

EcoSync Standard Terms and Conditions

1. SCOPE OF THIS AGREEMENT

- 1.1 The parties acknowledge that the Customer is entering into this Agreement as a supply agreement such that the Customer will (i) order Products and (ii) purchase access to the SaaS Services, and the Supplier shall supply to such Customer such Products and SaaS Services in accordance with this Agreement.

2. SUPPLY, DELIVERY AND INSTALLATION OF THE PRODUCTS

- 2.1 EcoSync shall use its reasonable endeavours to:

2.1.1 deliver the Products to the applicable Delivery Location on the applicable Delivery Date;

2.1.2 ensure that the Documentation contains sufficient information to enable the Customer to install the Product in the relevant Zones and to make full and proper use of the Products; and

2.1.3 if agreed by the parties in writing under the Order Form:

2.1.3.1 fit or install or procure the fitment or installation of the Products in the relevant Zones on the applicable Installation Date. [The Customer shall pay to EcoSync the relevant Installation Fees for such installation service (as identified in the Order Form).]; and

2.1.3.2 provide remote the Maintenance and Support Services (as described in the Order Form). [The Customer shall pay to EcoSync the relevant Support Fees for such services (as identified in the Order Form), such fees to be invoiced in accordance with the invoicing schedule set out in the Order Form.]

- 2.2 EcoSync shall use reasonable endeavours to ensure that the Products ordered by the Customer are properly packed and secured in a manner to enable them to reach the Delivery Location in good condition.

- 2.3 EcoSync shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to supply the Products in accordance with the terms of this Agreement.

- 2.4 In respect of the Sim Cards, the following terms shall apply:

2.4.1 EcoSync shall use its reasonable endeavours to provide the Customer with the Sim Card(s) on the Delivery Date;

2.4.2 for a period of 30 days following the Services Commencement Date (the “**Free of Charge Period**”), no fees shall be incurred by the Customer for the use of the Sim Card(s);

2.4.3 subject to clause 2.4.4, the mobile internet connection provided by the relevant Sim Card shall be terminated by Ecosync on expiry of the Free of Charge Period; and

2.4.4 where requested by the Customer in writing (either on or prior to the expiry of the Free of Charge Period), the mobile internet connection in respect of the relevant Sim Card(s) shall remain available (subject to payment of the relevant Sim Card Fees).

3. SAAS SERVICES

- 3.1 Following delivery of the Products, EcoSync shall commence providing the SaaS Services, such services to commence on the Services Commencement Date.
- 3.2 The parties must comply with the SaaS Schedule in relation to the supply and use of the SaaS Services under this Agreement.

4. LATE DELIVERY

- 4.1 While EcoSync will use its reasonable endeavours to meet Delivery Dates, time under this Agreement is not of the essence and delays in the delivery of any Products shall not entitle the Customer to:
 - 4.1.1 refuse to take delivery of the Products; or
 - 4.1.2 claim damages; or
 - 4.1.3 terminate this Agreement.

EcoSync shall have no liability for any failure or delay in delivering any Products to the extent that any failure or delay is caused by the Customer's failure to comply with its obligations under this Agreement or as a result of an event of force majeure or due to the acts or omissions of a third party.

- 4.2 If the Customer fails to take delivery of any Products on a Delivery Date, then, except where that failure or delay is caused by EcoSync's failure to comply with its obligations under this Agreement:
 - 4.2.1 delivery of the Products shall be deemed to have been completed at 9.00 am on the Delivery Date; and
 - 4.2.2 EcoSync shall store the Products until delivery takes place and charge the Customer for all reasonable related costs and expenses (including insurance).

5. TITLE AND RISK

- 5.1 Risk in Products shall pass to the Customer on delivery.
- 5.2 Title to Products shall not pass to the Customer until EcoSync receives payment in full (in cash or cleared funds) for the Products, in which case title to the Products shall pass at the time of payment of all such funds.
- 5.3 Until title to the Products has passed to the Customer, the Customer shall:
 - 5.3.1 store those Products separately from all other goods held by the Customer so that they remain readily identifiable as EcoSync's property;
 - 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to those Products;
 - 5.3.3 maintain those Products in satisfactory condition and keep them insured on EcoSync's behalf for their full price against all risks with an insurer that is reasonably acceptable to EcoSync;
 - 5.3.4 give EcoSync such information as EcoSync may reasonably require from time to time relating to (a) the Products; and (b) the ongoing financial position of the Customer.
- 5.4 In the event of termination of this Agreement when payment for Products delivered to the Customer has not been made in full the Customer will make those Products available for

collection by EcoSync. In the event that the said Products are not offered for collection within seven days of termination, EcoSync reserves the right to recover those Products that have not been paid for from the Customer and the Customer hereby grants EcoSync an irrevocable licence to enter its premises in order to recover the said Products.

