

**Sensera Systems**  
**TERMS & CONDITIONS**

Last Updated: July 1, 2021

These Terms and Conditions (this “**Agreement**”) govern the Buyer’s purchase and use of Products, Services, and Website provided by Sensera Systems Inc. (“**SENSERA**”).

**DEFINITIONS:**

- **Buyer** – means the counterparty entering into this Agreement.
- **Carrier** – means the wireless carrier(s) that provide cellular connectivity as part of SiteCloud Service.
- **Image Data** – means images, videos, locations, sensor data, and other metadata that are captured by any of Buyer’s Products and are accessible through User Accounts on the SiteCloud Service.
- **Products** – means all cameras, accessories, and related hardware that capture Image Data that SENSERA designs, manufactures, advertises, markets, sells, or rents.
- **Services** – means:
  - **SiteCloud-AERIAL Service** – drone photography service for site mapping and project progress support.
  - **SiteCloud Service** – web-based software platform for uploading Image Data from Products and viewing, monitoring, and sharing Image Data.
- **Usage Data** – means aggregated, anonymous data, statistics, and other information about customers’ interactions with the Services, including those of Buyer and Users.
- **User** – means any contractors, employees, or agents of Buyer who are authorized by Buyer to use the Products, Services, or Website.
- **Website** – means [www.senserasystems.com](http://www.senserasystems.com), [sitecloud.senserasystems.com](http://sitecloud.senserasystems.com), [support.senserasystems.com](http://support.senserasystems.com), and the SiteCloud Mobile App.

**1 BINDING AGREEMENT**

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BUYER’S OR USERS’ ACCEPTANCE OF DELIVERY OF ANY PRODUCT, USE OF THE SERVICES OR WEBSITE, OR PAYMENT OF ANY PART OF THE FEES DUE FOR ANY PRODUCTS OR SERVICES SHALL CONSTITUTE BUYER’S EXPRESS ASSENT TO THIS AGREEMENT. BUYER SHALL BE LIABLE FOR ANY BREACH OF THIS AGREEMENT BY A USER.

THIS AGREEMENT SHALL SUPERSEDE ANY INCONSISTENT OR CONTRADICTORY TERMS OR CONDITIONS, EXPRESSED OR IMPLIED, IN ANY AND ALL REQUESTS FOR QUOTATIONS, INVOICES, PURCHASE ORDERS, ACKNOWLEDGEMENTS, CONFIRMATIONS, OR SIMILAR DOCUMENTS EXCHANGED BETWEEN BUYER OR USERS AND SENSERA (COLLECTIVELY, “**PROCUREMENT DOCUMENTS**”). NO ADDITIONAL TERMS OR CONDITIONS APPEARING IN ANY PROCUREMENT DOCUMENTS SHALL BE BINDING ON SENSERA.

**2 TERM**

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THIS AGREEMENT BEGINS WHEN FIRST ENTERED INTO BY BUYER AND WILL CONTINUE UNTIL TERMINATED, AS SET FORTH HEREIN.

**3 MODIFICATIONS**

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SENSERA RESERVES THE RIGHT TO MODIFY ANY OF THE SERVICES OR WEBSITE, AS WELL AS THIS AGREEMENT. NOTICE OF SUCH MODIFICATIONS WILL BE POSTED TO THE WEBSITE OR SENT TO BUYER’S EMAIL ADDRESS ASSOCIATED WITH USER ACCOUNTS. ANY MODIFICATIONS WILL BE EFFECTIVE TWENTY-FOUR (24) HOURS FOLLOWING THEIR PUBLICATION. BUYER MAY

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CEASE USING THE MODIFIED SERVICES OR WEBSITE OR TERMINATE THIS AGREEMENT, AS APPLICABLE, IF BUYER DOES NOT AGREE TO ANY MODIFICATION. HOWEVER, BUYER WILL BE DEEMED TO HAVE AGREED TO ANY AND ALL MODIFICATIONS TO THE SERVICES AND WEBSITE THROUGH BUYER'S CONTINUED USE THEREOF FOLLOWING SUCH NOTICE.

### 4 PROVISION OF THE SITECLOUD SERVICE

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#### 4.1 SITECLOUD SERVICE

SENSERA offers the SiteCloud Service on a recurring monthly or multi-month fixed-term basis (each, a "**Service Plan**"). Buyer's purchase of a subscription to a Service Plan under a Procurement Document, at SENSERA's then-current published rates, grants Buyer and Users the right to access the SiteCloud Service during the term of the Service Plan.

#### 4.2 MONTHLY PLANS

Recurring monthly Service Plans ("**Monthly Plans**") have an initial term lasting from the Activation Date (defined below) through the last day of the month in which the Activation Date occurred. The Monthly Plan will automatically renew at the then-current published rates each month thereafter until Buyer provides the required Monthly Notice (defined below) to SENSERA.

