

01 MAY 2020

MEMORANDUM OF AGREEMENT (MOA)

SUBJECT: Ubicquia Cloud Services Terms and Conditions

This Agreement, including all of the condition, restrictions, and requirements stated herein, which together form Ubicquia's Terms of Use ("**Terms**"), are entered into between Ubicquia LLC and its subsidiaries and affiliates ("**Ubicquia**" or "**Us**") and you or the entity on whose behalf you accept these terms ("**You**," "**Your**," or "**Customer**"), including any individuals You authorize to access or use the Services, including Your independent contractors or employees ("**Authorized Users**"). Where the term "You," "Your," or "Customer" is used in these Terms, it shall be deemed to include any "Authorized User" regardless of whether the term "Authorized User" is specifically referenced. These Terms contain the terms, restrictions, and conditions that govern Your access to and use of any Ubicquia Service for use in conjunction with Ubicquia's hardware products and for other services that Ubicquia provides.

For Ubicquia Services that You receive from a third-party distributor or reseller, these Terms shall also govern any rights and obligations between the party receiving such Services, and its Authorized Users, and Ubicquia, and govern the use of such Services.

YOU MUST READ AND AGREE TO BE BOUND BY THESE TERMS BEFORE ACCESSING OR USING THE SERVICES. THESE TERMS TAKE EFFECT, AND YOU AGREE TO THESE TERMS, WHEN YOU CLICK THE BUTTON ACKNOWLEDGING YOUR ACCEPTANCE (E.G., [I ACCEPT]), OR BY SUBMITTING A PURCHASE ORDER FOR A UBICQUIA PRODUCT OR SERVICE THAT REFERENCES THESE TERMS, OR BY ACCESSING OR USING THE SERVICES. YOUR ACCEPTANCE HEREBY: (I) ACKNOWLEDGES THAT YOU HAVE READ AND UNDERSTAND THESE TERMS; (II) REPRESENTS AND WARRANTS THAT YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THESE TERMS, AND, IF ENTERING INTO THESE TERMS FOR AN ORGANIZATION, THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ORGANIZATION; AND (III) INDICATES YOUR ACCEPTANCE OF THESE TERMS AND AGREEMENT TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN. IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT ACCESS OR USE THE SERVICES.

I. DEFINITIONS

- A. "**Affiliate**" means any entity, now or hereafter existing, that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the subject entity. "Control," for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interest in the subject entity.
- B. "**Agreement**" means this Ubicquia Cloud Services Terms and Conditions MOA, any Ubicquia EULA applicable to one or more Ubicquia products or services that is associated with Your present use of Ubicquia's Services, any other existing and in force agreement between You and Ubicquia, and all applicable laws, rules and regulations applicable to Your use of the Services.

- C. **“Content”** means all hardware, software, and data products provided by Ubicquia. For the avoidance of doubt, Content in this Agreement includes, but is not limited to, information, works, equipment, components, and materials, non-exhaustively including processor-executable software, databases, text, audio, images, video, and other machine-generated and machine-presentable information.
- D. **“Documentation”** means electronic and non-electronic developer guides, getting started guides, user guides, quick reference guides, and other technical and operations manuals and specifications for the Services, as such documentation may be updated by Ubicquia from time to time.
- E. **“Personal Data”** means any information that can be used to identify an individual, such as, but not limited to, an image, name, address, telephone number, and e-mail address.
- F. **“Purchase Order”** means the order submitted by You to Ubicquia identifying the Units or Services You agree to purchase.
- G. **“Sales Order”** means the written confirmation issued by Ubicquia that constitutes Ubicquia’s acceptance of a corresponding Purchase Order and setting forth, or otherwise confirming where not in conflict with the Purchase Order, the terms and conditions of the transaction.
- H. **“Services”** means Ubicquia Services.
- I. **“Third Party Materials”** means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Us.
- J. **“Ubicquia Services”** means Ubicquia’s interactive web portal and the data input, data output, and data processing services provided through the web portal, application programming interfaces (APIs), platform services, Content, applications, support, and any other product or service provided by Ubicquia under these Terms.
- K. **“Units”** means the hardware products manufactured and sold by Ubicquia.
- L. **“Your Data”** means all information, software, and other like data that You or anyone acting on Your behalf provides to Ubicquia for any purpose in connection with Your use of the Services. Your Data does not include Telemetry Data.

