1. OFFER, CONFIRMATION, AGREEMENT
(a) These terms and conditions ("Terms") apply to the sale or supply of all products or systems ("Products"), and the performance of all services (which includes any software provided as a service) ("Services") by Signify Lanka (Private) Limited ("Signify") to you ("Customer") and will form a necessary part of any Offer or Agreement therefore. Customer’s ordering of Products or Services from Signify constitutes acceptance of these Terms, as such Terms may have been updated through the date of such order. As used herein, "Agreement" means any written agreement for supply, distribution, sale, or license of any Products or Services entered into between Signify and Customer, or any purchase order that is issued by Customer and accepted by Signify; and "Offer" means any quotation, proposal or other written communication by Customer.
(b) Products and Services may include web or mobile applications that may be subject to additional terms ("Additional Use Terms") or software that may be subject to additional (end-user) software license conditions ("EULAs"), both from either Signify or an affiliate, or third parties. Such EULAs or Additional Use Terms will be made available together with the web or mobile application or software, as applicable. Except where specified otherwise in a EULA or Additional Use Terms, such EULA or Additional Use Terms will form part of the Agreement. Software will not be sold to Customer, but licensed subject to the license terms in section 10 below.
(c) In the event of any conflict or inconsistency between these Terms and the terms of any Agreement or Offer the terms of such Agreement or Offer will prevail. With respect to web or mobile applications or software, any Additional Use Terms or the terms of any applicable EULA will prevail over these Terms.
(d) The terms "agreed", "consent", "confirmed", "accepted", "informed", "notified" or "notice" and documents or acts of similar meaning will be deemed to be required to be done in writing, where "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record. The term "includes" or "including" will be construed without limitation to the generality of preceding words.
(e) Any different or additional terms in any purchase order, blanket instructions, terms of purchase or other writing from Customer will be deemed a material alteration of these Terms and are expressly objected to and rejected and will be of no force or effect. Commencement of performance or shipment shall not constitute acceptance of any terms or conditions. Outcome of performance or usage of trade will not be applied to modify these Terms.
(f) These Terms may be amended by Signify by posting an updated version on its website, provided that in respect of an Agreement and an Offer the version of the Terms applicable as of the effective date of the Agreement or the date of the Offer will apply.
(g) Offers by Signify are open for acceptance, deliverable within the period stated in such Offer or, in the event that no period is stated, within thirty (30) days from the date of the Offer, provided that Signify may amend, withdraw or revoke any Offer at any time prior to the receipt by Signify of the acceptance of an Offer. No order submitted by Customer will be deemed final or accepted by Signify unless and until confirmed by Signify.
(h) Customer is solely responsible for the accuracy of any order, including with respect to the specification, configuration or other requirements of Products and Services, and functionality, compatibility and interoperability with other products (not authorized by Signify), as well as fitness for particular use. Customer warrants that the information provided to Signify under an Agreement is complete, accurate and true, and Customer acknowledges that a failure to provide complete, accurate and true information or instructions to Signify may detrimentally affect Signify’s ability to discharge its obligations or exercise its rights under an Agreement.
(i) Any catalog, specification, price sheet or other similar documentation prepared by Signify is strictly for convenience only and will not be deemed as an Offer. Signify believes such documentation is complete and accurate at the time of printing, but Signify does not warrant that such documentation is error free. Signify will not be responsible for any damages in connection with errors of measurements, descriptions, application recommendations and the like.
(j) Products will be supplied in accordance with the standard functionalities, styles and sizes as described in Signify’s catalogs or, for special or made-to-order Products, in accordance with Signify’s drawings and specifications sheets. In the event of a conflict between an order of Customer and a drawing or specification sheet from Signify approved by Customer, the latter will prevail.
(k) Assumptions, exclusions and qualifications stated by Signify in Offers, Agreements or otherwise will direct the Agreement and will be construed as part thereof and guide its execution and interpretation.
(l) Where the performance under the Agreement relies on the approval, confirmation or acceptance by Customer of a (draft) proposal, design, delivery, planning or any other action by Signify, Customer shall do so within the period stated in the Agreement, or, in the event that no period is stated, within seven (7) days after receipt of a request from Signify, in the absence of a response within such time period Customer will be deemed to have approved, confirmed or accepted as submitted by Signify.
(m) In the event that the Customer resells Products or incorporates Products and/or Services in offerings to its customer, Customer shall ensure that all its customers and/or end users of Products or Services comply with all relevant Customer’s obligations under the Agreement and these Terms, and that the terms of its agreement of each of its customer(s) or end user(s) are consistent with the Agreement and these Terms, failing which Customer shall indemnify, defend and hold harmless Signify and its affiliates, and their officers, directors, agents, employees, successors, and assigns from and against, all losses, liabilities, costs (including legal costs) and expenses arising out of or in connection with any non-compliance.
2. PRICES AND TERMS OF PAYMENT
(a) In consideration of the sale of Products and/or the performance of Services by Signify, Customer shall pay all prices and fees ("Prices") in accordance with the Agreement and this section. Prices are in LKR and unless agreed otherwise based on Ex Works – Signify facility (INCOTERMS latest version). Unless stipulated otherwise by the applicable INCOTERMS, Prices do not include any taxes, duties or other governmental fees, now or hereafter enacted, including value-added or similar taxes levied by any government, and Signify may add these to the Price or invoice separately, and Customer will reimburse Signify promptly on first request.
