WENATCHEE CITY COUNCIL
Thursday, August 26, 2021
Wenatchee City Hall Council Chambers
301 Yakima Street, 2nd Floor
Wenatchee, WA 98801
AGENDA

Wenatchee City Hall is open for the public to attend Council meetings in person. Masks are required. The meetings are also broadcast live on the City's YouTube channel: Wenatchee TV. The public may also participate in the meeting via phone by calling: (509) 888-3298, passcode 66516#.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Mayor's office at (509) 888-6204 (TTY 711). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title 1).

5:15 p.m. Regular Meeting

1. Call to Order, Pledge of Allegiance, and Roll Call

2. Consent Items
- Motion to approve agenda, vouchers, and minutes from previous meetings.

    Vouchers:
    Claim checks #200042 through #200127 in the amount of $1,522,274.97 for August 5, 2021

3. Presentations

- Childhood Cancer Awareness Month

4. Citizen Requests/Comments
The "Citizen Comments" period is to provide the opportunity for members of the public to address the Council on items either not on the agenda or not listed as a public hearing. The Mayor will ask if there are any citizens wishing to address the Council. When recognized, please step up to the microphone, give your name and mailing address, and state the matter of your interest. If your interest is an agenda item, the Mayor may suggest that your comments wait until that time. Citizen comments will be limited to three minutes.

5. Action Items

A. Master Customer Agreement and Equipment Purchase and Software License Addendum between the City of Wenatchee and WatchGuard Video, Inc., for body-worn cameras
Presented by Police Chief Steve Crown
Action Requested: *Motion for City Council to approve the Master Customer Agreement and Equipment Purchase and Software License Addendum for the purchase of body-worn cameras.*

B. City Project 2005-P2 – Millerdale Avenue Sidewalk – Authorization to Award Construction Contract
Presented by Project Engineer Steve Dobron and Engineering Services Manager Jacob Huylar
Action Requested: *Motion for City Council to award the construction contract for Millerdale Avenue Sidewalk, City Project No. 2005-P2, to Rudnick and Sons LLC and authorize the Mayor to sign the contract documents.*

6. Reports

a. Mayor's Report

b. Reports/New Business of Council Committees

7. Announcements

8. Adjournment

DRAFT

WENATCHEE CITY COUNCIL
Thursday, August 12, 2021
Wenatchee City Hall Council Chambers
301 Yakima Street, 2nd Floor
Wenatchee, WA 98801
MINUTES

Present: Mayor Frank Kuntz; Councilmember Position 1 Jose Cuevas; Councilmember Position 2 Jim Bailey; Councilmember Position 3 Ruth Esparza; Councilmember Position 4 Travis Hornby; Councilmember Position 5 Mark Kulaas; Councilmember At-Large "A" Linda Herald; Councilmember At-Large "B" Keith Huffaker

Staff Present: Executive Services Director Laura Merrill, Assistant City Attorney Danielle Marchant, City Clerk Tammy Stanger, IS Support Tim McCord, Public Works Director Rob Jammerman, Finance Director Brad Posenjak, Planning Manager Stephen Neuenschwander, Parks, Recreation & Cultural Services Director David Erickson, Neighborhood & Community Services Coordinator Brooklyn Holton, Public Works Director-Utilities Jessica Shaw, Facilities Manager Elisa Webb

5:15 p.m. Regular Meeting

1. Call to Order, Pledge of Allegiance, and Roll Call. Mayor Frank J. Kuntz called the regular meeting to order at 5:15 p.m. Councilmember Linda Herald led the Pledge of Allegiance. All Councilmembers were present.

2. Consent Items:

Motion by Councilmember Travis Hornby to approve the agenda, vouchers, and minutes from previous meetings. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).

3. Presentations

- City of Wenatchee Service Awards. The City of Wenatchee service awards were presented by Human Resources Director Kari Page and Human Resources Assistant Katlen Henke. The following employees were present to receive their service awards:

    5 Years of Service:
    Officer Caleb Aumell (Wenatchee Police Department)
    Cammy Coble (Parks, Recreation & Cultural Services)
    Jeremy Hoover (Public Works - Engineering)
    Officer Jared Shepard (Wenatchee Police Department)

15 Years of Service:
Nichole Carter (Finance Department)
Captain Brian Chance (Wenatchee Police Department)

20 Years of Service:
Officer Justin Kissel (Wenatchee Police Department)

25 Years of Service:
Alisa Clardy (Public Works – Fleets)

30 Years of Service:
Caryl Andre (Parks, Recreation & Cultural Services)

4. Citizen Requests/Comments

Tina Wagner, Sam Wagner, Slone Parker, and other representatives from the skateboarding community provided a video of a recent skate camp they offered, and some photos showing some items that need repaired at the park. They were appreciative of the lights staying on and making the park feel much safer. Staff will see if there's a warranty for the work at the skate park.

Lael Gaston, 1721 South Methow Street, Wenatchee, asked about the city's communications being translated to Spanish and Executive Services Director Laura Merrill mentioned that the city website has a new translating tool and that Facebook translates automatically. Lael also spoke about RVs in South Wenatchee on the city/county line and her recent experience with the Chelan County Sheriff not enforcing city laws, and asked about the county's ability to enforce city laws in the urban growth area boundaries. The Mayor suggested she reach out to the Chelan County Commissioners and ask them to follow city law within the urban growth boundary.

5. Action Items

A. Cascade Public Infrastructure Fund Grant Agreement

Parks, Recreation & Cultural Services Director David Erickson presented the staff report. Council asked questions.

Motion by Councilmember Linda Herald for City Council to accept the Public Infrastructure Fund Grant from Chelan County in the amount of $115,200 for the Lincoln Park Project and authorize the Mayor to sign. Councilmember Jose Cuevas seconded the motion. Motion carried (7-0).

B. Wastewater Treatment Plant Facilities Plan Amendment, Project No. 2003, $227,400

Deputy Public Works Director-Utilities Jessica Shaw presented the staff report. Council asked questions.

Motion by Councilmember Jim Bailey for City Council to approve the professional services agreement with Jacobs and authorize the Mayor's signature. Councilmember Keith Huffaker seconded the motion. Motion carried (7-0).

C. Amended and Restated Interlocal Agreement for the Greater Wenatchee Regional Events Center Project by the and between the City of Wenatchee and the Greater Wenatchee Regional Events Center Public Facilities District

Mayor Frank Kuntz presented the staff report. Council asked questions and commented.

Motion by Councilmember Ruth Esparza for City Council to authorize the Mayor to approve the Amended and Restated Interlocal Agreement for the Greater Wenatchee Regional Events Center Project, in substantially the same form as presented, by and between the City of Wenatchee and the Greater Wenatchee Regional Events Center Public Facilities District and authorize the Mayor's signature. Councilmember Linda Herald seconded the motion. Motion carried (7-0).

D. Code Enforcement Board Application – Amber Hallberg

Planning Manager Stephen Neuenschwander presented the staff report.

Motion by Councilmember Travis Hornby for City Council to pass Resolution No. 2021-31, designating the appointment of Amber Hallberg to the Code Enforcement Board for a two-year term ending December 31, 2022. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).

E. City of Wenatchee Project No. 1716 - Wenatchee City Hall Redevelopment construction contract between the City and TW Clark Construction, LLC, Change Order No. 1 in the amount of $174,200.00

Facilities Manager Elisa Schafer presented the staff report. Council asked questions and commented.

Motion by Councilmember Linda Herald for City Council to approve the contract change order with TW Clark Construction, LLC and authorize the Mayor's signature. Councilmember Mark Kulaas seconded the motion. Motion carried (7-0).

6. Public Hearing Items

The Mayor called the public hearing to order and stated the ground rules.

