

**Framework IoT as a Service Agreement
The IoT Provider - Licensee**

This Framework IoT as a Service Agreement is between

1. **NioBium Blue B.V.**, a limited liability company under the laws of the Netherlands, having its registered office at Parallelweg 27 – Office KA 0.14, 5223 AL 's-Hertogenbosch, the Netherlands; hereinafter to be referred to as "The IoT Provider",

and

2. **Customer**, a company under the laws of the provided country in the quote, having its registered office at the address, zip code, place, and country provided in the quote OR a company under the laws of the provided country in the checkout of <https://shop.theiotprovider.com>, having its registered office at the address, zip code, place, and country provided in the checkout of <https://shop.theiotprovider.com>; hereinafter to be referred to as "Licensee"; hereinafter to be referred to as "Licensee",

WHEREAS

- A. The IoT Provider provides various services including connectivity, cloud services, data services and algorithms, the services are made available through a platform and further specified the Quote;
- B. Licensee wishes to utilize the Services provided by The IoT Provider;
- C. The IoT Provider wishes to grant Licensee one or more License(s) to use the Services;
- D. The actual granting of Services will be laid down in one or more agreement(s) ("Agreement") to be concluded by the Parties;
- E. The Parties wish to lay down the general terms and conditions for the License(s) in this Framework IoT as a Service Agreement ("Framework Agreement") in order to establish the terms and conditions pursuant to which the IoT Provider shall provide the Services to Licensee.

NOW, THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:

1. Definitions

For the purposes of the Agreement, the following terms, whenever used with a capital, in both the single and plural form, shall have the meaning as defined hereinafter:

"Additional Services"	Additional Services are services that can be performed by The IoT Provider but that are not included in the standard services of the Agreement;
"Agreement"	the Quote issued by The IoT Provider and accepted by Licensee under the terms and conditions of this Framework Agreement, in which the Services are specified;
"Data"	all data, including but not limited to Output, generated, collected, stored, accessed, processed, transmitted, or otherwise used by or through the Services;

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"Data Migration"	any transfer of Licensee's Data into the Services, either from previous software systems, data sheets or any other digital or manual source;
"Data Policy"	the document attached as Annex 2 that outlines the principles and procedures for the collection, use, and management of Data by The IoT Provider while providing Services.
"Documentation"	any manuals, instructions, readme files and other information concerning the Services, made available by The IoT Provider as described in the Agreement(s);
"The IoT Provider's Licensor"	a third-party that has granted The IoT Provider the rights to use, integrate, and/or distribute proprietary software as a component or module within the Services;
"Effective Date"	the effective date of this Framework Agreement;
"Extension"	the extension of an Agreement after expiring of the License Term;
"Framework Agreement"	this Framework IoT as a Service Agreement of which the annexes form an integral part and pursuant to which Parties may enter into one or more Agreement(s);
"IP Rights"	all IP Rights, including but not limited to copyrights, trademark rights, rights to software, database rights and patent rights;
"License"	the license as described in article 4.1 and the Agreement(s);
"License Fee"	the fee that Licensee must pay to The IoT Provider for the use of the Services as specified in article 7 and the Agreement(s);
"License Term"	the term of the License as described in article 10.3 and the Agreement(s);
"Mobile Network Operator" or "MNO"	the mobile network operator(s) engaged by The IoT Provider or The IoT Provider Licensor(s) in order to provide the Services;
"Output"	all information and Data which are the result of use of the Services, as provided by The IoT Provider under the Agreement;
"Party" or "Parties"	The IoT Provider and Licensee individually or jointly, as the context may require;
"Platform"	The IoT Provider's platform described in Annex 1 which allows monitoring and managing the Services and shall be made available to Licensee via the internet;
"Quote"	The IoT Provider's offer made to Customer;
"Services"	the selected services to be provided by The IoT Provider to Licensee as described in the Agreement;

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“Service Level”	the service level as agreed upon between Parties in the accepted Quote;
“Statistics”	the technical and usage analytics sent from the Services to The IoT Provider and/or The IoT Provider’s Licensor(s) for the purpose of managing and developing Services, creating alerts, ensuring License compliance, catching failures, diagnosing trouble, and responding the errors in aggregate;
“Term”	the term of this Framework Agreement as defined in article 10.1;
“Working Days”	Monday to Friday, excluding Dutch national holidays.

