

This Customer Agreement (“Agreement”) is between you and sensemetrics, Inc. (“sensemetrics” or “us”). If you are entering into this Agreement not as an individual but on behalf of your company, then “Customer” or “you” means your company, and you are representing and warranting that you have the authority to bind your company to this Agreement. “We” and “our” in this Agreement means sensemetrics. By clicking on the “Accept” or equivalent button or placing an order with sensemetrics after sensemetrics has provided a quote for your order (“Quote”), you indicate your assent to be bound by all terms and conditions of this Agreement.

**1. Scope of Agreement.** This Agreement governs all products and services that you order or receive from sensemetrics. Before you place an order, sensemetrics will provide you with a formal Quote which is valid for thirty (30) days from the date it is delivered. If you have not accepted the Quote by clicking on the “Accept” or equivalent button or executing this Agreement within this 30-day period, then the Quote expires and cannot be accepted unless sensemetrics agrees, in writing, to extend the Quote. For any extensions, sensemetrics reserves the right to modify the Quote due to pricing changes. Sensemetrics will not provide any products or services, and there is no Agreement between you and sensemetrics, until you click on the “Accept” or equivalent button or execute this Agreement within the 30-day period.

**(a) Incorporated Documents.** This Agreement includes and incorporates the following documents: (a) the Quote provided by sensemetrics for your order, and if applicable, (b) our Service Level Agreement. In the event of any conflict or ambiguity between this Agreement and an incorporated document, the terms and conditions of this Agreement shall have priority and control unless expressly identified and superseded by an incorporated document.

**(b) Purchase Orders Excluded.** If you have provided sensemetrics with a purchase order or similar form generated by your company, sensemetrics will translate those terms into a Quote for your acceptance. Sensemetrics does not provide any products or services pursuant to purchase orders or similar forms, and no such order or form, in whole or part, shall constitute part of this Agreement. This Agreement supersedes all purchase orders or similar forms which you have submitted to sensemetrics for purposes of obtaining a Quote. No terms or conditions that are in addition to, different from, or inconsistent with those contained in the Quote and this Agreement, including without limitation, Customer’s standard printed terms and conditions, shall be binding upon sensemetrics unless executed by sensemetrics.

**(c) Account Registration.** You may need to register for a sensemetrics account to submit orders and obtain actionable Quotes from sensemetrics. Any registration information that you provide to us must be accurate, current, and complete. You must also update your information so that we may send

notices, statements and other information to you by email or through your account. You are responsible for all actions taken through your account. If you learn of any unauthorized use of your password or sensemetrics account, please contact us immediately at [admin@sensemetrics.com](mailto:admin@sensemetrics.com)

**2. Quotes.** All prices contained in Quotes are in United States dollars unless otherwise indicated. The estimated delivery times contained in Quotes are valid only for the 30-day acceptance period. If you do not accept the Quote within this period, then proposed prices and delivery times in any subsequent Quote are subject to change.

**3. Time of Delivery.** The estimated date of delivery is stated in the Quote. Sensemetrics will use commercially reasonable efforts to deliver the products and services within the estimated time. These are estimates and not guarantees. Factors beyond our control may delay delivery of the products and services which you ordered. Under no circumstances shall sensemetrics be liable to Customer for any costs, fees, penalties, liabilities, losses, interest, or damages of any kind which arise from or relate to sensemetrics' failure to deliver products and/or services on or before the estimated delivery date stated in the Quote. If Customer desires a time-certain delivery date and must meet strict deadlines, then you should advise sensemetrics so that any such requirement may be considered and specifically incorporated into the Quote as a separate line item.

**4. Delivery.** Unless specified otherwise in the Quote, delivery of products shall be made Ex Works (EXW) (Incoterms 2010) at sensemetrics' shipping point: 406 Ninth Ave, Suite 209, San Diego CA 92101. Customer shall be responsible for transportation, shipping, and/or carrier insurance. If not specified in the Quote or if Customer does not arrange for transportation or shipping, sensemetrics may in its sole discretion choose a commercially reasonable method of shipping, transportation, or carrier service. 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 we strive to deliver your products in a single shipment, sensemetrics may make partial deliveries of products and services that Customer has ordered.