F. 2021 Community Development Block Grant Annual Action Plan

Neighborhood & Community Services Coordinator Brooklyn Holton and Planning Manager Stephen Neuenschwander presented the staff report and power point presentation. Council asked questions.

The Mayor asked for public comment. There was no one who wished to comment.

Council asked additional questions.

Motion by Councilmember Keith Huffaker for City Council to adopt the 2021 Community Development Block Grant Annual Action Plan with Option 2 selected, and authorize the Mayor to sign associated assurances, certifications, and contracts necessary for implementing the 2021 Community Development Block Grant Annual Action Plan. Councilmember Travis Hornby seconded the motion. Motion carried (7-0).
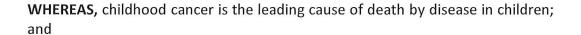
7. Reports

a. Mayor's Report. The Mayor reported on the following:

1. The Mayor and staff toured the new Everett homeless housing shelter on Wednesday, and several staff visited Burlington the evening prior. Staff is currently working on a location for the homeless housing sleep center.
2. The Chelan Douglas Transportation Council awarded the McKittrick Street project $704,295.
3. The Mayor and staff met with the design-build expert from Goodfellow this week to go over the process for spending federal dollars with a design-build approach.
4. The Finance Committee has authorized Public Works to hire an additional engineer to gear up for the work that will be needed for Confluence Parkway.

b. Reports/New Business of Council Committees

Councilmember Linda Herald reported that she also attended the tours in Everett and Burlington.

8. Announcements. None.

9. Adjournment. With no further business the meeting adjourned at 6:28 p.m.

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Frank J. Kuntz, Mayor

Attest:

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Tammy L. Stanger, City Clerk

PROCLAMATION

WHEREAS, childhood cancer is the leading cause of death by disease in children; and

WHEREAS, 1 in 285 children in the United States will be diagnosed by their 20th birthday; and

WHEREAS, there are 43 children per day, or 15,780 children annually, that are diagnosed with cancer as well as approximately 40,000 children on active treatment at any given time; and

WHEREAS, the average age of diagnosis is 6 years old, compared to 66 years old for adults' diagnosis and 80% of childhood cancer patients are diagnosed late and with metastatic disease; and

WHEREAS, on average there has been a 0.6 percent increase in incidence per year since the mid 1970's, resulting in an overall incidence of 24 percent over the last 40 years; and

WHEREAS, two-thirds of childhood cancer patients will have chronic health conditions as a result of their treatment toxicity, with one quarter being classified as severe to life-threatening; and

WHEREAS, approximately one half of childhood cancer families rate the associated financial toxicity due to out-of-pocket expenses as considerable to severe; and

WHEREAS, in the last 20 years, only four new drugs have been approved by the FDA to specifically treat childhood cancer; and

WHEREAS, researchers and healthcare professionals work diligently dedicating their expertise to treat and cure children with cancer; and

WHEREAS, too many children are affected by this deadly disease and more must be done to raise awareness to find a cure;

NOW, THEREFORE, I, Frank J. Kuntz, Mayor of the City of Wenatchee do hereby declare September 2021 to be Childhood Cancer Awareness Month in the City of Wenatchee, and I encourage all people in our city to join me in this special observance.

IN WITNESS WHEREOF, I have caused the seal of the City of Wenatchee to be affixed on this 26th day of August, 2021.

_____
FRANK J. KUNTZ, Mayor

CITY COUNCIL AGENDA REPORT

TO: Frank Kuntz, Mayor
                    City Council

FROM: Steve Crown, Police Chief
                    Wenatchee Police Department

MEETING DATE: **August 26, 2021**

I.   **SUBJECT**
Master Customer Agreement and Equipment Purchase and Software License Addendum between the City of Wenatchee and WatchGuard Video, Inc., for body-worn cameras.

II.   **ACTION REQUESTED**
Staff recommends the City Council approve the Master Customer Agreement and Equipment Purchase and Software License Addendum for the purchase of body-worn cameras.

III.   **OVERVIEW**
The Police Department has a current agreement with WatchGuard Video for its in-car dash cameras and storage software. Due to recent changes in Washington State laws, the implementation of body-worn cameras is necessary for recording felony-related and juvenile-involved investigative interviews. Additionally, these devices are useful in building community trust and police department transparency.

IV.   **FISCAL IMPACT**
This is a five-year contract which funds the purchase of 45 body-worn cameras and all associated hardware and software needs, to include cloud-based data storage and management of video footage and digital evidence. The cost of this agreement for the five-year term is $281,415.18, which is broken down into the following annual costs:

Year 1	$70,557.42	(First payment September 2021)
Year 2	52,714.44	
Year 3	52,714.44	
Year 4	52,714.44	
Year 5	52,714.44	

V.   **REFERENCE(S)**
1.   Master Customer Agreement
2.   Equipment Purchase and Software License Addendum

VI.   **ADMINISTRATIVE ROUTING**
Tammy Stanger, City Clerk

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Laura Merrill, Executive Services Director
Brad Posenjak, Finance Director
Steve Smith, Wenatchee City Attorney

Master Customer Agreement

This Master Customer Agreement (the "**MCA**") is entered into between WatchGuard Video, Inc., with offices at 415 E. Exchange Parkway, Allen, TX 75002 ("**WatchGuard**") and the entity set forth in the signature block below ("**Customer**"). WatchGuard and Customer will each be referred to herein as a "**Party**" and collectively as the "**Parties**". This Agreement (as defined below) is effective as of the date of the last signature (the "**Effective Date**").

1.   Agreement.

1.1.   Scope; Agreement Documents. This MCA governs Customer's purchase of Products (as defined below) and Services (as defined below) from WatchGuard. Additional terms and conditions applicable to specific Products and Services are set forth in one or more addenda attached to this MCA (each an "**Addendum**", and collectively the "**Addenda**"). WatchGuard may modify such online terms at any time by posting notice of modification on such site. Such modifications shall affect this Agreement only if in writing and signed by WatchGuard and Customer. In addition, the Parties may agree upon statements of work, quotes, technical, and other ordering documents setting forth the Products and Services to be provided by WatchGuard and additional rights and obligations of the Parties (the "**Ordering Documents**"). To the extent required by law or procurement procedures, proposals submitted in response to a competitive procurement process will be deemed Ordering Documents. This MCA, the Addenda, and any Ordering Documents collectively form the Parties' "**Agreement**".

1.2.   Order of Precedence. Each Addendum will control with respect to conflicting terms in the MCA, but only as applicable to the Products and Services described in such Addendum. Each Ordering Document will control with respect to conflicting terms in the MCA or any Addenda, but only as applicable to the Products and Services described on such Ordering Document.

2.   Products and Services.

2.1.   Products. WatchGuard will sell equipment and license software, including software as a service and subscription based software service offerings (the "**Products**") to Customer to the extent set forth in an Ordering Document, for Customer's own use in accordance with this Agreement. At any time during the Term (as defined below), WatchGuard may substitute any Products at no cost to Customer, if the substitute is substantially similar to the Products set forth in the applicable Ordering Documents.

2.2.   Services

> 2.2.1.   WatchGuard will provide services related to purchased Products ("**Services**"), to the extent set forth in an Ordering Document.

> 2.2.2.   Integration Services; Maintenance and Support Services. If specified in an Ordering Document, WatchGuard will provide, for the term of such Ordering Document, (a) design, deployment, and integration Services in order to design, install, set up, configure, and/or integrate the applicable Products at Customer Sites, as defined below ("**Integration Services**"), or (b) break/fix maintenance, technical support, or other Services (such as Software integration Services) ("**Maintenance and Support Services**"), each as further described in the applicable statement of work. Maintenance and Support Services and Integration Services will each be considered "Services", as defined above.

2.2.3. <u>Service Ordering Documents</u>. The Fees for Services will be set forth in an Ordering Document, and any applicable project schedules, Deliverables, and Customer point of contact will be set forth in the applicable statement of work for the Services. For purposes of clarity, each statement of work will be incorporated into, and form an integral part of, the Agreement.

