

AYLA NETWORKS, INC.

TERMS OF SERVICE

The following Terms of Service govern your access to and use of the Ayla Networks, Inc. (“**Ayla**”) cloud services and is an agreement between Ayla and you or the entity you represent (“**Customer**”).

1. Definitions. The following capitalized terms shall have the meanings set forth below. Any capitalized term used in these Terms of Service but not defined herein shall have the meaning assigned to it in the master subscription agreement between Ayla and Customer (the “**MSA**”).

1.1. “Affiliate” means any entity directly or indirectly controlling, controlled by or under common control with Customer as of or after the Effective Date, for so long as such relationship is in effect (including Affiliates subsequently established by acquisition, merger or otherwise). For the purpose of the foregoing, an ownership interest of fifty percent (50%) or more of an established entity shall be deemed to represent control of such entity.

1.2. “AMAP Software” means Ayla’s Agile Mobile Application Platform and any Updates thereto provided by Ayla.

1.3. “APIs” means Ayla’s application programming interfaces provided by Ayla to Customer pursuant to which Devices, Customer Applications, Customer’s web services, and Customer’s cloud services (and its designated third party cloud services) can connect with the Developer Platform and Production Platform.

1.4. “Application Libraries” means Ayla’s application libraries provided by Ayla to Customer and any Updates thereto provided by Ayla.

1.5. “Authorized Third Parties” means third parties (including but not limited to Customer’s application developers) that are approved in writing in advance by Ayla as being authorized to exercise certain rights of Customer under this Agreement, in each case solely on behalf and for the sole benefit of Customer, and solely pursuant to the terms of this Agreement.

1.6. “Authorized Users” means designated individuals authorized by Ayla and Customer to access the Services on behalf of Customer under this Agreement, who are trained and authorized to access and use the Customer Portal and Support Services, and who have agreed to comply with the applicable terms and conditions of this Agreement.

1.7. “Consumer” means the end-user consumer of any Device.

1.8. “Customer Application” means any mobile application or web-based application licensed by Customer and/or developed by or for Customer through which Customer and/or Consumers may manage a Device.

1.9. “Customer Portal” means Ayla’s web-based portal through which Customer may manage its account and access other features and functionality made available thereon from time to time. Customer may access, through the Customer Portal, Ayla’s developer portal (through which Customer may access the Developer Platform), Ayla’s production or field portal (through which Customer may access the Production Platform) and Ayla’s support portal, and the Customer Portal is accessible at www.aylanetworks.com.

1.10. “Data” means any information, data and files, including any personally identifiable data, transmitted into the Developer Platform and/or Production Platform through the use of the Services under this Agreement, including via a Device, a Customer Application, an application of an Authorized Third Party, Customer’s cloud, a cloud of an Authorized Third Party and any other means. The parties acknowledge that Data may be transmitted into the Developer Platform and/or Production Platform through third party intermediaries.

1.11. “Deployment Services” means implementation, integration and development services, described in the MSA, which will be provided by Ayla to Customer prior to the Launch Date for the applicable Device(s). For purposes of clarity, Support Services, which commence on the Launch Date for the applicable Device(s), are not included within Deployment Services.

1.12. “Device” means a hardware device which is enabled by Customer to connect to the Developer Platform and/or Production Platform.

1.13. “Device Access Licenses” means the licenses purchased by Customer for Devices. Device Access Licenses may vary as to the License Term thereof and their data plan (i.e., number Transactions as described in the MSA).

1.14. “Developer Platform” means Ayla’s developer and testing cloud platform made available on a region-by-region basis in various regions around the world.

1.15. “Documentation” means the applicable training, support, and other documentation relating to the use of and access to the Services provided by Ayla to Customer and any Updates thereto provided by Ayla.

1.16. “Effective Date” means the date defined in the MSA.

1.17. “Embedded Agent” means Ayla’s software that enables Devices to connect to the Developer Platform and Production

Platform and any Updates thereto provided by Ayla. The parties acknowledge that different versions of the Embedded Agent are made available by Ayla, some of which are provided only in object code format (i.e., embedded on the applicable Wi-Fi Module) and some of which are provided in partial or full source code format.

1.18. “Gateway Software” means Ayla’s gateway software that enables multiple Devices to connect to the Developer Platform and Production Platform through a single gateway and any Updates thereto provided by Ayla.

1.19. “Intellectual Property Rights” means all patent rights, copyright rights, utility models rights, trade secret rights, trademark rights (including all goodwill associated therewith), rights of publicity, authors’ rights, mask work rights, industrial rights, and all other intellectual property, proprietary or other rights, as may exist now and/or hereafter come into existence, including without limitation, (a) all rights, whether existing now or in the future, whether statutory or common law, whether subject to protection under statute, regulation or common law, in any jurisdiction in the world, together with all national, foreign and all applications therefor and state registrations, applications for registration and all renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisionals, reissues, re-examinations, renewals and extensions thereof); (b) all benefits, privileges, causes of action and remedies relating to any of the foregoing, whether before or hereafter accrued (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions); and (c) all rights to sue for all past, present and future infringements or other violations of any of the foregoing rights, and the right to settle and retain proceeds from any such actions.

1.20. “Launch Date” means the date mutually agreed in writing by Ayla and Customer for the initial commercial launch of one or more Devices.

1.21. “Liability” means any and all damages (including punitive damages), losses, expenses (including reasonable attorneys’ fees and litigation costs), claims, demands, suits, causes of action, settlements, payments, awards, judgments, liens, fines, fees, penalties, interest and other liability.

1.22. “License Term” means the term (i.e., time period) for the applicable Device Access License.

1.23. “Modifications” means any modifications, improvements, derivative works of, and enhancements to all or portions of the Software and Documentation, including any recast, transformed, or adapted versions thereof, bug-fixes, corrections, adaptations, revisions, translations (including compilation or recapitulation by computer), abridgments, condensations, expansions, update and upgrades, whether made by Ayla, Customer, or a third party.

1.24. “Platform License” means the annual license, commencing on Customer’s initial Launch Date in the relevant Territory, during which Customer will have the right to connect Devices to the Production Platform in such Territory.

1.25. “Policies” means Ayla’s policies pertaining to the use of the Services published at <https://www.aylanetworks.com/legal>.

1.26. “Production Platform” means Ayla’s production field cloud platform made available on a region-by-region basis in various regions around the world.

1.27. “Professional Services” means any professional services, including transition assistance services, which may be provided by Ayla to Customer under this Agreement pursuant to a mutually agreed statement of work signed by the parties, setting forth the specified services, the fees therefor, and any other terms and conditions applicable thereto.

1.28. “Services” means the APIs, Application Libraries, AMAP Software, Embedded Agent, Gateway Software, Developer Platform and Production Platform.

1.29. “Support Services” means the support services, as elected by Customer and described in the MSA, which commence on the Launch Date. For purposes of clarity, Deployment Services, which are provided prior to the Launch Date, are not included within Support Services.

1.30. “Software” means the software identified in the MSA as being licensed to Customer (which may include the Application Libraries, AMAP Software, Embedded Agent and Gateway Software) and any Updates thereto provided by Ayla.

1.31. “Territory” means the territory (or territories) identified in the MSA.

