

Aware Buildings Service Agreement, Terms of Service, and Product Warranty

Between

Customer Name and Address

(Herein the "Customer")

&

Aware Buildings

(Aware)

1. AWARE BUILDINGS SOLUTION SUBSCRIPTIONS:

You, your Property or your Company, ("**Customer**") hereby subscribes to one or more sensor-based monitoring and alerting solutions (hereafter referred to as the "**Solution**") offered by Aware Buildings, LLC (hereafter referred to as "**Aware**"). For the one-time equipment purchase fee, and the recurring data service fees agreed to, Aware will provide the Customer with various Sensors, Gateways, Output Operators, or Annunciators (collectively, the "**Hardware Resources**") including the Hardware Resources manufactured by Aware (hereafter "**Aware-Manufactured Hardware Resources**") and Data Services, including data storage, reporting or alerting (collectively, the "**Data Services**") that are part of and sufficient to implement the Solution and that inter-operate as described on the Aware website and in collateral materials and discussions. The Parties expect that the Hardware Resources and Data Services provided are sufficient to achieve Customer's objectives and that Aware shall provide the needed Hardware Resources and Data Services and offer its best efforts to assist Customer in achieving its Solution goals. However, it is the Customer's responsibility to determine whether the Solution's functionality will ultimately be suitable for and adequate to meet Customer's needs and intended purposes.

2. INSTALLATION RESPONSIBILITIES:

Aware shall provide to Customer the agreed upon Hardware Resources, for the Customer to install including:

- a) SENSORS: the self-installation process of the wireless sensors using Customer's own property staff, or a customer preferred 3rd party installer
- b) GATEWAYS: the installation of powered Gateways with wired (Ethernet) internet connections, utilizing the services of Customer's selected third-party low voltage installer services, or Aware's installation partner if agreed.
- c) Aware shall provide the necessary pre-provisioning, guidance, and configuration assistance to the installing parties, and reasonable troubleshooting services, needed to bring the Solution to its expected, desired state.
- d) Onsite services from Aware may be requested, and if available and warranted, may be provided at an additional fee.

It is the Customer's responsibility for the initial installation and continuing for the duration that an Aware solution is being subscribed to, to provide a working wired (Ethernet) Internet connection for the Gateway devices and other end devices not intended to run wirelessly and on batteries (such as valve actuators, alert annunciators), and to manage the placement of all Hardware Resources in operating environments suitable for that Solution as agreed, and to provide the necessary electrical service.

3. SERVICE LEVEL EXPECTATIONS:

The Solution(s) shall be available substantially 24x7, unless otherwise agreed to, subject to routine maintenance and short interruptions which may occur infrequently due to issues related to equipment, network functionality or data operations (“**24x7**”). Customer will receive prompt notifications by email of any interruptions of functionality and can request a prorated data services fee credit for the time the Solution is not available - except that if the interruption is due to the Customer’s not meeting the responsibilities mentioned, in which case no credit shall apply. In the event limited device failures result in a partial interruption of service for less than 2 hours, or affecting less than 50% of the Solution, no credit shall apply.

4. DATA SERVICES PROVIDED:

The recurring annual data services fee, includes:

- a. 24/x7 access to sensor data and management tools via the Aware dashboard and mobile app.
- b. Sensor data including On-line status, signal strength and low-battery monitoring and reporting.
- c. Alerts via email, SMS and optional Annunciator box, when Customer-configured conditions are detected (i.e., leaks) or thresholds are exceeded (i.e. high temperature).
- d. Access to Logs and displays of current and historic data trends in interactive analytic visualizations.
- e. Daily or weekly email reporting of Solution Summary data – including Sensor outputs, battery and signal strength.
- f. Long-term storage of-essential data and alerts.

5. CHOICE OF PRODUCT:

The type or model of sensor provided to the client is at Aware's discretion, and may look or act differently than what a client saw in a sales call, etc. - but will be adequate for the intended and contracted service.

6. SHIPPING AND INVOICING:

Hardware Resources being purchased from Aware are invoiced at the time of shipment to Customer, though for Customer peace of mind, risk of loss passes to Customer only upon receipt. The quoted fee does not include applicable sales taxes, tariffs, or shipping fees. Data Services fees are invoiced annually, starting from the earlier of (a) the date the Solution is activated and data is being collected or (b) 60 days after receipt of all requested Hardware Resources, unless a different date has been agreed to by both parties (hereafter referred to as the “**Activation Date**”). The activation date also serves as the renewal date for subsequent years.

7. ESTIMATED DEPLOYMENT DATE:

Deployment Date shall be determined and agreed to by both parties once the signed agreement has been executed.

8. PRICING CHANGES:

If the quantity of Hardware Resources or Data Services provided for your solution increases or decreases, the additional fees for Hardware Resources purchases or modified Data Services shall be invoiced either immediately, or at Aware’s discretion, upon the next renewal date.

