

SmartEye Service Terms of Use

STANDARD TERMS AND CONDITIONS

In a Partnership Agreement between OpenTech Alliance, Inc. (“OpenTech”) with a place of business at 2501 W. Dunlap Ave., Suite 255, Phoenix, AZ 85021 and BLUE EYE CORPORATION., a Delaware corporation, with its principal place of business at 423 W 300 S, Suite 290, Salt Lake City, UT 84101 (“Blue Eye”) the two parties, collectively known as (the “Service Providers”), will work together to supply the Hardware and the Monitoring Services (the “System”).

THIS REMOTE MONITORING SERVICE AGREEMENT (including any Exhibits hereto, this (“**Agreement**”) is entered into by and between Service Providers and you the “Customer”, as defined in the Service Order Form (“Order”) signed with OpenTech.

RECITALS

- A. Customer desires that Service Providers remotely assist Customer to install the remote monitoring system described on the Order at the Facility Address on the Order (the “Premises”) and perform certain Monitoring Services (as defined below) with respect to the Premises on the terms and conditions set forth herein.
- B. Service Providers will rely on the cameras and transmission equipment provided by Customer and relies on the proper operation of this equipment to perform Monitoring Services.

NOW, THEREFORE, in consideration of these premises, and other good and valuable consideration received and to be received, Customer and Service Providers, intending to be legally bound, agree as follows:

AGREEMENT

1. Certain Definitions.

- (a) “**Affiliate**” means an entity in which a Party owns in excess of fifty percent (50%), directly or indirectly, of such entity’s voting capital stock.
- (b) “**Fees**” means any and all fees payable by Customer to OpenTech pursuant to Order.
- (c) “**Party(ies)**” means, individually or collectively, Service Providers and/or Customer and any permitted successors and assigns.
- (d) “**Term**” shall have the meaning set forth in the Order.

2. License to Use System. Service Providers hereby grant to Customer a nonexclusive, nontransferable and non-sub licensable personal license to use the System solely for internal business purposes in accordance with, and during the Term of, this Agreement. **Customer acknowledges that if it did not pay any Hardware fees as part of the Order that Service Providers retain all ownership, right, title and interest in and to the System and that Customer is merely leasing the System from Service Providers during the Term.**

3. Installation of System. Subject to the terms and conditions of this Agreement, Customer hereby agrees with the assistance of OpenTech's Setup Training and Customization ("STC") Team to install the System on the Premises as follows:

- a) Customer hereby represents, warrants and covenants that it (i) requested the System for Customer's own use and not for the benefit of any other party, (ii) owns the Premises where the System is being installed or has the authority to authorize the installation of the System, and (iii) will comply with all laws, codes and regulations pertaining to the System installed and the Monitoring Services provided.
- b) Customer will provide high speed internet access in accordance with the following specifications:
 - i. 5 Mb minimum upload speed
 - ii. 10 Mb upload speed preferred
 - iii. Must have no data caps
- c) If Customer plans to stream multiple cameras for its own use, the minimum upload speed required is 10 Mb to ensure a reliable stream.
- d) Service Providers expressly assume no liability for delay in installation of the System due to strikes, riots, floods, storms, earthquakes, fires, power failures, insurrection, acts of God, shortages of labor or materials, or any other cause beyond the control of Service Providers. e) Service Providers shall not be liable for, and assume no responsibility for any losses arising from: (i) water intrusion, mold, fungi, wet or dry rot or bacteria, or (ii) the location of cameras or the design of Customer's security systems.

4. Monitoring Services. Subject to the terms and conditions of this Agreement, Customer hereby engages Service Providers to perform the following monitoring services (the "**Monitoring Services**") relating to the System installed on the Premises:

(a) Generally. During the Term, Service Providers shall monitor transmissions from the System on the Premises in accordance with the monitoring schedule set forth in the Order:

(b) Service Providers shall endeavor to notify the proper authorities or other persons in accordance with information provided in the Order. Service Providers do not represent or warrant that transmissions to or from the Premises or the System may not be interrupted, circumvented, or compromised. Service Providers do not assume any liability for delay or operation of the phone or internet service, cellular and/or radio frequency, or other potential methods, for reasons including but not limited to acts of God, strikes, restrictions imposed by government agencies, war, riot, terrorism, or any other conditions beyond Service Providers control. CUSTOMER ACKNOWLEDGES THAT IF THE INTERNET, TELEPHONE OR OTHER TRANSMISSION SERVICE IS INTERRUPTED, DISCONNECTED, MODIFIED, OR NOT WORKING FOR ANY REASON, THE SYSTEM MAY NOT FUNCTION AND TRANSMISSIONS MAY NOT BE MADE TO SERVICE PROVIDERS OR ITS SUBCONTRACTORS. Customer acknowledges that Service Providers shall not be liable for the activation, interruption, operation, or non-operation of internet, telephone or cellular transmission equipment or service, since Service Providers have no control or supervision of any such equipment or service.

(c) Maintenance. Maintenance of the cameras and transmission equipment shall remain the responsibility of Customer. Service Providers will notify Company promptly when problems with this equipment is detected.

5. Use of the System; Maintenance by Service Providers. Customer promises to maintain the System in proper working order at all times and not to tamper with, disturb, move (even in connection with remodeling), injure, remove, or otherwise interfere with the System or allow the same to be done by any third party. Service Providers shall not be obligated to furnish maintenance or repair services nor be liable under this Agreement for repairs to, replacement of, or additions to the System made necessary by (i) improper use; (ii) theft; (iii) natural disasters, such as hurricane, lightning, flood, fire or earthquakes; (iv) strikes, riots, terrorism, sabotage, acts of war; (v) repairs, changes, modifications, maintenance, relocation or reinstallation of the System by persons other than Service Providers personnel or without Service Providers supervision; (vi) unusual shock, electrical damage or a corrosive atmosphere harmful to the System's electrical circuitry; (vii) non-Service Providers or noncertified technician supplied equipment or service calls necessitated thereby; (viii) failure by Customer to maintain the site specifications recommended by Service Providers; (ix) trouble in a communication line; (x) causes other than ordinary, proper use of the System by Customer; or (xi) causes outside of Service Providers control. In the event an original part or component is no longer available, Service Providers may substitute a similar product provided such a similar product is then available.

6. Taxes and Other Charges.

(a) Customer agrees to pay all directly and indirectly imposed sales tax or other taxes required in connection with the System and Monitoring Services, including the use, monitoring, and servicing/repair of the Monitoring Services, purchase of additional equipment, charges made by any internet service provider or other utility for service of the network servicing the System, any increase in electricity charges, and any building permit or other fees required under any ordinances or laws in order to monitor and/or maintain the Monitoring Services at the Premises. Service Providers may pass these charges through to Customer at any time.

(b) Expenses and penalties, including, without limitation, false alarm fees, assessed against Customer and/or Service Providers by any court or local, state or federal governmental agency shall be the sole responsibility of Customer and shall be paid immediately. If Service Providers receive an excessive number of false alarms (to be determined in its sole discretion) Service Providers may terminate this Agreement immediately upon written notice to Customer. If the Response Protocol set forth on the Order involves contacting municipal or other public service authorities, then Customer shall be responsible for any "false alarms." In addition to all other legal remedies set forth in this Agreement, Service Providers may, at its option, be excused from further performance if it determines, in its sole discretion, that Customer caused any such "false alarm." Service Providers excuse from performance shall not affect its right to recover damages from Customer. In the event a fine, penalty, or fee is assessed against Service Providers by a governmental or municipal agency in connection with the System or the Monitoring Services, Customer agrees to promptly reimburse Service Providers for the same. Customer represents that Customer fully understands that the System, because of its sensitivity and nature, is subject to the influence of external events which are not within the control of Service Providers and which may cause the Service Providers to follow the Response Protocol on the Order even though no event has occurred which threatens the security of the Premises. Such occurrences shall not be construed as improper operation of the System nor as malfunction thereof, nor shall any or all of such occurrences excuse any of the obligations of Customer as set forth in this Agreement.

(c) Customer understands and agrees that Customer will be responsible for acquiring and renewing all applicable licenses and permits required by any government entity in connection with the Monitoring Services. IF CUSTOMER FAILS TO MAINTAIN AND/OR FAILS TO PROVIDE OR UPDATE ANY REQUIRED LICENSE OR PERMIT, SERVICE PROVIDERS WILL NOT BE HELD

RESPONSIBLE FOR PERFORMING THE MONITORING SERVICES AND MAY TERMINATE THE MONITORING SERVICES WITHOUT NOTICE TO CUSTOMER.

(d) Customer shall promptly reimburse Service Providers for fees assessed against Service Providers as a result of an emergency call originating from the Premises.

