

These Terms of Use (“Terms”) govern all access to and use of the sensemetrics Platform, a cloud-based IIoT service that includes sensemetrics Software, third-party software, and associated applications. By registering for an account or using the Platform, you agree to comply with and be bound by these Terms. Your use of the Platform is subject to: (1) these Terms, (2) the separate agreement between sensemetrics or its authorized resellers and you or your organization, (3) any third-party license agreement controlling the licensed product or software at issue, and (4) our Privacy Policy located at <https://sensemetrics.com/privacy>. If you and/or your organization has a separate agreement with sensemetrics, the separate agreement shall have priority over these Terms in the event of any conflict or inconsistency. All capitalized terms used herein are defined below.

MODIFICATION OF TERMS

sensemetrics reserves the right to revise these Terms from time to time. We will date and post the most current version of these Terms on our website or in the Platform portal. Any changes will be effective immediately upon posting the revised version of these Terms. If in our sole discretion we deem a revision to these Terms to be material, we will notify you via the Platform and/or by email to the address associated with your account or organization. Your continued use of the Platform after any such revision will constitute acceptance of the modified Terms.

YOUR ACCOUNT AND ACCESS TO THE PLATFORM

You may use the Platform during the subscription term solely in strict compliance with these Terms and all applicable laws or regulations. To obtain access to the Platform, you must establish an account and become a Registered User. When registering with the Platform you must: (i) provide true, accurate, current and complete information as requested by the Platform's registration form (such information being the "Registration Data"); and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You must keep your account and passwords confidential and not authorize any third party to access or use the Platform on your behalf, unless we provide an approved mechanism for such use. sensemetrics will not be liable for any loss or damage arising from any unauthorized use of your account(s).

If a third party such as an employer gave you your account, that organization has rights to your account and may: manage your account, reset your password, or suspend or cancel your account; view your account's usage and profile data, including how and when your account is used; and read or store content in your account. If you are an individual Registered User of the Platform, and the domain of the primary email address associated with your account is owned by an organization and was assigned to you as an employee, contractor or member of such organization, and that organization wishes to establish a commercial relationship with us and add your account to such relationship, then, if you do not change the email address associated with your account, your account may become subject to the commercial relationship between sensemetrics and such organization and controlled by such organization.

ACCEPTABLE USE

You agree that you will: (a) abide by and comply with these Term; (b) comply with all applicable laws, including, without limitation, worldwide data privacy laws, intellectual property laws, export control laws, and regulatory requirements; (c) comply with all terms of use and licenses for third-party software on the Platform; (d) provide accurate information to us and keep it updated; and (e) use the Platform in a professional manner and as authorized by your organization.

Registered Users located or residing in the European Economic Area must not provide or transfer any Personal Data (as defined by GDPR) other than their own, and any Personal Data provided shall be limited to name and business contact information.

You agree not use your account or access to damage, disable, overburden, or impair the Platform (or any network connected to the Platform); resell or redistribute the Platform or any part of it; or use any unauthorized means to modify, reroute, or gain access to the Platform. In addition, you agree that you will not and will not encourage or assist any third party to:

1. modify, alter, tamper with, repair or otherwise create derivative works of any Software;
2. reverse engineer, disassemble or decompile the software used to provide or access the Platform, or attempt to discover or recreate the source code used to provide or access the Platform;
3. use the Platform in any manner or for any purpose other than as expressly permitted by these Terms, the Privacy Policy, any user guides or any other policy, instruction or terms applicable to the Platform ("Policies");
4. sell, lend, rent, resell, lease, sublicense or otherwise transfer any of the rights granted to you with respect to the Platform to any third party;
5. remove, obscure or alter any proprietary rights notice pertaining to the Platform;
6. access or use the Platform in a way intended to avoid incurring applicable fees or exceeding usage limits;
7. use the Platform to engage in any unlawful or fraudulent activity or other similar falsification or manipulation of data;
8. interfere with or disrupt servers or networks used by sensemetrics to provide the Platform or used by others to access the Platform, or violate any third-party regulations, policies or procedures of such servers or networks or harass or interfere with another user's full use and enjoyment of any Software or the Platform;
9. access or attempt to access sensemetrics' other accounts, computer systems or networks not covered by these Terms, through password mining or any other means;
10. cause, in sensemetrics sole discretion, inordinate burden on the Platform or sensemetrics' system resources or capacity;
11. share passwords or other access information or devices or otherwise authorize any third party to access or use the Software or the Platform;
12. violate the intellectual property rights of sensemetrics or third parties;
13. interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Platform;
14. upload invalid data, viruses, worms, or other software agents through the Platform;
15. create a false identity, impersonate another person or otherwise misrepresent who you are or your affiliation with an organization;
16. interfere with the proper working of the Platform or bypass the security measures we may use to prevent or restrict access to the Platform; or
17. use the Platform for purposes or tasks not authorized by sensemetrics, or use the Platform in a manner that is detrimental to sensemetrics or its resellers.

SUSPENSION AND TERMINATION OF USE OF THE PLATFORM

sensemetrics reserves the right to suspend or terminate access to or use of the Platform for: (a) the actual or suspected violation of these Terms; (b) the use of the Platform in a manner that may cause sensemetrics to have legal liability or disrupt others' use of the Platform; (c) the detection of any malicious or other harmful code by you or in your account; (d) scheduled downtime and recurring downtime; (e) use of excessive storage capacity or bandwidth; or (f) unplanned technical problems and outages. If the suspension might be indefinite and/or sensemetrics has elected to terminate access to the Platform, we will use commercially reasonable efforts to notify you through the Platform and/or by email to the email address associated with your account. If your access to the Platform is suspended or terminated, you may no longer have access to the data that is stored with the Platform. For this and related reasons, you should download and save your data on a regular basis.

SUBSCRIPTION TERMINATION AND DATA STORAGE

Your access to the Platform is provided pursuant to a subscription, the term of which is stated in your or your organization's agreement with sensemetrics or its authorized resellers. Any failure to pay for a subscription may result in the suspension or termination of your Platform access. If your access to the Platform is through an authorized reseller, the reseller's failure to pay for subscriptions may result in suspension or termination; in this event, you must contact your reseller and your recourse is limited to the reseller. If your reseller is unresponsive, please contact sensemetrics for assistance.

Before your subscription expires or terminates, you should download and save the data associated with your account or the data that you have stored in the Platform. sensemetrics stores customer data for a period of six (6) months following the expiration or termination of an account. During the six month data storage period, you may access your data upon request by emailing support@sensemetrics.com. While sensemetrics may in its discretion retain data for longer than six months to comply with legal obligations or resolve disputes, sensemetrics has no obligation to store such data for longer than six months following account expiration or termination.

DATA UPLOADING, LICENSE, AND STORAGE

When you upload, submit, store, send, or receive data or content to or through our Platform, you give sensemetrics a limited license to host, store, modify, and process such data so that your data and content works with the Platform. The rights granted in this license are for the limited purpose of operating, promoting, and improving the Platform, subject in all cases to our Privacy Policy and these Terms. sensemetrics is constantly changing and improving the Platform. We may add or remove functionalities or features, and we may suspend or stop a functionality or feature altogether. If we discontinue or interrupt a material feature, we will provide reasonable notice so that you may extract and preserve the data associated with that feature. sensemetrics shall not, however, be responsible or liable for data or content loss due to your use of the Platform. You and/or your organization is solely responsible for backing up your Platform data and storing such data securely.

OUR PROPRIETARY RIGHTS

Except for data that you and/or your organization upload to and store therein, the Platform and its materials, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, and video (the "sensemetrics Materials"), and all intellectual property rights related thereto, are the exclusive property of sensemetrics and its licensors. Nothing in these Terms will be deemed to create a license in or under any such intellectual property rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publish, adapt, edit, or create derivative works from any materials (other than your data) accessible on the Platform. Use of the sensemetrics Materials for any purpose not expressly permitted by these Terms or separate agreement is strictly prohibited.

