



## OmniSense, LLC

### Monitoring Service Agreement (MSA) Terms and Conditions

THE FOLLOWING ARE THE TERMS AND CONDITIONS (“**TERMS AND CONDITIONS**”) THAT GOVERN THE OMNISENSE, LLC (“**OMNISENSE**”) MONITORING SERVICE (“**SERVICE**”) AND THE LIMITED WARRANTY ASSOCIATED WITH THE SERVICE. THESE TERMS AND CONDITIONS INCLUDE LIMITATION OF LIABILITY PROVISIONS. PLEASE READ CAREFULLY PRIOR TO INSTALLATION OF THE MONITORING DEVICES (“**DEVICES**”) AND SUBSCRIBING TO THE SERVICE.

1. **Definition of Subscriber.** A “Subscriber” is an individual or business entity that enrolls in the Service by
  - a. Installing the Devices on its premises (the “**Premises**”) in conformance with “OmniSense Facility Monitoring System (FMS) Installation Instructions” (“**Installation Instructions**”) and
  - b. Activating the Devices and associated sensor(s) (“**Sensor**”) (together Sensor and Devices are referred to as the “**System**”) by providing OmniSense with a signed copy of these Terms and Conditions and a completed “OmniSense, LLC Monitoring Service Enrollment Form” and
  - c. Maintaining their account with OmniSense in good standing with no outstanding past due fees.
  
2. **Formal Enrollment.** Once a Subscriber has initiated a subscription to the Service (“**Subscription**”) and fifteen (15) days has elapsed since the initiation of the Subscription, you/Subscriber will become formally enrolled in the Service and will be deemed to have acknowledged and consented to these Terms and Conditions. If you do not read these Terms and Conditions, you are still deemed to have agreed to be bound by all of these Terms and Conditions without limitation by accepting the services provided under the Service. Upon your subscription and thereafter upon formal enrollment, Subscriber shall receive the following:
  - a. Monitoring – OmniSense System will monitor various parameters at the Sensor locations to determine if the ambient readings in such location are outside of the alarm thresholds (“**Thresholds**”) established in the Monitoring Service Enrollment form (“**MSE**”)
  - b. Reporting - OmniSense will attempt to alert the contacts supplied in the MSE in the event that the System detects a reading outside the Thresholds.



3. **Subscriber's Right to Cancel.** You may cancel the Service upon expiration of the subscription period. To cancel, you must notify OmniSense in writing by mail or fax. To cancel the Service please provide your notice to  
  
OmniSense LLC  
72 Sams Point Road  
Beaufort SC 29907  
Phone: 805-340-9625  
Fax: 805-856-0409
4. **Installation/Care and Protection.** Subscriber must install the Sensors and the Devices pursuant to the instructions set forth in the Installation Instructions. Failure to set up the System as described in the Installation Instructions negates any warranty by OmniSense. Any damage to the Sensors or the Devices in installing the System, and thereafter, in maintaining and caring for the System negates any warranty by OmniSense.
5. **Service Fees.** Subscriber shall have paid in full all amounts owing before service will be provided.
6. **Ownership and Preservation of System Data.** OmniSense or its agents shall make at least the most recent 12 months of data available online. OmniSense or its agents shall archive at least the most recent 120 months of data using accepted industry archiving standards. The system data is the property of the subscriber and the subscriber hereby grants a perpetual royalty free license to OmniSense and its agents to use the data in the course of OmniSense's day to day operations.
7. **OmniSense Maintenance.** OmniSense and its agents are authorized, but shall not be obligated, to make such inspections and tests of the System as from time to time OmniSense may deem necessary to insure proper operation.
8. **Term.** The term of these Terms and Conditions commences upon formal enrollment in the Plan and terminates when the subscriber provides written notice of cancellation.
9. **Limited Hardware Warranty.** OmniSense will repair or replace any Hardware found to have a manufacturing defect for 12 months from date of purchase. This warranty does not cover the cost of any labor or materials incurred to remove or replace the defective sensor or device. This warranty does not cover damage resulting from any of the following: negligent use or misuse of the Sensor or Device; use of improper voltage or current; use contrary to Installation Instructions; disassembly, repair or alteration of the Device or Sensors by anyone other than OmniSense or its authorized representative(s). Further, the limited warranty does not cover Acts of God, such as fire, flood, hurricanes, tornadoes or any batteries that are included with the Device or Sensors. Subscriber further understands and acknowledges that OmniSense does not warrant that the



# OmniSense

*Wireless Sensor Networks  
for Facility Monitoring*

**Prevent Structural Damage Before it Starts**

System will run uninterrupted or error free. Subscriber acknowledges and understands that the System is of an advanced design, but that THE SYSTEM CANNOT OFFER A GUARANTEE OF PROTECTION AGAINST ANY EVENT THAT RESULTS IN THE ENVIRONMENT BEING OUTSIDE OF THE PARAMETERS OR ANY WARNING THAT THRESHOLD LEVELS HAVE BEEN BREACHED. ANY SENSING SYSTEM, INCLUDING THE OMNISENSE SENSORS AND DEVICES ARE SUBJECT TO COMPROMISE OR FAILURE TO WARN FOR A VARIETY OF REASONS. For example:

- Temperature, humidity, AC Power or other parameters that are being monitored at the Sensor might not be consistent with actual readings of the same or similar parameters in areas other than those where Sensors or Devices are located;
- The System will not work properly without power. In the event of an interruption or failure of the power source, the System may fail;
- Signals sent by the Device or received by the Sensor may be blocked;
- The ability of the System to work depends on proper installation and positioning.
- While the System may provide a warning as designed, there is no assurance that such warning will be timely enough so as to prevent property damage.
- The System requires the usage of a communication system. Any interruption or disruption of the communications system will adversely affect the proper operation of such system.
- The System, like other electrical devices, is subject to component failure. The electronic and other components of the System may fail at any time.
- In order to insure proper function of the System, the System must be properly cared for and maintained. It cannot be abused or subjected to hazards, including current surges, changes in voltage and the like. Subscriber should test the System frequently to insure that the System is operating properly.