1.32. “Third Party Materials” means any third party software or other materials which are included within the Software or any other portion of the Services. The Third Party Materials are set forth at <http://www.aylanetworks.com/third-party-software>, which may be updated by Ayla from time to time by posting such updates on such web page.

1.33. “Updates” means error corrections, bug fixes, enhancements, improvements, new releases, maintenance releases and updates provided by Ayla to Customer.

1.34. “Wi-Fi Modules” means the certified modules made available through Ayla’s authorized third party providers, which modules are comprised of hardware manufactured by such third parties and the applicable production version of the Embedded Agent pre-installed thereon.

2. License Grant; Customer Obligations.

2.1. Affiliates. Unless otherwise specified in this Agreement, the term “Affiliate” is included as part of the definition of

Customer in that Affiliates have the same rights and obligations as Customer hereunder, provided that such Affiliates are identified in the MSA or otherwise identified and agreed upon in writing by the parties. Customer shall be liable to Ayla under this Agreement for any breach of this Agreement or other failure of any of its Affiliates to comply with all the terms and conditions of this Agreement. For purposes of clarity, any Affiliate of Customer who wishes to directly purchase Services under this Agreement directly from Ayla under the terms and conditions of this Agreement is bound by this Agreement to the same extent as Customer

2.2. Grant of Licenses. Solely to the extent that the following items are licensed by Customer as set forth in the MSA, the following license grants pertaining thereto will apply. For purposes of clarity, if one or more of the following items is not expressly licensed to Customer as set forth in the MSA, then the following license as to such item shall not apply and shall have no effect. The following licenses may be exercised by Authorized Third Parties on behalf, and for the sole benefit, of Customer, provided that such Authorized Third Parties agree to comply with the terms of this Agreement, and further provided that Customer shall be responsible and fully liable to Ayla for any Liability arising from any breach of this Agreement or failure to comply with the terms and conditions of this Agreement by such Authorized Third Parties.

2.2.1. Application Libraries. Subject to the terms and conditions of this Agreement, Ayla grants to Customer a personal, non-exclusive, non-transferable (except as permitted under Section 12.2), non-sublicenseable license in the Territory to: (a) incorporate the Application Libraries into Customer Applications, and (b) distribute the Application Libraries, in object code format only, solely as an incorporated part of Customer Applications and solely for use by Devices which connect to the Developer Platform and Production Platform as authorized under this Agreement, to Consumers (directly or through distributors), provided that prior to providing access to Consumers to Customer Applications containing any portion of the Application Libraries, Customer shall ensure that Consumers are bound by a localized version of an end user license agreement (“EULA”) containing terms substantively as protective to Ayla as the terms in **Annex I** attached hereto (“**Consumer Terms**”).

2.2.2. AMAP Software. Subject to the terms and conditions of this Agreement, Ayla grants to Customer a personal, non-exclusive, non-transferable (except as permitted under Section 12.2), non-sublicenseable license in the Territory to: (a) use and reproduce the AMAP Software, and modify the portions of the AMAP Software provided to Customer in source code format, each for the sole purpose of creating Customer Applications used solely by Devices which connect to the applicable Developer Platform and Production Platform, and (b) distribute the AMAP Software, in object code format only, solely as an incorporated part of such Customer Applications and solely for use by Devices which connect to the Developer Platform and Production Platform as authorized under this Agreement, to Consumers (directly or through distributors), provided that prior to providing access to Consumers to such Customer Applications containing any portion of the AMAP Software, Customer shall ensure that Consumers are bound by a localized version of a EULA containing terms substantively as protective to Ayla as the Customer Terms.

2.2.3. “Production” or “Blackbox” Version of Embedded Agent. Subject to the terms and conditions of this Agreement, Ayla grants to Customer a personal, non-exclusive, non-transferable (except as permitted under Section 12.2), non-sublicenseable license in the Territory to distribute the production version of the Embedded Agent, in object code format only, in the form preinstalled on the Wi-Fi Modules purchased by Customer from Ayla’s certified third party providers, for the sole purpose of connecting Devices incorporating such Wi-Fi Modules to the Developer Platform and Production Platform as authorized under this Agreement, provided that prior to providing access to Consumers to such Devices containing any portion of the Embedded Agent, Customer shall ensure that Consumers are bound by a localized version of a EULA containing terms substantively as protective to Ayla as the Consumer Terms. Customer shall not modify the Embedded Agent nor use the Embedded Agent under the foregoing license other than as preinstalled software on the Wi-Fi Modules. Ayla will make available the then-current list of certified Wi-Fi Modules and the authorized providers thereof on the Customer Portal.

2.2.4. “Whitebox” Version of Embedded Agent. Subject to the terms and conditions of this Agreement, Ayla grants to Customer a personal, non-exclusive, non-transferable (except as permitted under Section 12.2), non-sublicenseable license in the Territory to: (a) use and reproduce the Whitebox version of the Embedded Agent; modify the portions of the Whitebox version of the Embedded Agent provided to Customer in source code format; and install the Whitebox version of Embedded Agent (whether or not modified) on certified modules approved in writing by Ayla (“**Certified Whitebox Modules**”), each of the foregoing for the sole purpose of connecting Devices incorporating the Certified Whitebox Modules to the Developer Platform and Production Platform as authorized under this Agreement; and (b) distribute the Whitebox version of the Embedded Agent (whether or not modified), in object code format only, solely as embedded software on Certified Whitebox Modules incorporated into Devices which connect to the Developer Platform and Production Platform as authorized under this Agreement, to Consumers (directly or through distributors), provided that prior to providing access to Consumers to such Devices containing any portion of the Embedded Agent, Customer shall ensure that Consumers are bound by a localized version of a EULA containing terms substantively as protective to Ayla as the Consumer Terms. Ayla will make available the then-current list of Certified Whitebox Modules and the authorized providers thereof on the Customer Portal.

2.2.5. “Linux” Version of Embedded Agent. Subject to the terms and conditions of this Agreement, Ayla grants to Customer a personal, non-exclusive, non-transferable (except as permitted under Section 12.2), non-sublicenseable license in the Territory to: (a) use and reproduce the Linux version of the Embedded Agent; modify the portions of the Linux version of the Embedded Agent provided to Customer in source code format; and install the Linux version of Embedded Agent (whether or not modified) on modules selected by Customer, in each case for the sole purpose of connecting Devices incorporating such modules to the Developer Platform and Production Platform as authorized under this Agreement; and (b) distribute the Linux version of the Embedded Agent (whether or not modified), in object code format only, solely as embedded software on modules incorporated into

Devices which connect to the Developer Platform and Production Platform as authorized under this Agreement, to Consumers (directly or through distributors), provided that prior to providing access to Consumers to such Devices containing any portion of the Embedded Agent, Customer shall ensure that Consumers are bound by a localized version of a EULA containing terms substantively as protective to Ayla as the Consumer Terms.