#### 4.3 FIXED TERM PLANS

Multi-month fixed-term Service Plans ("**Fixed Term Plans**") have an initial term of at least two (2) months, beginning on the Activation Date (defined below). The Fixed Term Plan will automatically renew at the then-current published rates for the same plan type and duration until Buyer provides the required Fixed-Term Notice (defined below) to SENSERA; provided, however, that Buyer may elect to change the plan type or duration of any renewal of a Fixed Term Plan by contacting SENSERA at [finance@senserasystems.com](mailto:finance@senserasystems.com) at least one (1) day before such renewal term begins.

#### 4.4 SITECLOUD SERVICE ACTIVATION AND EXPIRATION

Each initial Service Plan will begin seven (7) days after the ship date of Products associated with the Service Plan (the "**Activation Date**"). For Monthly Plans, SENSERA requires a minimum of five (5) days' written notice prior to the end of the current month of the Monthly Plan not to renew service for the upcoming month ("**Monthly Notice**"), and for Fixed Term Plans, SENSERA requires a minimum of thirty (30) days' written notice prior to the end of the current term of the Fixed Term Plan not to renew service for the upcoming term ("**Fixed Term Notice**," and together with Monthly Notice, "**Non-Renewal Notice**"). Non-Renewal Notice must be sent to [finance@senserasystems.com](mailto:finance@senserasystems.com), providing the customer name and the serial number of the Product for which the Service Plan is being cancelled. Upon receipt of Non-Renewal Notice, SiteCloud Service will expire at the end of the last day of the current month or term of the Service Plan, as applicable. Charges for the SiteCloud Service subscribed to under a Service Plan are non-refundable and no credits will be issued. Any unpaid charges for SiteCloud Service provided during the Service Plan remain due and payable after non-renewal of the Monthly Plan.

#### 4.5 WEBSITE ACCESS

Buyer and Users access and use the SiteCloud Service through the Website. Buyer's and Users' access to, and use of, the Website will be subject to the following terms:

- SENSERA grants to each User a limited, non-exclusive, revocable, and non-transferable license during the term of this Agreement, to access and use the Website solely for the purpose of using the SiteCloud Service as permitted in this Agreement.
- Each User is invited to create an account on the Website (each, a "**User Account**"). Buyer will not, and will ensure that Users do not, distribute or transfer any user IDs or passwords associated with User Accounts or provide a third party with the right to access any User Accounts. Buyer will notify

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SENSERA immediately at [support@senserasystems.com](mailto:support@senserasystems.com) if any user IDs or passwords associated with User Accounts are lost, stolen, or otherwise compromised. Buyer agrees to accept responsibility for all activities that occur under any User Account.

- Buyer may not create a link to any page of the Website without the prior written consent of SENSERA, with exception of the “public URL” feature of the Website that permits such creation.
- The Website may contain hyperlinks to web pages of third parties. SENSERA shall have no liability for the contents of such third-party web pages and does not make any representations or warranties about, or endorse, such web pages or their contents.

### 4.6 SITECLOUD-AERIAL

SENSERA offers SiteCloud-AERIAL Service in-flight packages to be delivered on a schedule that is determined by the Buyer pursuant to the Procurement Documents.

In order to provide Buyer with the SiteCloud-AERIAL Service, the assigned site must be deemed “flyable” in accordance with Federal Aviation Administration (“FAA”) regulations. If the site is not considered “flyable”, SENSERA cannot deliver the SiteCloud-AERIAL Service to that site. In this case, SENSERA will not accept an order for the affected SiteCloud-AERIAL Service, and if an order has already been taken, SENSERA will rescind it and provide a full refund of payment for the affected SiteCloud-AERIAL Service.

Buyer will have the following obligations with regard to the SiteCloud-AERIAL Service:

1. Buyer must provide SENSERA with a site contact name, address, phone number, and email.
2. Buyer must accept, sign, and return the SiteCloud-AERIAL Liability Insurance form.
3. Buyer will ensure that Users of the SiteCloud-AERIAL Service create User Accounts.
4. Buyer and Users will still be bound by all terms and conditions in this Agreement.

Flight plan execution for the SiteCloud-AERIAL Service may vary and change without notice depending on a variety of factors including on-site structures, topography, terrain, and weather.

### 4.7 SITECLOUD SERVICE AVAILABILITY

SENSERA may conduct either planned or unplanned outages of the SiteCloud Service. SENSERA will use commercially reasonable efforts to schedule outages in a way that minimizes the impact on customers, but SENSERA cannot always give advance notice of such outages. **The SENSERA Parties will not be liable for any such outages.**

### 4.8 SITECLOUD SERVICE CONNECTIVITY

In order for Products to upload Image Data to, and otherwise connect with, the SiteCloud Service, Products must be utilized in an area with a cellular data or WiFi connection. Carrier cellular coverage maps provide estimated wireless coverage for areas outdoors. Actual service area and quality of cellular coverage may vary and change without notice depending on a variety of factors including network capacity, terrain, and weather.