II. SCOPE OF USE

- A. You may access and use in accordance with these Terms, the Services that You purchase, or are otherwise provided to You, by, through, or on behalf of Ubicquia. The software embedded in Ubicquia’s products (and any updates thereto) is licensed and governed by Ubicquia’s [End User License Agreement](#) (“**EULA**”). You may also need to install software or provide additional information to use certain Services. You may use such software to the extent reasonably required to use the Services but only for the subscription term during which You are entitled to use the Services. Such software is

licensed to You under the EULA. Ubicquia reserves all rights to the Services, Content, hardware, and software not expressly granted under these Terms or the EULA.

- B. You may access and use the Services only if You can form a binding contract with Ubicquia and only if You are in compliance with the Terms of this Agreement.
- C. Your Account. You must have an account to access and manage Your use of the 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 to the extent caused by Ubicquia's breach of this Agreement, Ubicquia and its affiliates are not responsible for unauthorized access to Your account. You agree to use reasonable measures to protect Your credentials and You agree to contact Ubicquia immediately if You suspect unauthorized use of Your account or if Your account information is lost or stolen.

III. LIMITATIONS ON USE, ACCEPTABLE USE POLICY

- A. The Services and Content, including the features and functionality thereof, are protected by one or more of United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.
- B. Neither You nor any End 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 these Terms are conditioned on Your compliance with these Terms and will terminate if You do not comply with any term or condition of this Agreement.
- C. Acceptable Use Policy ("**AUP**"). Use of any Ubicquia Services is subject to the following AUP. The AUP applies to anyone who uses the Services, including without limitation You, Your Authorized Users, the legal entity or individual doing business with Ubicquia, including resellers, and any third party permitted by resellers to use or access the Services ("**End Users**"). You are required to inform End Users of this AUP .
- D. You, Your Authorized Users, and any End Users shall not directly or indirectly do any of the following or encourage, promote, permit, facilitate, or instruct others to:
 - 1. Modify, alter, tamper with, repair, create derivative works of (except to the extent software included in the Services is provided to You under a separate license that expressly allows You to create derivative works), or reverse engineer, decompile, translate, disassemble or otherwise attempt to extract or generate source code of, any software included in the Services;
 - 2. Sell, resell, reframe, distribute, rent, or lease the Services, include the Services in an outsourced or service bureau offering, or otherwise commercialize the Services;
 - 3. Use the Services for any illegal, harmful, or offensive use, 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;
4. Commit or encourage fraudulent or other illegal activities in violation of any applicable law, regulation, government order or decree, legal agreement, or Ubicquia published policies or specifications;
 5. Use the Services as a sole source of, primary source of, or final confirmation of information that protects the life, limb, or property of any third party. For the avoidance of doubt, the information of this provision III.D.5 includes, but is not limited to, measures or indication of time, temperature, location, pressure, voltage, current, power, lightening, 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);
 6. Infringe or misappropriate any copyright, trademark, or other intellectual property or proprietary rights of others;
 7. 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;
 8. Work around any technical limitations in the Services that only allow You or Your End Users to use the Services in certain ways;
 9. Download or otherwise remove copies of software, including source code and executable code, from the Services unless explicitly authorized;
 10. 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;
 11. Remove, circumvent, disable, damage, or otherwise interfere with security-related features of the Services;
 12. Access or probe any network, computer or communications system, software application, or network or computing device without authorization, including but not limited to breaches, vulnerability scans, or penetration testing; or
 13. Violate any applicable law or regulation or accompanying user or technical manuals, training materials, specifications, or other Documentation pertaining to any Services, whether in digital or printed format.

14. 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 breach of the AUP may result in warnings, suspending, restricting, or terminating access to the Services, removing or disabling access to any content or resource that violates the AUP, legal proceedings, and any other action Ubicquia reasonably deems appropriate. You agree to indemnify, defend, and hold Ubicquia harmless for any claims, liability, demands, damages, and costs (including attorneys' fees) arising from violations of the AUP by You or Your End Users.

E. 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.

IV. FEES

- A. You are responsible for paying all fees for the Services as specified in the applicable Purchase Order(s) or any other applicable agreement between You and Ubicquia. Payment obligations are non-cancelable, and fees paid are non-refundable. Unless otherwise agreed, annual licensing or Services fees are due within thirty (30) days of the invoice date and shall be paid in advance for the current year. If any invoiced amount is not received by the due date, without limiting Ubicquia's other rights or remedies, those charges may accrue late interest, calculated monthly, from the due date to the date of payment at the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law. You will pay all sales, value-added, general standard and similar taxes, levies, duty, or charges imposed by any government authority related to the Services purchased. If Your payment is thirty (30) or more days overdue, Ubicquia may, in its sole discretion after providing You at least ten (10) days prior notice, and without limiting Ubicquia's other rights and remedies, suspend or terminate the Services until such amounts are paid in full. In the event You dispute an invoice, You must notify Ubicquia in writing of such dispute within thirty (30) days of the invoice date. Ubicquia will not charge late interest or suspend Services 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.
- B. The applicable agreement between You and Ubicquia may govern the acceptable forms of payment for the Services You or Your End Users receive. For example, and not limitation, Services may be invoiced, billed, collected, or otherwise made due and paid for electronically, via one or more invoices, via a third-party credit source, via a purchase order, via a financial institution electronic withdrawal, via a wire payment, and the like.
- C. In the event Ubicquia authorizes one or more third parties to offer services through Ubicquia's Services, then Ubicquia may facilitate payment of such third-party services, if any, through the Services provided by Ubicquia.