2.2.6. Gateway Software. Subject to the terms and conditions of this Agreement, Ayla grants to Customer a personal, non-exclusive, non-transferable (except as permitted under Section 12.2), non-sublicenseable license in the Territory to: (a) use and reproduce the Gateway Software; modify the portions of the Gateway Software provided to Customer in source code format; and install the Gateway Software (whether or not modified) on certified modules approved in writing by Ayla (“**Certified Gateway Modules**”), each of the foregoing for the sole purpose of connecting Devices incorporating the Certified Gateway Modules to the Developer Platform and Production Platform as authorized under this Agreement; and (b) distribute the Gateway Software (whether or not modified), in object code format only, solely as embedded software on Certified Gateway Modules incorporated into Devices which connect to the Developer Platform and Production Platform as authorized under this Agreement, to Consumers (directly or through distributors), provided that prior to providing access to Consumers to such Devices containing any portion of the Gateway Software, Customer shall ensure that Consumers are bound by a localized version of a EULA containing terms substantively as protective to Ayla as the Consumer Terms. Ayla will make available the then-current list of Certified Gateway Modules and the authorized providers thereof on the Customer Portal.

2.2.7. Developer Platform and Production Platform. Subject to the terms and conditions of this Agreement, Ayla grants to Customer a personal, non-exclusive, non-transferable (except as permitted under Section 12.2), non-sublicenseable license in the Territory to: (a) permit Customer Applications, Customer’s web services, Customer’s cloud services, and Customer’s designated third party cloud services approved in writing by Ayla to connect to the Developer Platform and Production Platform pursuant to the APIs, solely for the regions for which Customer has purchased a Platform License; and (b) to permit Customer’s provisioned Devices to connect to the Developer Platform and Production Platform pursuant to the APIs, for the applicable region, in accordance with the terms of the Device Access License purchased therefor (including its data plan). Customer acknowledges that Ayla reserves the right to refuse connection to the Developer Platform and Production Platform by any Device that is not in compliance with the terms of Customer’s Device Access License (including its data plan). Customer’s access and use of the Developer Platform and Production Platform is subject to the terms and conditions set forth in the MSA. Customer acknowledges that Devices must have up-to-date Device software, as recommended by Ayla in the Documentation, in order to be able to connect to the Developer Platform and Production Platform.

2.2.8. Documentation. Subject to the terms and conditions of this Agreement, Ayla grants to Customer a personal, non-exclusive, non-transferable (except as permitted under Section 12.2), non-sublicenseable license in the Territory to internally use and reproduce the Documentation for development, testing, support and training purposes and to support Customer’s exercise of the express licenses granted in this Section 2.2.

2.3. Restrictions and Obligations. In addition to any restrictions set forth above in Section 2.2, Customer agrees (on behalf of itself, its Authorized Users and Authorized Third Parties), except as expressly permitted in Section 2.2 of this Agreement, not to: (a) access or use the Services or Documentation (or any portion thereof) in any way not expressly permitted under Section 2.2 hereof; (b) sell, rent, lease, sublicense, pledge, assign (except as permitted under Section 12.2) or otherwise transfer Customer’s rights, in whole or in part, to access and use Services or Documentation (or any portion thereof) to any third party or otherwise make the functionality of the Services available to third parties; (c) modify, adapt, translate or create derivative works based on the Services or Documentation (or any other portions thereof) in any way not expressly permitted under Section 2.2 hereof; (d) remove or alter any copyright, trademark, or other proprietary notices, legends, symbols, or labels appearing on or in the Services or Documentation (or any portion thereof), and Customer agrees to reproduce all such notices, legends, symbols and labels on copies of the Services and Documentation; (e) use any portion of the Services to connect any device to any website or service, except for Devices connecting to Ayla’s designated website (*@aylanetworks.com or successor site) and/or to the Developer Platform and Production Platform solely under this Agreement, unless Ayla’s prior written consent is obtained; (f) use or access the Services or Documentation in any way not in compliance with Ayla’s Policies; (g) use the Services or Documentation to create a product or service which is similar to or competitive with any portion of the Services or other offerings of Ayla or its affiliates; or (h) disclose to any third party the performance measures of the Services (or portion thereof) or benchmark tests or other comparisons of the Services (or portion thereof) with other services or software. Customer will not permit or encourage any third party to do any of the foregoing, except as expressly allowed pursuant to a separate agreement between Customer and Ayla. The Software licensed under this Agreement may contain Third Party Materials, including any software (including libraries, databases, drivers and similar components, or portions thereof) that is made available for use under a free or open source license. Customer will comply with any restrictions and obligations (in addition to those listed above in this Section 2.3) pertaining to such Third Party Materials, which restrictions are referenced at <http://www.aylanetworks.com/third-party-software>, which may be updated by Ayla from time to time. With respect to Customer’s obligation to ensure that Consumers are bound by a localized version of a EULA containing Consumer Terms as described in Sections 2.2.1 through 2.2.6 above, upon request by Ayla, Customer will promptly provide copies of such EULAs and other documentation or records reasonably requested by Ayla to verify Customer’s compliance with such obligations.

2.4. Additional Obligations for Source Code. Customer will be subject to the following obligations and restrictions applicable to any Software provided by Ayla in source code format (“**Source Code**”): (a) Customer may provide access to the Source Code solely to its employees who have a need to access the Source Code for purposes of exercising Customer's applicable license(s)

under this Agreement (“**Authorized Employees**”) and to Authorized Third Parties, provided that no Authorized Employees or Authorized Third Parties will be given access to any Source Code unless and until such parties: (i) have been apprised of and acknowledge the confidential and proprietary nature of the Source Code; (ii) have been trained with respect to the industry-standard procedures designed to preserve the confidentiality of the Source Code; and (iii) are subject to binding and enforceable obligations neither to use the Source Code (other than for purposes expressly permitted by this Agreement) nor to disclose such Source Code to any person or entity other than to another Authorized Employee or Authorized Third Party who has a need to access the Source Code for purposes of exercising Customer’s applicable license(s) under this Agreement; (b) Customer will not (and will not authorize or permit any third party to) allow hard copy printouts of any portion of the Source Code to exist except within secured locations; and (c) Customer will not (and will not authorize or permit any third party to) allow soft copy versions of any portion of the Source Code to reside on computers or networks unless such computers or networks are password protected (with such passwords only being made available to Authorized Employees). Customer agrees that Customer will be responsible and fully liable to Ayla for any breach, by any Authorized Employee or Authorized Third Party, of any obligations pertaining to the Source Code. Customer shall use its best efforts to protect the Source Code from unauthorized access, reproduction, disclosure or use. In the event Customer becomes aware of any unauthorized use or disclosure of the Source Code, Customer shall notify Ayla immediately in writing and will fully cooperate, at Customer’s expense, to minimize the effects of such unauthorized use or disclosure.

2.5. Access to Customer Portal. During the Term of this Agreement, Customer shall have the right to permit its Authorized Users to access and use the Customer Portal solely on behalf of Customer. Customer agrees (on behalf of itself and its Authorized Users) that: (a) in registering to access the Customer Portal, Customer and Authorized Users will provide true, accurate and complete information; (b) Customer and Authorized Users will maintain the confidentiality and security of the login credentials used to access the Customer Portal (“**Login Credentials**”); (c) Customer and Authorized Users will not transfer, share, disclose or resell such Login Credentials or otherwise share or transfer access to the Customer Portal to any third party without the express consent of Ayla; (d) Customer and Authorized Users will promptly notify Ayla of any unauthorized use of such Login Credentials or Customer’s account with Ayla; and (e) Customer and Authorized Users will “log off” and exit from the Customer Portal at the end of each session. Ayla will not be liable for any Liability arising from Customer’s or any Authorized User’s failure to comply with the foregoing, and Customer is entirely responsible for all activities taking place through Customer’s Login Credentials and actions taken by its Authorized Users.

