

UTILITYWISE PLC

TERMS AND CONDITIONS

This document comprises:-

1. a set of terms and conditions which apply to supplies of all goods and/or services by Utilitywise plc and/or any member of our group of businesses (“us/our/we”) to the purchaser or recipient of such supplies (“you/your”). These terms and conditions are known as the General Terms; and
2. further terms and conditions which:
 - 2.1. apply only to the supply of certain goods and/or services by us to you; and
 - 2.2. shall apply in addition to the General Terms.

These additional terms and conditions are known as the Supplemental Terms and are detailed within the following Schedules:-

- 2.3. Supplemental Terms – Part 1 - Procurement Services;
- 2.4. Supplemental Terms – Part 2 - Consultancy Services;
- 2.5. Supplemental Terms – Part 3 - Wiselife Products & Services;

UTILITYWISE PLC

PART 1 - GENERAL TERMS

The following terms and conditions apply to the supply of all goods and/or services by Utilitywise plc.

1. Definitions and Interpretation

In these General Terms:

1.1. the following words and expressions have the following meanings unless the context otherwise expressly requires:

“Affiliate” in respect of a person, any persons that Control, are Controlled by or are under common Control with that person from time to time;

“Applicable Law” any:

- (a) statute, statutory instrument, bye-law, order, regulation, directive, treaty, decision of the European Council, decree or law (including any common law or civil law judgment, demand, order or decision of any court, regulator or tribunal);
- (b) legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or
- (c) legally binding industry code of conduct or guideline

which relates to the Contract, the Products, and/or the Services;

“Business Day” a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales;

“Change in Control” will occur in respect of a person (the “relevant entity”) where:

- (a) Control of the relevant entity is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person who did not at the Start Date hold Control (whether directly or as a result of having Control

of one or more other persons) of the relevant entity; or

- (b) a person who has Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity at any time during the term of the Contract ceases to have Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity;

“Charges”	such charges for the provision of Products and/or Services, including the Services Fee and the Product Fee as set out in the Proposal or elsewhere as specified, as may be updated and notified to you by us from time to time;
“Conditions”	the General Terms and where applicable the Supplemental Terms;
“Consultancy Services”	the services described in Supplemental Terms - Part 2 - Consultancy Services;
“Consultancy Services Charges”	has the meaning given in Supplemental Terms - Part 2 - Consultancy Services;
“Consumption Data”	all information either (i) in your possession, custody and control and/or (ii) held by any current or past Utility Provider and which relates to your consumption of Utilities from time to time, including any prices charged in relation to such consumption;
“Control”	in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and “Controlled” will be construed accordingly;
“Contract”	the contract between us and you for the sale and purchase of the Products and/or Services in accordance with these Conditions;
“Customer”	the person or firm who is to receive Services or Products from us under the Contract, as set out in the Order and/or Proposal as the case may be;
“Customer Data”	(c) the Consumption Data; and (d) all data in any medium which you permit or request (whether expressly or by implication) us to access, store, transmit, distribute or otherwise process in the delivery of the Products and/or performance of the Services;

“Customer Default”	has the meaning given to it in clause 6;
“Data Controller”	the meaning given to it in the DPA;
“Data Processor”	the meaning given to it in the DPA;
“Deliverables”	any hosting services, written reports, utility consumption data generated by us or any of our utility monitoring products and any other written materials which we have specifically agreed in writing to provide to you as part of our Products or Services;
“DPA”	the Data Protection Act 1998;
“Data Protection Legislation”	the DPA and any legislation implemented from time to time by the UK Government to adopt the GDPR;
“Event”	an act, event, omission or circumstance
“Force Majeure Event”	<ul style="list-style-type: none"> (e) act of God; (f) war, insurrection, riot, civil commotion, act or threat of terrorism; (g) lightning, earthquake, fire, flood, storm, or extreme weather condition; (h) theft, malicious damage; (i) strike, lockout, industrial dispute (whether affecting the workforce of a party and/or any other person); (j) breakdown or failure of plant or machinery; (k) inability to obtain essential supplies or materials; (l) any failure or default of a supplier or sub-contractor of the relevant Party; or (m) any event or circumstance to the extent it is beyond the reasonable control of the relevant Party
“GDPR”	General Data Protection Regulation ((EU) 2016/679);
“General Terms”	the terms and conditions set out in this Part 1 – General Terms;
“Indemnified Costs”	all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement;
“Insolvent”	you are Insolvent where you:

- (n) give notice under section 84 Insolvency Act 1986 of, or propose or pass a resolution for, your winding up or in the case of a limited liability partnership proposes or determine that you will be wound up;
- (o) have a winding up petition presented against you;
- (p) have a winding up order or a notice of striking off made in respect of you;
- (q) have an administration order or an application for an administration order made in respect of you or has a notice of appointment of an administrator or a notice of intention to appoint and administrator filed in respect of you at any court;
- (r) propose, make or are subject to:
- (s) a company voluntary arrangement;
- (t) a composition with your creditors generally;
- (u) an application to a court of competent jurisdiction for protection from your creditors generally;
- (v) a scheme of arrangement under Part 26 Companies Act 2006;
- (w) have a receiver or a provisional liquidator appointed over any of your assets, undertakings or income;
- (x) cease to trade or appear, in the reasonable opinion of the Company, to be likely to cease to trade;
- (y) are unable to pay debts as they fall due; or the value of your assets are less than its liabilities, including your contingent and prospective liabilities;
- (z) are the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction;

“Installation”

the installation of Products at the Premises as part of the performance of the Services; and “Install” and “Installed” will be construed accordingly;

“Intellectual Property Rights”

all intellectual and industrial property rights of any kind whatsoever including but not limited to, patents, supplementary protection certificates, rights in know-how, registered trade marks, registered designs, models, unregistered design rights,

unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

"Liability"	liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in this and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of our obligations under the Contract and/or any defect in any of the Products or Services, in each case howsoever caused including if caused by negligence;
"Losses"	all losses including all direct, indirect and consequential losses;
"Order"	your request for the supply by us of Products and/or Services, whether as set out in your purchase order form, your letter of authority, your written acceptance of our quotation, or overleaf, as the case may be;
"Personal Data"	any personal data (as such term is defined in the DPA and subsequent replacement legislation);
"Premises"	any premises (whether belonging to or under the control of Customer or otherwise) in respect of which we have agreed to deliver or Install Products and/or perform Services;
"Product Fee"	such sums as are payable by you in respect of our supply to you of the Products, as described in our Proposal;
"Procurement Services"	the services described in Supplemental Terms - Part 1 - Procurement Services;
"Products"	the products to be supplied by us to you as described in our Proposal;
"Proposal"	the document issued by us to you setting out the nature of the services and products to be supplied by us to you;
"Recoverable Liabilities"	all Losses, liabilities, Indemnified Costs, damages and expenses that the indemnified person does or will incur or suffer, all claims or proceedings made, brought or threatened against the indemnified person by any person and all Losses, liabilities,

Indemnified Costs, damages and expenses the indemnified person does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding;