V. OUR RESPONSIBILITIES

- A. **Availability of Purchased Services.** Ubicquia will provide You the Services specified in the applicable Sales Order. Ubicquia will use commercially reasonable efforts to make the purchased Services available 24 hours a day, 7 days a week, except for: (i) scheduled downtime; (ii) any unavailability caused by circumstances beyond Ubicquia's reasonable control, including, but not limited to, an act of God, act of government, pestilence, flood, fire, storms, earthquake or other elements of nature, systemic electrical, telecommunications or other utility failures, civil unrest, act of terror, strike or other labor problem ("**Force Majeure Event**"), issues with network connectivity, or Internet service provider failure or delay; (iii) any other circumstances beyond Ubicquia's reasonable control, including Your use of Third Party Materials, misuse of the Services, or use of the Services other than in compliance with the express Terms of this Agreement; and (iv) any permitted suspension or termination of the Services pursuant to these Terms.
- B. **Support Services.** Ubicquia provides basic support with the Services and offers higher levels of support for an additional fee.

VI. YOUR OBLIGATIONS

- A. You are responsible for: (i) complying with the AUP as described in Section III(c); (ii) Your account security pursuant to Section II(c) and using reasonable efforts to prevent unauthorized access to or use of the Services and Content; (iii) Your Authorized Users' compliance with these Terms; (iv) the accuracy, completeness, and legality of Your Data, the means by which Your Data was acquired by You, and the use of Your Data with Ubicquia Services; and (v) the technical operation of Your Data, including ensuring that calls You make to the Services are compatible with Ubicquia's current APIs for that Service.
- B. You shall use the Services and Content only in accordance with these Terms, Ubicquia's Documentation, the commercial agreement and/or Sales Order (as applicable) between You and Ubicquia, and all applicable laws, rules, and regulations.
- C. You shall comply with the terms of service of third-party applications (including Your applications) with which You access or use the Services or Content.
- D. 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 back up of Your Data and Data of Your End Users and others to whom You owe such a duty.

VII. BETA AND FREE SERVICES

- A. **Beta Services.** 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 in 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.

- B. **Free Services.** Ubicquia may offer You access to certain Services free of charge (“**Free Services**”). Ubicquia may, in its sole discretion at any time and for any reason, terminate Your access to the Free Services or any portion thereof. You agree that any termination of Your access to Free Services may be without prior notice, and Ubicquia will not be liable to You or any third party for such termination. Unless prohibited by applicable law, Ubicquia shall use reasonable efforts to provide You with a reasonable opportunity to retrieve Your Data prior to termination, provided You are solely responsible for exporting Your Data prior to termination of Your access to the Free Services. The Free Services are provided “AS-IS” without support or any warranty of any kind. Ubicquia shall have no indemnification obligations with respect to any Free Services.

VIII. CHANGES

- A. **Services.** Ubicquia may 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.
- B. **Material Change to Services.** In the event a change by Ubicquia does materially reduce the core functionality of the Services and does have a materially adverse effect on Your use of the Services, You shall notify Ubicquia in writing, and Ubicquia shall attempt to provide a reasonably satisfactory work-around. In the event You are not satisfied with such work-around or a work-around is not possible, then You may terminate Your Services upon written notice to Ubicquia, and in such case, subject to this Agreement, you may be entitled to receive a pro-rated refund of any fees or other consideration paid in advance or otherwise exchanged for the terminated Services.
- C. **Automatic Updates.** Ubicquia may, from time to time and at its sole option, provide patches, bug fixes, corrections, updates, upgrades, support and maintenance releases, or other modifications to the Services, which items shall be deemed part of the Services.

YOU HEREBY CONSENT TO ANY SUCH AUTOMATIC UPDATES.

These updates may be automatically installed without providing any additional notice to You or receiving Your additional consent. If You do not consent, Your remedy is to terminate Your account and stop using the Services.