2. Framework Agreement

- 2.1 This Framework Agreement serves as the general terms and conditions that apply to all Services provided by The IoT Provider to Licensee under an Agreement. In the event Licensee engages The IoT Provider for the performance of Services, such Services shall be detailed in a separate Agreement.
- 2.2 If there is a conflict between this Framework Agreement, Agreement(s) and/or the annexes hereto, the order of precedence of the documents is as follows:
 - (i) The Agreement
 - (ii) This Framework Agreement
 - (iii) Annex 2 – Data Policy
 - (iv) Annex 1 – MNO Guidelines

3. Agreement

- 3.1 Each Agreement shall be subject to, and governed by, the terms and conditions of this Framework Agreement. Any additional or conflicting terms and conditions that are pre-printed or referred to in any document generated by Licensee shall not apply.
- 3.2 Neither this Framework Agreement nor any previous Agreement creates any obligations whatsoever on the part of The IoT Provider to issue or accept an Agreement.
- 3.3 Any Agreement issued by The IoT Provider to the Licensee is non-binding and without obligation until accepted by Licensee, unless explicitly stated otherwise.

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4. Scope of the License

License Grant

- 4.1 Under the terms and conditions of the Agreement and subject to payment of the applicable License Fee(s), The IoT Provider grants, and Licensee accepts, a non-exclusive, non-sublicensable, non-transferable, limited, and revocable license to use and access the Services provided by The IoT Provider via the Platform for Licensee's own business purposes only.
- 4.2 The Services and Documentation are made available to Licensee as described in the Agreement.
- 4.3 Next to Documentation, The IoT Provider shall provide Licensee with a reasonable level of support by means of e-mail, chat, or similar mechanism in the form of consultations, assistance and advice concerning installation, access, configuration, and use of the Services. After the Services are made available and working, any additional support, shall be subject to the Service Level Agreement agreed accepted Quote.
- 4.4 Licensee acknowledges that it has reviewed the Services and found them fitting to its needs.

License Restrictions

- 4.5 The rights granted in article 4.1 are subject to the following restrictions:
 - (i) Licensee shall use and access the Services in machine-readable, object code form only, solely in connection with the receipt of the Services and as installed and configured by The IoT Provider;
 - (ii) Licensee shall comply with the MNO Guidelines listed in **Annex 1**;
 - (iii) Licensee has no right to sell, assign, modify, translate, decompile, create derivative works or otherwise change or commercially exploit the Services;
 - (iv) Licensee is not permitted to reconstruct the source code, or any part thereof, of the Services by means of reverse engineering;
 - (v) Licensee is not permitted to conduct or request that any other person, whether legal or natural, conduct any load testing or penetration testing on the Services without prior written permission of The IoT Provider;
 - (vi) Licensee shall not remove, alter or obscure any copyright, trademark or other proprietary rights notice, on or in, the Services (or any part thereof), the Documentation and/or the Output;
 - (vii) Licensee shall not use the Services or results thereof for any benchmarking or for its own competing development activities;
 - (viii) Licensee shall not bundle, integrate, or attempt to integrate any third-party software technology with the Services without the prior written approval of The IoT Provider; and
 - (ix) If Licensee requires information to effect interoperability of the Services with other software, Licensee will request The IoT Provider in writing and with

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motivation for the necessary information. The IoT Provider will then inform Licensee within a reasonable period whether Licensee can obtain the requested information, and under which condition it is provided.