2.2.4. <u>Service Completion</u>. Unless otherwise specified in the applicable Ordering Document, Services described in an Ordering Document will be deemed complete upon WatchGuard's performance of all Services listed in such Ordering Document ("**Service Completion Date**"); provided, however, that Maintenance and Support Services may be offered on an ongoing basis during a given Ordering Document term, in which case such Maintenance and Support Services will conclude upon the expiration or termination of such Ordering Document.

2.3. <u>Non-Preclusion</u>. If, in connection with the Products and Services provided under this Agreement, WatchGuard makes recommendations, including a recommendation to purchase other products or services, nothing in this Agreement precludes WatchGuard from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement standards or other laws, regulations, or policies.

2.4. <u>Customer Obligations</u>. Customer will ensure that information Customer provides to WatchGuard in connection with receipt of Products and Services are accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for WatchGuard to provide the Products and Services and perform its other duties under this Agreement. Unless the applicable Ordering Document states otherwise, WatchGuard may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions or Customer information, decisions, or approvals described in this Section. If any assumptions in the Ordering Documents or information provided by Customer prove to be incorrect, or if Customer fails to perform any of its obligations under this Agreement, WatchGuard's ability to perform its obligations may be impacted and changes to the Agreement, including the scope, Fees, and performance schedule may be required.

2.5. <u>Documentation</u>. Products and Services may be delivered with documentation for the equipment, software, or data that specifies technical and performance features, capabilities, users, or operation, including training manuals ("**Documentation**") Documentation is and will be owned by WatchGuard, and unless otherwise set forth in an Addendum or Ordering Document, WatchGuard hereby grants Customer a limited, royalty-free, worldwide, non-exclusive license to use the Documentation solely for its internal business purposes in connection with the Products and Services.

2.6. <u>Deliverables</u>. As part of the Products and Services, WatchGuard may provide deliverables such as reports, specifications, designs, plans, drawings, analytics, or other technical or business information to Customer as more fully described in an Addendum or Ordering Document ("**Deliverables**"). All Deliverables are and will be owned by WatchGuard, and unless otherwise set forth in an Addendum or Ordering Document, WatchGuard hereby grants Customer a limited, royalty-free, worldwide, non-exclusive license to use the Deliverables solely for its internal business purposes in connection with the Products and Services. Customer acknowledges that the Deliverables may contain recommendations, suggestions or advice from WatchGuard. WatchGuard makes no warranties and disclaims all liabilities regarding any such

recommendations, and Customer accepts full responsibility for the implementation of, or results from, such recommendations.

2.7. <u>WatchGuard Tools and Equipment</u>. As part of delivering the Products and Services, WatchGuard may provide certain tools, equipment, models, and other materials of its own. Such tools and equipment will remain the sole property of WatchGuard. The tools and equipment may be held by Customer for WatchGuard's use without charge and may be removed from Customer's premises by WatchGuard at any time without restriction. Customer will safeguard all tools and equipment while in Customer's custody or control, and be liable for any loss or damage. Upon the expiration or earlier termination of this Agreement, Customer, at its expense, will return to WatchGuard all tools and equipment in its possession or control.

2.8. <u>Authorized Users</u>. Customer will ensure its employees and Authorized Users comply with the terms of this Agreement and will be liable for all acts and omissions of its employees and Authorized Users. Customer is responsible for the secure management of Authorized Users' names, passwords and login credentials for access to Products and Services. "**Authorized Users**" are Customer's employees, full-time contractors engaged for the purpose of supporting the Products and Services that are not competitors of WatchGuard, and the entities (if any) specified in an Ordering Document or otherwise approved by WatchGuard in writing (email from an authorized WatchGuard signatory accepted), which may include affiliates or other Customer agencies.

2.9. <u>Export Control</u>. Customer, its employees, and any other Authorized Users will not access or use the Products and Services in any jurisdiction in which the provision of such Products and Services is prohibited under applicable laws or regulations (a "**Prohibited Jurisdiction**"), and Customer will not provide access to the Products and Services to any government, entity, or individual located in a Prohibited Jurisdiction. Customer represents and warrants that (a) it and its Authorized Users are not named on any U.S. government list of persons prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) it and its Authorized Users are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) Customer will not permit its Authorized Users to access or use the Products or Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) Customer and its Authorized Users will comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which Customer, its employees, and the Authorized Users are located.

2.10. <u>Change Orders</u>. Unless a different change control process is agreed upon in writing by the Parties, a Party may request changes to an Addendum or an Ordering Document by submitting a change order to the other Party (each, a "**Change Order**"). If a requested change in a Change Order causes an increase or decrease in the cost or time required to perform the Services, the Parties will also adjust the Fees and project schedule. Change Orders are effective and binding on the Parties only upon execution of the Change Order by an authorized representative of both Parties.

3. **Term and Termination.**

3.1. <u>Term</u>. The term of this MCA ("**Term**") will commence on the Effective Date and continue until six (6) months after the later of (a) the termination, expiration, or discontinuance of services under the last Ordering Document in effect, or (b) the expiration of all applicable warranty periods, unless the MCA is earlier terminated as set forth herein. The applicable Addendum or Ordering Document will set forth the term for the Products and Services governed thereby.

3.2.   Termination. Either Party may terminate the Agreement or the applicable Addendum or Ordering Document if the other Party breaches a material obligation under the Agreement and does not cure such breach within thirty (30) days after receipt of notice of the breach or fails to produce a cure plan within such period of time. Each Addendum and Ordering Document may be separately terminable as set forth therein.

3.3.   Suspension of Services. WatchGuard may terminate or suspend any Products or Services under an Ordering Document if WatchGuard determines: (a) the related Product license has expired or has terminated for any reason; (b) the applicable Product is being used on a hardware platform, operating system, or version not approved by WatchGuard; (c) Customer fails to make any payments when due; (d) Customer fails to comply with any of its other obligations or otherwise delays WatchGuard's ability to perform; (e) laws or regulations change in a manner that makes compliance difficult or unreasonably costly.

3.4.   Effect of Termination or Expiration. Upon termination or expiration of this Agreement, an Addendum, or an Ordering Document, Customer and the Authorized Users will return or destroy (at WatchGuard's option) all WatchGuard Materials and WatchGuard Confidential Information in their possession or control and, as applicable, provide proof of such destruction, except that equipment purchased by Customer should not be returned. If Customer has any outstanding payment obligations under this Agreement, WatchGuard may accelerate and declare all such obligations of Customer immediately due and payable by Customer. Notwithstanding the reason for termination or expiration, Customer must pay WatchGuard for Products and Services already delivered. Customer has a duty to mitigate any damages under this Agreement, including in the event of default by WatchGuard and Customer's termination of this Agreement.

4.   **Payment and Invoicing.**

4.1.   Fees. Fees and charges applicable to the Products and Services (the "**Fees**") will be as set forth in the applicable Addendum or Ordering Document, and such Fees may be changed by WatchGuard at any time, except that WatchGuard will not change the Fees for Products and Services purchased by Customer during the term of an active Ordering Document or during a Subscription Term (as defined and further described in the applicable Addendum). Changes in the scope of Services described in an Ordering Document may require an adjustment to the Fees due under such Ordering Document. If a specific invoicing or payment schedule is set forth in the applicable Addendum or Ordering Document, such schedule will apply solely with respect to such Addendum or Ordering Document. Unless otherwise specified in the applicable Ordering Document, the Fees for any Services exclude expenses associated with unusual and costly Site access requirements, and Customer will reimburse WatchGuard for these or other expenses incurred by WatchGuard in connection with the Services.

4.2.   Taxes. The Fees do not include any excise, sales, lease, use, property, or other taxes, assessments or duties (collectively, "**Taxes**"), all of which will be paid by Customer, except as exempt by law. If WatchGuard is required to pay any Taxes, Customer will reimburse WatchGuard for such Taxes (including any interest and penalties) within thirty (30) days after Customer's receipt of an invoice therefore. Customer will be solely responsible for reporting the Products for personal property tax purposes, and WatchGuard will be solely responsible for reporting taxes on its income and net worth.

4.3.   Invoicing. WatchGuard will invoice Customer at the frequency set forth in the applicable Addendum or Ordering Document, and Customer will pay all invoices within thirty (30) days of the invoice date or as otherwise specified in the applicable Addendum or Ordering Document. Late payments will be subject to interest charges at the maximum rate permitted by law,

commencing upon the due date. WatchGuard may invoice electronically via email, and Customer agrees to receive invoices via email at the email address set forth in an Ordering Document. Customer acknowledges and agrees that a purchase order or other notice to proceed is not required for payment for Products or Services.

5.   Sites; Customer-Provided Equipment; Non-WatchGuard Content.

5.1.   Access to Sites. Customer will be responsible for providing all necessary permits, licenses, and other approvals necessary for its installation and use of the Products and Services at each applicable location (each, a "**Site**"), including for WatchGuard to perform its obligations hereunder, and for facilitating WatchGuard's access to any such Sites. No waivers of liability will be imposed on WatchGuard or its subcontractors by Customer or others at Customer facilities or other Sites, but if and to the extent any such waivers are imposed, the Parties agree such waivers are void.

5.2.   Site Conditions. Customer will ensure that (a) all Sites are safe and secure, (b) Site conditions meet all applicable industry and legal standards (including standards promulgated by OSHA or other governmental or regulatory bodies), (c) to the extent applicable, Sites have adequate physical space, air conditioning, and other environmental conditions, electrical power outlets, distribution, equipment, connections, and telephone or other communication lines (including modem access and interfacing networking capabilities), and (d) Sites are suitable for the installation, use, and maintenance of the Products and Services.

5.3.   Site Issues. WatchGuard will have the right at any time to inspect the Sites and advise Customer of any deficiencies or non-conformities with the requirements of this **Section 5 – Sites; Customer-Provided Equipment; Non-WatchGuard Content**. If WatchGuard or Customer identifies any deficiencies or non-conformities, Customer will promptly remediate such issues or the Parties will select a replacement Site. If a Party determines that a Site identified in an Ordering Document is not acceptable or desired, the Parties will cooperate to investigate the conditions and select a replacement Site or otherwise adjust the installation plans and specifications as necessary. A change in Site or adjustment to the installation plans and specifications may cause a change in the Fees or performance schedule under the applicable Ordering Document.

5.4.   Customer-Provided Equipment. Certain components, including equipment and software, not provided by WatchGuard may be required for use of the Products and Services ("**Customer-Provided Equipment**"). Customer will be responsible, at its sole cost and expense, for providing the Customer-Provided Equipment and maintaining the Customer-Provided Equipment in good working order. Customer represents and warrants that it has all rights in Customer-Provided Equipment to permit WatchGuard to access and use the applicable Customer-Provided Equipment to provide the Products and Services under this Agreement, and such access and use will not violate any laws or infringe any third-party rights (including intellectual property rights). Customer (and not WatchGuard) will be fully liable for Customer-Provided Equipment, and Customer will immediately notify WatchGuard of any Customer-Provided Equipment damage, loss, change, or theft that may impact WatchGuard's ability to provide the Products and Services under this Agreement, and Customer acknowledges that any such events may cause a change in the Fees or performance schedule under the applicable Ordering Document.

5.5.   Non-WatchGuard Content. In certain instances, Customer may be permitted to access, use, or integrate Customer or third-party software, services, content, and data, not provided by WatchGuard (collectively, "**Non-WatchGuard Content**") with or through the Products and

Services. If Customer accesses, uses, or integrates any Non-WatchGuard Content with the Products or Services, Customer will first obtain all necessary rights and licenses to permit Customer's and its Authorized Users' use of the Non-WatchGuard Content in connection with the Products. Customer will also obtain the necessary rights for WatchGuard to use such Non-WatchGuard Content in connection with providing the Products and Services, including the right for WatchGuard to access, store, and process such Non-WatchGuard Content (e.g., in connection with subscription-based Products), and to otherwise enable interoperation with the Products and Services. Customer represents and warrants that it will obtain the foregoing rights and licenses prior to accessing, using, or integrating the applicable Non-WatchGuard Content with the Products and Services, and that Customer and its Authorized Users will comply with any terms and conditions applicable to such Non-WatchGuard Content. If any Non-WatchGuard Content require access to Customer Data (as defined below), Customer hereby authorizes WatchGuard to allow the provider of such Non-WatchGuard Content to access Customer Data, in connection with the interoperation of such Non-WatchGuard Content with the Products and Services. Customer acknowledges and agrees that WatchGuard is not responsible for, and makes no representations or warranties with respect to, the Non-WatchGuard Content (including any disclosure, modification, or deletion of Customer Data resulting from use of Non-WatchGuard Content or failure to properly interoperate with the Products and Services). If Customer receives notice that any Non-WatchGuard Content must be removed, modified, or disabled within the Products or Services, Customer will promptly do so. WatchGuard will have the right to disable or remove Non-WatchGuard Content if WatchGuard believes a violation of law, third-party rights, or WatchGuard's policies is likely to occur, or if such Non-WatchGuard Content poses or may pose a security or other risk or adverse impact to the Products or Services, WatchGuard, WatchGuard's systems, or any third party (including other WatchGuard customers). Nothing in this Section will limit the exclusions set forth in **Section 7.2 – Intellectual Property Infringement**.

6. Representations and Warranties.

6.1. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that (a) it has the right to enter into the Agreement and perform its obligations hereunder, and (b) the Agreement will be binding on such Party.

6.2. WatchGuard Warranties. Subject to the disclaimers below, WatchGuard represents and warrants that (a) Services will be provided in a good and workmanlike manner and will conform in all material respects to the descriptions in the applicable Ordering Document; and (b) for a period of ninety (90) days commencing upon the Service Completion Date for one-time Services, the Services will be free of material defects in materials and workmanship. Customer's sole and exclusive remedy for any breach of the representations and warranties set forth in this **Section 6.2 – WatchGuard Warranties** will be that WatchGuard will use commercially reasonable efforts to remedy any confirmed material nonconformities or material defects in the applicable Services. Other than as set forth in subsection (a) above, recurring Services are not warranted but rather will be subject to the requirements of the applicable Addendum or Ordering Document. WatchGuard provides other express warranties for WatchGuard-manufactured hardware, WatchGuard-owned Software, and certain Services. Such express warranties are included in the applicable Addendum or Ordering Document. Such representations and warranties will apply only to the applicable Product or Service that is the subject of such Addendum or Ordering Document.

6.3. Warranty Claims. To assert a warranty claim, Customer must notify WatchGuard in writing of the claim prior to the expiration of any warranty period set forth in the applicable

Addendum or Ordering Document. Upon receipt of such claim, WatchGuard will investigate the claim and repair or replace any non-conforming Product or re-perform any non-conforming Service, at its option. Such remedies are Customer's sole and exclusive remedies for WatchGuard's breach of a warranty. WatchGuard's warranties are extended by WatchGuard to Customer only, and are not assignable or transferrable.

6.4. Pass-Through Warranties. Notwithstanding any provision of this Agreement to the contrary, WatchGuard will have no liability for third-party software or hardware provided by WatchGuard; provided, however, that to the extent offered by third-party providers of software or hardware and to the extent permitted by law, WatchGuard will pass through express warranties provided by such third parties.