- D. **APIs.** From time to time, Ubicquia may change or discontinue one or more APIs utilized for the Services. In such cases, Ubicquia shall use reasonable efforts to continue to support the previous version of any changed or discontinued API for a period of one (1)

year from the date of the change or discontinuation, unless the continued support of the previous version would reasonably be expected to: (i) pose a security risk or intellectual property rights issue; (ii) be commercially unfeasible (whether economically or technically); or (c) is impossible or impractical as a result of a legal requirement.

IX. THIRD PARTY MATERIALS

- A. Third Party Materials offered to You by a third party in conjunction with the Services, and any exchange of data between You and such third party, is solely between You and the applicable third party, even if such Third Party Materials are provided by use of, or through, the Services. Your use of such Third Party Materials shall be subject to a separate agreement directly between You and the Third Party Materials provider for the provision of the Third Party Materials. The Third Party Materials provider is solely responsible for the Third Party Materials.
- B. FOR THE AVOIDANCE OF DOUBT, UBICQUIA PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THIRD PARTY MATERIALS, INCLUDING WITH RESPECT TO FUNCTIONALITY OF SUCH THIRD PARTY MATERIALS WITH ANY UBICQUIA PRODUCT OR SERVICE. Ubicquia does not provide any warranty, maintenance, technical, or other support for any Third Party Materials or its use on any Ubicquia product or Service. Accordingly, Ubicquia shall have no obligation or liability arising from such Third Party Materials.

X. PRIVACY AND DATA PROTECTION

- A. Ubicquia will use commercially reasonable efforts to implement and maintain appropriate measures for protection of the security, confidentiality and integrity of Your Data in accordance with [Ubicquia's Privacy Policy](#), which is hereby incorporated by reference herein. Ubicquia will use Your Data and Personal Data in accordance with these Terms and the Privacy Policy. Where legally permissible, Ubicquia may process, transfer, copy, backup, and store Your Data and Personal 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 from Your End Users to such processing and transfer of Personal Data, including international transfers, where applicable.
- B. Ubicquia may collect certain information generated by instrumentation and logging systems created through the use and operation of Ubicquia's products and Services ("**Telemetry Data**") related to Your use of the Services in order to improve, maintain, or analyze the Services. You acknowledge and agree that Ubicquia shall be permitted to use such data without restriction to the extent such data is non-personal data that does not identify You or Your End Users.

XI. CONFIDENTIALITY

- A. Definition of Confidential Information. “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”) that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including without limitation product plans and designs, pricing, marketing and sales information, business plans and processes, customer and supplier data, financial, technology and technical information, “know-how,” trade secrets, information relating to patents, patent applications, works of authorship, prototypes, ideas, techniques, inventions, processes, equipment, algorithms, software programs, software source documents, research, experimental work, development, procurement requirements, purchasing, manufacturing, customer lists, business forecasts and other information, whether such information is in written, oral, electronic, web-based, or other form. Confidential Information does not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; or (iii) is received from a third party without breach of any obligation owed to the Disclosing Party.
- B. The Receiving Party will use 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) to: (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees, contractor’s, officers, directors, agents, attorneys, accountants, or advisors (collectively “**Representatives**”) who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. The Receiving Party will not use the Disclosing Party’s Confidential Information, or permit it to be accessed or used, in any manner to the Disclosing Party’s detriment, including without limitation, to reverse engineer, disassemble, decompile or design around the Disclosing Party’s proprietary services, products, and/or confidential Intellectual Property. Each Party hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all of its Confidential Information. The Receiving Party shall be responsible for any breach of the Confidentiality obligations herein caused by any of its Representatives.
- C. Required Disclosure. If the Receiving Party is required (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigation demand, or other legal or judicial process) by applicable law to disclose any of the Disclosing Party’s Confidential Information, the Receiving Party will provide the Disclosing Party with prompt notice (to the extent permissible under applicable law) so that the Disclosing Party may seek a protective order or other appropriate remedy, and the Receiving Party will cooperate in that effort, at the Disclosing Party’s cost. If such protective order or other remedy is not obtained, the Receiving Party will furnish only that portion of the Confidential Information which the Receiving Party is advised by legal opinion of the

Receiving Party's counsel is legally required and will exercise its best efforts to obtain reasonable assurance that confidential treatment will be accorded the Confidential Information.

