

**ANALYTICAL REMOTE TELEMETRY (ART) SEWER
TERM SHEET**

1	Supplier:	Metasphere Limited (company number: 05673888)
2	Purchaser:	[■INSERT DETAILS OF CUSTOMER ENTITY]
3	Effective Date	The date on which the Purchaser indicates its acceptance of these terms by signing this Term Sheet.
4	Commencement, Duration and Renewal (see also clause 2.1)	[■The Contract shall commence on the Effective Date and, unless terminated earlier in accordance with Clause 16 or otherwise under the terms of this Contract, shall continue for [■INSERT NUMBER] months (the Trial Period) and, thereafter the Contract shall be automatically renewed for a period of one (1) year (a Trial Extension Term). OR The Contract shall commence on the Effective Date and, unless terminated earlier in accordance with Clause 16 or otherwise under the terms of this Contract, shall continue for [■three/four/five (3/4/5)] years (the Initial Subscription Term), thereafter the Contract shall be automatically renewed for successive periods of 12 months (the Extended Subscription Term) (the Initial Subscription Term and the Extended Subscription term shall, together be referred to as the Subscription Term).
5	Supply (as further detailed in Schedule 1):	The Supplier shall supply to the Purchaser the following goods and/or services: [■INSERT NUMBER] sensor(s) (Analytical Remote Telemetry Sense Level Unit(s) (ART Sense Level)) [■Subscription to: ART Sewer Base Package including [■data collection and device management software ('Canvas') and data visualisation software ('Palette')] ART Sewer API Package including [■RESTful API access] ART Sewer ART Package including [■ART Analytics software] - eSIM Card for use with the ART Sense Level for either (a) the term of the Contract; or (b) for a period of five (5) years from the Effective Date (whichever period of time is shorter) and [■200MB] of data
6	Fees	<u>TRIAL PERIOD:</u> [[■BASE PACKAGE]: [■INSERT GBP AMOUNT] per Trial Period] [[■API PACKAGE]: [■INSERT GBP AMOUNT] per Trial Period] [[■ART PACKAGE]: [■INSERT GBP AMOUNT] per Trial Period] [[■INSERT DETAILS OF ADDITIONAL FEATURES INCLUDED]: [■INSERT GBP AMOUNT] per Trial Period]] <u>TRIAL EXTENSION TERM:</u>

		• [[■BASE PACKAGE]: [■INSERT GBP AMOUNT] per Trial Extension Term] • [[■API PACKAGE]: [■INSERT GBP AMOUNT] per Trial Extension Term] • [[■ART PACKAGE]: [■INSERT GBP AMOUNT] per Trial Extension Term] • [[■INSERT DETAILS OF ADDITIONAL FEATURES INCLUDED]: [■INSERT GBP AMOUNT] per Trial Extension Term]] <u>SUBSCRIPTION TERM:</u> • [[■BASE PACKAGE]: [■INSERT TOTAL GBP AMOUNT] AND/OR [■INSERT GBP AMOUNT] per annum] • [[■API PACKAGE]: [■INSERT GBP AMOUNT] per annum] • [[■ART PACKAGE]: [■INSERT GBP AMOUNT] per annum] • [[■INSERT DETAILS OF ADDITIONAL FEATURES INCLUDED]: [■INSERT GBP AMOUNT] per annum]]
7	Title in the Equipment	Title in the Equipment will pass [■on payment in full and in cleared funds of all sums payable to the Supplier in respect of the Supply OR on payment in full and cleared funds of the sums payable to the Supplier in the first invoice].
8	Delivery Date	[■INSERT]
9	Maximum number of Authorised Users	[■INSERT]
10	Special terms	[■INSERT ANY SPECIAL TERMS INCLUDING: DETAILED INFORMATION ABOUT PURCHASER'S SITE, WHERE THE EQUIPMENT IS TO BE DELIVERED AND DEVICE CONFIGURATIONS] [■INSERT ANY RESPONSIBILITIES AND OBLIGATIONS WHICH THE PURCHASER MUST UNDERTAKE AS A PREREQUISITE OF ENTERING THE CONTRACT] [■INSERT WARRANTY PERIOD (WITHIN WHICH ANY CLAIMS UNDER CLAUSES 13.1 OR 13.2 MUST BE MADE) IF SUCH PERIOD IS DIFFERENT TO THE 12 MONTH PERIOD REFERRED TO IN CLAUSE 13.3]
11	Configuration	[■The Purchaser can use Palette to change certain configuration options on the Sense Level devices, Canvas and Palette software platforms. These options are listed below: • User management including user creation, roles, areas of visibility and password resets. The number of users is limited and managed by the Supplier. • Sense Level alarm thresholds to trigger reporting by exception.]
12	Notices to be sent FAO	Supplier: Metasphere Limited Email: support@metasphere.co.uk

		Address: Millfield, Dorking Road, Tadworth, Surrey, KT20 7TD
		Purchaser: [■INSERT NAME] Email: [■INSERT] Address [■INSERT]
13	Schedules	Schedule 1: Supply Schedule 2: Third Party Additional Terms

This Term Sheet is subject to the attached Terms and Conditions, the terms of which shall be incorporated in their entirety. In the event of any conflict between any provision of (1) this Term Sheet, (2) the Terms and Conditions and (3) the Schedules specified in the Term Sheet, a term contained in a document higher in the list shall have priority over one contained in a document lower than the list.

