

END USER AGREEMENT

July 2020

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1.4 Installation and Implementation. Company and/or A Reseller, shall assist Customer in installing and implementing the Products. Customer shall designate a member of its staff (or a readily available third-party) who is familiar with Customer's computer network to assist in the installation and implementation, make decisions on behalf of the Customer and act as the principal person of contact with Company or A Reseller, as applicable, with respect to installation and implementation. Prior to installation of the Product, Customer shall certify to Company and A Reseller that all required equipment is properly installed, configured and networked and the Customer has taken all other actions requested by Company or A Reseller to prepare Customer's network for installation of the Product.

1.5 Support and Maintenance. Company and/or A Reseller shall provide First Level Support to Customer for the Software via email directly to Customer during Company's or A Reseller's normal business hours. For Company, normal business hours are between 8a.m. and 5p.m. EST Monday through Friday- excluding holidays and excluding days and times when Company is unable to provide such support as a result of circumstances beyond its control. For A Reseller, normal business hours shall be no less than between 8a.m. and 5p.m. in A Reseller's standard time zone. First Level Support is limited to responding to those Customer representatives who have been designated by Customer and Company or A Reseller to receive the support outlined herein. Except as otherwise agreed between Company and Customer, either A Reseller or Company will respond to each support incident (via email) within a reasonable time (generally within 8 business hours) considering the severity level and all related circumstances of the support required. A standard Service Level Agreement is available for further review.

2. Equipment. Company and/or a A Reseller agrees to sell and Customer agrees to buy the Equipment described in the Order. Company shall grant to Customer all right, title and interest in and to the Equipment, upon payment in full of the amounts set forth on the applicable Order, including all amounts due in connection with Equipment transportation and delivery. Risk of loss for any item of Equipment passes to Customer upon shipment of the Equipment item from the shipping location. All claims for nonconformity of the Equipment in accordance with the specifications set forth in the applicable Order must be made by Customer in writing within thirty (30) days after delivery of the Equipment. Customer further agrees not to resell any Equipment containing any Software provided to Customer. Purchaser agrees not to move the Equipment from the Site without the prior written consent of Company. Company will give due consideration to any request of Customer for modification or cancellation of its Order or release against an Order, but the Order or release may not be modified or canceled without the written agreement of Company and/or A Reseller. Charges for cancellations by Customer include, but are not limited to, charges for work in progress or work already completed under the Order or this Agreement, and are immediately due and payable upon cancellation. If Customer cancels any Order less than thirty (30) days before the delivery date, Customer shall be responsible for the price or prices stated on the face of the Order.

3. **Services.** Company and/or a A Reseller, as applicable, agree to perform for Customer the services as set forth on any purchase order, quotation or any other written document executed by the Company ("Services"), including any training and support.

4. **Ownership and Proprietary Rights.**

4.1 **Company's Rights.** All right, title and interest in and to the Software, and all documentation, code and logic which describes and/or comprises the Software are and shall at all times remain the sole property of the Company, including all ownership rights to patents, copyrights, trademarks, trade names, goodwill and trade secrets in connection therewith. Customer's right to use the Software is conditional upon and limited by the terms and conditions of this Agreement. No modification by the Customer of the Software or any part thereof will in any way reduce or eliminate the Company's ownership rights in and to the Software and its components. The Company owns all patent, trademark, copyright, trade secret or other intellectual property rights in the Software as delivered, as well as in any Customer-specific customizations or alternations or customizations to the Software made at the request of, or in conjunction with, Customer and Customer agrees to take any action or deliver any document required to confirm such ownership rights on the part of the Company. This Agreement does not grant Customer any rights to trademarks or service marks of the Company or its licensors. All other rights not expressly set forth herein are reserved by Company.

4.2 **Content.** Title to and right of ownership in any metrics provided by or on behalf of Customer shall remain with Customer ("Customer Content"). Company agrees not to use any Customer Content for any purpose other than to provide the services and to fulfill its obligations under this Agreement. Company further agrees not to make Customer Content available to any third party without Customer's prior written consent. Company however has the right to anonymously aggregate Customer Content for its own use.

