

RESOLUTION 2021-Z

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON,
AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH
SECURAMAX FOR BODYCAMs FOR THE EATONVILLE POLICE
DEPARTMENT**

WHEREAS, Substitute House Bill 1223 (“HB 1223”) was passed May 18, 2021, in Washington State; and

WHEREAS, HB 1223 requires any custodial interrogation of an adult for a felony offence, or a juvenile of any offence, to be electronically recorded starting January 1, 2022; and

WHEREAS, the Eatonville Police Department does not currently have bodycams for each officer, and desires to enter into a Service Contract with SecuraMax for the purchase, software service and hosting of 4 bodycams for 5 years; and

WHEREAS, the Public Safety Committee met and discussed this new requirement and recommends approval of the contract attached hereto as Exhibit A; now, therefore;

**THE COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON, HEREBY
RESOLVES AS FOLLOWS:**

THAT: The Mayor is authorized to execute on behalf of the Town the Service Contract with SecuraMax, attached hereto as Exhibit A.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 26th day of July 2021.

Mike Schaub, Mayor

ATTEST:

Miranda Doll, Town Clerk

SecuraMax™ SERVICE CONTRACT

This is a Service Contract (the "Service Contract") between _____
("LICENSEE") at _____

and Pro-Vision, Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, ("PRO-VISION"). This Service Contract provides a start date and term of agreement, the initial fee structure, identification of the services to be provided, and identification of the devices ("PRO-VISION Devices") for which the services are associated, wherein the identified services are to be provided under the terms and conditions specified herein and in a Software Service and Hosting Agreement to which the LICENSEE will agree to in order to use the Software Service as specified therein. This Service Contract is voidable at the sole option of PRO-VISION unless and until LICENSEE executes the Software Service and Hosting Agreement.

The undersigned representative of LICENSEE represents that he/she is authorized to enter into this Service Contract on behalf of the LICENSEE and hereby agrees to the following terms and conditions on behalf of the LICENSEE.

PRO-VISION and LICENSEE agree as follows:

LICENSEE will accept and be bound by the terms and conditions offered by PRO-VISION, which are set forth in the Software Service and Hosting Agreement. Each end user of LICENSEE will be required to agree to End User Terms and Conditions. Further, LICENSEE will need to agree to separate Uploader Licenses for the uploader software. The terms of deployment will be established in a separate Remote Deployment Agreement.

Various details referenced in the Software Service and Hosting Agreement are set forth below.

LICENSEE INFORMATION:

COMPANY / ORGANIZATION NAME:		BUSINESS TAX ID <i>(TIN/EIN/FEIN):</i>	
CONTACT NAME:		CONTACT TITLE:	
BILLING ADDRESS:			
CITY:		STATE:	ZIP:

PRO-VISION DEVICE(S):

MODEL: BC4-CAM	QUANTITY: 4
MODEL:	QUANTITY:

RECURRING ITEMS:

Items listed in this section are billed on a recurring monthly basis.

PART NUMBER	PART DESCRIPTION	QUANTITY	MONTHLY UNIT PRICE	SUB TOTAL	SEE NOTE
BC4-SMX-100-5YR	Bodycam 4 with SecuraMax 5 Year Plan [100GB]	55		220	
				0	
TOTAL				220	

FIXED COST ITEMS:

Items listed in this section have a one-time unit cost, monthly billing will not occur.

PART NUMBER	PART DESCRIPTION	QUANTITY	UNIT PRICE	SUB TOTAL	SEE NOTE
				0	
				0	
				0	
TOTAL				0	

The above fees are subject to change. Although monthly fees are listed above, LICENSEE will be responsible for payment of such fees for the entire Subscription Term and, in the event of early termination, the full amount of fees remaining shall become immediately due and payable. Fee payment will be made monthly by LICENSEE by ACH or credit card only. Terms and conditions as to how the monthly fees are to be paid are set forth in the Software Service and Hosting Agreement to which LICENSEE hereby acknowledges and agrees. All capitalized terms not otherwise defined in this Agreement shall have the meanings attributed to them in the Self-Hosted Software Service Agreement.

As set forth in the Self-Hosted Software Service Agreement, LICENSEE will be charged for data storage overages at the then-existing rates.

By applying our signatures below, we hereby accept the terms and conditions set forth above.

PRO-VISION:

LICENSEE:

SIGNATURE

SIGNATURE

NAME

NAME

DATE

DATE

SOFTWARE SERVICE AND HOSTING AGREEMENT

This is a Software Service and Hosting Agreement (the "Agreement") under which LICENSEE may use the Software Service. This Agreement supplements the terms set forth in a previously-agreed upon Service Contract, Number 202106240929 between LICENSEE and PRO-VISION ("the Service Contract"), including any Protection Plan listed in the Service Contract ("Protection Plan").

By clicking ACCEPT, you represent that you are authorized to enter into this Agreement on behalf of the Licensee "LICENSEE" listed in the Licensee field of the Service Contract and hereby agree to the following terms and conditions of use of this website ("Software Service") of behalf of the LICENSEE. The licensor of this website is Pro-Vision, Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, ("PRO-VISION").

PRO-VISION and LICENSEE agree as follows:

1. DEFINITIONS

1.1 "Documentation" means all generally available printed and electronic user and system documentation included in or accompanying an associated PRO-VISION camera and/or the Software Service, as updated from time-to-time by PRO-VISION.

1.2 "Intellectual Property" shall mean all PRO-VISION products related inventions (whether or not protected under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protected under copyright laws), Moral Rights, mask works, trademarks, trade names, trade dress, trade secrets, publicity rights, know-how, ideas (whether or not protected under trade secret laws), and all other subject matter protected under patent (or which is not patented, but is subject matter that is protected under patent law), copyright, moral right, mask work, trademark, trade secret, or other laws, including without limitation all new or useful art, combinations, discoveries, formulae, manufacturing techniques, technical developments, systems, computer architecture, artwork, software, programming, applets, scripts, designs, processes, and methods of doing business. "Moral Rights" means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country, or under any treaty.

1.3 "LICENSEE'S Data" is data originating from LICENSEE that is stored using the Software Service on behalf of LICENSEE, and includes media files such as text, videos, photos, and audio .

1.4 "PRO-VISION Device" means any device provided by PRO-VISION and listed in the Service Contract, from which the Software Service uploads LICENSEE'S Data, and any replacement of such device that is provided by PRO-VISION under PRO-VISION's Limited Warranty or the Protection Plan.

1.5 "Software Service" means the cloud-based computerized camera interface and media storage service (known as SecuraMax™) and related Documentation and any updates, corrections, enhancements or subsequent releases or versions thereto made available to LICENSEE by PRO-VISION under this Agreement.

1.6 "Start Date" shall mean the Start Date listed in Start Date field of the Service Contract.

1.7 "Subscription Term" shall mean the period of time beginning on the Start Date and ending after the number of years (3 or 5 years) set forth in the Subscription Term field of the Service Contract, unless renewed as provided in this Agreement. Subscription Term includes any Renewal Term.

1.8 "Trial Term" shall mean the length of the trial period and begins on the Start Date and ends after the period of time set forth in the Trial Term field (if any) of the Service Contract.

2. SOFTWARE SERVICE LICENSE

2.1 Grant of Software Service License. Subject to the terms and conditions of this Agreement and payment of the Software Service Fees, PRO-VISION grants and LICENSEE accepts a non-transferable, non-assignable, non-exclusive license to use the Software Service solely for its own purposes for the Term as set forth herein. LICENSEE shall be responsible for maintaining its computer equipment and Internet access needed so as to enjoy the Software Service.

SOFTWARE SERVICE AND HOSTING AGREEMENT

2.2 License Restrictions.

- (a) LICENSEE will not lend, lease, sublicense, transfer, or otherwise distribute the Software Service to any third party;
- (b) Unless specifically agreed otherwise by PRO-VISION in writing, LICENSEE will not use the Software Service in any manner to provide computer services to third parties;
- (c) LICENSEE will not adapt, translate or otherwise create any program, documentation or other work that is based on or incorporates any part of the Software Service without the express written consent of PRO-VISION;
- (d) Except as may be permitted by law, LICENSEE will not reverse engineer the Software Service; and
- (e) LICENSEE will keep the Software Service free and clear of all liens, security interests and other encumbrances and will provide PRO-VISION with immediate notice of any lien, security interest or encumbrance affecting the Software Service.

2.3 Ownership.

2.3.1 The Software Service. PRO-VISION owns all right, title, and interest in and to the Software Service including all Intellectual Property rights therein. LICENSEE does not acquire any rights, express or implied, in the Software Service, other than those specified in this Agreement.

2.3.2 LICENSEE'S Data. LICENSEE shall own all right, title, and interest in and to LICENSEE'S Data. PRO-VISION does not acquire any rights, express or implied, in LICENSEE'S Data. LICENSEE is solely responsible for controlling access to LICENSEE'S Data and is solely responsible for deletion, modification, downloading, uploading, sharing, copying, moving, and management of LICENSEE'S Data. PRO-VISION does not view the content of LICENSEE'S Data.

