

These Terms and Conditions (“Terms”) govern all Customer orders and purchases of SENSEMETRICS, Inc. (“Company”) Products and Services. Company provides products and Services pursuant only to Company-issued Quotes. By accepting a Quote in accordance with Section 2 below, Customer agrees to be bound by these Terms. These Terms are incorporated into each accepted Quote. Capitalized terms are defined below.

**1. Quote.** All Customer orders, in whatever form, are subject to the issuance and acceptance of a Company prepared Quote. No terms or conditions submitted by either party that are in addition to, different from, or inconsistent with those contained in (a) a Company issued Quote, and (b) these Terms, shall be binding on Company. All prices and charges contained in Quotes are in United States dollars (USD) unless otherwise indicated.

**2. Quote Acceptance.** Each Quote will be deemed accepted by Customer **upon the first of the following to occur**: (a) Customer provides Company with a purchase order that references a valid Quote number, (b) Customer signs and accepts the Quote without modification, or (c) Customer provides Company with an email or writing that references and accepts the Quote without modification. Unless stated otherwise, each Quote is valid for ninety (90) days from the date of issuance. Company reserves the right to revoke or withdraw the Quote before Customer acceptance. Any Customer added notations or modifications to the Quote shall constitute a rejection. If provided by Company in the Quote, estimated delivery times are valid only for a 30-day acceptance period. If Customer does not accept the Quote within this period, then delivery times are subject to modification or change.

**3. Quote Exclusions.** Company shall not be bound by Customer issued purchase orders, Customer’s printed or published terms and conditions, or similar documents. Notwithstanding anything to the contrary contained therein, no terms of any Customer purchase order, Customer terms and conditions, or similar document shall modify, alter, supplement, or amend these Terms. Company provides products and services pursuant only to these Terms.

**4. Time of Delivery.** If an estimated date of delivery has been requested and is stated in the Quote, Company will use commercially reasonable efforts to deliver the products or Services within the estimated time. These are estimates and not guarantees. Factors beyond Company’s control, including but not limited to the pandemic, may delay delivery. Company shall not be liable to Customer for costs, fees, penalties, liabilities, losses, interest, or damages of any kind arising from or relating to Company’s failure to deliver on or before the estimated delivery date. If Customer requires a firm delivery date and must meet strict deadlines, Customer must provide Company with notice so that any such requirement may be considered by Company and, in Company’s discretion, specifically incorporated into the Quote as a separately-stated line item.

**5. Shipping and Delivery.** Unless specified otherwise in the Quote, delivery shall be made Ex Works (EXW) (Incoterms 2010) at Company’s shipping point: 3858 Walnut Street Denver, CO 80205. Customer is responsible for transportation, shipping, and/or carrier insurance. If not specified in the Quote or if Customer does not arrange for transportation or shipping, Company may in its discretion choose a commercially reasonable method of shipping, transportation, or carrier service at Customer’s sole expense. In all cases, Customer is responsible for all costs and expenses involved in the shipment and delivery of products (including but not limited to loading, freight, shipping, insurance, customs, forwarding, and handling charges). While Company attempts to deliver products in a single shipment, this is not always possible; therefore, Company may make partial deliveries.

**6. Title Transfer and Risk of Loss.** Title to products and risk of loss or damage will pass to Customer when the carrier takes possession of the products. Before transfer, Company has inspected and/or tested the Company Products and verified they are in good working condition. All products are packaged in a commercially reasonable manner consistent with industry standards. Despite this, damage products can occur during shipping or transport.

Customer is responsible for inspecting packages for such damage or loss before signing for or accepting any shipment. Customer should not accept any shipment that has apparent damage until the carrier notes and acknowledges such damage in writing. Customer should keep original packing materials until the products have been fully examined. Customer is responsible for filing all claims for damages directly with the carrier. Customer's failure to follow these procedures shall relieve the Company of all liability for damage or loss after title has passed, including warranty claims for such damaged products.

