



Better Decisions Start Here

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SaaS and Support Agreement

Contents

AGREEMENT & DEFINITIONS ..... 2
1. SAAS SERVICES ..... 2
2. RESTRICTIONS AND RESPONSIBILITIES..... 2
3. OWNERSHIP ..... 3
4. CONFIDENTIALITY & PROPRIETARY RIGHTS ..... 3
5. SOFTWARE WARRANTY AND DISCLAIMER ..... 4
6. INDEMNITY..... 5
7. LIMITATION OF LIABILITY ..... 5
8 SUPPORT TERMS ..... 6
9 SERVICE & REPAIR TERMS ..... 7
10 PRICING FOR POST ROLLOUT INSTALLATIONS AND OUT OF SCOPE SERVICES ..... 8
11 PAYMENT AND DELIVERY ..... 9
12 TERM AND TERMINATION ..... 10
13 MISCELLANEOUS ..... 10
ACKNOWLEDGEMENT ..... 122

## SaaS and Support Agreement (“Agreement”)

### AGREEMENT & DEFINITIONS

“Customer” or “You” refers to the undersigned customer listed on the Acknowledgement page below (“Customer”). This Agreement pertains to the sale, license, and support of an hardware, software, and Software as a Service (“SaaS”) integrated solution offered by SenSource (the “Solution”), and includes access to cloud software programs, including without limitation, the Software (as defined below), system administration, system management, and system monitoring activities that SenSource performs for the Software, and includes support services for the Solution, as well as any other services provided by SenSource that are purchased by Customer in the attached Order Form and as further set forth in this Agreement (with all such services performed by SenSource collectively referred to as the “Services”). The term “Software” refers to the software products owned or distributed by SenSource to which SenSource grants You access as part of the Solution, including associated documentation, and any Software updates provided as part of the Services. The term “users” shall mean those individuals authorized by You or on Your behalf to use the Solution. The term “Customer Data” refers to the data provided by You that resides in Your Solution environment or that is generated from use of the Solution. The term “Order Form” refers to the Order Form that is attached to this Agreement.

#### 1. SaaS SERVICES

**1.1** Subject to the terms of this Agreement which includes the Order Form and all attachments and exhibits (including Exhibit A) as specified, upon execution of this Agreement and for so long as You continue to pay without interruption the annual support, data hosting and subscription fees set forth in the Order Form, You will have the nonexclusive, non-assignable (except as provided herein), term-based, royalty free, worldwide limited right to use the Solution solely for Your internal business operations and subject to the terms of the Agreement. You may allow Your users to use the Solution for this purpose and You are responsible for Your users’ compliance with the Agreement. The Solution is provided as described in, and subject to, any Solution policies referenced in the Order Form.

You agree that You do not acquire under the Agreement any license to use any Software in excess of the scope and duration of your subscription to the Solution. Upon the termination or expiration of this Agreement Your right to any access and use of the Solution shall terminate; provided, however, to the extent You have purchased any hardware components, You shall remain the owner of such hardware. Please note, however, that hardware that is not subject to a valid Solution subscription will no longer be operable by You unless you are able to provide replacement services for such hardware.

**1.2** Subject to the terms herein, SenSource will provide You with reasonable technical support Services in accordance with the terms set forth in the section entitled Support Terms below.

#### 2. RESTRICTIONS AND RESPONSIBILITIES

**2.1** You will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Solution or any software, documentation or data related to the Solution; modify, translate, or create derivative works based on the Solution or any Software (except to the extent expressly permitted by SenSource or authorized within the Solution); use the Solution or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

**2.2** Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Solution. You agree that such export control laws may govern Your use of the Solution (including technical data) and any services deliverables provided under the Agreement, and You agree to comply with all such export laws and regulations). You agree that no data, information, software programs and/or materials resulting from the Solution will be exported, directly or indirectly, by You in violation of these laws, or will be used by You for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

- 2.3** You represent, covenant, and warrant that You will use the Solution in compliance with this Agreement and its Exhibits and all applicable laws and regulations. You hereby agree to defend, indemnify and hold harmless SenSource against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action by a third party that arises from an alleged violation of the foregoing or otherwise from Your use of the Solution. SenSource may monitor Your use of the Solution if it has reason to believe that any misuse, abuse, disruption or interruption may be occurring and will contact You promptly if it confirms any such misuse, abuse, disruption or interruption.
- 2.4** Except for equipment to be provided by SenSource under this Agreement, You shall be responsible for obtaining and maintaining any equipment and ancillary services needed at Your facility to connect to, access or otherwise use the Solution, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like. You shall also be responsible for maintaining the security of such equipment, Your account, and passwords (including but not limited to administrative and user passwords and related security files and for all uses of and access to Your account by Your personnel).
- 2.5** Customer agrees to not restrict or interfere with communications between SenSource and the Solution's device management platform in order to remotely manage hardware and perform Services under this Agreement.

### 3. OWNERSHIP

- 3.1** You retain ownership in and to Your Customer Data. Although SenSource aggregates data for reporting purposes You may request non-aggregated Customer Data in raw form at any time. Requests for non-aggregated Customer Data will be processed within 14 business days after the request is received. Requests for non-aggregated Customer Data which occur more than once per month will incur a service charge at the current rate for standard support. You will own all hardware components you purchase pursuant to an Order Form.
- 3.2** SenSource and its licensors shall own and retain all right, title and interest in and to (a) the Solution and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed by SenSource in connection with implementation of the Solution or provision of support Services, and (c) all intellectual property rights related to any of the foregoing; provided, however, this Section 3.2 excepts all hardware components purchased by Customer pursuant to an Order Form.

### 4. CONFIDENTIALITY & PROPRIETARY RIGHTS

- 4.1** Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of SenSource includes non-public information regarding pricing, features, functionality and performance of the Solution. Proprietary Information of You includes non-public data provided by You to SenSource in connection with this Agreement, including any Customer Data disclosed by You to enable the provision of the Solution, and any Customer Data specific to You obtained or generated from use of the Solution. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in providing or receiving the Solution or as otherwise permitted herein) or divulge to any third party any such Proprietary Information. In no event shall the Receiving Party disclose any Proprietary Information or allow access to any Proprietary Information to any third-party without first securing (a) prior written consent from the Disclosing Party, and (b) a written agreement executed by such third-party agreeing to maintain the confidential nature of the Proprietary Information consistent with the provisions of this section 4. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after three (3) years following the disclosure thereof (except for trade secrets for which protection will continue for so long as such items remain trade secrets) or any information that the Receiving Party can document (a) is or becomes generally available to the public due to no fault of the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary

Information of the Disclosing Party or (e) is required to be disclosed by law (but only to the extent of such required disclosure).

- 4.2** Notwithstanding anything to the contrary, SenSource shall have the right to collect, analyze and aggregate data and other information relating to the provision, use and performance of various aspects of the Solution and related systems and technologies (including, without limitation, information concerning de-identified or aggregated Customer Data and data derived therefrom, but excluding any statistical information specific to You obtained or generated from Your use of the Solution and Software), and SenSource will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Solution and for other development, diagnostic and corrective purposes in connection with the Solution and other SenSource offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