The Purchaser's attention is drawn specifically to clause 13 (Warranties and Liability).

When the named person accepting and agreeing to these Terms and Conditions ("named person") is doing so for and on behalf of another person, company, partnership, organisation, group, association or other entity ("represented person"), the named person warrants and represents that they have the authority to bind that represented person to these Terms and Conditions and in the circumstances, a reference to "Purchaser", "user" and any other similar reference and/or any warranties, representations, statements, promises, acknowledgements, acts or omissions made or given by that named person are deemed to apply equally to such represented person who shall be and shall remain responsible and liable for the same as obligor under these Terms and Conditions.

By signing below, the Purchaser confirms it has read, understood, and agrees to the terms of this agreement.

Signed by an authorised signatory for and behalf of Purchaser. Signature:..... Name:..... Position:..... Date:.....	Signed by an authorised signatory for and behalf of Supplier. Signature:..... Name:..... Position:..... Date:.....
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Terms and Conditions

These Terms and Conditions govern the Supplier's provision of the Analytical Remote Telemetry (ART) Solution and the relevant provisions of these Terms and Conditions shall apply to any contract (the **Contract**) between the Supplier and the Purchaser placing an order for the manufacture and/or the supply of Sense Level, accessories, or other non-consumable components (the **Non-Consumables**) and/or batteries and other consumable items (the **Consumables**) (collectively the **Equipment**) and/or programs, media and user documentation listed in the Term Sheet and detailed in Schedule 1 (the **Software**) (the Equipment and Software ordered by the Purchaser, outlined in the Term Sheet and detailed in Schedule 1, being collectively referred to as the **Supply**). The Software may include firmware permanently resident on the Equipment (**Resident Software**).

1. INTERPRETATION

- 1.1 Any reference to a clause is to a clause of these Terms and Conditions.
- 1.2 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 A reference to a person includes an individual, corporate or unincorporated body.
- 1.4 A reference to a particular law is to it as in force for the time being considering any amendment, extension, or re-enactment and including any subordinate legislation.
- 1.5 **Including, include, in particular** or similar wording indicates that the words following it are illustrative only.
- 1.6 **Writing** or **written** includes email.

2. COMMENCEMENT AND TERM

- 2.1 This agreement shall commence on the Effective Date (as defined in the Term Sheet) and shall continue in accordance with the Term Sheet and these Terms and Conditions until terminated in accordance with clause 16 (Termination).

3. SUPPLY

- 3.1 The Supplier shall supply the goods and/or services set out in the Term Sheet and

detailed in Schedule 1 to the Purchaser from the Delivery Date in accordance with the Contract.

- 3.2 Where the Purchaser has a subscription to the Software, the Supplier shall use commercial reasonable endeavours to make the Software available 24 hours a day, seven days a week, except for:

- 3.2.1 planned maintenance carried out, provided that the Supplier has used reasonable endeavours to give the Purchaser at least 24 hours' notice in advance; and

- 3.2.2 unscheduled maintenance, provided, where possible, the Supplier uses reasonable endeavours to inform the Purchaser of such maintenance in advance.

- 3.3 Where the Purchaser has supplied the SIM cards for use in the device, they must meet the following criteria:

- 3.3.1 Conform to the relevant GSM and 3GPP standards.

- 3.3.2 Conform to the MFF2 form factor.

- 3.3.3 Be available for use during the manufacturing test process.

- 3.3.4 Be approved by Metasphere prior to manufacture.

4. DELIVERY OF THE SUPPLY

- 4.1 Within the United Kingdom. The Supplier will deliver the Supply to any address specified by the Purchaser in the United Kingdom.

- 4.2 Outside the United Kingdom. The Supplier will deliver the Supply in accordance with INCOTERMS 2000 to the nearest convenient port or airport to the Supplier's or its supplier's premises. At the Purchaser's request and cost (and subject to clause 5 below), the Supplier will act as the Purchaser's agent and arrange:

- 4.2.1 to ship the Supply to the destination outside the United Kingdom specified by the Purchaser; and

4.2.2 such insurance as the Supplier and the Purchaser shall agree.

4.3 The Purchaser shall be responsible for any freight charges, duties taxes or levies incurred in the execution of the Purchaser's request under this sub-clause.

4.4 Time of delivery. The Supplier shall use all reasonable efforts to deliver the Supply in accordance with times specified but shall not be liable for any loss or damage (whether direct or indirect) arising from late delivery.

5. EXPORT CONTROL

Where the Supply is for delivery or use outside the United Kingdom, the Purchaser shall at its own expense (but with reasonable assistance from the Supplier) obtain all necessary export and import licences and authorisations.