5. Additional Services

- 5.1 Unless otherwise agreed in writing, Additional Services will be charged separately.
- 5.2 The IoT Provider can provide Additional Services such as Data Migration, creation of new features, training, service, or support regarding the Services at terms to be agreed upon between Parties.
- 5.3 Before Additional Services are performed a written price indication will first be issued for approval. Depending on the complexity, a step-by-step plan will be offered.
- 5.4 In principle, The IoT Provider performs Additional Services against the then current consultancy rates, currently € 125 per hour. This rate is an indication and The IoT Provider may, at its sole discretion, deviate from this rate in its offer for Additional Services.

6. Review data and statistics

- 6.1 Licensee understands and agrees that the Services sends to The IoT Provider and/or The IoT Provider's Licensor(s) and/or their affiliates and service providers Statistics in accordance with the Data Policy described in **Annex 2**. Licensee further understands and agrees that The IoT Provider and/or The IoT Provider's Licensor(s) and/or their affiliates and service providers may:
 - (i) collect, store, and use Statistics; and
 - (ii) transfer Statistics for the purposes of (a) providing Services, (b) facilitating the provision of new products, updates, enhancements, and other services, (c) improving the Services, and other products, services, and technologies, and (d) providing new products, services or technologies to customers of The IoT Provider and The IoT Provider's Licensor(s) and their affiliates and service providers.

7. License fees and payment

- 7.1 All agreed fees as described in the Agreement(s) shall be paid in a timely manner and in compliance with the payment conditions agreed upon, regardless of whether the Services are used or not.
- 7.2 All prices are exclusive of VAT and other government levies that have been or shall be imposed.
- 7.3 All invoices and payments shall be in euro's unless agreed otherwise in writing.
- 7.4 Licensee shall pay invoices within fourteen (14) days after receipt of the invoice, unless agreed otherwise in the Agreement.
- 7.5 The IoT Provider reserves the right to unilaterally increase the License Fee. In case of modification of the License Fee, The IoT Provider shall notify the new License Fee to Licensee in writing at least two (2) months before the modified License Fee becomes due. Upon receiving this notification, Licensee has thirty (30) days to submit a written objection to the increase. If an objection is made by Licensee and Parties cannot reach an agreement, Licensee shall have the right to terminate the Agreement(s) without cause.

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- 7.6 Notwithstanding the right to increase the License Fee referred to in article 7.5, The IoT Provider may change the scope of Services and or the License Fee associated with the Services, due to regulatory constraints which effects the Services.
- 7.7 If Licensee fails to pay the fees due on time, statutory commercial interest shall be payable by Licensee on the outstanding amount without a demand notice of default being required. If Licensee still fails to pay the amount due after receiving a demand or notice of default, The IoT Provider may submit the claim for collection, in which case Licensee shall also be obliged to pay in addition to the total amount due, all judicial and extrajudicial costs, including all costs charged by an external expert.
- 7.8 In case of non-payment of any (part of the) License Fee, the Agreement may, in its entirety or with respect to the Agreement, at The IoT Provider's sole discretion, be terminated by The IoT Provider in accordance with article 10.5.

8. IP Rights of The IoT Provider

- 8.1 The IoT Provider and/or The IoT Provider's Licensor(s) reserve all rights not expressly granted to Licensee in the Agreement. Without limiting the generality of the foregoing, Licensee acknowledges and agrees that:
- (i) the Services and Documentation are licensed, not sold, to Licensee by The IoT Provider and Licensee does not and will not have or acquire under or in connection with the Agreement any ownership interest in the Services or Documentation, or in any related IP Rights;
 - (ii) except as specifically set forth in the Agreement, The IoT Provider and/or The IoT Provider's Licensor(s) retain all IP Rights and other rights, title and interest in and to the Services and Documentation, and Licensee acknowledges and agrees that it does not acquire any IP Rights or other rights, express or implied, therein;
 - (iii) any configuration or deployment of the Services shall not affect or diminish The IoT Provider's and/or any The IoT Provider's Licensor's rights, title, and interest in and to the Services; and
 - (iv) if Licensee suggests any new features, functionality, or performance for the Services that The IoT Provider or The IoT Provider's Licensor(s) subsequently incorporates into the Services, such new features, functionality, or performance shall be the sole and exclusive IP Rights or other proprietary right of The IoT Provider and/or The IoT Provider's Licensor(s) and shall be free from any confidentiality restrictions that might otherwise be imposed upon The IoT Provider pursuant to article 16.
- 8.2 Licensee shall, during the Term:
- (i) take all reasonable measures to safeguard the Services and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access; and