## 5. SOFTWARE WARRANTY AND DISCLAIMER

- 5.1** SenSource shall use reasonable efforts consistent with prevailing industry standards to maintain the Solution in a manner that minimizes errors and interruptions in the Solution, and shall perform the implementation and support Services in a professional and workmanlike manner. The Solution and associated Services may be temporarily unavailable for reasonable scheduled maintenance or for unscheduled emergency maintenance, either by SenSource or by third-party providers, or because of other causes beyond SenSource's reasonable control, but SenSource shall use reasonable efforts to provide advance notice of any scheduled service disruption and limit disruptions where possible to non-business hours. If during the Initial Term (as defined below), SenSource is unable to perform the Services consistent with the foregoing performance warranties and is unable to cure such failure within a reasonable period after receipt of written notice from You describing the breach of warranty, You at Your option may terminate this Agreement and SenSource will provide You with a pro rata refund of all Service and subscription fees paid to date by You under this Agreement for future Services or Software subscription based on (i) the date of Your notice of warranty breach and (ii) the remaining portion of the Initial Term as of such date. No fees paid for hardware components shall be refunded under this Section 5.1.
- 5.2** The SaaS-based portion of the Solution shall be available 99% of the time, measured monthly, excluding scheduled maintenance (not to exceed 2 hours per month), force majeure and other devices, utilities, connections and circumstances beyond the reasonable control of SenSource. Any request by the Customer that requires interrupting the Solution, will also be excluded from uptime or downtime calculation. Further, any downtime resulting from SenSource's suspension of the Solution or blocking of data communications or other services in accordance with its policies will also be excluded from any such calculation.
- 5.2.1** Your sole and exclusive remedy, and SenSource's entire liability, in connection with downtime shall be that SenSource will credit Customer 5% of the monthly SaaS fee for each full hour (60 consecutive minutes) that exceeds 7 hours (1%) of downtime during the month in which it occurred. Downtime shall begin to accrue as soon as You (with notice to SenSource) recognize that downtime is taking place, and continues until the availability of the Solution is restored. Such credits may not be redeemed for cash and shall not be cumulative beyond a maximum 35% of the monthly SaaS fees in any one (1) calendar month. In order to receive downtime credit, You must notify SenSource in writing with proof of the downtime within seven days from the time of occurrence, and failure to provide such notice will forfeit the right to receive downtime credit.
- 5.2.2** The credits for downtime will be applied to Your account to offset future payments (it will not expire) or it will be issued as a refund check at the end/termination of the Agreement.

- 5.3 SENSOURCE DOES NOT GUARANTEE THAT THE SOLUTION WILL BE PROVIDED, OR THAT SERVICES WILL BE PERFORMED, ERROR-FREE OR IN AN UNINTERRUPTED MANNER, OR THAT SENSOURCE WILL CORRECT ALL SOLUTION ERRORS.
- 5.4 YOU ACKNOWLEDGE THAT SENSOURCE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES OUTSIDE OF ITS CONTROL, INCLUDING THE INTERNET, AND THAT THE SOLUTION MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. SENSOURCE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.
- 5.5 EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION OR OTHERWISE IN THIS AGREEMENT, THE NON-HARDWARE PORTION OF THE SOLUTION AND ALL SERVICES ARE PROVIDED "AS IS" AND SENSOURCE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## 6. INDEMNITY

SenSource shall indemnify, defend and hold You harmless from any and all third party claims, demands, actions, causes, causes-of action by, and liability to third parties, and related loss, cost and expense (including but not limited to reasonable counsel fees) resulting from infringement by the Solution of any United States patent or any copyright or misappropriation of any trade secret or other intellectual property rights enforceable in the United States, provided SenSource is (A) promptly notified by You of any and all threats, claims and proceedings against You related thereto and upon request, You give reasonable assistance (at no cost or expense to You) and (B) given the opportunity to assume sole control over defense and settlement. SenSource will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Solution to the extent a claim arises from (i) components not supplied by SenSource under this Agreement, (ii) components made in whole or in part in accordance with Your specifications, (iii) modifications to the portions or components of the Solution by You or Your agents after delivery by SenSource, (iv) Your combination of any part of the Solution with other products, processes or materials not supplied by SenSource where the alleged infringement relates to such combination, (v) Your continued use of allegedly infringing portions or components of the Solution after SenSource has provided You with modifications or replacement that avoid the alleged infringement, or (vi) Your use of the Solution in violation of this Agreement. If, due to a claim of infringement, the Solution is held by a court of competent jurisdiction to be or are believed by SenSource to be infringing, SenSource may, at its option and expense (a) replace or modify the Solution to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for You a license to continue using the Solution, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Your rights hereunder and provide You a refund of any prepaid, unused fees for the Solution.

## 7. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND EXCEPT FOR (A) BODILY INJURY OF A PERSON, (B) INDEMNIFICATION OBLIGATIONS HEREIN, (C) CUSTOMER'S MISUSE OR MISAPPROPRIATION OF THE SENSOURCE'S PROPRIETARY INFORMATION OR INTELLECTUAL PROPERTY, OR (D) REFUND RIGHTS AS SET FORTH HEREIN, NEITHER PARTY (NOR ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS)) SHALL BE LIABLE TO THE OTHER: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; OR (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES. IN ANY AND ALL CASES, EXCEPT FOR INDEMNIFICATION CLAIMS PURSUANT TO SECTION 6, SENSOURCE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER TO SENSOURCE FOR THE SOLUTION UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



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8 SUPPORT TERMS

SenSource support Services under this Agreement are designed to proactively monitor, maintain and support the complete Solution.