6.5. WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS AND PASS THROUGH WARRANTIES IN THIS AGREEMENT, PRODUCTS AND SERVICES PURCHASED HEREUNDER ARE PROVIDED "AS IS" AND WITH ALL FAULTS. WARRANTIES SET FORTH IN THE AGREEMENT ARE THE COMPLETE WARRANTIES FOR THE PRODUCTS AND SERVICES AND WATCHGUARD DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND QUALITY. WATCHGUARD DOES NOT REPRESENT OR WARRANT THAT USE OF THE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF SECURITY VULNERABILITIES, OR THAT THEY WILL MEET CUSTOMER'S REQUIREMENTS.

7.   Indemnification.

7.1. General Indemnity. WatchGuard will defend, indemnify, and hold Customer harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual third-party claim, demand, action, or proceeding ("**Claim**") to the extent caused by WatchGuard's gross negligence or willful misconduct while performing its duties under an Ordering Document or an Addendum, except to the extent the claim arises from Customer's negligence or willful misconduct. WatchGuard's duties under this **Section 7.1 – General Indemnity** are conditioned upon: (a) Customer promptly notifying WatchGuard in writing of the Claim; (b) WatchGuard having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with WatchGuard and, if requested by WatchGuard, providing reasonable assistance in the defense of the Claim.

7.2. Intellectual Property Infringement. WatchGuard will defend Customer against any third-party claim alleging that a WatchGuard-developed or manufactured Product or Service (the "**Infringing Product**") directly infringes a United States patent or copyright ("**Infringement Claim**"), and WatchGuard will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim, or agreed to in writing by WatchGuard in settlement of an Infringement Claim. WatchGuard's duties under this **Section 7.2 – Intellectual Property Infringement** are conditioned upon: (a) Customer promptly notifying WatchGuard in writing of the Infringement Claim; (b) WatchGuard having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with WatchGuard and, if requested by WatchGuard, providing reasonable assistance in the defense of the Infringement Claim.

> 7.2.1. If an Infringement Claim occurs, or in WatchGuard's opinion is likely to occur, WatchGuard may at its option and expense: (a) procure for Customer the right to continue using the Infringing Product; (b) replace or modify the Infringing Product

so that it becomes non-infringing; or (c) grant Customer (i) a pro-rated refund of any amounts pre-paid for the Infringing Product (if the Infringing Product is a software Product, including subscription-based software services) or (ii) a credit for the Infringing Product, less a reasonable charge for depreciation (if the Infringing Product is an equipment product, including equipment with embedded Software).

7.2.2. In addition to the other damages disclaimed under this Agreement, WatchGuard will have no duty to defend or indemnify Customer for any Infringement Claim that arises from or is based upon: (a) Customer Data, Customer-Provided Equipment, Non-WatchGuard Content, or third-party equipment, hardware, software, data, or other third-party materials; (b) the combination of the Product or Service with any products or materials not provided by WatchGuard; (c) a Product or Service designed, modified, or manufactured in accordance with Customer's designs, specifications, guidelines or instructions; (d) a modification of the Product or Service by a party other than WatchGuard; (e) use of the Product or Service in a manner for which the Product or Service was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to use or install an update to the Product or Service that is intended to correct the claimed infringement. In no event will WatchGuard's liability resulting from an Infringement Claim extend in any way to any payments due on a royalty basis, other than a reasonable royalty based upon revenue derived by WatchGuard from Customer from sales or license of the Infringing Product.

7.2.3. This **Section 7.2 – Intellectual Property Infringement** provides Customer's sole and exclusive remedies and WatchGuard's entire liability in the event of an Infringement Claim. For clarity, the rights and remedies provided in this Section are subject to, and limited by, the restrictions set forth in **Section 8 – Limitation of Liability** below.

7.3. Customer Indemnity. Customer will defend, indemnify, and hold WatchGuard and its subsidiaries and other affiliates harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual or threatened third-party claim, demand, action, or proceeding arising from or related to (a) Customer-Provided Equipment, Customer Data, or Non-WatchGuard Content, including any claim, demand, action, or proceeding alleging that any such equipment, data, or materials (or the integration or use thereof with the Products and Services) infringes or misappropriates a third-party intellectual property or other right, violates applicable law, or breaches the Agreement, (b) Customer-Provided Equipment's failure to meet the minimum requirements set forth in the applicable Documentation or match the applicable specifications provided to WatchGuard by Customer in connection with the Products or Services; (c) Customer's (or its service providers, agents, employees, or Authorized User's) gross negligence or willful misconduct; and (d) Customer's or its Authorized User's breach of this Agreement. This indemnity will not apply to the extent any such claim is caused by WatchGuard's use of Customer-Provided Equipment, Customer Data, or Non-WatchGuard Content in violation of the Agreement. WatchGuard will give Customer prompt, written notice of any claim subject to the foregoing indemnity. WatchGuard will, at its own expense, cooperate with Customer in its defense or settlement of the claim.

8. **Limitation of Liability.**

8.1. <u>DISCLAIMER OF CONSEQUENTIAL DAMAGES</u>. EXCEPT FOR PERSONAL INJURY OR DEATH, WATCHGUARD, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE "**WATCHGUARD PARTIES**") WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER WATCHGUARD'S INDEMNITY OBLIGATIONS, A CAUSE OF ACTION FOR BREACH OF CONTRACT, UNDER TORT THEORY, OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR REVENUES, EVEN IF WATCHGUARD HAS BEEN ADVISED BY CUSTOMER OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES AND WHETHER OR NOT SUCH DAMAGES OR LOSSES ARE FORESEEABLE.

8.2. <u>DIRECT DAMAGES</u>. EXCEPT FOR PERSONAL INJURY OR DEATH, THE TOTAL AGGREGATE LIABILITY OF THE WATCHGUARD PARTIES AND CUSTOMER, WHETHER BASED ON A CLAIM IN CONTRACT OR IN TORT, LAW OR EQUITY, RELATING TO OR ARISING OUT OF THE AGREEMENT WILL NOT EXCEED THE FEES SET FORTH IN THE ORDERING DOCUMENT UNDER WHICH THE CLAIM AROSE. NOTWITHSTANDING THE FOREGOING, FOR ANY SUBSCRIPTION-BASED PRODUCT OR FOR ANY RECURRING SERVICES, THE WATCHGUARD PARTIES' AND CUSTOMER'S TOTAL LIABILITY FOR ALL CLAIMS RELATED TO SUCH PRODUCT OR RECURRING SERVICES IN THE AGGREGATE WILL NOT EXCEED THE TOTAL FEES PAID FOR SUCH SUBSCRIPTION-BASED PRODUCT OR RECURRING SERVICE, AS APPLICABLE, DURING THE CONSECUTIVE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FROM WHICH THE FIRST CLAIM AROSE.

8.3. <u>ADDITIONAL EXCLUSIONS</u>. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, WATCHGUARD WILL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF (A) CUSTOMER DATA, INCLUDING ITS TRANSMISSION TO WATCHGUARD, OR ANY OTHER DATA AVAILABLE THROUGH THE PRODUCTS OR SERVICES; (B) CUSTOMER-PROVIDED EQUIPMENT, NON-WATCHGUARD CONTENT, THE SITES, OR THIRD-PARTY EQUIPMENT, HARDWARE, SOFTWARE, DATA, OR OTHER THIRD-PARTY MATERIALS, OR THE COMBINATION OF PRODUCTS AND SERVICES WITH ANY OF THE FOREGOING; (C) LOSS OF DATA OR HACKING; (D) MODIFICATION OF PRODUCTS OR SERVICES BY ANY PERSON OTHER THAN WATCHGUARD; (E) RECOMMENDATIONS PROVIDED IN CONNECTION WITH OR BY THE PRODUCTS AND SERVICES; (F) DATA RECOVERY SERVICES OR DATABASE MODIFICATIONS; OR (G) CUSTOMER'S OR ANY AUTHORIZED USER'S BREACH OF THIS AGREEMENT OR MISUSE OF THE PRODUCTS AND SERVICES.