**7. Taxes and Surcharges.** Unless stated in the Quote, Company has not paid and is not responsible for any federal, state, or local excise, sales, use, withholding, value added, occupational or other taxes, surcharges, import or export duties, or other governmental fees (collectively, "Taxes"). Unless Customer provides Company with an appropriate exemption certificate, Company may include the sales tax it is required to collect in the Quote. All other Taxes are Customer's responsibility. If Company is required to pay any Taxes that are Customer's responsibility pursuant to this Section 7, Company will invoice Customer for the Taxes and Customer agrees to pay the invoice within thirty (30) days after receipt in accordance with these Terms. If Customer is required to make any withholdings from any sum payable to Company per the Quote, then the sum payable by Customer shall be increased to the extent necessary to ensure Company receives and retains a net amount equal to the amount Company would have received and retained in the absence of such required withholding.

### **8. Payment Terms.**

(a) **Terms.** Payment terms are specified in the Quote; any payment terms not so specified are NET30 from the date of Company Product delivery. All time payment terms (e.g., "NET30") stated in Quotes begin to run on the date of Company Product delivery (not from the date of invoice). All Software subscriptions activate on the date of Company Product delivery and will be invoiced accordingly.

(b) **Late Charges.** If Company does not receive timely payment in accordance with the Quote and/or these Terms, then additional late charges shall apply as follows:

- NET Terms + 30 days = +5% of outstanding invoice
- NET Terms + 60 days = +10% of outstanding invoice
- NET Terms + 90 days = +15% of outstanding invoice
- NET Terms + 120 days = +20% of outstanding invoice

(c) **Partial Payments.** If Company accepts any partial payment(s) in lieu of the entire amount due, this acceptance shall not constitute a waiver of any kind, and shall not be construed as an accord or satisfaction on the full amount due, including applicable late charges.

(d) **No Right of Set Off.** All Customer payments to Company shall be made free and clear of, and without any deductions for or on account of, any set-off, deduction, recoupment, hold back, or counterclaim, except for tax withholding permitted, if any, by Section 7 above.

(e) **Payment Forms; Bankcard Surcharge.** Company accepts payment by check, ACH, or wire transfer. If paying by bankcard (including but not limited to Mastercard, Visa, and/or American Express), there is an additional charge of 3.5% on the invoice total. Company may in its discretion reject bankcard payments which do not include this surcharge, or accept such payment with a reservation of rights. In this event, Customer agrees to pay the surcharge upon invoice and demand.

**9. Additional Terms for Exports.** Export shipments will be made only after Customer has provided Company with a certified and irrevocable letter of credit allowing shipment from any U.S. port, advance payment, or by special terms arranged with Company in writing. Customer shall pay all fees and costs charged by banks or finance companies related to procuring or drawing against letters of credit or other Customer related services, unless Company agrees otherwise in writing. Prices and charges for all export shipments are payable in U.S. Dollars. Additionally, Customer will be assessed (a) a letter of credit fee for use of letter of credit, (b) a legalization fee if Customer's order requires legalization, and (c) all charges for any pre-shipment inspection or third-party inspection if Customer's order requires or requests such an inspection, whether at point of origin or point of delivery. The charges set forth in this Section 9 have not been included in the Quote. Company will separately invoice charges and Customer agrees to pay such charges upon receipt in accordance with these Terms. The various activities associated with export charges, including without limitation inspection requirements, may delay shipments and Company Product deliveries. Company shall not be liable to Customer for any such delays.

**10. Notice of Errors/Shortages.** Before transfer to the carrier, Company has inspected the contents to ensure that no products have been omitted from a shipment. Despite this, errors or shortages can sometimes occur. Upon receipt of a shipment, Customer shall (a) open and examine all packages, and (b) timely notify Company of errors or shortages in the shipment. COMPANY SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR ERRORS OR SHORTAGES DISCOVERED OR REPORTED BY CUSTOMER MORE THAN TEN (10) DAYS AFTER DELIVERY OF ANY SHIPMENT FROM THE CARRIER.

