

SWITCHEE SOFTWARE SERVICES

Framework Agreement

CUSTOMER

(Customer) is incorporated and registered in **(Country)** with company number **(Number)** and VAT number **(vat number)** under whose registered office is at **(Address)**

By signing below, the Customer agrees to the Terms and Conditions attached.

Signed for and on behalf of the Customer.

.....

By:

Title:

Email:

Date:

.....

Signed for and on behalf of

SWITCHEE LIMITED

By:

Title:

Email:

Date:

SWITCHEE SOFTWARE SERVICES TERMS AND CONDITIONS

These Terms and Conditions are entered into between the Customer and Switchchee Limited, a company registered in England and Wales with company number 09123710 and with its registered address at Office 405, City Bridge House, 57 Southwark Street, London, SE1 1RU ("**Switchchee**"). These Terms and Conditions, together with each Order, form an Agreement between the Customer and Switchchee. These Terms and Conditions shall, together with each Order, be referred to herein as the "Agreement".

AGREED TERMS

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Authorised Users: those employees, agents and independent contractors of the Customer, its subsidiaries and affiliates, who are named and authorised by the Customer to use the Services and the Documentation.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 13.5 or 13.6.

Customer Data: the data inputted by the Customer, Authorised Users, or Switchchee on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services and any data generated by, or derived from the Customer's use of the Services, whether hosted or stored within the Services or elsewhere.

Cybersecurity Requirements: all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, applicable to either party, relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Documentation: the document made available to the Customer by Switchchee online which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date of an Order.

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Incident: any Vulnerability, Virus or security incident which:

- a) may affect the Software or the Services;

- b) may affect Switchchee's network and information systems, such that it could potentially affect the Customer or the Software or the Services; or
- c) is reported to Switchchee by the Customer.

Initial Subscription Term: the initial term as set out in the Order.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Known Vulnerability: any Vulnerability that has either:

- a) been assigned a Common Vulnerabilities and Exposures (CVE) number;
- b) been disclosed on the National Vulnerability Database available at the website operated by the US National Institute of Standards and Technology (NIST) from time to time; or
- c) been disclosed on the internet, or any open public database, such that it would be revealed by reasonable searches conducted in accordance with Good Industry Practice.

Latent Vulnerability: any instances of typical classes of Vulnerability, including without limitation buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection.

Normal Business Hours: 8.00 am to 6.00 pm local UK time, each Business Day.

Order: each order agreed by the parties in accordance with clause 3.

Product: the smart heating control and Internet of Things (IoT) monitoring products (including software) sourced by Switchchee for its customers.

Property Subscription: the property subscriptions purchased by the Customer pursuant to 10 from which Switchchee will collect sensor data and entitles the Customer to access and use the Services and the Documentation in accordance with this Agreement.

Regulations: the Electrical and Electronic Equipment Regulations 2013.

Renewal Period: the period described in clause 17.1.

Services: the subscription services provided by Switchchee to the Customer under this Agreement via Switchchee's platform, as more particularly described in each Order and the Documentation.

Setup Fees: the fees payable for the initialisation of the Software or the Services as described in an Order.

Software: the online software applications provided by Switchchee as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to Switchchee for the Property Subscriptions, as set out in an Order.

Subscription Term: in respect of each Order Form, the Initial Subscription Term together with any subsequent Renewal Periods.

Resident: each permitted occupier who has a habitual right to reside in the property where a Switchchee is installed.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018 ('DPA'); the 'UK GDPR' (as defined in section 3(10) (as supplemented by section 205(4)) of the DPA) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI/2003/2426) as amended.

User Subscriptions: the user subscriptions included in the Property Subscription purchased by the Customer pursuant to 10 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

2. Commencement and duration

- 2.1 This Agreement shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with clause 17, until either party gives to the other party written notice to terminate. Such notice shall expire on the completion of all Orders entered into before the date on which it is served.
- 2.2 If there are no uncompleted Orders as at the date notice to terminate is served under 2.1 such notice shall terminate this Agreement with immediate effect.
- 2.3 The parties shall not enter into any further Orders after the date on which notice to terminate is served under clause 2.1.
- 2.4 The Customer may procure any of Switchee's available Services by agreeing an Order with Switchee pursuant to clause 3.
- 2.5 Switchee shall provide the Services stated in an Order from the date specified in the relevant Order.

