

Microshare Standard End User License Agreement

These standard Software as a Service ("SaaS") Terms and Conditions (the "Platform License" or "Agreement") set forth the terms and conditions under which Microshare, Inc. ("Microshare"), will provide the SaaS Platform (as hereinafter defined) to each End User of the SaaS Platform ("End User"). Microshare and End User are collectively referred to herein at times as the "Parties" and individually as a "Party."

1. SaaS Platform

1.1. Definition. The term "Platform" means the Microshare online SaaS product(s) that are hosted from cloud-based or web-based platforms and not on any hardware delivered to or residing at End User facilities, and includes any corrections, patches, updates, upgrades or modifications to such products furnished by Microshare pursuant to the terms and conditions of this Platform License. Microshare provides the Platform to receive and process data from networked Internet of Things ("IoT") devices including smart sensors and monitors ("Sensors"), to allow End User to leverage Sensor data for such purposes as efficient resource management.

1.2. Access. Subject to compliance with the terms and conditions of this Platform License, including the fulfillment of all payment obligations hereunder, Microshare hereby grants to End User the limited, nonexclusive, nontransferable, non-sublicensable, terminable rights to: i) access the Platform on Microshare's website or portal, ii) use the Platform in connection with End User's business operations; and iii) create and build additional software applications ("Apps") that interface to the Platform via its public Application Programming Interfaces ("APIs") as such APIs are documented by Microshare. Under the foregoing license, End User may further permit its third-party service providers to exercise the rights of the preceding sentence only for the benefit of End User's business operations. To the extent that End User or its third-party service providers create any Apps pursuant to this license, the Parties shall negotiate a fair royalty rate that End User shall pay to Microshare with respect to such Apps and licensing or sales thereof to End User's clients.

2. **Accounts**. End User will have administrative access to the Platform through a root account log-in to Microshare's website or portal. Otherwise, End User may provision its own user accounts and identity management system through a Microsoft Active Directory ("AD") as may be interfaced to or federated with Microshare's website or portal. Microshare may provide a specialized software authentication application to End User for End User's use in provisioning AD accounts. End User shall keep its usernames and passwords, and any other information needed to access the Platform confidential and secure. Microshare is not responsible for any unauthorized access to End User's accounts and any ramifications of such access, and may take no action to disable any account for unauthorized access until given explicit notice by End User. Under confirmed unauthorized use circumstances, Microshare may take reasonable efforts with reasonable speed, to disable, lock or otherwise address End User's situation.

3. End User Obligations. End User agrees to: (i) make all agreed-upon payments to Microshare in a timely manner, (ii) comply with all laws applicable to End User's conduct, (iii) use reasonable security precautions, as determined by the manner in which End User uses the Platform, (iv) cooperate with Microshare's investigation of security issues, outages, problems, and any suspected breach of this Platform License or violation of the law, and (vi) notify Microshare immediately if End User suspects unauthorized use or abuse of any Sensors managed or monitored for End User by Microshare.

4. Restrictions.

4.1. Except under the terms of this Platform License or as otherwise authorized by Microshare in writing, End User agrees not to:

- download any part of or all of the Platform, other than through automated processes necessary for the use of the Platform through Microshare website or portal in accordance with the terms hereof;
- install the Platform on any of End User's computers, equipment or other devices;
- access or attempt to access any other of Microshare's systems, programs, software, or data that are not made available for End User's use;
- access any of the source code or copy, reproduce, republish, upload, post, transmit, resell, rent or distribute in any way any of the source code for the Platform;
- permit any third party to benefit from the use or functionality of the Platform via a rental, lease, timesharing, service bureau, or other arrangement;
- assign any of the rights granted to End User under this Platform License;
- circumvent any technical limitations in the Platform, or use any tool to enable features or functionalities that are otherwise disabled in the Platform;
- decompile, disassemble, translate or reverse engineer the Platform;
- perform or attempt to perform any actions that would interfere with the proper working of the Platform;
- prevent access to or the use of the Platform by Microshare's other End Users, or impose an unreasonable load on Microshare's infrastructure;
- modify the Platform;
- create derivative works based on the Platform;
- use the Platform in any manner to violate the rights of any other entity; or
- otherwise use the Platform except as expressly allowed under the terms and conditions of this Platform License.