- D. Specific Performance/Injunctive Relief. Each Receiving Party acknowledges that the Confidential Information constitutes valuable, special, and unique property of the Disclosing Party critical to its business, and that any breach of its confidentiality obligations herein by it will give rise to irreparable injury to the Disclosing Party that is not compensable in damages. Accordingly, each Receiving Party agrees that the Disclosing Party shall be entitled to obtain specific performance and/or injunctive relief against the breach or threatened breach of the confidentiality obligations herein by the Receiving Party or its Representatives. Such remedies shall not be deemed the exclusive remedies for a breach of this Section XI, but shall be in addition to all other remedies available at law or in equity to the Disclosing Party.
- E. A Party's obligations as to any particular Confidential Information of the other Party will remain in effect for a period of five (5) years following the disclosure of such Confidential Information. Each Party's obligations hereunder survive and continue in effect with respect to any Confidential Information that is a trade secret under applicable law.

XII. PROPRIETARY RIGHTS AND OWNERSHIP

A. Your Data

1. As between You and Ubicquia, You retain all right, title, and interest in and to Your Data. Except as provided in this Section XII, Ubicquia acquires no right, title, or interest from You or Your licensors to Your Data, including any related intellectual property rights. You hereby grant to Ubicquia, its Affiliates, and applicable contractors a nonexclusive, worldwide, royalty-free, perpetual, irrevocable, sublicensable, and assignable license to use, access, modify, reproduce, copy, display, perform, process, and distribute Your Data for the purpose of providing and improving the Ubicquia's products and/or Services. You represent and that You have the right to grant the license contained this Section.
2. Resultant Data. You hereby grant Ubicquia a nonexclusive, worldwide, royalty-free, perpetual, irrevocable, sublicensable, and transferable right to access, display, process, aggregate, create Derivative Works (defined below), or otherwise use Aggregate Data (defined below) (including all related intellectual property rights) in any manner and without payment of any royalties. For the purposes of these Terms: (i) "**Aggregate Data**" means data, including Your Data, in which identification (or re-identification) of an individual person or organization is not technically possible according to acceptable commercial standards of protection, and considering all means that could reasonably be used; and (ii) "**Derivative Work**" means a derivative work within the meaning of the Copyright Act of 1976 (as amended) including, without limitation, any modification, revision, translation, abridgment, condensation, or expansion of the associated content or any form in which the associated content is recast, transferred, transformed, or adapted, which, if prepared without the rights

granted under this Agreement, would result in copyright infringement.

3. Subject to the license granted to Aggregate Data above, Ubicquia shall own, itself and for its own benefit, all right, title, and interest in and to the Derivative Works created by or on behalf of Ubicquia of any Aggregate Data, including any intellectual property rights therein (whether those rights are registered or not, and wherever in the world those rights may exist).
- B. **Service Data**. You agree that Ubicquia and its Affiliates may use information derived from or generated by the Services to provide, maintain, protect, and improve the Services and to develop new products and services, to the extent permitted by applicable law.
- C. **Ubicquia Materials**. Ubicquia and its Affiliates or licensors own and reserve all right, title, and interest in and to the Services and Content, the underlying technology, the software, and Documentation, including all related intellectual property rights. Such ownership extends to all copies and portions of the foregoing, and all improvements, enhancements, modifications, and derivative works. You may use the Services and Content solely as part of the Services for Your internal business operations subject to these Terms and Your permitted use of the Services. No rights are granted to You hereunder, including any intellectual property rights, other than as expressly set forth herein and with respect to the software, in the [EULA](#). Some Content may be provided to You under a separate license, including an open source software license. Your use of such software is subject in all cases to the applicable license from such software provider, which shall prevail with respect to that Content.
- D. **Feedback**. If You or any of Your End Users, sends or transmits to Ubicquia any feedback, communications, or other such materials by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Ubicquia is free to use such Feedback irrespective of any other obligation or limitation between You and Ubicquia. All Feedback is, and will be treated as, non-confidential. You agree to assign, and hereby do assign, to Ubicquia and its Affiliates, and You shall cause Your End Users to assign, all right, title and interest in the Feedback, and to the extent such assignment is not permitted under applicable law, You hereby grant to Ubicquia a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Ubicquia's or its Affiliates' Services, any Feedback provided by You or Your End Users, and Ubicquia shall be entitled to use such Feedback without any restriction, for any purpose whatsoever and without any obligation of any payment of any fees.