Pricing for Hardware Resources and Data Services are subject to change at the sole discretion of Aware, however Aware shall endeavor to keep the Annual Network Maintenance Fee increases reasonable and shall provide the Customer with 90 days notice prior to the term renewal date. Should the Customer choose to reject the price

increase the agreement shall terminate in 90 days and the customer will be billed at the price agreed to prior to the proposed fee increase.

9. PAYMENT OF FEES AND RENEWALS:

Customer will be required to pay the fees as outlined below. Hardware and installation fees are due upon receipt of invoice and final. Network Management Fees are due and payable on an annual basis, in advance, commencing on the date designated on the signature page and on each anniversary of the Initial Fee Date during the Term ("Anniversary Date") unless this Agreement is terminated. Customer may terminate with a minimum 30 days' notice prior to the Anniversary Date. Any payment not received within thirty (30) days of the date due shall bear interest from the date due at the rate of one (1%) per month (prorated for partial periods) or the maximum rate permitted by applicable law, whichever is less.

10. LoRaWAN GATEWAY CHANGES: -

For solutions based on the Long-Range-Wireless LoRaWAN communications protocol (hereafter referred to as "LoRaWAN"), the quoted fee can include Aware's projected number of LoRaWAN gateways that are needed to cover the facility areas where sensors are being deployed. The nature of LoRaWAN technology is such that it is usually advisable, and sometimes necessary, to install additional LoRaWAN Gateways to round out coverage in the deployed facility for any weak spots not sufficiently covered by the core set of Gateways. Customer is responsible for the purchase of additional Gateways beyond Aware's quoted projected count. In such an instance, the additional Data Service fees for the additionally purchased Gateways will be waived.

11. HARDWARE PRODUCT WARRANTY:

Aware warrants that Aware-Manufactured Hardware Resources will perform in accordance with published specifications and be free from defects in materials and workmanship for a period of one (1) year from the date of customer receipt of product. Aware's sole obligation shall be, at its election, to repair or replace the Aware-Manufactured Hardware Resources in question or to refund the purchase price during that one (1) year term. Aware may resell other components from third party manufacturers. These products are subject solely to the individual warranties of their manufacturers, with no additional warranty from Aware.

- a) **COVERED DEFECTS:** The Customer must notify Aware of any defect promptly after such defect comes to the attention of Customer. This warranty will not apply to any Hardware Resources that have been (a) damaged by lightning, submersion in water beyond what is expected in its normal use as a contact water sensor, or power surges, (b) neglected, altered, abused, or used for a purpose other than the purpose for they were provided, (c) repaired by Customer or any other party without Aware's prior written authorization, (d) used in conjunction with a third party product or products not approved in advance by Aware, or (e) otherwise used in a manner inconsistent with any instructions provided by Aware.
- b) **RETURNS** – When a product return is authorized by Aware for credit or replacement, either resulting from a covered defect or as negotiated with Aware at its discretion, Customer shall contact support@awarebuildings.com to obtain an RMA# and return instructions.
- c) **WARRANTY ON REPLACEMENTS:** In the event that Aware repairs or replaces Hardware Resources under warranty, the repaired or replaced product will be covered through the end of the original warranty period. Any charges in excess of standard shipping charges associated with the shipment of replacement products shall be borne by Customer.

- d) **USEFUL LIFE:** The Hardware Product Warranty covers replacement of defective Hardware Resources for a period of one year. The average expected working lifespan of sensors and gateways is 10 years, except where the sensors and gateways deployment leaves them exposed to harsh or corrosive environments.

12. BATTERY LIFE:

Sensors provided under this agreement, whether produced by Aware or sourced from third party manufacturers tend to demonstrate different battery longevities, depending on the types of sensors and technologies used, the types and sizes of batteries, and various environmental and configuration settings, such as sampling rates. Customer can expect that Aware LoRaWAN sensors will operate on its recommended lithium-ion batteries for a period of FOUR YEARS before requiring replacement, when operated at 70 degrees F (+/- 10 degrees) with a sensor sampling rate of 1x per 10 seconds and a heartbeat of 1 hour.

