

Terms & Conditions of Service

These Terms and Conditions (“**T&Cs**”) shall govern the purchase of Services by Customer and/or Client (referred to herein as “**Customer**”), as specified in any proposals or order forms (each an “**Order Form**”) attached thereto. Ubicquia, Inc. (“**Ubicquia**”) and Customer may be referred to in these T&Cs as a “**Party**,” or collectively the “**Parties**.”

1. Definitions.

“**Access Credentials**” means any username, identification number, password, license or security key (including any API key), PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual's identity and authorization to access and use the Services and APIs.

“**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 other users of the Services, such that it does not identify Customer, any Authorized User, or Customer's Confidential Information.

“**API**” means any application programming interface set forth in an Order, made available by Ubicquia in connection with the Services, or otherwise necessary to use, integrate, or interoperate with the Services.

“**Authorized User**” means all persons authorized by Customer to access and use the Services under the rights granted to Customer pursuant to these T&Cs.

“**Confidential Information**” means any non-public information that is treated as confidential by a Party, including but not limited to all non-public information about its business affairs, products or services, Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether disclosed orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential”. Confidential Information shall not include information that: (a) is already known to the receiving Party without restriction on use or disclosure prior to receipt of such information from the disclosing Party; (b) is or becomes generally known by the public other than by breach of these T&Cs by, or other wrongful act of, the receiving Party; (c) is developed by the receiving Party independently of, and without reference to, any Confidential Information of the disclosing Party; or (d) is received by the receiving Party from a third party who is not under any obligation to the disclosing Party to maintain the confidentiality of such information.

“**Customer**” means the customer listed on the Order Form.

“**Customer Data**” means any and all information, data, materials, works, or other content that is (a) collected, downloaded, uploaded, input, or entered by or on behalf of Customer for Processing, and (b) information, data, reports, or other content generated or otherwise output from the Services in response to the Process of Customer Data. For the avoidance of doubt, Customer Data shall exclude Aggregated Statistics.

“**Customer Systems**” means the Customer's infrastructure, including all computers, software, hardware, equipment, tools, databases, models, electronic systems, and networks, whether operated directly by Customer or through third-party providers.

“**Documentation**” means all user manuals, instructions, guides, videos, model cards, and other specifications and technical materials, in any form or media, provided or made available by Ubicquia in relation to the description, features, or functions of the Equipment or Services.

“**Equipment**” means the equipment furnished by Ubicquia to enable the provision of the Services.

“**Fees**” has the meaning set forth in Section 1.10.1.

“**Force Majeure Event**” means any acts of God, flood, fire, earthquake, other natural disasters, epidemics, pandemics, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts (including without limitation state-sponsored cyber-attacks), riot, or other civil unrest; embargoes or blockades in effect on or after the date of these T&Cs, national or regional emergency, strikes, labor stoppages or slowdowns, or other industrial disturbances, any action taken by a governmental or public authority, including imposing any export or import restriction, quota, or other restriction or prohibition, any

national or regional shortage of adequate power, telecommunications, or transportation, or any other event outside a party's reasonable control.

“**Hazardous Materials**” means substances or items that can cause harm to people, animals, or the environment, including without limitation asbestos, asbestos-containing material, polychlorinated biphenyl (“PCB”), formaldehyde or other potentially toxic material.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Process**” means to take any action or perform any operation or set of operations on any data, information, material, work, expression, or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other improvements or derivative works, (b) process, weigh, perform statistical analysis, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or (c) block, erase, or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Provider Systems**” means the information technology infrastructure used by Ubicquia in performing the Services, including all computers, software, hardware, databases, models, electronic systems (including database management systems), and networks, whether operated directly by Ubicquia or through the use of third-party services.

“**Services**” means the power quality monitoring services provide by Ubicquia to detect and alert Customer about power issues impacting operations.

“**Term**” has the meaning set forth in **Error! Bookmark not defined.Error! Reference source not found.**

2. Orders. Customer has selected the Services identified in an Order Form. Additional Services are available and may be purchased by Customer from Ubicquia from time to time. Each order for Services will be effective only when approved by Customer and Ubicquia, either via a duly executed Order Form or upon written confirmation of acceptance of an order by Ubicquia. Each duly accepted order shall be part of and subject to these T&Cs. Except as set forth in a duly accepted order, these T&Cs do not obligate Customer to purchase, or Ubicquia to provide any Services.