Buyer understands and agrees that the cellular data or WiFi connection between Products and the SiteCloud Service may be temporarily interrupted because of atmospheric, terrain, or other natural or artificial conditions affecting the connection and that the cellular data connection may be temporarily interrupted due to usage concentrations, modifications, upgrades, relocation, and repairs of the cellular transmission network used in the provision of cellular data.

**The SENSERA Parties shall not be liable for any issues with cellular data or WiFi connection between Products and the SiteCloud Service.**

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Buyer agrees that the liability of Carrier and the SENSERA Parties to Buyer and Users for the cellular data used in the connection between Products and the SiteCloud Service may be strictly controlled and limited by Carrier's tariff, if any, and the laws, rules, and regulations of the Federal Communications Commission and other governmental authorities.

The cellular data connection between Products and the SiteCloud Services may be temporarily suspended or permanently terminated without notice in the event that SENSERA'S agreement with Carrier is terminated or in the event that Buyer or Users violate the Carrier's acceptable use policy or other network rules and policies. **Buyer waives any and all claims against the Carrier for such suspension or termination.**

**Buyer expressly understands and agrees that it has no contractual relationship whatsoever with Carrier or its affiliates or contractors by virtue of this Agreement and that Buyer is not a third-party beneficiary of any agreement between SENSERA and Carrier or its affiliates or contractors. In addition, Buyer acknowledges and agrees that Carrier and its affiliates and contractors shall have no legal, equitable, or other liability of any kind to Buyer and Users, and Buyer hereby waives any and all claims or demands therefor.**

### 4.9 DATA USAGE AND OVERAGES; TEXT MESSAGES

Certain Service Plans using cellular coverage to connect Products to the SiteCloud Service may include data limits. Cellular data usage can be affected by various Product and SiteCloud Service configurations. The SiteCloud Service provides Buyer with alerts when certain Service Plans are approaching purchased cellular data limits.

Buyer is solely responsible for modifying Product and SiteCloud Service configurations so that cellular data usage remains within Service Plan limits. Buyer agrees to pay for any cellular data overages according to the then-current overage rates in effect. SENSERA will invoice for overages monthly following the month the overage was incurred, and payment is due according to the payment terms on the invoice.

The SiteCloud Service may contain an SMS/text message alerting feature, which is triggered by certain configurations and conditions of the Products associated with the SiteCloud Service. SENSERA reserves the right to disable or limit this feature if the configuration or environment of the Product or Service is causing excessive SMS/text message alerts to Buyer or Users. SENSERA shall not be responsible for any charges Buyer or Users may incur to receive SMS/text messages from the SiteCloud Service.

### 4.10 API OFFERINGS

To the extent that SENSERA grants Buyer any access to, and use of, any SENSERA application programming interfaces for Buyer to interoperate any of its software, approved by SENSERA, with the SiteCloud Service (the "**APIs**"), Buyer agrees that it and Users will be bound by, and will comply with, the additional terms and conditions contained in the API Access Agreement provided by SENSERA to Buyer.

## 5 PRODUCTS

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### 5.1 PURCHASES

Buyer may purchase Products from SENSERA under a Procurement Document, at SENSERA's then-current published rates, to capture Image Data for use in conjunction with the SiteCloud Service.

### 5.2 RENTALS

Buyer may rent Products from SENSERA, instead of purchasing them, at SENSERA's then-current published rates. Buyer may rent Products for monthly or fixed-term periods (each, a "**Rental Plan**"), and the parties agree that their rights and obligations with respect to the activation, renewal, and non-renewal of Rental Plans will be equivalent to those for Service Plans, as stated in Sections 4.2-4.4 above; provided, however, that

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1. When first renting a Product, Buyer must purchase a subscription to a corresponding Service Plan;
2. Each Rental Plan will begin seven (7) days from the ship date of the rental Product;
3. Buyer must return, and SENSERA must receive, each rental Product within fourteen (14) days of the end of the Rental Plan; and
4. If SENSERA does not receive a rental Product within the fourteen (14) return window following the end of the Rental Plan, SENSERA reserves the right to invoice, and Buyer will promptly pay, as applicable, (i) a late return fee owing for the period following the return window and the date on which SENSERA actually receives the rental Product, (ii) a hold-over fee owing for the period following the return window and the date on which Buyer chooses to begin a new Rental Plan for the same rental Product, or (iii) a non-return fee, up to the then-current published purchase price for the rental Product, if Buyer never actually returns such Product.

Buyer shall be responsible for all lost or stolen rental Products and all damage caused to rental Products, outside of normal wear and tear.