6. RISK AND TITLE IN RESPECT OF EQUIPMENT

6.1 Title to the Equipment will pass to the Purchaser in accordance with the Term Sheet. Until title passes to the Purchaser, it shall take all necessary precautions to protect and insure the Equipment against any damage or loss.

6.2 Risk of loss, damage or destruction of each item of the Equipment will pass to the Purchaser on its despatch to the address, port or airport in accordance with clause 4.

7. LOSS OR DAMAGE IN TRANSIT

7.1 Inspection. The Purchaser shall examine the Supply on its delivery for any obvious damage or shortage.

7.2 Damage and Short Delivery. Any claim that the Supply is damaged or short delivered must be communicated in writing to both the Supplier and the carrier within three days of delivery; any other claim that the Supply is not in conformity with the despatch note must be communicated in writing to the Supplier within seven days of delivery.

7.3 Non-delivery shall be reported in writing to both the Supplier and the carrier:

7.3.1 where the Supply is for eventual delivery within the United

Kingdom, within 14 days of the date of advice of despatch note; and

7.3.2 where the Supply is for eventual delivery outside the United Kingdom, within 14 days of the date of advice of despatch note or, where the Purchaser has requested the Supplier to arrange shipping and insurance in accordance with clauses 4.2.1 and 4.2.2, within 14 days of the scheduled arrival date at the port of arrival at the destination outside the United Kingdom.

7.4 Failure to Claim. If the Purchaser fails to give notice or report in accordance with this clause, the Supply shall be deemed to have been delivered to the Purchaser free of damage or shortage and otherwise in accordance with the despatch note and the Purchaser shall be bound to pay for it.

8. LICENCE OF SOFTWARE

8.1 The Purchaser shall after payment for the Supply have a non-exclusive, non-transferable licence to use the Software for its own internal business purposes.

8.2 In relation to scope of use:

8.2.1 for the purposes of clause 8.1, use of the Software shall be restricted to use of the Software in object code form for the purpose of monitoring and recording wastewater levels.

8.2.2 the Purchaser may not use the Software other than as specified in clause 8.1 and clause 8.2.1 without the prior written consent of the Supplier, and the Purchaser acknowledges that additional fees may be payable on any change of use approved by the Supplier.

8.2.3 the Purchaser may make a backup copy of the Software (excluding any Resident Software) for its lawful use. The Purchaser shall record the location of the copy of the Software and take steps to prevent unauthorised copying.

8.2.4 except as expressly stated in this clause 8 and except to the extent

that the Supplier cannot prohibit such acts by law, the Purchaser has no right (and shall not permit any third party) to copy, translate, adapt, vary, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part or create derivative works of the same for any purpose, nor sub-licence the Software.

8.2.5 any of the Software which is licensed to the Supplier by a third party (**Third Party Software**) shall be deemed to be incorporated within the Software for the purposes of this licence (except where expressly provided to the contrary) and the Purchaser acknowledges that use of the Third Party Software is subject to the additional terms and conditions set out at Schedule 2 (Third Party Additional Terms) to which the Purchaser hereby agrees to be bound.

8.2.6 the Purchaser shall indemnify and hold the Supplier harmless against any loss or damage which it may suffer or incur as a result of the Purchaser's breach of any Third Party Additional Terms howsoever arising.

8.2.7 the Supplier may treat the Purchaser's breach of any Third Party Additional Terms as a breach of this licence.

8.3 The Purchaser may not use any such information provided by the Supplier or obtained by the Purchaser during any such reduction permitted under clause 8.2.4 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

8.4 The Purchaser shall not:

8.4.1 sub-license, assign or novate the benefit or burden of this licence in whole or in part;

8.4.2 allow the Software to become the subject of any charge, lien or encumbrance; and

8.4.3 deal in any other manner with any or all of its rights and obligations under this Contract,

without the prior written consent of the Supplier.

8.5 The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Purchaser.

8.6 The Purchaser shall permit the Supplier to inspect and have access to any premises (and to the Equipment located there) at or on which the Software is being used, and have access to any records kept in connection with the Contract, for the purposes of ensuring that the Purchaser is complying with these Terms and Conditions, provided that the Supplier provides reasonable advance notice to the Purchaser of such inspections, which shall take place at reasonable times.

8.7 The Purchaser shall:

8.7.1 ensure that the number of persons using the Software does not exceed the number of authorised users listed in the Term Sheet;

8.7.2 keep a complete and accurate record of the Purchaser's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;

8.7.3 notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person;

8.7.4 pay for broadening the scope of the licences granted under this Contract to cover the unauthorised use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 10.6, from such date to the date of payment.