3. Orders

- 3.1 Each Order shall be agreed in the following manner:
 - (a) the Customer shall ask Switchee for additional Property Subscriptions;

- (b) following receipt Switchee shall, as soon as reasonably practicable either:
 - (i) inform the Customer that it declines to provide the requested Services; or
 - (ii) notify the Customer of the Subscription Fees and Initial Subscription Term for those additional Property Subscriptions.
- (c) if Switchee provides a draft Order pursuant to clause 3.1(b)(ii) and the Customer confirms acceptance of that Order, Switchee shall provide the additional Property Subscriptions in accordance with the Order and this Agreement.

3.2 No amendment shall be made to an Order except in accordance with clause 20.

3.3 Each Order shall be part of this Agreement and shall not form a separate contract to it.

3.4 This Agreement incorporates and is subject to the contents of the Order. In the event of any conflict between the terms of this Agreement and details set out in the Order, the Order shall prevail.

4. **User subscriptions**

4.1 Switchee hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the applicable Subscription Term solely for the Customer's internal business operations.

4.2 The Customer shall not knowingly:

- (a) distribute or transmit to Switchee, via the Services, any Viruses or Known Vulnerability or Latent Vulnerability;
- (b) store, access, publish, disseminate, distribute or transmit via the Services any material which:
 - (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (ii) facilitates illegal activity;
 - (iii) depicts sexually explicit images;
 - (iv) promotes unlawful violence;
 - (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (vi) is otherwise illegal or causes damage or injury to any person or property;

and Switchee reserves the right, on no less than thirty (30) days' prior written notice to the Customer, such notice specifying the breach of this clause and requiring it to be remedied within the thirty (30) day period, to disable the Customer's access to the Services for the duration of time that the breach remains unremedied.

4.3 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

- (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
 - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
 - (c) use the Services and/or Documentation to provide services to third parties;
 - (d) subject to clause 25.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 4.
- 4.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, if there is any such unauthorised access or use, promptly notify Switchee.
- 4.5 The rights provided under this clause 4 are granted to the Customer and any subsidiary or holding company of the Customer.

5. Services

- 5.1 Switchee shall, during each Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 5.2 Switchee shall make the Services available in accordance with the terms of the support policy as advised by Switchee from time to time.
- 5.3 Switchee will, as part of the Services and at no additional cost to the Customer, provide the Customer with any support services in line with Switchee's support policy in force from time to time during Normal Business Hours and as set out in the Order.

6. Installation of Products

- 6.1 The Customer shall install, or shall arrange for the installation of, the Products, in its Properties. Where the Customer engages a third party to carry out any such installation, the Customer agrees that it shall be responsible for all acts or omissions of such third party and Switchee Ltd shall be entitled to treat any such error or omission, and take any action hereunder in respect to such error or omission, as if it had been committed by the Customer.
- 6.2 At the Customer's request, Switchee Ltd shall, acting as the Customer's agent, appoint a third party to install the Products for the Customer. The Customer agrees that Switchee Ltd shall have no liability in relation to any such installation.
- 6.3 The Customer agrees that, if the Customer makes a request pursuant to Clause 6.2, Switchee Ltd shall be entitled to share such personal data with any third party

appointed by it to the extent reasonably necessary to allow such third party to carry out any relevant installation.

- 6.4 Prior to installation (and prior to the occupation of a Property by a new Resident) unless instructed otherwise by Switchee Ltd the Customer shall provide the Resident with a copy of Switchee's Privacy Policy.

7. Customer data

- 7.1 Switchee and the Customer agree and acknowledge that they shall be bound by the terms of the Data Processing Addendum at Schedule 1.

8. Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

9. Switchee's obligations

- 9.1 Switchee undertakes that the Services will be performed in accordance with the Documentation and with reasonable skill and care in accordance with Good Industry Practice.