**5. Title Transfer and Risk of Loss.** Title to the products and risk of loss or damage shall pass to Customer when the carrier takes possession of the products. Before transfer, sensemetrics has inspected and/or tested the products and represents they are in good working condition. All products are packaged in a commercially reasonable manner consistent with industry standards. Despite this, damage can occur during shipping or transport. Customer is responsible for inspecting packages for 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 and tested in operation. Customer is responsible for filing all claims for damages directly with the carrier.

Customer's failure to follow these procedures shall relieve sensemetrics of all liability for damage or loss after title has passed, and such failure may also affect warranty claims as set forth in Section 11. Sensemetrics represents that it has good title to the products and the right to transfer title to the products free and clear of liens or other encumbrances.

**6. Taxes and Surcharges.** Unless stated and included in the Quote, sensemetrics 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 sensemetrics with an appropriate exemption certificate, sensemetrics will include the sales tax it is required to collect in the Quote. All other Taxes are Customer's responsibility. If sensemetrics is subsequently required to pay any Taxes that are Customer's responsibility pursuant to this Section 6, sensemetrics will invoice Customer for the Taxes and Customer agrees to pay such Taxes upon receipt of invoice in accordance with this Agreement. If Customer is required to make any withholdings from any sum payable to sensemetrics per the Quote, then the sum payable by Customer shall be increased to the extent necessary to ensure that sensemetrics receives and retains a net amount equal to the amount sensemetrics would have received and retained in the absence of such required withholding.

**7. Payment Terms.** Payment terms are specified in the Quote. All time payment terms (e.g., "NET30") stated in Quotes begin to run on the date that sensemetrics delivers the product or service to Customer. Time payment terms do not begin to accrue from the date of invoice. The following additional terms apply to all orders of products and services:

**(a) Late Charges.** If sensemetrics does not receive timely payment in accordance with the Quote and this Agreement, 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

**(b) Partial Payments.** If sensemetrics 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.

**(c) No Right of Set Off.** All payments made to sensemetrics hereunder 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 6 above.

**(d) Payment Forms; Bankcard Surcharge.** Sensemetrics 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. Sensemetrics 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, sensemetrics will present you with an invoice, payable on demand, for the bankcard surcharge.

**8. Additional Terms for Exports.** Export shipments will be made only after Customer has provided sensemetrics with a certified and irrevocable letter of credit allowing shipment from any U.S. port, advance payment, or by special terms arranged with sensemetrics in writing. Customer shall pay all fees and costs charged by Customer's or sensemetrics' banks or finance companies related to procuring or drawing against letters of credit or other Customer related services unless sensemetrics agrees otherwise in writing. Unless otherwise indicated in the Quote, prices and charges for all export shipments are payable in U.S. Dollars. Additionally, Customer will be assessed (i) a letter of credit fee for use of letter of credit, (ii) a legalization fee if Customer's order requires legalization, and (iii) all charges for any pre-shipment inspection (PSI) or third-party inspection if Customer's Quote requires or requests such an inspection, whether at point of origin or point of delivery. The charges set forth in this Section 8 have not been included in Customer's Quote. Sensemetrics will separately invoice charges in accordance with this section and Customer agrees to pay such charges upon receipt and in accordance with this Agreement. The various activities associated with export charges, including but not limited to inspection requirements, may delay shipments and deliveries. Sensemetrics shall not be liable to Customer for any such delays.

**9. Notice of Errors/Shortages.** Before transfer to the carrier, sensemetrics 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, Customer must: (a) open and examine all packages, and (b) timely notify sensemetrics of errors or shortages in the shipment. SENSEMETRICS 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.

**10. Return of Products.** If sensemetrics specially designs, customizes, or adapts any products pursuant to Customer's specifications or requirements of the Quote, such products may not be returned for credit, refund, or exchange. For all other standard 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 products shall be prepaid by Customer. Sensemetrics will repay such fees and charges to Customer only if it determines, in its discretion, that the returned products are eligible for return or covered by warranty pursuant to this Agreement.