- 8.1 PROACTIVE MAINTENANCE - SenSource will continuously monitor the Solution for problems with network connectivity and system performance.
8.2 TRAINING Customers receive two formal remote training sessions, typically two hours each.
8.3 WARRANTY COVERAGE - Hardware that is covered under warranty will be replaced or repaired at no charge to the Customer.
8.3.1 SELF-INSTALLATION: The use of SenSource installation Services is recommended.
8.3.2 WARRANTY EXCLUSIONS: HARDWARE THAT IS FOUND TO BE DAMAGED BY MISUSE, IMPROPER HANDLING OR EXTERNAL CAUSES WILL NOT BE COVERED UNDER WARRANTY.
8.4 OFFLINE SENSORS - If a SenSource device fails to report data for two consecutive reporting periods, the SenSource solution will identify the device as offline and attempt to deliver an email notification of this occurrence to the customer designated point of contact.
8.5 CUSTOMER CONTACTS FOR SUPPORT RELATED INCIDENTS - The SenSource Solution will direct notifications to the parties defined below.
8.5.1 Notifications regarding system outages or changes should be sent to at
8.5.2 Notifications regarding device connectivity issues should be sent to at
8.6 PHONE SUPPORT - Unlimited remote technical support is provided while you pay for such Services. Should Customer discontinue paying under this Agreement or allow the coverage to expire, but requests support Services, Customer will incur charges for technical support based on current rates.

Support Options

<p><b>Phone Support</b></p>	<p><b>1-800-239-1226 x3</b></p> <p>Available 8 a.m. – 6 p.m. Eastern Time Monday - Friday (excluding holidays) for all other issues requiring attention, report problems or bugs and/or assistance of any kind. SenSource will make commercially reasonable attempts to answer these calls immediately or respond within one business day.</p>
<p><b>Report Trouble Ticket</b></p>	<p><a href="https://www.sensourceinc.com/contact-us/contact-support/">https://www.sensourceinc.com/contact-us/contact-support/</a></p> <p>Visit the customer support contact page to enter a helpdesk ticket.</p>
<p>New Year’s Day, January 1<sup>st</sup>                  Memorial Day, Last Monday in May                  Independence Day , July 4<sup>th</sup>                  Labor Day, First Monday in September                  Thanksgiving Day, Christmas Eve, December 24<sup>th</sup>                  Christmas Day, December 25<sup>th</sup>                  New Year’s Eve, December 31<sup>st</sup></p>	<p><b>SenSource observes these US holidays</b></p> <p>If the holiday falls on a Saturday, the preceding Friday will be observed.</p> <p>If the holiday falls on a Sunday, the following Monday will be observed.</p>

**8.7 PAYMENT & RENEWALS FOR RECURRING FEES** – The invoice date (date of first shipment) is the beginning of recurring fees under this Agreement. Annual hosting, service or subscription payments and renewal dates are based on the quarterly billing cycle as follows:

SaaS Effective Date	SaaS Renewal and Billing Date
January 1 – March 31	March 31
April 1 – June 30	June 30
July 1 – September 30	September 30
October 1 – December 31	December 31

The cost of adding additional sensors to an existing Solution will be prorated based on the number of days remaining in the current program. Please see Section 13 for additional payment terms.

## 9 SERVICE & REPAIR TERMS

- 9.1** Customer will provide SenSource with information about the nature of a reported problem. SenSource will make commercially reasonable attempts to diagnose and correct any problems remotely within 48 hours (hrs.). Requests received after 2 p.m. Eastern Time will be considered reported on the next business day.
- 9.2** SenSource will schedule service visits within 48hrs of a reported problem which SenSource determines requires on-site intervention. The actual visit to the facility by the technician may require additional time to allow for delivery of required items not included in the spare parts kit listed below.
- 9.3** Changes to entry design or layout (i.e. ceiling heights, widths, location or obstacles) after initial hardware installation must be reported to SenSource prior to scheduling service or repairs to avoid additional cost and multiple visits.
- 9.4** Service calls will generally be complete within (2) hours. Hardware will be diagnosed and repaired on the first visit whenever possible, unless additional equipment not provided in the spare parts kit are necessary to complete the repair. No guarantee can be made that a technician can remain on site in excess of two hours for additional tasks, testing or otherwise, unless requested and agreed prior to service visit. Unless repairs are covered under warranty, charges for each visit as well as parts and equipment not included in the spare parts kit will be invoiced to the Customer.

- 9.5 If changes to the layout of the facility entrance area have been made after the initial installation and relocation or addition of thermal sensor(s) are required then a second visit may be required. A second visit may also be required in the event that the relocation of the thermal sensor requires adding or replacing cables. Additional charges associated with moving the thermal sensor will be submitted for approval prior to beginning work.
- 9.6 Sensor configuration files will be captured and made available only in the cases where the sensor is reconfigured, replaced or otherwise altered from its existing installed state.
- 9.7 If, in the performance of service, it is determined that cabling for sensors must be replaced, the technician will attempt to perform the service within the two-hour designated service time. If completing cable replacement is not possible within time constraints a second visit will need to be scheduled and additional charges may apply unless cable replacement is covered under warranty.
- 9.8 Any parts and labor costs required to repair or bring a system to functional state that are not covered under warranty or under the standard rate for a service call will be reported for approval prior to proceeding with work.
- 9.9 In the event that hardware is replaced, the replaced hardware will be shipped to SenSource for evaluation by the installing technician using pre-completed shipping labels and the original packaging for the new hardware. Tracking information will be captured. The actual costs of shipping will be charged to Customer only for items not covered under warranty.
- 9.10 Customer will be invoiced at current rates for all support Services after expiration or termination of this Agreement.

## 10 PRICING FOR POST ROLLOUT INSTALLATIONS AND OUT OF SCOPE SERVICES

- 10.1 Unless otherwise agreed to in writing, Services not covered under warranty or any other support agreements or included in the original scope of work will be charged to the Customer as set forth below. There is no extra charge for use of materials listed in the spare parts kit.
- 10.2 This list is not exhaustive but is intended as a guideline for most Services. Special circumstances may arise which may incur additional charges not shown below. These charges will be communicated to the Customer prior to performing work. Billing will be performed weekly, and all payments are due at Net 30 day terms from the receipt of invoice. Any billing disputes must be brought to the attention of SenSource within 30 days of invoice receipt or the invoice will be considered approved, absent manifest error.

Type	Service Description	Price (\$ US)
BASE SERVICE RATE*	Base service rate includes up to 2 hrs to install one sensor or repair the system.	\$300
	Installation of additional sensors *	\$150
CABLE*	Standard Cable Run* (replacement or new cable up to 150 ft)	\$225
	Installation of additional cable in 50 ft increments	\$75
CANCEL	Cancellation Fee	\$120
HOURLY RATE	Additional hour billed in 15 minute increments	\$120
CUSTOM PROGRAMMING	Hourly rate for custom software modifications	\$200
SHIPPING	Shipping for items to and from a facility which are not covered under warranty will be billed back to the Customer at shipping and handling rates available at the time items are shipped	
* Rate does not include: Installation or replacement of cable runs or special equipment required to reach high ceilings		



## 11 PAYMENT AND DELIVERY

- 11.1** Payment terms for hardware and Services as shown are subject to credit approval. All shipments are Freight on Board (FOB) SenSource plant. Payment shall not prejudice claims on account of omissions or shortage in shipment, but no such claim will be allowed unless made within 30 days after receipt by Customer. Payments will be considered delinquent if not received by SenSource within 30 days after delivery of invoiced items. A Late payment fee of 2% (two percent) per month or the highest percentage permitted by law will be added to the outstanding delinquent amounts of invoices. Orders exceeding \$50,000 USD will require partial prepayment as agreed upon in a separate document when orders are placed.
- 11.2** SenSource reserves the right to adjust ongoing annual hosting, SaaS subscription, and support Services fees upon no less than sixty (60) days prior written notice to You (which may be sent by email) before the expiration of this Agreement or any future renewals of this Agreement. Adjustments to fees will only apply to renewals and will not affect pricing that are in effect for the remainder of the current Agreement term.
- 11.3** Changes in Specification or Designs: Should Customer request that changes be made in the specifications or design relating to any part of the Solution, delivery dates and schedules shall be revised accordingly. If necessary an equitable adjustment, upward or downward, shall be made in price.
- 11.4** You agree that You have not relied on the future availability of any enhancements to programs or updates in entering into the payment obligation in the Order Form; however, the proceeding does not relieve SenSource of its obligation to deliver the Solution that You have ordered.
- 11.5** SenSource may choose to bill through an invoice, in which case, full payment for invoices (not subject to a bona fide billing dispute) issued in any given month must be received by SenSource within thirty (30) days after Your receipt of the invoice. If You dispute a portion of an invoice You agree to timely pay the undisputed portion and to contact SenSource promptly concerning the disputed portion in order that the parties may promptly resolve the invoice dispute in good faith. Unless You certify that You are exempt from such taxes, You shall be responsible for any sales or use taxes associated with the Solution (other than U.S. taxes based on SenSource's net income) which, if applicable will be included on SenSource's invoice.
- 11.6** Price Revision: Prices are binding on SenSource when Customer's Order Form is accepted and this Agreement is executed. No revision of prices shall be made or requested, except as specifically provided herein, unless there is attached to SenSource's quotation and/or acceptance of Customer's order a rider specifically setting forth the terms and conditions of such revision, which rider shall become a part of SenSource's terms as though fully set forth in SenSource's quotation and acceptance of Customer's order.
- 11.7** Delivery: SenSource shall not be liable for any delays in or failures of delivery due to force majeure which includes acts of God or public authority, labor disturbances, accidents, fires, floods, extreme weather conditions, failures of and delays by carriers, shortages of material, delays of a supplier due to causes beyond its control, or any other cause beyond the control of SenSource. SenSource shall notify Customer of any such delays as soon as it becomes apparent. IN NO EVENT SHALL SENSOURCE BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGE ARISING OUT OF DELAY IN OR FAILURE OF DELIVERY. Customer's requested delivery date or schedule shall be approximate and subject to SenSource's approval and acceptance. All products are shipped via freight prepaid service unless otherwise specified by the Customer. All freight and delivery charges will include insurance for loss or damage to goods provided by SenSource. Restocking Policy: Acceptance of returned merchandise for refunds and/or credit is at the discretion of the SenSource and will adhere to the terms set forth below.
- 11.8** Returning Materials: A pre-approved Returned Material Authorization (RMA) form must accompany merchandise that is returned for credit, repair or replacement. Return authorizations must be pre-approved by SenSource. When materials are received, an inspection will be performed to determine if restocking charges are applicable. Material that does not have an authorization may be returned to the Customer at Customer's expense.

**11.9 Restocking Charges:** Except in cases of warranty claims and systems designated for trial by Customer, returned items may incur a minimum 20% restocking fee if returned in resalable condition. Resalable is defined as fully functional with no physical evidence of use. Restocking charges may vary depending on the quantity and specialty of the items being returned therefore SenSource must always be contacted prior to returning items. Address for Returned Merchandise: SenSource Returns, 3890 Oakwood Avenue, Youngstown, OH 44515.

## 12 TERM AND TERMINATION

- 12.1 Termination, Reduction in Quantity, Rescheduling Delivery:** In the event Customer desires to terminate any part or all of the work to be done hereunder, to reduce the quantity of goods ordered, or reschedule the delivery of any goods, fair compensation shall be made to SenSource. SenSource shall recover, without duplication, the contract price for items or Services which have been completed, the actual costs incurred by SenSource which are properly allocable or apportionable under recognized commercial accounting practices to terminate work (including cost of discharging liabilities) plus a reasonable profit, the reasonable costs and expenses incurred by SenSource in making settlement hereunder and in protecting property in which Customer has an interest, and/or the increased costs incurred by SenSource by reason of a revision in the delivery schedule.
- 12.2** Subject to earlier termination as provided below, this Agreement shall continue for the Initial Term as specified in the Order Form (attached as Exhibit B), and shall be subject to automatic renewal for additional one (1)-year terms thereafter, unless either party provided the other party with at least sixty (60) days' written notice of non-renewal prior to the end of the then-current term. If no Initial Term is specified in the Order Form, the Initial Term shall be one (1) year.
- 12.3** In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' prior written notice (ten (10) days' prior written notice in the case of Customer's nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement and fails to reasonably cure such breach within the notice period. Customer will pay in full for the Solution and all Services performed up to and including the last day on which the Solution is provided. Upon any termination, SenSource will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, and thereafter SenSource may delete any stored Customer Data. SenSource is not obligated to delete data that is stored in a generic, aggregated or unidentifiable manner.
- 12.4** SenSource may immediately suspend access to the Solution upon termination of this Agreement (whether the termination is due to an uncured breach or because of a notice of non-renewal). All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

## 13 MISCELLANEOUS

- 13.1** SenSource is an independent contractor and the parties agree that no partnership, joint venture, or agency relationship exists between the parties. The parties are each responsible for paying their own employees, including employment-related taxes and insurance.
- 13.2** You shall obtain at Your sole expense any rights and consents from third parties with whom You have contracts that may be necessary for SenSource and its subcontractors to perform the Services under this Agreement.
- 13.3** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be revised and amended hereto to adhere to law and preserve the original intent as much as reasonably possible. If the provision cannot be revised it will be deemed eliminated to the minimum extent necessary so that the Agreement will otherwise remain in full force and effect.
- 13.4** This Agreement is not assignable, transferable or sublicensable by You except with SenSource's prior written consent; provided, however, that upon written notice to SenSource You may assign this Agreement to one of Your affiliated entities provided such assignee agrees in writing to SenSource to comply with Your continuing obligations hereunder. SenSource may

transfer and assign any of its rights and obligations under this Agreement without consent in connection with a sale of all or substantially all of its assets, a merger or acquisition, or any other change of control of SenSource or its business operations, provided such assignee or successor in interest agrees to comply with SenSource's continuing obligations hereunder.

- 13.5** This Agreement, together with its Exhibits, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.
- 13.6** All notices required hereunder must be sent in writing (which may include confirmed email) to the addresses below:
- Notice to SenSource: Joseph Varacalli, President, SenSource, Inc. 3890 Oakwood Ave., Youngstown, Ohio 44515; jvaracalli@Sensourceinc.com.
- Notices to You shall be addressed to:
- All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.
- 13.7** You agree that SenSource may list You as a current client for marketing purposes.
- 13.8** Except for actions for nonpayment or breach of a party's proprietary rights or confidential information, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than one year after the cause of action has accrued or the termination of this Agreement, whichever occurs first.
- 13.9** In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover its costs and attorneys' fees. This Agreement shall be governed exclusively by the laws of the State of Ohio without regard to its conflict of law's provisions; provided, however, that nothing herein shall constitute or be deemed to constitute a waiver of sovereign immunity. The parties hereby submit to the exclusive jurisdiction and venue of the state and federal courts located in Mahoning County, Ohio for the resolution of all disputes under, arising from or relating to this Agreement, its performance, the Solution, or otherwise between the parties, and both parties agree that they shall not contest venue in such courts. The parties agree that this Agreement shall not be governed by any codification of Articles 2 or 2A of the Uniform Commercial Code, or any references to the United Nations Convention on Contracts for the International Sale of Goods.
- 13.10** Neither party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license), or other event outside the reasonable control of the obligated party. Each Party will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either party may cancel unperformed Services and remaining Solution subscription upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for the Solution.



Better Decisions Start Here

3890 Oakwood Ave.
Youngstown, OH 44515-3033
Phone: (800) 239-1226
US Fax: (877) 517-2586
Intl. Fax: (858) 300-5327
www.sensourceinc.com

ACKNOWLEDGEMENT

SenSource and You agree that this SaaS and Support Agreement ("Agreement") is entered into on this [ ] day of \_\_\_\_\_, 20\_\_ (the "Effective Date") between SenSource, Inc. with a place of business at 3890 Oakwood Avenue, Youngstown, Ohio 44515 ("SenSource"), and the [ ] with a place of business at

("Customer" or "You").