6. OWNERSHIP AND LICENSING

6.1 EcoSync and its Affiliates, or their respective suppliers or licensors where applicable, own and retain all right, title and interest in and to the Embedded Software, the Documentation, the SaaS Services, the Information, and all of EcoSync's and its Affiliates', or their respective suppliers' or licensors', patents, trademarks (registered or unregistered), trade names, copyrights, trade secrets, other Intellectual Property Rights and EcoSync Confidential Information (collectively, the "**EcoSync IP**"). The Customer does not acquire any right, title or interest in or to the EcoSync IP except as expressly set forth herein. The Customer will not register, nor attempt to register any patent or copyright which, in whole or in part, incorporates any EcoSync IP without the prior written consent of EcoSync.

6.2 Subject to compliance with the terms and conditions of this Agreement and the payment of all applicable Product Fees on the terms set out in any Order Form, EcoSync grants to the Customer, a non-exclusive, non-transferable, non-assignable, limited licence for the Term to:

6.2.1 use and access the Documentation solely for the purpose of installing the Product and making full and proper use of the Product; and

6.2.2 use the Embedded Software incorporated in the Products solely to the extent necessary to enable the Customer to receive the benefit of the SaaS Services.

6.3 No reproduction rights are granted under this Agreement.

6.4 The Customer shall ensure that all reasonable precautions are taken to safeguard the EcoSync IP to prevent its misuse. Third party contractors, such as outsourcing service providers, approved in advance in writing by EcoSync may access and use the EcoSync IP but only for the Customer's internal business operations and activities, subject to all of the terms, conditions and restrictions set forth in this Agreement and the Documentation. The Customer will remain fully responsible for any act or omission of such third party contractors and will hold EcoSync harmless from any loss, damage, cost or expense

6.5 Open source software components may be distributed, embedded, or bundled with the Software and/or the SaaS Services. Such open source software is separately licensed by its copyright holder. Use of the open source software must be in accordance with its applicable license terms. EcoSync makes no representation, warranty or other commitment of any kind regarding such open source software. EcoSync offers no support for such open source software and shall, to the maximum extent permitted by law, have no liability associated with its use.

7. WARRANTIES

7.1 EcoSync warrants that the Products will:

7.1.1 be of satisfactory quality and will conform substantially in all material respects in accordance with specifications for the same as set out in the Documentation during the Warranty Period; and

7.1.2 during the Warranty Period, be free from any material defect in design, material, manufacture or workmanship;

7.2 EcoSync further warrants that it shall perform its obligations under this Agreement in compliance with all applicable laws and in accordance with good industry practice.

7.3 The Customer must notify EcoSync of any alleged non-conformance of the warranty contained in Clause 7.1. to EcoSync in writing during the Warranty Period. The Customer's exclusive

remedy and EcoSync's sole liability with regard to a breach of the warranty contained in Clause 7.1 shall be, at EcoSync's option and expense, to either:

- 7.3.1 repair or replace the non-conforming Product; or
 - 7.3.2 refund the Customer the Product Fees paid by the Customer for the non-conforming Product.
- 7.4 If EcoSync elects to return the applicable Product Fees paid for the non-conforming Product pursuant to Clause 7.2.2 above:
- 7.4.1 the Customer shall promptly return the non-conforming Products to EcoSync;
 - 7.4.2 the licences granted to the Customer hereunder in respect of such non-conforming Products shall automatically terminate.
- 7.5 To the extent permitted by law, EcoSync will have no liability to the Customer in respect of the warranties pursuant to Clause 7.1 for any claim that arises as a result of any of the following events:
- 7.5.1 the Customer makes any further use of those Products after giving notice in accordance with clause 7.1;
 - 7.5.2 the defect arises because the Customer failed to follow EcoSync's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Products or (if there are none) follow good trade practice regarding the same;
 - 7.5.3 the defect arises as a result of EcoSync following any drawing, design or specification supplied by the Customer;
 - 7.5.4 the Customer alters or repairs those Products without the written consent of EcoSync;
 - 7.5.5 the Customer uses the Products other than in accordance with the recommendations provided by EcoSync including those in the Documentation;
 - 7.5.6 the Customer uses the Products in combination with any third party equipment without the prior written agreement of EcoSync;
 - 7.5.7 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 7.5.8 the Products differ from the Documentation as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.6 To the extent permitted by law, EcoSync does not represent, warrant or make any commitment that: (i) the Product will meet the Customer's requirements; or (ii) the Product will operate in combination with other hardware or software, except as expressly specified in the Documentation.
- 7.7 The express provisions of this Agreement are in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, (including but not limited to implied undertakings of satisfactory quality, conformity with description and reasonable fitness for purpose) all of which are hereby excluded to the maximum extent permitted by law.
- 7.8 The Customer further acknowledges and agrees that (i) any information provided to the Customer in respect of potential cost savings or CO₂ emission reductions the Customer may gain from using the Products should be used for information purposes only, and (ii) the benefits derived from the use of the Product depend on various factors, some of which are solely within

the customer's control (including, for example, how the system is used, and building and room occupancy) . As such, EcoSync does not warrant, represent, undertake or agree that use of the Products and/or Services by the Customer will deliver any particular benefits if implemented.

8. FEES

Subscription Fees

- 8.1 In respect of the SaaS Services, the Customer shall pay to EcoSync the Subscription Fees in accordance with the SaaS Schedule, the Payment Terms set out in this clause 8 and the Order Form.