2.6. Prohibited Uses. The Services are not designed, intended, or certified for use in systems involving the operation of weapons, weapons systems, nuclear installations, means of mass transportation, aviation, life support computers, medical equipment (including resuscitation equipment and surgical implants) or other medical devices regulated by the United States Food and Drug Act or similar international law or regulation, to support services or processing of medical or health information, including patient or insured information by healthcare providers or any covered entity or business associates regulated by the U.S. Health Insurance Portability and Accountability Act (“**HIPAA**”), pollution control, hazardous substances management, or for any application in which the failure of the Services could create a risk of personal injury or death (“**Prohibited Uses**”). Customer may not use the Services in connection with any of the foregoing Prohibited Uses.

2.7. Modules. Customer understands and agrees that: (a) there are different versions of Wi-Fi Modules, Certified Whitebox Modules and Certified Gateway Modules available from multiple pre-approved third party providers, (b) each version of such modules may have varying features and functionality, and (c) Ayla does not provide, and is not responsible for, any hardware components of such modules.

2.8. Feedback. With respect to comments, suggestions, enhancement requests, recommendations or other feedback provided by Customer, the Customer Contacts, Authorized Third Parties and Authorized Users (“**Feedback**”), Customer hereby grants (on behalf of itself, the Customer Contacts, Authorized Third Parties and its Authorized Users) to Ayla a non-exclusive, perpetual, irrevocable, world-wide, royalty-free, fully paid up, sublicenseable, transferable, right and license, with full rights to grant sublicenses, to use, make, have made, offer for sale, sell, license, import, copy, create derivative works of, distribute, perform, transmit, and display and otherwise exploit such Feedback for any and all purposes whatsoever, without restriction.

2.9. Prohibited Information. Notwithstanding anything else in this Agreement, the parties acknowledge and agree that (a) Customer has sole control over any and all Data that is provided and/or transmitted to Ayla, whether directly from Customer, via Devices, via a Customer Application, via a third party application, via Customer’s cloud (if any), via Customer’s cloud application (if any), via Customer’s agents and third parties engaged by Customer, or via any other means; (b) Ayla does not require receipt of or access to any specific type or amount of information to be transmitted to Ayla; (c) Customer shall not transmit, disclose or otherwise provide (or cause or allow to be transmitted or provided to Ayla) (i) social security numbers (or similar national identification number), (ii) health insurance card or policy identification numbers, (iii) protected health information regulated under HIPAA, (iv) personally identifiable medical or health information without the data subject’s prior consent to the processing and transfer of their personal medical or health information for purposes of this agreement in compliance with applicable law; (v) precise geolocation information such as device latitude and longitude that is not collected in accordance with applicable law; (vi) credit card or other payment account information and/or (vii) any other personal or sensitive information where the transfer to and processing by Ayla under this Agreement would violate applicable local law (“**Prohibited Information**”); and (d) if Customer (or Customer’s client or customer through use of a license provided herein) transmits or provides to Ayla any Prohibited Information, Customer shall indemnify, and hold Ayla harmless from and against, any Liability arising from the transmission to Ayla of any Prohibited Information (as described in Section 8.2), and Ayla shall have no liability or obligation whatsoever with respect to such Prohibited

Information.

2.10. Restrictions Against Contamination. Customer shall not use the Software or any other portion of the Services in such a manner, or take any other action, that would require the Software or any other portion of the Services, in whole or part, to be subject to Open Source Terms to which such items are not already subject at the time provided by Ayla. “**Open Source Terms**” means any terms which require: (a) the Software or any other portion of the Services be disclosed or distributed in source code form; and/or (b) the Software or any other portion of the Services be licensed for the purpose of making modifications or derivative works; and/or (c) the Software or any other portion of the Services be redistributable at no charge; and/or (d) the Software or any other portion of the Services be permitted to be reverse engineered; and/or (e) the Software or any other portion of the Services be used only for non-commercial purposes; and/or (f) the Software or any other portion of the Services to include any third party attribution; and/or (g) any patent non-assert obligations or patent license by Ayla, its assignees or licensees.

2.11. Use of Data. As between Customer and Ayla, Customer shall be the exclusive owner of Data transmitted to Ayla under this Agreement, subject to the express rights granted herein. In order for Ayla to provide the Services to Customer under this Agreement and to perform its obligations hereunder, Customer hereby grants to Ayla a worldwide, non-exclusive, royalty-free, fully paid up, non-transferable (except as permitted under Section 12.2) irrevocable right and license: (a) during the Term, to use, store, process, modify, reproduce, distribute and display the Data, and to grant sublicenses to third parties, each for the sole purposes of providing the Services, performing its obligations under this Agreement and complying with applicable law or legal requirements; and (b) perpetually during and after the Term, (i) to use, store, process, modify, reproduce and display the Data for Ayla’s internal business purposes, including development, diagnostic, forecasting, planning, analysis and corrective purposes in connection with the Services, and for otherwise improving and enhancing the Services; and (ii) to distribute, disclose and otherwise exploit in any manner Aggregated Data for Ayla’s business purposes, including disclosure within its public statements and marketing materials describing and/or promoting Ayla and/or the Services. “**Aggregated Data**” means any data obtained by Ayla, including data pertaining to the Services, Ayla’s systems and software, and the use of any of the foregoing, and data which may be derived from Data, which in all instances (i) does not identify an individual and (ii) is not attributed to Customer. Aggregated Data includes data that has been combined into databases which include third party data.

2.12. Consents from Consumers. Customer represents, warrants, and agrees that, to the fullest extent that it is able to do so: (a) it has complied with applicable law, including the privacy and data protection laws of the territories from which any Data is obtained, in providing and transmitting (or enabling or permitting the transmission of) any Data to Ayla as contemplated under this Agreement; and (b) prior to transmitting (or enabling or permitting the transmission of) any Data to Ayla through the Services (or via any other third party intermediary), Customer shall have obtained from each Consumer (and any other third party whose consent is required) all applicable consents and approvals required for the collection, transmission and processing of such Data to Ayla for the purposes contemplated under this Agreement and for the grant of the licenses to Ayla in Section 2.11.

2.13. Changes to the Services; End of Life of APIs. Customer understands and agrees that Ayla may, from time to time, in Ayla’s sole discretion, improve, enhance, modify and/or expand the features and functionality of the Production Platform (and related Developer Platform) and other portions of the Services during and after the Term at no additional cost to Customer. Ayla warrants that any changes made to the Production Platform (and related Developer Platform) or other portions of the Services during the Term shall not materially degrade the then-existing features of the Production Platform (and related Developer Platform) or the ability of Devices, Customer Applications and/or Customer’s cloud to connect with the Production Platform (and related Developer Platform), provided that such connection is made through a version of an API that has not been discontinued. Ayla will provide one (1) year advance notice to Customer in the event that a version of the APIs will be discontinued. Notwithstanding the foregoing, Ayla reserves the right, without advance notice to Customer, to make any reasonable security-related changes to the Production Platform (and related Developer Platform) or other portions of the Services, and in such instances will notify Customer as soon as reasonably practicable and will make diligent efforts to minimize the impact of such changes.