(e) Customer acknowledges that Service Providers specifically disclaims any responsibility for services associated with notifying or dispatching paramedics, doctors and other medical personnel and/or ambulance services and if there are any charges incurred as a result of such notification, said charges shall be the responsibility of Customer, whether or not Customer requested such notice and whether or not such entities were correctly or incorrectly notified by Service Providers.

7. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER SERVICE PROVIDERS NOR ITS SUBCONTRACTORS, ASSIGNEES, AGENTS, EMPLOYEES, SUBSIDIARIES AND AFFILIATES (COLLECTIVELY, FOR PURPOSES OF THIS SECTION 7, “**SERVICE PROVIDERS**”), IS AN INSURER. INSURANCE, IF ANY, SHALL BE OBTAINED BY CUSTOMER. THE AMOUNTS PAYABLE TO SERVICE PROVIDERS HEREUNDER ARE BASED UPON THE VALUE OF THE MONITORING SERVICES AND ARE NOT RELATED TO THE VALUE OF CUSTOMER’S PROPERTY OR PROPERTY OF OTHERS LOCATED IN CUSTOMER’S PREMISES. CUSTOMER AGREES TO LOOK EXCLUSIVELY TO CUSTOMER’S INSURER TO RECOVER FOR INJURY OR DAMAGE IN THE EVENT OF ANY LOSS OR INJURY AND RELEASES AND WAIVES, ON BEHALF OF ITSELF AND ITS INSURER, ALL RIGHT OF RECOVERY AGAINST SERVICE PROVIDERS ARISING BY WAY OF SUBROGATION. SERVICE PROVIDERS DOES NOT MAKE ANY GUARANTY OR WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, THAT THE MONITORING SERVICES SUPPLIED WILL AVERT, DETECT OR PREVENT FIRE, BURGLARY, PROPERTY DAMAGE, BODILY INJURY OR OTHER OCCURRENCES THE MONITORING SERVICES ARE DESIGNED TO DETECT. IT IS IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES, IF ANY, WHICH MAY PROXIMATELY RESULT FROM FAILURE ON THE PART OF SERVICE PROVIDERS TO PERFORM ANY OF THEIR OBLIGATIONS HEREUNDER. CUSTOMER FURTHER AGREES THAT IF SERVICE PROVIDERS SHOULD BE FOUND LIABLE FOR LOSS, DAMAGE, OR INJURY DUE TO A FAILURE OF SYSTEM OR SERVICES IN ANY RESPECT, SERVICE PROVIDERS LIABILITY SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES ACTUALLY PAID BY CUSTOMER WITH RESPECT TO MONITORING SERVICES PROVIDED BY SERVICE PROVIDERS DURING THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO ANY SUCH LOSS. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY LOSS, DAMAGE, OR INJURY, IRRESPECTIVE OF CAUSE OR ORIGIN, WHICH RESULTS DIRECTLY OR INDIRECTLY TO ANY PERSON OR PROPERTY FROM PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS IMPOSED BY THIS AGREEMENT OR FROM THE NEGLIGENCE, ACTIVE, PASSIVE OR OTHERWISE, STRICT LIABILITY, BREACH OF WARRANTY OR ANY OTHER ALLEGED FAULT ON THE PART OF SERVICE PROVIDERS OR ITS SUBCONTRACTORS.

8. Customer’s Indemnification Obligations. Customer shall indemnify, defend and hold Service Providers and its subcontractors, assignees, agents, employees, subsidiaries and affiliates (collectively, the “**Service Providers Indemnified Parties**”) harmless from any claims, actions, losses, liabilities, damages and expenses (including attorney’s fees and court costs) made, assessed or awarded against any such Service Providers Indemnified Party: (a) arising out of or in connection with the acts or omissions relating to Customer’s use of any of the System or the Monitoring Services; or (b) arising out of or in connection with a breach of any of