2.4 Storage and Access.

2.4.1 Location.

PRO-VISION may store LICENSEE'S Data at any location within the United States. LICENSEE agrees to allow PRO-VISION to transfer LICENSEE'S Data to third parties contracted by PRO-VISION for purposes of storage of LICENSEE'S Data.

2.4.2 Storage Space.

- (a) PRO-VISION agrees to provide the storage space set forth in the Service Contract for one-month periods in exchange for prepayment of the Software Service Fee applicable to the requested storage space and particular time period.
- (b) The requested storage space provided with each PRO-VISION Device may be pooled with the requested storage space for all PRO-VISION Devices. However, such storage space may only be used for data uploaded from such PRO-VISION Devices. All other forms of

LICENSEE'S Data that is stored is considered to be stored in excess storage, which will be subject to an additional charge at PRO-VISION's then prevailing Storage Overage Fee per excess gigabyte used.

- (c) Storage space used or required in excess of that set forth in the Service Contract for a particular time period (regardless of whether it is used to store data from PRO-VISION Devices) will result in an additional charge at PRO-VISION's then prevailing Storage Overage Fee per excess gigabyte used.

SOFTWARE SERVICE AND HOSTING AGREEMENT

2.4.3 Download Limitations.

- (a) PRO-VISION agrees to allow data downloads (in gigabytes) set forth in the Service Contract by the LICENSEE for one-month periods in exchange for prepayment of the Software Service Fee applicable to the requested download limits and particular time period.
- (b) Data downloads used or required in excess of that set forth in the Service Contract for a particular time period will result in an additional charge at PRO-VISION's then prevailing Excess Data Download Fee per excess gigabyte downloaded.

2.4.4 Access Rights. Subject to any Suspension of Services per Section 3.4, during the Term of this Agreement, LICENSEE will have access and use of the Software Service for the storage and management of LICENSEE'S Data. Other than collecting usage statistics per Section 14, PRO-VISION will not access LICENSEE'S Data or view the content of LICENSEE'S Data. LICENSEE will be responsible for determining and managing access to LICENSEE'S Data. PRO-VISION will not disclose the content or existence of LICENSEE'S Data or any information about LICENSEE except as compelled by court order or otherwise required by law. PRO-VISION will attempt to provide advance notice of any compelled disclosure in an effort to permit LICENSEE opportunity to object to the court or administrative body.

2.4.5 Data Security. PRO-VISION will implement commercially reasonable and appropriate measures for securing and encrypting LICENSEE'S Data against unauthorized access. LICENSEE is responsible for maintaining security of end user's login credentials and security by the end users of LICENSEE'S Data. LICENSEE may not transfer or sublicense the log-in credentials to any other entity. Audit tracking is provided to track access to LICENSEE'S Data originating from PRO-VISION Devices based on log-in credentials. LICENSEE will contact PRO-VISION immediately if LICENSEE believes any third party has used LICENSEE'S account or accessed LICENSEE'S Data without authorization.

2.5 Software Service Availability. PRO-VISION shall use commercially reasonable efforts to make the Software Service generally available. PRO-VISION's Software Service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. PRO-VISION is not responsible for any delays, failures, or other damages resulting from such problems.

2.6 Backup, Disaster Recovery, Bandwidth and Data Security. Backup, disaster recovery, bandwidth and data security are provided by third parties referenced in Section 2.4 above. PRO-VISION takes no responsibility for backup, disaster recovery, bandwidth and data security.

3. FEES AND TAXES

3.1 Software Service Fee. LICENSEE shall pay PRO-VISION a monthly Software Service Fee in effect at the time of payment. The Software Service Fee includes the Data Plan Fee and the Protection Plan Fee (if applicable). Such monthly Software Service Fees are due in advance of the month in which the Software Service is desired. LICENSEE shall pay all Software Service Fees by electronic funds transfers through an automated clearinghouse ("ACH") or through pre-authorized credit card charges only, in accordance with the payment instructions PRO-VISION provides to LICENSEE. PRO-VISION will provide a notice via e-mail of the amount to be withdrawn through ACH or charged via credit card five (5) days in advance of the withdrawal/charge. PRO-VISION may change the amount of the Software Service Fee at any time during the Subscription Term, including, without limitation, by changing the amount of a component of the Software Service Fee or by adding or removing a component, in PRO-VISION's reasonable discretion.

3.2 Storage Overage Fees. Storage Overage Fees will be charged in the next month following the month in which the overage occurred.

3.3 Additional PRO-VISION Devices. LICENSEE may add additional PRO-VISION Devices during the Term of this Agreement. However, any additional PRO-VISION Devices may be added only upon LICENSEE entering into a new Service Contract and an associated new Software Service and Hosting Agreement.

3.4 Suspension of Service. In addition to any other rights and remedies, PRO-VISION reserves the right to suspend the Software Service provided to the LICENSEE, including the right to access LICENSEE'S Data, under any one or more of the following conditions:

- (a) if Licensee is in breach of this Agreement, including if LICENSEE's account is five (5) days or more overdue (except with respect to charges then under reasonable and good faith dispute);
- (b) if any security risk is created by LICENSEE's use of the Software Service;

- (c) if LICENSEE's use of the Software Service creates or threatens to create any adverse effect on the Software Service or any use or data of any other licensee of the Software Service;
- (d) if PRO-VISION may be exposed to liability through LICENSEE's use of the Software Service; or
- (e) if LICENSEE becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

In the event that the Software Service is suspended due to any condition stated in (a) above, PRO-VISION will maintain the suspension until such time that all delinquent amounts are paid in full, LICENSEE'S breach is cured or the Software Service is otherwise terminated. LICENSEE will remain liable for payment of the Software Service Fees throughout the duration of the suspension of services. LICENSEE'S Data will not be deleted as a result of the suspension of services. However, per Section 4.2, PRO-VISION may terminate this Agreement at which point LICENSEE'S Data may be deleted 60 days following written notice of termination.

3.5 Taxes and Other Charges. LICENSEE will be responsible for the amount of any and all sales, use, ad valorem, personal property, excise, other taxes or governmental charges associated with this Agreement (excluding taxes in respect of PRO-VISION's income) and/or any other taxes due for LICENSEE's use or receipt of the Software Service or support, consulting and training services provided by PRO-VISION. Such amounts, and any other charges which LICENSEE has agreed to pay and are not otherwise specifically provided for herein shall be due to the appropriate governmental authority upon payment or receipt of PRO-VISION's invoice. LICENSEE agrees that should any tax liability on the Software Service or other items included under this Agreement be established by any taxing unit, the LICENSEE agrees to pay such taxes arising out of this Agreement.

3.6 Late Payments. All amounts to be paid by LICENSEE hereunder shall be due and payable within the times prescribed. All payments not made by LICENSEE when due shall be subject to late charges of the lesser of (i) one and a half percent (1.5%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. In addition, LICENSEE shall pay all of PRO-VISION's reasonable costs and attorneys' fees in any legal action to collect overdue amounts and/or enforce PRO-VISION's rights under this Agreement.

4. TERM AND TERMINATION

4.1 Term. The Term of this Agreement will be determined based upon the Start Date and will remain in effect throughout the Subscription Term (or the Trial Term, if applicable), unless earlier terminated as provided herein. Upon completion of the initial Subscription Term, this Agreement will automatically renew for successive 1 year terms (each a "Renewal Term") at the monthly Software Service Fee then in effect unless LICENSEE provides written notice of termination at least sixty (60) days in advance of the end of the then existing Subscription Term or Renewal Term.

4.2 Termination

- (a) **Termination with Cause.** Either party may terminate this Agreement for cause: (i) Upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. A "material breach" by LICENSEE includes, without limitation, a violation by LICENSEE of any term of the End User Terms and Conditions.
- (b) **Termination upon Sale of PRO-VISION Device.** PRO-VISION will have the right to terminate this Agreement if LICENSEE sells any PRO-VISION Device that uses the Software Service.
- (c) **Early Termination.** In the event LICENSEE terminates this agreement without cause prior to the completion of the Subscription Term or any Renewal Term, LICENSEE must immediately pay PRO-VISION all unpaid invoices and interest and an amount equal to 100% the Software Services Fees in effect multiplied times the number of months remaining in the Subscription Term immediately prior to such termination.

4.3 Effect of Termination. Termination of this Agreement or any Software Service license will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve LICENSEE of its obligation to pay all fees and charges that have accrued or are otherwise owed by LICENSEE under this Agreement. Termination of this Agreement will terminate any Support Services and will immediately terminate LICENSEE'S right to access LICENSEE'S Data other than for purposes of download per Section 4.5 below.

4.4 Outstanding Fees. Termination shall not relieve LICENSEE of the obligation to pay any fees accrued or payable to PRO-VISION prior to the effective date of termination.