- 8.8 For the purposes of these Terms and Conditions, **"Intellectual Property Rights"** means patents, 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.
- 8.9 All Intellectual Property Rights in the Software remain at all times vested in the Supplier or any licensor of the Supplier absolutely. The Purchaser shall at all times hold or use the Software and all information and know-how relating thereto in confidence, and, save as expressly permitted herein, not use any concept contained therein for its own or any third party's benefit. The foregoing shall not however apply to information which has become public knowledge otherwise than through the fault of the Purchaser its servants or agents or information legally acquired from any third party.
- 8.10 The Purchaser agrees that it will not use the Supply in any manner that does, or is likely to, infringe, dilute, misappropriate, or otherwise violate any Intellectual Property Rights in the Supply.
- 8.11 Where the Purchaser uploads content to the Supply, it agrees that it (i) is solely responsible for any such content; (ii) has all necessary licences, rights, consents and permissions required to upload that content; (iii) will act only in accordance with these Terms and Conditions; and (iv) will comply with all laws, statutes and regulations (from time to time in force) which are applicable to the publication and distribution of such content. The Purchaser shall retain ownership of any Intellectual Property Rights in the user content that it uploads or publishes on the Supply and the Purchaser hereby grants the Supplier, during the term of the Contract and for a

period of five years following termination of the Contract, a non-exclusive, worldwide and royalty-free licence to use, reproduce and display any user content inputted and any data collected by the ART Sense Level or related to the ART Sense Level (including but not limited to location data, timeseries, events, system logs) for the purpose of providing the Supply to the Purchaser and for the Supplier's internal business purposes.

- 8.12 Unless otherwise directed by the Purchaser in writing, the Purchaser agrees to allow the Supplier to use the Purchaser's company logo for marketing purposes. Subject to the Purchaser's prior agreement, the Supplier may use the Purchaser's company name in a brief project summary on the Supplier's website. The parties acknowledge and agree that any information used by the Supplier in accordance with this clause will not be considered confidential and any use of such information by the Supplier in accordance with this clause will not be in breach of clause 18.

9. SUBSCRIPTIONS

- 9.1 The Purchaser acknowledges and agrees that the alarms manager feature ("Alarms Manager") will be maintained by the Purchaser. Active alarms should be viewed and accepted as they are raised by the devices and the Canvas system. The Supplier reserves the right to accept and set the status of any alarms within the Alarms Manager which are older than 30 days as cleared. Notwithstanding any change in status to the alarms on the Alarms Manager, all alarms raised are held indefinitely on the event log and can be viewed by the Purchaser as required.
- 9.2 The Supplier reserves the right to apply firmware upgrades to ART Sense Level's which are accessing or using the Software. These will normally be to resolve security issues or to improve product performance.
- 9.3 Initial ART Sense Level configuration is included in the Initial Subscription Charge (as defined in clause 10.5.3). Unless otherwise stated in the Term Sheet, any subsequent configuration outside what the user can self-manage will be charged by the Supplier separately.

- 9.4 The Supplier reserves the right to make immediate and reasonable changes to ART Sense Levels that have been identified as having a detrimental effect on the system. If these changes relate to the Purchaser's ART Sense Level, the Supplier will notify the Purchaser as soon as is practicable.
- 9.5 Subject to clause 9.3, the Supplier reserves the right to charge for any subsequent configuration changes to any reports on data collected through the Purchaser's use of the API Package. Where the Supplier is hosting the exported files, they will be available for 30 days, and will be removed from the export server after this time.
- 9.6 The Supplier does not warrant that:
- 9.6.1 the Purchaser's use of the Supply will be uninterrupted or error-free;
 - 9.6.2 any defects are capable of correction or improvement;
 - 9.6.3 the Supply or information obtained by the Purchaser through the Supply will meet the Purchaser's requirements; or
 - 9.6.4 the Supply will be free from Vulnerabilities or Viruses (as defined in clause 9.7).
- 9.7 For the purposes of these Terms and Conditions,
- 9.7.1 Virus shall mean any thing 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.
 - 9.7.2 Vulnerability shall mean a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.
- 9.8 The Supplier 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 Purchaser acknowledges that the Supply may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 9.9 The Purchaser acknowledges that the Software is under continuous development by the Supplier and, in the case of Third Party Software, the relevant third party and changes to the specifications and features (detailed in Schedule 1) may be made from time to time.
- 10. PRICE AND PAYMENT**
- 10.1 Prices for the Supply do not include:
- 10.1.1 Value Added or other sales tax, or customs duty;
 - 10.1.2 packaging, delivery or installation;
 - 10.1.3 any data usage additional to that specified in the Term Sheet;
 - 10.1.4 training in the use, installation and maintenance of the Supply unless otherwise specified in the Term Sheet.
- 10.2 A minimum order value of £500 (excluding items listed in clause 10.1) shall apply to each purchase order of the Purchaser.
- 10.3 Prices for the Supply shall be the prices set out either in the Term Sheet or the Supplier's price lists as published. The Supplier shall be entitled to vary the prices for the Supply of the Subscription Term from time to time upon thirty (30) days' prior notice to the Purchaser.
- 10.4 Where the Supply is for delivery in the United Kingdom, payment is due in cleared

sterling funds 30 days from the date of invoice which shall be raised on the same date the Equipment is despatched unless otherwise agreed. Where the Supply is for delivery outside the United Kingdom, and where not otherwise specified, payment shall be made prior to shipment on terms as the Supplier notifies to the Purchaser in advance.