8.4. <u>Voluntary Remedies</u>. WatchGuard is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed issues in **Section 8.3 – Additional Exclusions** above, but if WatchGuard agrees to provide Services to help resolve such issues, Customer will reimburse WatchGuard for its reasonable time and expenses, including by paying WatchGuard any Fees set forth in an Ordering Document for such Services, if applicable.

8.5. <u>Statute of Limitations</u>. Customer may not bring any claims against an WatchGuard Party in connection with this Agreement or the Products and Services more than one (1) year after the date of accrual of the cause of action. Notwithstanding, Customer may not bring Indemnification claims described in Section 7 more than three (3) years after the date of accrual of the cause of action.

9.   Confidentiality.

9.1.   Confidential Information. "**Confidential Information**" means any and all non-public information provided by one Party ("**Discloser**") to the other ("**Recipient**") that is disclosed under this Agreement in oral, written, graphic, machine recognizable, or sample form, being clearly designated, labeled or marked as confidential or its equivalent or that a reasonable businessperson would consider non-public and confidential by its nature. With respect to WatchGuard, Confidential Information will also include Products and Services, Documentation, and any Deliverables, as well as any other information relating to the Products and Services. The nature and existence of this Agreement are considered Confidential Information of the Parties. In order to be considered Confidential Information, information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by Discloser by submitting a written document to Recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

9.2.   Obligations of Confidentiality. During the Term and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (a) not disclose Confidential Information to any third party, except as expressly permitted in this **Section 9 - Confidentiality**; (b) restrict disclosure of Confidential Information to only those employees (including, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must access the Confidential Information for the purpose of, and who are bound by confidentiality terms substantially similar to those in, this Agreement; (c) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (d) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (e) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (f) only use the Confidential Information as needed to fulfill its obligations and secure its rights under this Agreement.

9.3.   Exceptions. Recipient is not obligated to maintain as confidential any information that Recipient can demonstrate by documentation (a) is publicly available at the time of disclosure or becomes available to the public without breach of this Agreement; (b) is lawfully obtained from a third party without a duty of confidentiality to Discloser; (c) is otherwise lawfully known to Recipient prior to such disclosure without a duty of confidentiality to Discloser; or (d) is independently developed by Recipient without the use of, or reference to, any of Discloser's Confidential Information or any breach of this Agreement. Additionally, Recipient may disclose Confidential Information to the extent required by law, including a judicial or legislative order or proceeding.

9.4.   Ownership of Confidential Information. All Confidential Information is and will remain the property of Discloser and will not be copied or reproduced without the express written permission of Discloser (including as permitted herein). Within ten (10) days of receipt of Discloser's written request, Recipient will return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain (a) one (1) archival copy of the Confidential Information for use only in case of a dispute concerning this Agreement and (b) Confidential Information that has been automatically stored in accordance with Recipient's standard backup

or recordkeeping procedures, provided, however that Recipient will remain subject to the obligations of this Agreement with respect to any Confidential Information retained subject to clauses (a) or (b). No license, express or implied, in the Confidential Information is granted to the Recipient other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. Discloser represents and warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

10.   Proprietary Rights; Data; Feedback.

10.1.   Data Definitions. The following terms will have the stated meanings: "**Customer Contact Data**" means data WatchGuard collects from Customer, its Authorized Users, and their end users for business contact purposes, including marketing, advertising, licensing and sales purposes; "**Service Use Data**" means data generated by Customer's use of the Products and Services or by WatchGuard's support of the Products and Services, including personal information, location, monitoring and recording activity, product performance and error information, activity logs and date and time of use; "**Customer Data**" means data, information, and content, including images, text, videos, documents, audio, telemetry and structured data base records, provided by, through, or on behalf of Customer, its Authorized Users, and their end users through the use of the Products and Services. Customer Data does not include Customer Contact Data, Service Use Data, or information from publicly available sources or other Third-Party Data or WatchGuard Data; **"Third-Party Data"** means information obtained by WatchGuard from publicly available sources or its third party content providers and made available to Customer through the Products or Services; "**WatchGuard Data**" means data owned or licensed by WatchGuard; "**Feedback**" means comments or information, in oral or written form, given to WatchGuard by Customer or Authorized Users, including their end users, in connection with or relating to the Products or Services; and **"Process"** or **"Processing"** means any operation or set of operations which is performed on personal information or on sets of personal information, whether or not by automated means, such as collection, recording, copying, analyzing, caching, organization, structuring, storage, adaptation, or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

10.2.   WatchGuard Materials. Customer acknowledges that WatchGuard may use or provide Customer with access to software, tools, data, and other materials, including designs, utilities, models, methodologies, systems, and specifications, which WatchGuard has developed or licensed from third parties (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, or derivative works of the foregoing, whether made by WatchGuard or another party) (collectively, "**WatchGuard Materials**"). The Products and Services, WatchGuard Data, Third-Party Data, Documentation and Deliverables, are considered WatchGuard Materials. Except when WatchGuard has expressly transferred title or other interest to Customer by way of an Addendum or Ordering Document, the WatchGuard Materials are the property of WatchGuard or its licensors, and WatchGuard or its licensors retain all right, title and interest in and to the WatchGuard Materials (including, all rights in patents, copyrights, trademarks, trade names, trade secrets, know-how, other intellectual property and proprietary rights, and all associated goodwill and moral rights). For clarity, this Agreement does not grant to Customer any shared development rights in or to any WatchGuard Materials or other intellectual property, and Customer agrees to execute any documents and take any other actions reasonably requested by WatchGuard to effectuate the foregoing. WatchGuard and its licensors reserve all rights not expressly granted to Customer, and no rights, other than those expressly granted herein, are granted to Customer by implication, estoppel or otherwise. Customer will not modify, disassemble, reverse engineer,

derive source code or create derivative works from, merge with other software, distribute, sublicense, sell, or export the Products and Services or other WatchGuard Materials, or permit any third party to do so.

10.3. Ownership of Customer Data. Customer retains all right, title and interest, including intellectual property rights, if any, in and to Customer Data. WatchGuard acquires no rights to Customer Data except those rights granted under this Agreement including the right to Process and use the Customer Data as set forth in **Section 10.4 – Processing Customer Data** below and in other applicable Addenda. The Parties agree that with regard to the Processing of personal information which may be part of Customer Data, Customer is the Controller and WatchGuard is the Processor, and may engage sub-processors pursuant to **Section 10.4.3 – Sub-Processors**.

10.4. Processing Customer Data.

10.4.1. WatchGuard Use of Customer Data. To the extent permitted by law, Customer grants WatchGuard and its subcontractors a right to use Customer Data and a royalty-free, worldwide, non-exclusive license to use Customer Data (including to process, host, cache, store, reproduce, copy, modify, combine, analyze, create derivative works from such Customer Data and to communicate, transmit, and distribute such Customer Data to third parties engaged by WatchGuard) to (a) perform Services and provide Products under the Agreement, (b) analyze the Customer Data to operate, maintain, manage, and improve WatchGuard Products and Services, and (c) create new products and services. In addition, to the extent permitted by law, Customer grants WatchGuard and its subcontractors the right to use Customer Data and a royalty-free, worldwide, non-exclusive, perpetual, and irrevocable license to use Customer Data to develop, sell, and license anonymized Customer Data to third parties, including in an aggregated format. Customer agrees that this Agreement, along with the Documentation and applicable Deliverables, are Customer's complete and final documented instructions to WatchGuard for the processing of Customer Data. Any additional or alternate instructions must be agreed to according to the Change Order process. Customer represents and warrants to WatchGuard that Customer's instructions, including appointment of WatchGuard as a Processor or sub-processor, have been authorized by the relevant controller.