SOFTWARE SERVICE AND HOSTING AGREEMENT

4.5 Return of LICENSEE Data. Except as otherwise provided in this Agreement, after termination of the Agreement by either party, and provided LICENSEE has paid all amounts due under this Agreement, then upon request by LICENSEE and payment of the then-applicable Transfer Fee (which may be found at www.SecuraMax.com), PRO-VISION will make available to LICENSEE a function that allows the LICENSEE to download LICENSEE'S Data for a period of ninety (90) days following termination. Otherwise, after sixty (60) days following termination, PRO-VISION shall have no obligation to maintain or provide access to any LICENSEE'S Data and may thereafter, unless prohibited by law, delete all LICENSEE'S Data in PRO-VISION's possession or under its control.

4.6 Survival. The rights and obligations of the parties contained in Sections 2.2 (License Restrictions), 2.3 (Ownership), 3 (Fees and Taxes), 4.3 (Effect of Termination), 4.5 (Return of LICENSEE Data), 7 (Confidential Information and Operational Data), 8.3 (Support Services Exclusions), 8.4 (Intellectual Property Ownership in Software Service), 8.5, 8.6, 10.1 (Warranty of Authority), 11 (Disclaimer), 12 (Indemnities), 13 (Limitation of Liability), and 15 (General Terms), together with all other provisions of this Agreement which by their nature are necessary or useful to effectuate their enforcement, will survive the termination of this Agreement or any other license for the Software Service.

5. DEPLOYMENT

5.1 Remote Deployment

Unless otherwise provided in the Service Contract or per Section 5.2 below, all deployment of the Software Service will be performed by remote assistance at no additional charge according to the terms and conditions set forth in a separate Remote Deployment Agreement. Provided the applicable Software Service Fee has been paid in advance by LICENSEE for the current month and provided that payment has been made for all PRO-VISION Devices, PRO-VISION will provide access to the Software Service to LICENSEE on or after the Start Date and will provide assistance setting up an account and helping LICENSEE to assign users as provided in the Remote Deployment Agreement

5.2 On-Site Deployment

PRO-VISION will not provide on-site deployment services unless requested by LICENSEE and agreed to in advance and upon LICENSEE's payment of the agreed upon fees.

6. TRAINING SERVICES

PRO-VISION will provide reasonable training in the use of the Software Service for the Training Fees in effect at the time of LICENSEE's request for such training services. Each party will be solely responsible for any expenses incurred by its personnel in connection with such training, except that LICENSEE will reimburse PRO-VISION for any travel and other reasonable expenses incurred by PRO-VISION's personnel in providing training at LICENSEE's site. All training will be scheduled at a mutually agreeable time, subject to the availability of PRO-VISION's personnel and facilities.

7. CONFIDENTIAL INFORMATION AND OPERATIONAL DATA

7.1 Definition. For the purposes of the Agreement, "Confidential Information" means: (a) the Software Service, Work Product, and other related technical information disclosed by PRO-VISION to LICENSEE; (b) LICENSEE'S Data; (c) any non-public business or technical information of PRO-VISION or LICENSEE, including but not limited to any information relating to PRO-VISION's or LICENSEE's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how, that is designated by the disclosing party as "confidential" or "proprietary" at the time of disclosure, and, if orally disclosed, is reduced to writing by the disclosing party within thirty (30) days of such disclosure; or that ought reasonably be understood to be confidential by virtue of its nature or the circumstances of its disclosure and (c) terms of this Agreement (including, without limitation, the amount of fees or other charges specified under this Agreement).

7.2 Obligations. Each party will not use the other party's Confidential Information and will not disclose such Confidential Information to any third party except to employees and consultants as are reasonably required in connection with the exercise of its rights and performance of its obligations under this Agreement, provided that such disclosure to employees or consultants is subject to binding use and disclosure restrictions at least as protective as those set forth herein. Each party will take all reasonable measures to maintain the confidentiality of all such Confidential Information in its possession or control, which will in no event, be less than the measures it uses to maintain the confidentiality of its own information of equal importance. Each party shall promptly notify the other party of any suspected or actual unauthorized disclosure of the other party's Confidential Information.

7.3 Compelled Disclosures. To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over a party, the party may disclose Confidential Information of the other party in accordance with such law or order or requirement, subject to the following conditions: As soon as possible after becoming aware of such law, order or requirement and prior to disclosing Confidential Information, the party will so notify the other party in writing and, if reasonable, provide the other party notice not less than five (5) business days prior to the required disclosure. The party that is the subject of the

SOFTWARE SERVICE AND HOSTING AGREEMENT

order or requirement will use reasonable efforts not to release Confidential Information, pending the outcome of any measures taken by the other party to contest, otherwise oppose or seek to limit such disclosure. Notwithstanding any such compelled disclosure, the disclosure will not otherwise affect the party's obligations hereunder with respect to Confidential Information so disclosed.

7.4 Exclusions. Confidential Information will not include information that (a) is in or enters the public domain through no fault or breach of this Agreement by the receiving party; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; or (c) the receiving party rightfully receives from a third party without restriction on use or disclosure. It will be presumed that any Confidential Information in a party's possession is not within exceptions (b) or (c) above, and the burden will be upon the party asserting the exception to prove otherwise by records and documentation.

7.5 Non-Exclusive Equitable Remedy. Each party acknowledges and agrees that due to the unique nature of the Software Service and Confidential Information as defined herein, there can be no adequate remedy at law for any breach of its obligations hereunder, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable relief from a court of competent jurisdiction in addition to whatever remedies either of them might have at law or equity.

8. SUPPORT SERVICES

8.1 PRO-VISION will provide Support Services for Software Service, which consist of the following:

8.1.1 Enhancements and Updates. PRO-VISION will implement any updates, corrections, and enhancements to the Software Service that PRO-VISION provides to its current customers generally without an additional charge. If PRO-VISION provides any update, correction or enhancement as a new Software Service for which it charges an additional fee, it will make such Software Service available to LICENSEE on the same terms as it offers other current customers for the Software Service.

8.1.2 Online/Telephone Support. PRO-VISION will provide reasonable online, telephone, or email support to assist LICENSEE in the identification, verification and resolution of problems associated with the Software Service in exchange for payment of PRO-VISION's Support Service Fees that are then in effect. Such support will be provided during PRO-VISION's normal business hours, excluding PRO-VISION's regularly scheduled holidays. PRO-VISION reserves the right to charge LICENSEE for any telephone call or email which in PRO-VISION's judgment, constitutes end-user training.

8.1.3 Program Corrections. If the Software Service does not perform substantially as described in the Documentation when used in the manner specified in the Documentation and if LICENSEE notifies PRO-VISION of the issue through PRO-VISION's online, telephone, or email support service, PRO-VISION will use its commercially reasonable efforts to resolve the issue.

SOFTWARE SERVICE AND HOSTING AGREEMENT

8.2 Conditions to Support Services. LICENSEE acknowledges that PRO-VISION may provide the Support Services specified in this Section 8 for PRO-VISION's then prevailing Support Service Fees. If LICENSEE requests Support Services, LICENSEE will: (a) perform such procedures as may be described in the Documentation for the identification and resolution of problems; and (b) provide PRO-VISION with sufficient information and assistance to enable PRO-VISION to duplicate problems reported by LICENSEE, to determine whether the problem results from an error or other issue in the Software Service, and to confirm that the problem has been corrected. LICENSEE shall be solely responsible for all costs and fees associated with maintaining and updating hardware and software provided by other vendors. All Support Services are contingent on LICENSEE's payment of applicable Software Service Fees and PRO-VISION's then prevailing Support Service Fees.

8.3 Exclusions. Notwithstanding the foregoing, PRO-VISION shall have no obligations for Software Service problems caused by LICENSEE's negligence, abuse or misapplication, LICENSEE's use of Software Service other than as specified in the Documentation, or by other factors beyond the control of PRO-VISION. Services available under this Section do not include services set forth in Section 6 ("Training Services") or in Section 5 ("Deployment").

8.4 Intellectual Property Ownership in Software Service. LICENSEE and PRO-VISION agree that PRO-VISION shall be the exclusive owner of all right, title, and interest in and to all software, programming, tools, documentation, materials, and other Intellectual Property (collectively, the "Work Product") of any kind used, developed, or delivered by PRO-VISION to LICENSEE in connection with performing the Software Service, that such Work Product shall not constitute a work-made-for-hire under U.S. Copyright Law, and that PRO-VISION shall have the exclusive right to protect the Work Product by patent, copyright, or any other means. Such Work Product shall expressly exclude LICENSEE'S Data and LICENSEE Confidential Information. In the event, by operation of law or otherwise, LICENSEE is deemed to be the owner of all or any portion of the Intellectual Property rights in the Work Product, LICENSEE hereby assigns all such Intellectual Property rights to PRO-VISION and agrees to cooperate with PRO-VISION in confirming PRO-VISION's sole and exclusive ownership of the Work Product.