“Services”	such of the Consultancy Services, Procurement Services, and/or Wiselife Services as are to be supplied to you as set out in our Proposal and as those services may be varied from time to time together with such other services as we may agree in writing to supply to you;
“Services Fee”	such sums as are payable by you in respect of our provision to you of the Services, as described in our Proposal, and which may include the following: (aa) the Consultancy Services Charges; and (bb) the Wiselife Charges
“Start Date”	the earlier of the date upon which we agree to provide Products and/or Services to you, or the date upon which we commence the supply of services;
“Supplemental Terms”	the terms and conditions set out in Supplemental Terms Part 1, Supplemental Terms Part 2 and Supplemental Terms Part 3, as may apply to the supply of goods and/or services to you, as set out in the Order;
“Term”	the period starting on the Start Date and ending on the Termination Date;
“Termination Date”	the date on which the Contract expires or terminates for whatever reason or we cease providing the Services;
“Utilities”	each and any of the following: heat, power, water, gas, telecommunications, and such other supplies as are agreed between you and us as being Utilities for the purpose of the Contract;
“Utility Provider”	has the meaning given in Supplemental Terms – Part 1;
“Wiselife Services”	has the meaning given in Supplemental Terms – Part 3;
“Wiselife Charges”	has the meaning given in Supplemental Terms – Part 3; and
“Year”	the period of 12 months starting on the Start Date, each successive period of 12 months during the Term and the period (if any) starting on the day following the expiry of the last such period of 12 months and ending on the Termination Date.

- 1.2. all headings are for ease of reference only and will not affect the construction or interpretation of the Contract;
- 1.3. unless the context otherwise requires:
 - 1.3.1. references to the singular include the plural and vice versa and references to any gender include every gender;
 - 1.3.2. references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
 - 1.3.3. references to a “Party” or to the “Parties” will mean we and/or you as the context requires and will include a reference to its or their successors and (to the extent applicable) permitted assigns and references to a third party will mean any person other than the Parties;
- 1.4. references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.5. any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.6. to the extent only of any conflict or inconsistency between the General Terms and the Supplemental Terms, the Supplemental Terms shall take priority.
- 1.7. an obligation on a Party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that Party; and
- 1.8. any obligation on a Party not to do or omit to do anything includes an obligation not to allow (whether expressly or by a failure to take reasonable steps to prevent) that thing to be done or omitted to be done by any other person.

2. **Commencement and term**

The Contract shall commence on the Start Date and shall continue, unless terminated earlier in accordance with its terms, until we have completed the provision of the Services and/or supply of the Products under the Contract.

3. **Basis of contract**

- 3.1. These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.2. The Order constitutes an offer by you to purchase the Products and/or Services from us in accordance with these Conditions. You are responsible for ensuring that the terms of the Order are complete and accurate.
- 3.3. The Order shall be deemed to be accepted by us upon the earlier of the following:
- 3.3.1. our issuing to you a written acceptance of the Order, or
 - 3.3.2. commencement of provision of the supply of Products or Services to you
- at which point the Contract shall come into existence.
- 3.4. You waive any right you might otherwise have to rely on any term endorsed upon, delivered with or contained in any of your documents that is inconsistent with these Conditions.
- 3.5. A quotation for the Products and/or Services given by us shall not constitute an offer. A quotation shall only be valid for a period of [20] Business Days from its date of issue.

4. **Our Obligations to You**

- 4.1. Subject to clause 4.5,
- 4.1.1. we will supply the Services to you in accordance with reasonable care and skill and in accordance with good industry practice in place at the time of performing the Services.
 - 4.1.2. we will use reasonable endeavours to supply the Services to you in accordance with the timescales:
 - 4.1.2.1. set out in the Order and/or Proposal to which such Services relate; or
 - 4.1.2.2. as otherwise agreed between the Parties in writing, specifically in accordance with any agreed risk management policy

provided that time of performance of the Services will not be of the essence of the Contract.

- 4.2. Subject to clause 4.5,

- 4.2.1. we will deliver the Deliverables to you in accordance with the requirements set out in Services Specifications.
- 4.2.2. we will use reasonable endeavours to deliver the Deliverables in accordance with the timescales:
 - 4.2.2.1. set out in the Order and/or Proposal to which such Services relate; or
 - 4.2.2.2. as otherwise agreed between the Parties in writing,
provided that time of delivery of the Deliverables will not be of the essence of the Contract.
- 4.3. Title to Deliverables will remain with us at all times.
- 4.4. Risk in each Deliverable will pass to you upon delivery of that Deliverable to you.
- 4.5. Without prejudice to clause 6, if we fail to perform any of our obligations to the standards required by, or by the relevant date for performance:
 - 4.5.1. set out in the Contract; or
 - 4.5.2. as otherwise agreed between the Parties in writing,
then the date for performance by us of any obligations which relate to and/or are dependent on such performance by you will be extended by the period which we reasonably require in order to manage the impact of your defect or delay in performance.
- 4.6. We reserve the right, as determined in our sole discretion, to make any improvement, substitution or modification in the specification of any element or part of the Services at any time to the extent that such improvement, substitution or modification:
 - 4.6.1. will not have a material detrimental impact on the Services; or
 - 4.6.2. is necessary to comply with any Applicable Law or health and safety requirements.

5. **Your Obligations to Us**

- 5.1. You agree that you shall:
 - 5.1.1. perform all of your obligations under the Contract;
 - 5.1.2. promptly provide us, on request, with all co-operation, information, assistance, materials and resources that we may reasonably require from time to time in connection with the supply of the Products and/or Services and the performance of our obligations under the Contract;

- 5.1.3. provide all necessary access to Consumption Data, the Premises and relevant facilities and personnel to enable us to comply with its obligations under the Contract;
 - 5.1.4. take all necessary precautions to protect the health and safety and security of our personnel whilst they are at the Premises;
 - 5.1.5. provide us with such access to data as is we consider necessary to enable us to perform our obligations under the Contract;
 - 5.1.6. obtain and maintain in force all licences, permissions, authorisations, consents and permits needed by you in order for you to receive the Services and/or to enable us to perform the Services and our other obligations under the Contract;
 - 5.1.7. ensure that all information which you provide to us is accurate, adequate and complete and we shall be entitled to rely on the accuracy of the information provided;
 - 5.1.8. immediately inform us if there is any change in the Premises, circumstances and/or business, which may affect the provision of the Services and we should be entitled to rely on the accuracy of the information provided; and
 - 5.1.9. comply with all Applicable Law, including the provisions of the Bribery Act 2010 and the Modern Slavery Act 2015.
- 5.2. You acknowledge that you are solely responsible for:
- 5.2.1. understanding the regulatory requirements applicable to your business and for using the Products and Services in a manner that complies with those requirements; and
 - 5.2.2. ensuring that you possess and maintain appropriate software and hardware to use the Services.

6. **Customer Default**

If the performance of any of our obligations under the Contract is prevented or delayed by any of your acts or omissions, including any breach of the terms and conditions of the Contract ("**Customer Default**"):

- 6.1. we shall, without limiting our other rights or remedies, have the right to suspend delivery of Products and/or the performance of Services until you remedy such Customer Default;
- 6.2. we shall not be liable to you for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay in performing any of our obligations under the Contract; and

6.3. you shall reimburse us on demand for any costs or losses sustained or incurred by us arising directly or indirectly from such Customer Default.