XIII. DISCLAIMERS

- A. The Hardware Warranty for Ubicquia Units is set forth separately in Ubicquia's limited hardware warranty terms, as provided in the Ubicquia Standard Terms and Conditions of Sale.
- B. **DISCLAIMER OF WARRANTIES.** THE CONTENT AND SERVICES ARE PROVIDED "AS IS," AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NEITHER UBICQUIA, 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 INTEGRATION. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE SERVICES AND ITS FEATURES OR FUNCTIONALITY, AND ANY COMMUNICATION WITH YOU, IS FOR INFORMATION PURPOSES ONLY, AND DOES NOT CONSTITUTE A WARRANTY OR REPRESENTATION. WITHOUT LIMITING THE FOREGOING, UBICQUIA MAKES NO REPRESENTATION OR WARRANTY THAT THE SERVICES WILL: (I) MEET YOUR REQUIREMENTS; (II) BE UNINTERRUPTED, ERROR-FREE, ACCURATE, RELIABLE, OR COMPLETE; (III) BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE NOT EXPLICITLY SPECIFIED IN THE DOCUMENTATION; OR (IV) THAT 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 XIII APPLIES, *INTER ALIA*, TO ALL APPLICABLE SERVICES DESCRIBED IN SECTION III.D.

XIV. INDEMNIFICATION

- A. **Indemnification By Ubicquia.** Ubicquia shall defend You against any third-party claim, demand, suit, action, or proceeding (provided that such third party is not affiliated with You) brought against You alleging that Your use of the Services directly infringes a third party's patent, copyright, trademark, or trade secret and indemnify You against damages finally awarded against You by a court of competent jurisdiction or settlements entered into by Ubicquia on Your behalf. As a condition to Ubicquia's obligation, You must: (i) promptly give Ubicquia written notice of any claim; (ii) give Ubicquia sole control of the defense and settlement of such claim; and (iii) provide Ubicquia with all reasonable assistance, at Ubicquia's expense. If Ubicquia receives information about an infringement claim related to the Services, then Ubicquia may, at its option and expense: (a) obtain the right or license for Your continued use of the Services in accordance with these Terms; (b) modify the Services to make them non-infringing; or (c) terminate the applicable Service upon written notice to You, and refund any pro rata portion of any prepaid fees paid to Ubicquia for the terminated Services for the remainder of the unexpired subscription term. Notwithstanding the foregoing, Ubicquia shall have no responsibility for, and no obligation to defend or indemnify You for, any claim resulting or arising from: (1) Your Data, third party Content, or open source software that is licensed

to You under separate agreement; (2) modifications of the Services that were not performed by or on behalf of Ubicquia; (3) the combination, operation, or use of the Services with hardware, software, services, or processes not provided by Ubicquia; (4) 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; (5) use of non-current or unsupported versions of the Services; (6) Beta Services or Free Services; or (7) services You provide based on the Services. This paragraph states Ubicquia's sole obligation and exclusive liability and Your sole remedy for any third-party claims of infringement of any intellectual property or proprietary right.

- B. **Indemnification By You**. You will defend Ubicquia from and against any claim, demand, action suit, proceeding, damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or relating to any third-party claim concerning (a) Your or any of Your End Users' use of the Services (including any activities under Your account and use by Your employees and personnel or End Users) in a manner not expressly authorized by these Terms or that violates applicable law; (b) Your negligence or Your breach of this Agreement; (c) Your Data or the combination of Your Data with other applications, content or processes; or (d) a dispute between You and any End User of Yours. You will indemnify Ubicquia against all damages finally awarded against Ubicquia (or the amount of any settlement entered into by You) with respect to such claims. Your duty to indemnify and defend under this paragraph is contingent upon: (i) You receiving prompt written notice of the third-party claim or action for which You must indemnify Ubicquia (but Ubicquia's failure to promptly notify will only affect Your obligation to the extent that such failure materially prejudices Your ability to defend the claim), (ii) You having the right to solely control the defense and resolution of such claim or action (except that You may not settle any claim against Ubicquia unless it unconditionally released Ubicquia of all liability), and (iii) Ubicquia's reasonable cooperation with You in defending and resolving such claim or action, at Your expense.

XV. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES WILL UBICQUIA OR ITS OFFICERS, EMPLOYEES, DIRECTORS, SHAREHOLDERS, AGENTS, AFFILIATES OR LICENSORS BE LIABLE UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTORY OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS OR MONEY, REVENUES, PROFITS, GOODWILL, USE, DATA, INABILITY TO USE, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OTHER INTANGIBLE LOSSES OR COSTS OF SUBSTITUTE GOODS OR SERVICES (EVEN IF SUCH PARTIES WERE ADVISED OF, KNEW OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM YOUR OR YOUR AUTHORIZED USER'S USE OF THE SERVICES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE). IN ANY CASE THE AGGREGATE LIABILITY OF UBICQUIA

AND ITS OFFICERS, EMPLOYEES, DIRECTORS, SHAREHOLDERS, AGENTS, AFFILIATES OR LICENSORS TO YOU OR TO ANY THIRD PARTY FOR ALL CLAIMS ARISING UNDER THESE TERMS IS LIMITED TO YOUR ACTUAL DAMAGES UP TO THE FEES ACTUALLY PAID BY YOU TO UBICQUIA FOR THE SERVICES GIVING RISE TO THE CLAIM IN THE 12 MONTH PERIOD PRECEDING THE CLAIM. THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM.