SOFTWARE SERVICE AND HOSTING AGREEMENT

8.5 In consideration of the performance of any Support Services hereunder, LICENSEE will pay PRO-VISION the Support Service Fees that are then in effect. PRO-VISION shall have the right to immediately cease all performance of Support Services if LICENSEE fails to timely pay PRO-VISION as required hereunder.

8.6 LICENSEE will reimburse PRO-VISION for (i) travel and living expenses associated with on-site training and other Support Services, and (ii) any special or unusual expenses incurred at LICENSEE's specific request. Payment for all expenses to be reimbursed by LICENSEE under this Agreement will become due twenty (20) days after LICENSEE's receipt of PRO-VISION's itemized invoice, which PRO-VISION will prepare monthly, at PRO-VISION's option. LICENSEE should contact its PRO-VISION sales representative for details regarding any on-site support.

9. OTHER SUPPORT TERMS

9.1 In addition to the support and services described above, at LICENSEE's request and upon PRO-VISION's written agreement, PRO-VISION may also perform additional Support Services for LICENSEE to correct difficulties or defects caused by LICENSEE's errors, interactions with other software of LICENSEE, or any authorized changes or customizing made to the Software Service. Such additional Support Services may be provided in exchange for the Support Service Fees at PRO-VISION's then applicable rates.

10. LIMITED WARRANTIES

10.1 Warranty of Authority. Each party warrants to the other that it has sufficient rights to enter into this Agreement and to perform their respective obligations hereunder. LICENSEE further warrants:

- (a) that LICENSEE, as well as the agent accepting this Agreement, is legally authorized by the laws of its jurisdiction, or by any required resolution by its governing body, to enter into this Agreement and to perform all of LICENSEE'S obligations under this Agreement;
- (b) that LICENSEE is a U.S. person, as defined in 22 C.F.R. §120.15;
- (c) that LICENSEE is not an educational institution;
- (d) that LICENSEE is a U.S. Government Entity (including a Federal Agency, a State/Local Entity or a Tribal Entity acting in its governmental capacity, where: a "Federal Agency" is a bureau, office, agency, department or other entity of the United States Government; "State/Local Entity" is
 - i. any agency of a state or local government in the United States,
 - ii. any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries, or
 - iii. the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Northern Mariana Islands; and a "Tribal Entity" is a federally recognized tribal entity eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe, or, in Alaska, a Native village or Alaska Regional Native Corporation);
- (e) that LICENSEE has funds appropriated and available to pay for the Software Service Fees for the duration of the Term of this Agreement (the entire Trial Term and/or Subscription Term and any Renewal Terms agreed upon by not providing notice under Section 4.1);
- (f) that LICENSEE will only use the Software Service for essential governmental or proprietary purposes consistent with the scope of LICENSEE'S authority and that LICENSEE will not use the Software Service in a business or trade of any person or other entity, or for any personal use;
- (g) that LICENSEE shall be responsible for its end user's use of the Software Service including any and all activities performed under LICENSEE's account including all use by LICENSEE'S employees and agents;
- (h) that LICENSEE shall be responsible for any breach of this Agreement by its end users including any and all of LICENSEE'S employees and agents;
- (i) that LICENSEE shall be responsible for any claims that the content of LICENSEE'S Data infringes or misappropriates any third party's rights;
- (j) that LICENSEE shall be responsible for any dispute between LICENSEE and any third party with respect to LICENSEE'S collection or use of LICENSEE'S Data;
- (k) that LICENSEE shall be responsible for any dispute between LICENSEE and any end user including any and all of LICENSEE'S employees and agents; and
- (l) that LICENSEE will acquire and maintain insurance coverage up to the amount allowed by all applicable laws and regulations that would cover any claims, liabilities, damages, losses, expenses and costs arising out of or related to any third-party claim in this Section 10.1.

LICENSEE further agrees to adhere to this Agreement and all laws, rules, regulations, and policies applicable to the use of the Software Service and the content of LICENSEE'S Data, and that all of LICENSEE's end users agree to the same. If LICENSEE becomes aware of any violation by an end user, LICENSEE will immediately terminate that end user's access to LICENSEE'S Data and the Software Service.

SOFTWARE SERVICE AND HOSTING AGREEMENT

10.2 Support Services Warranty. PRO-VISION warrants that any Support Services performed by PRO-VISION under this Agreement will be performed in a manner consistent with generally accepted industry standards. This warranty will be valid for thirty (30) days from performance of the Support Services. As LICENSEE's exclusive remedy and PRO-VISION's entire liability for any breach of the foregoing warranty, PRO-VISION will, at its expense, use its commercially reasonable efforts to re-perform the Support Services to correct any defects therein.

11. DISCLAIMER

11.1 PRO-VISION Services. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 10, THE SOFTWARE SERVICE, THE SUPPORT SERVICES AND ALL OTHER SERVICES PROVIDED HEREUNDER ARE PROVIDED TO LICENSEE "AS IS" AND "AS-AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF INFORMATION AND QUIET ENJOYMENT. PRO-VISION DOES NOT WARRANT THAT THE SOFTWARE SERVICE, THE SUPPORT SERVICES AND/OR ANY OTHER SERVICES PROVIDED HEREUNDER WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE SERVICE WILL BE CORRECTED. PRO-VISION DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE SERVICE IN TERMS OF ITS CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, OR OTHERWISE. LICENSEE ACKNOWLEDGES THAT IT WILL HAVE SOLE AND COMPLETE RESPONSIBILITY FOR ANY DECISIONS MADE OR ACTIONS TAKEN BY IT IN RELIANCE UPON THE SOFTWARE SERVICE. No employee or agent of PRO-VISION is authorized to make any different or additional warranties to LICENSEE and PRO-VISION will not be bound by any such purported warranties. The warranties provided by PRO-VISION are personal to LICENSEE and may not be extended to any third party. There are NO third party beneficiaries of PRO-VISION's obligations under this Agreement.

11.2 Third Party Products and/or Services. PRO-VISION MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY SOFTWARE, COMPUTER HARDWARE, DEVICES, OR SERVICES OF ANY NATURE OBTAINED FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS"). PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE THIRD PARTY ITEMS. LICENSEE SHOULD CONSULT THE RESPECTIVE VENDORS/MANUFACTURERS OF THE THIRD PARTY ITEMS FOR WARRANTY AND PERFORMANCE INFORMATION. NOTHING IN THIS AGREEMENT SHALL BE INTERPRETED AS A WARRANTY, EITHER EXPRESS OR IMPLIED, BY PRO-VISION THAT WOULD EXPAND IN ANY WAY A VENDOR/MANUFACTURER'S STANDARD END-USER WARRANTY.

11.3 LICENSEE Responsibilities. LICENSEE ACKNOWLEDGES THAT IT HAS INSPECTED THE SOFTWARE SERVICE AND CONFIRMS BY ENTERING INTO THIS AGREEMENT THAT THE SOFTWARE SERVICE MEETS LICENSEE'S REQUIREMENTS. LICENSEE ACKNOWLEDGES AND ACCEPTS THAT PRO-VISION DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SERVICE WILL, IN FACT, MEET THE SPECIFIC NEEDS AND REQUIREMENTS OF LICENSEE. LICENSEE ASSUMES FULL RESPONSIBILITY FOR THE CHOICE AND ADEQUACY OF THE SOFTWARE SERVICE AND ACKNOWLEDGES THAT LICENSEE WILL BE EXCLUSIVELY RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT AND CONTROL OF ACCESS TO THE SOFTWARE SERVICE INCLUDING, BUT NOT LIMITED TO: (I) ASSURING PROPER MACHINE CONFIGURATION, AUDIT CONTROLS AND OPERATION METHODS; (II) IMPLEMENTING SUFFICIENT PROCEDURES AND CHECK POINTS TO SATISFY LICENSEE'S REQUIREMENTS FOR SECURITY AND ADEQUACY OF INPUT AND OUTPUT; (III) ASSURING LOGIN CREDENTIALS AND PASSWORDS ARE ESTABLISHED FOR EACH END USER AND THAT SUCH CREDENTIALS ARE NOT SHARED; AND (IV) ENSURING THAT LICENSEE'S USE OF THE SOFTWARE SERVICE MEETS ANY REQUIREMENTS OF ALL APPLICABLE LAWS. PRO-VISION WILL NOT BE RESPONSIBLE FOR ANY USE OF THE SOFTWARE SERVICE BY LICENSEE THAT DOES NOT COMPLY WITH APPLICABLE LAWS AND DISCLAIMS ANY RESPONSIBILITY FOR DATA CORRUPTION, LOSS, MODIFICATION, OR ERRORS EXISTING IN LICENSEE'S DATA PRIOR TO UPLOAD AS WELL AS ANY DATA CORRUPTION, LOSS, MODIFICATION, OR ERRORS EXISTING IN LICENSEE'S DATA AFTER ANY UPLOAD OR DOWNLOAD.

SOFTWARE SERVICE AND HOSTING AGREEMENT

12. INDEMNITIES

12.1 Infringement Indemnity. PRO-VISION agrees to defend, indemnify and hold LICENSEE and its affiliates, subsidiaries, officers, directors, employees, and agents harmless from and against any and all claims, suits, proceedings, losses, liabilities, damages, costs, and expenses, including reasonable attorneys' fees made against LICENSEE by third parties alleging that the Software Service infringes any patent or copyright or misappropriates a trade secret. LICENSEE shall provide PRO-VISION with prompt written notice of such claim and with information, reasonable assistance, and sole authority to defend or settle the claim. In the defense or settlement of the claim, PRO-VISION may obtain for LICENSEE the right to continue using the Software Service, replace or modify the Software Service so that it becomes non-infringing, without loss of substantial functionality, or, if such remedies are not reasonably available, terminate LICENSEE's right with respect to the infringing Software Service and refund to LICENSEE the Software Service Fees paid, prorated over the payment period in the event of an injunction. PRO-VISION will have no liability and shall not provide such indemnification if the alleged infringement is based on (a) the combination, use or operation of the Software Service with software, equipment or devices not provided by PRO-VISION, if such a claim would have been avoided but for such combination; (b) the use of the Software Service other than in accordance with the Documentation; (c) the use of the Software Service after notice of the alleged or actual infringement from PRO-VISION or any appropriate authority; or (d) a matter which is the subject of indemnification by LICENSEE under Section 12.2. THE FOREGOING STATES LICENSEE'S SOLE AND EXCLUSIVE REMEDIES, AND PRO-VISION'S ENTIRE LIABILITY, FOR INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

12.2 Indemnification by LICENSEE. LICENSEE shall defend and indemnify PRO-VISION and hold it and its affiliates, subsidiaries, officers, directors, employees, agents, and suppliers (including any third party used to store licensee's data) harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by PRO-VISION as a result of any claim, judgment, or adjudication related to or arising from (i) LICENSEE's use of the Software Service including, but not limited to, management, deletion, or alteration of LICENSEE'S Data or LICENSEE's failure to store or maintain data (except to the extent indemnified by PRO-VISION under Section 12.1 or to the extent such claims are solely the result of PRO-VISION's gross negligence or willful misconduct), or (ii) LICENSEE's third party service providers and their designees or any other third party to whom LICENSEE provides access to or use of the Software Service, or the data contained therein.

13. LIMITATION OF LIABILITY

13.1 Exclusion of Damages. EXCEPT AS EXPRESSLY PROVIDED HEREIN, IN NO EVENT WILL PRO-VISION OR ITS AFFILIATES, SUBSIDIARIES, AGENTS, AND THIRD PARTY SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE LICENSEE'S DATA) BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OR INABILITY TO USE ANY SOFTWARE SERVICE OR ANY SERVICES PROVIDED HEREUNDER FOR ANY PERIOD OF TIME (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES OR LOSS OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, PRO-VISION AND ITS AFFILIATES, SUBSIDIARIES, AGENTS, AND THIRD PARTY SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE LICENSEE'S DATA) WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DAMAGES ARISING FROM: (1) ANY UNAUTHORIZED ACCESS TO LICENSEE'S DATA; (2) ANY MODIFICATION, DELETION, DAMAGE, OR OTHER LOSS OF LICENSEE'S DATA; (3) FAILURE TO PROPERLY STORE LICENSEE'S DATA; (4) FAILURE TO PROPERLY IDENTIFY LICENSEE'S DATA; (5) SUSPENSION OR TERMINATION OF THE SOFTWARE SERVICE; (6) LICENSEE'S USE OF THE SOFTWARE SERVICE; (7) THIRD PARTY CLAIMS PERTAINING TO EXISTENCE, NON-EXISTENCE, DELETION, AND/OR MODIFICATION OF LICENSEE'S DATA; OR (8) DISCONTINUANCE OF ANY PORTION OF THE SOFTWARE SERVICE.

13.2 Total Liability. EXCEPT FOR PRO-VISION'S INFRINGEMENT OBLIGATIONS SET FORTH IN SECTION 12.1 AND CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 7, THE TOTAL LIABILITY OF PRO-VISION AND ITS RESPECTIVE AFFILIATES, SUBSIDIARIES, AGENTS AND SUPPLIERS TO LICENSEE OR ANY THIRD PARTIES (INCLUDING ANY THIRD PARTY USED TO STORE LICENSEE'S DATA) ARISING FROM THE SOFTWARE SERVICE, SERVICES OR THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) WILL IN NO EVENT EXCEED IN THE AGGREGATE THE AMOUNTS PAID BY LICENSEE FOR THE SOFTWARE SERVICE OR SERVICES TO WHICH THE CLAIM RELATES PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

13.3 Allocation of Risk. The provisions of this Agreement allocate the risks between PRO-VISION and LICENSEE. PRO-VISION's pricing reflects this allocation of risk and the limitation of liability specified herein. The parties have agreed that the limitations specified in this Section 13 (Limitation of Liability) will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

SOFTWARE SERVICE AND HOSTING AGREEMENT

14. LICENSEE USAGE STATISTICS

To help enable PRO-VISION to provide and improve its Software Service, LICENSEE hereby agrees to allow PRO-VISION to acquire and use LICENSEE's usage statistics including cloud storage space used, frequency of uploads, amount of data downloaded, amount of storage consumed by any of LICENSEE'S Data that is not data uploaded from PRO-VISION Devices, number of active users and/or PRO-VISION Devices, and any other information needed to enforce this Agreement, conduct any troubleshooting requested by LICENSEE, and to analyze and diagnose any systems on which the Software Service software resides.

15. GENERAL TERMS

15.1 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

15.2 Modification and Waiver. This Agreement may not be amended except by a written instrument signed by duly authorized representatives of both parties. No waiver will be effective unless in writing and signed by a duly authorized representative of the party sought to be charged therewith. The failure of PRO-VISION to insist upon strict performance of any of the provisions of this Agreement will not be construed as a waiver of PRO-VISION's rights arising out of any subsequent default of that or any other provision.

15.3 Assignment. This Agreement and the rights hereunder will be assignable by PRO-VISION. LICENSEE will have no right to assign this Agreement or any of its rights hereunder without PRO-VISION's prior written consent. Any attempt to assign this Agreement without such consent will be void. PRO-VISION may reasonably require, as a condition to its consent, payment of a license transfer fee in such amount as PRO-VISION may specify in its sole discretion. No permitted assignment by LICENSEE will be effective without the express written consent of PRO-VISION. Provided that PRO-VISION has consented to such assignment, LICENSEE may not retain any copy of the Software Service or Documentation following the assignment.

15.4 Failure or Delay in Performance. PRO-VISION will not be liable for or be deemed in default under this Agreement, or any other agreement between PRO-VISION and LICENSEE, as a result of any failure or delay in the performance of any obligation owed LICENSEE if such delay or failure results from any cause beyond PRO-VISION's reasonable control.

15.5 Notices. All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier, overnight delivery service, certified mail, or by email and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section. Either party may change its address for notices to the other party by the means specified in this Section.

15.6 Applicable Law; Limitation of Actions. This Agreement will be construed, interpreted, governed and enforced by and in accordance with the laws of Michigan, and the laws of the United States of America, without regard to conflicts of laws principles. No action, regardless of form, arising out of any of the transactions under this Agreement may be brought by LICENSEE more than one (1) year after such action accrued. Any dispute regarding this Agreement or arising out of any of the transactions under this Agreement shall be determined in the federal courts of the United States within the jurisdiction of the United States District Court for the Western District of Michigan, or the courts of the State of Michigan sitting in Kent County, Michigan, and the parties hereby stipulate and agree to jurisdiction and venue in such courts. Each party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim such a lack of jurisdiction, or that such court is an inconvenient forum.

15.7 Entire Agreement. This Agreement is binding on the parties and their permitted assignees. With the exception of any Service Contracts, Remote Deployment Agreements, Protection Plan Agreements, Uploader Licenses, End User Terms and Conditions, additional Software Service and Hosting Agreements, any policies and restrictions on the SecuraMax.com website, and the possible exception of a Beta Test Agreement, this Agreement is the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous agreements, representations or understandings, written or oral, with respect to such subject matter. In the case of a conflict between a Beta Test Agreement and the terms and conditions of this Agreement, the terms of this Agreement will control with the exception of any Confidentiality terms of such Beta Test Agreement, which will control until such time that the Beta Test Agreement is terminated. Purchase orders or other similar documents issued by LICENSEE will have no effect on this Agreement.

15.8 Audit. At its own expense, PRO-VISION may perform an audit of LICENSEE's usage of the Software Service to confirm use of the software in accordance with the terms of this Agreement. The audit may be conducted (i) once every calendar year and (ii) as required in the event PRO-VISION has reason to believe LICENSEE is utilizing the Software Service in an unauthorized manner.

SOFTWARE SERVICE AND HOSTING AGREEMENT

15.9 Force Majeure. Except for LICENSEE's payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.

15.10 Relationship of the Parties. LICENSEE and PRO-VISION agree that PRO-VISION shall perform its duties under this Agreement as an independent contractor. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by PRO-VISION who perform duties related to this Agreement shall remain under the supervision, management, and control of PRO-VISION. In order to assist it in carrying out its duties and responsibilities pursuant to this Agreement and any Statement(s) of Work, PRO-VISION may subcontract with or otherwise engage the services of one or more third parties.



RECURRING PAYMENT AUTHORIZATION

Questions about how to complete this form?
Call: 1.800.576.1126 (8 a.m. to 5 p.m EST)

AGREEMENT:

The agreement below should be read and signed, by the primary billing contact in the organization listed below ("CUSTOMER").
This person must be authorized to complete and sign any applicable paperwork on behalf of the organization.

- CUSTOMER authorizes PRO-VISION, Inc. to make regularly scheduled charges to the checking/savings, or credit card account per the terms of the service contract between CUSTOMER and PRO-VISION.
- Payments that are returned, declined, or late will incur an additional fee
- An email receipt will be sent to the billing contact(s) on file and a corresponding charge will appear on CUSTOMER'S bank or credit card statement from PRO-VISION, INC.
- Email notification for charges will be provided by PRO-VISION to CUSTOMER five days prior to billing indicating the amount due for the billing period and date of payment collection

DATE OF FIRST PAYMENT:	On Scheduled Deployment Date	INITIAL PAYMENT AMOUNT*: <small>* Subsequent payment amounts will be equal to the first payment, plus any overages or fees incurred.</small>	220
SIGNATURE:		DATE (DD/MM/YYYY):	

PAYMENT METHOD:

Select payment method below. The signee must be authorized to complete and sign any applicable paperwork on behalf of the organization.

ACH/BANK WITHDRAWAL

CREDIT CARD

ACCOUNT INFORMATION:

CHECKING / SAVINGS	CHECKING	SAVINGS	ROUTING NUMBER:	ACCOUNT NUMBER:	
	BANK NAME:		BANK ADDRESS:		
	BANK CITY:		BANK STATE:	BANK ZIP:	
	NAME(S) ON ACCOUNT:				
	AUTHORIZATION: PRO-VISION, Inc. is authorized to process debit entries to this account. This authority will remain in effect until customer provides PRO-VISION, Inc. with reasonable notification to terminate the authorization.				
	AUTHORIZED SIGNATURE:			DATE	
CREDIT CARD	VISA	MASTERCARD	AMERICAN EXPRESS		DISCOVER CARD
	CREDIT CARD NUMBER:			EXPIRATION DATE (MM/YYYY):	
	NAME AS IT APPEARS ON CARD:			CVV:	
	BILLING ADDRESS:				
	CITY:		STATE:	ZIP:	
	AUTHORIZATION: PRO-VISION, Inc. is authorized to charge this credit card account in accordance with the information above.				
	AUTHORIZED SIGNATURE:			DATE (DD/MM/YYYY):	



CUSTOMER SETUP

Questions about how to complete this form?
Call: 1.800.576.1126 (8 a.m. to 5 p.m EST)

Email completed form to: smxadmin@provisionusa.com
Or fax form to: 616.583.1522

ORGANIZATION INFORMATION:

DOES NOT REQUIRE CJIS-COMPLIANT STORAGE
ALL organizations, including government, that **DO NOT** require CJIS-Compliant storage
IF YOU ARE UNSURE, SELECT THIS OPTION

**U.S. GOVERNMENT AGENCY and
REQUIRES CJIS-COMPLIANT STORAGE**
ONLY U.S. local, state, or government agencies requiring CJIS-Compliant storage qualify

COMPANY / ORGANIZATION NAME:

CITY:

STATE:

ZIP:

BILLING CONTACTS:**PRIMARY CONTACT**

FIRST NAME:

LAST NAME:

TITLE:

EMAIL:

PHONE:

FAX::

SECONDARY CONTACT

FIRST NAME:

LAST NAME:

TITLE:

EMAIL:

PHONE:

FAX::

DEPLOYMENT INFORMATION:**DEPLOYMENT CONTACT:**

This is the primary contact for scheduling and coordinating deployment. This person must be authorized to complete and sign any applicable paperwork on behalf of the organization.

CHECK BOX IF PRIMARY & DEPLOYMENT CONTACT ARE THE SAME

FIRST NAME:

LAST NAME:

TITLE:

EMAIL:

PHONE:

FAX::

YOU WILL BE CONTACTED TO SCHEDULE A DEPLOYMENT DATE ONCE ALL COMPLETED CONTRACTUAL DOCUMENTS AND FORMS HAVE BEEN RECEIVED.

DEPLOYMENT:

Remote deployment is standard
On-site requires Sales Manager approval

☒ **REMOTE**
☐ **ON-SITE**

CONFIGURATION:

Adjusts default SecuraMax™ settings
to fit specific customer type

☒ **LAW ENFORCEMENT**
☐ **NON-LAW ENFORCEMENT**

EQUIPMENT:

Purchasing new BC cameras /
Have BC cameras

☒ **NEW HARDWARE**

QTY: 4

TYPE: BC4-CAM

EXISTING HARDWARE

QTY:

TYPE:

Remote Deployment Agreement

This is a Remote Deployment Agreement ("RDA") between _____ ("LICENSEE") and Pro-Vision Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, United States of America ("PRO-VISION"). This RDA provides the terms upon which PRO-VISION may install and activate Uploader Software and Remote Access Software on LICENSEE'S computers. This RDA is being entered into by the parties solely in furtherance of and subject to all terms of a Software Service and Hosting Agreement ("SSHA") previously entered into by and between the parties; LICENSEE'S rights and PRO-VISION'S obligations under this RDA are conditioned upon LICENSEE previously entering into the SSHA. All capitalized terms not otherwise defined in this RDA shall have the meanings attributed to them in the SSHA.

The undersigned representative of LICENSEE represents that he/she is authorized to enter into this RDA on behalf of the LICENSEE and hereby agrees to the following terms and conditions on behalf of the LICENSEE.

PRO-VISION and LICENSEE agree as follows:

1. DEFINITIONS

- 1.1. "Input and Output" means all data that is received, captured, saved, recorded, transmitted, generated, emitted, and/or displayed on, by, or through LICENSEE'S local computer, including, without limitation, keyboard keypresses, mouse cursor motions, and mouse clicks made by the user of the local computer (including a user controlling the local computer via remote access software); text and images displayed on or transmitted to the video monitor of the local computer; and sounds generated by or transmitted to the local computer; regardless of whether the data is detectible by the human senses of an observer of the local computer.
- 1.2. "Remote Access Software" means software that enables access to, and control of, a computer by a user at a remote location through a network connection, including through the internet.
- 1.3. "Uploader Software" means the SECURAMAX™ Uploader Software which is the subject of a separate software license between LICENSEE and PRO-VISION.

2. GRANT OF ACCESS AND CONTROL

LICENSEE grants PRO-VISION access to, and control of, LICENSEE'S computers, using Remote Access Software selected by PRO-VISION, for the purpose of remotely installing and activating the Uploader Software. LICENSEE acknowledges and agrees that Remote Access Software must first be installed and activated on LICENSEE'S computers, by LICENSEE or by PRO-VISION. LICENSEE agrees to install and activate, or to permit PRO-VISION to install and activate, Remote Access Software selected by PRO-VISION, on each of LICENSEE'S computers upon which LICENSEE desires to have the Uploader Software remotely installed and activated. LICENSEE acknowledges and agrees that PRO-VISION'S obligations under this RDA are conditioned upon the proper installation, activation, and operation of Remote Access Software selected by PRO-VISION.

3. INSTALLATION AND ACTIVATION

- 3.1. Subject to the other terms and conditions of this RDA, PRO-VISION will remotely install and activate up to three licensed copies of the Uploader Software on LICENSEE'S computers, for a duration of up to two hours of installation and activation time, regardless of the number of Uploader Software licenses or the number of BODYCAM® units that LICENSEE owns. It will be LICENSEE'S obligation to install and activate any additional copies of the Uploader Software, subject to the number of licenses that LICENSEE holds for the Uploader Software.
- 3.2. LICENSEE will attend the computers on which the Uploader Software is being remotely installed and activated by PRO-VISION during the entire length of the installation and activation processes, and LICENSEE will observe and participate at LICENSEE'S computers, and reasonably assist PRO-VISION, during the installation and activation processes.
- 3.3. LICENSEE acknowledges and agrees that any part of the Input and Output of LICENSEE'S computers may be recorded by PRO-VISION during the remote installation and activation of the Uploader Software, and retained by PRO-VISION indefinitely. LICENSEE acknowledges and agrees that PRO-VISION has no obligation to record or retain any portion of the Input and Output, or to provide LICENSEE with a copy of any portion of the Input and Output.
- 3.4. After PRO-VISION completes the installation and activation of the Uploader Software on one of LICENSEE'S computers, LICENSEE or PRO-VISION will remove the Remote Access Software from that computer.