7. **Customer Data and Data Protection**

7.1. In relation to Customer Data:-

7.1.1. you will either own the Customer Data or have sufficient rights to use such Customer Data for the purposes of the Contract, and are responsible for the accuracy and content of such data;

7.1.2. you hereby grant us a perpetual royalty-free licence to use such Customer Data for the following purposes:

7.1.2.1. the provision of the Products and Services under the Contract;

7.1.2.2. analysis and review of Consumption Data as part of our normal business practices; and

7.1.2.3. for such other purposes as are necessary in relation to our business objects.

7.1.3. you warrant that the Customer Data is accurate and complete.

7.2. The Parties agree that, in respect of any Personal Data, you are the Data Controller and we are the Data Processor.

7.3. You will comply with your obligations under Data Protection Legislation in respect of Personal Data.

7.4. We will:

7.4.1. take appropriate technical and organisational measures against unauthorised or unlawful processing of, and accidental loss or destruction of, or damage to, Personal Data, having regard to the state of technological development and the cost of implementing any measures, to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing, accidental loss, destruction or damage and the nature of the Personal Data;

7.4.2. only process Personal Data for the purpose of performing our obligations under the Contract and in accordance with your lawful instructions (provided such instructions are in accordance with the DPA); and

7.4.3. take reasonable steps to ensure the reliability of our employees who have access to the Personal Data.

- 7.5. You warrant to us that you have all necessary rights to permit us to process Personal Data in accordance with the Contract.
- 7.6. You will indemnify us against all Recoverable Liabilities arising out of or in connection with any breach by you of your warranty at clause 7.5.
- 7.7. We reserve the right to carry out such credit and identity checks on all our customers, as we, or a third party in our absolute discretion deem necessary. Consequently, you agree that we may check your details on any database (public or private), that we may use for the purpose of assisting other companies with such checks and may keep records of all such searches.

8. **Charges and Payment**

- 8.1. Unless specified otherwise in the Supplemental Terms, you will pay us the Charges in accordance with this clause 8.
- 8.2. Any sum payable under the Contract is exclusive of VAT (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by Applicable Law from time to time.
- 8.3. We will be entitled to vary the Charges at any time by giving written notice to you to reflect any variation in the cost of supplying the Products and/or Services which arise as a consequence of any change in Applicable Law, any variation in your requirements for the Products and/or Services and/or any information provided by you being inaccurate or incomplete.
- 8.4. We will be entitled to invoice you:
 - 8.4.1. for the Product Fee, following Delivery of the Products; and
 - 8.4.2. for the Services Fee following performance of the Services, save where performance extends over one month, and in which case we shall issue monthly invoices for Services performed during the previous month.
- 8.5. Unless otherwise expressly agreed with you in writing or as set out in the Proposal, each invoice will be payable by you within 30 days following the date on which the invoice is issued. All payments will be made in pounds sterling in cleared funds by cheque or electronic bank transfer to such bank account as we may nominate from time to time, and cash is not acceptable as a method of payment.
- 8.6. Time will be of the essence in respect of the timescales for payment of invoices set out in clause 8.5.
- 8.7. Notwithstanding any purported contrary appropriation by you, we will be entitled, by giving written notice to you, to appropriate any payment by you to any invoice issued by us.

- 8.8. If any sum payable under the Contract is not paid on or before the due date for payment we will be entitled to charge you interest on that sum at 8% per annum above the base lending rate from time to time of the Bank of England from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis.
- 8.9. Notwithstanding clause 8.8, we may, at our sole discretion and as an alternative to clause 8.8, claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.10. If you fail to make any payment due to us under the Contract we will be entitled to withhold further deliveries of Products and to suspend provision of any Services until payment of all overdue sums has been made.
- 8.11. Save as otherwise expressly provided in the Contract or required by Applicable Law, all payments to be made by you to us under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.

9. **Confidentiality.**

- 9.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any Affiliate, except as permitted by clause 9.2.
- 9.2. Each party may disclose the other party's confidential information:
- 9.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 9;
 - 9.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
 - 9.2.3. is required to be disclosed in compliance with the UK Corporate Governance Code (if listed on any UK stock exchange), by the regulations of any stock exchange on which the securities are listed or by any clearing house in connection with any issue of securities.
- 9.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

9.4. Nothing within this Contract shall require us to return or destroy confidential information or copies that we are required to retain by applicable law, professional record keeping obligations, or to satisfy the rules or regulations of a regulatory body or stock exchange to which such person is subject, or which has been created pursuant to automatic IT back-up or internal disaster recovery procedures, or which is contained in our board minutes or investment committee papers.

10. **Warrant**

10.1. Subject to clause 11.1, all warranties, conditions and other terms implied by Applicable Law (whether by statute, common law or otherwise) are excluded from the Contract.

10.2. Notwithstanding any other term of the Contract, we will not be in breach of the Contract and, subject to clause 11.1, will have no Liability to you, to the extent our failure to perform or delay or defect in performance of our obligations under the Contract arises as a result of:

10.2.1. any failure by you to comply with the terms and conditions of the Contract;

10.2.2. our reliance on any incomplete or inaccurate data provided by you or a third party;

10.2.3. our compliance with any instruction or request by you or one of its employees; or

10.2.4. any circumstances beyond our control including but not limited to the following:

10.2.4.1. any delay or failure attributable to third parties;

10.2.4.2. any failure of hardware or software belonging to you or any third party;

10.2.4.3. any damage caused to hardware or software as a result of your negligence or misuse.

10.3. Where we do have to investigate any defect reported by you, if such defect is as a result of any of the circumstances listed above at clause 10.2, we reserve our position to charge you our reasonable costs arising out of our investigation of the reported defects.

11. **Exclusions and Limitations of Liability**

YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

11.1. Nothing in the Contract will operate to limit or exclude our Liability for:

- 11.1.1. death or personal injury caused by its negligence, or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);
 - 11.1.2. fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
 - 11.1.3. breach of its obligations under Section 12 Sale of Goods Act 1979;
 - 11.1.4. breach of its obligations arising under Section 2 Supply of Products and Services Act 1982; or
 - 11.1.5. any other matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 11.2. Subject to clause 11.1, we will have no Liability to you, for any:
- 11.2.1. loss of profit (whether direct, indirect or consequential);
 - 11.2.2. loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential);
 - 11.2.3. loss of revenue, loss of production or loss of business (in each case whether direct, indirect or consequential);
 - 11.2.4. loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential);
 - 11.2.5. loss of use or value of any data or software (whether direct, indirect or consequential);
 - 11.2.6. loss or damage arising out of any failure by you to keep full and up to date security copies of any computer program or data held or used on behalf of you (whether direct, indirect or consequential);
 - 11.2.7. wasted management, operational or other time (whether direct indirect or consequential);
 - 11.2.8. liability of you to third parties (whether direct, indirect or consequential); and
 - 11.2.9. special, indirect or consequential loss or damage.
- 11.3. Subject to clauses 10, 11.1 and 11.2, and any express provisions set out in the Supplement Terms, our total Liability to you arising out of or in connection with the Contract or otherwise between the parties from Events which occur in any one Year will be limited to the total Charges paid by you to us for Products and Services supplied to you in that Year.