### **11. Return of Company Products.**

(a) **Returns.** If Company specially designs, customizes, or adapts Company Products pursuant to Customer's specifications or requirements, such Company Products may not be returned for credit, refund, or exchange. For standard Company Products, Customer may return the items only if they are (a) unused, and (b) undamaged. All shipping fees and handling charges, including but not limited to insurance, for returned Company Products shall be prepaid by Customer. Company will repay such fees and charges to Customer only if it determines, in its discretion, that the Company Products are eligible for return or are warranted pursuant to Section 12.

(b) **Limitations.** Company will not accept any standard Company Products returned for credit, refund, or exchange after forty-five (45) days from date of delivery to Customer. Company reserves the absolute right to determine whether returned Company Products, if used and/or damaged, can be refurbished and resold; should Company determine, in its sole discretion, that returned Company Products cannot be refurbished and resold, then Company will return the Company Products at Customer's sole expense. In this event, Customer agrees to pay the return charges upon invoice and demand.

(c) **Prior Authorization for Returns.** Customer shall not return any Product for any reason without first obtaining prior written authorization from Company. All returned Company Products must include a Returned Materials Authorization ("RMA") number issued by Company which is visible on the outside of the shipping container. Notwithstanding such authorization, Company reserves the right to inspect returned Company Products at the point of delivery and refuse, in its discretion, to accept returned Company Products.

## **12. WARRANTIES**

**12.1 Limited Warranty – Company Products.** Company warrants to Customer that Company Products will be

free from defects in design, materials, or manufacture that cause the Company Products to not materially conform to their published technical specifications for one (1) year from the date of original shipment to Customer.

**12.2 Warranty Returns (RMA Required).** If Customer believes, after reasonable investigation, that a Company Product failure is covered by the warranty in Section 12.1, Customer should contact Company's warranty support center by telephone during business hours. Customer must provide sufficient information to enable Company support personnel to determine the cause of the failure. If a Company Product is to be returned to Company, Customer will, at its expense, return the Company Product in accordance with Company's instructions, including first obtaining a Return Material Authorization number ("RMA"). No return will be accepted without an RMA.

**12.3 Warranty Determination.** Upon receipt of a Company Product returned for warranty evaluation, the Company shall promptly inspect and take the following action:

(a) **Non-Conformance.** If Company determines in its reasonable discretion that a Company Product failure does not conform to (i.e., is covered by) the warranty in Section 12.1, Company will, at its option, either (a) repair the Company Product, or (b) replace the Company Product, or (c) issue a credit for the actual amount paid by Customer for the Company Product upon return of the Company Product.

(b) **Conformance.** If Company determines in its reasonable discretion that a returned Company Product conforms to (i.e., is not covered by) the warranty in Section 12.1, Company will invoice Customer for, and Customer will pay for, Company's costs to return the Company Product to Customer.

**12.4 Extended Warranty.** If Customer has purchased a warranty extension for a Company Product, the one year limited warranty period shall be extended for the period specified in an accepted Quote. All warranty extensions must be purchased no later than thirty (30) days from the date of delivery to carrier, and no warranty extension shall exceed two years.

**12.5 Warranty Exclusions.** The warranty and remedies set forth in this Section 12 will not apply to (a) any samples, prototypes, beta designations, or pre-production Company Products; (b) any customizations, tampering, alterations or modifications of, or additions to, the Company Products made by parties other than Company; (c) use of the Company Products in a manner for which they were not designed or other than as specified in the applicable technical specifications; (d) the combination, use, or interconnection of the Company Products with other products not supplied and/or not approved by Company; (e) abnormal usage or misuse of the Company Products; or (f) Customer's or a third party's negligence (including without limitation failure to service the Company Product in accordance with Documentation). If Company determines that any warranty claim reported by Customer falls within any of the foregoing exceptions, Customer agrees to pay Company for its warranty services at Company's time and materials rates then in effect.

**12.6 Labor and Shipping Costs.** Customer shall be responsible for and perform all labor required in connection with the warranty services described in this Section 12 (excluding labor associated with the repair or replacement of Company Products at Company facilities), including labor required to inspect and ship Company Products to Company. Customer shall be responsible for and pay all freight, insurance, import/export and other shipping-related charges to Company for all warranty repairs. Company Products returned to Company by Customer must be shipped D.D.P. (Incoterms 2000) to Company's facility. Company shall be responsible for and pay all freight, insurance, import/export and other shipping-related charges to return repaired Company Products to Customer,

provided that if Company determines that any Company Product returned for warranty repair is not defective or subject to exclusion, then Customer shall pay such charges.

**12.7 Limited Warranty – Services.** Company warrants that any Services will be performed in a good and workmanlike manner consistent with applicable industry standards and the Quote specifications. This limited warranty will be in effect for a period of thirty (30) days from the completion of Services specified by the Quote. As Customer's sole and exclusive remedy and Company's entire liability for any breach of this limited warranty for Services, Company will, at its sole option and expense, promptly re-perform any Services that fail to meet this warranty or refund to Customer the fees paid for the non-conforming Services.

**12.8 Third-Party Software and Products.** If Company provides Customer with products, software, and/or supplies that bear the logo or copyright of another company with warranty and/or support terms from the other company, such other company's warranty and support terms apply instead of those in these Terms, and, unless specifically agreed in writing by Company, Company provides no warranty or support for those products, software, and/or supplies. Company will provide reasonable assistance in passing-through third-party warranties to Customer.

**12.9 Exclusive Remedy.** This Section 12 sets forth Customer's exclusive remedy, and Company's entire liability in contract, tort, or otherwise, for any breach of warranty for any Company Product or Service. Customer's warranty rights and remedies set forth in this Section 12 are exclusive and in lieu of all other rights and remedies (except to the extent that applicable law prohibits agreements to disclaim warranties or limit liabilities).

**12.10 Disclaimer of Warranties.** EXCEPT AS SET FORTH IN THIS SECTION 12, COMPANY PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND COMPANY MAKES NO REPRESENTATIONS AND PROVIDES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AS TO THE DESIGN OR QUALITY OF WORKMANSHIP OF COMPANY PRODUCTS OR THE RESULTS FROM THE USE OF COMPANY PRODUCTS OR SERVICES. EXCEPT FOR PRODUCTS MANUFACTURED BY COMPANY, COMPANY DOES NOT PROVIDE ANY WARRANTY OF NON-INFRINGEMENT.

**13. Export Restrictions.** Customer acknowledges that Company Products and Software, including technical information supplied by Company or contained in Documentation (collectively, "Items"), may be subject to export controls of the U.S. government. The export controls may include those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the U.S. and their re-export from and to other countries. Customer shall comply with EAR and all other applicable laws, regulations, treaties, and agreements relating to the export, re-export, and import of any Item. Customer shall not, without first obtaining the required license from the appropriate U.S. government agency, export or re-export any Item, or export, re-export, distribute, or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Customer shall cooperate fully with Company in any audit or inspection related to applicable export or import control laws or regulations, and shall indemnify, defend, and hold Company harmless from, or in connection with, any violation of this Section by Customer or its employees, consultants, agents, appointees, end users and/or customers.

**14. Use of Company Products.** Customer acknowledges and agrees that the Company Products must be used in accordance with all instructions, policies, manuals, and guides ("**Documentation**") provided by Company and, where stated in the Documentation, Company Products must be installed, operated, and/or serviced only by

personnel who have received the appropriate training. Any Company Products that are to be connected to an electricity supply or network must be operated only by appropriately trained and qualified personnel. Customer agrees to indemnify, defend, and hold Company harmless from any claims or liability arising from or relating to Customer's (including but not limited to Customer's employees, agents, consultants, and contractors) use of Company Products in a manner which violates this Section 14.

**15. Documentation.** Company will furnish Customer with Documentation for the operation, support, and servicing of Company Products. Customer may use the Documentation only for internal business purposes in accordance with these Terms. Customer shall not distribute, modify or make derivative works of the Documentation. The Documentation shall be the confidential information of Company, whether or not marked as "confidential" or "proprietary." Customer may not disclose Documentation to any third party without Company's prior written consent.

**16. Use of Platform.** Customers with access to Company accounts, networks, servers, systems, and API agree to use the Platform in accordance with the Platform Terms of Use and compliance with all applicable laws, regulations, and third-party licenses. If there is any conflict between them, these Terms shall have priority over the Platform Terms of Use. Customer agrees to access the Platform using only those methods and interfaces approved by Company. Customer shall not modify or otherwise interfere with the Platform. When Customer uploads, submits, stores, sends or receives data to or through the Platform, Customer grants Company a license to host, store, modify, and process the data subject to Company's Privacy and Data Use Policy. Company is constantly changing and improving the Platform and may add or remove functionalities or features, and may suspend or stop a feature or component altogether. If Company discontinues or interrupts a Platform feature or component, Company will attempt to give advance notice so that Customer may extract and preserve Customer data. Company shall not, however, be responsible or liable for content or data loss due to Customer use of the Platform.

**17. Platform Access & Software Subscriptions.** During the term of any subscription period set forth in an accepted Quote, Customer may access and use Company's Platform, including the Software used to provide Platform functionality. If Customer has purchased access to additional Software services or modules, the subscription period shall be as provided in the accepted Quote. Subscription access to the Platform and/or Software does not convey title or any Intellectual Property rights, all of which are retained by Company. The Platform and some Software may contain third-party software; while the subscription access that Company provides allows Customer to use this software, no other rights are implied or conveyed. Customer use of third-party software must comply with all applicable licenses. Some Software may be offered under an open source license. There may be provisions in the open source license that limit or override the terms of Company's subscription services. Company reserves the right to restrict, suspend, or terminate Platform access or Software subscriptions due to late payment.

**18. Intellectual Property.** The Company Products, Software, Platform, and associated Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive and sole property of Company. All rights in and to the Company Products, Software, Platform and associated Documentation are reserved by Company. Customer agrees that Company is and shall remain the sole and exclusive owner of all right, title and interest in and to the patent rights, copyrights, trade secret rights, design rights, and other Intellectual Property rights (whether registered, registrable or otherwise) related to the Company Products, Platform, Software, Technical Information, and associated Documentation.

**19. Equipment Lease Terms.** The terms in this Section 19 apply only if Customer is leasing hardware or equipment from Company pursuant to an accepted Quote.

(a) **Title and Use.** Except as expressly forth in these Terms, Company retains all rights and title to the Company Products and other equipment leased to Customer (collectively, the “**Leased Products**”). Customer and Company agree that the lease of all Leased Products constitutes a “true lease” of the Leased Products and not a sale. Customer shall only use the Leased Products in compliance with these Terms, the Documentation, and all applicable laws, rules and regulations. Customer shall not make any alterations, additions, or improvements to the Leased Products. Customer shall keep the Leased Products free and clear of all levies, liens, and encumbrances. Customer shall not permit any act or omission that may negatively or adversely affect Company’s rights or title to the Leased Products. Customer shall not remove any product identification or notices of any proprietary restrictions from any of the Leased Products. Customer shall promptly pay all taxes, fees, licenses, and governmental charges, together with any penalties or interest thereon, relating to the lease of the Leased Products.

(b) **Term and Termination.** The initial term for all Leased Products shall be as specified in the Quote, commencing on the date of delivery to Customer (the “**Commencement Date**”).

(i) Unless Customer provides Company with written notice of intent not to renew at least seven (7) days before the expiration of any lease Term, then the lease shall successively renew for the same period of time as the initial term set forth in the original Quote (each, a “**Renewal Term**”). Collectively, the Initial Term and all Renewal Term(s) shall be referred to in this Section 19 as the “Term.”