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

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

**(c) Restocking Charge.** If sensemetrics accepts a returned product for credit, refund, or exchange pursuant to this Section 10, Customer agrees to pay, upon invoice and demand, a twenty-five percent (25%) restocking charge. Customer shall not be responsible for this charge if sensemetrics determines that the returned product is non-conforming or covered by warranty pursuant to this Agreement.

**11. Limited Warranty.** The following limited warranty applies to the products and Services (as defined in Section 15) that sensemetrics provides to Customer pursuant to an accepted Quote. There are no warranties except as expressly stated in this Agreement.

**(a) Sensemetrics Manufactured Products.** For all products that (i) are manufactured by sensemetrics, and (ii) purchased directly from sensemetrics, sensemetrics warrants for a period of one (1) year from the date of delivery that the product is in good working order and free from material defects ("Product Warranty"). Sensemetrics' sole and exclusive warranty obligation, and Customer's sole and exclusive remedy for a Product Warranty claim, is limited to (x) replacement or (y) repair of the product, in sensemetrics' discretion, at no charge to the Customer. If Customer refuses a repair or replacement, then sensemetrics will provide Customer with a credit, equal to the price of the warranted product, to Customer's established account with sensemetrics. In no event or under any circumstances will a warranty claim result in a refund paid by sensemetrics to Customer.

**(b) Warranty Claim.** Upon receipt of any product which Customer has returned for a warranty claim, sensemetrics will promptly inspect and test the product. Should sensemetrics determine, in its sole discretion, that the product is warranted pursuant to Section (a) above, then sensemetrics will in its discretion decide to repair or replace the product. In conjunction therewith, sensemetrics will notify Customer of its determination. After repair or upon replacement, sensemetrics will return the product

to Customer at sensemetrics' expense. Should Customer refuse either repair or replacement, sensemetrics will credit the price of the warranted product to Customer's account with sensemetrics.

**(c) Warranty Limitation.** Sensemetrics provides no warranty for damage to products caused by any one or combination of the following: (i) ordinary wear and tear, (ii) misuse or abuse, or (iii) use of the product not in conformance with the instructions, specifications, manuals, and/or parameters provided to Customer. In addition, Customer will void the product warranty if damage occurs in whole or in part as a result of any of the following: (i) improper installation by Customer, (ii) improper reconfiguration by Customer, (iii) careless or negligent operation of the product, (iv) failure to service the product as specified, and/or (v) Customer attempts to repair or modify the product.

**(d) Warranty for Repairs/Replacements.** Products repaired or replaced by sensemetrics are warranted against material defects in workmanship and materials in connection with such repair or replacement for a period of ninety (90) days from the shipment date back to Customer, or the remainder of the original Product Warranty period, whichever is greater.

**(e) Non-Sensemetrics Products.** For all products or components of products that sensemetrics sells or provides to Customer but which are not manufactured by sensemetrics, sensemetrics provides no warranty whatsoever. For these products or components, sensemetrics will provide the Customer with commercially reasonable assistance in pursuing its warranty claim against the manufacturer, vendor, supplier, or distributor of the non-sensemetrics product or component. This assistance will include, at a minimum, sensemetrics' provision of warranty documents and information for the product to the Customer. Such assistance may include assignment, if assignable, of the first-party warranty from sensemetrics to Customer, or otherwise assisting the Customer with its warranty claim for the product.