## 6 BILLING AND PAYMENT

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### 6.1 PAYMENTS

All prices and payments for Products and Services are due and payable in advance upon Buyer's receipt of invoice. At SENSERA's sole discretion, trade credit terms with payment due thirty (30) days from invoice date may be extended to Buyer upon successful completion of a credit application that is expressly approved by an authorized SENSERA representative. Any amounts not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month or the maximum rate allowed under law, whichever is lower. SENSERA reserves the right to revoke trade credit terms if there are any amounts past due under any Buyer invoices.

SENSERA reserves the right to suspend any Services upon notice to Buyer if Buyer has any amounts past due under any invoices related to such Services. Prior to the reactivation of suspended Services, Buyer must pay in advance for any amounts past due, along with any costs or expenses incurred by SENSERA in connection with such reactivation and any related collection expenses.

If Buyer has any amounts past due under any invoices, SENSERA reserves the right to require payment of all past due amounts before Buyer can purchase additional Products or Services.

### 6.2 BILLING AND PAYMENT FOR RECURRING SERVICE PLANS

For Monthly Plans, the fees for SiteCloud Service actually rendered during the first month of the Service Plan from the Activation Date to the last day of that month, plus an additional month's worth of fees, shall be due and payable at the time of purchasing the subscription to the Monthly Plan. Buyer shall provide an automatic payment authorization form and have an active credit card or ACH information on file for all Monthly Plans. Subsequent fees for every other month during the Monthly Plan will be invoiced on or near the 23<sup>rd</sup> of the immediately prior month and will be automatically billed to the credit card or ACH information on file on the last day of the immediately prior month ("**Billing Date**"). If the payment cannot be completed on the Billing Date, the SiteCloud Service will be suspended, and Buyer will need to contact SENSERA at [finance@senserasytems.com](mailto:finance@senserasytems.com) to make late payment by credit card or ACH, to update the payment information on file for future payments, and to have the SiteCloud Service reactivated.

### 6.3 BILLING AND PAYMENT FOR FIXED PERIOD SERVICE PLANS

For Fixed Term Plans, fees for the initial term of the Fixed Term Plan are due and payable upon receipt of invoice and prior to the commencement of such initial term. For the automatic renewal of a Fixed Term Plan, SENSERA will provide an invoice for the renewal term to Buyer via email to the billing contact on file within thirty (30) days of the end of the current term of the Fixed Term Plan. If payment is not received by

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the last day of the current term of the Fixed Term Plan, the SiteCloud Service will be suspended, and Buyer will need to contact SENSERA at [finance@senserasytems.com](mailto:finance@senserasytems.com) to purchase a new Service Plan and have the SiteCloud Service reactivated.

### 6.4 SITECLOUD-AERIAL

When the order for SiteCloud-AERIAL Service is placed, SENSERA will submit an invoice to Buyer detailing the flight package(s) and the number of flights purchased. Payment is due upon receipt of invoice. Buyer must execute any purchased flights within twelve (12) months of the purchase of the package or else any unused flights will expire and be non-refundable.

### 6.5 RENTED PRODUCTS

Buyer agrees to pay for any rented Products at the agreed rental rates. Buyer will pay all fees for rented Products to SENSERA (a) monthly in advance for a monthly Rental Plan and (b) fully in advance for a fixed-term Rental Plan.

### 6.6 TAXES

Buyer is responsible for all taxes on purchases from SENSERA (“**Taxes**”). SENSERA will charge and collect Taxes where it has an obligation to do so. If Buyer is exempt from paying any Taxes, Buyer must notify SENSERA at time of purchase and provide a valid tax-exempt certificate to SENSERA. Buyer must maintain a valid tax-exempt certificate on file with SENSERA for Services to remain exempt from paying Taxes.

## 7 SHIPMENT

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Products will not be shipped until full payment is received by SENSERA or trade credit terms are expressly approved by SENSERA. Title and risk of loss to all Products purchased or rented under this Agreement will pass to Buyer upon receipt of the shipment by the carrier at SENSERA’s facility. SENSERA will select the carrier, the mode of shipment, the packaging, and any shipping insurance, and Buyer will be responsible for paying all transportation and insurance charges, including any customs fees or duties. Depending on the availability of Products in stock, SENSERA may delay delivery or make partial shipments of, and require partial payment for, the Products ordered under a Procurement Document.

When Buyer returns any Product to SENSERA, whether for repair or at the end of a Rental Term, SENSERA will create a shipping label for the Product, and Buyer will promptly package and ship the Product back to SENSERA, using the carrier stated on the shipping label. Buyer must provide a tracking number for returned Products to SENSERA once shipped. Buyer will be responsible for all transportation and insurance charges for the return of any Product to SENSERA, and title to, and risk of loss for, the Product will remain with Buyer until the Product is received by SENSERA.

## 8 INTELLECTUAL PROPERTY

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### 8.1 SERVICES AND WEBSITE

All right, title, and interest in and to the Services and the Website are owned solely by SENSERA or its partners.