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- (ii) promptly notify The IoT Provider in writing if Licensee becomes aware of: (a) any actual or suspected infringement, misappropriation, or other violation of IP Rights in or relating to the Services or Documentation; or (b) any claim that the Services or Documentation, including any production, use, marketing, sale, or other disposition of the Services or Documentation, in whole or in part, infringes, misappropriates, or otherwise violates the IP Rights or other rights of The IoT Provider or The IoT Provider's Licensor(s).

8.3 If the Services, or any part of the Services, are, or in The IoT Provider's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party IP Right, or if Licensee's use of the Services is enjoined or threatened to be enjoined, The IoT Provider may, at its option and sole cost and expense:

- (i) obtain the right for Licensee to continue to use the Services as contemplated by the Agreement;
- (ii) modify or replace the Services, in whole or in part, to seek to make the Services non-infringing, while providing equivalent features and functionality, and such modified or replacement software will constitute Services under the Agreement; or
- (iii) if, after The IoT Provider's exercise of commercially reasonable efforts, none of the remedies set forth under (i) or (ii) is reasonably available to The IoT Provider, terminate the Agreement, in its entirety or with respect to the affected part or feature of the Services, effective immediately on written notice to Licensee, in which event: (i) Licensee shall cease all use of the Services immediately on receipt of The IoT Provider's notice; and (ii) provided that Licensee and The IoT Provider fully comply with the post-termination obligations, The IoT Provider shall promptly refund to Licensee, on a pro rata basis, the share of any License fees prepaid by Licensee for the future portion of the Term that would have remained but for such termination.

8.4 Licensee agrees that The IoT Provider's Licensor(s) are entitled to enforce the terms of the Agreement directly against Licensee as necessary to protect The IoT Provider's Licensor(s) and or their licensor(s)' IP Rights or any rights under the Agreement.

9. Right to audit

9.1 The IoT Provider is entitled to investigate whether Licensee uses the Platform and/or the Services in a manner that complies with the conditions of the Agreement. Licensee undertakes to cooperate with such an audit. The IoT Provider shall bear the costs of such audit, as long as no infringements of the Agreement are found. If Licensee is found to infringe the Agreement, Licensee will bear the costs of the audit.

10. Duration and termination

10.1 This Framework Agreement shall take effect on the date both Parties formally signed this document ("Effective Date"). All rights and obligations in this Framework Agreement shall apply to all Agreements entered into as of the Effective Date.

