



Terms, Conditions and Obligations

Whereas, SEAMETRICS is a technology and Services provider connected to the Internet offering cellular transmission Services, web-based interfaces and data collection tools, data, hosting, and other information over the Internet;

WHEREAS, Customer seeks to utilize SEAMETRICS Services for his/her own purposes;

WHEREAS, the parties acknowledge that the Internet is neither owned nor controlled by any one entity; therefore, SEAMETRICS can make no guarantee that any given reader shall be able to access SEAMETRICS Services at any given time. SEAMETRICS represents that it shall make every good faith effort to ensure that its Services are available as widely as possible and with as little Services interruption as possible;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. **The Agreement.** This Agreement is by and between SEAMETRICS and the customer identified above ("Customer") and is comprised of these terms and conditions, the applicable Rate Plans and/or Schedules attached, or subsequently published or updated by SEAMETRICS (collectively, the "Agreement"), and is the entire Agreement between the parties. This Agreement also covers Customer reselling the SEAMETRICS Services to its Customers, or to referred Customers that have a direct relationship with SEAMETRICS.
2. **Effective Date.** This Agreement shall become effective upon agreement date.
3. **Services.** SEAMETRICS shall provide PCS (Personal Communication Services) wireless or international network access and the use of a variety of wireless and Internet Services, including web-based tools for device management, data retrieval, and data supply Services (collectively known as the "Services"). SEAMETRICS may update or modify the Services as required to maintain availability of the Services from time to time upon prior notice to Customer. Customer will be provided with:
 - a. Activated SIM cards with product, if required by the cellular network
 - b. Access to packet, and/or SMS usage as defined above
 - c. Access to secure web-site for data retrieval and/or device and sensor management tools
 - d. Access to myINWdata.com portal for remote data display and graphing tools
 - e. Access to SEAMETRICS technical support at no charge for a maximum of two (2) hours/month

SEAMETRICS will exercise no control whatsoever over the content of the information passing through the network except for what is noted in **section 13** of this agreement, relating to Lawful Purpose.

SEAMETRICS makes no warranties or representations of any kind, whether expressed or implied for the Services it is providing. SEAMETRICS also disclaims any warranty of merchantability or fitness for any particular purpose and will not be responsible for any damages that may be suffered by the Customer, including loss of data resulting from delays, non-deliveries or Services interruptions by any cause or errors or omissions of the Customer. Use of any information obtained by way of SEAMETRICS is at the Customer's own risk, and SEAMETRICS specifically denies any responsibility for the accuracy or quality of information obtained through its Services. Connection speed represents the speed of an end-to-end connection.

SEAMETRICS does not represent guarantees of speed or availability of end-to-end connections. SEAMETRICS expressly limits its damages to the Customer for any non-accessibility time or other down time to the pro-rated monthly charge during the system unavailability. SEAMETRICS specifically denies any responsibilities for any damages arising as a consequence of such unavailability.