There shall be no force or effect to any different terms or agreements (such as terms on a purchase order) unless specifically signed by both parties and are appended to this Agreement.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND, IN SUCH EVENT, "COMPANY" AND "YOU" AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY. YOU MAY ONLY SIGN THIS AGREEMENT IF YOU HAVE SUCH AUTHORITY AND IF YOU AGREE TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT.

Table with 2 columns and 5 rows for signature and name information.



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## Exhibit B – ORDER FORM



# BARSTOW COMMUNITY COLLEGE

## COVID-19 Expense Request

Date:	7/13/23						
Department:	Academic Affairs - Instructional Technology Center						
Vendor Name:	SenSource						W-9 <input type="checkbox"/> on file (Check one) <input type="checkbox"/> attached
Vendor ID:	0338441-01						
Item(s):  (Attach quote when possible)	Real-Time Occupancy Monitoring for One Space, Per Year, Renewal 7/1/2023 - 7/1/2024						
Total Amount:	\$420.00						
Account #:	Fund <b>01</b>	Life Span <b>50</b>	Site <b>00</b>	Program <b>0619</b>	Sub-Prgm 	Ob Code 5812.00	Type <b>6790</b>
Explanation/ Justification of request as it directly relates to COVID-19:	The health and safety of our students and employees is the highest priority at Barstow Community College. As we prepare to bring more in-person students onto the campus after the COVID-19 pandemic, it is important that we limit the number of people in each building to a maximum that is safe and enables students to practice physical distancing. SenSource is a people counting software that enables staff in the Library or the Teaching and Learning Support Center to accurately monitor the number of people in their respective areas at any given point in time. People are counted as they enter and exit the specific area. Staff can be alerted if the number of people in the building nears the maximum so they can prepare to mitigate or make adjustments.						

### Route for signatures:

Requestor Name	 <small>Bryan Asdel (Jul 17, 2023 08:56 PDT)</small>	Date	07/17/2023
Area Vice President		Date	07/17/2023
Budget Analyst		Date	07/17/2023
VP of Admin. Services		Date	07/18/2023

- Budget Analyst will assign the **Sub-Program** code and route to the VP of Admin. Services.
- VP of Admin. Services will approve/deny and route back to Requestor.

Administrative Services Only
Approved Account # : <b>01 – 50 – 00 – 0619 – <u>0626</u> – <u>5812.00</u> <u>6790</u></b>



3890 Oakwood Ave., Youngstown, OH 44515-3033

Phone: 800-239-1226 Fax: 877-517-2586  
E-mail: accounting@sensourceinc.com

# INVOICE

56279	
Date	5/16/2023

Bill To

**Barstow Community College**  
**Bryan Asdel**  
**2700 Barstow Rd**  
**Barstow, CA 92311**

Ship To

Barstow Community College  
Bryan Asdel  
2700 Barstow Rd  
Barstow, CA 92311

P.O. Number	Terms	Rep	Ship	Via	PSP/Cloud Renewal	SafeSpace Renewal
	Due Upon Receipt	IST 3	5/16/2023	UPS GROUND		

Item Code	Description	Qty	Price Ea.	Amount
	Annual Renewal			0.00
	Coverage Period			
	7/1/2023 - 7/1/2024			
SRVC-SAFESPACE-YEAR-R...	Real-Time Occupancy Monitoring for One Space, Per Year, Renewal	1	420.00	420.00
OK TO PAY:				
Signature: <i>Jennifer Rodden</i>				
Email: jrodden@barstow.edu				

	<b>Payments/Credits</b> USD 0.00	<b>Total</b>	<b>USD 420.00</b>
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<b>Balance Due By:</b> 5/17/2023	<b>Balance Due</b> USD 420.00
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All sales are made pursuant to all terms and conditions listed on the SenSource "Standard Terms & Conditions of Sale" (Form: FRM-1010) and most recent quotation that may contain additional terms and conditions. Typographical and stenographic errors are subject to correction. Seller is not bound by any other conditions not stated herein or contained in the "Standard Terms & Conditions of Sale". Please contact us with any questions.