(b) Subject to notice to Customer, Signify reserves the right to adjust Prices for Products and/or Services not yet delivered or performed to reflect variations in individual costs of more than five percent (5%) including any foreign exchange rate fluctuations, raw materials and other costs of manufacturing and distribution, and labor costs, that take effect between the date of the Agreement and delivery of Products and/or performance of Services. In addition, if an Agreement has a term longer than twelve (12) months, Signify may adjust Prices as of each 1st April (i) for the change in the most recently published wholesale index compared to twelve (12) months earlier; and (ii) to reflect variations in the foreign exchange rate between LKR currency and the Euro currency of more than 5% since the date of the Offer.
(c) Any cancellation, delay or other change by Customer of a purchase order previously accepted by Signify will require the prior approval of Signify and the approval will be without prejudice to any rights or remedies Signify may have under the Agreement or at law. If, on request of Customer, Signify agrees to any such change in purchase order or a change in an Agreement, including an (partial) cancellation, delay or suspension, the addition, omission, alteration, substitution or modification of the design, quality, standard, quantity, manufacturing site or performance (including accuracy, sequence, quantities or timing) of Products and/or Services (each, a "Variation"), or a Variation is required due to (i) changes in applicable laws, regulations or industry standards, (ii) emergency situations, (iii) incorrect or incomplete information provided by Customer, or (iv) non-compliance by Customer of any of its obligations under an Agreement, Customer shall reimburse Signify for all costs and expenses incurred.
(d) Signify may invoice Customer upon shipment of Products, or when Services have been performed. Signify may require (i) Customer to pay on fixed payment days; (ii) an advance payment (of part of) the Price; and/or (iii) invoice per separate specified phase, time period or milestone of performance. Customer shall notify Signify in writing within thirty (30) days of date of invoice to the designated bank account of Signify. Customer shall pay all amounts due to Signify in full without any set-off, counterclaim, deduction or (tax) withholding.
(e) In the event Customer fails to make any payment due under an Agreement on the due date or fails to reply within 7 days of balance confirmation letter sent by Signify, then, whether or not Signify has previously given Customer a grace period, Customer shall immediately pay to Signify, to the extent permitted by applicable law: (i) all amounts due from Customer will be considered payable and non-disputed, admitted debt; (ii) Customer shall pay Signify interest on all due amounts from the due date until Signify has received full payment thereof, at the rate of eighteen percent (18%) per annum or the applicable statutory rate, whichever is higher, and shall pay Signify costs of payment collection, including attorneys’ fees; and (iii) Signify may cancel any credit issued to Customer. Unless agreed otherwise, Customer provides (additional) security, prepayments or deposits, and may implement additional conditional payment terms or accelerate payment schedules for any outstanding performance.
(f) Signify may set off against and deduct from any amount that Signify (or any of its affiliates) owes to Customer, or any amount that Customer owes to Signify or against any advance payments or deposits made by Customer. In the event that Signify sets off amounts in different currencies it will use a commonly used currency conversion rate.
3. DELIVERY OF PRODUCTS; PERFORMANCE OF SERVICES
(a) Unless agreed otherwise, Products will be delivered Ex Works – Signify facility (INCOTERMS latest version). Signify shall perform Services at the location(s) agreed in the Agreement. Dates communicated or acknowledged by Signify are approximate only, and Signify will not be liable for, nor will Signify be in breach of its obligations to Customer, for any delay in delivery or performance, provided that Signify shall use commercially reasonable efforts to meet such dates. In the event of delay, Signify shall use commercially reasonable efforts to deliver Products or perform Services reasonably close to the due date and/or ATC in accordance with the Agreement.
(b) Customer shall note any damage to Products caused in transit, or shortages thereto, on transport documentation immediately upon receipt of Products, with due regard to applicable instructions by Customer. All Products delivered under the Agreement will be deemed accepted by Customer as conforming to the Agreement, and Customer will have no right to revoke any acceptance, unless Customer provides Signify notice of a claimed nonconformity within seven (7) days of the date of delivery. Notwithstanding the foregoing, any use of a Product by Customer or its customers after delivery will constitute acceptance of that Product by Customer. Signify shall at its option and within a reasonable time, correct nonconformities by either repair, make available parts, replace or deliver missing Products, or credit the Price paid by Customer for undelivered Products.
(c) Minor Nonconformities will not prevent or suspend acceptance by Customer of the Products, Services or both, and Signify shall correct these within a reasonable time. "Minor Nonconformities" are nonconformities or anomalies that do not hinder the overall operation and intended use of the design, quality, standard, quantity, manufacturing site or performance (including accuracy, sequence, quantities or timing) of Products and/or Services.
(d) Customer will not be liable for, nor will Customer provide any warranty for, or make any claim against Signify for, or in connection with any repair or replacement of a Product caused by Customer, its agents, employees, contractors or other third parties. If, at the option of Customer, Customer cannot accept delivery of a Product or require, to its satisfaction, that Customer provides (additional) security, prepayments or deposits, and may implement additional conditional payment terms or accelerate payment schedules for any outstanding performance.
(e) Customer explicitly acknowledges that certain features or functionality of Products and Services may rely on the availability and correct functioning of third party service providers, as may be indicated by Signify, including supply of energy, data storage, connectivity and communication services. These are outside of the control of Signify, and Signify will have no responsibility or liability in this respect.
(f) Customer is responsible for all information, orders, instructions, materials, and actions provided or performed by Customer directly or by third parties engaged by Customer (excluding subcontractors of Signify) in connection with the delivery or performance by Signify of any Products and Services.
or Services. Signify will be entitled to rely on the accuracy and completeness of all information furnished by Customer, including where Signify provides data collection, design or audit services.

Upon request of Signify, Customer shall promptly provide any other information, services or support under Customer’s control and relevant to the performance by Signify under the Agreement.

(g) In the event of delay or interruption in delivery of Products or the performance of Services for reasons not attributable to Signify or due to a variation, the timelines for performance by Signify will be amended accordingly. Signify will be entitled (in addition to the increased costs referred to in section 2(c)) to a reasonable compensation by Customer for any damages and/or costs incurred by such delay.

In the event that an Agreement contains (minimum) stock requirements for Signify, Customer will at first request of Signify purchase products kept in stock under such requirement.

4. USE OF PRODUCTS AND SERVICES

(a) Customer shall use Products and Services only for their intended purposes and in accordance with all instructions contained in the manuals, guidelines, warranty terms and any other terms and conditions applicable to such Products and Services or provided by any personnel of Signify, deployed or subcontracted by Signify in the performance of an Agreement (“Personnel”). Customer shall ensure that all materials, tools, constructions and other facilities (including sanitary installations) and storage of materials, tools and instruments on or near the site; (iv) decommission and collect the materials that are replaced by Products and remove these from the site; and (v) assist Signify during (performance) tests. Until request of Signify, Customer shall arrange for the temporary shared use of the site (including water systems), (c) Upon finalization of Installation or other Services on-site, Signify shall notify Customer in accordance with the acceptance protocol agreed between the Parties. In the event that no such protocol has been agreed, within five (5) days after notice to Customer of finalization of installation or other Services on-site, Customer shall check and test the Service set-up, the Products supplied and/or installed by Signify and, subject to sections 3(b) and 3(c), notify Signify of any Defect (as defined in section 9(a)), in the absence of which Customer will be deemed to have accepted the Service set-up, the Products supplied and/or installed five (5) days after notice. Signify shall resolve Defects so notified within a reasonable period in accordance with section 9.

7. RISK AND TITLE

(a) The event of delay or loss of Products will pass to Customer (i) upon delivery by Signify to Customer in accordance with the applicable INCOTERMS; or (ii) in the event that Signify Installs Products on-site, unless agreed otherwise, upon delivery on-site.

(b) Legal title to Products will pass to Customer only when Signify (or its financiers) has received payment for such Products in full and, to the extent permitted by applicable law, Signify received payment in full of all other amounts due to Customer under any other agreement with Signify (or any of its affiliates). Until legal title to Products has passed to Customer, Customer shall (i) not assimilate, transfer or pledge any of the Products, or grant any right or title in the Products to any third party, except in the normal course of business and against payment or subject to retention of title; and (ii) not remove, alter, damage or alter the identification marks or labels on Products provided by Signify. In the event of breach by Customer, Signify may require that Customer return to Signify, at Customer’s cost (including costs for de-installation), all Products in which the title has not yet passed and Customer shall fully cooperate to enable Signify to collect such Products and grant Signify (or its representative) free access to the location of the Products, and other equipment supplied and/or used by Signify in the performance of Services.

8. FORCE MAJEURE

Signify will not be liable for any breach resulting from a Force Majeure event. If a Force Majeure event occurs, Signify’s performance will be suspended for the period of such Force Majeure event. “Force Majeure” means any circumstances or occurrences beyond the reasonable control of Signify, whether not foreseeable at the time of an Agreement, as a result of which Signify cannot provide Products or Services or cause its or its subcontractors’ Personnel (equipped with sanitary installations) to work in accordance with the acceptance protocol agreed between the Parties. In the event of Force Majeure, Customer may require that Customer return to Signify, at Customer’s cost (including costs for de-installation), all Products in which the title has not yet passed and Customer shall fully cooperate to enable Signify to collect such Products and grant Signify (or its representative) free access to the location of the Products, and other equipment supplied and/or used by Signify in the performance of Services.

9. LIMITED WARRANTY AND DISCLAIMER

(a) In most instances, Signify Products are sold subject to an applicable standard warranty either accompanying the product or as published on Signify’s website as the standard warranty applicable for a particular Product (“the Standard Product Warranty”). For any Product that is sold by Signify or by a Dealer of Signify to an end-user (including, without limitation, acts of God, natural catastrophes including earthquake, lightning, hurricane, typhoon, flooding or volcanic activities or extreme weather conditions, strikes, lock-outs, war, terrorism, political situation, civil unrest, riots, sabotage, vandalism, industry-wide shortages, breakdown of plant or machinery, fault or loss of Human or Data caused by a Defect), means, in relation to a Product, that a Product has any of the following defects, deficiencies or shortfalls which causes the Product to fail to operate in accordance with the specifications provided by Signify, with consideration given to the overall performance of the Product and, in relation to Services, means that the Service has not been performed in a competent, diligent manner.

(b) Unless otherwise agreed by the Parties, Signify does not provide any warranty for third party products, nor marks with any of its PHILIPS trademark or with trademarks owned by Signify, nor for third party software, applications or services, or customized Products.

(c) Customer acknowledges that EULAs or Additional Use Terms may limit the warranty period for software (including web or mobile applications).

(d) In order to be entitled to make a valid claim under warranty, Customer shall promptly notify Signify of any alleged Defective Products or Defective Services prior to expiration of the warranty period.

(e) Customer shall bear the costs of access for remedial warranty efforts by Signify, including removal
and replacement of systems, structures or other parts of Customer’s facility, the de-installation of Defective Products, and the re-installation of replacement products. Customer shall not return Products to Signify without consent of Signify and unless in accordance with applicable Signify return policies. In the event that Signify decides that a claim under warranty is not valid, Customer will bear the costs incurred by Signify in handling and testing, and the transport of Products returned.

(f) Any indemnification and warranty obligations of Signify under an Agreement are conditional upon (i) proper storage, installation, use, operation, and maintenance of Products, all in accordance with user manuals, warranty policies and other instructions or terms communicated by Signify to Customer; (ii) Customer keeping accurate and complete records of operation and maintenance during the warranty period and providing Signify access to those records; and (iii) modification or repair of Products or Services only as authorized by Signify. Failure to meet these conditions renders the warranty null and void. Signify will not be responsible for normal wear and tear and environmental or stress testing. The warranty provided in this section 9 does not apply to damage or failure to perform arising as a result of any Force Majeure or from any abuse, misuse, abnormal use, improper power supply, power surges or fluctuations, corrosive environments, neglect, exposure or any other use or installation violation of the instructions or restrictions prescribed by Signify or any applicable standard or code.

(g) Any indemnification and warranty obligation of Signify under an Agreement will not establish, by themselves, any liability to third parties or the public. Nothing in an Agreement will be construed to create any obligation, standard of care or liability to persons or third parties.

(h) Customer’s obligations whether written or oral related to any Product is required, Customer shall fully cooperate and shall provide such assistance as Signify may require.

Customer shall keep accurate books and records to assure traceability of the Products in the event of a Product recall or any other remedial action.

(i) (a) Subject to the limitations set out in the Agreement, and subject to applicable law, sections 11 and 12(b), (c) and (d) state the entire liability of SIGNIFY and its affiliates in connection with defective products or defective services, regardless of when the defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort or extra-contractual liability (including negligence). ANY AND ALL CLAIMS AGAINST SIGNIFY WHOEVER THEY MAY EXTEND DIRECTLY TO CUSTOMER ONLY AND NOT TO ANY THIRD PARTY, INCLUDING CUSTOMER’S CUSTOMERS, AGENTS OR REPRESENTATIVES. SIGNIFY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AGAINST INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AN ESSENTIAL PURPOSE OF THE LIMITED EXCLUSIVE LIABILITIES AND REMEDIES UNDER THE WARRANTY IS ALLOCATION OF RISKS BETWEEN SIGNIFY AND CUSTOMER, WHICH ALLOCATION OF RISKS IS REFLECTED IN THE PRICES.

10. RIGHTS IN SOFTWARE, DOCUMENTATION AND INTELLECTUAL PROPERTY

(a) Subject to Customer’s fulfillment of all obligations under the Agreement and these Terms, the supply of Products including the Provision of Services includes a non-exclusive and non-transferable limited license (without the right to grant sublicenses) to Customer under any intellectual property rights (including patents, utility models, registered and unregistered designs, copyrights, database rights, trademarks, domain names, trade secrets, know-how, semiconductor IC topography rights and all registrations, applications, renewals, extensions, combinations, divisions, continuations or reissues of any of the foregoing, collectively: “IPR”) of Signify, to the limited extent that such IPR is embodied or embedded in the Products or Services purchased, to use or resell the Products (including Documentation) as sold by Signify, and/or, for Services, to use the Services (including Documentation) during the term of the applicable Agreement in accordance with the applicable Services description. No rights to IPR are conferred to Customer or any third party arising out of or in connection with the Products or Services. (b) In respect of any (embedded) software or other applications supplied to Customer, Customer shall not and shall not permit any third party to: (i) copy, reproduce, distribute, modify, adapt, alter, translate, or create derivative works therefrom; (ii) assign, sublicense, lease, rent, loan, transfer, disclose, or otherwise make available such software or other works; (iii) merge or incorporate such software with or into any other software; or (iv) reverse assemble, discompile, deassemble, or otherwise attempt to derive the source code or the algorithmic nature for such software, or to decode, de-crypt or neutralize any security measures in software or remove or circumvent the protection of software, without authorization from Signify except as explicitly allowed under applicable law; (v) perform any action with regard to software in a manner that would require the software, or any derivative work thereof, to be licensed under Open Source Terms, including but not limited to: (a) combining the software or a derivative work thereof with Open Source Software, by means of incorporation or linking or otherwise; or (b) using Open Source Software to create a derive work of the software, where “Open Source Software” means any software that is licensed under open source license terms that require as a condition of use, modification or distribution of a work, to make available the source code or other materials preferred for modification, or (2) the granting of permission for creating derivative works, or (3) the reproduction of certain notices or license terms in derivative works or accompanying documentation, or (4) the granting of a royalty-free license to any party under IPR regarding the work or any work that contains, is combined with, requires or otherwise is based on the work.

(c) Customer acknowledges that third parties may own IPR related to Products or Services. Customer shall reproduce, without any amendments or changes, any proprietary rights legends of Signify or its third party suppliers in any software or Documentation provided by Signify.

(d) Signify will be free to use in any way or form any ideas, suggestions, feedback or recommendations by Customer to Signify regarding Products or Services (“Feedback”), without payment of royalties or other consideration to Customer. Signify will own all IPR in Feedback. Signify is entitled to use, deliverables and creations resulting from the performance of Services for its own publicity or for promotional purposes.

11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

(a) Customer shall promptly notify Signify of any third party claim alleging that any of the Products and/or Services supplied to Customer by Signify infringes any third party IPR. Upon such notice, Signify may at its own option and at its own expense either: (i) procure for Customer the right to continue using such Product and/or Services; or (ii) provide a replacement non-infringing product for such Product of equivalent functionality; or (iii) modify such Product such that it is no longer infringing; or (iv) remedy such Service; or (v) make an appropriate refund or credit of monies paid by Customer for that Product and/or Services.

(b) In the event that a claim referred to under section 11(a) results in any legal proceedings, Customer shall give Signify full authority, at the option and cost of Signify, to settle or conduct the defence of such claim. Customer shall provide Signify with all assistance as Signify may reasonably require in connection with such defence of such claim. Customer shall not enter into any settlement in connection with any such claim, nor incur any costs or expenses for the account of Signify without the prior consent of Signify.

(c) Subject to the provisions of sections 11 and 12, Signify will reimburse Customer in respect of any final award of damages by a court of competent jurisdiction holding that Products and/or Services as supplied by Signify under an Agreement directly infringe any third party IPR, provided that the infringement is in defending any suit or proceeding for such infringement, provided that Signify gives Customer prompt notice in writing of any such suit or proceeding for infringement and so requested, full authority to conduct the defence thereof.

(d) Notwithstanding anything to the contrary provided in the Agreement, Signify will not be liable for, and the obligations of Signify set out in this section 11 will not apply to: (i) any claim of infringement of third party IPR resulting from compliance with Customer’s design, drawings, specifications or any work that contains, is combined with, modified or adapted to the use by Customer of the Products and/or Service as supplied by Signify under the Agreement.

(e) With regard to any claim of infringement covered by section 11(d), Customer shall fully indemnify Signify against any award of damages for any such infringement and shall reimburse all costs incurred in defending any suit or proceeding for such infringement, provided that Signify gives Customer prompt notice in writing of any such suit or proceeding for infringement and so requested, full authority to conduct the defence thereof.

(f) In the event that Signify receives notice claiming infringement of third party IPR in relation to any Products and/or Services supplied or to be supplied under an Agreement, Signify may, in order to avoid the invalidity, terminate the Agreement, suspend or discontinue the supply or performance to Customer of the Products and/or Services or parts of such supply or service and Signify will not be liable to Customer by virtue of such termination, suspension or discontinuation.

(g) Subject to the exclusions and limitations set forth in section 12, the foregoing states the entire liability of Signify for infringement of third party IPR in connection with the supply of Products and/or Services.

12. LIMITATION OF LIABILITY

(a) The liability of SIGNIFY and its affiliates for all claims of any kind arising from or related to the provision of Products or Services to Customer, or otherwise under an agreement, including any indemnities, penalties or liquidated damage (“CLAIMS”), will be limited to the maximum aggregate total unpaid price (“CAP”) of (i) twenty percent (20%) of the total price paid by the CUSTOMER for PRODUCTS AND/OR SERVICES TO WHICH SUCH CLAIMS RELATE, or (ii) EUR 2,000,000, whichever is lower. FOR SERVICES THAT ARE PERFORMED ON THE BASIS OF SPECIFIED PHASES, TIME PERIODS OR MILESTONES (“MILESTONES”) AS MAY BE SPECIFIED IN AN AGREEMENT, the LIABILITY CAP WILL FURTHER BE LIMITED TO TWENTY PERCENT (20%) OF THE TOTAL REVENUE PER EACH SUCH MILESTONE FOR ALL CLAIMS ARISING FROM OR RELATED TO SUCH MILESTONE.

(b) Signify will not under any circumstances be liable for any lost profits, lost savings, loss of data, loss of reputation, loss of goodwill, indirect, incidental, punitive or special consequential damages, whether or not such damages are based on tort, warranty, contract or otherwise – even if Signify has been advised, or is aware, of the possibility of such damages.

(c) In order to be entitled to make a valid Claim, Customer must notify Signify of any such Claim within thirty (30) days of the date of the event giving rise to the Claim, and any lawsuit relating to a Claim must be filed within one (1) year of the date of such notification. Claims that are not brought or filed in accordance with the preceding sentence will be null and void.

(d) The limitations and exclusions of liability will apply only to the extent permitted by applicable mandatory law.

13. CONFIDENTIALITY

Customer shall maintain any technical, commercial and financial information, including any Offer and (pricing) terms, received or disclosed to Customer by Signify, and any Feedback, confidential and shall not disclose such information or use such information for any purpose other than as agreed by the Parties and in relation to the Offer and/or the Agreement.

14. EXPORT/IMPORT CONTROLS

(a) Certain transactions of Signify may be subject to export or import controls laws and regulations that prohibit or restrict the (re)export or transfer of certain items to countries, entities or individuals, as such laws and regulations of the UN, EU and US (“Export Regulations”). The (re)export or transfer of Products and/or Services, as well as technical assistance, training, investments, financing, financial assistance, brokering and licensing of technology, are subject in all respects to the applicable Export Regulations and to the jurisdiction of the relevant authorities responsible for Export Regulations. If any such (re)export or transfer requires an export or import license, or is otherwise prohibited or restricted under Export Regulations, Signify may, in its sole discretion, suspend its obligations to Customer until such license is granted or for the duration of any restrictions or prohibitions, or terminate (the relevant part of) the Agreement without incurring any liability.

(b) Customer shall impose all export control restrictions to any third party if the Products and/or Services are such as are subject to export or import controls laws and regulations.
TERMS AND CONDITIONS FOR SALE OF PRODUCTS AND SERVICES – SIGNIFY LANKA (PRIVATE) LIMITED

Services are (re)exported or transferred to third parties. At the request of Signify and if required by applicable Export Regulations, Customer shall inform Signify on any (re)export or transfer of the Products in order to comply with Export Regulations and any other regulatory responsibilities governing the sale of the Products, including requirements on the traceability of Products that may apply to Signify. Customer shall not provide any statement or certification in support of restrictive trade actions or boycotts.

15. ASSIGNMENT
(a) Customer may not assign an Agreement, or any of its rights or obligations thereunder, without the prior consent of Signify.
(b) In the absence of a prior assignment, sell, novate or subcontract in part or in whole its obligations and rights (including receivables) under any Agreement to any of its affiliates or any third party without the prior consent of Customer – and if such consent would be required under applicable law, such consent is herewith provided –, in which event Customer shall cooperate with Signify’s efforts, including providing relevant information, executing documents and making payments to accounts or third parties as notified by Signify.