Product Fees

- 8.2 In respect of the Products, the Customer shall pay the Product Fees in accordance with this clause 8 and the Order Form.
- 8.3 EcoSync will be entitled to submit invoices to the Customer for the Product Fees at the times set out in the Order Form.

Payment Terms

- 8.4 The Customer shall pay all amounts invoiced to it by EcoSync in full in pounds sterling within 14 days of the date of invoice.
- 8.5 All amounts in respect of the Products due to EcoSync under or in relation to an Order Form are exclusive of:
- 8.5.1 any shipping and handling fees for the delivery of the Products, and
 - 8.5.2 Sales Tax, which shall be charged in addition in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be paid by the Customer in full at the same time as payment is due under the relevant invoice.
- 8.6 If the Customer is or may be required under any law or regulation of any governmental entity or authority, domestic or foreign, to withhold or deduct any portion of any payment due to EcoSync pursuant to this Agreement and EcoSync is unable to reclaim or recover that withholding or deduction through the exercise of reasonable efforts, then the sum payable to EcoSync will be increased by the amount necessary to yield to EcoSync an amount equal to the sum it would have received had no withholdings or deductions been made.
- 8.7 If the Customer fails to make any payment in accordance with this Agreement, then EcoSync shall (without prejudice to its other rights and remedies) be entitled to charge interest on the overdue amount at the rate allowed by law in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, compounded on a monthly basis, from the date on which such amount fell due until payment, whether before or after judgment.
- 8.8 Save as expressly provided for in this Agreement, any amounts paid in accordance with this Clause 8 shall be non-refundable in any circumstances including upon early termination of this Agreement.

9. CONFIDENTIALITY

- 9.1 The Customer shall keep all Confidential Information secret and securely protected against theft or unauthorised access, and in any event shall maintain its security, integrity and confidentiality to at least the same standard as it applies to its own confidential information.
- 9.2 The Customer may disclose Confidential Information to its directors, employees, officers, agents, sub-contractors and professional advisers ("**Authorised Persons**") for the purposes

of performing its obligations under this Agreement, provided that the Customer informs all Authorised Persons that the Confidential Information is confidential. The Customer shall be responsible for all acts and omissions of Authorised Persons as though they were its own acts or omissions under this Agreement.

- 9.3 The Customer may disclose any Confidential Information to any regulator, law enforcement agency or other third party if it is required to do so by law, regulation, or similar authority. In those circumstances the Customer shall (to the extent practical and lawful to do so) notify EcoSync in writing as soon as practicable before the disclosure and use all reasonable endeavours to consult with EcoSync with a view to agreeing the timing, manner and extent of the disclosure.
- 9.4 All Confidential Information shall remain the property of EcoSync and EcoSync reserves all rights in its Confidential Information. Nothing in this Agreement or the disclosures envisaged by this Agreement shall (except as expressly agreed otherwise in this Agreement) operate to transfer or operate as a grant of any licences or right to use, any intellectual property rights in the Confidential Information.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in this Agreement shall operate so as to exclude or limit the liability of either party to the other for:
- 10.1.1 death or personal injury arising out of negligence;
 - 10.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 10.1.3 the obligation to pay any Product Fees or Subscription Fees;
 - 10.1.4 any losses arising due to unauthorised use of Confidential Information or breach of any of the obligations under Clause 5; or
 - 10.1.5 any other liability that cannot be excluded or limited by law.
- 10.2 Subject to Clauses 10.1, 10.2 and 10.4, the total aggregate liability of EcoSync to the Customer in respect of any and all causes of action arising in each Contract Year under or in connection with this Agreement howsoever arising, including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise, shall not exceed the value of the Subscription Fees paid or payable by the Customer to EcoSync in that Contract Year.
- 10.3 Subject to Clauses 10.1 and 10.2, EcoSync shall not be liable to the Customer for:
- 10.3.1 any indirect, special or consequential loss or damage;
 - 10.3.2 any loss of profits (whether direct or indirect), business opportunities, loss or corruption of data, loss of management time, loss of revenue or damage to goodwill; or
 - 10.3.3 any costs that are incurred by the Customer when adjusting its heating systems for lower utilization following its use of the Product.

11. TERMINATION

- 11.1 The term of this Agreement commences on the Effective Date and continues indefinitely until it is terminated or it expires in accordance with this Agreement. Unless terminated earlier in accordance with its terms, this Agreement shall continue in force for the duration of the Initial Term and shall automatically extend for a period of twelve (12) months upon the expiry of the Initial Term and on each subsequent anniversary of such expiry (each such extension, a **“Renewal Period”**) unless either party gives at least [thirty (30)] days’ written notice to the

other party before the end of the Initial Term (or the applicable Renewal Period), to terminate this Agreement at the end of the Initial Term or the applicable Renewal Period, in which case this Agreement shall terminate at 23:59PM (GMT) on the last day of the Initial Term (or the applicable Renewal Period).

