account and disconnect the units as follows:

UbiCell	all pre-programmed schedules will be deleted all devices will be set to ALS (photocell) mode all device SIMs will be deactivated (from LTE network)
UbiGrid	all device SIMs will be deactivated (from LTE network)
UbiSmart (AQM)	all device SIMs will be deactivated (from LTE network)

In the event of a security vulnerability discovery at the device level, UbiQuia will only disconnect the affected devices.

17 Survival. Sections 1, 2.4, 4.2, 4.3(b), 4.4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16.3, 16.4, 16.5, 17, 19, 20, 21, 22, and 23, and any right, obligation, or required performance of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

18 Modifications. You acknowledge and agree that we have the right, in our sole discretion, to modify this Agreement from time to time, and that modified terms become effective on posting. You will be notified of any such modifications. You are responsible for reviewing and becoming familiar with all modifications. Your continued use of the Services after the effective date of the modifications will be deemed acceptance of the modified terms. We will exercise commercially reasonable efforts to provide you at least thirty (30) days' advance notice of any modifications we reasonably anticipate may result in a material variation or change to this Agreement and/or the Services.

19 Export Regulation. The Services utilize software and technology that may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations. You shall not, directly or indirectly, (i) export, re-export, or release the Services or the software or technology included in such Services to, (ii) make the Services or the software or technology included in the Services accessible from, or (iii) use the Services or the software or technology included in the Services in any jurisdiction or country to which export, re-export, or release is prohibited by law, regulation, or rule. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, using, or otherwise making the Services or the software or technology included in the Services available outside the U.S.

20 U.S. Government Rights. The Documentation and each of the software components that constitute the Services is a "commercial product" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if you are an agency of the U.S. Government or any contractor therefor, you receive only those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48

C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other U.S. Government customers and their contractors.

21 Governing Law and Jurisdiction. The Parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. This Agreement is governed by and construed in accordance with the internal laws of the State of Florida, without giving effect to any choice or conflict of laws provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Florida. Any legal suit, action, or proceeding arising out of or related to this Agreement or the rights granted hereunder will be instituted exclusively in the United States District Court for the Southern District of Florida or the circuit courts of the State of Florida located in Broward County, Florida, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

22 Injunctive Relief. You hereby acknowledge that your breach of this Agreement may cause irreparable harm and significant injury to Ubicquia in an amount that may be difficult to ascertain and for which a remedy at law may be inadequate. Accordingly, you hereby agree that, in addition to any other rights and remedies it may have, Ubicquia shall have the right to seek injunctive relief in any court of competent jurisdiction to enforce your obligations under this Agreement.

23 Miscellaneous. This Agreement constitutes the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. Any notices to us must be sent by certified mail or nationally recognized courtier to Ubicquia, Inc., Attn: Legal Department, 401 East Las Olas Blvd., Suite 1750, Fort Lauderdale, FL 33301, U.S.A., with a copy emailed to legal@ubicquia.com, and are deemed given upon confirmation of receipt by us. You hereby consent to receiving electronic communications from us. These electronic communications may include notices about applicable fees and charges, transactional information, and other information concerning or related to the Services or this Agreement. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. Any failure to act by us with respect to a breach of this Agreement by you or others does not constitute a waiver and will not limit our rights with respect to such breach or any subsequent breaches. This Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement. This Agreement is personal to you and may not be assigned or transferred for any reason whatsoever without our prior written consent and any action or conduct in violation of the foregoing will be void and without effect. We expressly reserve the right to assign this Agreement and to delegate any of its obligations hereunder.