(ii) Customer may terminate any lease Term by providing Company with written notice of intent not to renew at least seven (7) days before the expiration of the then-current Term. Company may terminate any lease Term: (i) by providing Customer with written notice of termination no less than ten (10) days before the expiration of any Term, (ii) at any time, with ten (10) days written notice and opportunity to cure, if Customer fails to make any payment when due, or (iii) if Customer breaches any term or condition herein that is not cured within ten (10) days after receiving notice from Company.

(c) **Replacements.** During the Term, if any Leased Product ceases to operate due to ordinary wear and tear (as reasonably determined by Company), Company will in its discretion repair or replace such Leased Product at no cost to Customer. If any Leased Product ceases to operate for any reason other than (i) defects in design, materials, or manufacture that cause the Company Products to not materially conform to their published technical specifications, or (ii) ordinary wear and tear (as reasonably determined by Company), then Customer shall pay Company all costs to replace such Leased Product. If a Leased Product ceases to operate, Customer shall notify Company within thirty (30) days after such failure and shall work with Company to replace such Leased Product and determine the cause of its failure.

(d) **Return upon Termination or Expiration.** No later than thirty (30) days following the termination or expiration of the applicable Term, Customer shall at its sole expense return the Leased Products in good repair (ordinary wear and tear excepted). If Customer fails to return the Leased Products pursuant to the foregoing, or if the Leased Products are not in good repair when returned to Company (as reasonably determined by Company), then Customer shall pay to Company the replacement cost of such delayed or damaged Leased Products within thirty (30) days after invoice.

(e) **Maintenance and Risk of Loss.** Customer agrees to maintain the Leased Products in good working condition. Customer shall bear the entire risk of loss, theft, damage, or destruction (“**Risk of Loss**”) of the Leased Products while in Customer’s possession. If any Leased Product is damaged, Customer shall provide Company with immediate written notice and cooperate with Company to repair such Leased Product at Customer’s expense.

During the Term, Customer shall allow Company to inspect the Leased Products during Customer's normal business hours, provided that Company provides prior reasonable notice of such inspection.

(f) **Insurance.** Company shall have no obligation to maintain insurance for the Leased Products. Customer shall be responsible for insuring Leased Products against any Risk of Loss.

**20. Force Majeure.** Company shall not be liable for failure to perform or for delay in performance due to fire, flood, strike, pandemic, other labor difficulty, act of God or Nature, act of any governmental authority (including but not limited to national or state emergencies), riot, embargo, fuel or energy shortage, wrecks or delays in transportation, inability to obtain necessary labor, materials, or manufacturing facilities from usual sources, or due to any cause beyond Company's reasonable control. In the event of a delay in performance due to any such cause, the date of delivery or time for completion of performance will be extended by a period of time reasonably necessary to overcome the effect of such delay. If Company reasonably determines that any such delay in performance is likely to extend for a period of ninety (90) days or more, Company has the right to terminate the Quote(s) upon written notice to Customer with no liability or further obligation.

**21. Severability.** If any part or provision of these Terms is declared and determined by any arbiter or court of competent jurisdiction to be illegal or invalid, such declaration and determination shall not affect the validity of the remaining parts, terms or provisions, and the remainder of these Terms shall have full force and effect.

**22. No Third Parties.** These Terms are solely for the benefit of the Company and Customer, and nothing contained herein shall be deemed to be for the benefit of any third party or create any third-party rights.

**23. LIMITATION OF LIABILITY.** COMPANY SHALL NOT BE LIABLE UNDER ANY CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE CLAIM OR THEORY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, OR FOR LOSS OF GOODWILL OR BUSINESS PROFITS, LOST REVENUE, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR FOR ANY OTHER EXEMPLARY OR PUNITIVE DAMAGES ARISING FROM THE USE OF COMPANY PRODUCTS, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE RELATING TO PERSONAL INJURY OR PROPERTY DAMAGE, EVEN IF COMPANY HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY FOR DAMAGES, LOSSES, OR LIABILITIES ARISING FROM OR RELATING TO THESE TERMS EXCEED THE AMOUNTS ACTUALLY RECEIVED BY COMPANY FROM CUSTOMER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO THE ALLEGED LIABILITY OR DAMAGES. CUSTOMER ACKNOWLEDGES THAT COMPANY HAS SET ITS PRICES AND AGREED TO SELL COMPANY PRODUCTS OR PROVIDE SERVICES IN RELIANCE ON THE LIMITATIONS OF LIABILITY AND DAMAGES IN THIS SECTION AND THIS FORMS AN ESSENTIAL BASIS OF THE AGREEMENT BETWEEN CUSTOMER AND COMPANY. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY SPECIFIED IN THESE TERMS WILL SURVIVE ANY AGREEMENT TERMINATION AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