- 9.2 The undertaking at clause 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Switchee's instructions, or modification or alteration of the Services by any party other than Switchee or Switchee's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Switchee will, at its expense, and without prejudice to customer's other rights or remedies, correct any such non-conformance promptly.

- 9.3 This Agreement shall not prevent Switchee from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

- 9.4 Switchee:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and

Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9.5 Switchee warrants and undertakes that:

- (a) it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement;
- (b) it will comply with all applicable laws and regulations with respect to its obligations under this Agreement including the Cybersecurity Requirements;
- (c) it will co-operate with the Customer in all matters relating to the Services and comply with the Customer's instructions;
- (d) it will not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business; and
- (e) it will notify the Customer in writing immediately upon the occurrence of a change of control of Switchee.

9.6 Switchee shall take all reasonable steps not to introduce any Viruses or Known Vulnerabilities or Latent Vulnerabilities into the Customer's network and information systems via the Services or Software or otherwise.

10. Customer's obligations

The Customer shall:

- (a) provide Switchee with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by Switchee; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- (c) ensure that its network and systems comply with the relevant specifications provided by Switchee from time to time.

11. Charges and payment

11.1 The Customer shall pay (or procure payment of) the Subscription Fees and Setup Fees to Switchee for the Property & User Subscriptions in accordance with this **Clause 11** and each Order.

11.2 The Customer shall on each Effective Date provide to Switchee approved purchase order information acceptable to Switchee and any other relevant valid, up-to-date and complete contact and billing details and Switchee shall invoice the Customer (or its nominee):

- (a) on that Effective Date for the Subscription Fees and Setup Fees payable in respect of the Initial Subscription Term; and

- (b) subject to clause 17.1, at least 30 days prior to each anniversary of that Effective Date for the Subscription Fees payable in respect of the next Renewal Period;

and the Customer shall pay or procure payment of each invoice within 5 days after the date of such invoice.

- 11.3 If Switchchee has not received payment within 30 days after the due date, and as Switchchee's sole remedy, interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Switchchee's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 11.4 All amounts and fees stated or referred to in this Agreement:
 - (a) shall be payable in pounds sterling;
 - (b) are exclusive of value added tax, which shall be added to Switchchee's invoice(s) at the appropriate rate.
- 11.5 Upon 30 days' prior notice to the Customer, Switchchee shall be entitled to increase the Subscription Fees at the start of each Renewal Period by no more than the Retail Prices Index (RPI).

12. Proprietary rights

- 12.1 The Customer acknowledges and agrees that Switchchee and/or its licensors own all Intellectual Property Rights in the Services and the Documentation. Except as expressly stated in this Agreement, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 12.2 Switchchee confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 12.3 Switchchee may use the Customer's logo in any marketing material it publishes on its website, other proprietary medium or social media.

13. Confidentiality

- 13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
 - (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

- 13.2 Subject to clause 13.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 13.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 13.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 13.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Switchchee's Confidential Information.
- 13.6 Switchchee acknowledges that the Customer Data is the Confidential Information of the Customer.
- 13.7 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 13.8 The above provisions of this 13 shall survive termination of this Agreement, however arising.

14. Waste Electrical and Electronic Equipment Regulations 2013

- 14.1 The Customer agrees and acknowledges that:
- (a) Switchchee, as a producer of the Products, is subject to the Regulations;
 - (b) the Regulations impose certain obligations on Switchchee with respect to the collection and disposal of the Products; and
 - (c) Switchchee is subject to certain penalties in the event of any non-compliance with these obligations, including, but not limited to, the imposition of a fine.
- 14.2 The Customer undertakes that it shall:
- (a) dispose of the Products in accordance with the Regulations;
 - (b) comply in all other respects with the obligations imposed by the Regulations; and
 - (c) use reasonable endeavours to comply with any reasonable request of Switchchee in relation to compliance with the Regulations by Switchchee.
- 14.3 The Customer shall, no less than 14 days prior to disposal of any Product, provide written notice to Switchchee of its intention to make such disposal and take such steps

as Switchchee may reasonably request in relation to the method and process for such disposal.