3. Equipment. All Equipment installed by Ubicquia shall be owned by Ubicquia unless Ubicquia has agreed in writing to give Customer ownership of the Equipment at the end of the Term. At the end of the Term, or upon termination of the Services, Ubicquia has the right, but not the obligation, to remove or disable any or all of the Equipment owned by Ubicquia, in which case Customer will not be able to use the Equipment for any purpose. Ubicquia may remove or, upon written notice to Customer, transfer to Customer in whole or in part, all Ubicquia-owned Equipment, including devices, wiring/cable and other materials associated with the Equipment, without any further obligation to Customer.

4. Access and Use of the Services.

(a) Provision of Access. Ubicquia shall, at no additional cost to Customer, provide Customer the Access Credentials (or ability to create Access Credentials), APIs and Documentation necessary to make the Services ready and available for Customer and its Authorized Users.

(b) Access and License Grant. Ubicquia hereby grants to Customer during the applicable Term, a non-exclusive and non-transferable right to access and use the Services solely and exclusively for Customer's legitimate business purposes. Customer may not sublicense its rights hereunder, except to an Authorized User and then only in connection with such Authorized User's use of the Services on behalf of Customer.

(c) Documentation License. Ubicquia hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to prepare, reproduce, print, download, and use the Documentation during the Term as may be necessary or useful for any permitted use of the Services under these T&Cs.

(d) Use Restrictions. Except as otherwise permitted under these T&Cs or upon written consent of Ubicquia, Customer shall not and shall not permit any Authorized Users to: (a) modify or create derivative works of the Services or Documentation, in whole or in part; (b) rent, lease, lend, sell, license, sublicense, assign, or otherwise transfer the Services or Documentation; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; or (d) remove any proprietary notices from the Services or Documentation.

(e) Acceptable Use Policy. Access to the Services is contingent upon Customer's and its Authorized User compliance with the Acceptable Use Policy, as such may be amended from time to time at Ubicquia's sole discretion.

5. Installation.

5.1. Installation. To the extent requested by Customer, Ubicquia shall complete the installation of the Equipment in a timely and workmanlike manner, including all supplies and necessary labor to install the Equipment in accordance with these T&Cs, the Order Form, or any applicable installation specifications provided to Ubicquia by Customer in writing. Ubicquia shall not be responsible for any delays in the installation of the Equipment beyond its reasonable control. Customer hereby acknowledges that the Equipment may be installed by a third-party contractor retained by Ubicquia. Ubicquia shall not be liable for any payment obligations or losses whatsoever resulting from installation or other services either performed by Customer directly or a third-party provider retained by Customer.

5.2. Designated Locations. Prior to performing the physical installation of the Equipment, the Parties shall collaborate to identify locations and/or assets ("**Designated Locations**") and proper positioning of the Equipment for optimal functionality of the Services. Neither Ubicquia nor its subcontractor shall be liable for any delay in installing the Equipment due to the Customer's delay in confirming the Designated Locations and/or delay in having such Designated Locations ready for installation (including, without limitation, having proper electrical work and permits or authorizations necessary for the installation of the Equipment at the Designated Locations). After installation, any changes to the deployment plan (including without limitation Equipment re-positioning and/or locations change) will be charged to the Customer at the then current installation charges. Customer represents and warrants that the Designated Locations are suitable for the installation of the Equipment, including without limitation, supply of a power source, in compliance with Ubicquia's requirements, at each site where an Equipment unit is installed. The power must be available on a 24-hour, 7 days per week basis. The Designated Locations must comply with applicable safety, codes and regulations.

5.3. Hazardous Materials. Customer represents and warrants that, to the best of its knowledge, the Designated Locations are free of any Hazardous Materials. If any such substance is discovered on the work site, Ubicquia will not be required to install or service the Equipment at such site unless and until Customer certifies the removal or safe containment of such Hazardous Materials. Customer shall indemnify, defend and hold Ubicquia, its officers, directors, agents and contractors harmless from any damages, claims, injuries or liabilities resulting from the exposure of Ubicquia's employees, contractors or subcontractors to Hazardous Materials at the work site; provided, however, that the foregoing provision will not apply when it has been determined that such Hazardous Materials were brought to the work site by Ubicquia, its employees or contractors.