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- 10.2 This Framework Agreement shall remain in effect until terminated ("opzeggen") by either party upon three (3) months' written notice. If and to the extent that any Agreement is still in effect at the time of termination, the provisions of this Framework Agreement shall continue to apply to such Agreement until the Agreement is completed or terminated.
- 10.3 Unless stated otherwise in the Agreement, Parties engage in the Agreement for a period of twelve (12) months (hereinafter: the "License Term") which initiates on the effective date specified in the Agreement.
- 10.4 Unless agreed otherwise in the Agreement, if a Party wants to terminate ("opzeggen") an Agreement without cause at the end of the License Term or Extension, this Party must give one (1) month written notice before the end of the License Term or Extension. Failure to provide notice in a timely manner will result in an Extension of the last agreed upon License Term or Extension.
- 10.5 Parties are entitled to terminate ("opzeggen") the Agreement without cause with immediate effect in whole or in part, without obtaining any obligation to compensate for any damage, if one of the following circumstances occurs:
- (i) the other Party is granted a moratorium of payments (whether or not provisionally);
 - (ii) bankruptcy is requested for the other Party;
 - (iii) the other Party is declared bankrupt;
 - (iv) a Party infringes the terms of the Agreement and does not or is unable to remedy such infringement within two (2) months after given written notice by the other Party.
- 10.6 The IoT Provider is entitled to terminate ("opzeggen") the Agreement without cause, without any judicial intervention, with immediate effect and without prior notice to Licensee, if:
- (i) Licensee infringes the rights of The IoT Provider and/or The IoT Provider's Licensors, including but not limited to The IoT Provider's and/or any The IoT Provider's Licensor's IP Rights;
 - (ii) Licensee uses the Services for unlawful purposes or for purposes contrary to public policy and public decency;
 - (iii) Licensee uses the Services in such a way that the Services are damaged, modified, interrupted, or is less efficient in any way;
 - (iv) a The IoT Provider's Licensor terminates or suspends The IoT Provider's right to use (parts of) the Services; or
 - (v) the enterprise of Licensee is terminated or transferred in whole or in part to a third-party.
- 10.7 A termination is considered to be received the day it is delivered to the e-mail inbox, or when sent physically, it has been delivered to the address of the other Party. Additionally, Licensee may also terminate the Agreement via the Platform, with such termination being effective upon confirmation of receipt by the Platform.
- 10.8 Regardless of the above, the Agreement ends only if both Parties agree in writing to terminate ("opzeggen") the Agreement.

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- 10.9 Upon termination or expiration of the Agreement and subject to the terms of the Agreement, Licensee shall:
- (i) immediately cease all use of and other activities with respect to the Services;
 - (ii) pay all amounts accrued hereunder in accordance with the payment terms of the Agreement; and
 - (iii) dispose of all copies of all Services and Documentation and/or other materials supplied to Licensee hereunder (including Confidential Information).

11. Exit clause

- 11.1 If the Agreement is terminated in accordance with article 10.6, The IoT Provider shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of the Agreement. The purpose of this assistance is to allow for the expired or terminated part of the Agreement to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services.
- 11.2 Unless agreed otherwise, the assistance described in this article is charged as Additional Services. Licensee shall pay The IoT Provider for any resources utilized in performing such transition assistance.
- 11.3 Parties agree that any transition assistance is governed by the terms and conditions of the Agreement, except for those terms or conditions that do not reasonably apply to such transition assistance.

12. Promotion

- 12.1 Licensee is encouraged to publicly report its use of the Services, e.g. in press releases, annual reports or environmental reports concerning its organization.
- 12.2 To this end, The IoT Provider hereby grants Licensee a non-exclusive, non-transferable, non-sublicensable and revocable license under its trademark(s) and copyrights concerning the name "The IoT Provider" and the associated logos as made available on the The IoT Provider website as indicated in the Agreement or specifically provided by The IoT Provider. However, Licensee must use the name and logos in unmodified form and Licensee must adhere to any specific rules given by The IoT Provider, which rules are generally available on the The IoT Provider website.
- 12.3 Licensee may not create any false or misleading impressions regarding its affiliation with The IoT Provider.
- 12.4 Licensee may not register or apply for any trademarks or Internet domain names that contain the name "The IoT Provider" or any confusingly similar designation. The IoT Provider is entitled to demand transfer of any such trademarks or domain names by Licensee to The IoT Provider without charge and at Licensee's expense.
- 12.5 Licensee agrees that The IoT Provider and The IoT Provider's Licensor(s) may list Licensee as a customer and reproduce Licensee's logo and registered trademark online or in printed materials solely to indicate that Licensee is or was a user of the Services.
- 12.6 Licensee acknowledges and agrees that the Agreement does not grant Licensee any rights to trademarks or service marks of The IoT Provider's Licensor(s) or their licensor(s).