- 14.4 In the event that Switchchee is subject to a fine or other penalty in relation to the Regulations as a result of any failure by the Customer to comply with the terms of this Clause 14, the Customer shall be required to pay an amount to Switchchee equal to the amount of any such fine and will provide such assistance as Switchchee Ltd may reasonably request to resolve any outstanding proceedings in relation to such failure.

15. Indemnity

- 15.1 The Customer shall defend, indemnify and hold harmless Switchchee against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) Switchchee provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

- 15.2 Switchchee shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) Switchchee is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to Switchchee in the defence and settlement of such claim, at Switchchee's expense; and
- (c) Switchchee is given sole authority to defend or settle the claim.

- 15.3 In the defence or settlement of any claim, Switchchee may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

- 15.4 In no event shall Switchchee, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than Switchchee; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Switchchee; or
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Switchchee or any appropriate authority.

- 15.5 The foregoing states the Customer's sole and exclusive rights and remedies, and Switchchee's (including Switchchee's employees', agents' and sub-contractors') entire

obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

16. Limitation of liability

16.1 Except as expressly and specifically provided in this Agreement, the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use.

16.2 Nothing in this Agreement limits or excludes the liability of Switchee:

- (a) for death or personal injury caused by Switchee's negligence; or
- (b) for fraud or fraudulent misrepresentation; or
- (c) under clause 6, 9.5, 13 or 14.

16.3 Subject to clauses 16.1 and 16.2:

- (a) Switchee shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) the losses for which Switchee assumes responsibility and which shall (subject to Clause 16.3 (c)) be recoverable by the Customer include:
 - (i) sums paid by the Customer to Switchee pursuant to this Agreement;
 - (ii) losses incurred by the Customer arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Switchee personnel, regulator or customer of the Customer) against the Customer caused by the act or omission of Switchee;
 - (iii) loss of, corruption or damage to, data.
- (c) Switchee's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the Property & User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

17. Term and termination

17.1 Each Order shall, unless otherwise terminated as provided in this clause 17, commence on its Effective Date and shall continue for its Initial Subscription Term and, thereafter shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) the Customer notifies Switchee that it wishes to terminate an Order, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Order shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement.

17.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement and/or any Order with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 17.2(c) to Clause 17.2(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.3 On termination of an Order for any reason:

- (a) all licences granted under this Agreement in respect of that Order shall terminate and the Customer shall cease all use of the applicable Services and/or the Documentation within 30 days of the date of termination of the Order;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party and provided in relation to the Order;

- (c) Switchchee shall provide all assistance and information requested by Customer and shall co-operate with Customer and any replacement provider of the applicable Services to facilitate a smooth transition from Switchchee; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

17.4 On termination of this Agreement for any reason, Switchchee:

- (a) shall make no further use of the Customer Data;
- (b) at the written direction of the Customer, Switchchee shall destroy or return the Customer Data or, in the case of any Customer Data in electronic form, delete such Customer Data; and
- (c) Switchchee shall preserve all Customer Data in its possession until it has received any such instructions.

18. Force majeure

Switcher shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

19. Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedule, the provisions in the main body of this Agreement shall prevail.

20. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22. Rights and remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

23. Severance

23.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

23.2 If any provision or part-provision of this Agreement is deemed deleted under clause 23.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. Entire agreement

24.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

24.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

24.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

24.4 Nothing in this clause shall limit or exclude any liability for fraud.

25. Assignment

25.1 The Customer shall not, without the prior written consent of Switchee, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

25.2 Switchee may not at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.

26. No partnership or agency

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

27. Third party rights

Except as provided in Clause 4.5, this Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

28. Notices

28.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in this Agreement.