5.4. Access to Designated Locations. Customer agrees to allow Ubicquia and/or its agents or contractors reasonable access in and near the Designated Locations for the purpose of performing the Installation Service. Customer agrees to use best efforts to facilitate (i) obtention of permits, (ii) traffic management (if applicable), (iii) road or lane closures (if applicable), and (iv) other similar authorizations or requirements needed to complete the installation of the Equipment. Customer represents and warrants that it has all necessary rights, permissions and authority to allow Ubicquia (or its contractor) to install the Equipment at the Designated Locations and to maintain such Equipment at such Designated Locations during the Term.

5.5. Replacement; relocation or Removal of the Designated Locations. To the extent Customer is in control of the Designated Locations, it must provide Ubicquia at least seven (7) business days written notice prior to any scheduled removal and/or replacement of the Designated Location in order for Ubicquia to coordinate the removal and/or replacement of its Equipment. To the extent the aforementioned prior written notice is not feasible due to urgent or unforeseen circumstances, Customer will safely remove the Equipment

from the Designated Location and either (i) re-attach the Equipment on a new Designated Location; or (ii) return the Equipment to Ubicquia.

6. Responsibility and Subcontracting. Ubicquia shall be solely responsible for the operation, provision, maintenance, and management of the Services. Ubicquia shall host the Services and Process Customer Data at a secure data center.

6.1. Subcontractors. Ubicquia shall ensure its subcontractor complies with all relevant terms of these T&Cs, including all provisions relating to Confidential Information of Customer. Ubicquia shall remain responsible and liable for any and all: (a) performance required hereunder, including the proper supervision, coordination, and performance of the Services; and (b) acts and omissions of each subcontractor to the same extent as if such acts or omissions were by Ubicquia.

6.2. Ubicquia Personnel. Ubicquia is solely responsible for the payment of its personnel, including all fees, expenses, and compensation to, by, or on behalf of any its personnel and, if applicable, the withholding of income taxes and payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits. Prior to any Ubicquia's personnel performing any Services hereunder, Ubicquia shall: (a) ensure that such personnel have the legal right to work in the United States; and (b) at its sole cost and expense, conduct background checks. Ubicquia shall ensure that no person or entity that is identified on a sanctioned or restricted parties list published by a United States governmental authority law provides any Services.

7. User Education and Training. Ubicquia will make available to Customer virtual training on all uses of the Services at no additional cost to Customer. Upon Customer's written request, Ubicquia may provide in-person training. Such in-person training will be conducted at such reasonable times and locations as Customer and Ubicquia agree and pursuant to such rates applicable at the time of the request.

8. Service Levels; Maintenance and Support. During the Term and during any period Ubicquia is obligated to provide the Services, Ubicquia shall provide maintenance and support, at no additional cost to Customer; provided, however that (i) Customer shall be fully liable for any Equipment failure due to Customer's negligence (including without limitation its employees, agents, or contractors), and (ii) Ubicquia reserves the right to charge Customer a replacement fee in the event the Equipment is destroyed due to power surge, vandalism, or acts of God. Ubicquia's obligations under this Section 8 relates only to the maintenance of the Equipment and Services subscribed by Customer and does not include any maintenance, repair or services to (i) any devices not installed by Ubicquia (or its subcontractor), or (ii) Customer System.

9. Ubicquia Systems. Ubicquia shall make the Services available in accordance with the data security requirements set out in Ubicquia Security Program. Ubicquia shall be solely responsible for all Ubicquia Systems and shall exercise commercially reasonable efforts to prevent unauthorized access to Customer Data through the Ubicquia Systems. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE T&CS, CUSTOMER ACKNOWLEDGES THAT (A) NEITHER UBICQUIA NOR UBICQUIA'S THIRD-PARTY PROVIDERS CONTROL THE TRANSFER OF DATA OVER COMMUNICATION FACILITIES, INCLUDING THE INTERNET, AND (B) THE SERVICES MAY BE SUBJECT TO LIMITATIONS, INTERRUPTIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF COMMUNICATION FACILITIES. UBICQUIA AND UBICQUIA'S THIRD-PARTY PROVIDERS ARE NOT RESPONSIBLE FOR ANY INTERRUPTIONS, DELAYS, DELIVERY FAILURES, DATA LOSS, LOSS OF PROFIT, LOSS OF USE, OR OTHER DAMAGE RESULTING FROM ANY OF THE FOREGOING. IN ADDITION, UBICQUIA DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED.