11.4. Nothing in this clause 11 will prevent or restrict the right of a Party to seek injunctive relief or specific performance or other discretionary remedies of the court.

11.5. The exclusions from, and limitations of, liability set out in this clause 11 will be considered severally.

12. **Termination of the Contract**

12.1. If you commit a material breach of the Contract:

12.1.1. which cannot be remedied; or

12.1.2. which can be remedied but is not remedied within 14 days of receipt of written notice from us setting out the breach and requiring you to remedy the breach,

we may terminate the Contract immediately by giving written notice to that effect to you.

12.2. We may also terminate the Contract immediately, by giving written notice to you if you:

12.2.1. fail to make any payment due to us under the Contract within 30 days of the due date for payment of the same (provided that such sum is not the subject of a bona fide dispute);

12.2.2. become Insolvent; or

12.2.3. undergo a Change in Control

12.3. On termination of the Contract for any reason you shall immediately pay to us all of our outstanding unpaid invoices and interest.

12.4. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

12.5. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

12.6. If the Contract is terminated in accordance with clause 12 all Services which have not been fully performed and Products which have not been fully supplied as at the Termination Date will be deemed to be cancelled without us incurring any Liability to you. You will reimburse to us all costs and expenses incurred by us in furtherance of its obligations under the Contract prior to the date of deemed cancellation.

12.7. Our rights under this clause 12 are in addition to and separate from our rights of suspension under clause 6.1 above.

13. **Force Majeure**

- 13.1. Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for six months, the party not affected may terminate this Contract by giving 12 weeks written notice to the affected party.
- 13.2. If we are affected by the Force Majeure Event you will continue to pay our invoices in accordance with clause 8 in respect of any Products and Services which we continue to supply notwithstanding the occurrence of the Force Majeure Event.

14. **Intellectual Property Rights**

- 14.1. With effect from the date on which the relevant Deliverable is supplied to you, we grant to you a non-exclusive licence to use the Intellectual Property Rights in that Deliverable solely to the extent necessary to use that Deliverable for its intended purpose. You may not assign or sub-licence the rights granted to you by us under this clause 14.
- 14.2. You grant to us a non-exclusive, royalty-free licence to use your Intellectual Property Rights to the extent required for the purpose of the supply of the Services and the performance of our other obligations under the Contract. We may grant a sub-licence of this licence to any sub-contractor appointed by us in connection with the Contract.
- 14.3. Save as otherwise expressly provided in this clause 14, you acknowledge and agree that all Intellectual Property Rights in the Deliverables shall belong to us and nothing in the Contract will operate to transfer to you, or to grant to you any licence or other right to use, any of our Intellectual Property Rights.
- 14.4. You warrant to that you have all necessary rights, consents and/or licences necessary to grant us the rights set out in clause 14.2

15. **Assignment and Sub-Contracting**

- 15.1. We will be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of our rights under the Contract.
- 15.2. You will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of your rights under the Contract.
- 15.3. We will be entitled to sub-contract any of our obligations under the Contract.
- 15.4. You will not be entitled to sub-contract any of your obligations under the Contract.

16. **Entire Agreement**

- 16.1. The Contract constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

- 16.1.1. you have not entered into the Contract in reliance upon, and will have no remedy in respect of, any misrepresentation, representation or statement (whether made by us or any other person and whether made to you or any other person) which is not expressly set out in the Contract;
- 16.1.2. the only remedies available to you for any misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract; and
- 16.1.3. nothing in this clause 16 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

17. Notices.

- 17.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.1; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed
- 17.2. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

18. General

- 18.1. Any delay by us in exercising or failing to exercise a right or remedy available to us under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default by us will only be valid if it is in writing and addressed to you, and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
- 18.2. Each Party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
- 18.3. The Parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

- 18.4. The Parties may vary or rescind the Contract without the consent of our employees, agents and sub-contractors.
- 18.5. Save as expressly provided otherwise, nothing in the Contract and no action taken by the Parties in connection with it or them will create a partnership or joint venture between the Parties or give either Party authority to act as the agent of or in the name of or on behalf of the other Party or to bind the other Party or to hold itself out as being entitled to do so.
- 18.6. Save as otherwise expressly provided in the Contract no variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the Parties.
- 18.7. If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 18.8. The invalidity or unenforceability of any provision of the Contract will not affect the validity or enforceability of any other provision and will be considered severable from each other.
- 18.9. Our rights and remedies set out in the Contract are in addition to and not exclusive of any rights and remedies provided by law.

19. **GOVERNING LAW AND JURISDICTION**

- 19.1. The Contract and any non-contractual obligations arising out of or in connection with them will be governed by the law of England and Wales.
- 19.2. Subject to clause 19.3, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).
- 19.3. Any Party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.

SUPPLEMENTAL TERMS

PART 1 – PROCUREMENT SERVICES

1. Definitions

In this Part 1 of the Supplemental Terms, in addition to any terms defined in the General Terms, the following words and expressions have the following meanings unless the context otherwise expressly requires:

“Letter of Authority”	the letter of authority signed by you granting us the right to share and obtain Consumption Data from your Utility Provider and to otherwise engage with such Utility Provider on your behalf in connection with the Services;
“Procurement Fee”	the sum payable to us by the Utility Provider as a result of you entering into the Utility Contract;
“Utility Contract”	the agreement to be entered into by you with the Utility Provider you select as a result of our Procurement Services for the supply to you of the Utility Services set out in such Utility Contract, and on such terms as are agreed between you and such Utility Provider;
“Utility Provider”	any supplier to you from time to time of Utility Services, either introduced to you by us, or otherwise involved in the supply of Utility Services to you and which are relevant to the Services supplied by us to you;
“Utility Services”	the supply of Utilities for consumption;

2. Procurement Services

- 2.1. You are purchasing from us the Procurement Services on an exclusive basis and accordingly you will not, at any time during the Term, obtain services in the nature of the Procurement Services from any person other than us.
- 2.2. The Procurement Services to be provided by us shall be as set out in our Proposal which may include any or all of the following:-
 - 2.2.1. obtaining Consumption Data on your behalf
 - 2.2.2. review of the Consumption Data;

- 2.2.3. identification of potential suppliers of Utilities based on your consumption portfolio;
 - 2.2.4. engagement with Utility Suppliers and conduct of tendering procedures, provision of information and management reporting to your internal procurement function regarding the proposed Utility Suppliers;
 - 2.2.5. supporting your procurement team in the negotiation of Utility Contracts;
 - 2.2.6. provision of price trackers showing historic trends in Utility prices;
 - 2.2.7. review of MOP and DC arrangements;
 - 2.2.8. review of security requirements
- 2.3. To facilitate the provision of the Procurement Services by us you shall provide us with a signed Letter of Authority granting us the exclusive right to enter into discussions with Utility Providers regarding the provision of Utility Services to you (as further detailed in the Letter of Authority);
- 2.4. You acknowledge and agree that:
- 2.4.1. we are not acting as your agent in respect of the purchase of Utilities from any particular Utility Supplier;
 - 2.4.2. we are not responsible for, and will have no Liability to you in respect of, or in connection with, the provision of any Utility Services to you;
 - 2.4.3. it is your responsibility to review and to satisfy yourself as to the terms of any Utility Contract;
 - 2.4.4. we make no representation nor give any advice on the terms of any Utility Contract. We accept no Liability to you in respect to such Utility Contract.
 - 2.4.5. any pricing or other information provided by us to you in connection with the provision of Utility Services:
 - 2.4.5.1. is indicative only;
 - 2.4.5.2. does not constitute an offer by us or any Utility Provider to supply Utility Services to you; and
 - 2.4.5.3. is subject to you entering into a valid and binding Utility Contract, to which we shall not be a party.