13. LIMITATION OF WARRANTY & REMEDIES:

- a. THE WARRANTY SET FORTH HEREIN IS THE ONLY WARRANTY APPLICABLE TO HARDWARE RESOURCES AND DATA SERVICES PURCHASED BY CUSTOMER. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE HARDWARE RESOURCES AND DATA SERVICES FURNISHED BY AWARE ARE NOT GUARANTEED TO BE UNINTERRUPTED OR ERROR-FREE. ADDITIONALLY, CUSTOMER AGREES THAT AWARE IS NOT LIABLE FOR DAMAGES CAUSED BY CUSTOMER OR A THIRD PARTY; BY WIRELESS CARRIERS, DATA CENTERS, BUILDINGS, ACCIDENTS, NETWORK CONGESTION, WEATHER OR DAMAGE AND/OR INTERRUPTIONS CAUSED BY NATURE.
- b. AWARE SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY AND WARRANTIES, IMPLIED OR EXPRESSED, FOR USES REQUIRING FAIL-SAFE PERFORMANCE IN WHICH FAILURE OF A PRODUCT COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE SUCH AS, BUT NOT LIMITED TO, SECURITY, LIFE SUPPORT, MEDICAL DEVICES OR NUCLEAR APPLICATIONS. THE HARDWARE RESOURCES AND DATA SERVICES ARE NOT DESIGNED FOR AND SHOULD NOT BE USED IN ANY OF THESE APPLICATIONS. IF YOU NEVERTHELESS CHOOSE TO USE THE HARDWARE RESOURCES AND DATA SERVICES IN SUCH ACTIVITIES, YOU MUST NOT RELY ON THEM AS YOUR SOLE OR PRIMARY SOURCE OF MONITORING.
- c. IN NO EVENT WILL AWARE BE LIABLE FOR PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR AN AMOUNT IN EXCESS OF THE PURCHASE PRICE OF THE HARDWARE RESOURCES.
- d. IN NO EVENT WILL AWARE BE LIABLE FOR CONSEQUENTIAL DAMAGES RESULTING FROM THE FAILURE OF ANY OF THE HARDWARE RESOURCES, INCLUDING BUT NOT LIMITED TO, THE FAILURE TO ACTIVATE, DETECT A CONDITION, ALERT CUSTOMER OF A CONDITION, AND/OR THE FAILURE OF THE HARDWARE RESOURCES TO ENGAGE OR DISENGAGE A DEVICE OR DEVICES, INCLUDING BUT NOT LIMITED TO LEAKS, FLOODS, MOLD, WATER DAMAGE AND/OR PERSONAL INJURY. IN NO EVENT WILL AWARE BE RESPONSIBLE FOR THE OPERATION OF ANY BUILDING SYSTEM, INCLUDING BUT NOT LIMITED TO CUSTOMER PROVISIONED VALVES WHICH A HARDWARE RESOURCE IS CONTROLLING. CUSTOMER MAY NOT AND SHOULD NOT RELY ON A HARDWARE RESOURCE AS ITS SOLE OR PRIMARY SOURCE FOR CONTROLLING ANY CRITICAL BUILDING SYSTEM.

13. NO OTHER WARRANTIES:

AWARE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED AND CUSTOMER ACKNOWLEDGES THAT DISCLAIMER.

14. INDEMNIFICATION.

To the fullest extent permitted by law, Customer agrees to defend, indemnify, and hold harmless Aware and its employees, contractors, officers, agents and managers from all liabilities, claims, and expenses, including attorney's fees, that arise from Customer's use of one or more Aware Solutions including claims by third parties. Aware reserves the right, at Customer's sole expense, to assume the exclusive defense and control of any matter for which Customer is obligated to indemnify Aware. If Aware chooses to assume the defense of any matter that is subject to indemnification by you, Customer will cooperate with Aware, at Customer's expense, in any respect reasonably requested by Aware.

15. AWARE'S OWNERSHIP OF THE PROGRAM

The Customer represents that it has purchased the Hardware Resources only. The Customer represents and hereby acknowledges that it has NOT purchased and Aware expressly retains any and all rights, title and interest in the intellectual property of the Hardware Resources, and/or any other aspect of the Solution including but not limited to the alerting software, visualizations, database designs, hardware designs, ownership of any and all copyrights, trademarks, patents, look and feel, trade secrets and any other intellectual property rights recognized under any applicable law without limitation worldwide.

16. INFORMATION PRIVACY

Aware may disclose your personal information only as required by law, such as to comply with a subpoena, or similar legal process or when we believe in good faith that disclosure is necessary to protect our rights, protect your safety or the safety of others, investigate fraud, or respond to a government request. Aware will only retain personal data we process on behalf of our customers for as long as needed to provide services and as necessary to comply with our legal obligations, resolve disputes and enforce our agreements.

17. CHOICE OF LAW.

This Aware Solutions Subscription is to be governed by, and will be construed and enforced in accordance with, the laws of the United States of America, excluding its principles of conflicts of law. Each party hereby submits to the personal jurisdiction of said courts for the purpose of litigating any such action or other legal proceeding.

18. NOTICE.

All notices, requests, demands and other communications under or in connection with this Aware Solution Subscription shall be given in writing and shall be deemed to have been given or made: if by hand, immediately upon delivery; if by electronic mail or similar electronic mode, two hours after sending; if by Federal Express, Express Mail or any other overnight service, the first business day after dispatch; or if mailed by certified mail return receipt requested, two business days after delivery or return of the notice to sender marked "unclaimed". All notices shall be delivered or mailed to the parties at the following address (or to such other address as either party shall designate by notice in accordance with the provisions to this paragraph):

IF TO AWARE BUILDINGS:

Jerry Kestenbaum
Aware Buildings, LLC
105 E. 80th St
New York, NY 10075
jerry@awarebuildings.com

IF TO CUSTOMER:
