

## CUSTOMER AGREEMENT ("Agreement")

"VARISENSE" or "we," "us," or "our" refers to VariSense LLC. "You" or "your" refers to the person or entity that is the customer of record.

**PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.**

This Agreement, Customer Service Summary, and terms of service for products, features, applications, and services ("Services") not otherwise described herein that are posted on applicable VARISENSE websites or devices, and any documents expressly referred to herein or therein, make up the complete agreement between you and VARISENSE and supersede any and all prior agreements and understandings relating to the subject matter of this Agreement.

### Acronyms and Definitions

- a. **"Authorized User"** means you and those of your employees and agents you have authorized to access the VariSense Software.
- b. **"VariSense Software"** means the online software applications and mobile applications, as further described in the Marketing Collateral, made available to you by VariSense under this Agreement.
- c. **"VariSense System"** means the complete VariSense monitoring system, including the VariSense Software and any hardware.
- d. **"User Account"** means a login point provided by VariSense under this Agreement to enable use of the VariSense Software in accordance with the terms of this Agreement.
- e. **"Website"** means the VariSense website, hardware, and mobile applications or such other website concerning the VariSense System and/or related products or services operated by VariSense.
- f. **"Log-in Details"** means the personal username and password created by you to access the VariSense Software and System.

### Use and Access

- a. VariSense will provide you with one or more User Accounts, and relevant Login details, to access and use the VariSense Software with your agreement to comply with the terms of this Agreement. The VariSense Software is made available to you as a utility to enable you to access data remotely.
- b. VariSense grants to you a non-exclusive, non-transferable, revocable, royalty-free license to permit Authorized Users to access and use the VariSense Software on the terms of this Agreement.
- c. You may access and use the VariSense Software solely for its intended purpose, provided that you may only use and access the VariSense Software in connection with the VariSense System and not as a standalone product.
- d. You shall keep all the Log-in Details confidential and not disclose them to any person or party. You shall notify VariSense promptly if any Log-in Details are disclosed to any person or party other than your Authorized Users and/or if you become aware of anything that may compromise the security and/or operation of the Log-in Details, User Accounts, the VariSense Software and/or the VariSense System.
- e. You shall be responsible for all activities carried on by any person who accesses or otherwise uses a User Account regardless of whether such activities are undertaken by an Authorized User or any third party.

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- f. You undertake not to, and agree to ensure that your Authorized Users do not:
- i. Use the VariSense Software for any illegal purpose or any purpose other than that for which it is intended;
  - ii. Copy, record, edit, alter or translate the VariSense Software;
  - iii. Reverse engineer, disassemble or otherwise attempt to derive source code for the VariSense Software in whole or in part except to the extent expressly permitted by law;
  - iv. Grant access to the VariSense Software or Data to any person other than an Authorized User;
  - v. Remove, tamper with or circumvent the Log-in Details or any license keys relating to the VariSense Software provided by VariSense, or provide such license keys to any individual or legal entity other than the Authorized Users, or use the Log-in Details or any license keys provided by VariSense to change, modify, delete, interfere with or misuse any files or other data created, owned or provided by VariSense or any third party contained within, or provided as part of the VariSense System (including, but not limited to, the VariSense Software);
  - vi. Interfere with or disrupt the proper operation of the VariSense Software including, but not limited to, knowingly or negligently transmitting files that may interrupt, damage, destroy or limit the functionality of any computer software, hardware, systems or networks including corrupted files or files that contain viruses, Trojans, worms, spyware or other malicious content; and/or upload any content or data other than the Data onto the VariSense Software.

### **1.0 TERM COMMITMENT, CHARGES, BILLING AND PAYMENT**

#### **1.1 What is the Term of Service? How can I fulfill my Service Commitment? What are my rights to cancel service and terminate my Agreement?**

VARISENSE Service(s) may be used with: (a) a sensor device that is assigned to your account ("Device") and/or, (b) a device that is designed and purchased for use exclusively within the VARISENSE system ("Devices and Equipment"), and/or (c) equipment connected to your network providing data to the VARISENSE Cloud ("Platform").

**Term of Service.** Your Agreement begins on the day we activate your Service(s) and continues through the Term of Service, a 24-month period ("Service Commitment"). At the end of your service commitment, this Agreement will automatically continue on a month-to-month basis. If your Agreement has no Service Commitment, it is a month-to-month Agreement.

**Fulfillment of Service Commitment.** You have received certain benefits from us in exchange for your Service Commitment, which may include, but are not limited to, a subsidized sensor device. There are two alternative ways to fulfill your Service Commitment. You can pay for the Services described in your Customer Service Summary for the term of your Service Commitment, or you can terminate your Agreement prior to the end of your Service Commitment. If you terminate your Agreement prior to the end of your Service Commitment you must return any Devices and Equipment that you received from VARISENSE or pay an Early Termination Fee ("ETF"). The Early Termination Fee is not a penalty, but rather is an alternative means for you to perform your obligations under the Agreement that compensates us for the fact that the Service Commitment on which your rate plan is based was not completed and that you did not return your VariSense Devices and Equipment.

**Your Termination Rights.** You may terminate your Agreement for any reason during the term of your Service Commitment. However, you agree to return to VARISENSE any Devices and Equipment you received from VARISENSE in connection with your Service Commitment. If you fail to return the Devices and Equipment, you will be charged the fair market value of the Devices and Equipment. VARISENSE also may charge you a restocking fee for any returned Devices and Equipment. Some resellers may impose additional fees.

After your Service Commitment ends and you are on a month-to-month Agreement, you may terminate your Agreement at any time with 30 days notice without incurring an ETF. The month-to-month Agreement does not cover replacement of equipment or additional defects or repairs. If

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you sign a new Agreement before the end of the term of your existing Agreement and terminate that new Agreement within 14 days as allowed above, you agree that you will be bound by the terms and conditions of your existing Agreement including fulfillment of any remaining Service Commitment hereunder.

Service commitments include replacement and repair to your VARISENSE Devices and Equipment during the term of the Agreement. A month-to-month Agreement does not include replacement or repair. If you experience any problems with the equipment you must either purchase new equipment or sign up for the Service Commitment Agreement.

### **1.2 What are VARISENSE's rights to cancel my Service(s) and terminate my Agreement?**

VARISENSE may interrupt, suspend or cancel your Services and terminate your Agreement without advance notice for any reason including, but not limited to, the following:

- Any conduct that we believe violates this Agreement or VARISENSE's Acceptable Use Policy;
- Any conduct that involves the use of abusive, derogatory, insulting, threatening, vulgar or similarly unreasonable language or behavior directed at any of our employees or representatives whether it be in person, over the phone, or in writing;
- You use your Device/Equipment and/or our Services for an unlawful purpose;
- You use your Device/Equipment and/or our Services in any way that: (a) is harmful to, interferes with, or negatively affects our network or other customers, (b) is harmful to, interferes with, or negatively affects our Services or operations, (c) infringes intellectual property rights of VARISENSE or others, (d) results in the publication of threatening, offensive or illegal material, or (e) generates spam or other abusive messaging or calling, a security risk, or a violation of privacy;
- You fail to make all required payments when due;
- Your credit has deteriorated and/or we believe that there is a risk of non-payment;
- You refuse to pay any required advance payment or deposit;
- We discover that you are under age;
- You provide inaccurate or misleading credit information; or
- You modify any VARISENSE hardware from its manufacturer's specifications.

VARISENSE's rights under this Section 1.2 are in addition to any specific rights that we reserve in other provisions of this Agreement to interrupt, suspend, modify, or cancel your Services and terminate your Agreement.

After your Service Commitment ends and you are on a month-to-month Agreement, VARISENSE may terminate your Agreement at any time with 30 days' notice.

### **1.3 Can VARISENSE change my Terms and Rates?**

We may change any terms, conditions, rates, fees, expenses, or charges regarding your Services at any time. We will provide you with notice of material changes either in your monthly bill or separately. You understand and agree that State and Federal Taxes or Fees and other governmentally imposed taxes or fees, whether or not assessed directly upon you, may be increased based upon the government's or our calculations.

### **1.4 How will I receive my bill? What charges am I responsible for? How much time do I have to dispute my bill?**

You will receive an electronic (paperless) bill from VARISENSE. Each month we will send you an email notice with your electronic bill. This will be sent to your official email address on file with VARISENSE. You are required to keep your email address current and to notify us immediately of any change in your email address. You will not receive a paper bill in the mail unless you expressly request one.

You are responsible for all charges for or resulting from Services provided under this Agreement. You must have a valid credit card or debit card on file at all times, VARISENSE will apply the monthly service charge the card on file.

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IF YOU DISPUTE ANY CHARGES ON YOUR BILL, YOU MUST NOTIFY US IN WRITING AT VARISENSE BILL DISPUTE, 6039 Cypress Gardens Blvd, Suite 263, Winter Haven, FL 33884 WITHIN 60 DAYS OF THE DATE OF THE BILL OR YOU'LL HAVE WAIVED YOUR RIGHT TO DISPUTE THE BILL AND TO PARTICIPATE IN ANY LEGAL ACTION RAISING SUCH DISPUTE. Charges include, without limitation, recurring monthly service, administrative, and late payment charges; and other surcharges; restoral and reactivation charges; any other charges; and applicable taxes and governmental fees, whether assessed directly upon you or upon VARISENSE.

### **1.5 How does VARISENSE calculate my bill?**

If the Devices and Equipment you order is shipped to you, your Services may be activated before you take delivery so that you can use it promptly upon receipt. Thus, you may be charged for Services while your Devices and Equipment are still in transit. If, upon receiving your first bill, you have been charged for Services while your Devices and Equipment were in transit, you may contact Customer Service at support@varisense.com to request a credit. Except as provided below, monthly Services and certain other charges are billed one month in advance, and there is no proration of such charges if Service is terminated on other than the last day of your billing cycle. You agree to pay for all services used with your devices.

### **1.6 Are Advance Payments Required?**

We may require you to make advance payments for Services, which we may offset against any unpaid balance on your account. Interest won't be paid on advance payments unless required by law. We may require additional advance payments if we determine that the initial payment was inadequate. Any charges you incur in excess of your limit become immediately due at the next billing cycle.

### **1.7 What if I fail to pay my VARISENSE Bill when it is due?**

You agree that for each bill electronic credit or debit card on file by the due date, VARISENSE may charge and you will pay a late payment fee of \$5 and/or any charges associated with the credit or debit card transactions fees.

You expressly authorize, and specifically consent to allowing, VARISENSE and/or its outside collection agencies, outside counsel, or other agents to contact you in connection with any and all matters relating to unpaid past due charges billed by VARISENSE to you. You agree that, for attempts to collect unpaid past due charges, such contact may be made to any mailing address, telephone number, cellular phone number, e-mail address, or any other electronic address that you have provided, or may in the future provide, to VARISENSE. You agree and acknowledge that any e-mail address or any other electronic address that you provide to VARISENSE is your private address and is not accessible to unauthorized third parties. For attempts to collect unpaid charges, you agree that in addition to individual persons attempting to communicate directly with you, any type of contact described above may be made using, among other methods, pre-recorded or artificial voice messages delivered by an automatic telephone dialing system, pre-set e-mail messages delivered by an automatic e-mailing system, or any other pre-set electronic messages delivered by any other automatic electronic messaging system.

### **1.8 Who Can Access My Account and for What Purpose?**

You authorize us to provide information about and to make changes to your account, including new or extended Service Commitments and the purchase of Products and/or Services, upon the direction of any person able to provide information we deem sufficient to identify you. In addition, you may designate individuals who are authorized to make certain changes to your account ("Authorized Users"). You are responsible for all changes made by such Authorized Users, including new or extended Service Commitments and the purchase of Products or Services. You consent to the use by us or our authorized agents of regular mail, predictive or autodialing equipment, email, text messaging, facsimile or other reasonable means to contact you to advise you about our Services or other matters we believe may be of interest to you. In any event, we reserve the right to contact you by any means regarding customer service-related notifications, or other such information.

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### 2.0 HOW DO I RESOLVE DISPUTES WITH VARISENSE?

#### 2.1 Dispute Resolution by Binding Arbitration

**PLEASE READ THIS CAREFULLY, IT AFFECTS YOUR RIGHTS.**

##### Summary:

Most customer concerns can be resolved quickly and to the customer's satisfaction by contacting our customer service department at support@varisense.com. **In the unlikely event that our customer service department is unable to resolve the issue to your satisfaction (or if we have not been able to resolve a dispute we have with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.** Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted.**

#### 2.2 Arbitration Agreement

(1) VARISENSE and you agree to arbitrate **all disputes and claims** between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- Claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- Claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- Claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- Claims that may arise after the termination of this Agreement.

References to "VARISENSE," "you," and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or Devices under this or prior Agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on your behalf. **You agree that, by entering into this Agreement, you and VARISENSE are each waiving the right to a trial by jury or to participate in a class action.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

(2) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to VARISENSE should be addressed to: Office for Dispute Resolution, VARISENSE, 6039 Cypress Gardens Blvd, Suite 263, Winter Haven, FL 33884 ("Notice Address"). The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If VARISENSE and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or VARISENSE may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by VARISENSE or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or VARISENSE is entitled.

(3) The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the

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AAA. The AAA Rules are available by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless VARISENSE and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the AAA Rules will determine the right to a hearing. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, VARISENSE will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse VARISENSE for all monies previously disbursed by it that is otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA rules.

(4) Notwithstanding any provision in this Agreement to the contrary, we agree that if VARISENSE makes any future change to this arbitration provision (other than a change to the Notice Address) during your Service Commitment, you may reject any such change by sending us written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.

### **3.0 TERMS OF SERVICE AND EARLY TERMINATION FEES**

3.1 Your "Term" is the period of time for which you have agreed to maintain Service with us. Periods of suspension of Service do not count toward your Term. After your Term, you will become a month-to-month customer. Except for month-to-month customers, **if you decide to terminate your Service prior to the end of your Term you must return any Devices and Equipment that you received from VARISENSE or pay an Early Termination Fee ("ETF") as described in Section 1.1.**

### **4.0 TERMS RELATING TO THE USE AND LIMITATIONS OF SERVICE**

#### **4.1 What are the Limitations on Service and Liability?**

Unless prohibited by law, the following limitations of liability apply.

#### **4.1.1 LIMITATIONS OF LIABILITY**

You cannot recover from us (1) punitive damages, (2) treble, consequential, indirect, or special damages, or (3) attorney's fees.

YOU WAIVE TO THE FULLEST EXTENT ALLOWED BY LAW ANY CLAIM FOR DAMAGES, INCLUDING BUT NOT LIMITED TO ANY INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OTHER THAN DIRECT, COMPENSATORY DAMAGES AS LIMITED IN THIS AGREEMENT. IN ADDITION, IN NO EVENT DOES VARISENSE AUTHORIZE YOU TO USE THE SERVICES WHERE VARISENSE FAILURE TO PERFORM CAN REASONABLY BE EXPECTED TO RESULT IN A SIGNIFICANT PHYSICAL INJURY, OR IN LOSS OF LIFE. ANY SUCH USE BY YOU IS ENTIRELY AT YOUR OWN RISK, AND YOU AGREE TO HOLD VARISENSE HARMLESS FROM ANY CLAIMS OR LOSSES RELATING TO SUCH UNAUTHORIZED USE.

Neither we nor any Third Party Service Provider or beneficiary will be liable to you or any other party for consequential, indirect, incidental, special, exemplary, or punitive damages (including without limitation, loss of business, business interruption, loss of data, loss of business

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information, or lost profits) in connection with the Services or the System. These limitations apply to all claims, including, without limitation, claims in contract and tort (such as negligence, product liability and strict liability). Some states do not allow the exclusion or limitation of incidental or consequential damages, so those particular limitations may not apply to you.