16. COMPLIANCE WITH LAWS-ANTI-BRIBERY
(a) Customer shall at all times comply and shall take all actions reasonably necessary to ensure that its business partners shall comply, with all applicable local and international laws and regulations, including on anti-bribery and anti-corruption and the Export Regulations. Accordingly, Customer shall conduct its business honestly and not engage in any act of bribery or corruption.
(b) Should Customer receive any indications about a breach of the obligation under (a) Customer shall cooperate and provide Signify with all information required to allow Signify to verify such indications, and if founded, section 18 will apply.

17. HEALTH AND SAFETY
(a) Customer shall comply with all applicable legislation, rules and/or regulations on the health and safety of workers and/or employees, as well as health and safety of the public in the vicinity.
(b) Customer shall provide and shall procure that its employees, agents, contractors or subcontractors provide safe work surroundings for Personnel and other representatives and shall take those measures prescribed by law and any other measures necessary for the prevention of accidents at the site to ensure the health and safety of Personnel at the site. Customer shall timely inform Personnel of required safety precautions and advise Signify of all applicable site-specific health, safety, security and environmental requirements and procedures. Signify has the right, but not the obligation, to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the site.
(c) Customer shall ensure that no hazardous materials are present at the site. If hazardous materials are present, Customer shall and shall procure that its employees, agents, contractors or subcontractors handle these properly and if applicable, arrange for the appropriate removal and disposal thereof at the expense of Customer. If, in the reasonable opinion of Signify, the health, safety, or security of Personnel or the site is or may be, impaired by security risks, terrorist acts or threats thereof, customer shall report to Signify immediately. Customer shall at its own expense and/or expense of the Personnel work with Signify to eliminate hazardous materials, or unsafe working conditions. Signify may, in addition to other rights or remedies available to it, evacuate some or all Personnel from the site (with the reasonable assistance of Customer), suspend performance of all or any part of an Agreement, and/or remotely perform or supervise Services (if possible) with no further liability to Customer.
(d) Conditions at a site that differ materially from those disclosed by Customer, or previously unknown physical conditions at site that differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement, will be deemed a Variation.

18. BREACH; SUSPENSION; TERMINATION
(a) In the event of a breach by Customer of any of the provisions of the Agreement or these Terms, including any failure to pay any amount as and when due; or (b) in the reasonable opinion of Signify, the financial position of the Customer (or a material change thereof) is likely to affect Customer’s ability to perform its obligations under the Agreement; or (iii) any proceedings in insolvency, bankruptcy (including reorganization), liquidation or winding up are instituted by or against Customer, whether filed or instituted by Customer voluntarily or involuntarily, a trustee or receiver is appointed over Customer, or any assignment is made for the benefit of creditors of Customer; or (iv) Customer ceases, or threatens to cease, to carry on business, or (v) the control over or ownership of Customer changes, then Signify may declare all amounts outstanding by Customer immediately due and payable and may set off any amount that Signify (or any of its affiliates) owes to Customer under any agreement including any advance payments or deposits made by Customer, against amounts due pursuant to section 18(b). In addition, Signify may in its sole discretion by notice to Customer with immediate effect suspend or cancel any performance due from Signify (including production, delivery, installation and commissioning of Products, obligations under warranty and performance of Services) or terminate the Agreement or any part thereof, without any liability, and/or suspend or cancel any credit terms offered to Customer. Signify may only use the right to terminate an Agreement pursuant to this section if, in respect of an event under (i) above that is capable of being remedied, Customer fails to remedy the breach within fourteen (14) days, or in respect of an event under (ii), Customer fails to provide Signify with a bank guarantee or other security to the satisfaction of Signify within fourteen (14) days.
(b) Customer shall indemnify, defend and hold harmless Signify and its affiliates, and its officers, directors, agents, employees, successors, and assigns from and against, all losses (including loss of profits or turnover), liabilities, costs (including legal costs and costs incurred in relation to unfurnished products) and expenses arising out of or in connection with any of the following events: (i) a breach by Customer of any of the provisions or obligations of the Agreement or these Terms, or the occurrence of any of the events set out in Section 18(a); (ii) any claim by third parties for any loss, damage or injury or death caused or alleged to be caused by the negligent use, application, or installation of Products, or caused by any modification of Product or integration of Product into other products not authorized by Signify, by Customer or its contractors, agents, affiliates or customers to whom it sold Product; or (iii) non-compliance by Customer with section 7(b), in which event costs will include the full replacement costs of products, systems or other equipment.
(c) Upon (early) termination or expiration of an Agreement, (i) all rights and licenses granted to Customer under that Agreement will immediately cease; (ii) Customer shall return, delete (including from all hard disks and memory) or destroy (and a duly appointed officer shall certify to such destruction) all information disclosed under section 13, including software not embedded in Products, and all copies thereof; (iii) return to Signify, at Customer’s expense, any Products of which (legal) title has not passed to Customer (in accordance with section 7) and any other products, systems or equipment supplied and/or used by Signify in the performance of the Services; and (iv) all reasonable costs and expenses incurred by Signify (including a reasonable profit) for any activities related to work performed by Signify prior to such termination will be considered due, payable and non-refundable.
(d) In the event of a suspension that lasts for more than two (2) months, the provisions of section 18(c)(iv) will also be applicable to any activities related to work performed by or for Signify prior to such suspension.
(e) The rights of Signify pursuant to this section 18 will be in addition to any other rights and remedies which may arise by law or in equity. In the event of termination of an Agreement, the terms and conditions destined to survive such termination or expiration will so survive. Termination will not affect the rights of the Parties accrued up to the date of termination.