XVI. TERM; TERMINATION; SUSPENSION

- A. **Subscription Term.** These Terms will commence on the date indicated on Your Sales Order (“Effective Date”) and shall remain in full force and effect so long as You continue to access or use the Services, or until terminated in accordance with these Terms. Annual subscription and/or licensing fees shall automatically renew on the annual anniversary of the Effective Date until You provide Ubicquia with sixty (60) days prior written notice before the end of the then current subscription term of Your intention not to renew.
- B. **Suspension.** Without limiting other remedies, Ubicquia may suspend Your and any of Your End Users’ right to access or use all or a part of the Services immediately upon notice to You if Ubicquia determines, in its sole discretion, that:
1. You or an End User of Yours has violated these Terms or the AUP;
 2. You have engaged in any conduct that Ubicquia believes is in violation of any applicable law or regulation or is otherwise harmful to Ubicquia or a third party;
 3. You or Your End User’s use of the Services: (a) poses a security risk to the Services; (b) may adversely impact the Services; or (c) could subject Ubicquia or any third party to liability; or
 4. provision of the Services is rendered impossible or impractical as a result of a legal requirement or judicial order.
- C. **Termination.** You may discontinue Your use and access to the Services at any time for any reason by providing Ubicquia written notice. Either party may terminate these Terms for cause by providing written notice to the other party if: (i) the other party materially breaches these Terms 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 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 benefits of creditors.
- D. **Refund or Payment Upon Termination.** If You terminate these Terms for cause, Ubicquia will refund to You any prepaid fees covering the remainder of the then current subscription term after the date of termination for the Units subject to such termination.

If these Terms are terminated by You without cause, You shall not be entitled to a refund. In the event You terminate the Services with respect to some but not all of the corresponding Units, access to the Services and any accompanying software license shall cease with respect to the corresponding Units. If these Terms are terminated by Ubicquia for cause, You will pay any unpaid fees covering the remainder of the then current subscription term of all Sales Orders. In no event will termination relieve You of Your obligation to pay all fees owing to Ubicquia for the period prior to the effective date of termination.

- E. **Your Data Upon Termination.** Upon Your written request made within thirty (30) days after the effective date of termination of these Terms, Ubicquia will make Your Data available for export or download, as applicable. Thereafter, Ubicquia shall have no obligation to maintain or otherwise make Your Data available to You, and Ubicquia shall have the option to delete or destroy all copies of Your Data in its possession to the extent legally permissible.
- F. **Ubicquia's Data Upon Termination.** Upon Your written request made within thirty (30) days after the effective date of termination of these Terms, You will return to Ubicquia all Content, if any, and all other items in Your possession or control, if any, that are proprietary to Ubicquia.
- G. **Survivability.** Termination of these Terms or Your use of the Services will not affect any rights or obligations of either party accruing up to termination nor any rights or obligations, which by their nature may survive termination, including, but not limited to, the sections of this Agreement titled "Free Services," "Fees," "Proprietary Rights and Ownership," "Confidentiality," "Disclaimers," "Indemnification," "Limitation of Liability," "Refund or Payment Upon Termination," "Your Data Upon Termination," "Survivability," "Jurisdiction," and "General Provisions."

XVII. ASSIGNMENT AND SUBCONTRACTING

No party to these Terms shall assign these Terms, by operation of law or otherwise, in whole or in part, without the prior written consent of the other party (such consent not to be unreasonably withheld) except that either party may assign this Agreement pursuant to its merger or consolidation with or into, or the purchase of all its outstanding stock by, any other entity; provided such other entity is not a competitor of the non-assigning party. Any assignment made or attempted in violation of this paragraph shall be void and of no effect. Ubicquia may subcontract the performance of the Services to third parties. Any such subcontract shall not relieve Ubicquia of its obligations under these Terms.

XVIII. GOVERNING LAW; JURISDICTION; NOTICES; RELATIONSHIP OF PARTIES

- A. **Governing Law.** These Terms shall in all respects be governed by and interpreted under the laws of the State of Florida (without regard to the conflicts of laws provisions thereof or the UN Convention on the International Sale of Goods and any rules of private

international law or the conflict of laws that would lead to the application of any other laws).

- B. **Jurisdiction**. The parties agree that any judicial proceeding to resolve claims relating to these Terms or the Services will be brought in the courts of Florida, Brevard County, or the U.S. District Court for the Southern District of Florida.
- C. **Relationship of the Parties**. The parties are independent contractors. These Terms do not create a partnership, joint venture, agency, fiduciary, or employment relationship between the parties.