### 8.2 IMAGE DATA

Except as indicated below, all right, title, and interest in all Image Data collected by the Products and uploaded to the SiteCloud Service shall remain with Buyer. Buyer hereby grants to SENSERA a non-exclusive, worldwide, transferable, sublicensable (to resellers or other partners for integrated services), royalty-free license, during the term of the Service Plan under which Image Data was collected and/or stored, and for three (3) years thereafter, to copy, reproduce, alter, modify, distribute, and create derivative works of Image Data to provide the Services, to perform data analysis, to develop artificial intelligence and new Products and Services, to improve the Products and Services, to market the Products and Services,

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and to perform other related business functions. To the extent that Buyer notifies SENSERA that any Image Data is Confidential Information, SENSERA's license to Image Data will not include any right to disclose the Image Data to any third parties or use the Image Data for the benefit of any third parties.

Upon expiration or termination of Buyer's last-active Service Plan, Buyer shall have up to twelve (12) months to download any Image Data from the Website. Following such period, SENSERA shall have no further obligation to retain or archive Image Data unless required by law or by a court order in connection with ongoing litigation. Buyer shall reimburse SENSERA for the expense incurred by SENSERA in retaining Image Data in connection with any formal litigation involving Buyer.

Buyer agrees to defend, indemnify, and hold harmless the SENSERA Parties, Carrier, and their respective officers, directors, members, managers, shareholders, employees, agents, representatives, successors, and assigns (collectively, the "**SENSERA Indemnified Parties**") from and against any claims, suits, demands, actions, and all resulting losses, liabilities, damages, judgments, settlements, penalties, fines, costs, and expenses (including reasonable attorneys' fees) (collectively, "**Claims**") arising out of (a) Buyer's authority, or lack thereof, to grant the rights in the Image Data to SENSERA under this Agreement; (b) Buyer's failure to obtain any permission or consent, in compliance with applicable laws, to use the name, image, and likeness of any individual featured in the Image Data; or (c) any allegation that SENSERA's use of the Image Data as permitted by the license above (i) constitutes an infringement or misappropriation of the intellectual property rights, or a violation of the privacy rights, of any third party or (ii) is illegal in any way.

### 8.3 USAGE DATA

SENSERA may collect Usage Data, provided that it does not identify Buyer or any User as the source thereof and does not otherwise constitute Confidential Information. Usage Data is not Image Data and will be the sole property of SENSERA. Usage Data may be freely used by SENSERA for any lawful purpose.

### 8.4 TRADEMARKS

Nothing in this Agreement gives Buyer or Users any right or license to any trademarks (whether registered or unregistered), logos, trade dress, or other brand features of SENSERA.

### 8.5 FEEDBACK

If Buyer or Users from time to time provide suggestions, comments, or other feedback to SENSERA with respect to SENSERA or the Website, Products, or Services, SENSERA may freely use, copy, disclose, license, distribute, or otherwise exploit any such suggestions, comments, or other feedback in any manner and without any obligation or restriction. SENSERA will retain sole ownership of any such suggestions, comments, or other feedback.

### 8.6 THIRD-PARTY TECHNOLOGY

The Products, Services, and Website may contain or integrate with components of technology developed, provided, or maintained by third parties ("**Third-Party Technology**"). Any intellectual property included in the Third-Party Technology belongs to the respective owner of such intellectual property. In addition to this Agreement, Buyer's and Users' access to, and use of, any Third-Party Technology may also be subject to terms and conditions of the providers of such Third-Party Technology. SENSERA will have no liability for Buyer's and Users' access to, and use of, Third-Party Technology.

### 8.7 PROHIBITED USAGE

Buyer shall not, and ensure that Users and any other third parties do not, engage in any of the actions listed below:

- Using the Products, Services, or Website to provide life-sustaining medical care for any individual, including without limitation, use of the Services in health care and assisted living environments;

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- Attempting, or assisting another, to access, alter, or interfere with the communications and/or information of other users of the Products, Services, or Website;
- Rearranging, tampering with, or making an unauthorized connection with any network of a Carrier;
- Using the Products, Services, or Website in such a manner so as to interfere unreasonably with the use of the same by one or more other users or in a manner that violates the acceptable use policy of the Carrier;
- Using the Products, Services, or Website for any unauthorized or unlawful purposes;
- Installing any amplifiers, enhancers, repeaters, or other devices that modify or otherwise affect the radio frequencies used to provide the Services;
- Reproducing, altering, or creating derivative works of, or attempting to, reproduce, alter, or create derivative works of, the Products, Services, or Website;
- Using the Products, Services, or Website for monitoring of third parties without their permission, except in the case of a prisoner and parolee monitoring;
- Using the Products, Services, or Website in any manner that could damage, disable, overburden, or impair the same;
- Using automated scripts to collect information from, or otherwise interact with, the Products, Services, or Website;
- Distributing, selling, reselling, lending, loaning, leasing, licensing, sublicensing, or transferring any of Buyer's or Users' rights to access or use the Products, Services, or Website, except as expressly permitted by applicable law;
- Reverse engineering, disassembling, decompiling, or otherwise attempting to derive the method of operation of the Products, Services, or Website, except as expressly permitted by applicable law;
- Attempting to circumvent or overcome any technological protection measures intended to restrict access to any portion of the Products, Services, or Website;
- Monitoring the availability, performance, or functionality of the Services or Website; and
- Interfering with the operation or hosting of the Services or Website.