### **4.1.2 Limitations of Liability by You**

For yourself and for anyone else claiming under you, you agree to release and discharge VariSense and its Third Party Service Providers, their parents, affiliates, and subsidiaries, and the respective officers, directors, and employees, and each third-party beneficiary from all claims, liabilities and losses in connection with the Services, including, but not limited to claims for personal injury or property damage arising from the total or partial failure of performance of the Services, even if caused by the negligence of us or the malfunction of the Services. You agree to indemnify, protect and defend us and each third-party beneficiary against all such claims, damages, expenses, liabilities and losses (including but not limited to reasonable attorneys' fees and all related costs and expenses) incurred by us as a result of any claim, judgment, or adjudication against us or related to or arising from a claim that our use of any content you provide to us, as permitted under this Agreement, infringes the copyright and trade secret rights of a third party. You further agree that this release extends to any party claiming under you and that no insurance company will have any right of subrogation.

YOU AGREE TO WAIVE TO THE FULLEST EXTENT ALLOWED BY LAW, ANY CLAIM FOR DAMAGES OTHER THAN DIRECT, COMPENSATORY DAMAGES AS LIMITED IN THIS AGREEMENT.

You agree that you have no contractual relationship whatsoever with our Underlying Wireless Carrier(s) and that you are not a third-party beneficiary of any agreement between us and our Underlying Wireless Carrier(s). In addition, you expressly agree that none of our Underlying Wireless Carrier(s) has any legal, equitable, or other liability of any kind to you. You waive any and all claims or demands for such liability.

You agree that the limitations of liability and indemnities in this Agreement will survive even after the Agreement has ended. These limitations of liability apply not only to you, but to anyone using your Services, to anyone making a claim on your behalf, and to any claims made by your family, employees, customers, or others arising out of or relating to your Services or System.

### **4.2 Who is responsible for security?**

VARISENSE DOES NOT GUARANTEE SECURITY. Data encryption is available with some, but not all, Services sold by VARISENSE.

## **5.0 WHAT OTHER TERMS AND CONDITIONS APPLY TO MY VARISENSE SERVICE?**

### **5.1 Intellectual Property**

You must respect the intellectual property rights of VARISENSE, our third-party content providers, and any other owner of intellectual property whose protected property may appear on any VariSense software, website and/or dialogue box controlled by VARISENSE or accessed through the VARISENSE software or websites. Except for material in the public domain, all material displayed in association with the Service is copyrighted or trademarked. Except for personal, non-commercial use, trademarked and copyrighted material may not be copied, downloaded, redistributed, modified or otherwise exploited, in whole or in part, without the permission of the owner. Copyright 2016 VARISENSE Intellectual Property. All rights reserved. VARISENSE, VARISENSE logo and all other marks contained herein are trademarks of VARISENSE Intellectual Property and/or VARISENSE affiliated companies.

**5.1.1** Customer agrees that VariSense will have permission to use and refer to the Customer (including any Customer affiliate if it is the supplier), Customer logo and the affiliate name and logo in VariSense promotional material.

### **5.2 Severability**

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If any provision of this Agreement is found to be unenforceable by a court or agency of competent jurisdiction, the remaining provisions will remain in full force and effect. The foregoing does not apply to the prohibition against class or representative actions that is part of the arbitration clause; if that prohibition is found to be unenforceable, the arbitration clause (but only the arbitration clause) shall be null and void.

### **5.3 Assignments; Governing Law; English Language**

#### **5.3.1 Assignment**

VARISENSE may assign this Agreement, but you may not assign this Agreement without our prior written consent.

#### **5.3.2 Governing Law**

The law of the state of your billing address shall govern this Agreement except to the extent that such law is preempted by or inconsistent with applicable federal law. In the event of a dispute between us, the law of the state of your billing address at the time the dispute is commenced, whether in litigation or arbitration, shall govern except to the extent that such law is preempted by or inconsistent with applicable federal law.

#### **5.3.3 English Language**

The original version of this Agreement is in the English language. Any discrepancy or conflicts between the English version and any other language version will be resolved with reference to and by interpreting the English version.