The sensemetrics Platform, Software, and associated documentation, and all worldwide intellectual property rights therein, are without limitation the exclusive and sole property of sensemetrics. All rights in and to the Platform, Software, and associated documentation are reserved by sensemetrics. sensemetrics is 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 Platform, Software, and associated documentation.

EXPORT RESTRICTIONS

sensemetrics Products, Services, and any related Software and technology, including technical information supplied by sensemetrics or contained in documents (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.

You must comply with EAR and all other applicable laws, regulations, treaties, and agreements relating to the export, re-export, and import of any Item. You will 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. You must cooperate fully with sensemetrics in any official or unofficial audit or inspection related to applicable export or import control laws or regulations.

LIMITATION OF LIABILITY

SENSEMETRICS 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 AND ALL OTHER EXEMPLARY OR PUNITIVE DAMAGES ARISING HEREUNDER OR FROM THE USE OF ITS PLATFORM, SOFTWARE OR PRODUCTS, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE RELATING TO PERSONAL INJURY OR PROPERTY DAMAGE, EVEN IF SENSEMETRICS HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT SHALL SENSEMETRICS' TOTAL AGGREGATE LIABILITY FOR DAMAGES, LOSSES, OR LIABILITIES ARISING FROM OR RELATING TO THESE TERMS EXCEED THE AMOUNTS ACTUALLY RECEIVED BY SENSEMETRICS FROM YOU, YOUR ORGANIZATION, OR RESELLER WITH RESPECT TO THE PRODUCT(S) AND/OR SERVICES GIVING RISE TO THE ALLEGED LIABILITY. YOU AND/OR YOUR ORGANIZATION ACKNOWLEDGE THAT SENSEMETRICS AND ITS AUTHORIZED RESELLERS HAVE SET PRICES AND AGREED TO SELL PRODUCTS AND PROVIDE SERVICES IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND DAMAGES IN THIS SECTION AND THAT THIS SECTION FORMS AN ESSENTIAL BASIS OF THE AGREEMENT BETWEEN US. WE MUTUALLY AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THESE TERMS WILL SURVIVE ANY TERMINATION AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

NO WARRANTY

THE PLATFORM AND SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE PLATFORM AND SOFTWARE ARE AT YOUR OWN RISK. EXCEPT AS MAY BE PROVIDED BY SEPARATE WRITTEN AGREEMENT BETWEEN US, THE PLATFORM AND SOFTWARE ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, SENSEMETRICS AND ITS LICENSORS AND SUPPLIERS DO NOT WARRANT THAT ANY CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE PLATFORM WILL MEET YOUR REQUIREMENTS; THAT THE PLATFORM WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE PLATFORM IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE PLATFORM IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD.

DATA SECURITY

sensemetrics is committed to the protection and security of your 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. sensemetrics shall not be liable for the integrity or security of data which is transmitted over the internet.

You are solely responsible for ensuring the strength and maintaining the confidentiality of your account and Platform passwords. You agree to maintain the confidentiality of such passwords and restrict access only to authorized users, and agree to immediately notify sensemetrics of any unauthorized use of passwords or any other breach of Platform security. sensemetrics 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, and/or stolen information which result from same.

If you or your organization has knowledge of any (a) accidental loss or destruction of, or unauthorized disclosure of or access to personal information or organization data; or (b) data security breach on any of the systems used to receive or store such data, then the knowledgeable party must (i) expeditiously report such incident to the other party; (ii) mitigate, to the extent practicable, any harmful effect of such disclosure or access; (iii) cooperate with sensemetrics in providing any notices to affected individuals regarding the incident; and (iv) cooperate with any regulatory or other investigation into the incident, in consultation with sensemetrics and its agents or vendors.