- 11.2 Either party may terminate this Agreement if:
 - 11.2.1 the other party materially breaches this Agreement and does not cure such breach within 30 days after its receipt of written notice specifying such breach from the non-breaching party; or
 - 11.2.2 the other party suffers an Insolvency Event.
- 11.3 Without limiting clause 11.2, EcoSync may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer:
 - 11.3.1 fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than [fifteen (15)] days after being notified in writing to make such payment; and or
 - 11.3.2 breaches Clause 9 or paragraph 4 of the SaaS Schedule.
- 11.4 Upon termination of this Agreement,
 - 11.4.1 all licences granted under this Agreement shall immediately terminate, save for any licences granted under this Agreement which are stated to be granted on a perpetual and irrevocable basis which shall survive the termination of this Agreement and shall continue in full force and effect;
 - 11.4.2 the Customer shall:
 - 11.4.2.1 immediately discontinue all use of the Products and the SaaS Services; and
 - 11.4.2.2 immediately pay all sums and amounts payable to EcoSync under the terms of this Agreement;
 - 11.4.3 EcoSync may immediately suspend all access to the SaaS Services; and
 - 11.4.4 EcoSync may at its sole discretion purchase back the Products from the Customer, the costs for such purchase to be agreed between the parties in writing.
- 11.5 Termination of this Agreement is without prejudice to any rights either party has against the other party, including but not limited to injunctive relief, and termination will not relieve either party of any of its obligations to the other existing at the time of termination.
- 11.6 The termination or expiry of this Agreement for any reason whatsoever shall not affect any provision of this Agreement which is expressed or otherwise intended to survive or to operate in the event of the termination of this Agreement.

12. DATA PROTECTION

- 12.1 To the extent that either party processes any personal data provided by the other party in connection with this Agreement, each party shall act as independent controllers in relation to such personal data and each party shall comply with its respective obligations under applicable Data Protection Legislation in relation thereto. The Customer shall promptly provide EcoSync with such reasonable cooperation, information and assistance as EcoSync may require from time to time to enable EcoSync to comply with its obligations under applicable Data Protection Legislation in relation to any personal data provided to EcoSync by the Customer or its Authorised Users.

12.2 Each party shall at all times comply with good industry practice relating to data protection, and implementation and maintenance of information security policies, and processes.

13. PILOT

13.1 Where the Order Form states this Agreement is a 'Pilot', then notwithstanding anything to the contrary in this Agreement, the following provisions shall apply:

13.1.1 EcoSync shall use its reasonable endeavours to deliver a Pilot Test Kit to the applicable Delivery Location on the applicable Delivery Date;

13.1.2 this Agreement shall commence on the Effective Date and shall, unless terminated earlier in accordance with its terms, continue in force for the duration of the Pilot Period (as set out in the Order Form). This Agreement shall expire automatically on the last day of the Pilot Period, unless otherwise agreed between the parties in writing;

13.1.3 EcoSync gives no warranty, representation, guarantee or undertaking (express or implied) that the Customer's and its Authorised Users' access and use of the Pilot Test Kit (including for the avoidance of doubt, any access and use of the Products, the SaaS Services, Embedded Software, and/or Information) shall not infringe the rights (including Intellectual Property Rights) of any third party;

13.1.4 EcoSync does not guarantee that (i) the Products will conform substantially in all material respects in accordance with specifications for the same as set out in the Documentation or (ii) the SaaS Services will always be available or be uninterrupted;

13.1.5 access to the SaaS Services is permitted on a temporary basis during the Pilot Period. EcoSync may suspend, withdraw, discontinue or change all or any part of the SaaS Services without notice. EcoSync will not be liable to the Customer if for any reason the SaaS Services is unavailable at any time or for any period during the Pilot Period;

13.1.6 title to the Pilot Test Kit (including its casing), shall not pass to the Customer (and, for the avoidance of doubt, the provisions of clause 5.3 shall apply);

13.1.7 subject to Clauses 10.1, 10.2 and 10.4, the total aggregate liability of EcoSync to the Customer under or in connection with this Agreement howsoever arising, including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise, shall not exceed a sum equal to £100;

13.1.8 EcoSync may terminate this Agreement immediately on notice to the Customer. On termination of the Agreement, the Customer shall either:

13.1.8.1 promptly return to EcoSync any materials (including any Pilot Test Kit and its packaging) provided by EcoSync, to the address specified by EcoSync from time to time; or

13.1.8.2 where it chooses to keep a Pilot Test Kit, pay all amounts invoiced to it by EcoSync, such invoice to include the costs equivalent to the list price for the Pilot Test Kit (including, for the avoidance of doubt, all relevant components);

13.1.9 where the Customer chooses to enter into an agreement with EcoSync for the purchase of the Products and the SaaS Services following the Pilot Period, the Customer shall either (at EcoSync's sole discretion) (i) retain the Pilot Test Kit (but shall promptly return all packaging (including the Pilot Test Kit casing) to EcoSync); or (ii) return the Pilot Test Kit, which shall then be replaced by EcoSync with new Products; and

13.1.10 where the Customer fails to install the Pilot Test Kit within the Pilot Period following the Delivery Date, EcoSync shall be entitled to recall the Pilot Test Kit on notice to the Customer, in which case the Customer shall (at its own cost and expense) promptly return the Pilot Test Kit to the address specified by EcoSync from time to time.