**(f) DISCLAIMER.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION 11, SENSEMETRICS DISCLAIMS ALL WARRANTIES FOR PRODUCTS AND SERVICES. THERE ARE NO ADDITIONAL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, EITHER IN FACT OR BY OPERATION OF LAW. SENSEMETRICS DISCLAIMS ALL WARRANTIES WHICH ARE, AS A MATTER OF CONTRACT, LAW, OR COURSE OF DEALING, SUBJECT TO DISCLAIMER. THIS DISCLAIMER INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING WARRANTIES: FITNESS FOR A PARTICULAR PURPOSE OR USE, MERCHANTABILITY, MARKETABILITY, RELIABILITY, VALUE, AND PROFITABILITY. EXCEPT FOR PRODUCTS MANUFACTURED BY SENSEMETRICS, WE DO NOT PROVIDE ANY WARRANTY OF NON-INFRINGEMENT. SENSEMETRICS MAKES NO REPRESENTATIONS AND PROVIDES NO WARRANTY REGARDING THE ACCURACY OF DATA GENERATED BY THE PRODUCTS OR SERVICE. SERVICES PROVIDED WITHOUT CHARGE ARE "AS IS" WITH NO WARRANTY WHATSOEVER.

**12. 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 PRODUCTS OR SERVICES, 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 THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY RECEIVED BY SENSEMETRICS FROM CUSTOMER WITH RESPECT TO THE PRODUCT(S) AND/OR SERVICES GIVING RISE TO THE ALLEGED LIABILITY. CUSTOMER ACKNOWLEDGES THAT SENSEMETRICS HAS SET ITS PRICES AND AGREED TO SELL PRODUCTS AND/OR SERVICES TO CUSTOMER IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND DAMAGES IN THIS SECTION 12 AND THE DISCLAIMER OF WARRANTIES SET FORTH IN SECTION 11, AND THAT THESE SECTIONS FORM AN ESSENTIAL BASIS OF THE AGREEMENT BETWEEN CUSTOMER AND SENSEMETRICS. CUSTOMER AND SENSEMETRICS AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THESE TERMS AND CONDITIONS WILL SURVIVE ANY TERMINATION OF THIS AGREEMENT AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

**13. Documentation.** Information and data included on sensemetrics' website or in white papers, catalogues, prospects, circulars, advertisements, illustrated matter, and price lists are approximate and not binding on sensemetrics. No such information or data shall be binding unless specifically included in an actionable Quote which Customer has properly accepted. Drawings, descriptive documents, parts lists and other documentation (collectively, "Documentation") provided or made available to Customer constitutes confidential information of sensemetrics and may be used by Customer only in connection with the use of the products or Services. Customer may not disclose Documentation to any third party without sensemetrics' prior written consent.

**14. Use of Products.** Customer acknowledges and agrees that the product(s) must be used in accordance with all instructions, policies, and Documentation provided by sensemetrics and, where stated in the Documentation and/or Quote, products must be operated only by personnel who have received the appropriate training. Any sensemetrics provided products that are to be connected to an electricity supply or network must be operated only by appropriately trained and qualified personnel, and must not be made available to any personnel without the proper training and qualifications. Customer agrees to defend, indemnify, and hold sensemetrics 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 the products in a manner which violates this Section 14.



**15. Use of Services.** Customers with access to sensemetrics' accounts, software, networks, nodes, servers, and systems (collectively, "Services") agree to use the Services in accordance with instructions and policies provided by sensemetrics. These policies include, but are not limited to, compliance with all applicable laws, third-party licenses, and Documentation provided by sensemetrics. Customer agrees to access the Services using only those methods and interfaces approved by sensemetrics. Customer shall not modify or otherwise interfere with the Services. When you upload, submit, store, send or receive content to or through our Services, you give sensemetrics a license to host, store, modify, process, and create derivative works so that your content works better with our Services. The rights you grant in this license are for the limited purpose of operating, promoting, and improving our Services, and to develop new ones, subject in all cases to our Privacy and Data Use Policy. Sensemetrics is constantly changing and improving its Services. We may add or remove functionalities or features, and we may suspend or stop a Service altogether. If we discontinue or interrupt a Service, we will attempt to give you advance notice so that you may extract and preserve your content. Sensemetrics shall not, however, be responsible or liable for content loss due to your use of its Services.