**24. Entire Agreement.** These Terms, together with accepted Quote(s), constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all previous proposals, both oral and written, negotiations, representations, commitments, writings, documents, and all other communications between the parties. No changes, modifications, or waivers to the Terms will be effective unless in writing and signed by authorized representatives of both parties.



**25. Governing Law; Dispute Resolution.** These Terms, together with accepted Quote(s), shall be governed exclusively by and construed according to the substantive laws of the State of Delaware, without regard to its conflicts of law principles. Any claim or controversy arising out of or relating to the Terms and Quote(s) shall be submitted for binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”); provided, however, that nothing in this Agreement shall require the arbitration of infringement or misappropriation of Intellectual Property rights. Claims for infringement or misappropriation of Intellectual Property rights shall be subject to the exclusive jurisdiction of the State Courts of Delaware or the Federal District Court of Delaware. Any arbitration arising from or relating to this Agreement shall be conducted by a single AAA arbitrator and take place in San Diego, California or New Castle County, Delaware. The arbitration award shall be reasoned but shall not be appealable, except as provided by applicable Delaware law governing arbitration awards. The arbitration award shall be enforced by the Courts of Delaware, or any other court having jurisdiction over such awards and the enforcement thereof. The parties consent to the jurisdiction of the courts of the United States and/or State of Delaware for arbitration enforcement and injunctive relief purposes. The parties expressly waive any right to object to arbitration and consent to binding arbitration in lieu of suit in any court of law. In any court proceeding, arbitration, appeal, and/or subsequent proceeding(s) to collect an award or enforce a judgment, the prevailing party shall be entitled to expenses incurred in connection therewith, including reasonable attorneys’ fees, costs, and statutory interest.

**26. Privacy and Data Use.** For purposes of this Section 26, “personal information” means information that identifies a particular individual, such as name, postal address, email address or phone number. Company complies with all data privacy laws regarding personal information and treats such information as confidential. Company does not sell, share, or disclose personal information.

(a) **Protection and Storage of Data.** Company is committed to the protection and security of Customer data. However, no security measures are completely impenetrable. Information and data transmitted over the internet, either wirelessly or wired, is vulnerable to interception, corruption, and malicious code. Company shall not be liable for the integrity or security of data which is transmitted over the internet. Company retains Customer information and data for (i) so long as Customer maintains an active account (e.g., Software subscription) and (ii) a period of six (6) months following account termination; thereafter, Company may retain Customer information and data for the period necessary to comply with legal obligations or resolve disputes. Company shall have no obligation to store Customer data for longer than six months following account termination.

(b) **Password Security and Account Access.** Customer is solely responsible for ensuring the strength and maintaining the confidentiality of account and Platform passwords. Customer shall maintain the confidentiality of such passwords and restrict access only to authorized users. Customer shall immediately notify Company of any unauthorized use of passwords or any other breach of Platform security. Company shall have no liability for losses, damages, claims, or disclosures arising from or related to account security, including but not limited to weak passwords, leaked passwords, hacked accounts, compromised data, or stolen information which result from same.

