

These Terms and Conditions (“**Terms**”) are between sensemetrics, Inc. (“**Company**”) and the reseller or distributor (“**Reseller**”) that executes a resale or distribution agreement incorporating these Terms. For terms not defined herein, capitalized terms shall have the meaning set forth in Reseller’s separate agreement with Company.

1. Scope. These Terms govern all resale or distribution orders, purchases, and leasing of Company Products and third-party products sold by Company. If there is any conflict between these Terms and a resale or distribution agreement between the parties, the specific terms of the separately executed agreement will have priority.

2. Purchase Orders Excluded. Company shall not be bound by any Reseller issued purchase orders, terms and conditions, or similar documents. Notwithstanding anything to the contrary contained therein, no terms of any Reseller purchase order, terms and conditions, or similar document or Reseller published terms shall modify, alter, or amend these Terms.

3. Order Confirmations. Company provides Company Products pursuant only to Order Confirmation (“**OC**”) forms prepared and issued by Company. All Reseller orders, in whatever form, are subject to written Order Confirmation. There is no binding agreement regarding Reseller orders until Company has issued an OC which Reseller accepts in accordance with the agreement between the parties. If Reseller provides Company with a purchase order or similar document, Company may use such purchase order or similar document to prepare the OC. All OCs that Reseller accepts shall become part of the resale or distribution agreement between the parties and incorporated into these Terms. All prices and charges contained in OCs are in United States dollars unless otherwise indicated.

4. Time of Delivery. The estimated date of delivery is stated in the OC. Company will use commercially reasonable efforts to deliver all products 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 Reseller for costs, fees, penalties, liabilities, losses, interest, or damages of any kind arising from or relating to Company’s failure to deliver products on or before the estimated delivery date. If Reseller requires a firm delivery date and must meet strict deadlines, Reseller must provide Company with notice so that any such requirement may be considered by Company and, in Company’s discretion, specifically incorporated into the Order Confirmation as a separately-stated line item.

5. Shipping and Delivery. Unless specified otherwise in the OC, delivery shall be made Ex Works (EXW) (Incoterms 2010) at Company’s shipping point: 750 B Street, #1630, San Diego CA 92101. Reseller is responsible for transportation, shipping, and/or carrier insurance. If not specified in the OC or if Reseller does not arrange for transportation or shipping, Company may in its discretion choose a commercially reasonable method of shipping, transportation, or carrier service at Reseller’s sole expense. In all cases, Reseller 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 of products.

6. Title Transfer and Risk of Loss. Title to products and risk of loss or damage will pass to Reseller 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 to products can occur during shipping or transport. Reseller is responsible for inspecting packages for such damage or loss before signing for or accepting any shipment. Reseller should not accept any shipment that has apparent damage until the carrier notes and acknowledges such damage in writing. Reseller should keep original packing materials until the products have been fully examined. Reseller is responsible for filing all claims for damages directly with the carrier. Reseller’s failure to follow these procedures shall relieve 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 OC, 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 Reseller provides Company with an appropriate exemption certificate, Company may include the sales tax it is required to collect in the OC. All other Taxes are Reseller’s responsibility. If Company is required to pay any Taxes that are Reseller’s responsibility pursuant to this Section 7, Company will invoice Reseller for the Taxes and Reseller agrees to pay the invoice within thirty (30) days after receipt in accordance with these Terms. If Reseller is required to make any withholdings from any sum payable to Company per the OC, then the sum payable by Reseller 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 OC; any payment terms not so specified are NET30 from the date of Company Product delivery to Reseller. All time payment terms (e.g., “**NET30**”) stated in OCs begin to run on the date of 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 OC 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 Reseller 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, Reseller agrees to pay the surcharge upon invoice and demand.

9. Additional Terms for Exports. Export shipments will be made only after Reseller 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. Reseller shall pay all fees and costs charged by banks or finance companies related to procuring or drawing against letters of credit or other Reseller related services, unless Company agrees otherwise in writing. Prices and charges for all export shipments are payable in U.S. Dollars. Additionally, Reseller will be assessed (i) a letter of credit fee for use of letter of credit, (ii) a legalization fee if Reseller’s order requires legalization, and (iii) all charges for any pre-shipment inspection (PSI) or third-party inspection if Reseller’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 Order Confirmation. Company will separately invoice charges in accordance with this Section and Reseller agrees to pay such charges upon receipt and 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 Reseller for any such delays.