14. MISCELLANEOUS

14.1 **Governing Law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed exclusively in accordance with the law of England and Wales.

14.2 **Dispute Resolution.** In the event of any dispute, controversy, claim, question or disagreement (a “**Claim**”) arising out of or related to this Agreement or the breach thereof, the Claim will be subject to the exclusive jurisdiction of the English courts.

14.3 **Notices.** Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the addresses set out in the Order Form. Any notice or communication shall be deemed to have been received (i) if delivered by hand, at the time the notice is left at the proper address; or (ii) 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. This clause 14.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.4 **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all Agreements, arrangements, promises, undertakings, proposals, warranties, representations and understandings between them at any time before their respective signature (“**Pre-Contractual Statements**”), whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on any Pre-Contractual Statements made by or on behalf of the other party (whether made innocently or negligently) in relation to the subject matter of this Agreement, other than those which are set out expressly in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on, and hereby waives all rights and remedies which might otherwise be available to it in relation to, any Pre-Contractual Statements. Nothing in this clause shall limit or exclude the liability of either party arising out of any pre-contractual fraudulent misrepresentation or fraudulent concealment.

14.5 **Severability.** If any provision, or part of a provision, of this Agreement is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall be deemed not to form part of this Agreement, and the legality, validity or enforceability of the remainder of the provisions of this Agreement shall not be affected, unless otherwise required by operation of applicable law. The parties shall use reasonable endeavours to agree within a reasonable time upon any lawful and reasonable variations to the Agreement which may be necessary in order to achieve, to the greatest extent possible, the same commercial effect as would have been achieved by the provision, or part-provision, in question and with no fundamental change to the bargain between the parties.

14.6 **Variations.** No variation of this Agreement shall be effective unless made in writing and signed by or on behalf of each of the parties or by their duly authorised representatives.

14.7 **No Waiver.** The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a party waives a right, power or remedy arising as a result of a breach of any provision of this Agreement, this shall not operate as a waiver of any right, power or remedy arising as a result of any subsequent breach of that provision or any other provision of this Agreement, which will instead require a variation to this Agreement in accordance with Clause 14.7 above.

14.8 **Assignment; Successors and Assigns.** This Agreement is personal to the Customer. The Customer shall not assign, transfer, sub-licence, mortgage, charge, declare a trust of or deal in

any other manner with this Agreement, or with any of its rights or obligations under it, without the prior written consent of EcoSync. Any attempted assignment in violation of this clause is null and void and of no force or effect. Subject to the foregoing, this Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns. EcoSync may assign or sub-license this Agreement, in whole or in part, to any of its Affiliates or in connection with a merger (by operation of law or otherwise) or sale or acquisition of all or substantially all of its assets or voting securities.

- 14.9 **Force Majeure.** Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Reseller or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, endemic or pandemic, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for six months, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.
- 14.10 **Third Party Rights.** Except for EcoSync's third party licensors, a person who is not a party to this Agreement may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999. The parties hereto shall be entitled to vary, rescind or amend this Agreement and any part thereof without the prior consent of any third party.
- 14.11 **Conflicts.** In the event of any conflict between the Order Form, the Clauses of the Product Agreement and the SaaS Schedule to the Product Agreement, the conflict shall be resolved by giving priority: (a) first, to the Clauses of the Product Agreement; (b) second, to the SaaS Schedule to the Product Agreement; and (c) third, to the Order Form.
- 14.12 **Execution.** The parties represent that they have each caused the Agreement to be signed by a duly authorised representative and that this Agreement will thereby bind the respective party.

15. DEFINITIONS AND INTERPRETATION

- 15.1 In this Agreement:

"**Affiliate**" means in respect of a party, any entity that from time to time, directly or indirectly, Controls, is Controlled by, or is under common Control with that party and any other entity agreed in writing by the parties as being an Affiliate in respect of either party;

"**Authorised Persons**" has the meaning given in Clause 9.2;

"**Authorised Users**" means the employees of the Customer who are authorised by the Customer to access and use the SaaS Services solely on behalf and for the benefit of the Customer;

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

"**Confidential Information**" means all information in any medium or format (including written, oral, visual or electronic, and whether or not marked or described as "confidential"), together with any copies, which relates to EcoSync, to its Affiliates, or to its (or its Affiliates') employees, officers, customers or suppliers, and which is directly or indirectly disclosed by or on behalf of EcoSync to the Customer under or in connection with this Agreement (or which is learnt or acquired by the Customer in connection with this Agreement), whether before or after the date of this Agreement, and which would reasonably be regarded as confidential, BUT shall not include (i) information which is in the public domain other than as a result of a breach of this Agreement or any separate confidentiality undertaking between the parties; (ii)

information which the Customer received, free of any obligation of confidence, from a third party which was not itself under any obligation of confidence in relation to that information; or (iii) information which the Customer can show by its written or other records was developed or created independently by the Customer or any of its Affiliates;

“**Claim**” has the meaning given in Clause 14.2;