The foregoing limited warranty will be deemed invalid upon the occurrence of any of the following events:

- A. Subscriber has failed to maintain or repair the System in accordance with OmniSense's direction to Subscriber; or
- B. Any payments required to be made by the Subscriber under these Terms and Conditions or any other agreement with OmniSense are in arrears.

10. **Disclaimer of Warranty.** Other than the limited warranty set forth above, OMNISENSE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. OMNISENSE SHALL NOT BE LIABLE IN ANY WAY OR MANNER WHATSOEVER TO SUBSCRIBER OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE, INJURY OR ANY OTHER DAMAGES WHATSOEVER OR HOWSOEVER CAUSED INCLUDING BUT NOT LIMITED TO ANY LOSS OF PROFITS, LOSS OF BUSINESS REVENUE, FAILURE TO REALIZE EXPECTED SAVING, OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS EVEN IF OMNISENSE IS MADE AWARE OF



SUCH POSSIBILITY, RELATED TO OR ARISING, DIRECTLY OR INDIRECTLY, FROM THESE TERMS AND CONDITIONS OR THE SUBSCRIBER'S PURCHASE, USE OR INTENDED USE OF THE SERVICE, INCLUDING BUT NOT LIMITED TO THE FORGOING:

- ANY DELAY IN RESPONSE OR NON-RESPONSE OF ANY AUTHORITY OR PERSONS NOTIFIED BY OMNISENSE; or
- ANY FAILURE OF OMNISENSE TO NOTIFY SUBSCRIBER WHERE IT IS UNABLE TO DO SO BY REASON OR CAUSES BEYOND THE CONTROL OF OMNISENSE; or
- INACCURATE OR OUTDATED SUBSCRIBER INFORMATION.

11. **Limitation of Liability.** OMNISENSE, ITS AGENTS, DISTRIBUTORS, OFFICERS, DIRECTORS AND EMPLOYEES SHALL NOT BE LIABLE FOR DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, ANY PROPERTY DAMAGE. IN NO EVENT WILL OMNISENSE'S LIABILITY UNDER THE SERVICE OR THESE TERMS AND CONDITIONS EXCEED THE MOST RECENT 12 MONTHS OF MONITORING FEES. THE PARTIES UNDERSTAND THAT THE FORGOING AMOUNT REFLECTS THE ALLOCATION OF RISK BETWEEN OMNISENSE AND SUBSCRIBER AND PROVIDE LIMITED RECOURSE TO SUBSCRIBER. SUBSCRIBER FURTHER UNDERSTANDS THAT OMNISENSE IS NOT AN INSURER AND THAT INSURANCE, IF ANY, SHALL BE THE RESPONSIBILITY OF THE SUBSCRIBER.
12. **Indemnification.** If notwithstanding the limitation of liability provision and disclaimer of warranty set forth above, OmniSense shall be found liable to Subscriber or any other person for loss, damage or injury or other claims whatsoever or howsoever caused in an amount in excess of the most recent 12 months of monitoring fees, SUBSCRIBER SHALL INDEMNIFY AND SAVE OMNISENSE, ITS AGENTS, DISTRIBUTORS, OFFICERS, DIRECTORS AND EMPLOYEES HARMLESS AGAINST ANY CLAIMS IN EXCESS OF THIS AMOUNT. THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION WHETHER BREACH OF CONTRACT, STRICT LIABILITY, TORT, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY. In addition, Subscriber shall be liable for and shall indemnify OmniSense from and against all costs and damages which OmniSense sustains by reason of Subscriber's breach of any covenant, term or condition of these Terms and Conditions, including, without any limitation, all fees and expenses incurred by OmniSense in attempting to enforce any provision of these Terms and Conditions, or in recovering any charges or any damages for breach of any covenant, term or condition herein. All remedies conferred upon OmniSense shall be deemed to be cumulative and no one is exclusive of the other or any other remedy conferred by law.
13. **Notices.** Any request, notice, consent or authorization to be given shall be in writing and sent to the party to receive same, and, if delivered personally or by facsimile, shall



be deemed to have been given the same day, or if sent by mail, shall be deemed to have been given three (3) business days after the date of mailing.

14. **General.** The entire understanding between the parties related to the Service and the Services is contained in these Terms and Conditions. These Terms and Conditions shall apply to, inure to the benefit of, and bind the heirs, executors, administrators, successors and permitted assigns of the parties. These Terms and Conditions shall be interpreted and governed by the laws of California.

Please indicate that you have read and understood the terms and conditions of this Monitoring Service Agreement by signing below.

Subscriber Signature

\_\_\_\_\_ Date \_\_\_\_\_

Subscriber Printed Name

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