4. **Term.** The term of this Agreement shall be a minimum of one year beginning on the Agreement Date ("Initial Term"), Thereafter, the Agreement will automatically renew on an annual basis, (each a "Services Renewal Term") unless otherwise terminated as provided herein.
5. **Charges.**
 - a. The Customer shall pay to SEAMETRICS all charges relating to the use of the Services as specified in its annual invoice including:
 - i. charges for establishment and use of the Services including system access fees, Services connection charges, fixed monthly network connection fees, usage fees and monthly access fees; and
 - ii. all applicable taxes levied upon the Services or any optional Services or features
 - b. All charges are due and payable in full at date of invoice. Any balance unpaid after the due date will be subject to a late payment charge of 1.5% per month (18% per year) or the highest charge allowable at law, whichever is less, in addition to discontinuation of Services as described in section 6.
 - c. NSF payments will be subject to a \$25.00 handling fee for each defaulted payment.
 - d. Any questions or discrepancies regarding charges must be reported in writing to SEAMETRICS within 30 days of the invoice date. Failure to contact SEAMETRICS within this time period will constitute Customer acceptance of such charges.
6. **Default**
 - a. Any one of the following events shall constitute an event of default:
 - i. The Customer fails to make any payments due hereunder as invoiced
 - ii. The Customer fails to perform or observe any condition of this Agreement or;
 - iii. Any representation or warranty made by the Customer herein or in any document or certificate furnished by the Customer in connection with this Agreement shall prove to be incorrect at any time in any material respect; or
 - iv. The Customer uses the Services, including through use of non-approved devices or applications, in a manner that adversely affects SEAMETRICS' ability to provide Services to another Customer in any way whatsoever, or is contrary to law or regulation or SEAMETRICS' rights or interests in the Services.
 - b. In the event of default, SEAMETRICS may at its sole option, terminate this Agreement or suspend the Services, without notice, or liability, and bill the Customer immediately for all outstanding charges accrued up to the date of such termination suspension. The Customer shall be liable and will indemnify SEAMETRICS for the costs and expenses incurred by SEAMETRICS by reason of the default or the exercise by SEAMETRICS of its remedies in respect thereof and such costs and expenses shall be due and payable immediately upon receipt of invoice.
 - c. Reconnection of Services following disconnection or suspension solely through failure by the Customer to meet payment terms may be subject to Pre-payment for Services, and reconnection fees. Reconnection of Services following termination or suspension for any other

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- reason will require Customer to comply with any current certification or testing requirements. SEAMETRICS accepts no responsibility for successful re-establishment of Services by Customer.
- d. In the case of data storage on an SEAMETRICS hosting server, failure of Customer to remit payment to SEAMETRICS by the invoice due date is cause for no access to the Customer's data from the SEAMETRICS hosting server(s). Customer agrees that SEAMETRICS shall not be held liable for such removal or disconnection.
7. **Termination of Services During the Term**
- a. This Agreement may be terminated either by SEAMETRICS or the Customer upon thirty (30) days prior written notice and the Customer shall remain liable for and shall pay all charges hereunder, including all charges for Services provided by SEAMETRICS, up to and including the date of termination.
 - b. SEAMETRICS may, at its option, cancel or suspend Services immediately should it believe Customer has violated or is about to violate the SEAMETRICS Terms of Services Agreement, or should the Customer fail to remit payment to SEAMETRICS by the Customer's invoice due date. Termination for any violation of the SEAMETRICS Policies and Terms of Services Agreement shall be immediate.
 - c. If Customer does not agree to any new terms and conditions applicable to the Services, or should the Customer at any time wish to cancel the Services all together, the Customer may provide notice to SEAMETRICS at the address noted above, directed to the attention of "Accounting".
 - d. There is a \$100 termination fee if Services are canceled within the "initial term"
8. **Refund Policy.** As detailed in section 7, cancellation by Customer must be in writing with 30 days prior notice. Setup charges are not refundable under any circumstances. Refunds of renewal fees paid to SEAMETRICS shall only be made for fully unused calendar months of Services that the Customer desires to cancel; after all other applicable cancellation fees have been applied. Customer shall not be entitled to any refund of any monies under any circumstances should this agreement be terminated due to a violation of the SEAMETRICS Policies and Terms of Services Agreement.
9. **Phone Number.** The Customer will not have nor acquire any property rights or any other rights to any phone number designated for it by SEAMETRICS. SEAMETRICS may change any phone number designated for the Customer at any time providing 30 days advance written notice of the change. SEAMETRICS will not be liable for any costs, losses, damages, expenses or liabilities or other amounts resulting from any change to any phone number.
10. **Age.** Customer certifies that he or she is of full legal age to enter into this agreement.
11. **Policies.** Customer agrees to all terms in the SEAMETRICS Policies and Terms of Services Agreement. SEAMETRICS network resources used by Customer may not be used to impersonate another person or misrepresent authorization to act on behalf of others or SEAMETRICS. All messages transmitted by Customer should correctly identify the sender. Users may not alter the attribution of origin in electronic mail messages or posting. Users must not attempt to undermine the security or integrity of computing systems or networks and must not attempt to gain unauthorized access.
12. **Limitation of Liability**
- a. SEAMETRICS does not guarantee the uninterrupted working of the Services or of any related equipment or hardware, and shall not be liable to the Customer, or other person or entity for any damages whatsoever and howsoever caused, including direct, indirect, incidental, consequential, exemplary or punitive damages or those resulting from defective equipment or hardware, or resulting from failure to provide Services for any cause whatsoever, mistakes, omissions, interruptions, delays, errors in transmission, defects in transmission, failures or defects in Services or equipment or from any other cause including the failure to transmit which is caused by Acts of God, fire, explosion, war, theft, communication failure, unauthorized access to records, terrorism, riots, strikes, lockouts, picketing, boycotts, acts of government authorities, or by other causes beyond its control. SEAMETRICS' aggregate liability under this agreement for any cause of action or damages whatsoever shall not exceed the fees paid by the Customer in the one-month period immediately preceding the claim.
 - b. No credit allowance will be given for interruptions caused by the Customer's or any user's negligence, its custom applications, third-party devices or Services or willful acts or for interruptions caused by failure of equipment not provided by SEAMETRICS or its authorized representatives, or for events beyond the control of SEAMETRICS.
 - c. If any SEAMETRICS facility or equipment located on or in the Customer property or premises are damaged or destroyed for reasons other than normal wear and tear, or by persons or causes other than SEAMETRICS itself, the Customer shall pay to SEAMETRICS the cost of restoration or replacement of the SEAMETRICS equipment, which was damaged or destroyed.
 - d. Customer expressly agrees that use of the Server offered by SEAMETRICS is at Customer's sole risk. Neither SEAMETRICS, its employees, affiliates, agents, merchants licensers or the like, warrant that the Server Services will not be interrupted or error free; nor do they make any warranty as to the results that may be obtained from the use of the Server Services or as to the accuracy, reliability or content of any information Services or merchandise contained in or provided through the Agreement.
 - e. Customer's exclusive remedies for all damages, losses and causes of actions whether in contract, tort including negligence or otherwise, shall not exceed the aggregate dollar amount of fees paid by the Customer in the one-month period immediately preceding the claim.
13. **Lawful Purpose.** Customer may only use SEAMETRICS' Services for lawful purposes. Transmission of any material in violation of any Federal, State or Local regulation is prohibited. This includes, but is not limited to copyrighted material, material legally judged to be threatening or obscene, or material protected by trade secrets.
14. **Indemnification.** Customer agrees that it shall defend, indemnify, save and hold SEAMETRICS harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorneys' fees asserted against SEAMETRICS, its agents, its customers, servants, officers and employees, that may arise or result from any Services provided or performed or agreed to be performed or any product sold by Customer, its agents, employees or assigns. Customer agrees to defend, indemnify and hold harmless SEAMETRICS against Liabilities arising out of any of the following:
- a. any injury to person or property caused by any products sold or otherwise distributed in connection with SEAMETRICS Server Services;
 - b. any material supplied by Customer infringing or allegedly infringing on the proprietary rights of a third party;
 - c. copyright infringement; and
 - d. any defective product which Customer sold on the Server offered by SEAMETRICS.
15. **Data Backup.** SEAMETRICS offers data backup Services. SEAMETRICS will use commercially reasonable efforts and industry accepted methods to ensure the reliability of the backup and restore process. However, because of the technical limitations regarding backups on live servers and the possibility of data corruption, if data has changed since the time last backup was performed, or that the data was not in a usable state at the time we performed a given backup, we, in no way, guarantee the usability of any data from any given backup set.

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SEAMETRICS performs full server backups once per day. Differential backups are performed every four hours. Backups are overwritten in a cyclic fashion, therefore SEAMETRICS does not promise to retain data backups for any longer than two weeks.