- 2.4.6. we may supply to any Utility Provider any information, data or document which we receive from you;
- 2.4.7. any information you provide to us in respect of your historic consumption of Utilities shall be accurate and complete in all respects, and you shall indemnify us in respect of any failure by you to provide such information.

3. **Payment for Procurement Services**

- 3.1. Unless otherwise expressly agreed in writing between us, in consideration for the provision of the Procurement Services we will be paid the Procurement Fee by the Utility Provider with whom you enter into a Utility Contract.
- 3.2. You agree to provide us with such information as we reasonably request in order to verify the cost and status of your Utility Contract, and shall provide us with a copy of such Utility Provider invoices and Utility Contract on request.
- 3.3. You agree that you shall not commit any act or omission which has the object or effect of preventing our ability to receive a payment from the Utility Provider under clause 3.1.

4. **Liability**

- 4.1. Subject to clauses 10, 11.1 and 11.2, of the General Terms, our total Liability to you in connection with the provision of Procurement Services will be limited to the Procurement Fee received by us from the Utility Provider in respect of the Utility Contract entered into by you.
- 4.2. You will indemnify us in respect of any costs, claims, damages or losses incurred by us, if following your execution of the Utility Contract, at any time during the duration of the Utility Contract, including after the termination or expiry of the Contract, you commit any act or omission which results in the Utility Provider seeking recovery of all or part of the Procurement Fee from us.

SUPPLEMENTAL TERMS

PART 2 - CONSULTANCY SERVICES

5. Definitions

In this Part 2 of the Supplemental Terms, in addition to any terms defined in the General Terms, the following words and expressions have the following meanings unless the context otherwise expressly requires:

“Consultancy Services Charges”	has the meaning given in paragraph 7.2 of this Part 2 of the Supplemental Terms;
“Consultancy Services Fees”	the fees payable by you in respect of the provision of Consultancy Services by us as set out in the Proposal or such other document or contract agreed between us;
“Cost Savings”	the relative reduction to you in the cost of the relevant item over the period set out in the Proposal or such other document or contract agreed between us
“Share of Savings Element”	the proportion of any Cost Savings to be paid to us, as set out in the Proposal;
“Share of Savings Calculation”	the calculation set out in the Proposal identifying a Share of Savings Element to be paid to us;

6. Consultancy Services

- 6.1. In consideration of payment of the Consultancy Services Fees, we shall provide you with the Consultancy Services.
- 6.2. The Consultancy Services to be provided by us shall be as set out in our Proposal which may include any or all of the following:-
 - 6.2.1. Utilities budget analysis and support;
 - 6.2.2. provision of market intelligence in relation to the Utilities supply market;
 - 6.2.3. energy management support, including quarterly analysis of Consumption Data for your sites;
 - 6.2.4. retrospective bill validation, including analysis of invoices received by you from your historic Utility Suppliers;

6.2.5. electricity capacity analysis;

and such other consultancy services as may be set out in the Proposal to which the Contract relates.

7. Payment of the Consultancy Services Charges

7.1. In consideration of the provision of Consultancy Services, you agree to pay us the Consultancy Services Charges.

7.2. The Consultancy Services Charges shall comprise the following elements:-

7.2.1. the Consultancy Services Fee; and

7.2.2. the Share of Savings Element (if any)

7.3. Upon signature of the Contract we shall be entitled to invoice you in respect of the Consultancy Services Fee.

7.4. Where the Consultancy Services Charges contains a Share of Savings Calculation, you agree that we shall be entitled to invoice you in respect of the Share of Savings Element at a fixed point in time as agreed between us.

7.5. You agree to provide us with such information as we reasonably require regarding your Consumption Data, your historic and future business activities, and your arrangements with Utility Suppliers to enable us to provide the Consultancy Services to the best of our ability.

7.6. You agree that you shall not commit any act or omission which has the object or effect of preventing or reducing our ability to provide you with any savings in the cost of Utilities that we may need to provide in order to receive the Share of Savings Element.

7.7. We may, at our sole discretion, agree to withhold charges that would otherwise be payable in respect to Consultancy Services subject you entering into a Utility Contract promptly following our supply of the Procurement Services and in respect of which we are paid a Procurement Fee by the Utility Provider with whom you enter into a Utility Contract.

7.8. In the event that you fail to enter into a Utility Contract with a Utility Provider in accordance with clause 7.7 the relevant withheld charges shall become payable.

8. Liability

8.1. Subject to clauses 10, 11.1 and 11.2, of the General Terms, our total Liability to you in connection with the provision of Consultancy Services will be limited to the Consultancy Services Fee payable by you under the Contract.

SUPPLEMENTAL TERMS

PART 3 - WISELIFE PRODUCTS AND SERVICES

9. Definitions

In this Part 3 of the Supplemental Terms the following words and expressions have the following meanings unless the context otherwise requires:

“Additional Licence Terms”	any additional and / or updated software licence terms and conditions as may be made available by us to you from time to time
“Customer Equipment”	any equipment, systems, cabling or facilities provided by you required for and/or used directly or indirectly in the supply of the Wiselife Products and/or the Services
“Deliverables Services”	the provision of access to the Deliverables in a standard web based format, available on the web-server hosted by us or a member of its Group and accessed via the website www.utilityinsight.com and/or www.t-mac.co.uk .
“Delivery”	the time at which delivery of the Wiselife Products is deemed to occur in accordance with paragraph 14 of this Part 3;
“Edd:e Networking Requirements”	means such network connectivity requirements as are notified in writing from time to time by us to you for the connection of Edd:e, which at the date of the Contract means each of the following:- (cc) a network port must be provided; (dd) a fixed IP address, gateway address, subnet and DNS nameserver address to be provided in order to configure the Linux server; (ee) by default, the IP address of the Edd:e is 192.168.1.100;

- (ff) to facilitate basic operation the Edd:e system is designed to connect to EMU servers via port 80;
- (gg) port 80 must be available for outbound data;
- (hh) EMU Systems will require remote access to the unit. Edd:e has an embedded Linux system and is accessed via ssh. EMU Systems require such access to upgrade the Software and attend to any issues that may arise, specifically, during the Installation. To meet this requirement a firewall port must be forwarded to port 22 on the Edd:e installation.