“**Contract Year**” means each consecutive period of twelve (12) months, the first such period commencing on the Effective Date;

“**Control**” means the ownership of, or power to vote in respect of, at least 50% of the voting stock, shares or interests of an entity;

“**Customer Data**” means any data transferred to EcoSync by the Customer under the SaaS Schedule;

“**Data Protection Legislation**” means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 in each case, as amended, revised or replaced from time to time (in particular, by operation of the Directive 2009/136/EC, and the General Data Protection Regulation (EU) 2016/679 (“**GDPR**”)) and all applicable national implementing legislation and guidelines, or any applicable analogous legislation in any jurisdiction, in each case, as amended, revised or replaced from time to time;

“**Delivery Date**” means the date(s) on which the Products (or the Pilot Test Kits, as applicable) are to be delivered to the applicable Delivery Location, as set out in the Order Form;

“**Delivery Location**” means the location(s) to which the Products (or the Pilot Test kits, as applicable) are to be delivered, as set out in the Order Form;

“**Documentation**” means the documentation provided to Customer by EcoSync in connection with the Products and/or the SaaS Services, including any user manuals or other documentation provided under this Agreement, and including any documentation described in the Order Form;

“**EcoSync IP**” has the meaning given in Clause 6.1;

“**EcoSync Personnel**” means EcoSync's Affiliates and EcoSync's and its Affiliates' employees, directors, officers, agents and subcontractors

“**EcoSync Platform**” means the platform operated by EcoSync providing access to EcoSync's SaaS Services;

“**Effective Date**” means the date of this Agreement;

“**Embedded Software**” means EcoSync's operating software embedded in the Hardware as described in the Documentation that is licensed pursuant to this Agreement;

“**First Delivery**” has the meaning given in Clause 3.1;

“**Free of Charge Period**” has the meaning given in clause 2.4.2;

“**Handover Call**” means the call made by EcoSync to the Customer following the installation of the Products, whereby EcoSync confirms that the Customer is satisfied with the installation of the Products and provides certain log-in details to the Customer;

“**Hardware**” means the hardware components of the type and specification listed in Order Form and/or the Documentation;

“Insolvency Event” means, in respect of either party:

- (a) that party becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent;
- (b) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of that party;
- (c) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to that party and/or over all or any part of the assets of that party; or
- (d) that party enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally;

“Installation Date” means the date(s) on which the Products are to be fitted or installed by either (i) EcoSync; (ii) a third party procured by EcoSync; or (iii) the Customer (with each being an "Installation Date"), as set out in the Order Form;

“Installation Fees” means the fees to be paid by the Customer to EcoSync for the Products to be fitted or installed by either (i) EcoSync; (ii) a third party procured by EcoSync; or (iii) the Customer, as set out in the Order Form;

“Intellectual Property Rights” means (i) patents, rights to inventions, designs, copyright and related rights, database rights, trade marks, related goodwill and the right to sue for passing off and/or unfair competition and trade names, in each case whether registered or unregistered; (ii) proprietary rights in domain names; (iii) knowhow, trade secrets and confidential information; (iv) applications, extensions and renewals in relation to any of these rights; and (v) all other rights of a similar nature or having an equivalent effect anywhere in the world. In addition, for the purposes of this Agreement;

“Pilot Period” means the period as set out in the Order Form;

“Pilot Test Kit” means the test kit (including all of its relevant components) provided by EcoSync to the Customer, in order for the Customer to test the Products and/or SaaS Services;

“Pre-Contractual Statements” has the meaning given in Clause 14.4;

“Product” means (i) the Hardware and (ii) the Embedded Software;

“Product Fees” means both the fees for the Hardware and the Installation Fees, as set out in the Order Form;

“Renewal Period” has the meaning given in clause 11.1;

“SaaS Services” means those services made available by EcoSync through the EcoSync Platform, access to which is necessary for the correct operation of the Hardware and Embedded Software and where access is strictly subject to the terms set out in the SaaS Schedule;

“SaaS Schedule” means the SaaS Schedule to this Agreement;

“Sales Tax” means any applicable national, federal, state and local sales, use, value added, excise and other similar taxes, fees and surcharges that are legally or by custom borne by a purchaser of goods or services;

“Services Commencement Date” means the latter of (i) the Installation Date and (ii) the date of the Handover Call;

“Sim Card” means the sim card with mobile internet connection provided by EcoSync to the Customer;

“Sim Card Fees” means the fees for the provision of the Sim Card(s), as set out in the Order Form, such fees to be invoiced in accordance with the invoicing schedule set out in the Order Form;

“Subscription Fees” means the annual subscription fees as set out in the Order Form;

“Subscription Term” means the term of this Agreement, commencing from the Services Commencement Date;

“Warranty Period” means a period of 12 months from the Services Commencement Date;

“Virus” means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

“Zones” means virtual building areas that can be thermally controlled separately using the Product and SaaS Services, as agreed between the parties in writing from time to time.

Interpretation

Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

A reference to writing or written includes faxes and e-mail.