5. **Fees and Payment Terms.**

5.1 **Invoices and Payment.** Company shall invoice Customer for fees in the amount set forth in the Order. The fees shall be paid in the manner set forth in the Order. Payment in full is due by Customer upon receipt of the invoice. In the event additional sensors, locations or services are to be installed during the Term, Company shall provide Customer an addendum of the Order setting forth any additional fees. Any prices quoted on the Order exclude shipping and handling. Freight charges will be invoiced to Customer by Company separately. All amounts not paid within thirty (30) days of Customer's receipt of an invoice shall bear interest, before and after judgment, from the due date until paid at the rate of one and a half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. All prices quoted, all Orders accepted, and all billings rendered are exclusive of all present and future federal, state and local excise, sales, use, import, personal, property, gross receipts, VAT, goods and services tax, and similar taxes. Such taxes, if paid by Company, will be charged to Customer.

5.2 **Reimbursable Expenses.** Customer shall pay reasonable expenses approved in advance which are directly related to Company's performance of this Agreement including, without limitation, travel time, transportation, mileage, air fares, car rental, shipping, meals, lodging and incidentals. In addition, Customers shall pay Company for any equipment, third-party software, third-party software licenses, and other goods or services provided by Company which are not separately, specifically and expressly priced in the Order. Customer shall reimburse Company for reimbursable expenses within 15 days of Company's invoice for such charges.

- 5.3 Credit Evaluation. During the Term, the Company shall have the option, in its sole discretion, to evaluate Customer's creditworthiness. Company's obligations to manufacture any Equipment or perform any services hereunder are conditioned upon Company's receipt of a credit evaluation satisfactory to Company.

6. Warranty.

- 6.1 Mutual Warranties. Each of the parties represents and warrants to the other that (i) it is a legal entity in good standing and that it is authorized to carry on business and to perform the obligations set forth in this Agreement and this Agreement is valid, binding and enforceable against it (subject to applicable principles of equity and bankruptcy and insolvency laws); (ii) it has the full power and ability to grant the rights granted to the other party and their permitted assigns herein; and (iii) it possesses or will possess all necessary rights, licenses and certifications required to grant the rights and to perform its obligations hereunder;
- 6.2 Customer Warranties. In exercising its rights and obligations under this Agreement, Customer shall comply with all applicable international, national and local laws and regulations, including all applicable United States and foreign export laws and regulations. Customer shall provide information and approvals or other permits, licenses or authorizations required for the shipment of Product to Customer. Customer warrants and represents that Customer's use of any Products purchased from Company shall comply with all applicable law in the jurisdiction in which Customer implements such Products. To the extent any personal data generated by Customer in the use of any Products within the European Union or is otherwise subject to the General Data Protection Regulation ("GDPR") or other applicable data protection laws, Customer warrants and represents Customer shall comply with the GDPR and all applicable law governing the use of personal data in any use of the Products. Customer agrees to indemnify and hold harmless Company for any liabilities arising from noncompliance with the GDPR or violation of any applicable data protection law. To the extent any personal data generated directly by Company originates within the European Union or is otherwise subject to the GDPR or other data protection laws, Company warrants that it shall comply with applicable law governing the use of personal data in its own processing of such personal data.
- 6.3 Equipment Warranties. Any and all warranties for the Equipment are limited to the warranties made by the Equipment manufacturers. Company does not make any warranty as to the Equipment or provide any Equipment maintenance.
- 6.4 Disclaimers. **EXCEPT AS SET FORTH IN THIS SECTION 6, THERE ARE NO OTHER WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE NOR OTHER WARRANTIES, EXPRESS OR IMPLIED (BY OPERATION OF LAW OR OTHERWISE), BY COMPANY WITH RESPECT TO THE PRODUCTS OR ANY OTHER GOOD OR SERVICE PROVIDED UNDER THIS AGREEMENT.** Specifically, Company does not warrant that the Products or Services will meet a Reseller's requirements or will be error-free or operate without interruption. Additionally, when a material, article or piece of equipment is identified in the specifications of the Equipment, or otherwise by reference to a brand name, manufacturers' or vendors' names, trademarks, catalog numbers, etc., it is intended merely to establish a general quality standard and not to require the use of a particular material, article or piece of equipment.

