Licence terms governing Plugwise 'Source Pro' software for large corporate users (version 201201)

1 Right of use

1.1 Plugwise B.V., referred to below as '**Plugwise**', grants the User a non-exclusive right to use the 'Source Pro' computer software, referred to below as the '**Software**', in object code form. The User will strictly comply with the restrictions on use agreed by the parties.

1.2 The User may use the Software only to read out and control hardware that has been brought onto the market by or on behalf of Plugwise (referred to below as the '**Plugwise Hardware**'), and only in combination with Plugwise Hardware that the User rightfully has at its disposal.

1.3 The right of use is non-transferable. The User is not permitted to sell, lease, sublicense or dispose of the Software or the carriers that contain it, to grant any limited rights in respect of the Software or the carriers that contain it or to make the Software or the carriers that contain it available to a third party for any reason or in any manner whatsoever, even if the third party in question will use the Software exclusively for the User's benefit.

2 Term and fee

2.1 The right of use will commence after the Software has been activated. The right of use will end by operation of law if the User is in default with respect to any of its obligations under this Agreement and/or if the User is declared bankrupt or if a provisional or definitive suspension of payments is pronounced in respect of the User in accordance with the Dutch Natural Persons Debt Rescheduling Act (*Wet Schuldsanering Natuurlijke Personen*).

2.2 The Software is an accessory part of the Plugwise Hardware. The right of use will also end in the event that the contract of sale with respect to the Plugwise Hardware – in the context of which the Software was made available to the User – is dissolved.

2.3 The User will owe Plugwise a fee in connection with the use of the Software, in addition to the one-off purchase price, for each period of twelve (12) months (referred to below as the 'Period'), for Software-updates, -support, and -maintenance-services, in the amount of 7,5% of the cost of the Software and the Hardware (Firmware), the first payment of which is due after expiration of twelve (12) months from the date of purchase. If the User does not wish (or no longer wishes) to receive any updates and does not wish (or no longer wishes) to take advantage of the (remote) support- and maintenance-services with respect to the Source Pro software, those services may be terminated by giving written notice to Plugwise no later than two (2) months before the end of a Period.

3 Intellectual property rights

3.1 All intellectual property rights in respect of the Software (including updates, improvements and expansions) are vested exclusively in Plugwise or its licensors. The User will only obtain the rights of use and the powers that are explicitly granted under this Agreement. The User will not otherwise duplicate, copy and/or change the Software.

3.2 The Software contains confidential business information. The User will observe a strict duty of confidentiality with respect to the Software and its operation. The User also is not permitted to remove or change any notices contained in the Software with respect to copyrights, trademarks, trade names or other intellectual or industrial property rights, including any notices pertaining to the confidential nature of and secrecy with respect to the Software.

3.3 Plugwise will be permitted to take technical measures in order to protect the Software. If Plugwise has protected the Software by means of technical security measures, the User is not permitted to remove, change or bypass such security measures.

3.4 If the User develops software or a third party develops software for the User, or if the User intends to do so and requires any information in connection with the interoperability of the software to be developed and the software that Plugwise has made available to it in order to effectuate that interoperability, the User will submit to Plugwise a written, itemized request for the necessary information, in which case Plugwise will inform the User within a reasonable term as to whether the information that has been requested can be made available to the User and under what conditions such information can be made available, including financial conditions and conditions with respect to any third parties to be engaged by the User. In these General Terms and Conditions 'interoperability' is taken to mean the ability of software to exchange information with other components of a computer system and/or software and to communicate by means of that information.

3.5 With due observance of the other provisions contained in this Agreement, the User is entitled to correct errors in the Software that has been made available to it if such correction is necessary in connection with the intended use of the Software that ensues from the nature of the Software and Plugwise has declared that it is unwilling to repair those errors for the User. Where this Agreement refers to rights or obligations with respect to errors, 'errors' is taken to mean a failure to comply with the functional specifications that Plugwise has provided in writing. The existence of an error will be deemed to be established only if it can be demonstrated and reproduced. The User is obliged to notify Plugwise immediately with respect to any errors.