28.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

29. **Governing law**

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

30. **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 Data Processing Addendum

PARTIES

- (1) (Company Name) is incorporated and registered in (UK) with company number (number) and VAT Number (VAT Number) under whose registered office is (Registered Address) (**Customer**)
- (2) SWITCHEE LIMITED incorporated and registered in England and Wales with company number 09123710 whose registered office is at Office 405, City Bridge House, 57 Southwark Street, London, SE1 1RU (**Switchee**)

BACKGROUND

- (A) This data processing addendum (the “**Addendum**”) sets out the additional terms, requirements, and conditions on which Switchee, will process personal data when providing its services (the “**Services**”) to the Customer under the agreement entered into between Switchee and the Customer (the “**Agreement**”).
- (B) This Addendum contains the mandatory clauses required by Article 28(3) of the UK GDPR for contracts between controllers and processors, and will apply when Switchee is instructed to process personal data on behalf of the Customer, where the Customer is a controller in respect of that personal data.
- (C) The table below sets out the subject-matter, nature and purpose, duration of the processing, the type(s) of personal data being processed, and the categories of data subjects, as required by Article 28(3) of UK GDPR (the “**Table**”):

Data Processing Details	
Subject-matter	The provision of Services to the Customer as described in the Agreement The personal data processed will relate to the Customer’s tenants who receive a Switchee device and the Customer’s staff members involved in the project.
Nature and purpose	Switchee will process the personal data of occupants of houses owned and provided by the Customer to carry out the Customer’s instructions in respect of: • installing, repairing or replacing Switchee smart devices in the occupant’s house. • providing sensor data and insights sorted by and referenceable by address. • managing support and technical queries received from the Customer and the Customer’s tenants.
Duration	For the duration of the Agreement and any subsequent renewals
Types of personal data	Names, addresses and contact details (telephone number, email) of the Customer’s tenants. Details about tenant’s energy

	consumption. Names, contact details and employment position of the Customer's staff.
Categories of Data Subject	The Customer's tenants. Members of staff of the Customer.

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this Addendum.

1.1 Definitions:

Defined terms in this Addendum shall have the same meaning as in the Agreement, except as set out below or as otherwise indicated within the Addendum:

“Applicable Laws”: the UK Data Protection Legislation and any other law that applies in the UK.

“controller”, “processor”, “data subject”, “personal data”, “personal data breach”, “processing” and “appropriate technical and organisational measures”: as defined in the Data Protection Legislation.

For the purposes of this Addendum, the Customer will be referred to as the **“Data Controller”**, and Switcher will be referred to as the **“Data Processor”**.

2. Compliance with Data Protection Legislation

2.1 This Addendum is intended to ensure that the Data Controller's appointment of the Data Processor is compliant with Data Protection Legislation, and the Data Processor may, at any time on not less than 30 days' notice, revise this Addendum by replacing it with any applicable controller to processor standard clauses or similar terms approved by the relevant supervisory authority forming part of an applicable certification scheme to which the Data Processor is subject.

2.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 2.2 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

3. Roles of the parties

3.1 The parties acknowledge that for the purposes of the Data Protection Legislation, and in respect of the data processing described in the Table, the Data Controller is the controller and the Data Processor is the processor. The Table sets out the scope,

nature and purpose of processing by the Data Processor, the duration of the processing and the types of personal data and categories of Data Subject.

4. Data Controller's Responsibilities

- 4.1 The Data Controller is responsible for ensuring that the processing of personal data takes place in compliance with the UK data protection laws, namely UK GDPR (article 24) and Data Protection Act 2018.
- 4.2 The Data Controller has the right and obligation to make decisions about the purposes and means of the processing of personal data.
- 4.3 The Data Controller shall be responsible, among other, for ensuring that the processing of personal data, which the Data Processor is instructed to perform, has a legal basis.
- 4.4 Without prejudice to the generality of clause 2.2, the Data Controller will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Data Processor and/or lawful collection of the personal data by the Data Processor on behalf of the Data Controller for the duration and purposes of this Addendum.