**16. Software License.** Sensemetrics grants to Customer a limited, non-exclusive, non-assignable license to use the sensemetrics' software provided with the products and/or services solely for the purpose of operating the products/services in accordance with the Quote. The license is personal to the Customer and may not be assigned, sold, or leased. The term of the license shall be governed by the specifications and requirements of the accepted Quote. This license does not convey title or any intellectual property rights to the software, all of which shall remain with sensemetrics. Customer shall not copy sensemetrics' software or any related Documentation, other than as is necessary for back-up copies, and shall not share the software or Services with third parties. Customer shall not copy, distribute, sell, or lease any part of our software or related Services. Customer shall not reverse engineer or attempt to extract or derive the source code of that software or the Services. Some of our Services contain third-party software and/or content; while the license that sensemetrics grants to Customer allows you to use this software and/or content, no other rights are conveyed and your use of third-party software or open source code must comply with all applicable licenses. Some software used in our Services may be offered under an open source license that we will make available to you. There may be provisions in the open source license that expressly override some of these terms.

**17. Intellectual Property.** Even when title to products passes to Customer, sensemetrics shall remain the exclusive owner of all intellectual property rights of any nature, including copyrights, patents and patentable inventions, know-how, trade secrets, trademarks and design rights (whether registered, registrable or otherwise) embodied in or otherwise relating to the products (including any software contained therein). Customer shall not disassemble and reverse engineer the products or any part thereof, including software. Customer shall not remove any proprietary notices or branding contained in or otherwise affixed to the products.



**18. Export Restrictions.** Customer acknowledges that sensemetrics products 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. 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 sensemetrics in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify, defend, and hold sensemetrics harmless from, or in connection with, any violation of this Section 18 by Customer or its employees, consultants, agents, or customers.

**19. Force Majeure.** Sensemetrics 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, 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 sensemetrics' 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 sensemetrics reasonably determines that any such delay in performance is likely to extend for a period of ninety (90) days or more, sensemetrics shall have the right to cancel the Quote and terminate this Agreement upon written notice to Customer with no liability or further obligation to Customer with respect to such Quote.

**20. Dispute Resolution.** This Agreement shall be governed exclusively by and construed according to the substantive laws of the State of California, without regard to its conflicts of law principles, as applied to contracts between California residents entered into and to be performed entirely within California. Any claim or controversy (including any claim for injunctive or equitable relief) arising out of or relating to this Agreement, or the breach thereof, shall be submitted for binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”). The arbitration shall be heard by a single AAA arbitrator and take place in San Diego, California, at a location designated by the AAA. The arbitration award shall be reasoned but shall not be appealable, except as provided by applicable California law governing arbitration awards. The arbitration award shall be enforced by the Courts of California, or any other court having jurisdiction over such awards and the enforcement thereof. The parties consent to the jurisdiction of the courts of the State of

California for enforcement 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. THE PARTIES AGREE THAT BY CONSENTING TO MANDATORY ARBITRATION, THEY WAIVE ANY RIGHT TO A TRIAL BY JURY FOR ALL CLAIMS ARISING FROM OR RELATED TO THIS AGREEMENT. In any arbitration, appeal of arbitration as permitted by statute, or subsequent proceeding(s) to collect an arbitration 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.

**21. Entire Agreement.** This Agreement sets forth the entire agreement and full understanding of the parties with respect to its subject matter. This Agreement supersedes all prior courses of conduct, agreements, promises, and communications, whether oral or written, by any officer, executive, employee or representative of any party hereto. No amendment or modification to this Agreement, shall be effective unless executed in writing and signed by authorized representatives of the parties.

**22. Severability.** If any part, term, or provision of this Agreement 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 the Agreement shall have full force and effect.

**23. Third Parties; Assignment.** This Agreement is solely for the benefit of the sensemetrics and Customer, and nothing contained herein shall be deemed to be for the benefit of any third party or create any third-party rights. Customer may assign this Agreement only with the prior written consent of sensemetrics, which consent shall not be unreasonably withheld. Sensemetrics may freely assign this Agreement. This Agreement shall inure to the benefit of any successors or permitted assigns.

**24. Waiver.** No term or provision of this Agreement or any incorporated document 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.