10.5 Where the Purchaser subscribes to use the Software:

10.5.1 The Purchaser shall be charged for each subscription it has to the Software.

10.5.2 The Purchaser shall be invoiced for each subscription annually, in advance, for each calendar year (January – December).

10.5.3 The first invoice in respect of the Subscription will be issued 30 days after the Equipment is despatched and this charge (the **Initial Subscription Charge**) will cover the remaining months of that calendar year (on a pro-rata basis). Where the Purchaser's subscription begins part way through a month, the Initial Subscription Charge will be applied for the whole of the month in which the Purchaser's subscription begun.

10.5.4 The Purchaser will be charged and invoiced separately for any additional (optional) packages that it purchases within its subscription.

10.5.5 If the Purchaser terminates its subscription to the Software, it shall be responsible for and agree to pay any and all outstanding charges owed to the Supplier. For the avoidance of doubt, termination of the Purchaser's subscription does not entitle the Purchaser to any reimbursement of the annual charge already paid to the Supplier in respect of the Supply in that calendar year.

10.5.6 When an invoice is delivered to the Purchaser, the Purchaser shall make payment to the Supplier by no later than the specified payment due date. If payment is

not received within 15 days of the invoice due date, the account will be suspended, and the Purchaser will be unable to access the Supply and any data from the Supply. If the Purchaser subsequently makes payment the Supplier will reactivate the Purchaser's account. Where an account has been suspended for more than 30 days that account may be terminated and all associated data permanently removed.

10.6 Where the Purchaser's use of data exceeds the amount on the SIM Card specified at Section 5 of the Term Sheet, the Purchaser will be liable for all additional charges incurred and such charges will be invoiced to the Purchaser and payable by the Purchaser in accordance with these Terms and Conditions.

10.7 Without limiting any other right or remedy of the Supplier, if the Purchaser fails to make any payment due to the Supplier under the Contract by the due date for payment, the Supplier shall have the right to charge interest on the overdue amount at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 (which shall apply, or be deemed to apply, in the UK or any other jurisdiction, as applicable).

10.8 Neither party shall be entitled to any right to set off, deduct or withhold monies owed to the other party under this Contract except as required by law.

11. **FORCE MAJEURE**

Except for the obligation to make payments, non-performance of either party shall be excused to the extent that performance is prevented or delayed by industrial dispute or any act or circumstance beyond the Supplier's reasonable control, and, in the event of such non-performance, the Supplier may, without incurring liability to the Purchaser, suspend the Contract and, after at least ten weeks' suspension, terminate it.

12. **PURCHASER OBLIGATIONS**

12.1 The Purchaser shall undertake as a necessary prerequisite of the performance of the Contract, those responsibilities and obligations set out in the Term Sheet.

- 12.2 The Purchaser shall ensure that the Supply is used in accordance with any relevant written information or advice which the Supplier may make available to the Purchaser.
- 12.3 The Purchaser shall take such measures, if any, which have been specified by the Supplier prior to final delivery of the Supply to be necessary to comply with the Supplier's specifications in respect of:
- 12.3.1 using the Supply in accordance with its instructions and in a safe manner including only using the Supply in an environment in which it is safe to do so;
- 12.3.2 the relevant education, training and skills necessary for the safe use of the Supply by the Purchaser and others;
- 12.3.3 the security measures applicable to control access to, and use of, the Supply; and
- 12.3.4 any safety warning given in relation to the Supply including an obligation to update to a new release of software if required in order to continue to use the Supply safely.
- 12.4 The Purchaser agrees to use the Supply in accordance with these Terms and Conditions and in accordance with all applicable laws, statutes and regulations and agrees that it shall not use the Supply to:
- 12.4.1 transmit, distribute or store material that is, in the Supplier's reasonable opinion, inappropriate or which is illegal, defamatory, libellous, indecent, or obscene;
- 12.4.2 transmit, distribute or store material that contains a Virus, or other component which is, or is likely to be, harmful to the Supply;
- 12.4.3 transmit or distribute any material containing fraudulent offers for goods or services, or any advertising or promotional materials that contain false, deceptive, or misleading statements, claims, or representations; or
- 12.4.4 send unsolicited e-mail messages, SMS or postings, including, without limitation, bulk commercial advertising or informational announcements.
- 12.5 The Purchaser acknowledges that the Supply or any part thereof is not intended to be primarily relied upon in or in connection with any safety-related environment. The Purchaser further acknowledges that it has sole responsibility for and warrants and represents to the Supplier that it has, and shall maintain at all times, sufficient safety precautions, safeguards and protections independent of the Supply.
- 12.6 The Purchaser acknowledges and agrees that the Supply is for business as usual forecasting in the ordinary course of business and should not be used within a high risk environment (for example, and without limitation, where there is a material or reasonably foreseeable risk of death, personal injury or material damage to physical property) that is dependent on the proper functioning of the Supply. If and to the extent that the Purchaser intends to use the Supply for such purposes, it shall first notify the Supplier in writing and the parties shall seek to agree additional consideration and/or insurance as appropriate.
- 12.7 The Purchaser shall indemnify and keep the Supplier fully indemnified during the continuance of this Contract and thereafter from and against all actions, proceedings, claims, demands, loss, damage, costs and expenses (including legal fees on a full indemnity basis) which may be brought or made or awarded against or settled by the Supplier, whether arising directly or indirectly in contract, negligence or any other tort, statute, by way of indemnity or otherwise howsoever in relation to loss or damage to physical property owned by the employees, contractors or agents of the Purchaser or any third parties whatsoever and in relation to death or personal injury of the Purchaser's employees and its contractors and agents and their employees or any third parties whatsoever arising out of or in connection with the use, non-use or failure of the Supply except to the extent caused by the Supplier's negligence.