Customer's representations, warranties or other obligations set forth in this Agreement. Further, in the event any person not a party to this Agreement shall make any claim or file any lawsuit against any Service Providers Indemnified Party, in any way relating to the Monitoring Services or the System, including for failure of the System or the Monitoring Services in any respect, Customer agrees to defend, indemnify and hold such Service Providers Indemnified Party harmless from any and all such claims and lawsuits including the payment of all damages, expenses, costs, and attorneys' fees. These obligations shall survive the expiration or termination of this agreement and shall apply even if such claim or lawsuit arises out of negligence, gross negligence, failure to perform, strict liability, and breach of warranty, failure to comply with any applicable law or other fault. Customer hereby releases, discharges and agrees to hold the Service Providers Indemnified Parties harmless from any and all claims, liabilities, damages, losses or expenses, arising from or caused by any hazard covered by insurance in or on the Premises whether said claims are made by Customer, its agents or insurance company or other parties claiming under or through Customer. Customer agrees to defend and hold the Service Providers Indemnified Parties harmless from, and indemnify the Service Providers Indemnified Parties against, any action or subrogation which may be brought against any Service Providers Indemnified Party by any insurer or insurance company or its agents or assigns including the payment of all damages, expenses, costs and attorney's fees. Customer shall notify its insurance carrier of the terms of this provision.

9. Third Party Products and Services. The Monitoring Services and the System rely on, interoperate with and/or incorporate certain third party products and services. These third party products and services are beyond Service Providers control, but their operation may impact or be impacted by the use and reliability of the Monitoring Services and the System. Customer acknowledges and agrees that: (i) the use and availability of the System and the Monitoring Services is dependent on third party product vendors and service providers, (ii) these third party products and services may not operate in a reliable manner 100% of the time, and they may impact the way that the System and the Monitoring Services operate, and (iii) Service Providers are not responsible for damages and losses due to the operation of these third party products and services. Service Providers hereby disclaims and you hereby discharge, waive and release Service Providers and its licensors and suppliers from any past, present, and future claims, liabilities, and damages, known or unknown, arising out of or relating to your interactions with such third parties and their products and services.

10. Recording. Customer acknowledges that Service Providers will listen to and record video and/or audio related to monitored activity at the Premises as well as conversations that Customer, its employees and/or any other person at the Premises, has with Service Providers or its subcontractors or emergency services providers and law enforcement personnel. Customer agrees and consents for itself and its employees, agents, customers, guests, invitees and licensees to the aforementioned actions regarding video and communications and that Service Providers shall have no liability pertaining thereto. Customer agrees to take all necessary actions to inform its employees, agents, customers, guests, invitees and licensees of the listening, viewing and recording of communications and video as aforementioned, and agrees to indemnify Service Providers against any claims related to the listening, viewing or recording of communications and video. Customer understands that privacy cannot be guaranteed on telephone, cable and computer systems and Service Providers shall not be liable for any claims, loss, damages or costs which may result from any lack of privacy experienced. Customer consents to (a) use of Customer's information about Customer and the Premises (collectively, "information") to administer the Monitoring Services and to provide information to emergency services providers or law enforcement personnel.

11. Representations and Warranties of the Parties.

(a) Representations and Warranties of Customer. Customer hereby represents and warrants to Service Providers as follows: (i) this Agreement has been duly and read and understood by Customer and

constitutes the legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms; (ii) Customer is duly organized, validly existing and in good standing under the laws of the state of its incorporation/organization, and has full power and authority to execute, deliver and perform its obligations under this Agreement; (iii) the execution, delivery and performance by Customer of this Agreement and the consummation by it of its obligations hereunder will not, with or without the giving of notice, the lapse of time, or both, conflict with or violate (A) any provision of law, rule or regulation to which Customer is subject, (B) any order, judgment or decree applicable to Customer or binding upon its assets or properties, (C) any provision of the charter or other organizational documents of Customer, or (D) any agreement or other instrument applicable to Customer or binding upon its assets or properties; and (iv) no consent, approval or authorization of, or exemption by, or filing with, any governmental authority or any third party is required to be obtained or made by Customer in connection with the execution, delivery and performance of this Agreement or the taking by Customer of any other action contemplated hereby.

(b) Representations and Warranties of Service Providers. Service Providers hereby represent and warrants to Customer as follows: (i) this Agreement has been duly created and delivered by Service Providers and constitutes the legal, valid and binding obligation of Service Providers, enforceable against Service Providers in accordance with its terms; (ii) Service Providers is duly organized, validly existing and in good standing under the laws of the state of its incorporation/organization, and has full power and authority to execute, deliver and perform its obligations under this Agreement; (iii) the delivery and performance by Service Providers of this Agreement and the consummation by it of its obligations hereunder will not, with or without the giving of notice, the lapse of time, or both, conflict with or violate (A) any provision of law, rule or regulation to which Service Providers is subject, (B) any order, judgment or decree applicable to Service Providers or binding upon its assets or properties, (C) any provision of the charter or other organizational documents of Service Providers, or (D) any agreement or other instrument applicable to Service Providers or binding upon its assets or properties; and (iv) no consent, approval or authorization of, or exemption by, or filing with, any governmental authority or any third party is required to be obtained or made by Service Providers in connection with the execution, delivery and performance of this Agreement or the taking by Service Providers of any other action contemplated hereby.