10.4.2. Collection, Creation, Use of Customer Data. Customer further represents and warrants that the Customer Data, Customer's collection, creation, and use of the Customer Data (including in connection with WatchGuard's Products and Services), and WatchGuard's use of such Customer Data in accordance with the Agreement, will not violate any laws or applicable privacy notices or infringe any third-party rights (including intellectual property and privacy rights). Customer also represents and warrants that the Customer Data will be accurate and complete, and that Customer has obtained all required consents, provided all necessary notices, and met any other applicable legal requirements with respect to collection and use (including WatchGuard's and its subcontractors' use) of the Customer Data as described in the Agreement.

10.4.3. Sub-Processors. Customer agrees that WatchGuard may engage sub-processors who in turn may engage additional sub-processors to Process personal data in accordance with this Agreement. When engaging sub-

processors, WatchGuard will enter into agreements with the sub-processors to bind them to data processing obligations to the extent required by law.

10.5. Data Retention and Deletion. Except for anonymized Customer Data, as described above, or as otherwise provided under the Agreement, WatchGuard will delete all Customer Data following termination or expiration of this MCA or the applicable Addendum or Ordering Document, with such deletion to occur no later than ninety (90) days following the applicable date of termination or expiration, unless otherwise required to comply with applicable law. Any requests for the exportation or download of Customer Data must be made by Customer to WatchGuard in writing before expiration or termination, subject to **Section 13.9 – Notices**. WatchGuard will have no obligation to retain such Customer Data beyond expiration or termination unless the Customer has purchased extended storage from WatchGuard through a mutually executed Ordering Document.

10.6. Service Use Data. Customer understands and agrees that WatchGuard may collect and use Service Use Data for its own purposes, including the uses described below. WatchGuard may use Service Use Data to (a) operate, maintain, manage, and improve existing and create new products and services, (b) test products and services, (c) to aggregate Service Use Data and combine it with that of other users, and (d) to use anonymized or aggregated data for marketing, research or other business purposes. Service Use Data may be disclosed to third parties. It is Customer's responsibility to notify Authorized Users of WatchGuard's collection and use of Service Use Data and to obtain any required consents, provide all necessary notices, and meet any other applicable legal requirements with respect to such collection and use, and Customer represents and warrants to WatchGuard that it has complied and will continue to comply with this Section.

10.7. Third-Party Data and WatchGuard Data. WatchGuard Data and Third-Party Data may be available to Customer through the Products and Services. Customer and its Authorized Users may use WatchGuard Data and Third-Party Data as permitted by WatchGuard and the applicable Third-Party Data provider, as described in the applicable Addendum. Unless expressly permitted in the applicable Addendum, Customer will not, and will ensure its Authorized Users will not: (a) use the WatchGuard Data or Third-Party Data for any purpose other than Customer's internal business purposes; (b) disclose the data to third parties; (c) "white label" such data or otherwise misrepresent its source or ownership, or resell, distribute, sublicense, or commercially exploit the data in any manner; (d) use such data in violation of applicable laws; (e) use such data for activities or purposes where reliance upon the data could lead to death, injury, or property damage; (f) remove, obscure, alter, or falsify any marks or proprietary rights notices indicating the source, origin, or ownership of the data; or (g) modify such data or combine it with Customer Data or other data or use the data to build databases. Additional restrictions may be set forth in the applicable Addendum. Any rights granted to Customer or Authorized Users with respect to WatchGuard Data or Third-Party Data will immediately terminate upon termination or expiration of the applicable Addendum, Ordering Document, or this MCA. Further, WatchGuard or the applicable Third-Party Data provider may suspend, change, or terminate Customer's or any Authorized User's access to WatchGuard Data or Third-Party Data if WatchGuard or such Third-Party Data provider believes Customer's or the Authorized User's use of the data violates the Agreement, applicable law or WatchGuard's agreement with the applicable Third-Party Data provider. Upon termination of Customer's rights to use any WatchGuard Data or Third-Party Data, Customer and all Authorized Users will immediately discontinue use of such data, delete all copies of such data, and certify such deletion to WatchGuard. Notwithstanding any provision of the Agreement to the contrary, WatchGuard will have no liability for Third-Party Data or WatchGuard Data available

through the Products and Services. WatchGuard and its Third-Party Data providers reserve all rights in and to WatchGuard Data and Third-Party Data not expressly granted in an Addendum or Ordering Document.

10.8. Feedback. Any Feedback provided by Customer is entirely voluntary, and will not create any confidentiality obligation for WatchGuard, even if designated as confidential by Customer. WatchGuard may use, reproduce, license, and otherwise distribute and exploit the Feedback without any obligation or payment to Customer or Authorized Users and Customer represents and warrants that it has obtained all necessary rights and consents to grant WatchGuard the foregoing rights.

10.9. Improvements; Products and Services. The Parties agree that, notwithstanding any provision of this MCA or the Agreement to the contrary, all fixes, modifications and improvements to the Services or Products conceived of or made by or on behalf of WatchGuard that are based either in whole or in part on the Feedback, Customer Data, or Service Use Data (or otherwise) are the exclusive property of WatchGuard and all right, title and interest in and to such fixes, modifications or improvements will vest solely in WatchGuard. Customer agrees to execute any written documents necessary to assign any intellectual property or other rights it may have in such fixes, modifications or improvements to WatchGuard.

11. **Force Majeure; Delays Caused by Customer.**

11.1. Force Majeure. Except for Customer's payment obligations hereunder, neither Party will be responsible for nonperformance or delayed performance due to events outside of its reasonable control. If performance will be significantly delayed, the affected Party will provide notice to the other Party, and the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule.

11.2. Delays Caused by Customer. WatchGuard's performance of the Products and Services will be excused for delays caused by Customer or its Authorized Users or subcontractors, or by failure of any assumptions set forth in this Agreement (including in any Addendum or Ordering Document). In the event of a delay under this **Section 11.2 – Delays Caused by Customer**, (a) Customer will continue to pay the Fees as required hereunder, (b) the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule, and (c) Customer will compensate WatchGuard for its out-of-pocket costs incurred due to the delay (including those incurred by WatchGuard's affiliates, vendors, and subcontractors).

12. **Disputes.** The Parties will use the following procedure to resolve any disputes relating to or arising out of this Agreement (each, a "**Dispute**"):

12.1. Governing Law. All matters relating to or arising out of the Agreement are governed by the laws of the State of Washington, unless Customer is the United States Government (or an agency thereof), in which case all matters relating to or arising out of the Agreement will be governed by the laws of the State in which the Products and Services are provided. The terms of the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.

12.2. Negotiation; Mediation. Either Party may initiate dispute resolution procedures by sending a notice of Dispute ("**Notice of Dispute**") to the other Party. The Parties will attempt to resolve the Dispute promptly through good faith negotiations, including timely escalation of the Dispute to executives who have authority to settle the Dispute (and who are at a higher level of management than the persons with direct responsibility for the matter). If a Dispute is not

resolved through negotiation, either Party may initiate mediation by sending a notice of mediation ("**Notice of Mediation**") to the other Party. The Parties will choose an independent mediator within thirty (30) days of such Notice of Mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, but if the Parties are unable to agree upon a mediator, either Party may request that the American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute. All in person meetings under this **Section 12.2 – Negotiation; Mediation** will take place in Dallas, Texas, and all communication relating to the Dispute resolution will be maintained in strict confidence by the Parties. Notwithstanding the foregoing, any Dispute arising from or relating to WatchGuard's intellectual property rights will not be subject to negotiation or mediation in accordance with this Section, but instead will be decided by a court of competent jurisdiction, in accordance with **Section 12.3 – Litigation, Venue, Jurisdiction** below.