12.8 The Purchaser shall indemnify the Supplier against any liability for defects caused by any changes, addition to or removal of any hardware, software or any other part of the Supply (**Modifications**) by anyone other than the Supplier except where such Modifications have been previously approved in writing by the Supplier (such approval not to be unreasonably withheld or delayed). The Purchaser will pay all reasonable costs incurred by the Supplier in approving any such Modifications within 30 days of presentation of an invoice for these costs.

13. WARRANTIES AND LIABILITY

13.1 Specifications. The Supplier warrants that the Supply (including the Software) substantially complies with its specification as referred to in Schedule 1 to these Terms and Conditions (except where changes are required to ensure compliance with applicable law or regulatory standards or except where changes are made in accordance with clause 9.9), but otherwise reserves the right to improve or alter the Supply without reference to the Purchaser.

13.2 Materials and Workmanship. Subject to the provisions of sub clause 13.3, the Supplier warrants that the Non-Consumables manufactured by the Supplier are free from defects in materials and workmanship, provided that this warranty does not cover:

13.2.1 any part of the Non-Consumables which has been manufactured or modified by a third party. The Supplier will if permitted pass on to the Purchaser the benefit of any warranty or guarantee given by such third party;

13.2.2 damage arising through accident, failure to apply replacement parts provided by the Supplier, misuse (including without limitation, use outside the relevant specification) or unauthorised repair of the Non-Consumables;

13.2.3 any failure by the Purchaser to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Non-Consumables or (if there are none) good trade practice;

13.2.4 any defect in the Non-Consumables arising as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions (including any defect or loss of power/battery life arising from the Equipment being used over and above the amount agreed between the parties); or

13.2.5 any defect in the Non-Consumables arising as a result of the Supplier following any drawing or design supplied by the Purchaser.

13.3 Warranty Claims. Any claims under sub clause 13.1 or 13.2 must be made by the Purchaser in writing and received by the Supplier prior to the expiry of twelve months (or such other period as is specified in the Term Sheet) from the date of delivery of the Supply.

13.4 On receipt of a claim under this sub clause the Supplier shall be entitled to inspect the Supply and shall direct the Purchaser either:

13.4.1 to return the Supply or parts thereof (carriage and insurance paid) to the Supplier; or

13.4.2 to receive the Supplier's engineer at the place where the Supply is installed; the reasonable travel and accommodation expenses of such engineer shall be for the Purchaser's account; or

13.4.3 to comply with the Supplier's reasonable requests regarding testing and remedying defects in the Supply via email or by such other means as are appropriate.

13.5 Where the Supplier is satisfied that any claim is within this warranty, the Supplier's entire liability will be to repair or replace (at its sole option) free of charge any material defect in the Supply.

13.6 Except as expressly and specifically provided in the Contract, the Purchaser assumes sole responsibility for any results obtained from the use of the Supply, and for conclusions drawn from such use.

13.7 The Supplier shall have no liability for any damage caused by errors or omissions in

any information, instructions or scripts provided to the Supplier by the Purchaser in connection with the Supply, or any actions taken by the Supplier at the Purchaser's direction.

13.8 The Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any direct or indirect loss of profit, revenue, loss of business, business interruption, depletion of goodwill or anticipated savings and/or similar losses, or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses arising in any way, even if foreseeable, or if that party has been advised of the possibility of those losses out of or in connection with the Contract, including but not limited to in respect of any forecasts made by the ART software and the Purchaser's decisions made in light of such forecasts.

13.9 To the maximum extent permitted by law, the Supplier's liability under or in connection with the Contract, whether in contract, negligence any other tort or howsoever arising in respect of one incident or series of incidents arising from the same cause shall not exceed the total charges paid or payable in the calendar year in which the liability occurs.

13.10 Nothing in these Terms and Conditions limits or excludes the liability of either party for: (1) death or personal injury caused by that party's negligence; (2) fraud or fraudulent misrepresentation; or (3) any liability that cannot be limited or excluded at law.