12. Disclaimer of Warranties. TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXCEPT AS OTHERWISE UNAMBIGUOUSLY AND EXPRESSLY SET FORTH IN THIS AGREEMENT, SERVICE PROVIDERS DISCLAIM ALL WARRANTIES EXPRESS OR IMPLIED, OF ANY KIND INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT IN RELATION TO OR ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, AS TO ANY OF THE SYSTEM, MONITORING SERVICES, ANCILLARY SERVICES OR CONSULTING SERVICES. WITHOUT LIMITING THE FOREGOING, SERVICE PROVIDERS SPECIFICALLY DISCLAIM ANY WARRANTY THAT ANY OF THE SYSTEM MONITORING SERVICES, ANCILLARY SERVICES OR CONSULTING SERVICES WILL BE UNINTERRUPTED, SECURE, COMPLETE OR ERROR-FREE. CUSTOMER ACKNOWLEDGES THAT, WHILE SERVICE PROVIDERS USE REASONABLE EFFORTS TO PROVIDE THE SYSTEM, MONITORING SERVICES, ANCILLARY SERVICES AND CONSULTING SERVICES, THE PROVISION THEREOF INVOLVES THE POSSIBILITY OF HUMAN AND MACHINE ERRORS, DELAYS, INTERRUPTIONS AND LOSSES.

13. Fees and Payments. Customer agrees to pay OpenTech all applicable Fees set forth in the Order and elsewhere in this Agreement. Such Fees shall be due and payable by Customer upon receipt of invoice from OpenTech and shall be paid by Customer within thirty (30) days after the date of invoice. Late payments will incur a late charge of \$25.00 plus one and one-half percent (1.5%) per month, or the highest rate allowable by law. Further, if the System or the Monitoring Services are suspended because of Customer's default or breach hereunder, Customer shall be required to pay a reconnection charge at Service Providers then-prevailing rate upon the re-activation of the System and the Monitoring Services. Fees are non-refundable except to the limited extent expressly and unambiguously provided in this Agreement. All payments shall be made in U.S. currency. Customer shall calculate and pay all taxes, duties or charges of any kind (including withholding or value added taxes) imposed by any federal, state or local governmental entity for products or services provided under this Agreement, excluding only taxes based solely on Service Providers net income. Customer shall hold Service Providers harmless from all claims and liability arising from Customer's failure to support or pay any such taxes, including duties, tariffs or charges.

14. Term and Termination.

(a) The initial term of this Agreement shall begin on the completion of the STC and shall continue for the Term defined in the Order and shall renew automatically thereafter for additional one (1) year terms unless either Party gives the other Party sixty (60) days written notice prior to the end of the then-current term (collectively, "**Term**"). Except as provided below, Customer may not terminate this Agreement prior to the end of the then-current Term unless Customer fully pays the balance of payments due for the remainder of the then-current Term.

(b) Either Party may terminate this Agreement for a material breach by the other Party of its obligations hereunder if such continues uncured for a period of thirty (30) days subsequent to written notification of breach from the non-breaching Party to the Party in breach (or, if able to be cured and the cure reasonably takes longer than thirty (30) days, within such longer period as such cure reasonably requires, provided that the breaching party promptly undertakes action to cure and diligently pursues the same until cured). Either Party may also terminate this Agreement immediately upon written notice to the other Party in the event that the other Party: (i) makes a general assignment for the benefit of creditors; (ii) appoints or has appointed a receiver to take charge of all or part of its property; (iii) admits in writing its inability to pay its debts generally as they mature; (iv) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it; (v) otherwise substantially ceases its business operations; (vi) takes any action for the purpose of effecting any of the foregoing; or (vii) commences proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Party or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Party or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within sixty (60) days of commencement.

(c) Upon any expiration or termination of this Agreement: (i) Service Providers shall immediately cease providing the Monitoring Services; (ii) Customer shall immediately cease using the System; and (iii) Customer will immediately pay any and all outstanding Fees and charges owed to Service Providers. Notwithstanding the expiration or termination of this Agreement or any renewal period

hereof, it is acknowledged that those rights and obligations that by their nature are intended to survive such expiration or earlier termination will survive.