“Edd:e”

the energy monitoring product produced by us or a member of our Group under the name of Edd:e and any addition or variation thereof;

“End User Licence Terms”

the licence terms made available to you by us and/or a third party applicable to your use of the Software;

“End User”

you and each employee of yours who will use the Wiselife Services whether employed on a part-time or full-time basis, but not including subcontractors, consultants or freelancers;

“Hardware”

the equipment identified in the Proposal to be supplied to you for use in connection with the Software and the Wiselife Services;

“Installation Requirements”

any electrical and other Installation requirements necessary to enable us to Install (or, if we are not providing Installation Services, to enable you to install) and monitor the performance of the Wiselife System at the Premises and/or to provide Deliverables Services

“Installation Services”	the installation services described in paragraph 19 of this Part 3 and/or a Services Specification as those services may be varied from time to time;
“Product Specification”	any product description document relating to the Wiselife System made available by us to you upon request and as may be updated and notified to you by us from time to time
“Security Information”	has the meaning in paragraph 20.2 of this Part 3;
“Software”	any software installed on, or downloaded to, the Hardware or otherwise made available by us, subject to the End User Licence Terms, that enables an End User to use the Wiselife System and/or access the Services and/or Deliverables;
“Third Party Requirements”	in relation to any part of the Wiselife System supplied to us by any third party, any restrictions, limitations, or requirements on use of such part imposed by such third party and notified to you from time to time;
“Wiselife Charges”	the sum payable to us by you in return for us providing the Wiselife Products & Services as set out in the Proposal;
“Wiselife Requirements”	<p>Networking means such network connectivity requirements as are notified in writing from time to time by us to you for the connection of the Wiselife System, which at the date of the Contract means each of the following:-</p> <ul style="list-style-type: none"> (ii) a spare Ethernet port on your broadband router; (jj) DHCP and DNS must be enabled on the network for the gateway to obtain its IP address; (kk) certain TCP ports will be utilised and must not be blocked by a fire wall;

(II) TCP Port 80 (http), 443 (https) and 5671 (amqp),

“Wiselife Products & Services” together the Wiselife System, and the Wiselife Services;

“Wiselife Services” such services as are provided by us to support and manage the Wiselife System, and any data arising from such Wiselife System, as set out in the Proposal

“Wiselife System” together the Hardware and the Software;

“Wiselife Warranty Period” the period starting on Delivery and ending on expiry of a period of [six] months from and including the date of Delivery, unless stated otherwise in the Contract]; and

10. Wiselife Products and Services

In consideration of payment of the Wiselife Charges, we shall provide you with the Wiselife Products & Services.

11. Charges for Wiselife Products and Services

11.1. In consideration of provision of the Wiselife Products & Services by us, you agree to pay us the Wiselife Charges.

11.2. We may, at our sole discretion, agree to withhold charges that would otherwise be payable in respect of the Wiselife Products & Services subject you entering into a Utility Contract promptly following our supply of the Procurement Services and in respect of which we are paid a Procurement Fee by the Utility Provider with whom you enter into a Utility Contract.

11.3. In the event that you fail to enter into a Utility Contract with a Utility Provider in accordance with clause 7.7 the relevant withheld charges shall become payable by you.

12. Customer Acknowledgement and Co-Operation

12.1. You acknowledge and accept that:

12.1.1. internet connectivity via a proxy server is not supported by the Wiselife System; and

12.1.2. End Users will require an iPhone (iOS 8 or above) or an Android (4.4.4 or above) smartphone to access the Software.

12.2. You undertake and agree with us that you will co-operate with us so as to enable us to evaluate the effectiveness of the Wiselife System at the Premises.

12.3. You will ensure that the Customer Equipment:

12.3.1. is in good working order at all times;

12.3.2. is suitable for use in connection with the Wiselife Products and Services; and

12.3.3. conforms with all relevant United Kingdom standards or requirements.

13. Wiselife System

13.1. Notwithstanding paragraphs 13.2 and 13.3 of this Part 3, at any time we may make changes to the specification of the Wiselife System, including the provision of any update or modification to the Software at any time, and shall give notice of any relevant changes to Wiselife System to you as soon as reasonably practicable.

13.2. We will be entitled at any time to add to or withdraw items from the Wiselife System by giving written notice to that effect to you.

13.3. We will be entitled at any time to:

13.3.1. vary the design, finish, or specification of the Wiselife System and/or their packaging; and/or

13.3.2. substitute any materials or parts which are used in Wiselife System and which are unavailable for any reason with alternative materials or parts,

to the extent that:

13.3.3. this does not, in the reasonable opinion of we materially affect their quality or performance; or

13.3.4. this is necessary to comply with Applicable Law or health and safety requirements.

13.4. All samples, drawings, descriptive and illustrative matter and advertising issued or published by us (or the manufacturer of the Wiselife System) whether in catalogues, brochures, websites, other promotional materials or otherwise are for the sole purpose of giving an approximate idea of the relevant Product and are not indicative of the actual Products that you may receive.

14. Delivery of Wiselife System

- 14.1. We will deliver the Wiselife System to the address set out in the Proposal. We will inform you in advance of the date on which we propose that the Wiselife System will be delivered. Delivery of the Wiselife System will be deemed to occur when they arrive at the delivery address.
- 14.2. We will use reasonable endeavours to deliver Wiselife System on the date notified by us to you in writing, but time for delivery of the Wiselife System will not be of the essence of the Contract. Any delivery dates given by us are estimates only. You will not be entitled to reject any Wiselife System or to claim damages from us by reason of a delay in delivery or failure to deliver and, subject to clause 11.1 of the General Terms, we will not have any Liability to you for any losses, damages, costs or expenses incurred by you as a result of a delay in delivery or failure to deliver.
- 14.3. If Delivery occurs but you fail to accept delivery of the Wiselife System we will be entitled to:
- 14.3.1. store or arrange for storage of the Wiselife System until you accepts delivery of them; and
- 14.3.2. charge you for all costs and expenses which we incur under paragraph 14.3.1 of this Part 3.
- 14.4. We will be entitled, at its discretion, to deliver Wiselife System by separate instalments. We will be entitled to invoice the Product Fee for each instalment separately in accordance with clause 8.4 of the General Terms.
15. **Inspection and Delivery of Wiselife System**
- 15.1. You will inspect the Wiselife System on Delivery and will within five Business Days from and including the date of Delivery give written notice to us of any breach of any of the warranties in paragraph 17 of this Part 3 in relation to the Wiselife System.
- 15.2. Paragraphs 17.2.2, 17.2.3, 17.3, 17.4, 17.5, 17.6 of this Part 3 and clause 10.1 of the General Terms will apply to any breach of warranty notified to us under paragraph 15.1 of this Part 3.
- 15.3. If you do not give notice to us under paragraph 15.1 of this Part 3 in respect of a Product, you will be deemed to have accepted that Product on expiry of the five Business Day period from and including the date of Delivery.
- 15.4. Wiselife Systems supplied under the Contract are not sale by sample.
16. **Title to and Risk in Wiselife System**
- 16.1. Risk of damage to or loss of the Wiselife System will pass to you on Delivery.