19. GOVERNING LAW AND FORUM
(a) The laws of Sri Lanka govern all Agreements, Offers and these Terms, without regard to conflict of laws principles.
(b) Any dispute or proceeding arising out of or in connection with an Agreement, an Offer or these Terms that cannot be settled through consultation in good faith within thirty (30) days after notice from either Party that a dispute exists shall be referred to and finally resolved by arbitration in New Delhi in accordance with the Arbitration Rules of the Mumbai Centre for International Arbitration (“MCIA Rules”), which rules are deemed to be incorporated by reference in this clause. The parties agree that any arbitration commenced pursuant to this clause shall be conducted in accordance with the Expedited Procedure set out in Rule 12.3 of the MCIA Rules. The seat of the arbitration shall be New Delhi. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English. The law governing this arbitration agreement shall be Sri Lanka Laws. The United Nations Convention on Contracts for the International Sale of Goods will not apply.
(c) Nothing in this section 19 will be construed or interpreted as a limitation on either Party’s right under applicable law to seek injunctive or other equitable relief, to take any action to safeguard its possibility to have recourse on the other Party or to bring action or proceedings in relation to any failure to pay any amount as and when due.

20. PRIVACY AND USE OF DATA
(a) Each Party shall comply with all applicable data protection laws. Unless agreed otherwise by the Parties, Signify (or its subcontractors) will not process information relating to any identifiable or identifiable natural persons ("Personal Data") for or on Customer’s behalf. In the event that Signify processes Personal Data as part of its own legitimate business purposes, it will do so in accordance with the "Signify Privacy Notice for Customers, Consumers and Other Business Persons" which is available on http://www.signify.com/global/privacy under the “Legal information” section.
(b) Customer acknowledges and agrees that Signify and its affiliated companies (or their respective subcontractors) may collect information and data generated from Products and Services (including any third party product, service or system provided in conjunction with the Product and/or Service) for the purposes set out in the "Signify Privacy Notice for Customers, Consumers and Other Business Persons" which is available on http://www.signify.com/global/privacy for the "Legal information" section.

21. MISCELLANEOUS
(a) The invalidity or unenforceability of any provision of these Terms or an Agreement will not affect the validity or enforceability of any other provision thereof, all of which will remain in full force and effect. In the event of such finding of invalidity or unenforceability, the Parties shall endeavor to substitute the invalid or unenforceable provision(s) by such effective provision(s) as will most closely correspond with the original intention of the provision(s) so voided. At reasonable notice, Customer shall assist Signify in verifying Customer’s compliance with the Agreement.
(b) Any right of Signify set out in these Terms will be without prejudice to any rights or remedies Signify may have under the Agreement or at law or in equity. Customer acknowledges that Signify, N.V. and any of its affiliates are intended to be third-party beneficiaries for purposes of all benefits under, and may enforce the provisions of the Agreement, including these Terms, where applicable. The failure or the delay of either Party to enforce any provision of these Terms or an Agreement will not constitute a waiver of such provision or a waiver to enforce it.
(c) The terms of an Agreement (including these Terms and any other terms and conditions forming part thereof) state the entire understanding and agreement between the Parties as to the sale of Products and performance of Services under that Agreement and will supersede all prior promises, agreements, representations, undertakings or implications whether made orally or in writing between Signify and Customer with respect to the subject thereof. The Parties expressly acknowledge that, in entering into an Agreement, no reliance has been placed on any representations which have not been incorporated as part of that Agreement. No variation to an Agreement will be binding upon either Party unless made in writing and signed by an authorized representative of each of the Parties.
(d) Prices and terms are subject to correction for typographical or clerical errors.

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