4.2. End User warrants that it will not attempt to or engage in any of the foregoing actions. End User agrees that the Platform may be provided using or may contain proprietary content, information and materials that are protected by applicable intellectual property and other laws. End User may not use such proprietary content, information or materials in any way except for the permitted use of the Platform hereunder.

5. Support.

5.1. Direct Support.

- 5.1.1. "Tier 1 Support" is the initial support level provided to End User that addresses basic issues, generally via telephone or email communications to answer questions and help troubleshoot any difficulties that End User may have in using the Platform.
 - 5.1.2. In general, Platform Tier 1 Support shall be provided by a third-party Resellers or distributors from whom End User has purchased access and use of the Platform.
 - 5.1.3. If End User purchases Platform access and use directly from Microshare, Microshare or its agents may provide Tier 1 Support to End User hereunder. The support under this Platform License does not include any on-site support by Microshare unless separately purchased by End User.
- 5.2. Online Support. End User shall have Internet access to Microshare's knowledge base and other help facilities posted on Microshare's web site, to allow End User to obtain solutions to problems by querying this knowledge base.

6. Ownership.

- 6.1. End User acknowledges that the Platform and all enhancements, updates, upgrades, corrections and modifications thereto, all copyrights, patents, trade secrets, or trademarks or other intellectual property rights protecting or pertaining to any aspect of the Platform and any and all documentation therefor, are and shall remain the sole and exclusive property of Microshare and/or its licensors, as the case may be.
- 6.2. Microshare acknowledges that any Apps that End User or its third party service providers may develop and all enhancements, updates, upgrades, corrections and modifications thereto, all copyrights, patents, trade secrets, or trademarks or other intellectual property rights protecting or pertaining to any aspect of such Apps and any and all documentation therefor, are and shall remain the sole and exclusive property of End User and/or its services providers, as the case may be.

7. Modifications to the Platform. End User agrees that Microshare may update, upgrade or modify the Platform at any time, including the removal or modification of previously available functionality. The inclusion of any functionality at a particular time does not imply or warrant that these abilities or services will be available at a later time. Microshare reserves the right to charge additional fees for upgrades, updates or modifications. Any updates, upgrades, enhancements and/or modifications provided to End User by Microshare will automatically be considered part of the Platform and will be subject to the terms of this Platform License.

8. Transfer Restrictions. End User shall not sell, transfer, publish, disclose, display or otherwise make available the Platform, documentation or copies thereof to others without Microshare's advance written consent.

9. Consent to Monitoring and Use of Data. End User agrees that Microshare may monitor End User's use of the Platform and collect and use data and related information through the Platform, including but not limited to information about End User's use of the Platform, that may be gathered periodically to ensure compliance with this Platform License, to facilitate the provision of updates, product support and other services (if any), and for Microshare's other internal purposes.

10. Warranty and Disclaimer.

10.1. Performance. Microshare represents and warrants that the Platform will perform substantially in accordance with its documentation, technical specifications and Service Level Agreement ("SLA"). In the event that End User discovers a material malfunction in the Platform, Microshare agrees, for the Term, to promptly use commercially reasonable efforts to correct, cure or otherwise remedy, at Microshare's option, such malfunction at Microshare's sole expense. End User agrees to cooperate and work closely with Microshare in a prompt and reasonable manner in connection with Microshare's correction efforts.

10.2. Open Source Software. The Platform shall not include or incorporate any Open Source Software ("OSS") to the extent that such OSS is governed by a license agreement that requires that derivative works of the Platform must also be an OSS product, or that the OSS license must be applied to such derivative works. For the avoidance of doubt, any incorporated OSS may not be governed by the GNU General Public License ("GPL") or any similar "copyleft" license agreement.