7. **LIMITATION OF LIABILITY. IN NO EVENT WILL COMPANY OR ITS LICENSORS BE LIABLE FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER RESULTING FROM THE LOSS OF USE, LOST DATA, OR LOST PROFITS. UNDER NO CIRCUMSTANCES WHATSOEVER WILL COMPANY BE LIABLE FOR ANY MATTER OR MATTERS THAT WILL EXCEED IN THE AGGREGATE THE AMOUNT CUSTOMER HAS PAID TO COMPANY**

FOR THE LICENSE OF THE SOFTWARE AND SERVICES AS SET FORTH HEREIN. THE FOREGOING SHALL NOT APPLY TO BREACHES OF CONFIDENTIALITY PROVISIONS OR INDEMNIFICATION OBLIGATIONS.

8. **Indemnification of Company by Customer.** Except for Company's or A Reseller's gross negligence or criminal misconduct, Customer shall defend, indemnify and hold Company harmless from any and all claims by any party and all damages and expenses, including reasonable attorneys' fees and costs of litigation arising by, through or under this Agreement, the provision of Services or the use of the Products. Customer shall deliver written notice to Company of any proceeding or claim promptly after Customer becomes aware thereof and shall promptly inform Company of all material developments with respect to the claim. Company shall have the right, but not the obligation, to participate, at its own expense, in the defense of the claim through legal counsel selected by it. If the Customer fails to perform its obligations under this Section 12, then Company shall have the right, but not the obligation, to defend the claim and, the Customer shall, in addition to indemnifying Company for the claim, indemnify Company for all of the costs incurred in connection therewith, including reasonable attorneys' fees. No settlement shall be made that affects Company or the Products without Company's prior written consent.
9. **Confidentiality.** The parties acknowledge that in the course of this Agreement both parties will become familiar with proprietary information of the other and its clients concerning technology, business affairs, property, methods of operation, processing system or other proprietary and confidential information ("Confidential Information"). Each party shall (a) not disclose the other party's or client's Confidential Information without such party's written consent, and (b) maintain the confidentiality of this Agreement and of any Confidential Information using at least the degree of care and security as each uses to maintain the confidentiality of its own Confidential Information. Information shall not be considered confidential under this Section that: (i) is publicly known prior to or after disclosure hereunder other than through acts or omissions attributable to the recipient or its employees or representatives; (ii) as demonstrated by prior written records, is already known to the recipient at the time of disclosure hereunder; (iii) is disclosed in good faith to the recipient by a third party having a lawful right to do so; or (iv) is the subject of written consent of the party which supplied such information authorizing disclosure.
10. **Term and Termination of Agreement.** The initial term of this Agreement shall begin on the Effective Date and continue for a term of 1 (1) year, unless otherwise terminated in accordance with the terms of this Agreement (the "Term"). Provided the Customer is not in breach or default of any of its obligations under this Agreement and timely pays applicable annual fees to Company to renew this Agreement, this Agreement will automatically renew for successive one (1) year terms, unless one party gives written notice to the other of its intent not to renew this Agreement at least thirty (30) days prior to the end of the then current term. Either party may terminate this Agreement upon ninety (60) days written notice to the other party if: (1) the other party materially breaches any provision of this Agreement and fails to remedy such breach within thirty (30) days of receipt of a notice of the breach, or (2) the other party becomes insolvent, bankrupt or reorganized under bankruptcy laws. Notwithstanding anything in this Agreement to the contrary, Company, in its sole discretion, may suspend its obligations under this Agreement during any period of time Customer fails to comply with any material term of this Agreement; provided however, that such suspension shall not extend the term of this Agreement. Further, notwithstanding the foregoing, the following paragraphs shall survive termination of this Agreement: 5 through 12.
11. **Duties Upon Termination.** Upon termination of this Agreement for any reason, Customer's license(s) to use the Software shall terminate and Customer shall cease any use of the Software or Equipment not purchased by Customer. Customer shall return any non purchased Equipment and the Software to Company, including all copies thereof, and, if return is not possible, permanently delete all Software from all computers or storage devices under Customer's control. Within ten (10) days following termination of this Agreement, Customer shall certify in writing that all Software had been returned or deleted. Notwithstanding anything herein to the contrary, to provide an orderly