10. Notice of Errors/Shortages. Before transfer to the carrier, Company has inspected contents to ensure that no products are omitted from a shipment. Despite this, errors or shortages can sometimes occur. Upon receipt of a shipment, Reseller 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 RESELLER 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 any Company Products pursuant to Reseller's specifications or requirements, such Company Products may not be returned for credit, refund, or exchange. For all other standard Company Products, Reseller 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 Reseller. Company will repay such fees and charges to Reseller only if it determines, in its discretion, that the Company Products are eligible for return or are covered by warranty as specified in the separate agreement between the parties.

(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 Reseller. 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 Reseller's sole expense. In this event, Reseller agrees to pay the return charges upon invoice and demand.

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

12. Export Restrictions. Reseller 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. Reseller shall comply with EAR and all other applicable laws, regulations, treaties, and agreements relating to the export, re-export, and import of any Item. Reseller 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. Reseller shall cooperate fully with Company in any official or unofficial 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 Reseller or its employees, consultants, agents, appointees, end users and/or customers.

13. Force Majeure. Company shall not be liable for failure to perform or for delay in performance due to fire, flood, strike, other labor difficulty, act of God or Nature, pandemic, act of any governmental authority, 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 estimated 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 OC(s) upon written notice to Reseller with no liability or further obligation.

14. 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.

15. No Third Parties. These Terms are solely for the benefit of the Company and Reseller, and nothing contained herein shall be deemed to be for the benefit of any third party or create any third-party rights. For avoidance of doubt, these Terms are not for the benefit of Reseller's customers.

16. 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 ITS 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 RESELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO THE ALLEGED LIABILITY OR DAMAGES. RESELLER ACKNOWLEDGES THAT SENSEMETRICS HAS SET ITS PRICES AND AGREED TO SELL COMPANY PRODUCTS IN RELIANCE ON THE LIMITATIONS OF LIABILITY AND DAMAGES IN THIS SECTION AND THIS FORMS AN ESSENTIAL BASIS OF THE AGREEMENT BETWEEN RESELLER AND SENSEMETRICS. RESELLER AND SENSEMETRICS 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.

17. Lease Terms for Company Products.

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

(b) Term and Termination. The initial term for Leased Products shall be as specified in the OC commencing on the date of delivery to Reseller ("**Commencement Date**").

(i) Unless Reseller provides Company with written notice of intent not to renew at least seven (7) days before the expiration of any lease Term, the lease shall successively renew in accordance with the initial term set

forth in the original OC (each, a “Renewal Term”). Collectively, the Initial Term and Renewal Term(s) shall be referred to herein as the “Term.”

(ii) Reseller 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 Reseller 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 Reseller fails to make any payment when due, or (iii) if Reseller 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 Reseller. If any Leased Product ceases to operate for any other reason than ordinary wear and tear (as reasonably determined by Company), then Reseller shall pay Company all costs to replace such Leased Product. If a Leased Product ceases to operate, Reseller 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 Expiration/Termination. No later than thirty (30) days following the termination or expiration of the applicable Term, Reseller shall at its sole expense return the Leased Products in good repair (ordinary wear and tear excepted). If Reseller 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 Reseller shall pay to Company the replacement cost of such delayed or damaged Leased Products within thirty (30) days after invoice.

(e) Maintenance and Inspection. Reseller agrees to maintain (and ensure its sub-lessees maintain) the Leased Products in good working condition. Reseller shall bear the entire risk of loss, theft, damage, or destruction of the Leased Products while in Reseller’s possession (or the possession of its sub-lessees). If any Leased Product is damaged, Reseller shall provide Company with immediate written notice and shall cooperate with Company to repair such Leased Product at Reseller’s expense. Reseller shall allow Company to inspect the Leased Products at any time, during Reseller’s normal business hours, provided that Company provides prior reasonable notice of such inspection.

(f) Insurance. During the Term, Reseller shall maintain insurance against loss, theft, damage, or destruction of the Leased Products in an amount not less than the full replacement cost of the Leased Products, with loss payable to Company. The insurance shall be primary, without the right of contribution from any other insurance carried by Company. The insurance shall expressly provide that it shall not be invalidated by any act, omission, or neglect of Reseller or any sub-lessee of Reseller. Upon request, Reseller shall furnish to Company a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Section 17(g) and shall designate Company as a loss payee and/or additional insured. Company shall have no obligation to maintain insurance for the Leased Products. Reseller shall not make adjustments with insurers except with Company’s prior written consent and hereby irrevocably appoints Company as Reseller’s attorney-in-fact to receive payment of and to endorse all checks, drafts and other documents and to take any other actions necessary to pursue insurance claims and recover payments if Reseller fails to do so. Reseller shall promptly notify Company of each occurrence that may become the basis of a claim under the foregoing insurance policies and shall provide Company with all requested information relating to each such claim.

DATE: June 23, 2020.