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12.7 The license of this article terminates automatically upon termination or expiry of the Agreement, regardless of the reason or cause.

13. Assignment

13.1 This Framework Agreement or any Agreement or the rights and obligations thereunder shall not (entirely or partially) be assigned or otherwise transferred by Licensee without the prior written consent of The IoT Provider, which shall not be withheld unreasonably. Any such assignment without consent shall be null and void.

13.2 The IoT Provider may transfer and assign this Framework Agreement and any Agreement or the rights and obligations thereunder (entirely or partially) and/or subcontract the performance of all or some of The IoT Provider's rights and obligations under any Agreement to a third-party at any time without the prior written consent of Licensee.

14. Limited Warranty

14.1 The Services are provided "as is" and The IoT Provider only guarantees that the Services have been developed and made available in accordance with the duty of care that may be expected of a reasonably capable and competent IT provider. Licensee understands and acknowledges that the Services and the ability to provide access and use the Services are largely dependent on public systems and infrastructure such as telephone, electric, internet, cable, mobile network, and hosting services, and The IoT Provider shall not be responsible for any malfunction in the foregoing.

14.2 The Licensee acknowledges having been fully informed of the characteristics of the current status of the Services and declares that The IoT Provider has completely fulfilled its duty of informing Licensee with respect to the Services and their functionalities.

14.3 In case The IoT Provider performs any Data Migration, this is done at the expense and risk of Licensee. Since the format of Data offered for migration is in general very variable, no representation or guarantee is made regarding the quality and accuracy of such Data Migration.

14.4 The Licensee acknowledges and agrees that the Services are provided by The IoT Provider with no other guarantees or obligations than those provided in the Agreement.

14.5 The Licensee hereby confirms and acknowledges the utilization of third-party components in the Services and acknowledges that such third-party components are being installed with its consent. Such third-party components are utilized on an 'as is' basis without any warranty whatsoever and company hereby expressly disclaims with respect to any such third-party components, and to the maximum extent permitted by applicable law all warranties, whether express, implied, or statutory, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose and non-infringement.

14.6 Licensee acknowledges and agrees that Services may be hosted on servers that are cloud based. The IoT Provider shall make its best efforts in order to ensure that such servers shall be secure at all times, but Licensee acknowledges that the operation and maintenance of such servers is beyond The IoT Provider's control and The IoT Provider shall not be liable to any malfunction thereof.

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- 14.7 The foregoing warranties are in lieu of all other warranties, expressed or implied, including but not limited to, implied warranties of fitness for a particular purpose and warranties of merchantability. Excepting the warranty expressly acknowledged hereunder and to the fullest extent permitted by law, The IoT Provider hereby disclaims, and licensee hereby waives all other warranties, express or implied, including but not limited to all implied warranties of fitness for a particular purpose and all implied warranties of merchantability.
- 14.8 Licensee represents that in performing its undertakings under the Agreement, The IoT Provider is acting as an independent service provider and that nothing in the Agreement or in any of the terms and conditions hereof establishes employment relations between The IoT Provider and Licensee.