- 16.2. Subject to paragraph 16.2 of this Part 3, legal and beneficial ownership of the Hardware will not pass to you until we have received in full in cleared funds all sums due to it in respect of the Hardware. We may, by giving written notice to you, pass legal and beneficial ownership of the Hardware (or any of them) to you at any time before such ownership would otherwise have passed to you.
- 16.3. Until ownership of the Hardware has passed to you, you shall:
- 16.3.1. hold the Hardware on a fiduciary basis as our bailee;
 - 16.3.2. not destroy, deface or obscure any identifying mark or packaging on or relating to the Hardware;
 - 16.3.3. maintain the Hardware in satisfactory condition and not amend, modify or alter such Hardware; and
 - 16.3.4. keep the Wiselife Products insured on our behalf for their full price against all risks to our reasonable satisfaction. On request you shall produce evidence of sufficient insurance to us.
- 16.4. You may use the Wiselife Products in connection with the Wiselife Products and Services before ownership has passed to you.
- 16.5. Your right to possession and use of the Wiselife System will terminate immediately if, before ownership of the Wiselife Products passes to you in accordance with paragraph 16.2 or 16.2 of this Part 3:
- 16.5.1. you become Insolvent;
 - 16.5.2. we give you written notice that we have any concerns regarding your financial standing;
 - 16.5.3. you fail to pay any sum due to us on or before the due date or is in breach of any of its obligations under the Contract;
 - 16.5.4. you encumber or in any way charge the Wiselife System (or any part of it); or
 - 16.5.5. the Contract expires or terminates for any reason.
- 16.6. You grant, and will procure that the owner of any relevant third-party premises grant, us, our agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Wiselife System are or may be stored in order to inspect them, or, where your right to possession, use and resale has terminated, to recover them.

17. Wiselife Product Warranty

- 17.1. Subject to paragraph 17.7 of this Part 3, we warrant that during the Wiselife Warranty Period, the Wiselife System will:
- 17.1.1. subject to paragraph 13.1 and 13.3 of this Part 3, conform to the Product Specification in all material respects; and
 - 17.1.2. be free from material defects in design, materials or workmanship.
- 17.2. If, at any time during the Wiselife Warranty Period, you become aware of a breach of any of the warranties at paragraph 17.1 of this Part 3, you will:
- 17.2.1. give written notice of the breach to us, such notice to be given within 28 days after you become aware of the breach and prior to expiry of the Wiselife Warranty Period;
 - 17.2.2. at our option either return to us (at our cost) the Wiselife System or permit us or its agent or sub-contractor to inspect it at the Premises; and
 - 17.2.3. provide to us all information and assistance which we may reasonably require to investigate the alleged breach.
- 17.3. Subject to clause 11.1 of the General Terms, our only Liability for breach of the warranties at paragraph 17.1 of this Part 3 will be, at our option, to repair or replace the relevant Wiselife Products.
- 17.4. Your only remedy for breach of our obligation at paragraph 17.3 of this Part 3 will be in damages.
- 17.5. Subject to clause 11.1 of the General Terms, we will not have any Liability for a breach of a warranty at paragraph 17.1 of this Part 3 if or to the extent that:
- 17.5.1. you do not comply with its obligations at paragraph 17.2 of this Part 3 in respect of the breach;
 - 17.5.2. notice of the breach should have been given but was not given to us under paragraph 15 of this Part 3;
 - 17.5.3. the relevant defect was caused by damage in transit after Delivery;
 - 17.5.4. the relevant defect was caused by fair wear and tear;
 - 17.5.5. the relevant defect was caused or exacerbated by improper use, handling, alteration, installation, repair, maintenance, storage or failure to comply with instructions provided by us or the manufacturer, by you its employees, agents or subcontractors; or

- 17.5.6. you make further use of the relevant Wiselife System after discovering the relevant breach.
- 17.6. The warranties at paragraph 17.1 of this Part 3 will apply to any part of the Wiselife System which are repaired or replaced under paragraph 17.3 of this Part 3 for the remainder of the original Wiselife Warranty Period.
- 17.7. Where any part of the Wiselife System is manufactured or supplied by a third party, we will take reasonable steps to ensure you receive the benefit of that third party's warranties but save to the extent that any fault in such third-party part arises as a result of our acts or as a result of your failure to comply with the Third Party Requirements, we will not have any further Liability to you.
- 17.8. Notwithstanding any other term of the Contract, we will not be in breach of the Contract and, subject to clause 11.1 of the General Terms, will have no Liability to you, to the extent our failure to perform or delay or defect in performance of our obligations under the Contract arises as a result of:
- 17.8.1. any failure by you to comply with the terms and conditions of the Contract;
 - 17.8.2. our compliance with any instruction or request by you or one of its employees; or
 - 17.8.3. any inaccurate or incorrect data not caused by the Wiselife Products;
 - 17.8.4. any use of the Wiselife System by you in contravention of the Third Party Requirements;
 - 17.8.5. any misuse of the Wiselife System by you or any third party;
 - 17.8.6. the failure of you or any third party (except for any subcontractor appointed by us) to set-up of the Services or install the Wiselife System;
 - 17.8.7. any circumstances beyond our control including but not limited to:
 - 17.8.7.1. any delay or failure attributable to third parties;
 - 17.8.7.2. any failure of hardware or software belonging to you or any third party; and
 - 17.8.7.3. any losses of data or Services through power failure to the Wiselife System.

18. Wiselife Software Licence and Warranty

- 18.1. With effect from the date on which the Software is delivered or made available to you, we grant to you a non-exclusive, non-transferable licence to use the Software only in connection with the Wiselife System and on the following conditions:
- 18.1.1. you shall not copy (except to the extent required for normal operation of the Wiselife System), reproduce, translate, adapt, vary or modify the Software, nor communicate it to any third party, without our prior written consent;
 - 18.1.2. you shall not use the Software on any equipment other than the Wiselife System, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software or on the medium on which it resides;
 - 18.1.3. such licence shall be terminable by us immediately upon written notice if:
 - 18.1.3.1. you breach any of the terms and conditions of the Contract or the Third Party Requirements;
 - 18.1.3.2. we terminate the Contract in accordance with clauses 12.1, or 12.2 of the General Terms;
 - 18.1.3.3. you infringe the Intellectual Property Rights of any third party; or
 - 18.1.3.4. we are compelled to do so by Applicable Law, or under or in connection with any agreement between us and a third party;
 - 18.1.4. on or before the expiry of this licence, you shall return to us all copies of the Software in its possession.
- 18.2. In addition to the General Terms and the provisions of this Part 3, the Additional Licence Terms shall apply to the supply and use of the Wiselife System. In the event of conflict between the licence terms set out in paragraph 18.1 of this Part 3 and the Additional Licence Terms, the Additional Licence Terms shall prevail.
- 18.3. You shall, and will ensure that all End Users shall, at all times comply with the licence terms set out in paragraph 18.1 of this Part 3 and the provisions of the Additional Licence Terms and End User Licence Terms.
- 18.4. Notwithstanding the provisions of clause 9 of the General Terms or this paragraph 18 of this Part 3, the Software is provided “as is” and without warranty of any kind, including without limitation any warranty of merchantability, fitness for a particular purpose and non-infringement, or

that the Software will perform without interruption, be error free or virus free.

- 18.5. You will indemnify we against all Recoverable Liabilities arising out of or in connection with any breach by you of any of its obligations under paragraphs 18.1, 18.2 or 18.3 of this Part 3 (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations).

19. Wiselife Installation Services

- 19.1. Unless otherwise agreed in writing by us, delivery and Installation (or, if we are not providing Installation Services, installation by you) of the Wiselife Products shall take place at the Premises.

- 19.2. It is your responsibility to read, understand and comply with all of the Installation Requirements and Networking Requirements prior to Installation of the Wiselife Products.