**25. Equipment Lease.** If Customer has accepted a Quote which includes leased products or Services (collectively, "Equipment"), then the following additional terms and conditions apply:

- (a) Term and Termination.** The lease term commences on the date sensemetrics delivers the Equipment to Customer or a carrier in accordance with Section 4 of this Agreement. The lease term shall be as specified in the Quote. If no renewal term is specified, then the lease shall successively renew at the end of each term unless either party terminates. Unless otherwise

specified in the Quote, Customer can elect not to renew the lease by providing sensemetrics with written notice no less than thirty (30) days before the expiration of the then-current term. Sensemetrics can elect not to renew the lease by providing Customer with written notice no less than thirty (30) days before the expiration of the then-current term, or terminate the lease at any time, with ten days written notice, if Customer fails to pay any invoice when due.

- (b) Up-Front Payment; Damage Deposit.** If the accepted Quote requires an up-front payment, sensemetrics shall hold the payment, without interest, as security for payment of lease invoices and/or as a damage deposit on the Equipment. Sensemetrics may, in its sole discretion, apply the up-front payment as follows: (i) to any invoice if not paid when due, (ii) to the final term of the lease after receiving notice of non-renewal from Customer, or (iii) as a damage deposit on the Equipment. Sensemetrics reserves the right to require or specify in the Quote an additional damage deposit on leased Equipment. Sensemetrics shall return the damage deposit, if any and without interest, to Customer no later than thirty (30) days after Customer has returned the Equipment in accordance with Section 25(d) below.
- (c) Use of Equipment.** Customer shall use the Equipment properly and in compliance with all laws, instructions, and Documentation regarding the use, maintenance, security, and storage of such Equipment. Customer shall maintain the Equipment in good working order and repair. Customer shall maintain insurance on the Equipment, in amounts sufficient for replacement, with losses payable to sensemetrics against fire, theft, and other such risks, and provide sufficient proof of same upon request. Customer shall keep the Equipment free and clear of any liens or other encumbrances, and shall not permit any act where sensemetrics' title or rights may be negatively or adversely affected. Customer shall promptly pay all taxes, fees, licenses, and governmental charges, together with any penalties or interest thereon, relating to the possession or use of the Equipment.
- (d) Return of Equipment.** No later than thirty (30) days after the termination of the Equipment lease or this Agreement for any reason by either party, Customer shall at its sole expense return the Equipment to sensemetrics in good working condition, ordinary wear and tear excepted. If Customer fails to timely return the Equipment, or if the Equipment has been damaged and is not, in sensemetrics' determination, repairable at Customer's expense, then Customer shall pay the replacement cost of the Equipment upon invoice and demand.
- (e) Replacement Equipment.** If leased Equipment malfunctions due to: 1) normal wear and tear, 2) hardware/software defect, or 3) a force majeure event, sensemetrics will in its discretion provide a replacement at no cost (except shipping) to Customer; provided, however, that if sensemetrics reasonably determines that the Equipment has malfunctioned or been damaged

due to Customer's negligence or use not in conformance with this Agreement, then Customer shall be liable for the replacement cost of the Equipment. In the event of a malfunction and upon receiving notice, sensemetrics may in its discretion, with a reservation of rights, ship immediate replacements to Customer. No later than thirty (30) days after providing notice pursuant to this section, Customer must return the malfunctioning Equipment to sensemetrics. If Customer does not return the Equipment, or if sensemetrics determines in its discretion that Customer is liable for the malfunction or damage, then Customer shall pay the replacement cost to sensemetrics upon invoice and demand.

- (f) **Miscellaneous.** Sensemetrics has all rights, title, interests, and licenses required to lease the Equipment for Customer's use during the term. Sensemetrics grants Customer the right to quietly hold and possess the Equipment for the term of the Lease. Sensemetrics represents that the Equipment is in good working condition and order. Sensemetrics retains all title to and ownership of leased Equipment. This lease does not result in any transfer of rights or property except as expressly stated in this Agreement.