### **9 PRIVACY & CONFIDENTIALITY**

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Each party ("**Recipient**") may receive Confidential Information from the other party ("**Discloser**") during the term of this Agreement. Recipient agrees to protect from disclosure such Confidential Information with the same degree of care that it affords its own confidential information, but in no event with less than reasonable care. The Recipient will also refrain from disclosure of any Confidential Information to any third party, except for its employees, contractors, and resellers as necessary for the performance or use of the Services under this Agreement.

For purposes of this Agreement, "**Confidential Information**" means all information provided or disclosed by Discloser regarding Discloser's business, technology, or other affairs, whether in oral, written, or electronic form, that is of a nature such that a reasonable person would recognize it as confidential. The following information will not be considered Confidential Information: (i) information that is publicly available through no fault of Recipient; (ii) information that was known by Recipient prior to commencement of discussions regarding the subject matter of this Agreement; (iii) information that was independently developed by Recipient; and (iv) information rightfully obtained by Recipient without continuing restrictions on its use or disclosure.



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SENSERA may be obligated to disclose or share Buyer's Confidential Information in order to comply with any applicable legal requirements including, without limitation, administrative investigations, subpoenas, or other court orders (each, a "**Mandatory Disclosure Request**"). SENSERA agrees, provided it is permitted by the applicable Mandatory Disclosure Request, to notify Buyer of any such Mandatory Disclosure Request in advance of any disclosure of Confidential Information. In the event that compliance with such Mandatory Disclosure Request incurs more than five (5) hours of employee time and/or in excess of one thousand dollars (\$1,000) of professional time (including legal support), Buyer will reimburse SENSERA on demand for the fair market value of all employee time or professional expenses incurred in connection with complying with such Mandatory Disclosure Request.

Promptly upon Discloser's written request, Recipient will return to Discloser or destroy all Confidential Information of Discloser in Recipient's possession or control and permanently erase all electronic copies of such Confidential Information promptly, provided that Recipient may retain a reasonable number of copies of each item of Confidential Information in accordance with its own archival or back-up procedures that are compliant with applicable law or as otherwise necessary to comply with applicable law, and in such event, Recipient will continue to protect such retained Confidential Information as it is required to do so under this Agreement.

### **10 INSTALLATION AND SUPPORT**

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Unless the parties otherwise agree to the contrary in a Procurement Document, Buyer is responsible for the installation of the Products. When Buyer is installing the Products, the following terms and conditions apply:

- It is Buyer's responsibility to ensure that all Products are installed per all local codes, requirements, and applicable safety standards and rules.
- SENSERA shall not be responsible for any costs incurred by Buyer or Users in connection with installation or deinstallation of products.

In the event that the parties agree that SENSERA's agents will provide Product installation pursuant to Procurement Documents, the following terms and conditions apply:

- Buyer will pay all fees due to SENSERA for the Product installation, as specified in the applicable Procurement Document.
- SENSERA's agents will have the right to enter Buyer's premises at mutually agreed upon times in order to install the Products.
- Buyer will ensure that no visible or latent dangerous conditions exist on its premises that could cause harm to SENSERA's agents during the course of them installing the Products. Buyer will be liable for any such harm caused by such conditions on its premises.
- The Buyer shall indemnify, defend, and hold harmless SENSERA Indemnified Parties from all Claims resulting from any injury to or death of any person (including injury to or death of SENSERA's agents) or loss of or damage to tangible personal property caused by Buyer or Buyer's premises in the course of SENSERA's agents installing the Products.

### **11 LIMITED PRODUCT WARRANTY**

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#### **11.1 WHAT IS COVERED**

This limited warranty covers defects in materials and workmanship in Products.

#### **11.2 WHAT IS NOT COVERED**

This limited warranty does not cover any damage, deterioration, or malfunction resulting from any alteration, modification, tampering, improper or unreasonable use or maintenance, misuse, abuse, accident, neglect,

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exposure to extreme weather conditions, environmental conditions outside the specified ranges, fire, improper packing and shipping (such claims must be presented to the carrier), lightning, power surges, or other acts of nature or God.