DATA COLLECTION AND USE

If you or your organization has a separate agreement with sensemetrics, the data collection and use provisions of that agreement (including any confidentiality provisions) shall have priority over this Section. If your or your organization has executed a Data Processing Agreement (“DPA”) with sensemetrics, the DPA shall apply to all data that is Personal Data. In the event of any conflict or inconsistency between the DPA and these Terms, the DPA shall have priority.

Information that you and/or your organization submit to sensemetrics, including but not limited to data that is collected by our Products and uploaded to the Platform, is used to deliver the Services specified in your purchase agreement. sensemetrics uses this information and data to administer, operate, maintain, monitor, and improve its Products, Services, Software, and the Platform. This information and data includes account setup information, network access information, device information, telemetry signals, sensor data, and technical information. sensemetrics may use this information and data in the following ways: create and secure accounts, identify personnel as authorized users, deliver services in accordance with the purchase agreement, administer and update the Platform/Software, maintain and monitor use of the Platform, and send administrative e-mail notifications, such as security, or support and maintenance advisories. Company does not sell or disclose information or data to third parties.

When connected to sensemetrics Products (e.g., Threads), sensors and devices generate data that is uploaded to the Platform. sensemetrics collects and receives data that may include log files, array information, sensor modes, settings, durations, error rates, and other usage information. We use this data to provide services, troubleshoot bugs, respond to service requests, and analyze sensor or device errors. We may also use this data to improve services or develop new products. If we use any data for such purposes, we will always disassociate and anonymize the data. Our use of aggregated, anonymized, and disassociated information is subject to our Privacy Policy and the restrictions set forth in this Section.

sensemetrics operates worldwide and as a result, the data we receive and collect may cross international borders. Your use of our products, services, and the Platform shall constitute acknowledgement and agreement that your information and data may be processed for the purposes identified in these Terms. You acknowledge and agree 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 your or your organization’s country. By providing information and data required for use of the Products, Services, and Platform, you and/or your organization consent to the international transfer of data and use in accordance with these Terms.

NOTICES

We may send you, in electronic form, information about the Platform or Software, additional information, and information that applicable law requires us to provide. We may provide required information to you by email at the address you specified when you signed up for the Platform. Notices emailed to you will be deemed given and received when the email is sent. You may provide legal notices to us via US Certified Mail return receipt requested or recognized national overnight courier, to the following address: sensemetrics, Attn: Cory Baldwin, 750 B Street, #1630, San Diego CA 92101. Any such notice, in either case, must specifically reference that it is a notice given under these Terms.

GENERAL PROVISIONS

(applicable only if You and/or Your Organization do not have a separate agreement with sensemetrics)

Dispute Resolution. These Terms shall be governed by and construed in accordance with the laws of the State of Delaware without reference to conflict of laws principles. Exclusive venue for all claims or controversies arising from or relating to these Terms shall be in any court of competent jurisdiction located in the State of Delaware.

Severability. It is intended that these Terms shall not violate any applicable law or regulations. The unenforceability or invalidity of any provision herein shall not affect the force and validity of the remaining provisions and such invalid provisions shall be deemed severed and, if permissible, be replaced with terms which as closely as possible approximate the intent of such invalid provisions.

Waiver. No provision of these Terms shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

Assignment. Neither you nor your organization may assign your obligations or responsibilities under these Terms to another person or party.

DEFINITIONS

“Platform” means the 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 SaaS modules which enable a wide-range of sensor management workflows and analytics tools.

“Products” means sensemetrics’ proprietary internet of things devices known as the ‘THREAD’ and all other products that Company develops, manufactures, and provides for sale.

“Software” means the machine-readable or object code version of the firmware and software in or used to deliver Company Products (including without limitation any application programming interfaces or “APIs” for such software) or operate the Platform, and updates, new version or releases of such software. For clarity, some Software is provided as firmware in Products and some Software is provided via downloads directly from Company.

“Third-Party Products” means third party software, hardware and/or other products that Company sells, provides, leases, or distributes with Products and/or the Platform.

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