5. Data Processor's Responsibilities

Without prejudice to the generality of clause 2.2, the Data Processor shall, in relation to any personal data processed in connection with the performance by the Data Processor of its obligations under the Agreement:

- 5.1 process that personal data only on the documented written instructions of the Data Controller unless the Data Processor is required by Applicable Laws to otherwise process that personal data. Where the Data Processor is relying on Applicable Laws as the basis for processing personal data, the Data Processor shall promptly notify the Data Controller of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Data Processor from so notifying the Data Controller;
- 5.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to: the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage of the data; and the nature of the data to be protected, in all cases having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 5.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

- 5.4 not transfer any personal data outside the European Economic Area or the United Kingdom unless either:
- (a) the Data Processor is processing the personal data in a territory which is subject to adequacy regulations under the Data Protection Legislation and that the territory provides adequate protection for the privacy rights of individuals; or
 - (b) the Data Processor participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that the Data Processor can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Data Protection Legislation;
- 5.5 assist the Data Controller, at the Data Controller's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 5.6 notify the Data Controller without undue delay, and where practicable, within 48 hours, on becoming aware of a Personal Data Breach in respect of the personal data set out in the Table;
- 5.7 on the termination of the Agreement or at the written direction of the Data Controller, delete or return personal data and copies thereof to the Data Controller unless required by Applicable Law to store the personal data;
- 5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and allow for audits by the Data Controller or the Data Controller's designated auditor, only so far as is necessary in order to demonstrate compliance, provided that the Data Controller: provides the Data Processor with no less than 30 days' notice of such audit or inspection; and the parties agree the scope, duration, and purpose of such audit or inspection. If the Data Controller becomes privy to any confidential information of the Data Processor as a result of this clause 5.8, the Data Controller shall hold such confidential information in confidence and, unless required by law, not make the confidential information available to any third party, or use it for any other purpose. The Data Controller acknowledges that the Data Processor shall only be required to use reasonable endeavours to assist the Data Controller in procuring access to any third party assets, records or information as part of any audit; and
- 5.9 inform the Data Controller immediately if, in the Data Processor's opinion, an instruction from the Data Controller infringes (or, if acted upon, might cause an infringement of) the Data Protection Legislation.

6. Third party processors

- 6.1 The Data Controller consents generally to the appointment by the Data Processor of third party processors (sub-processors) of the personal data being processed under the Agreement.

- 6.2 The Data Processor confirms that:
- (a) it shall impose on all sub-processors the same data protection obligations as set out in clauses 2 and 5; and
 - (b) it shall remain fully liable for the actions of its sub-processors at all times.
- 6.3 The Data Processor shall give the Data Controller prior notice of the appointment of any new sub-processors and provide the Data Controller with full details of the processing to be undertaken by the sub-processor, thereby giving the Data Controller the opportunity to object to such appointment. If the Data Processor so notifies the Data Controller of any changes to sub-processors and the Data Controller objects to such changes, the Data Controller will be entitled to terminate this Addendum (without liability for either party, and such termination will be deemed to be a no-fault termination) if the Data Controller has reasonable grounds for objecting to such changes by reason of the changes causing or being likely to cause the Data Controller to be in breach of the Data Protection Legislation.
- 7. Documentation and compliance**
- 7.1 Each Party shall ensure that it is able to demonstrate its compliance with this Addendum.
- 7.2 The Data Processor shall deal promptly and properly with all reasonable inquiries from the Data Controller that relate to the processing under this Addendum.
- 7.3 The Data Processor shall make available to the Data Controller all information necessary to demonstrate compliance with the obligations set out in this Addendum and that are stemming directly from the UK GDPR and at the Data Controller's request, allow for and contribute to reviews of data files and documentation or of audits of the processing activities covered by this Addendum, in particular if there are indications of non-compliance.
- 7.4 The Data Controller may choose to conduct the audit by itself, to mandate, at its own cost, an independent auditor or to rely on an independent audit mandated by the Data Processor. Where the Data Processor mandates an audit, it has to bear the costs of the independent auditor. Audits may also include inspections at the premises of the data processor and shall be carried out with reasonable notice.
- 7.5 The Data Processor and Data Controller shall make the information referred to in this clause, including the results of any audits, available to the Information Commissioner's Office on request.