(d) Upon any expiration or termination of this Agreement, if Customer did not pay for the Hardware Customer hereby authorizes and empowers Service Providers to enter the Premises and to remove the System and all other equipment provided or return the equipment in good working order to Service Providers. Removal of the System and other equipment shall not be deemed a waiver of Service Providers right to damages or to collect any payments due hereunder, and Service Providers shall continue to have the right to enforce any legal remedy or right available to Service Providers. Further, Service Providers shall be in no way obligated to restore the Premises to its original condition or redecorate same upon the removal of the System in connection with the termination or expiration of this Agreement.

15. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without regard to its choice of law principles. The state and federal courts located in the State of Arizona shall have the sole and exclusive jurisdiction over any claims or actions arising out of or related to this Agreement, and Customer hereby consents to personal jurisdiction of such courts.

16. Assignment; Subcontractors; Successors and Assigns. This Agreement may not be transferred or assigned by Customer without the express written consent of Service Providers. Any purported transfer or assignment in contravention of this Section shall be null and void. Service Providers shall have the right to assign this Agreement (in whole or in part) without notice to Customer or to any other person or entity. Service Providers shall have the right to delegate any or all of its duties hereunder to subcontractors in its sole discretion. This Agreement shall inure to the benefit of and be binding on the Parties and their respective successors and permitted assigns. No person shall be a third party beneficiary of this Agreement except as specifically provided herein.

17. Attorneys' Fees, Costs, and Expenses. In any action, proceeding, or dispute, with or without litigation, arising out of this Agreement or the transactions contemplated hereby, the successful party therein (regardless of whether the matter is pursued to judgment or is voluntarily dismissed) shall be entitled to recover from the other party thereto the reasonable attorneys' and paralegals' fees, court costs, filing fees, publication costs and all other expenses incurred by the successful party in connection therewith, at trial and all appellate proceedings, and in all bankruptcy, administrative, and similar proceedings.

18. Severability; Construction. If any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction: (a) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law; and (b) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect. This Agreement has been negotiated by the Parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party. The headings of the Sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof. The Parties agree that any and all purchase orders or other purchase documentation shall be superseded by the terms and conditions of this Agreement.

19. Remedies. The Parties agree that, notwithstanding any other provision of this Agreement, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to preliminary and permanent injunctive relief, as well as money damages. Nothing stated herein shall be construed to limit any other remedies available to the Parties.

20. Force Majeure. Excluding payment obligations, neither Party shall be in breach or otherwise liable for events beyond the Party's control (other than events that could have been avoided or prevented by commercially reasonable foresight, planning or implementation), including, but not limited to, an act of God, fire, earthquake, flood or other natural disasters, power failures, acts of government or acts of any third party (each a "Force Majeure Event"). Each Party experiencing a Force Majeure Event shall promptly notify the other Party of the nature and expected duration, if known, of the Force Majeure Event.
21. No Waiver. The failure of either Party to enforce at any time any of the provisions of this Agreement shall not be deemed to be a waiver of the right of either Party thereafter to enforce any such provisions.
22. Need for Writing. No employee, agent, representative, or Affiliate of Service Providers has authority to bind Service Providers to any oral representation, warranty, covenant or other obligation concerning any of the System, Monitoring Services, Ancillary Services, Consulting Services or any other matters related to this Agreement. Any such representation, warranty, covenant or other obligation not expressly contained in this Agreement will not be enforceable.
23. Independent Contractors. The Parties are independent contractors and nothing in this Agreement will be construed to create a joint venture, partnership or an agency relationship between the parties. Neither Party has the authority, without the other Party's prior written approval, to bind or commit the other Party in any way.
24. Entire Agreement; Amendment. This Agreement contains the entire understanding of the Parties with respect to its subject matter and supersedes all previous agreements, understandings, discussions and negotiations between the parties with respect to such subject matter, whether written or oral. Both Parties acknowledge having read the terms and conditions set forth in this Agreement, understand all terms and conditions, and agree to be bound thereby. Except as otherwise provided herein, no modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the party against whom it is to be enforced.
25. Jury Trial Waiver. Both Parties hereby waive any rights to a jury trial in any judicial action brought by either Party which relates in any way to this agreement, whether based upon contract, negligence, or otherwise.