10. Fees and Payment.

10.1. Fees. The fees for the Services shall be determined in accordance with the rates, pricing, and discounts set forth in the Order Form ("**Fees**"). **Customer acknowledges and agrees that the Fees for the Services are prepaid and non-refundable**. Unless expressly provided otherwise in an Order Form, Customer shall pay all undisputed invoices within thirty (30) days after receipt of an invoice.

10.2. Fees During Renewal Term. The Fees for the Services are fixed during the original Term. Renewal of the Services will be paid at the then applicable rate.

10.3. Cancellation Fee. Customer may terminate the Services at anytime but will be subject to an early cancellation fee stated in the Order Form. This amount is a contract termination charge, related to the

removal of the Equipment, reprogramming, restocking and other similar charges incurred by Ubicquia due to Customer's early cancellation, and is not a penalty. Unless expressly stated otherwise in these T&Cs, all prepaid Fees will not be refunded.

10.4. **Replacement of Equipment.** In the event Equipment needs to be replaced due to Customer's negligence (including its employees, contractors and agents) or if the Equipment needs to be replaced due to acts of God, vandalism or power surge, Customer will be liable for the actual cost of replacing the Equipment.

10.5. **Payment Disputes.** Customer may withhold from payment any and all payments of Fees that Customer disputes in good faith, pending resolution of such dispute, provided that Customer: (a) timely renders all payments and amounts that are not in dispute; (b) notifies Ubicquia in writing (email suffices) of the dispute prior to the due date for payment, specifying in such written notice the amount in dispute and the reason for the dispute; (c) works with Ubicquia in good faith to promptly resolve the dispute; and (d) promptly pays any amount determined to be payable by resolution of the dispute. Ubicquia shall not fail to perform any obligation hereunder by reason of Customer's good faith withholding of any Fees in accordance with this Section 10.4.

10.6. **Taxes.** All Fees and other amounts payable by Customer under these T&Cs are exclusive of taxes and similar assessments. Customer is 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 Customer hereunder, other than any taxes imposed on Ubicquia's income.

11. **Confidential Information.**

11.1. **Confidentiality.** In connection with these T&Cs, each Party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other Party (as the "**Receiving Party**"). The Receiving Party shall not (i) access or use, or permit the access or use of, Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with these T&Cs; (ii) use or permit the use of any of the Disclosing Party's Confidential Information, directly or indirectly, in any manner to the detriment of the Disclosing Party or to obtain any competitive advantage over the Disclosing Party; (iii) disclose or permit access to Confidential Information other than to its representatives (which shall include Ubicquia's subcontractor) who: (A) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with these T&Cs; (B) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 11.1; and (C) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this section. The Receiving Party shall safeguard the Confidential Information using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care and will notify the Disclosing Party in writing of any unauthorized disclosure or use of the Disclosing Party's Confidential Information.

11.2. **Compelled Disclosures.** If the Receiving Party is compelled by applicable law to disclose any Confidential Information, then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

12. **Intellectual Property Rights; Customer Data.**

12.1. **Ubicquia's Intellectual Property.** Except for the rights expressly granted in these T&Cs, Ubicquia retains and owns all right, title, and interest, including all Intellectual Property Rights, in and to the Equipment, the Services, and the Documentation. To the extent Customer, its employees, contractors, or agents, or any Authorized User provides Ubicquia with any feedback, including without limitation, suggesting or recommending changes to the Equipment or Services, addition of new features, performance

or functionality ("**Feedback**"), Ubicquia is free to use such Feedback irrespective of any other obligation or limitation governing such Feedback. All Feedback is and will be treated as non-confidential. Customer hereby assigns to Ubicquia, on its behalf and on behalf of its Authorized Users, employees and agents, all right, title, and interest in and to the Feedback, and Ubicquia is free to use, without any attribution or compensation to Customer or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever.