- 19.3. You will be responsible (at your own cost) for preparing and maintaining the Premises for the supply of the Installation Services and for ensuring that the Installation Requirements are met prior to the Installation appointment (including making provision for power to the Premises to be turned off where necessary as part of Installation).

- 19.4. In respect of each Premise to which the Wiselife System shall be installed, you undertake and agree with us that you shall:

- 19.4.1. ensure that that the Premises (together with an electricity and broadband supply) shall be available to us at all reasonable times, and shall ensure that the Premises meet the Installation Requirements and the Networking Requirements for the purpose of us preparing, Installing (if relevant), monitoring, removing and maintaining the Wiselife Products;

- 19.4.2. inform us of all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises and any other relevant Customer's or third party premises.

- 19.4.3. in advance of the date of Installation provide us with the following information:

- 19.4.3.1. normal operating hours for the Premises, including the times when the Wiselife Products can be Installed;

- 19.4.3.2. layout plans of the Premises;

- 19.4.3.3. details of the use of the Premises;
- 19.4.3.4. details of the key customer contacts at the Premises;
- 19.4.3.5. historic energy consumption at the Premises;
- 19.4.3.6. existing plant maintenance agreements;
- 19.4.3.7. the details of appropriate personnel to liaise with we or its subcontractor to enable the Installation of the Wiselife Products and appropriate personnel to accompany any Supplier representatives, including individuals who may be required and who would be authorised and able to liaise with we or its subcontractor to provide any decision relating to the Installation which may be required; and
- 19.4.3.8. any other relevant information requested by us or its subcontractor or which would be reasonable for you to provide.

19.4.4. where requested by us:

- 19.4.4.1. ensure that the Premises are de-energised;
- 19.4.4.2. grant access to the Premises for the purposes of installation or maintenance where required by us or its subcontractor;
- 19.4.4.3. you implement any recommendations contained or made
 - 19.4.4.3.1. in any pre-installation report on the Premises prepared by us; or
 - 19.4.4.3.2. in any documentation issued by us in connection with the Wiselife System.

19.5. You acknowledge that the following may have an adverse effect or prevent Installation:

- 19.5.1. failure by you to ensure that any existing equipment, plant or machinery on the Premises is capable of use in connection with the Wiselife System; we or any subcontractor will not amend or alter any existing equipment, plant or machinery on the Premises unless this has been agreed in writing in advance;

- 19.5.2. where any report has recommended certain works and those works have not been undertaken by you;
 - 19.5.3. where in the interests of health and safety it would not be advisable to perform the Installation;
 - 19.5.4. if the Installation reveals pre-existing issues/faults with your equipment, plant or machinery. Whilst we or any subcontractor may identify such faults to you, the rectification of such issues/faults will not be undertaken by us or any subcontractors as part of the Installation Services; and
- 19.6. You acknowledge that neither us nor any subcontractor shall be liable for the following:
- 19.6.1. any error, failure or fault due to incorrect circuit labelling;
 - 19.6.2. any third-party equipment failing after the Installation, except due to us or our subcontractors' negligence; and
 - 19.6.3. any loss of power following or during Installation.
- 19.7. You will ensure that the Wiselife Networking Requirements are available at the Premises, so as to enable us to Install (if relevant) and monitor the performance of the Wiselife Products:
- 19.8. Subject to **clause 11.1** of the General Terms, you acknowledge that we shall have no Liability in relation to Installation if you fail to provide any information or breaches any of this paragraph 19 of this Part 3.
- 19.9. You shall be liable for abortive fees if we or any subcontractors are unable to Install Equipment due to a breach by you of this paragraph 19 of this Part 3 or if we or the subcontractor's safety is put at risk on the Premises.
20. **Access To Deliverables**
- 20.1. To enable the End Users to access the Deliverables:
- 20.1.1. we shall provide you with a list of access codes, which you must use and allocate to the End Users in accordance with the provisions of the Contract;
 - 20.1.2. you shall procure that any End User shall register with us via www.utilityinsight.com using the access code allocated to the End User by you. As part of the registration process, we shall provide each End User with a username and password which will allow the End User to access the Deliverables.
- 20.2. You shall procure that each End User shall treat any username, password or any other information which forms part of our security procedures

("Security Information") as confidential and that he shall not disclose it to any third party. You shall indemnify us in respect of any loss or damage to us arising out of the disclosure of any Security Information by any End User.

20.3. We have the right to disable any access code, username, password or other information we provided to you or an End User at any time if, in our opinion, you or any End User fail to comply with any of the terms and conditions of the Contract, including any Additional Terms.

20.4. From time to time, we may:

20.4.1. (for operational reasons), change access codes, usernames, passwords or other security information necessary to access the Deliverables or change the technical specification of the access to the Deliverables;

20.4.2. issue instructions to you and/or individual End Users, which we believe are necessary for reasons of security or for the quality of access to the Deliverables by you. You shall procure that the End User complies with any such instructions that we issue to you or any End User;

20.4.3. temporarily suspend access to the Deliverables because of an emergency or for operational maintenance or improvements or for the purpose of ensuring network or information security. In such cases, we shall aim to restore access to the Deliverables as soon as reasonably practical and we shall aim to give you as much notice as possible of any emergency or scheduled suspension of the access to the Deliverables.

20.5. We do not warrant or guarantee that

20.5.1. our website or servers or the Deliverables are error or virus free;

20.5.2. the performance of the internet or that the transmission of information over the internet will be secure or that the internet will be accessible at all times;

20.5.3. you will have continuous or secure access to its website or the web-Server and gives no representations or warranties (whether express or implied) about the availability of its website and/or its web-server.

20.6. If any End User's employment with you ceases for any reason, you shall inform us immediately and provide us with details of the individual to enable us to deactivate that End User's access to the Deliverables.

- 20.7. We shall process all information about End Users (including all Personal Data provided by you or any End User to us before or during the term of the Contract) in accordance with our Privacy Policy.
- 20.8. You warrant that all End Users agree to the provisions of our Privacy Policy, that it has procured all necessary consents from End Users to the processing of their Personal Data in accordance with the provisions of the Privacy Policy, and that all data provided by you or any End User is accurate.

21. EDD:E SYSTEM - NETWORKING PARAMETERS

Installation of the Edd:e system requires that each electrical distribution board be isolated prior to an engineer commencing work.

- 21.1. Where agreed, to prevent the interruption of daily business activities, installation may be completed outside of normal working hours.
- 21.2. Where the Installation is to take place during normal working hours you must make appropriate provision for ensuring that the power to the Premises is turned off during the course of the Installation.
- 21.3. We shall not be responsible for ensuring that server equipment or other sensitive equipment has been shutdown prior to the power at the Premises being turned off. As such, you must ensure that an appropriate individual is available to power down server equipment. The same, or equivalent, individual will be responsible for restarting or resetting equipment following the restoration of power.
- 21.4. You must power down all essential systems (including servers) prior the installation appointment time. Any delay in the powering down of such systems may result in a delay to Installation.
- 21.5. In order to complete the Installation, Systems will need to install a small Linux server.
- 21.6. You shall provide us with the Edd:e Networking Requirements.
- 21.7. System administrators may restrict access to given IP address. If this is the case you must use IP address 82.219.27.53.