References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

SAAS SCHEDULE

ECOSYNC SAAS SERVICES

1. SUBSCRIPTION TERM

- 1.1 The parties shall be required to perform their obligations under this SaaS Schedule from the Services Commencement Date.

2. SAAS SERVICES SUBSCRIPTION

- 2.1 Subject to the Customer's payment of the Subscription Fees and its compliance with the other terms and conditions of this SaaS Schedule, EcoSync hereby grants to the Customer a non-exclusive, non-transferable, revocable, non-sublicensable (save as set out expressly in this paragraph) right during the Subscription Term (and, for the avoidance of doubt, commencing from the Service Commencement Date) to use and access, and to permit the Authorised Users to use and access, the SaaS Services on a software-as-a-service basis, for normal business purposes and solely in accordance with the Documentation.

- 2.2 EcoSync may amend the SaaS Services and the Documentation from time-to-time provided such amendments apply to the majority of customers of the SaaS Services and do not materially and negatively impact the functionality, performance or security of the SaaS Services.

- 2.3 Customer shall grant EcoSync and its licensors a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual licence to use or incorporate into the SaaS Services any enhancement requests or feedback provided by the Customer, so long as the Customer (including any Authorised User) is not identified in any way as the source of such enhancement requests or feedback. For the avoidance of doubt, EcoSync shall not be obliged to implement any such enhancement requests or feedback.

Accessing the SaaS Services

- 2.4 For the avoidance of doubt, the SaaS Services will be accessed via an online portal. The description of how the Customer may access such application will be set out in the Documentation.

3. ECOSYNC'S OBLIGATIONS

- 3.1 EcoSync warrants that during the Subscription Term the SaaS Services shall perform materially in accordance with the Documentation.

- 3.2 EcoSync shall use reasonable endeavours to ensure the SaaS Services is available on a 24/7 basis, but EcoSync makes no representation, and gives no warranty or undertaking, that the operation or availability of the SaaS Services will be uninterrupted or error-free.

- 3.3 If EcoSync fails to comply with the warranty at paragraph 3.1, it shall use its reasonable endeavours to rectify, repair or correct such failure within a reasonable period of time. The warranty at paragraph 3.1 shall not apply to the extent of any non-conformance, including unavailability, which is caused by: (a) the Customer's breach of this Agreement; (b) use and access of the SaaS Services contrary to EcoSync's instructions; or (c) modification or alteration of the SaaS Services by any person other than EcoSync or authorised EcoSync Personnel.

- 3.4 The Customer acknowledges that EcoSync and/or the EcoSync Personnel may from time to time carry out routine and emergency maintenance of the SaaS Services. The Customer agreed that they may be unable to access the SaaS Services during any period in which routine or emergency maintenance is being carried out, though EcoSync will use its reasonable endeavours to keep disruption to and unavailability of the SaaS Services to a minimum.

- 3.5 Without limitation to Clause 14.9 (Force Majeure), the Customer acknowledges that EcoSync has no direct control over the availability of bandwidth over the entirety of the Internet and that, while EcoSync will use such endeavours as EcoSync deems appropriate to facilitate the SaaS Services, EcoSync shall not be responsible for delays caused by such unavailability.

- 3.6 Except as expressly provided in this SaaS Schedule, the SaaS Services is provided "as is" and to the extent permitted by law, EcoSync disclaims all other conditions, warranties, representations, undertakings or other terms which might have effect between the parties with respect to the SaaS Services, or be implied or incorporated into this SaaS Schedule, whether by

statute, common law, custom or otherwise, including any implied conditions, warranties, undertakings or other terms relating to satisfactory quality, reasonable skill and care, fitness for any particular purpose, ability to achieve a particular result or arising from course of dealing or usage of trade. EcoSync does not warrant anything in relation to [software or] systems that do not make up the SaaS Services or the connection to those [software or] systems and does not adopt, endorse or, nor is responsible or liable for, any such [software or] systems.

4. CUSTOMER'S OBLIGATIONS

4.1 In relation to the SaaS Services:

4.1.1 the Customer shall not:

- 4.1.1.1 store, distribute or transmit any Virus, or any material, information or data through the SaaS Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- 4.1.1.2 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the SaaS Services, Information, EcoSync Platform, or Documentation;
- 4.1.1.3 access, develop, supply or market all or any part of the SaaS Services in order to build a product or service which replicates, competes with or is substantially similar to the SaaS Services;
- 4.1.1.4 attempt to undertake any security testing of the SaaS Services without the prior written consent of EcoSync;
- 4.1.1.5 use the SaaS Services to provide services to third parties (including any Affiliates of the Customer) subject to the terms of this SaaS Schedule;
- 4.1.1.6 subject to Clause 14.8 (Assignment), transfer, temporarily or permanently, any of its rights under this SaaS Schedule; or
- 4.1.1.7 subject to the terms of this SaaS Schedule, assist third parties in obtaining access to the SaaS Services;

4.1.2 the Customer shall use its best endeavours to prevent any unauthorised access to, or use of, the SaaS Services and shall notify EcoSync promptly of any such unauthorised access or use; and

4.1.3 EcoSync may audit the Customer's compliance with this paragraph 4.1 by any lawful, technical means and the Customer shall provide all reasonable assistance and information to EcoSync necessary to establish that the SaaS Services are only being accessed and used in accordance with this Agreement.