12.2. **Ownership of Customer Data.** As between Customer and Ubicquia, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to the Customer Data, subject to the licenses granted in Section 1.12.3 Customer warrants that it has all rights necessary in the Customer Data, including the means by which the Customer Data was acquired, and Processing of the Customer Data by Ubicquia and Customer's use of the Services will not violate any policy, rules, or applicable law. The Services do not replace the need to maintain regular data backups or redundant data archives. Customer is responsible for taking its own measures to maintain appropriate security, protection, and backup of the Customer Data in its possession.

12.3. **Permitted Use of Customer Data.**

(a) Customer hereby grants to Ubicquia a limited, royalty-free, non-exclusive, and non-sublicensable license to (i) Process the Customer Data as necessary to provide the Services, and (ii) perform, update, or otherwise improve the Services, (including without limitation for training purposes as provided in these T&Cs).

(b) Customer further grants to Ubicquia 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 produce the Aggregated Statistics. Ubicquia owns and retains all right, title and interest in and to the Aggregated Statistics and Customer hereby agrees that Ubicquia may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics in any manner permitted by law. For the avoidance of doubt, Aggregated Statistics shall be aggregated and anonymized and shall not identify Customer, or Customer's Confidential Information.

13. **Representations, Warranties, and Covenants.**

13.1. **Representations & Warranties.** Each Party represents, warrants, and covenants to the other Party that: (i) it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (ii) it has the right, power, and authority (including all permits, consents, and licenses required) to enter into these T&Cs, grant and perform all rights and licenses, and perform its obligations hereunder; (iii) the execution of the Order Form, incorporating these T&Cs, by its representative whose signature is set forth at the end of the Order Form has been duly authorized by all necessary corporate or organizational action of such Party; (iv) to the best of its knowledge, neither its grant of the rights or licenses hereunder or its obligations under these T&Cs will conflict with or violate any applicable law or require the consent, approval, or authorization of any governmental authority or other third party; and (v) when executed and delivered by both Parties, these T&Cs will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

13.2. **Service Warranty.** Ubicquia will perform the Services in a professional and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using Ubicquia personnel with the requisite skill, experience, and qualifications, and shall devote adequate resources to meet its obligations under these T&Cs.

13.3. **DISCLAIMER. UBICQUIA'S SERVICES, SYSTEMS AND EQUIPMENT DO NOT CAUSE AND CANNOT ELIMINATE OCCURENCES OF THE EVENTS THEY ARE INTENDED TO MONITOR. ACCORDINGLY, THE SERVICES ARE PROVIDED "AS IS" AND WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UBICQUIA MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND TO CUSTOMER OR ANY OTHER PARTY, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE 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 CUSTOMER, IS**

FOR INFORMATIONAL PURPOSES ONLY, AND DOES NOT CONSTITUTE A WARRANTY OR REPRESENTATION ABOUT THE EQUIPMENT OR SERVICES. WITHOUT LIMITING THE FOREGOING, UBICQUIA MAKES NO REPRESENTATION OR WARRANTY THAT (I) THE SERVICES WILL MEET CUSTOMER'S 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 WILL RESOLVE ANY PARTICULAR SUPPORT REQUEST OR FIX ANY ERRORS IN A SPECIFIC TIME AND MANNER, OR THAT SUCH RESOLUTION WILL MEET CUSTOMER'S EXPECTATIONS.

14. Indemnification.

14.1. General Indemnification by Ubicquia. Ubicquia shall defend and indemnify Customer, and Customer's officers, directors, employees, agents, permitted successors and assigns (each, a "**Customer Indemnitee**") from and against any and all losses incurred by Customer Indemnitee resulting from any action by a third party (other than an affiliate of Customer), to the extent that such losses arise out of or result from any negligence or more culpable act or omission (including recklessness or willful misconduct) of Ubicquia.