13.11 Except as expressly provided under sub clauses 13.1 to 13.5, all terms, conditions and warranties, statutory or otherwise, relating to the Supply (including satisfactory quality, its fitness for any purpose) are excluded from the Contract to the maximum extent lawfully permissible, including without limitation in respect of any repaired or replaced Equipment or Software.

14. INFRINGEMENT

14.1 The Supplier shall indemnify the Purchaser from and against all claims, proceedings, damages, costs and expenses arising from

the infringement by the use of the Supply of any patent, trademark or copyright or other intellectual property right of third parties effective in the United Kingdom at the date the Supplier signs the Term Sheet, provided always that this indemnity shall not apply if the Supply or any part thereof is used other than as permitted under the terms of this Contract.

14.2 The Purchaser shall indemnify the Supplier from and against all claims, proceedings, damages, costs and expenses arising from the infringement by the use of the Supply of any patent, trademark or copyright or other intellectual property right of third parties effective in the United Kingdom at the date the Supplier signs the Term Sheet for any use of the Intellectual Property Rights in the Supply other than in accordance with the Contract.

14.3 If any claim is threatened or made or if any action is brought against the Purchaser arising out of matters referred to in this clause the Supplier shall be promptly informed and may at its own expense and at its own discretion conduct all negotiations to settle the claim and any litigation that may arise from it. The Purchaser shall not, unless and until the Supplier shall have failed within a reasonable time to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto.

14.4 If the Supply or any part thereof becomes or is likely to become the subject of an action or claim of patent, trademark or other intellectual property right or copyright infringement, the Supplier shall, in its own discretion and at its own expense, either procure for the Purchaser the right to continue to use the Supply or modify the Supply in order that it no longer infringes. Provided however, that if none of these options is made available and the Purchaser must cease to use the Supply, the Purchaser's exclusive remedy in respect thereof shall be the Supplier's obligation to refund all sums paid in respect of the Supply.

14.5 The forgoing states the entire liability and the exclusive remedy of each of the parties hereto with respect to infringement by use of the Supply of any patent, trademark or copyright or other intellectual property right and is subject to the terms of clause 13.9.

15. **ASSIGNMENT**

The Contract is not assignable or transferable by the Purchaser without the prior written consent of the Supplier and is between the Supplier and the Purchaser as principals, but the Supplier may without consent (but without reducing its obligations under the Contract) assign or sub-contract all or any part of its rights and obligations hereunder.

16. **TERMINATION**

16.1 Either party may terminate the Contract, by notifying the other party of termination in writing at least 60 days before the end of the Initial Subscription Term, in which case the Contract shall terminate upon the expiry of the Initial Subscription Term.

16.2 The Supplier may terminate the Purchaser's access to the Supply, and the Contract, with immediate effect on written notice to the Purchaser without incurring liability to the Purchaser and without prejudice to the Supplier's rights which may have accrued up to the date of termination if:

16.2.1 the Purchaser's use of the Supply breaches these Terms and Conditions or if the Purchaser does anything which, in the Supplier's reasonable opinion, damages or is likely to cause damage to the Supply. This may result in the removal of all information and data associated with the Purchaser;

16.2.2 the Purchaser breaches the Third Party Additional Terms;

16.2.3 the Purchaser becomes insolvent; and/or

16.2.4 the Purchaser fails to pay any amount due under the Contract on the due date for payment and remains in default for not less than 30 days after being notified by the Supplier to make such payment.

16.3 On termination of the Contract for any reason:

16.3.1 all licences granted under the Contract shall immediately terminate and the Purchaser shall

immediately cease all use of the Supply;

16.3.2 each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party unless the Supplier requests that the Purchaser destroys or erases any equipment, property or other items, in which case the Purchaser shall destroy such items and provide the Supplier with written confirmation that it has done so;

16.3.3 user accounts will be retained for 30 days following termination to allow the Purchaser to extract any data manually through the Supply. Where requested, the Supplier can export all data as a chargeable service. After the expiry of those 30 days the Supplier reserves the right to remove the data and any users related to that account; and

16.3.4 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.

16.4 On termination of the Contract, the following provisions shall continue in force: price and payment; termination; warranties and liability; infringement; waiver and severance; confidentiality; no partnership; entire agreement; and governing law.

17. **DATA PROTECTION**

17.1 Each party warrants to the other that any Personal Data (as defined in the UK GDPR, defined below) processed under the Contract will be processed in compliance with all laws (whether of the UK or any other jurisdiction) relating to the use, protection and privacy of Personal Data which are from time to time applicable to the Supplier (or any part of its business) including but not limited to the General Data Protection Regulation (EU) 2016/679 as it applied in England and Wales until 31 December 2020, the Privacy and Electronic Communications Regulations

2003, the Data Protection Act 2018 and the UK General Data Protection Regulation brought into force by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (**UK GDPR**).