4. NO WARRANTY

THE REMOTE ACCESS SOFTWARE IS OFFERED ON AN "AS-IS" BASIS AND NO WARRANTY, EITHER EXPRESSED OR IMPLIED, IS GIVEN. PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSEE ASSUMES ALL RISK ASSOCIATED WITH THE QUALITY, PERFORMANCE, INSTALLATION AND USE OF THE REMOTE ACCESS SOFTWARE INCLUDING, BUT NOT LIMITED TO, THE RISKS OF PROGRAM ERRORS, DAMAGE TO EQUIPMENT, LOSS OF DATA OR SOFTWARE PROGRAMS, OR UNAVAILABILITY OR INTERRUPTION OF OPERATIONS. LICENSEE IS SOLELY RESPONSIBLE FOR DETERMINING THE APPROPRIATENESS OF USE THE REMOTE ACCESS SOFTWARE AND ASSUMES ALL RISKS ASSOCIATED WITH ITS USE.

5. INDEMNIFICATION

- 5.1. By accepting this RDA, LICENSEE agrees to indemnify and otherwise hold harmless PRO-VISION, its officers, employers, agents, subsidiaries, affiliates and other partners from any direct, indirect, incidental, special, consequential or exemplary damages arising out of, relating to, or resulting from the remote access software or any other matter relating to the Remote Access Software.

6. LIMITATION OF LIABILITY

- 6.1. LICENSEE EXPRESSLY UNDERSTANDS AND AGREES THAT PRO-VISION SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF PRO-VISION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE. IN NO EVENT WILL PRO-VISION'S TOTAL CUMULATIVE DAMAGES EXCEED THE FEES LICENSEE PAID TO PRO-VISION UNDER THIS RDA IN THE MOST RECENT TWELVE-MONTH PERIOD.

7. GENERAL TERMS

- 7.1. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this RDA invalid or unenforceable, that provision of this RDA will be enforced to the maximum extent permissible and the other provisions of this RDA will remain in full force and effect.
- 7.2. **Modification and Waiver.** This RDA may not be amended except by a written instrument signed by duly authorized representatives of both parties. No waiver will be effective unless in writing and signed by a duly authorized representative of the party sought to be charged therewith. The failure of PRO-VISION to insist upon strict performance of any of the provisions of this RDA will not be construed as a waiver of PRO-VISION'S rights arising out of any subsequent default of that or any other provision.
- 7.3. **Failure or Delay in Performance.** PRO-VISION will not be liable for or be deemed in default under this RDA, or any other agreement between PRO-VISION and LICENSEE, as a result of any failure or delay in the performance of any obligation owed LICENSEE if such delay or failure results from any cause beyond PRO-VISION'S reasonable control.
- 7.4. **Applicable Law; Limitation of Actions.** This RDA will be construed, interpreted, governed and enforced by and in accordance with the laws of the State of Michigan in the United States of America, and the federal laws of the United States of America, without regard to conflicts of laws principles. No action, regardless of form, arising out of any of the transactions under this RDA may be brought by LICENSEE more than one (1) year after the cause of action accrued. Any dispute regarding this RDA or arising out of any of the transactions under this RDA shall be determined in the federal courts of the United States within the jurisdiction of the United States District Court for the Western District of Michigan, or the courts of the State of Michigan sitting in Kent County, Michigan, and the parties hereby stipulate and agree to jurisdiction and venue in such courts. Each party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim such a lack of jurisdiction, or that such court is an inconvenient forum.
- 7.5. **Force Majeure.** Except for LICENSEE'S payment obligations, if any, neither party will be liable for any failure or delay in performance under this RDA which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.
- 7.6. **Relationship of the Parties.** LICENSEE and PRO-VISION agree that PRO-VISION shall perform its duties under this

RDA as an independent contractor. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by PRO-VISION who perform duties related to this RDA shall remain under the supervision, management, and control of PRO-VISION. In order to assist it in carrying out its duties and responsibilities pursuant to this RDA, PRO-VISION may subcontract with or otherwise engage the services of one or more third parties.

7.7. **Conflicts Between Agreements.** In the event of a conflict between the terms of this RDA and the terms of the SSHA or an agreement mentioned in the SSHA (other than this RDA), the conflicting terms of the SSHA or of the agreement mentioned in the SSHA shall be given effect over the conflicting terms of this RDA.

By applying our signatures below, we hereby accept the terms and conditions set forth above.

PRO-VISION:

LICENSEE:

Signature

Signature

Name

Name

Title

Title

Date

Date

END USER TERMS AND CONDITIONS

This is a Software Service License (the "License") setting forth end user terms and conditions under which you, the "END USER," are licensed to access and use the SecuraMax.com website ("Software Service").

By clicking ACCEPT, you hereby agree to the following terms and conditions of use of the Software Service. The licensor of this Software Service is Pro-Vision, Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, ("PRO-VISION").

PRO-VISION and END USER agree as follows:

1. DEFINITIONS

1.1 "Affiliated" means employed by, contracted with, or otherwise expressly authorized by.

1.2 "Documentation" means all generally available printed and electronic user and system documentation included in or accompanying an associated PRO-VISION camera and/or the Software Service, as updated from time-to-time by PRO-VISION.

1.3 "END USER'S Data" is data originating from END USER that is stored using the Software Service on behalf of the END USER or the AGENCY, and includes media files such as text, videos, photos, and audio.

1.4 "Intellectual Property" shall mean all PRO-VISION products related inventions (whether or not protected under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protected under copyright laws), Moral Rights, mask works, trademarks, trade names, trade dress, trade secrets, publicity rights, know-how, ideas (whether or not protected under trade secret laws), and all other subject matter protected under patent (or which is not patented, but is subject matter that is protected under patent law), copyright, moral right, mask work, trademark, trade secret, or other laws, including without limitation all new or useful art, combinations, discoveries, formulae, manufacturing techniques, technical developments, systems, computer architecture, artwork, software, programming, applets, scripts, designs, processes, and methods of doing business. "Moral Rights" means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country, or under any treaty.

1.5 "PRO-VISION Device" means any device provided by PRO-VISION and listed in the Service Contract from which the Software Service uploads END USER'S Data.

1.6 "Software Service" means the cloud-based computerized camera interface and media storage service (known as SecuraMax™) and related Documentation and any updates, corrections, enhancements or subsequent releases or versions thereto made available to END USER by PRO-VISION under this License.

1.7 "Software Service and Hosting Agreement" means the Software Service and Hosting Agreement, related to Service Contract Number 202106240929, made between PRO-VISION and the U.S. Government Entity as described herein ("AGENCY") with which the END USER is affiliated, where the Software Service and Hosting Agreement pertains to the Agency's use of the SecuraMax™ Software Service.

2. SOFTWARE SERVICE LICENSE

2.1 Grant of Software Service License. Subject to the terms and conditions of this License, the terms and conditions of the Software Service and Hosting Agreement, and payment of the Software Service Fees by the AGENCY, PRO-VISION grants, and END USER accepts, a non-transferable, non-assignable, non-exclusive license to use the Software Service solely for END USER's own purposes for the Term as set forth herein.

2.2 License Restrictions.

- (a) END USER will not lend, lease, sublicense, transfer, or otherwise distribute the Software Service to any third party;
- (b) Unless specifically agreed otherwise by PRO-VISION in writing, END USER will not use the Software Service in any manner to provide computer services to third parties;
- (c) END USER will not adapt, translate or otherwise create any program, documentation or other work that is based on or incorporates any part of the Software Service without the express written consent of PRO-VISION;
- (d) Except as may be permitted by law, END USER will not reverse engineer the Software Service; and
- (e) END USER will keep the Software Service free and clear of all liens, security interests and other encumbrances and will provide PRO-VISION with immediate notice of any lien, security interest or encumbrance affecting the Software Service.

2.3 END USER Log In Credentials

END USER will be prompted to create personal END USER log in credentials including a user identification and password. END USER will be responsible for maintaining secrecy of END USER's log in credentials. END USER hereby agrees not to share END USER's log in credentials.

2.4 Ownership.

2.4.1 The Software Service. PRO-VISION owns all right, title, and interest in and to the Software Service including all Intellectual Property rights therein. END USER does not acquire any rights, express or implied, in the Software Service, other than those specified in this License.

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2.5 Storage and Access.

2.5.1 Location. PRO-VISION may store END USER'S Data at any location within the United States. END USER agrees to allow PRO-VISION to transfer END USER'S Data to third parties contracted by PRO-VISION for purposes of storage of END USER'S Data.

2.5.2 Access Rights. Subject to any Suspension of Services per Section 3.2, during the Term of this License, END USER will have access and use of the Software Service for the storage and management of END USER'S Data. Other than collecting usage statistics per Section 14, PRO-VISION will not access END USER'S Data or view the content of END USER'S Data. PRO-VISION will not disclose the content or existence of END USER'S Data or any information about END USER except as compelled by court order or otherwise required by law. PRO-VISION will attempt to provide advance notice of any compelled disclosure in an effort to permit END USER opportunity to object to the court or administrative body, except when prohibited by law.