2.14. Customer Obligations. Customer acknowledges that Customer’s performance of its obligations as described in the MSA and Customer’s timely provision of (and Ayla’s access to) Customer’s personnel, resources, assistance, cooperation, and complete and accurate information and data from the Customer Contacts as is reasonably requested by Ayla (collectively, “**Customer Obligations**”) is essential to the provision of the Services. Ayla shall not be liable for any deficiency, delay or failure in providing the Services or otherwise performing its obligations hereunder if such deficiency, delay or failure results from Customer’s failure to perform Customer Obligations as required hereunder.

2.15. Injunctive Relief. It is understood and agreed that, notwithstanding any other provisions of this Agreement, breach of the provisions of this Section 2 by Customer will cause Ayla irreparable damage for which recovery of money damages would be inadequate, and that Ayla shall therefore be entitled to obtain timely injunctive relief, without the requirement of posting bond, to protect Ayla’s rights under this Agreement in addition to any and all remedies available at law.

3. Taxes; Audits.

3.1. Taxes. The fees payable by Customer to Ayla under this Agreement are exclusive of any and all taxes, levies or duties imposed by any local, state, federal or international taxing authority, including any applicable, sales, VAT, use, excise, and withholding taxes based on the transactions or payments made by Customer to Ayla under this Agreement (other than taxes based on Ayla’s net income) (collectively, “**Taxes**”). Customer shall pay and be responsible for all such Taxes. Ayla will reasonably cooperate with Customer to minimize such Taxes.

3.2. Audit. Customer shall keep and maintain complete and accurate books, records and accounts relating to Customer's compliance with its obligations under this Agreement, including without limitation its obligations under Sections 2.3 and 2.4. Ayla shall have the right, by ten (10) days advance written notice and not more than once in any calendar year, to examine such books, records and accounts of Customer to verify Customer's compliance with its obligations under this Agreement. Any such audit shall be at Ayla's expense; provided, however, if such audit reveals a material breach of this Agreement by Customer, then Customer shall pay the reasonable costs of the audit.

4. Support Services; Support Obligations of the Parties.

4.1. Support Services. Commencing on the Launch Date, Ayla will provide Support Services in accordance with the support plan purchased by Customer under and described in the MSA. For purposes of clarity, Support Services commence on the Launch Date and not on the Effective Date.

4.2. Support Obligations. Customer acknowledges and agrees that, as between Customer and Ayla, Customer shall be solely responsible to provide any and all support to Consumers, resellers, distributors and other third parties and that Ayla's support obligations extend solely to Customer via its Authorized Users. The support obligations of Customer and Ayla's Support Services are described in in the MSA. For purposes of clarity, Ayla shall not have any obligation to provide Support Services to Consumers, resellers and distributors of the Devices, or any third party.

5. Confidentiality.

5.1. Confidential Information. Each party to this Agreement acknowledges that, in the course of performing under this Agreement, each party (as a receiving party) may obtain or otherwise learn the Confidential Information of the other party (as the disclosing party). "**Confidential Information**" means any information relating to a disclosing party, its business, technology, suppliers, licensors, resellers, distributors, customers, and third parties to whom the disclosing party has an obligation of confidentiality, whether in tangible or intangible form, which is either marked or designated as "confidential" or "proprietary," or disclosed under circumstances indicating its confidential or proprietary nature, or otherwise would be known to be confidential or proprietary by a reasonable person. The Confidential Information of a disclosing party shall be owned exclusively by the disclosing party. The parties acknowledge and agree that the Documentation, APIs and any performance measures of the Services are Ayla's Confidential Information. The parties agree that this Section 5 shall not, but that the terms and conditions set forth in Section 6 shall, govern the use and disclosure of Personal Data between the parties.

5.2. Obligations. The receiving party agrees: (a) to protect the Confidential Information of the disclosing party from unauthorized dissemination and use; (b) to use the Confidential Information of the disclosing party solely for performing its obligations and exercising its rights hereunder; (c) not to disclose any Confidential Information of the disclosing party, or any part or parts thereof, except to the receiving party's employees and contractors who are aware of the confidentiality obligations imposed by this Section 5.2 and have agreed to comply with the requirements of this Section 5.2; and (d) not to disclose or otherwise provide to any other third party, without the prior written consent of the disclosing party, any Confidential Information of the disclosing party or any portion thereof. The receiving party shall remain liable for any non-compliance of such employee or contractor with the terms of this Section 5.2. The receiving party shall take the same degree of care that it uses to protect its own highly sensitive confidential and proprietary information of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized dissemination, disclosure or use of the Confidential Information.

5.3. Exclusions. The foregoing restrictions pertaining to the Confidential Information shall not apply to any information that: (a) was or becomes publicly known through no fault of or breach of this Agreement by the receiving party; (b) was known by the receiving party before receipt from the disclosing party; (c) becomes known to the receiving party without confidential or proprietary restriction from a source that does not owe a duty of confidentiality to the disclosing party with respect to such Confidential Information; or (d) is independently developed by the receiving party without the use of, reference to, or access to the Confidential Information of the disclosing party. In addition, the receiving party may disclose the Confidential Information if the receiving party is legally compelled to do so, provided that prior to any such compelled disclosure, the receiving party shall (if legally able to) notify the disclosing party of such compelled disclosure, shall cooperate fully with the disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information, and shall solely disclose the portion of the Confidential Information compelled to be disclosed solely to the party entitled to receive it. Notwithstanding any such compelled disclosure by the receiving party, such compelled disclosure shall not otherwise affect the receiving party's obligations hereunder with respect to Confidential Information so disclosed.

5.4. Injunctive Relief. Each receiving party agrees that, due to the unique nature of the Confidential Information of the disclosing party, the unauthorized disclosure or use of the Confidential Information will cause irreparable harm and significant injury to the disclosing party, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, each receiving party agrees that the disclosing party, in addition to any other available remedies, shall have the right to seek an immediate injunction and other equitable relief enjoining any breach or threatened breach of the obligations under this Section 5, without the necessity of posting any bond or other security. The receiving party shall promptly notify the disclosing party in writing upon becoming aware of any such breach or threatened breach.

5.5. Terms of Agreement. The parties may disclose the general nature of the relationship between the parties, but a party may not disclose the terms and conditions of this Agreement without the prior written consent of the other party, except: (a) as

required by the applicable laws, including without limitation, requirements to file a copy of this Agreement (redacted to the extent reasonably permitted by applicable law) or to disclose information regarding the provisions hereof or performance hereunder to applicable regulatory authorities; (b) in confidence, to legal counsel; (c) in confidence, to accountants, banks, and financing sources and their advisors; (d) in connection with the enforcement of this Agreement or any rights hereunder; and (e) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction.

5.6. Press Release. Within sixty (60) day after the Effective Date, the parties will issue a joint press release announcing the parties' relationship hereunder. Additionally, on each Launch Date or close to such date, the parties will issue a second joint press release announcing the launch of the applicable Devices on the Production Platform. Such press releases shall be subject to Customer's approval, which shall not be unreasonably withheld.

6. Data.

6.1. Information Security Programs. Each party will maintain a written information security program that contains administrative, technical and physical safeguards to protect against anticipated threats or hazards to the security, confidentiality or integrity of, the unauthorized or accidental destruction, loss, alteration or use of, and the unauthorized access to or acquisition of, Data. Each such information security program will be consistent with the requirements of applicable laws and regulations. Ayla's certifications pertaining to data security are set forth at <https://www.aylanetworks.com/compliance>, which may be updated by Ayla from time to time.