4.2 The Customer shall:

- 4.2.1 provide EcoSync with all necessary co-operation in relation to this Agreement and access to such information as may be required by EcoSync in order to provide the SaaS Services (including, but not limited to, the Customer's internet settings);
- 4.2.2 promptly notify EcoSync of any changes to its internet connection which may affect the provision of the SaaS Services;
- 4.2.3 maintain sufficient licences to any software (from third parties or licensed by EcoSync separately to this Agreement) operated using or in conjunction with the SaaS Services;
- 4.2.4 comply with all applicable laws and regulations with respect to its activities under this SaaS Schedule;
- 4.2.5 comply with the provisions set out in the Service Description (found here: [\[INSERT HYPERLINK\]](#));
- 4.2.6 where the 'Room Booking Integration' service is provided (as set out in the Order Form), promptly notify EcoSync of any changes to the relevant Customer room booking

system that may impact the provision of such service;

4.2.7 carry out all other Customer responsibilities set out in this SaaS Schedule in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, EcoSync may adjust any timetable or delivery schedule set out in this SaaS Schedule as reasonably necessary; and

4.2.8 ensure that the Authorised Users comply with the terms of this Agreement, and shall be responsible for any acts and omissions of the Authorised User as if committed by the Customer itself.

4.3 The Customer acknowledges and agrees that EcoSync shall not be liable to the Customer for any loss or damage howsoever caused to the extent arising from any downtime, outage, interruption in or unavailability of the SaaS Services as result of or attributable to the Customer's breach of paragraph 4.2.

5. **SUBSCRIPTION FEES**

5.1 The Customer shall pay the Subscription Fees (as set out in the Order Form) to EcoSync in accordance with this paragraph 5, clause 8 and the Order Form.

5.2 EcoSync will invoice the Subscription Fees to the Customer in advance on an annual basis, with EcoSync being entitled to issue the first invoice on the Service Commencement Date. EcoSync reserves the right to make provision of the SaaS Services subject to receipt of payment of the Subscription Fees.

5.3 Prior to the commencement of any Renewal Period, EcoSync may alter the Subscription Fees (up to a maximum increase of 5%) which will be payable by the Customer for that Renewal Period. Alterations of the Subscription Fees require not less than sixty (60) days' notice to the Customer.

5.4 Any Subscription Fees paid in accordance with this paragraph 5 shall be non-refundable in any circumstances including upon early termination of this Agreement, other than where the Customer terminates the Agreement in accordance with clause 11.3.1. In such circumstances, the Customer shall be entitled to a pro-rata refund of any Subscription Fees paid by the Customer for the terminated period (such refund being calculated with reference to the period between the date of termination and the end of the Contract Year to which such advance payment relates).

6. **CUSTOMER DATA AND DATA PROTECTION**

6.1 EcoSync shall own all rights, title and interest in and to all of the Customer Data, and to the extent necessary, the Customer undertakes to assign to EcoSync (or procure the assignment) of all such Customer Data..

6.2 EcoSync hereby grants to the Customer, on and subject to the terms and conditions of this Agreement, a non-exclusive, irrevocable, sub-licensable, perpetual licence to use the Customer Data for the Customer's own internal business purposes. .

6.3 The Customer represents, warrants and undertakes to EcoSync that it has the right to disclose and assign in accordance with the terms of this Agreement the Customer Data to EcoSync. The Customer further represents, warrants and undertakes to EcoSync that the use of the Customer Data by EcoSync and/or any EcoSync Personnel in accordance with this SaaS Schedule will not: (a) breach any laws, statutes or regulations; (b) infringe the Intellectual Property Rights or other legal rights of any person; or (c) give rise to any cause of action against EcoSync, in each case in any jurisdiction and under any applicable law.

7. **TERMINATION AND SUSPENSION**

7.1 On termination of the Agreement for any reason, EcoSync may immediately end the Customer's use of and access to the SaaS Services.

7.2 EcoSync may suspend the Customer's and/or its Authorised User's, right to access the SaaS Services or use any portion or all of the SaaS Services immediately upon notice to the Customer if it determines acting reasonably:

7.2.1 that the Customer's (or an Authorised User's) use of or access to the SaaS Services (a) poses a security risk to EcoSync, the SaaS Services or any third party; (b) may adversely

impact availability or performance of the SaaS Services, EcoSync Platform, or the systems or software of any other customer of EcoSync; (c) may subject EcoSync or any third party to any liability; or (d) may be fraudulent; or

7.2.2 that the Customer, or any Authorised User, is in breach of this Agreement (including this SaaS Schedule) or any other agreement by which software being used on or in conjunction with the SaaS Services is licensed.

7.3 EcoSync shall reinstate the suspended SaaS Services once it has established the cause of the suspension has been remedied or ceased to exist. Where the cause of the suspension persists for more than thirty (30) days, EcoSync may immediately terminate the Agreement without incurring any liability to the Customer.