- 17.2 For the purposes of these Terms and Conditions, and unless stated otherwise in any relevant Term Sheet, the Supplier is deemed to be a Controller (as defined in the UK GDPR), in respect of any Personal Data (as defined in the UK GDPR) which is processed in connection with the Contract.

18. **CONFIDENTIALITY**

Each party to the Contract undertakes at all times to hold in confidence for the other party, to use only for the purposes hereof and, subject to clause 8.12, not to print, publicise or otherwise disclose to any third party, confidential information of the other party.

19. **WAIVER AND SEVERANCE**

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contract. If any part or provision of this Contract is held to be invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms and Conditions.

20. **THIRD PARTY RIGHTS**

Nothing in this Contract confers or purports to confer on any third party any benefit or right to enforce any term of this Contract, and the provisions of the Contracts (Rights of Third Parties) Act 1999 (as amended or modified from time to time) are expressly excluded.

21. **NOTICES**

- 21.1 Notices under the Contract must be served in writing and must be delivered personally, sent by pre-paid first-class post

or other next working day delivery service, or by fax or email using the contact details in the Term Sheet.

- 21.2 Any such notices shall be deemed to have been received:

21.2.1 if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address;

21.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 09:00 on the second working day after posting;

21.2.3 if sent by fax, at the time of transmission (subject to evidence of successful transmission); or

21.2.4 if sent by email, at the time of transmission subject to there being no subsequent automatic notification that the email failed to be delivered.

22. **NO PARTNERSHIP**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

23. **ENTIRE AGREEMENT**

These Terms and Conditions constitute the entire agreement between the Supplier and the Purchaser in relation to the subject matter thereof which supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between them relating thereto. The Purchaser acknowledges that it has not relied on any statement, promise or representation or assurance or warranty that is not set out in these Terms and Conditions. These Terms and Conditions shall apply to the exclusion of any of the Purchaser's terms and conditions.

24. **VARIATION**

No variation or addition to the Contract or these Terms and Conditions shall be

effective unless contained on the face of the Term Sheet or in a written instrument signed by a director or a duly authorised representative of the Supplier and a copy of such instrument is annexed to the Term Sheet.

contractual disputes or claims) shall be governed by and construed in accordance with English Law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England in respect of all such matters.

25. **GOVERNING LAW AND JURISDICTION**

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-

SCHEDULE 1

Base Package

ART Sewer is a groundbreaking Wastewater Level Monitoring solution providing users with an all-in-one approach for cost-effective mass deployment of IoT sensing devices across a wastewater network.

For each site to be monitored using the ART Sewer, the following will be included in the Base Package:

1. Smart Level Sensor

- Sense Level, an IoT connected radar level sensor, with multi-band NB-IoT/Cat-M1 modem.
 - 60GHz Radar (0-3m range (accuracy +/- 0.5%))
 - Multi-band NB-IoT/ LTE-M modem
 - External antenna
 - IP68
 - ATEX/IECEX Zone 0
 - eSIM card for use with the ART Sense Level for [■the term of the Contract OR for a period of 5 years] and up to [■500MB] data
 - Installation bracket
 - Remote management: Firmware upgrade & configuration

2. A subscription service for **Canvas, **Palette** and **MySite** software platforms**

- Canvas is a secure, scalable cloud-hosted data collection and processing platform which collects data from Sense Level Units and provides key data processing functions including alarm management, data import/export and remote device management, including device configuration and firmware upgrades.
- Palette is a user-friendly data visualisation platform for effective monitoring, reporting and estate management. Accessed using a standard web browser this interface provides access to collected data, device and system alarms and estate and user account management tools.
- MySite is a mobile friendly interface to Palette allowing users to send key site information at the point of installation, including sensor location and site photographs.
- As a cloud platform service, the functionality of these platforms may be developed over time by the Supplier to improve the service offering to the Purchaser.

[■Metasphere to include the following options where applicable

In addition to the base package there are two additional optional services, API and ART.

ART Sewer API Package

The API package allows the Purchaser to extract data collected from the Sense Level Units by Canvas for offline processing. The data is supplied in raw form and does not include any alarms or insight from the ART package.

The API has a RESTful interface and is defined in a separate specification available from Metasphere. The data is secured using security tokens that are issued by Metasphere. Further information about the token mechanism is available from Metasphere.

Access to this interface is provided under a fair usage policy with a maximum read request frequency of 5 mins. The Supplier reserves the right to monitor and impose restrictions or deny access should this be exceeded.

AND/OR

ART Sewer ART Package

ART delivers a data analytics and insight platform to proactively manage flow in sewers, pumping stations, manholes, Combined Sewer Overflows (CSOs), detect partial sewer blockages as well as monitor and prevent flooding events. Features include:

- Operational Intelligence
- Smart Machine Learning Data Analytics
- Ability to detect partial sewer blockages
- Ability to monitor flooding events using sewer level and rainfall data
- Proactively manage flow in sewers, pumping stations, manholes and CSO.]

SCHEDULE 2

THIRD PARTY TERMS AND CONDITIONS