10.3. Availability. Subject to planned downtime, Microshare will make reasonable efforts to ensure that the Platform will be available to End User a minimum of 99.0% of the time during any calendar month, excluding scheduled maintenance and outages that are beyond Microshare's reasonable control (e.g., Internet outages) in accordance with the SLA. Except for the forgoing sentence, Microshare does not guarantee, represent or warrant that access to the Platform will be continuous, uninterrupted or error-free, and Microshare does not guarantee that End User will be able to access or use all or any of the Platform at all times. Microshare will make reasonable efforts to notify End User in advance of system outages and scheduled downtime.

10.4. Connectivity Infrastructure. Notwithstanding the foregoing Section 10.2 and for the avoidance of doubt, access to and hosting of the Platform, as well as the connections between the Platform and the Sensors or other peripheral devices are provided by underlying Internet, cellular circuits and third party services (e.g., Microsoft Azure, Amazon Web Services ("AWS")) (altogether the "Connectivity Infrastructure"). The Parties agree that such Connectivity Infrastructure is beyond Microshare's reasonable control, and Microshare expressly disclaims any warranties, responsibilities or liabilities for such Connectivity Infrastructure, or for failures of the Platform due to lack of coverage, connectivity failures, or downtime of any component of the Connectivity Infrastructure.

10.5. DISCLAIMER. EXCEPT AS EXPRESSLY WARRANTED IN THIS PLATFORM LICENSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND MICROSHARE HEREBY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS WITH RESPECT TO THE PLATFORM EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

11. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL MICROSHARE BE LIABLE HEREUNDER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOST SAVINGS), OR LOSS OF USE OR DATA, EVEN IF MICROSHARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER AS A RESULT OF A BREACH OF THIS AGREEMENT OR OTHERWISE, AND WHETHER SUCH LIABILITY ARISES OUT OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY OR OTHERWISE. IN THE EVENT THAT THIS LIMITATION ON LIABILITY IS NOT FULLY ENFORCED, IN NO EVENT SHALL MICROSHARE'S AGGREGATE LIABILITY FOR ANY MATTER ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNT OF THE FEES PAID BY END USER FOR THE SAAS SERVICES IN THE SIX (6) MONTHS PRIOR TO THE ACTION OR CLAIM GIVING RISE TO LIABILITY.

12. Confidentiality.

12.1. Definition. "Confidential Information" means any and all confidential information of a Party (the "Disclosing Party") disclosed to the receiving Party (the "Recipient"), including, but not limited to, proprietary software, technical information, know-how, trade secrets, marketing data, End User lists, business/financial information, and pricing information. A Disclosing Party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the Recipient; (b) was in the Recipient's lawful possession prior to the disclosure and had not been obtained by the Recipient either directly or indirectly from the Disclosing Party; (c) is lawfully disclosed to the Recipient by a third Party without any obligation of confidentiality to the Disclosing Party; or (d) is independently developed by the Recipient.