15. Limitation of liability

- 15.1 The Agreement sets forth Licensee's sole remedy and The IoT Provider's entire obligation and liability for any breach of any The IoT Provider condition, warranty, or representation of the Services or Documentation set forth in the Agreement.
- 15.2 To the extent permitted under the applicable law, The IoT Provider shall not be liable for any i) loss, ii) damage and/or iii) fines imposed by regulatory bodies, resulting from, or related to the Services. This includes but is not limited to loss of Data, income, profit, or other economic advantages. Moreover, under no circumstances shall The IoT Provider be liable for any indirect, incidental, or consequential damage arising as a result of the use of the Services, including but not limited to the unavailability of the Services.
- 15.3 In so far as The IoT Provider is liable, The IoT Provider shall not be liable for more than the total amount paid by Licensee for the Services during the previous 12 months.
- 15.4 No liability shall exist for damages or fines that have not been reported to The IoT Provider in writing within thirty (30) days of their occurrence, or for damages where Licensee failed to take appropriate measures to limit such damages.
- 15.5 The IoT Provider shall not be liable for any non-compliance with any data and or privacy regulation, and Licensee warrants that no personal data will be entered into or processed in the Services.
- 15.6 Licensee is solely responsible for its actions when using the Services, and therefore, notwithstanding the above, Licensee shall indemnify, defend, and hold harmless The IoT Provider, its directors, officers, employees and agents and their respective successors, heirs and assigns ("The IoT Provider Indemnities"), against any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon any of The IoT Provider Indemnities in connection with any claims, suits, actions, demands or judgments ("Claims") arising out of any theory of liability (including without limitation actions in the form of tort, warranty, or strict liability and regardless of whether such action has any factual basis) concerning any act or omission of Licensee, (a) in connection with the Services; (b) which are in breach of any applicable law; (c) which constitutes a breach of the Agreement; (d) which are in violation of any rights of any third-party; or (e) which may result in breach of data and privacy regulation.
- 15.7 Under no circumstances shall The IoT Provider be liable for damages arising as a result of intent or gross negligence from Licensee.

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16. Confidentiality

- 16.1 Each Party may have access to information that is confidential to the other Party ("Confidential Information"). The IoT Provider's Confidential Information shall include, but is not limited to, the Services, Documentation, formulas, methods, The IoT Provider's Licensor(s), know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, the terms and pricing under the Agreement, all information clearly identified in writing at the time of disclosure as confidential and all information which Licensee ought reasonably to regard as confidential.
- 16.2 A Party's Confidential Information shall not include information that:
- (i) is or becomes a part of the public domain through no act or omission of the other Party;
 - (ii) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party;
 - (iii) is lawfully disclosed to the other Party by a third-party without restriction on disclosure; or
 - (iv) is independently developed by the other Party without use of or reference to the other Party's Confidential Information.
- 16.3 The Parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third-party or to use each other's Confidential Information for any purpose other than in the performance of the Agreement. Each Party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of the Agreement.
- 16.4 The Parties agree to hold each other's Confidential Information in confidence during the term of this Framework Agreement and for an unlimited period thereafter. Each Party acknowledges and agrees that, due to the unique nature of Confidential Information, there can be no adequate remedy at law for breach of this article 16 and that such breach would cause irreparable harm to the non-breaching Party; therefore, the non-breaching Party shall be entitled to seek immediate injunctive relief, in addition to whatever remedies it might have at law or under the Agreement.
- 16.5 This article 16 will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that the responding Party shall first have given notice to the other Party and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued.

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17. Force majeure

- 17.1 If Licensee or The IoT Provider is unable to satisfy its obligations under the Agreement as a result of force majeure, the Party concerned shall not be liable for any delays or shortcomings in the performance of the obligations, nor for any damage arising from this for the other Party, provided that he (i) informs the other Party as quickly as possible after the occurrence by registered letter of the nature and causes of this unforeseeable situation beyond his control, and (ii) does his best to undo such causes of non-performance as quickly as possible, and (iii) carefully continues performance as soon as the causes of the force majeure have been eliminated.
- 17.2 All causes that are beyond the reasonable control of The IoT Provider or Licensee, including but not limited to fire, explosions, power failures, earthquakes, floods, very severe storms, strikes, embargos, labour disputes, acts by the civil or military authorities, (cyber) terrorism, natural disasters, acts or neglect of internet traffic services, acts or neglect of regulatory or government bodies shall be considered as force majeure.