3.6 Plugwise will indemnify the User against any legal claim that is based on an allegation that the Software or any part of the Software infringes an intellectual property right that applies in the Netherlands, subject to the condition that the User notifies Plugwise immediately regarding the existence and the content of the legal claim and leaves the handling of the case, including any settlements that are reached, completely to Plugwise. This obligation to indemnify will lapse insofar as the infringement in question is related to any changes that the User has made or has allowed third parties to make to the Software. If it has been irrevocably determined at law that the Software infringes any intellectual property right of a third party or if Plugwise is of the opinion that there is a reasonable chance that there is such an infringement, Plugwise will take back the Software or will ensure that the User can continue using the Software or other functionally equivalent software without any interference. If Plugwise takes back the Software, the User will be entitled to simultaneously return the Plugwise Hardware that was purchased in combination with the Software in exchange for a credit of the purchase costs, after deducting a reasonable usage fee, provided that the User submits the original purchase invoice(s) to Plugwise. Any other or more extensive liability on the part of Plugwise on the ground of a violation of third parties' intellectual property rights is excluded, including any liability on the part of Plugwise for infringements that are caused by the use of the Software in a modified form that was not implemented by Plugwise, in combination with goods or software that was not delivered or provided by Plugwise, or in a manner other than that for which the Software was developed or intended.

4 Updates

4.1 Plugwise will endeavour to modify the Software if Plugwise considers that desirable in connection with modifications to and/or improvements in the Plugwise Hardware, the repair of errors or in the event of any technical improvements to the program. The User will receive an update-notification from Plugwise but is solely responsible for installing the update.

4.2 Plugwise will indicate in an update list any deviations in the Software from the specifications contained in the manual. Plugwise will endeavour to remedy any deviations in a subsequent version, in an order of priority to be determined by Plugwise.

5 Use of the Software

5.1 The User is at all times obliged to use the Software and the Plugwise Hardware in accordance with the user manual that is provided with them. The User is aware that improper use of the Software may cause damage. Before using the Software to turn electrical equipment on or off, the User will always investigate (in the product specifications, manuals and/or by asking the manufacturer or seller of the equipment in question) whether the interruption of the power supply is safe and it will not use the Software's function intended for that purpose if there is any doubt in this respect.

5.2 The Software and the related update(s) will be prepared with all due care. However, the data obtained using the Software are indicative in nature and the User cannot derive any rights from them with respect to the accuracy or completeness of such data. The choice of the Software, the implementation and the manner of use are at the User's risk.

6 Privacy and use of personal and other data

6.1 Plugwise uses the data processed by the Software for scientific, statistic and historic purposes and in order to expand and improve its products and services. Unless it has received separate permission, Plugwise will compile only technical data (including usage data) that cannot be traced back to natural persons in the User's household and/or business. All personal data will be processed in accordance with the provisions contained in the Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens*) and Plugwise's privacy policy as communicated on the Plugwise website (Plugwise Privacy & Cookie Policy).

6.2 Part of the right of use is for Plugwise to automatically receive the technical anonymous usage data from the User.

6.3 The User can also give Plugwise explicit permission (using the Source Pro software) to link its personal data to its usage data.

7 Liability

7.1 Plugwise is not liable for direct or indirect damage, including damage caused by a temporary or permanent operations failure of the Software and the Plugwise Hardware, damage sustained by third parties, consequential damage, loss of profit, loss of savings, decreased goodwill, damage caused by business interruption, damage as a result of claims brought by the User's purchasers, mutilation or loss of data, damage related to the use of the goods that the User has instructed Plugwise to use, materials or software of third parties, damage related to the engagement of suppliers that the User has instructed Plugwise to engage or damage caused by improper use by the User, except in the event of an intentional act or willful recklessness on the part of Plugwise.

7.2 Any liability on the part of Plugwise for any other type of damage, on any basis whatsoever, is explicitly excluded.

7.3 Any liability on the part of Plugwise will be limited to a maximum amount equal to the price stipulated for the Software and the Plugwise Hardware in accordance with the original purchase invoice, up to a maximum of EUR 10,000.

7.4 The User indemnifies Plugwise against any and all claims brought by third parties on the ground of product liability as a result of a defect in the Plugwise Hardware or the Software that is used by the User.

8 Applicable law and disputes

8.1 This Agreement is governed by Dutch law, and any disputes between Plugwise and the User that ensue from this Agreement will be submitted exclusively to the competent court in the district of The Hague, the Netherlands.

9 Final provision

9.1 These Licence Terms are a supplement to the General Terms and Conditions of Plugwise BV (Business). The User and Plugwise agree that those General Terms and Conditions govern the licensing of the Software unless and only insofar as these Licence Terms provide otherwise.