- 12.2. Non-Disclosure Obligation. In the course of performance of this Agreement, each Recipient may receive Confidential Information of the other Disclosing Party. Any and all Confidential Information in any form or media so obtained by a Recipient shall be held in confidence and shall not be used, copied, reproduced, or disclosed to third parties for any purpose whatsoever, except as necessary in connection with the obligations of the Recipient under this Agreement. Each Recipient further agrees that it will take reasonable security precautions to protect the confidentiality of such Confidential Information. Notwithstanding the foregoing, a Recipient may disclose the Disclosing Party's Confidential Information to its employees, consultants, affiliates or professional advisers who have a need to know such information for the purposes of this Agreement, provided that the Disclosing Party shall be responsible for compliance by such persons with the requirements of this Section. The non-disclosure provisions of this Agreement shall survive the termination of this Agreement, and shall remain in effect for a minimum period of ten (10) years from the date of termination, except that the Parties shall protect all trade secrets under the non-disclosure provisions of this Agreement indefinitely until such Confidential Information no longer qualifies as a trade secret.
- 12.3. Permitted Disclosure. Notwithstanding any provision hereof, a disclosure by a Recipient of any of the Disclosing Party's Confidential Information (1) in response to a valid order by a court or other governmental body; (2) as otherwise required by law; or (3) necessary to establish the rights of either Party under this Agreement shall not be considered to be a breach of this Agreement by the Recipient; provided, however, that Recipient must provide prompt prior written notice thereof to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent the disclosure. Further, the Recipient shall disclose only the minimum amount of the Confidential Information that it is legally required to furnish and, where appropriate, will exercise its best efforts to obtain written assurances that confidential treatment will be accorded to such Confidential Information.
- 12.4. Equitable Relief. In the case of a breach of the confidentiality provisions of this Section, the Parties hereby agree that their respective remedies at law are inadequate, and consent to equitable enforcement of their obligations under said provisions without the requirement to show irreparable harm, by a court of appropriate equity jurisdiction hereunder.

13. Term and Termination.

- 13.1. Term. This license begins on the date that Access is made available and continues until terminated or until the end of the term specified in the product order with End User's third-party Reseller.
- 13.2. Termination for Cause. Each Party may terminate this Agreement and/or any SOW upon written notice if the other Party materially breaches this Agreement or a SOW and fails to correct the breach within thirty (30) days following written notice specifying the breach.

- 13.3. Effects of Termination. In the event of any expiration or termination of this Agreement, End User shall pay Microshare any and all undisputed amounts due under this Agreement. At the termination or expiration of this Agreement, End User must cease using Platform and return or destroy, at Microshare’s direction, any and all remaining copies and any and all documentation relating thereto in End User’s possession. Upon expiration or termination, each of the Parties shall deliver or destroy all Confidential Information of the other Party (including, without limitation any End User data) that is in its possession, care or control at the other Party’s election (except for information that is required to be kept for backup or data retention purposes, in which case such information will be kept confidential in accordance this Agreement until deletion), and upon the other Party’s request, provide a written certification of the same.
- 13.4. Survival. The following provisions of this Agreement will survive indefinitely after the expiration or termination of this Agreement and will remain in full force and effect and be binding upon the Parties as applicable: Sections 1.1, 4, 6, 8, 10.5, 11, 12, 13.3 and 14.

14. General.

- 14.1. Governing Law; Jurisdiction. The law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where the End User is domiciled. The construction, validity and performance of this Agreement, and all non-contractual obligations arising from or connected with this Agreement shall be governed by, and construed in accordance with the governing law, and the Parties agree to irrevocably submit to the exclusive jurisdiction and convenient forum, as specified in the following table:

If End User is domiciled in:	Governing law is:	Courts with exclusive jurisdiction are:
North America, South America	The State of Delaware, United States of America	The U.S. State or Federal courts in Philadelphia, Pennsylvania, USA
The World (except for North America and South America).	England	London, England