18. Miscellaneous

- 18.1 Amendments to the Agreement can only be agreed upon between Parties in writing.
- 18.2 Articles 8 (IP Rights), 11 (Right to audit) 15 (Liability), 16 (Confidentiality), and 19 (Applicable Law) and all other parts of this Framework Agreement that by their nature are ought to survive the termination of the agreement remain applicable after termination of this Framework Agreement.
- 18.3 The fact that a Party does not exercise any right or does not use any legal remedy does not constitute a waiver of that right or remedy.
- 18.4 The Agreement constitutes the entire agreement between the Parties and supersedes any and all previous representations, understandings, discussions, or agreements between Licensee and The IoT Provider as to the subject matter hereof.
- 18.5 The section headings in the Agreement are for convenience only and shall not be used in construing or interpreting any of its terms.
- 18.6 Licensee acknowledges that the Services may be subject to United States' export jurisdiction and to any other applicable laws and regulation concerning the transfer of the Services or any part thereof across international borders. Licensee will comply with all applicable national and international laws that apply to Licensee's use of the Services, including United States Export Administration Regulations, as well as end user, end use and destination restrictions which may be issued by the United States and other governments from time to time.
- 18.7 In the event that any of the provisions of the Agreement shall be found to be illegal, invalid, or unenforceable, the remaining provisions of the Agreement shall remain valid, enforceable and in full effect. Moreover, in the event of the nullity, invalidity, or unenforceability of one or more provisions of the Agreement, Licensee and The IoT Provider undertake to negotiate in good faith in order to replace the provision concerned with a valid and enforceable provision that bears the closest resemblance to the intentions of the Agreement.

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19. Applicable law and jurisdiction

- 19.1 The Agreement and all related Documentation including all annexes and schedules attached hereto, and all matters arising out of or relating to the Agreement are construed in accordance with and are exclusively governed by the laws of the Netherlands, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the Netherlands.
- 19.2 Any legal suit, action, litigation, or proceeding of any kind whatsoever in any way arising out of, from or relating to the Agreement shall be settled in accordance with the Rules of Arbitration of the Netherlands Arbitration Institute (NAI) by one or more arbitrators appointed in accordance with the said Rules, without prejudice to each Party's right to seek injunctive relief in any court having jurisdiction thereof. The place of arbitration shall be Amsterdam, the Netherlands. The arbitration shall be conducted in the English language. The arbitral award shall be final and binding upon the Parties hereto, and judgment upon such award may be entered in any court having jurisdiction thereover.

**Framework IoT as a Service Agreement
The IoT Provider - Licensee**

Annex 1 – MNO Guidelines

1. Licensee shall notify The IoT Provider on becoming aware that any device on which a SIM card is installed, or SIM Card (if such are provided under the Agreement) has been lost or stolen or that any person is making improper or illegal use of such device, SIM Card or the Services. The Licensee will be responsible for any charges incurred as a result of unauthorized use of any device, or SIM Card, or the information contained within a SIM Card, until The IoT Provider has received a request from the Licensee to suspend the Services to that Device or SIM Card.
2. Licensee shall not use the Services fraudulently or in connection with a criminal offence or for the purpose of sending unsolicited text messages or any material which is offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax or which breaches any person's intellectual property rights or rights of privacy or is otherwise unlawful.
3. Licensee shall not act or omit to act in any way which will or may bring MNO into disrepute or place The IoT Provider, The IoT Provider's Licensor(s), and or the respective MNO in breach of any licenses; authorizations, provisions of law or regulation and/or directions applicable to The IoT Provider and or the respective MNO.
4. Licensee shall not procure the Services for any improper, immoral or unlawful purpose.
5. Licensee shall not directly or indirectly be involved or knowingly recklessly or negligently permit any other person to be involved in any fraud and shall immediately upon becoming aware of any such fraud notify The IoT Provider and comply with such procedures and rules adopted by or binding on The IoT Provider and or the MNO from time to time concerning such fraud.
6. Licensee hereby confirm that it is not (and will not be throughout the Term) a telecommunication operator.

Annex 2 – Data Policy

The latest version is available via <https://legal.theiotprovider.com/terms/The-IoT-Provider-Data-policy-v1.0.pdf>