### 11.3 HOW LONG THIS COVERAGE LASTS

This limited warranty with respect to any purchased Products lasts two (2) years from the original invoice date under which Buyer is billed for each such Product. This limited warranty for all rental Products lasts for the Rental Term applicable to each such Product.

### 11.4 WHO IS COVERED

If Buyer resells any Products, this limited warranty does not transfer to the new owner upon resale.

### 11.5 WHAT SENSERA WILL DO UNDER THIS LIMITED WARRANTY

SENSERA will, at its sole option, provide one of the following two remedies to satisfy a proper claim under this limited warranty:

1. Elect to repair any defective Products within a reasonable period of time, free of any charge for the necessary parts and labor to repair the Products to their proper operating condition.
2. Replace the defective Products with, at its sole option, new or refurbished replacement Products or with similar Products deemed by SENSERA to perform substantially the same function as the original Products.

Products that Buyer purchased that are repaired or replaced under this limited warranty will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer. Products that Buyer rents that are repaired or replaced under this limited warranty will be warranted for the remainder of the original warranty period.

### 11.6 WHAT SENSERA WILL NOT DO UNDER THIS LIMITED WARRANTY

SENSERA will not be responsible for any costs related to the removal or return of the Products. SENSERA will not be responsible for any costs related to any re-installation of the Products or any adjustment of User controls or any programming required during any re-installation of the Products.

### 11.7 HOW TO OBTAIN A REMEDY UNDER THIS LIMITED WARRANTY

To obtain a remedy under this limited warranty, Buyer must contact SENSERA Customer Support at 800-657-0437 or [support@senserasytems.com](mailto:support@senserasytems.com). Buyer must provide the serial number for the affected Product and the original invoice under which the defective Product was purchased as proof of purchase. If a Product is to be returned for repair or replacement, a return authorization number (“**RMA Number**”) is required and will be provided to Buyer. Buyer will securely package the returned Product in a carton bearing the associated RMA Number. If a replacement Product is provided and SENSERA does not receive the defective Product to be returned under this limited warranty within fourteen (14) days of SENSERA providing the RMA Number to Buyer, SENSERA reserves the right to invoice, and Buyer will promptly pay, as applicable, (i) a late return fee owing for the period following the fourteen- (14-) day return window and the date on which SENSERA actually receives the returned Product, or (ii) a non-return fee, up to the then-current published purchase price for the replacement Product, if Buyer never actually returns the defective Product.

### 11.8 OTHER CONDITIONS

This limited warranty is void vis-a-vis a certain Product if (a) the label bearing the serial number of the Product has been removed or defaced; or (b) the Product is not distributed by SENSERA.

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### 12 TERMINATION

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#### 12.1 FOR CAUSE; NO SERVICE PLAN IN EFFECT

This Agreement or any individual Procurement Document, Service Plan, or Rental Term hereunder may be terminated by either party upon written notice to the other party in the event that the other party commits a material breach of this Agreement, and following receipt of written notice of such breach from the non-breaching party, fails to cure such breach within thirty (30) days thereof. Additionally, either party may terminate this Agreement in the event that no Service Plan has been in effect for a period greater than twelve (12) months. Termination of this Agreement will terminate all of Buyer's Procurement Documents, Service Plans, and Rental Terms then in effect.

#### 12.2 EFFECT OF TERMINATION

Upon termination of this Agreement for any reason: (a) all rights granted to Buyer and Users under this Agreement will terminate; (b) Buyer will pay any unpaid charges having accrued for its purchase or rental of Products and purchase of subscriptions to Service Plans; (c) Buyer will, and will cause its Users to, immediately cease all access to, and use of, the Services and Website, except for the purposes and duration permitted in Section 8.2 above; (d) Buyer will return all Confidential Information in its and Users' possession to SENSERA, if any; and (e) SENSERA may, in its sole discretion, delete User Accounts any time after twelve (12) months following the effective date of termination of this Agreement. Provisions which by their inherent meanings are to survive the termination of this Agreement will so survive.

### 13 SUSPENSION

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Without limiting SENSERA'S right to terminate this Agreement, SENSERA may also suspend Buyer's and Users' access to User Accounts and the Services and Website, with or without notice to Buyer or Users upon any actual, threatened, or suspected breach of this Agreement or applicable law or upon any other conduct deemed by SENSERA to be inappropriate or detrimental to SENSERA, the Services, or Website, or any other SENSERA customer.