transition from the use of the Software and the support and maintenance provided hereunder, upon the stated date of termination of this Agreement, Customer shall have the option to extend the terms and conditions of this Agreement or any particular support or maintenance on a month-to-month basis for a period of up to three (3) months pursuant to the applicable terms and prices and payment provisions under the Agreement (the “Disengagement Period”) provided that Customer and Company have come to agreement on reasonable terms for all past due and current payment obligations. During the Disengagement Period, the terms of this Agreement and the obligations of the parties hereunder shall continue to apply in full force. The Disengagement Period shall commence upon the stated date of termination and shall continue during the Disengagement Period until Customer provides at least twenty (20) days prior written notice of its election to terminate the Disengagement Period as of a month end. The charges to Customer for the Disengagement Period shall be the charges that would otherwise be paid under this Agreement, on a pro-rated basis.

12. General Provisions.

- 12.1 No Assignment by Customer.** Customer shall not assign, lease, sublease, license, sublicense, franchise, sell, resell, offer to sell or transfer its rights under this Agreement or delegate any duties under this Agreement, including a transfer at law, without the express prior written consent of Company, which consent shall not be unreasonably delayed, withheld or denied.
- 12.2 Governing Law and Exclusive Jurisdiction.** This Agreement shall be governed and interpreted in accordance with the substantive law of the State of Wisconsin, excepting its conflict of laws principles. Any dispute regarding this Agreement will be heard in the state or federal courts having jurisdiction in Wisconsin, and Customer shall be subject to the personal jurisdiction of such courts.
- 12.3 Binding Agreement.** Subject to the restrictions on transferability set forth in this Agreement, this Agreement shall inure to the benefit of and be binding upon the parties, their respective legal representatives, successors and assigns.
- 12.4 Integration.** This Agreement (including the documents referred to herein) constitutes the entire agreement among the parties and supersedes any prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they have related in any way to the subject matter hereof. No modifications or amendments to this Agreement will be valid unless signed in writing by both parties.
- 12.5 Force Majeure.** Neither party will be responsible for delays in performance (other than the payment of money) caused by acts of God or governmental authority, pandemic or epidemic, strikes or labor disputes, electrical outage, equipment failure, fires or other loss of facilities or any other cause beyond the party’s reasonable control. The affected party must use reasonable efforts to minimize the effect of the delay.
- 12.6 Attorneys’ Fees.** If either party employs any legal process hereunder, the successful party in such legal party shall be entitled to recover all and reasonable attorneys’ fees.
- 12.7 Assistance from Customer.** As part of Company’s marketing efforts or to assist Company in enhancing its marketing efforts, Customer agrees to provide Company with or participate in the following as mutually agreed by both parties: (i) issue a press release on the use of the Services , (ii) allow Company to use Customer’s name and approved logo in Company’s marketing materials (including print materials and/or web-site), (iii) participate with Company in a case study in use of Service, and (iv) act a reference site.

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f. Dispute Resolution. The parties agree that in the event of any dispute arising out of or in connection with these Terms of Use, including any question regarding its existence, validity or termination (the "**Dispute**"), the parties shall, in the first instance, resolve the Dispute by amicable negotiation in good faith upon either party giving a written notice to the other (the "**Negotiation Notice**") to enter into such negotiation. If no agreement is reached between the parties within sixty (60) days from the date of the Negotiation Notice, the Dispute shall be referred to and finally resolved by arbitration in New York before a single arbitrator from JAMS mutually agreeable by the parties. The decision of the arbitration shall be final and binding and may be used as a basis for enforcement of these Terms of Use.