6.2. Export of Data. Customer may request export of Data which is up to fifteen (15) months old (i.e., from the date of access) during the Term and for a period of ninety (90) days after termination or expiration of this Agreement. Upon Customer's request and subject to payment by Customer of Ayla's then-current standard hourly support rates, Ayla will export such Data for Customer.

7. Warranty; Representations and Warranties; Disclaimers.

7.1. Performance. Ayla warrants that, during the Term, the Services will conform in all material respects to the applicable specifications contained in the Documentation ("**Specifications**"). In the event that the Services (or a portion thereof) do not conform in all material respects to the applicable Specifications, Ayla will make commercially reasonable efforts to correct such non-conformity by correcting or replacing the portion of affected Services within thirty (30) days after Customer's written notice specifying such non-conformity. If correction or replacement of the portion of the affected Services is not commercially practicable, Ayla will so notify Customer, and upon Customer's request (which must be within thirty (30) days after Ayla's notice to Customer), Ayla will refund the fees paid by Customer for the portion of the affected Services and will suspend the portion of the affected Services for which a refund was given and terminate the corresponding licenses granted to Customer. This Section 7.1 constitutes Ayla's sole and exclusive liability, and Customer's sole and exclusive remedy, in the event of a breach of the warranty in this Section 7.1.

7.2. Required Testing; Continued Testing. Prior to the commercial launch of any Specific Product, Customer agrees to conduct a reasonable amount of testing consistent with prevailing industry best practices, for a recommended period of ninety (90) days but in any event no less than a period of thirty (30) days, on each of the Developer Platform and the Production Platform for the applicable region(s) in which the Specific Product is intended to be launched by Customer. During Customer's testing, Ayla will provide reasonable assistance to Customer in resolving problems, issues and errors ("**Issues**") encountered during the testing activities (provided that Ayla will provide Deployment Services only to the extent expressly purchased by Customer). Customer acknowledges and agrees that if Customer fails to conduct proper and adequate testing on both the Developer Platform and the Production Platform prior to the commercial launch of a Device, then (a) Customer assumes all risk associated with Issues arising from the Device, the Customer Applications, Customer's web services, Customer's cloud services and/or Customer's designated third party cloud services, (b) if Customer claims that Issues arise from the Developer Platform, Production Platform or other portions of the Services, such Issues must be capable of being replicated by Ayla, and (c) to the extent that Ayla discovers that the Issues did not arise from the Developer Platform, Production Platform or other portions of the Services, Ayla will charge Customer its then-current standard hourly rates for the amount of time spent by Ayla to research, reproduce, find the cause of and/or resolution to the Issue. After the commercial launch of any Specified Product, Customer shall continue such testing of such Specific Product, on both the Developer Platform and Production Platform, and shall conduct such testing to the extent that any changes are made to the Specific Product, the Customer Applications, Customer's web services, Customer's cloud services and/or Customer's designated third party cloud services. Customer will promptly notify Ayla of any Issues discovered in such testing. Customer will provide to Ayla a reasonable number of Specific Products to enable Ayla to participate in testing both prior to an after the commercial launch thereof.

7.3. Mutual Representations and Warranties. Each party hereby represents and warrants that: (a) it has the full corporate right, power and authority to enter into this Agreement and to perform its obligations hereunder; and (b) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and will not violate any agreement to which such party is bound or any obligation of such party.

7.4. Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, ACCURACY, AND ANY WARRANTIES

THAT MAY ARISE OUT OF COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. AYL A DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, WILL BE ERROR-FREE OR SECURE, OR THAT THE SERVICES WILL BE UNINTERRUPTED.

8. Indemnification.

8.1. By Ayla. Subject to Customer's compliance with Section 8.3, Ayla shall: (a) defend (and at Ayla's option settle) any claim brought against Customer by an unaffiliated third party alleging that Customer's authorized use and access of the Services under this Agreement infringes or misappropriates such third party's trade secrets, copyrights, U.S. patents, or trademarks in the Territory; and (b) pay any damages finally awarded against Customer for any such claim by a court of competent jurisdiction, or any amount agreed to by Ayla in settlement of such claim. If such a claim occurs, or in Ayla's opinion is reasonably likely to occur, Ayla may, at its expense and at its sole discretion, in addition to its indemnification obligations under this Section 8.1: (a) procure the right to allow Customer to continue to use the Services (or infringing portions thereof), or (b) modify or replace the Services (or infringing portions thereof) to become non-infringing, or (c) if neither of the foregoing options is commercially feasible, terminate Customer's right to use the affected portion of the Services and refund, on a pro-rata basis, any unused portion of the fees paid by Customer for such Services. Notwithstanding the foregoing, Ayla shall have no obligations under this Section 8.1 or otherwise with respect to any infringement claim to the extent any infringement claim is based upon or arises out of: (i) any modification or alteration of the Services (or portion thereof) not made by Ayla that results in such infringement; (ii) any unauthorized access or use of the Services (or any portion thereof) or any breach of this Agreement by Customer, its Authorized Users and/or Authorized Third Parties; (iii) any combination or use of the Services (or any portion thereof) with other software, products, equipment, methods or services not provided by Ayla that results in such infringement; (iv) any Third Party Materials; (v) Customer's failure within a reasonable time to use or implement corrected or replacement Services (or portions thereof) that would have avoided or mitigated the alleged infringement; (vi) Customer's continuance of allegedly infringing activity beyond a reasonable period after being notified thereof; and/or (vii) any specifications or requirements supplied by Customer.

8.2. By Customer. Subject to Ayla's compliance with Section 8.3, Customer shall: (a) defend (and at Customer's option settle) any claim brought against Ayla by an unaffiliated third party alleging that any Device, Customer Application, Customer cloud or other service or product made available, sold or distributed by Customer (and its resellers and distributors), or used by Customer in connection with the Services, has caused or contributed to bodily injury, death or property damage and/or infringes or misappropriates such third party's trade secrets, copyrights, patents, or trademarks (except to the extent the claim arises from the distribution of the unmodified Application Libraries or AMAP Software, if any, as an incorporated part of a Customer Application in accordance with Section 2.2 or the unmodified Embedded Agent embedded within Wi-Fi Modules in accordance with Section 2.2); and (b) pay any damages finally awarded against Ayla for any such claim by a court of competent jurisdiction, or any amount agreed to by Customer in settlement of such claim. In addition, Customer shall indemnify Ayla from any Liabilities arising from Customer's breach of Sections 2.3, 2.9, 2.10 or 2.12.

8.3. Procedure. The party seeking indemnification under this Section 8 will: (a) provide notice of the applicable indemnified claim to the indemnifying party within a reasonable time after becoming aware of such claim (unless the indemnified party is legally precluded from providing such notice); (b) provide reasonable assistance to the indemnifying party in the defense of the indemnified claim; and (c) tender the control of the defense of the indemnified claim to the indemnifying party, who will promptly assume and conduct (at its own expense) the full defense and/or settlement of the indemnified claim. The indemnifying party shall not have the right to settle any indemnified claim, without the prior written consent of the indemnified party, which contains an admission of liability or wrongdoing on the part of the indemnified party or imposes a material obligation (including payment obligation) on the indemnified party that is not wholly discharged by the indemnifying party. The indemnified party may, at its sole expense, participate in the defense and settlement of any claim for which it is entitled to indemnification hereunder.