14.2. Infringement Indemnification by Ubicquia. Ubicquia shall defend and indemnify Customer Indemnitees from and against any and all losses incurred by Customer Indemnitee resulting from any Action by a third party (other than an affiliate of Customer) that the Services, or Customer's use thereof, infringe, misappropriate, or otherwise violate such third party's Intellectual Property Rights. Ubicquia's indemnification obligation under Section 1.14.2 shall not apply to any action or loss to the extent that such action or loss arises out of or results from (i) Customer's use of the Services in combination with any products, services, or software not provided by or on behalf of Ubicquia; or (ii) modification of the Services by Customer or any Authorized User other than as permitted by Ubicquia in writing

14.3. Indemnification by Customer. Customer shall defend and indemnify Ubicquia, and its officers, directors, employees, agents, contractors, and permitted successors assigns (each, a "**Ubicquia Indemnitee**") from and against all losses incurred by the Ubicquia Indemnitee resulting from any action by a third party (other than an affiliate of Ubicquia), to the extent that such losses are alleged to arise out of or result from any claim that the Customer Data and Ubicquia's permitted use thereof hereunder is unlawful or infringes, misappropriates, or otherwise violates such third party's rights.

14.4. Indemnification Procedure. The Party seeking indemnification (the "**Indemnitee**") shall promptly notify the other Party (the "**Indemnifying Party**") in writing of any action for which it seeks indemnification pursuant to this Section 14. The Indemnifying Party shall take control of the defense and employ counsel of its choice; the Indemnitee agrees to collaborate with the Indemnifying Party in such defense, at the Indemnifying Party's sole cost and expense. The Indemnifying Party shall not settle any action on any terms or in any manner that adversely affects the rights of the other Party without the other Party's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. A Party's failure to perform any obligations under this Section 14.4 will not relieve the Indemnifying Party of its obligations under Section 14 except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure.

14.5. Mitigation. In addition to all other remedies that may be available to Customer under the Agreement, if the Services are, or in Ubicquia's reasonable opinion, are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party's Intellectual Property Right, or if Customer's use of the Services is enjoined or threatened to be enjoined, Ubicquia shall promptly notify Customer and Ubicquia shall, at its sole cost and expense, and its sole discretion: (i) obtain the right for Customer to continue to access and use the affected Services to the full extent contemplated by these T&Cs; or (ii) modify or replace the affected Services, in whole or in part, to make the affected Services (as so modified or replaced) non-infringing, while providing equivalent features and functionality. If neither of the remedies set forth in (i) or (ii) is reasonably available, then Ubicquia may direct Customer to cease use of any portion of the Services that have been enjoined or finally adjudicated as infringing, and Ubicquia shall refund to Customer any pre-paid, prepaid Fees for such infringing Services that have not been provided or that Customer cannot reasonably use as intended under these T&Cs.

15. Limitations on Liability.

15.1. EXCLUSION OF DAMAGES. EXCEPT FOR BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THESE T&CS UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

15.2. CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF UBICQUIA ARISING OUT OF OR RELATED TO THESE T&CS UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED TWO TIMES THE TOTAL AMOUNTS PAID TO UBICQUIA UNDER THESE T&CS IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$50,000, WHICHEVER IS GREATER. THIS CAP SHALL NOT APPLY TO ANY LIABILITY TO THE EXTENT THAT THE SAME MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF APPLICABLE LAW.

16. Term and Termination.

16.1. Service Term. The Services will begin on the date specified on the applicable Order Form and, unless terminated earlier pursuant to these T&Cs, will continue for the term set forth in such Order Form (the "**Term**"). Customer may renew the Services, either electronically through the Services portal or by issuing a new Order Form to Ubicquia.

16.2. Termination for Cause. In addition to any other termination right set forth in these T&Cs, either Party may terminate these T&Cs, effective on written notice to the other Party, if the other Party (i) materially breaches these T&Cs, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or (ii) (X) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (Y) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, or (Z) makes or seeks to make a general assignment for the benefit of its creditors.

16.3. Cancellation of the Services. Customer may cancel the Services (or any portion thereof) at any time by providing at least thirty (30) days' prior written notice to Ubicquia; provided, however (i) any pre-paid Fee are non-refundable; and (ii) Customer shall remain liable for the Early Cancellation Fee (if any).

16.4. Termination or Expiration. These T&Cs will continue as long as Customer uses the Services (or any portion thereof).