XIX. ARBITRATION

- A. If You are a resident of the United States, then any dispute arising out of Your use of the Ubicquia Services, or any dispute arising out of the Terms, including or concerning the interpretation, violation, invalidity, non-performance, or termination, shall be submitted to final and binding arbitration by one arbitrator of Judicial Arbitration Mediation Services, Inc. (“JAMS”), subject to the U.S. Federal Arbitration Act and federal arbitration law, and according to the JAMS Streamlined Arbitration Rules and Procedures (“JAMS Rules”) that are in effect at the commencement of the subscription term, wherein the one arbitrator is to be appointed in accordance with JAMS Rules. The arbitration proceeding shall take place in the State of Florida and shall be governed by the laws of the State of Florida in accordance with the previous Governing Law; Jurisdiction; Relationship of Parties section XVIII. You shall not request the arbitrator to render, and the arbitrator shall have no power to render, any decision or award except as provided in this Agreement. The prevailing party will be entitled to an award of all fees, costs and expenses of the arbitration and the arbitrator.
- B. **Enforcement**. The decision of the appointed arbitrator is final and binding. You agree that any suit, action or proceeding required to enforce any arbitration award rendered pursuant to this binding arbitration shall be brought in the courts of Florida, and You irrevocably submit to the jurisdiction of such courts for the purpose of any such suit, action, proceeding, or judgment.

XX. GENERAL PROVISIONS

- A. **Import and Export Compliance**. In connection with these Terms, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, You are solely responsible for compliance related to the manner in which You choose to use the Services, including Your transfer and processing of Your Data, the provision of Your Data to Your End Users, and the region in which any of the foregoing occur.

- B. **U.S. Government Rights.** The Services are provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the same rights and restrictions generally applicable to the Services. If You are using the Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, You will immediately discontinue Your use of the Services. The terms “commercial item” “commercial computer software,” “commercial computer software documentation,” and “technical data” are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.
- C. **No Third Party Beneficiaries.** This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to these Terms.
- D. **No Waivers.** The failure by Ubicquia to enforce any provision of these Terms will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by Ubicquia must be in writing to be effective.
- E. **Severability.** If any portion of these Terms is held to be invalid or unenforceable, the remaining portions of these Terms will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect the intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from these Terms, and the rest of the Terms will remain in full force and effect.
- F. **Statute of Limitations.** You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.
- G. **Modifications.** You acknowledge and agree that Ubicquia has the right, in its sole discretion, to modify these Terms from time to time, and that the modified terms shall become effective on posting. You will be notified of modifications through email or posts on the Services. You are responsible for reviewing and becoming familiar with any such modifications. Your continued use of the Services after the effective date of the modifications will be deemed acceptance of the modified terms.
- H. **Binding.** These Terms shall be binding on, and shall inure to, the benefit of the heirs, successors, and assigns of the parties hereto. Except as permitted in Section G above, no modification to these Terms is binding, unless in writing and signed by a duly authorized representative of Ubicquia.
- I. **Entire Agreement.** Unless Ubicquia has provided separate, written, individual terms, this Agreement represents the entire agreement between You and Ubicquia relating to the Services or any products developed with or utilizing the Services or Content and: (i) supersedes all prior or contemporaneous oral or written communications, proposals, and representations with respect to the Services; and (ii) prevails over any conflicting or additional terms of any acknowledgement or similar communication from You with respect to the Services provided during the subscription term.

Notice. Any and all notices, requests, instructions, and other communications required or permitted to be given hereunder may be delivered personally or by nationally recognized overnight courier service or sent by government-run or otherwise government-sponsored mail or by electronic mail (email). Any notices to Ubicquia must be sent to our corporate headquarters address available at our website: www.ubicquia.com, and must be delivered either in person, by certified or registered mail, return receipt requested and postage prepaid, or by recognized overnight courier service, and are deemed given upon receipt by Ubicquia. Notwithstanding the foregoing, You hereby consent to receiving electronic communications from Ubicquia. These electronic communications may include notices about applicable fees and charges, transactional information, and other information concerning or related to the Services. You agree that any notices, agreements, disclosures, or other communications that Ubicquia sends to You electronically will satisfy any legal communication requirements, including that such communications be in writing. Any notices to You will be sent, to the extent reasonably possible, to an address You provide, and in the event You do not provide such an address, to any address or all addresses Ubicquia can discern from You, including Your login information, Your contact information, information from Your Purchase Order, or any other such information. In at least some cases, Ubicquia may attempt to contact You via the Services.