8.4. Remedies. The remedies set forth in this Section constitute each indemnified party's sole and exclusive remedies, and each indemnifying party's entire liability, with respect to infringement, violation or misappropriation of third party Intellectual Property Rights.

9. Ownership.

9.1. By Customer. As between the parties, Customer owns and shall retain all right, title and interest (including without limitation all Intellectual Property Rights) in and to: (a) the Data, the (b) Customer Applications (except for the Application Libraries, AMAP Software, Gateway Software and any other materials provided by Ayla incorporated therein), (c) the Customer cloud, and (d) Customer's systems and networks. Customer reserves all rights not expressly granted to Ayla under this Agreement.

9.2. By Ayla. As between the parties, Ayla owns and shall retain all right, title and interest (including without limitation all Intellectual Property Rights and other proprietary rights), in and to (a) the Services (and each portion thereof) and the Documentation (and each portion thereof), (b) any Modifications made to the Services (or any portion thereof) or Documentation (or any portion thereof), whether by Ayla, Customer or a third party, (c) Ayla's other products, systems and networks, and (d) any deliverables or work product created in the course of providing Deployment Services or Professional Services (unless otherwise set forth in the applicable statement of work). Ayla reserves all rights not expressly granted to Customer under this Agreement.

10. Termination.

10.1. Termination for Breach. In addition to any other termination rights set forth in this Agreement, if either party

materially breaches this Agreement, the non-breaching party, at its option, shall have the right to terminate this Agreement by written notice to the breaching party unless, within thirty (30) days (or ten (10) days for payment breaches) after the breaching party's receipt of written notice specifying such breach in reasonable detail from the other party, the breaching party cures such breach. Additionally, Ayla shall have the right to suspend the Services in the event of a material breach of this Agreement by Customer which has not been cured within thirty (30) days (or ten (10) days for payment breaches) after notice thereof to Customer.

10.2. Effect of Termination. Upon the expiration or any termination of this Agreement:

(a) If this Agreement is terminated by Ayla pursuant to Section 10.1, the licenses granted by Ayla to Customer in Sections 2.2 and 2.5 shall terminate, and Ayla shall have the right to immediately terminate the Services and any other services under this Agreement;

(b) If this Agreement is terminated by Customer pursuant to Section 10.1 or if the Term expires, (i) then with respect to Device Access Licenses for provisioned Devices whose License Terms extend beyond the termination or expiration date of the Term, if any ("**Outstanding Licenses**"), at Customer's option with written notice to Ayla at least thirty (30) days prior to the effective date of termination or expiration, Ayla will continue to maintain the Outstanding Licenses on the Production Platform (with continued testing on the Developer Platform), and the licenses granted to Customer will survive solely with respect to such Outstanding Licenses, provided that Customer continues to pay all applicable annual fees (including the annual Platform License fee) and the fees for Support Services if Customer wishes to continue to receive paid Support Services; (ii) Customer shall not have the right to purchase any additional Device Access Licenses; (iii) at Customer's option, Ayla will transmit one (1) Over-the-Air Update provided by Customer to all Activated Devices which are connected to the Production Platform at the time of transmission in order for such Devices to be transferred from the Production Platform to Customer's or its designated third party platform; (iv) at Customer's request and subject to Ayla's approval, Ayla will implement a customized solution for Outstanding Licenses. In the event that Customer chooses to have Ayla transmit an Over-the-Air-Update, Ayla will be responsible solely for the transmission thereof, and Customer will be responsible for testing and validating such Over-the-Air-Update, in compliance with prevailing best practices for updating device software for devices in the field and for the effectiveness, functionality and performance of such Over-the-Air-Update. At Customer's option, and subject to a written statement of work executed by the parties, Ayla will provide Professional Services to assist Customer in developing such Over-the-Air Update. With respect to Outstanding Licenses maintained on the Production Platform (with continued testing on the Developer Platform) after termination or expiration pursuant to subsection (i) above, each party's respective rights and obligations under this Agreement shall survive solely with respect to such Outstanding Licenses until the termination of the last of Outstanding Licenses (or earlier termination if Ayla terminates the Outstanding Licenses under Section 10.1 for a breach by Customer);

(c) Each party will promptly and permanently destroy and delete all Confidential Information of the other party in its possession or control, other than an archival copy for compliance, enforcement, and defense purposes, provided that any such retained copies shall remain subject to Section 5 of this Agreement for so long as they are retained. Upon request from the other party, each party will provide the other party with a written certification, signed by one of its officers, certifying the destruction of all such Confidential Information; provided, that such party may retain a production copy of such Confidential Information only to the extent necessary to fulfill its obligations with respect to Outstanding Licenses for the term of such Outstanding Licenses; and further provided, that the obligations in Section 5 shall continue to be applicable to such retained Confidential Information; and

(d) In the event of any termination or expiration of this Agreement, the following provisions shall survive: Sections 1, 2.2(for Outstanding Licenses only, if applicable), 2.3 (for Outstanding Licenses only, if applicable), 2.5 (for Outstanding Licenses only, if applicable), 3, 4 (for Outstanding Licenses only, if applicable), 5, 6, 7 (for Outstanding Licenses only, if applicable, provided that Customer has paid the annual Support Services fee), 8, 9, 10.2, 11 and 12. Termination of this Agreement by either party shall not act as a waiver of any breach of this Agreement, shall not act as a release of either party from any liability for breach of such party's representations, warranties or obligations under this Agreement, and shall be without prejudice to any other right or remedy that a party may have at law or in equity. Neither party shall be liable to the other party due to termination of this Agreement in accordance with Section 10 or any other express termination rights under this Agreement, whether for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with the business or goodwill of either party.

11. Limitation of Liability. EXCEPT FOR ANY DAMAGES ARISING FROM OR RELATING TO A BREACH BY EITHER PARTY OF ITS OBLIGATIONS UNDER SECTION 5, A BREACH BY CUSTOMER OF ITS OBLIGATIONS UNDER SECTION 2.4, OR THE INFRINGEMENT OR MISAPPROPRIATION BY CUSTOMER OF ANY OF AYLA'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING DAMAGES FOR LOST PROFITS, LOST REVENUE, BUSINESS INTERRUPTION, LOST DATA OR USE, OR THE COST OF SUBSTITUTE PROCUREMENT) ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AYLA'S AGGREGATE LIABILITY TO CUSTOMER ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER BASED ON NEGLIGENCE, CONTRACT, TORT, INDEMNIFICATION, STRICT LIABILITY OR OTHER THEORY, WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO AYLA UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH CUSTOMER NOTIFIES AYLA OF THE CLAIM ON WHICH LIABILITY IS ALLEGEDLY BASED.

12. General.

12.1. Relationship of Parties. Both parties are, and shall remain at all times, independent contractors, and nothing in this Agreement will be construed to create an agency, employment, fiduciary, representative or any other relationship between the parties.