It is the customer's responsibility to initiate, maintain and store an independent backup of data stored on SEAMETRICS servers to ensure a redundant back-up source exists as part of customer's disaster recovery process

- 16. **Unauthorized Access to Data or Use of the Services.** SEAMETRICS will use commercially reasonable efforts and industry accepted methods to ensure the reliability and security of Services, but SEAMETRICS is not responsible for unauthorized access to data or the unauthorized use of the Services. The customer is responsible for the use of the Services by any employee or other person to whom they have given access to the Services, and any person who gains access to Customers data or the Services as a result of the failure to use reasonable security precautions, even if such use was not authorized by the customer.
- 17. **Confidentiality.** Both parties to this Agreement acknowledge that they may come into confidential or proprietary information (Information) of the other, and they both agree to hold such Information in confidence and not to disclose it, or any part of it, to any third party without the written permission of the other. This non-disclosure obligation shall last during the Term of this Agreement (and any and all extensions) plus three years.
- 18. **Non-Partnership.** The Parties are neither partners nor joint venture participants, neither Party shall have the right to bind the other in any way, and no third party shall have any rights under this Agreement.
- 19. **Miscellaneous.**
 - a. This Agreement constitutes a legal binding agreement between SEAMETRICS and the Customer and is the entire agreement between SEAMETRICS and the Customer. SEAMETRICS may change these terms and conditions at any time upon notice to Customer, and Customer's continued use of Services constitutes Customer's acceptance of any change.
 - b. Customer understands that SEAMETRICS has entered into certain resale agreements with underlying carrier partners entitling it to resell nonexclusive airtime Services and that Customer agrees to be bound by those terms and conditions of resale. Underlying carrier partner is a third-party beneficiary of this Agreement and reserves the right to take equitable or legal action to enforce its provisions
 - c. A failure by SEAMETRICS to enforce any right under this Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under this Agreement. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such a provision shall be deemed severed from the Agreement and replaced with a provision mostly closely reflecting the intent or the severed provision as is allowable at law, and the other provisions shall remain in full force and effect.
 - d. The original of this Agreement has been written in English and Customer waives any right it may have under the laws of its territory to have this Agreement written in any other language. Customer represents that it has the ability to read and write in English and has read and understood this Agreement. If this Agreement is translated into a language other than English, the English version and interpretation shall govern and prevail. This Agreement will be with Instrumentation Northwest, Inc., and will be governed by the laws of the state of Washington. Conflicts of law's provisions, the UN Convention for the International Sale of Goods, and the Uniform Commercial Code, and any legislation implementing the foregoing Convention and Code, are expressly excluded.
- 20. **Contract Revisions.** Revisions to this Contract will be considered agreed to by the Customer on renewal of SEAMETRICS Services as specified in Section 1. This Agreement and SEAMETRICS Policies and Terms of Services Agreement constitute the entire understanding of the parties. Any changes or modifications to this Contract are agreed to by the parties upon renewal of Services.

Please initial all pages, sign and return to ap@seametrics.com

Printed Name _____ **Signature** _____ **Date** _____

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VZCOM / myINW.com Rates

Service Description	Rate	Code
VZCOM Base Plan – Includes cellular coverage (up to 2MB), secure data hosting at myINW.com, and 25 SMS alarms per month.		
1 Year VZCOM Base Plan	\$300	BP1
Base Plan Add-Ons		
Voice Dial Alarming	\$1,250 Setup + \$100.00/month	VA1
CSV Data Delivery Services	\$1000 Setup \$45.00/month	CS1
API Web Services Token	\$1000/"Company" + \$5/modem/month	API
Additional Cellular Bandwidth	\$5.00/MB/month	MB1
Promotional Plan Additional Months (Initial term included with product)	\$35.00/month	PRO

Other Rates

Service Description	Rate	Code
Other Modem Cellular Only – Includes Verizon cellular network coverage (up to 2MB) for the customer to supply own data hosting. <i>Example: Raven Modem w/ Aqua4Push or Aqua4Plus application</i>	\$15.00/month	OM1
Additional Cellular Bandwidth	\$5.00/MB/month	MB1