2.5.3 Data Security. PRO-VISION will implement commercially reasonable and appropriate measures for securing and encrypting END USER'S Data against unauthorized access. END USER may not transfer or sublicense the log-in credentials to any other entity. Audit tracking is provided to track access to END USER'S Data originating from PRO-VISION Devices based on log-in credentials. END USER will contact PRO-VISION immediately if END USER believes any third party has used END USER'S account or accessed END USER'S Data without authorization.

2.6 Software Service Availability. PRO-VISION shall use commercially reasonable efforts to make the Software Service generally available to END USER. PRO-VISION's Software Service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. PRO-VISION is not responsible for any delays, failures, or other damages resulting from such problems.

2.7 Backup, Disaster Recovery, Bandwidth and Data Security. Backup, disaster recovery, bandwidth and data security are provided by third parties referenced in Section 2.5 above. PRO-VISION takes no responsibility for backup, disaster recovery, bandwidth and data security.

3. FEES AND SUSPENSION OF SERVICES

3.1 Software Service Fee. Per the Software Service and Hosting Agreement, the AGENCY shall pay PRO-VISION a monthly Software Service Fee in order to allow END USER access and use of the Software Service. No fees are separately owed by END USER in association with this License.

3.2 Suspension of Service. In addition to any other rights and remedies, PRO-VISION reserves the right to suspend the Software Service provided to the END USER, including the right to access END USER'S Data, under any one or more of the following conditions:

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- (b) if any security risk is created by END USER's or AGENCY's use of the Software Service;
- (c) if END USER's or AGENCY's use of the Software Service creates or threatens to create any adverse effect on the Software Service or any use or data of any other end user or licensee of the Software Service;
- (d) if PRO-VISION may be exposed to liability through END USER's or AGENCY's use of the Software Service;
- (e) if AGENCY becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or
- (f) the Software Service licensed to AGENCY is otherwise suspended per the Software Service and Hosting Agreement.

In the event that the Software Service is suspended due to any condition stated in (a) above, PRO-VISION will maintain the suspension until such time that END USER's or AGENCY's breach is cured or the Software Service is otherwise terminated. END USER'S Data will not be deleted as a result of the suspension of services. However, per Section 4.2, PRO-VISION may terminate this License, at which point END USER'S Data may be deleted 60 days following written notice of termination.

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4.1 Term. This License commences on the date of acceptance and will remain in effect until termination of the Software Service and Hosting Agreement unless this License is otherwise terminated per Section 4.2 below.

4.2 Termination

- (a) **Termination of the Software Service and Hosting Agreement.** This License will terminate if the Software Service and Hosting Agreement is terminated for any reason.
- (b) **Termination for Breach.** PRO-VISION may terminate this License if END USER breaches any of the terms or conditions of this License or of the Software Service and Hosting Agreement.
- (c) **Termination for Discontinuance of Affiliation with the AGENCY.** This License will be terminated if and when END USER is no longer affiliated with the AGENCY.
- (d) **Termination by the AGENCY.** Pursuant to the Software Service and Hosting Agreement, if the Agency becomes aware of any violation by END USER of the terms and conditions of this License or of the Software Service and Hosting Agreement, the AGENCY will immediately terminate END USER's access to END USER's Data and the Software Service.

4.3 Effect of Termination. Termination of this License or the Software Service and Hosting Agreement will not limit either party from pursuing other remedies available to it, including injunctive relief. Termination of this License will immediately terminate END USER'S right to access END USER'S Data.

4.4 Survival. The rights and obligations of the parties contained in Sections 2.4 (Ownership), 4.3 (Effect on Termination), 5 (Confidential Information and Operational Data), 7 (Disclaimer), 8 (Indemnities), 9 (Limitation of Liability), and 11 (General Terms), together with any other provisions of this License which by their nature must survive in order to effectuate their enforcement, will survive the termination of this License or any other license for the Software Service.

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5.4 Exclusions. Confidential Information will not include information that (a) is in or enters the public domain through no fault or breach of this License by the receiving party; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; or (c) the receiving party rightfully receives from a third party without restriction on use or disclosure. It will be presumed that any Confidential Information in a party's possession is not within exceptions (b) or (c) above, and the burden will be upon the party asserting the exception to prove otherwise by records and documentation.

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Signature

Name

Title

Date

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LICENSEE may use the Uploader Software under this Agreement until either party terminates this Agreement as set forth in this paragraph or such time that the Software Service and Hosting Agreement is terminated. Either party may terminate the Agreement at any time, upon written notice to the other party. Upon termination, all licenses granted to LICENSEE will terminate, and LICENSEE will immediately uninstall and cease all use of the Uploader Software. The Sections entitled "No Warranty," "Indemnification," and "Limitation of Liability" will survive any termination of this Agreement.

PRO-VISION may modify the Uploader Software with notice to LICENSEE, including but not limited to, changing the functionality or appearance of the Uploader Software, and such modification will become binding on LICENSEE unless LICENSEE terminates this Agreement.

Indemnification

By accepting the Agreement, LICENSEE agrees to indemnify and otherwise hold harmless PRO-VISION, its officers, employers, agents, subsidiaries, affiliates and other partners from any direct, indirect, incidental, special, consequential or exemplary damages arising out of, relating to, or resulting from LICENSEE's use of the Uploader Software or any other matter relating to the Uploader Software.

Limitation of Liability

LICENSEE EXPRESSLY UNDERSTANDS AND AGREES THAT PRO-VISION SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF PRO-VISION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE. IN NO EVENT WILL PRO-VISION'S TOTAL CUMULATIVE DAMAGES EXCEED THE FEES LICENSEE PAID TO PRO-VISION UNDER THIS AGREEMENT IN THE MOST RECENT TWELVE-MONTH PERIOD.

General Terms

Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

Modification and Waiver. This Agreement may not be amended except by a written instrument signed by duly authorized representatives of both parties. No waiver will be effective unless in writing and signed by a duly authorized representative of the party sought to be charged therewith. The failure of PRO-VISION to insist upon strict performance of any of the provisions of this Agreement will not be construed as a waiver of PRO-VISION's rights arising out of any subsequent default of that or any other provision.

Assignment. This Agreement and the rights hereunder will be assignable by PRO-VISION. LICENSEE will have no right to assign this Agreement or any of its rights hereunder without PRO-VISION's prior written consent. Any attempt to assign this Agreement without such consent will be void. PRO-VISION may reasonably require, as a condition to its consent, payment of a license transfer fee in such amount as PRO-VISION may specify in its sole discretion. No permitted assignment by LICENSEE will be effective without the express written consent of PRO-VISION. Even if PRO-VISION has consented to such assignment, LICENSEE may not retain any copy of the Uploader Software or associated documentation following the assignment.

UPLOADER LICENSE

Failure or Delay in Performance. PRO-VISION will not be liable for or be deemed in default under this Agreement, or any other agreement between PRO-VISION and LICENSEE, as a result of any failure or delay in the performance of any obligation owed LICENSEE if such delay or failure results from any cause beyond PRO-VISION's reasonable control.

Notices. All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier, overnight delivery service, certified mail, or by email, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section. Either party may change its address for notices to the other party by the means specified in this Section.

Applicable Law; Limitation of Actions. This Agreement will be construed, interpreted, governed and enforced by and in accordance with the laws of the State of Michigan in the United States of America, and the federal laws of the United States of America, without regard to conflicts of laws principles. No action, regardless of form, arising out of any of the transactions under this Agreement may be brought by LICENSEE more than one (1) year after the cause of action accrued. Any dispute regarding this Agreement or arising out of any of the transactions under this Agreement shall be determined in the federal courts of the United States within the jurisdiction of the United States District Court for the Western District of Michigan, or the courts of the State of Michigan sitting in Kent County, Michigan, and the parties hereby stipulate and agree to jurisdiction and venue in such courts. Each party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim such a lack of jurisdiction, or that such court is an inconvenient forum.

Audit. At its own expense, PRO-VISION may perform an audit of LICENSEE's usage of the Uploader Software to confirm use of the software in accordance with the terms of this Agreement. The audit may be conducted (i) once every calendar year and (ii) as required, in the event PRO-VISION has reason to believe LICENSEE is utilizing the Uploader Software in an unauthorized manner.

Force Majeure. Except for LICENSEE's payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.

Relationship of the Parties. LICENSEE and PRO-VISION agree that PRO-VISION shall perform its duties under this Agreement as an independent contractor. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by PRO-VISION who perform duties related to this Agreement shall remain under the supervision, management, and control of PRO-VISION. In order to assist it in carrying out its duties and responsibilities pursuant to this Agreement and any Statement(s) of Work, PRO-VISION may subcontract with or otherwise engage the services of one or more third parties.