12.2. Assignment. Neither party shall assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, a party may assign this Agreement without the prior written consent of the other party solely in connection with a merger, consolidation, corporate reorganization, sale of all or substantially all of such party's assets, sale of stock, change of name or like event, provided that (a) the assigning party provides reasonable notice of such assignment to the other party (and in the case of Customer, Customer provides prior written notice of such assignment to Ayla), (b) the other party shall have the right to terminate this Agreement immediately by written notice to the assigning party in the event that the assignee is a competitor of the other party (and the provisions of Section 10.2(b) shall apply), and (c) in the event of an assignment by Customer, Ayla shall have the right to terminate this Agreement to the extent that any source code of Ayla has been provided or licensed to Customer under this Agreement and Customer shall not provide access to any such source code to an assignee unless and until Ayla has provided its consent to such assignment and has approved the Authorized Third Parties who may access and use such source code. Any attempted assignment other than in accordance with this Section 12.2 shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

12.3. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to its conflicts of law provisions. The parties disclaim the application of the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act to this Agreement. Any dispute regarding this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, in the State of California, and the parties hereby irrevocably agree to submit to the personal and exclusive jurisdiction and venue of such courts for any such dispute, provided that either party may seek injunctive relief in any court of competent jurisdiction.

12.4. Compliance with Law. In performing its obligations and exercising its rights and licenses under this Agreement, each party will comply with all applicable laws, rules and regulations as may be applicable to such party.

12.5. Export Control. In performing under this Agreement, Customer agrees to comply fully with all applicable laws, including export laws and regulations of the United States, including, without limitation, the U.S. Export Administration Regulations and the export laws of international countries to which Customer is subject (collectively "**Export Controls**"). Without limiting the generality of the foregoing, Customer will not, and will require its agents and representatives not to, export, direct or transfer the Services, Software, Documentation, technical information or other portions of the Services provided by Ayla hereunder, or any direct product thereof, to any destination, person or entity restricted or prohibited by the Export Controls.

12.6. Government Use. The Software, Documentation and other portions of the Services are "commercial items" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software, Documentation or other portions of the Services are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the foregoing will be only those specified in this Agreement. Customer's rights in the Software, Documentation and other portions of the Services are limited to those expressly granted in Sections 2.2 and 2.5. Ayla and its licensors reserve all rights and licenses in and to the Software, Documentation and other portions of the Services not expressly granted to Customer under this Agreement.

12.7. No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and is not intended to convey any rights or benefits to any third party, nor will this Agreement be interpreted to convey any rights or benefits to any person except the parties hereto.

12.8. Language. This Agreement, any disputes hereunder, and all Services (except for Support Services provided in China) will be provided and conducted in the English language. Support Services provided in China will be provided in Mandarin Chinese. Only the most current English version of this Agreement is binding. In the event of inconsistency or discrepancy between the English version and any other language version of this Agreement, the English-language version shall prevail.

12.9. Force Majeure. Neither party shall be liable for any loss, damage or penalty resulting from delays or failures in performance resulting from Force Majeure Events. The party affected by the Force Majeure Event will promptly notify the other party and will resume performance when the Force Majeure Event is no longer effective. "**Force Majeure Events**" means events beyond a party's reasonable control, including without limitation acts of nature, labor disputes, the stability or availability of the Internet or a portion thereof, actions by a governmental authority (such as a moratorium on any activities related to this Agreement or changes in government codes, ordinances, laws, rules, regulations, or restrictions), telecommunication or Internet network failures or brown-outs, failures or unavailability of third party systems, networks or software, flood, earthquake, fire, lightning, epidemics, war, acts of terrorism, riots, civil disturbances, sabotage, power grid failures, and denial of service attacks and other hacking attacks.

12.10. Waiver. The waiver by either party of a breach of or a default under any provision of this Agreement shall be in writing to be effective and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or

remedy that it has or may have hereunder operate as a waiver of any right or remedy.

12.11. Severability. Any determination that any provision of this Agreement or any application thereof is invalid, illegal or unenforceable in any respect in any instance shall not affect the validity, legality and enforceability of such provision in any other instance, or the validity, legality, or enforceability of any other provision of this Agreement.

12.12. Captions and Section Headings. The captions and Section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

12.13. Notices. Any notice required to be given under this Agreement shall be in writing and delivered personally, by email transmission, or by express overnight mail to the other designated party at the postal address or email address set forth for such party in the MSA (or such other postal address or email address provided by each party in accordance with this Section), or if to Customer, to one or more of the Customer Contacts at the then-current postal address or email address in Ayla's files for such individuals. Notices shall be deemed effective: (a) on the date of delivery if delivered personally; (b) on the date of email transmission, if sent by email and a response email or other confirmation by the recipient of the receipt of such email is provided by the receiving party; or (c) one (1) business day after deposit, if sent by express overnight courier, with written confirmation of receipt.

12.14. Changes to Terms of Service. Ayla reserves the right to change these Terms of Service at any time at Ayla's discretion. Ayla will give Customer notice of any changes by posting an updated version of these Terms of Service online. Any changes will be effective as of the date they are posted, unless a different effective date is specified. Customer is responsible for checking for updates to these Terms of Service and the continued use of the Software or Services after any such changes take effect will constitute Customer's acceptance of such changes.

12.15. Entire Agreement. This Agreement contains the complete understanding between Ayla and Customer with respect to the subject matter hereof and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement.

Annex I
Consumer Terms

1. Consumer will not use the Application Libraries except as an incorporated portion of the Customer Application, unmodified from the form provided to Consumer.
2. Consumer will not use the Embedded Agent or Gateway Software except as an incorporated portion of the Device, unmodified from the form provided to Consumer.
3. Consumer will not modify, adapt, translate or create derivative works based on, or decompile, disassemble, reverse engineer or otherwise attempt to derive the source code of, the Application Libraries, Embedded Agent or Gateway Software.
4. Customer and its licensors retain all ownership of the Customer Application (and the Application Libraries contained therein) and any software installed on a Device (including the Embedded Agent and Gateway Software) and only a license thereto is granted to Consumer under the applicable EULA for the Customer Application or Device;
5. Customer's licensors disclaim any and all warranties pertaining to the Application Libraries contained within the Customer Application, the Embedded Agent installed on the Device and the Gateway Software installed on the Device, including the warranty of merchantability, fitness for a particular purpose, title and non-infringement.
6. Customer's licensors shall not be liable to Consumer for any special, indirect, incidental, consequential or punitive damages, even if Customer is notified of such damages.
7. Consumer will not use the Application Libraries, Embedded Agent or Gateway Software to attempt to gain unauthorized access to or use of the systems/services of Customer's licensors; nor will Consumer disseminate or transmit viruses, worms, Trojan horses, time bombs, spyware, malware, cancelbots, passive collection mechanisms, robots, data mining software, or any other malicious or invasive code or program into the systems/services of Customer's licensors.
8. Consumer will not use the Application Libraries, Embedded Agent or Gateway Software to interfere with, breach or circumvent any security feature, authentication feature, or any other feature that restricts or enforces limitations on the use of, or access to, the systems/services of Customer's licensors.
9. Consumer will not probe, attack, scan, or test the vulnerability of the systems/services of Customer's licensors.
10. Customer's licensors of the Application Libraries, Embedded Agent and Gateway Software are the express third party beneficiaries of the EULA; the provisions related to the Application Libraries, Embedded Agent and Gateway Software are made expressly for the benefit of such licensors and are enforceable by such licensors.