- 14.2. Dispute Resolution. The Parties agree to attempt in good faith to resolve any controversy, claim, or dispute of any nature whatever arising out of, or relating to, the Agreement, or the breach, termination, enforceability, or validity of the Agreement (a "Dispute") promptly by negotiation between executives or managers who have authority to settle the Dispute and who are at a higher level of management than the persons who have direct responsibility for the administration of the Agreement. In the event of a failure to resolve a Dispute per the foregoing, all Disputes that may arise under, out of, or in connection with the Agreement, shall be settled in accordance with the then existing rules of the American Arbitration Association,, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any such arbitration shall proceed in accordance with the laws and venue of Section 14.1. THE PARTIES UNDERSTAND AND AGREE TO SUBMIT TO ARBITRATION PROCEEDINGS TO SETTLE ANY DISPUTES HEREUNDER, THAT SUCH ARBITRATION WILL BE IN LIEU OF LITIGATION, AND EACH PARTY HEREBY WAIVES THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL IN FAVOR OF THE ARBITRATION PROCEEDING EXCEPT AS PERMITTED UNDER THIS AGREEMENT. THE PARTIES HEREBY WAIVE ANY OBJECTION TO THE VENUE OF SECTION 14.1 AS INCONVENIENT OR INAPPROPRIATE, AND AGREE TO EXCLUSIVE JURISDICTION AND VENUE IN THE DISPUTE RESOLUTION LOCATION.
- 14.3. Costs. Each Party agrees to pay all reasonable costs and expenses that the other prevailing Party incurs in successfully enforcing or defending this Agreement, including reasonable attorneys' and other professionals' fees.
- 14.4. Assignment. Microshare may freely transfer, assign or subcontract this Agreement or any of its rights or obligations hereunder without any requirement of consent of the other Party hereto. End User may not sell, transfer, assign or subcontract this Agreement or any right or obligation hereunder without the prior written consent of Microshare.
- 14.5. Independent Contractor. The Parties agree that each is an independent contractor and the Agreement does not create any employment relationship between the Parties for taxation or any other purpose. Each Party shall be responsible for the payment of compensation (including provision for employment taxes, workmen's compensation and any similar taxes) associated with the employment of its personnel. Neither Party shall have the right to bind the other to any agreement with a third Party, or to incur any obligation or liability on behalf of the other Party.
- 14.6. Notice. All notices and requests in connection with this Agreement shall be given or made upon the respective Parties in writing and shall be deemed to be given as of the day such notice or request is received by the other Party. All such notices and requests should be directed to the addresses identified by each Party.
- 14.7. No Third-Party Beneficiaries. Nothing in this Agreement shall create any rights in any third-party beneficiaries, and neither Party has any obligation to any third party by virtue of this Agreement.

- 14.8. Severability. If any provision of this Agreement is in violation of any applicable law, such provision shall to such extent be severable and be deemed null and void, and the remainder of the Agreement shall remain in full force and effect.
- 14.9. No Waiver. The failure of either Party to insist upon the performance of any provision herein or to exercise any right or privilege granted to it hereunder, will not be construed as a waiver of such provision or any provisions herein, and the same will continue in full force. The various rights and remedies given to or reserved by either Party herein or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach or any provision be considered a condonement of any continuing or subsequent breach of the same provision.
- 14.10. Entire Agreement. This Agreement, together with any exhibits or other attachments, constitutes the entire Agreement between the Parties in relation to this engagement.
- 14.11. Right to Amend. Microshare may amend or modify this Agreement at any time by posting the modified Agreement on its website, sending End User a copy via email, or otherwise communicating the amendment to End User via the Platform. End User's continued use of the Platform after Microshare amends or modifies this Agreement constitutes End User's consent to the revised Agreement. If End User does not agree to the revised Agreement, End User may discontinue use of the Platform, and terminate this Agreement at the end of the term specified in the product order with End User's third-party Reseller.
- 14.12. Counterparts. This Agreement may be executed by any of the Parties hereto in counterparts, via written, electronic or scanned signature, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. Facsimile signatures are effective to bind the signing Party and admissible in any court and/or for any lawful purpose.
- 14.13. Force Majeure. Neither Party will be liable for delay or failure to perform any of its obligations where such delay or failure is due to the acts or omissions of the other Party, unavailability of parts or software, war, civil insurrection, natural disaster (such as flood, earthquake, hurricane or lightning strike) or other act of God or any other event or condition beyond the reasonable control of such Party.
- 14.14. Headings and Recitals. The paragraph headings in this Agreement are to be given no legal effect. The preamble recitals are included as an integral part of this Agreement and are to be given full legal effect.