17. Survival. Any right or obligation of the Parties in these T&Cs that, by its nature, should survive termination or expiration of these T&Cs will survive any expiration or termination of these T&Cs, including provisions related to intellectual property rights, confidentiality, privacy, indemnification, representations and warranties, limitations of liability, notices, and effects of termination.

18. Dispute Resolution. Any dispute, controversy, or claim arising out of or relating to this the Services, or the breach, termination or invalidity of these T&Cs (each, a "**Dispute**"), shall be submitted for negotiation and resolution to the General Manager of Ubicquia (or to such other person of equivalent or superior position designated by Ubicquia) and the duly appointed representative of Customer, by delivery of written notice (each, a "**Dispute Notice**") from either of the Parties to the other Party. Such persons shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve any Dispute within thirty (30) days after delivery of the applicable Dispute Notice, either Party may file suit in a court of competent jurisdiction in accordance with the provisions of these T&Cs.

19. Miscellaneous.

19.1. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in these T&Cs shall be construed as creating any agency, partnership, joint

venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

19.2 Public Announcements. Ubicquia may publicly refer to Customer as a customer and use Customer's name and marks orally and, in compliance with Customer's written guidelines, in written materials, including its websites, programs, and other marketing materials.

19.3 Notices. Notices will be deemed effectively given: (a) when delivered by hand (providing proof of delivery); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the date sent by email if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Notices to Customer shall be sent to the address on the Order Form. Notices to Ubicquia shall be sent to: Legal Department – 401 East Las Olas Blvd, Suite 800, Fort Lauderdale FL 33301 or legal@ubicquia.com

19.4 Export Control. Customer shall not export or re-export, directly or indirectly, any: (a) product or service provided under these T&Cs, including any Equipment, Services or Documentation; (b) technical data; (c) software; (d) information; or (e) items acquired under these T&Cs to any country for which the United States Government (or any agency thereof) requires an export license or other approval without first obtaining any licenses, consents or permits that may be required under the applicable laws of the U.S. or other foreign jurisdictions including the Export Administration Act and Regulations. Customer shall, at its own expense, defend, indemnify and save harmless Ubicquia from and against all third-party claims, liability, loss or damage (including reasonable attorneys' fees and other defense costs), assessed against or suffered by Ubicquia as a result of an allegation or claim of noncompliance by Customer with this Section 19.4. The obligations contained in this Section 19.4 shall survive the termination or expiration of these T&Cs.

19.5 Assignment; Third Party Beneficiaries. Customer may not assign or transfer these T&Cs for any reason whatsoever without Ubicquia's prior written consent. Ubicquia expressly reserves the right to assign these T&Cs and/or delegate any of its obligations hereunder. Any purported assignment, delegation, or transfer in violation of this Section 19.5 is void. Subject to the foregoing, these T&Cs are binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

19.6 Force Majeure. Ubicquia shall not be liable or responsible to Customer, or be deemed to have defaulted under or breached these T&Cs, for any failure or delay in fulfilling or performing any term of these T&Cs, when and to the extent such failure or delay is caused by a Force Majeure Event.

19.7 Amendment, Modification, and Waiver. No amendment to or modification of these T&Cs is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in these T&Cs, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these T&Cs will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

19.8 Governing Law; Submission to Jurisdiction. These T&Cs are governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law 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 these T&Cs or the Services must be instituted in the federal courts of the United States or the courts of the State of Florida, in each case located in the city of Fort Lauderdale and County of Broward, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

19.9 Waiver of Jury Trial. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to these T&Cs or the transactions contemplated hereby.

19.10 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party against the other Party arising out of or related to these T&Cs,

the prevailing Party is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party

19.11 Miscellaneous. The Parties intend these T&Cs to be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. If any term or provision of these T&Cs is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these T&Cs or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination, the Parties hereto shall negotiate in good faith to modify these T&Cs so as to effect the original intent of the Parties as closely as possible. These T&Cs, including all exhibits and attachments (including Order Forms) referenced therein, constitute the sole and entire agreement of the Parties with respect to the Services and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. Except as otherwise expressly set forth in these T&Cs, all rights and remedies provided in these T&Cs are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. These T&Cs may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of these T&Cs delivered by email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of these T&Cs.