(c) **Collection and Use.** Information that Customer submits to Company, including but not limited to data that is collected by Company Products and uploaded to the Platform or Customer’s enterprise server, is used to deliver the services specified in the Quote. Company uses this information and data to administer, operate, maintain, monitor, and improve Company Products and the Platform. This information and data includes account setup information, network access information, device information, telemetry signals, sensor data, and technical information. Company may use this information and data in the following ways: create and secure Customer accounts, identify Customer personnel as authorized users, deliver services in accordance with the Quote,

administer and update the Company Products, maintain and monitor Customer's use of the Platform, and send administrative e-mail notifications, such as security, or support and maintenance advisories. Company does not sell or disclose Customer information or data to third parties.

(d) **Anonymized Data Use.** When connected to Company Products, Customer sensors and devices generate data that is uploaded to the Platform and enterprise servers. Company collects and receives data that may include log files, array information, sensor modes, settings, durations, error rates, and other usage information. Company uses this data to provide services, troubleshoot bugs, respond to Customer requests, and analyze sensor or device errors. Company may also use this data to improve services or develop products. If Company uses any data for such purposes, it will always anonymize the data. Data that Company may use for analytics or development will be disassociated from Customer. Company's use of aggregated, anonymized, and disassociated information is subject to the restrictions set forth in this Section 26 and is subject to the Company's Privacy Policy.

(e) **International Users.** Company operates worldwide and as a result, the data it receives and collects may cross international borders. Customer's use of Company Products and the Platform shall constitute acknowledgement and agreement that Customer information and data may be processed for the purposes identified Section 26. Customer acknowledges and agrees that information and data may be processed in the country in which it was collected and in other countries, including the United States, where laws regarding processing of personal information or company data may be less stringent than the laws in Customer's country. By providing information and data required for use of Company Products and the Platform, Customer consents to the international transfer of data and use in accordance with Section 26.

(f) **Security Notice Procedure.** If Customer or Company has knowledge of any (i) accidental loss or destruction of, or unauthorized disclosure of or access to personal information or company data; or (ii) data security breach on any of the systems used to receive or store such data, then the knowledgeable party must (iii) expeditiously report such incident to the other party; (iv) mitigate, to the extent practicable, any harmful effect of such disclosure or access; (v) cooperate with the other party in providing any notices to individuals regarding the incident; and (vi) cooperate with any regulatory investigation into the incident, in consultation with the other party.

**27. Notices.** All notices pursuant to these Terms shall be in written English, and shall be deemed given when electronically mailed, sent by facsimile, personally delivered to, or when received by registered mail or commercial courier, at the address of the party to be noticed as set forth in the Quote or such other address as may be notified by Company or Customer.

## DEFINITIONS

"API" means the Company's proprietary application programming interface used to administer and operate Company Products, Software, and the Platform.

"Company Products" means without limitation all proprietary (i.e., first party) products (including Software) that Company develops, manufactures, and/or provides for sale or lease.

"Customer" means the person or legal entity that accepts a Company-issued Quote in accordance with these Terms.

"Documentation" means without limitation the documentation, instructions, manuals, guides, and related information that Company provides to Customer in conjunction with the purchase, installation, use, and servicing of Company

Products, Software, and the Platform.

“Intellectual Property” means all copyrights, trade secrets, patents, patent applications, code, designs, diagrams, schematics, moral rights, contract rights and other proprietary rights as may exist now and/or hereafter come into existence, and all mask work, database, and design rights, whether or not registered or published and all renewals and extensions of the foregoing, regardless of whether such rights arise under the laws of the United States or any other state, country, or jurisdiction.

“Platform” means the Company Products and Software that collectively provide: (a) edge computing and connectivity for devices and sensors, (b) network and sensor management controls, (c) calibration and data processing, (d) programmatic access to data via API, and (e) Company and/or third-party software modules which enable a wide-range of sensor management workflows and analytics tools.

“Services” means the remote and/or on-site product support services that Company provides pursuant to a Quote. Company provides sales and support Services *for products only*. For the avoidance of any doubt, “Services” excludes consulting, design, professional, and/or engineering services of any kind or type.

“Software” means the machine-readable or object code version of the firmware and software in or used to operate and deliver Company Products and the Platform, including without limitation APIs and all updates to such software.

**Date:** June 23, 2020