### 14 DISPUTE RESOLUTION/ARBITRATION/GOVERNING LAW

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Except as otherwise provided in this Section 14, the parties will attempt to resolve all disputes, controversies, or claims arising under, out of, or relating to this Agreement (each, a "**Dispute**") through discussion between the parties. Except as otherwise provided in this Section 14, if any Dispute cannot be resolved through negotiations between the parties within thirty (30) days of notice from one party to the other of the Dispute, either party may submit such Dispute for final settlement through binding arbitration under the rules of the American Arbitration Association then in effect (the "**Rules**"). The arbitration will be conducted before a sole neutral arbitrator, at a site specified by SENSERA in the State of Colorado. The award of the arbitrator will be the exclusive remedy of the parties for all claims, counterclaims, issues, or accountings presented or plead to the arbitrator. The award of the arbitrator will require the non-prevailing party to pay the prevailing party's costs, fees, and expenses (including attorneys' fees). Judgment upon the award may be entered in any court or governmental body having jurisdiction thereof. Notwithstanding the foregoing, if SENSERA reasonably believes Buyer or Users have, in any manner, violated or threatened to infringe SENSERA's intellectual property rights, or breached any of their obligations with regard to SENSERA's Confidential Information, then SENSERA may seek emergency, preliminary, or other appropriate interim relief in the federal or state courts located in Denver, Colorado. The interpretation of the rights and obligations of the parties under this Agreement will be governed in all respects exclusively by the laws of the State of Colorado, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement, and the parties hereby disclaim the application thereof.

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### 15 LIMITATION OF LIABILITY, DISCLAIMERS, INDEMNITY

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#### 15.1 LIMITATION OF LIABILITY

Buyer agrees to limit the total aggregate amount for damages sought by it or Users against SENSERA, or SENSERA'S affiliates, resellers, agents, representatives, vendors, manufacturers, or suppliers (the "SENSERA Parties"), to the fees or other charges that Buyer paid to SENSERA during the six (6) months immediately preceding the date on which the most recent claim for damages against the SENSERA Parties accrued. Notwithstanding the foregoing, Buyer agrees that under no circumstances are the SENSERA Parties liable to Buyer or Users for any incidental, consequential, exemplary, treble, punitive, special, or other indirect damages of any nature whatsoever, arising out of, related to, or in connection with this Agreement.

#### 15.2 DISCLAIMER OF WARRANTY: SERVICES

All express or implied representations and warranties relating to the Services and Website are hereby excluded from this Agreement to the extent allowed by applicable law and are expressly disclaimed by SENSERA and the SENSERA Parties.

#### 15.3 DISCLAIMER OF WARRANTY: PRODUCTS

Except as specified in Section 11 above, all express or implied representations and warranties related to the Products are hereby excluded from this Agreement to the extent allowed by applicable law and are expressly disclaimed by SENSERA and the SENSERA Parties.

#### 15.4 INDEMNIFICATION

In addition to its other indemnification obligations throughout this Agreement, Buyer agrees to defend, indemnify, and hold harmless the SENSERA Indemnified Parties from and against any Claims arising out of (a) Buyer's or Users' use of, or failure or inability to use, the Products, Services, or Website; and (b) any breach of this Agreement, or violation of any laws or regulations or the rights of any third party (expressly including privacy rights) by Buyer, any User, or any other person using User Accounts.

### 16 NOTICES

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Unless otherwise specified in this Agreement, any notices (1) that Buyer sends to SENSERA under this Agreement will be provided by certified mail (return receipt requested) to Sensera Systems, Inc., Attn: David Gaw, CEO, 17301 West Colfax Avenue, Suite 310, Lakewood, Colorado 80401 or by email to [finance@senserasytems.com](mailto:finance@senserasytems.com); and (2) that SENSERA sends to Buyer will be provided by an email to any email address that Buyer or Users provided to SENSERA in connection with User Accounts, provided that in the case of any notice applicable both to Buyer and other customers, SENSERA may instead provide such notice by posting it on the Website. Notices provided to SENSERA will be deemed given when actually received by SENSERA. Notices provided to Buyer will be deemed given twenty-four (24) hours after posting to the Website or sending via e-mail.

### 17 MISCELLANEOUS TERMS

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Except as expressly set forth in this Agreement, this Agreement may be amended or modified only by a writing signed by both parties. Any waiver or failure by SENSERA to enforce any provision of this Agreement on one (1) occasion will not be deemed a waiver by SENSERA of any other provision or of such provision on any other occasion. If any provision of this Agreement is held to be unenforceable under any law, that provision will be removed to the extent necessary to comply with such law, replaced by a provision that most closely approximates the original intent and economic effect of the original to the extent consistent with such law, and the remaining provisions will remain in full force. Neither this Agreement nor any of Buyer's or Users' rights or obligations hereunder may be assigned or transferred by Buyer (in whole or in part and including by sale, merger, consolidation, or other operation of law) without the prior written approval

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of SENSERA. Any assignment in violation of the foregoing will be null and void. SENSERA may freely assign this Agreement. The words "include," "includes," and "including" means "include," "includes," or "including," in each case, "without limitation." The parties hereto are independent parties, not agents, employees, or employers of the other or joint ventures, and neither acquires hereunder any right or ability to bind or enter into any obligation on behalf of the other.