**26. Privacy and Data Use.** For purposes of this Section, "personal information" means information that identifies a particular individual, such as name, postal address, email address or phone number. Sensemetrics will comply with all data privacy laws regarding personal information. Except as otherwise provided herein or in our Privacy and Data Use Policy, sensemetrics will never sell, share, lease or give away your personal information to any third party.

- (a) **Protection and Storage of Information and Data.** Sensemetrics is committed to the protection and security of your data. However, despite our best efforts, no security measures are completely impenetrable. Information and data transmitted over the internet and networks, either wirelessly or wired, is inherently 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 and our Services. We will retain your information and data for as long as your account is active, or as is reasonably useful for commercial purposes, or as is necessary to comply with our legal obligations, resolve disputes, and enforce this Agreement.

- (b) **Password Security and Account Access.** Customer is responsible for ensuring the strength and maintaining the confidentiality of account and network passwords. You shall maintain the confidentiality of such passwords and restrict access only to designated and authorized users. You agree to immediately notify sensemetrics of any unauthorized use of your passwords or account or any other breach of 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.

- (c) Legal Compliance.** Sensemetrics may access and disclose your personal information or identifiable company data when we believe in good faith that such disclosure is necessary to: (a) enforce legal rights and comply with the law; (b) comply with an order from a government entity or other competent authority; (c) prevent or address potential or actual injury or interference with our rights, property, operations, users or others who may be harmed or may suffer loss or damage; or (d) protect our rights, prevent fraud and/or comply with judicial proceeding, court order, or legal process served on sensemetrics.
- (d) Collection and Use.** Information that you submit to us, including but not limited to data that is collected from our products and uploaded to our cloud-service and/or your enterprise server, is used to deliver your order and provide the services you requested. Sensemetrics uses this information and data to administer, operate, maintain, monitor, and improve the products and services which you have ordered. Without limitation, this information and data may include: account setup information, network access information, device information, telemetry signals, sensor data, and technical information. Sensemetrics may use the information and data which you supply or which we collect in the following ways, to: facilitate the creation of and secure your account on our network, identify you and authorized personnel as users in our system, deliver the products and services you ordered, administer and update the products and services you ordered, provide and maintain the services you request, improve the products and services which you ordered, monitor the performance of the products and services you ordered, send alerts and other notifications to you based on network and device monitoring, customize our products and services for your specific or changing needs; and send you administrative e-mail notifications, such as security, or support and maintenance advisories.
- (e) Anonymized Data Use.** When using our products and services, sensors and systems will generate data which is uploaded into the sensemetrics service-cloud and/or your enterprise servers. Via our networks or your VPN, sensemetrics may actively or passively receive and collect data generated by the sensors and other devices which have been deployed to facilitate your order. This data includes without limitation log files, array information, sensor modes, settings, durations, error rates, and other usage information. This information helps sensemetrics improve its products and services, troubleshoot bugs, respond to requests, and analyze sensor errors. We also may collect and analyze this information to support, maintain, develop, and improve the products and services we offer to you and other sensemetrics users. If sensemetrics aggregates and analyzes the data it collects and receives as a result of providing products and services, it will always anonymize the data. All data which sensemetrics collects

and uses for analytics will be disassociated from your company. Our use and disclosure of aggregated, anonymized, and disassociated information is subject to the restrictions set forth in this Agreement. You agree that Sensemetrics shall have the perpetual right to use this data in an aggregated, non-identified form for research purposes, to help us make sales, marketing, and business decisions and sensemetrics may use this data to create anonymous information which expands the size and scope of our database.

- (f) International Users and Transfers.** Sensemetrics operates worldwide and as a result, the information we collect may cross international borders. Your use of sensemetrics' products and services shall constitute acknowledgement and agreement that your information and data may be processed for the purposes identified in this Agreement. In addition, your 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 country. By providing your information and data, you consent to such transfer.
- (g) Security Notice Procedure.** If you or sensemetrics 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: (a) expeditiously report such incident to the other party; (b) mitigate, to the extent practicable, any harmful effect of such disclosure or access; (c) cooperate with the other party in providing any notices to individuals regarding the incident; and (d) cooperate with any regulatory investigation into the incident, in consultation with the other party.