12.3. Litigation, Venue, Jurisdiction. If the Dispute has not been resolved by mediation within sixty (60) days from the Notice of Mediation, either Party may submit the Dispute exclusively to a court in Chelan County, Washington. Each Party expressly consents to the exclusive jurisdiction of such courts for resolution of any Dispute and to enforce the outcome of any mediation. In the event of litigation, each party shall bear its' own attorneys' fees and costs incurred therein.

13.   **General.**

13.1. Compliance with Laws. Each Party will comply with applicable laws in connection with the performance of its obligations under this Agreement, including that Customer will ensure its and its Authorized Users' use of the Products and Services complies with law (including privacy laws), and Customer will obtain any FCC and other licenses or authorizations (including licenses or authorizations required by foreign regulatory bodies) required for its and its Authorized Users' use of the Products and Services. WatchGuard may, at its discretion, cease providing or otherwise modify Products and Services (or any terms related thereto in an Addendum or Ordering Document), in order to comply with any changes in applicable law.

13.2. Audit; Monitoring. WatchGuard will have the right to monitor and audit use of the Products, which may also include access by WatchGuard to Customer Data and Service Use Data. Customer will provide notice of such monitoring to its Authorized Users and obtain any required consents, including individual end users, and will cooperate with WatchGuard in any monitoring or audit. Customer will maintain during the Term, and for two (2) years thereafter, accurate records relating to any Software licenses granted under this Agreement to verify compliance with this Agreement. WatchGuard or a third party ("**Auditor**") may inspect Customer's and, as applicable, Authorized Users' premises, books, and records. WatchGuard will pay expenses and costs of the Auditor, unless Customer is found to be in violation of the terms of the Agreement, in which case Customer will be responsible for such expenses and costs.

13.3. Assignment and Subcontracting. Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. WatchGuard may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to a

subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns.

13.4. Waiver. A delay or omission by either Party to exercise any right under this Agreement will not be construed to be a waiver of such right. A waiver by either Party of any of the obligations to be performed by the other, or any breach thereof, will not be construed to be a waiver of any succeeding breach or of any other obligation. All waivers must be in writing and signed by the Party waiving its rights.

13.5. Severability. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision will be deemed to be modified to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement will not be affected, and each such provision will be valid and enforceable to the full extent permitted by applicable law.

13.6. Independent Contractors. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership, or formal business organization of any kind.

13.7. Third-Party Beneficiaries. The Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that the Agreement will not benefit, or create any right or cause of action in or on behalf of, any entity other than the Parties. Notwithstanding the foregoing, a licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.8. Interpretation. The section headings in this Agreement are included only for convenience. The words "including" and "include" will be deemed to be followed by the phrase "without limitation". This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

13.9. Notices. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as FedEx, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt.

13.10. Cumulative Remedies. Except as specifically stated in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity, by contract, or otherwise. Except as specifically stated in this Agreement, the election by a Party of any remedy provided for in this Agreement or otherwise available to such Party will not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract, or otherwise.

13.11. Survival. The following provisions will survive the expiration or termination of this Agreement for any reason: **Section 2.4 – Customer Obligations**; **Section 3.4 – Effect of Termination or Expiration**; **Section 4 – Payment and Invoicing**; **Section 6.5 – Warranty Disclaimer**; **Section 7.3 – Customer Indemnity**; **Section 8 – Limitation of Liability**; **Section 9 – Confidentiality**; **Section 10 – Proprietary Rights; Data**; **Feedback**; **Section 11 – Force Majeure; Delays Caused by Customer**; **Section 12 – Disputes**; and **Section 13 – General**.

13.12. <u>Entire Agreement</u>. This Agreement, including all Addenda and Ordering Documents, constitutes the entire agreement of the Parties regarding the subject matter hereto, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. Except the one-year warranty term provided for in the Equipment Purchase and Software License Addendum which modifies section 6.2 hereof, the preprinted terms and conditions found on any Customer purchase order, acknowledgment, or other form will not be considered an amendment or modification or part of this Agreement, even if a representative of each Party signs such document.

The Parties hereby enter into this MCA as of the Effective Date.

WatchGuard Video, Inc.	**Customer:**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Equipment Purchase and Software License Addendum

This Equipment Purchase and Software License Addendum (this "**EPSLA**") is entered into between WatchGuard Video, Inc., with offices at 415 E. Exchange Parkway, Allen, TX 75002 ("**WatchGuard**") and the entity set forth in the signature block below or in the MCA ("**Customer**"), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of [   ] (the "**MCA**"). Capitalized terms used in this EPSLA, but not defined herein, will have the meanings set forth in the MCA.

1.   Addendum. This EPSLA governs Customer's purchase of Equipment and license of Software Products (and, if set forth in an Ordering Document, related Services) from WatchGuard, and will form part of the Parties' Agreement. "**Equipment**" means hardware Products provided by WatchGuard; and "**Software**" means software preinstalled on Equipment and software Products provided by WatchGuard, including, software that may be installed on Customer-Provided Equipment in accordance with this EPSLA (as applicable).

2.   Delivery of Equipment and Software.

2.1.   Delivery and Risk of Loss. WatchGuard will provide to Customer the Products (and, if applicable, related Services) set forth in an Ordering Document, in accordance with the terms of the Agreement. WatchGuard will, using commercially reasonable practices, pack the ordered Equipment and ship such Equipment to the Customer address set forth in the applicable Ordering Document or otherwise provided by Customer in writing, using a carrier selected by WatchGuard. Notwithstanding the foregoing, delivery of Equipment (and any incorporated Software) will occur, and title and risk of loss for the Equipment will pass to Customer, upon shipment by WatchGuard in accordance with Ex Works, WatchGuard's premises (Incoterms 2020). Customer will pay all shipping costs, taxes, and other charges applicable to the shipment and import or export of the Products and Services, as applicable, and Customer will be responsible for reporting the Products for personal property tax purposes. Delivery of Software for installation on Equipment or Customer-Provided Equipment will occur upon the earlier of (a) electronic delivery of the software by WatchGuard, and (b) the date WatchGuard otherwise makes the Software available for download by Customer. If agreed upon in an Ordering Document, WatchGuard will also provide Services related to such Products.

2.2.   Delays. Any shipping dates set forth in an Ordering Document are approximate, and while WatchGuard will make reasonable efforts to ship Products by any such estimated shipping date, WatchGuard will not be liable for any delay or related damages to Customer. Time for delivery will not be of the essence, and delays of 120 days or less will not constitute grounds for cancellation, penalties, termination, or a refund.

3.   Software License and Restrictions.

3.1.   Software License. Subject to Customer's and its Authorized Users' compliance with the Agreement (including payment terms), WatchGuard hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicenseable, and non-exclusive license to use the Software identified in an Ordering Document, in object code form only, and the associated Documentation, solely in connection with the Equipment provided by WatchGuard or authorized Customer-Provided Equipment (as applicable, the "**Designated Products**") and solely for Customer's internal business purposes. Unless otherwise stated in an Addendum or the Ordering Document, the foregoing license grant will be limited to the number of licenses set

forth in the applicable Ordering Document and will continue for the life of the applicable Designated Product. Except as otherwise permitted in an applicable Addendum or Ordering Document, Customer may install, access, and use Software only in Customer's owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Software remotely from any location.

3.2. <u>Subscription License Model</u>. If the Parties mutually agree that any Product purchased under this EPSLA will be replaced with or upgraded to a subscription-based Product, then upon such time which the Parties execute the applicable Ordering Document, the licenses granted under this EPSLA will automatically terminate, and such subscription-based Products will be governed by the terms of the applicable Addendum under this Agreement.

3.3. <u>End User Licenses</u>. Notwithstanding any provision to the contrary in the Agreement, certain Software is governed by a separate license, EULA, or other agreement, including terms governing third-party equipment or software, such as open source software, included in the Products and Services. Customer will comply, and ensure its Authorized Users comply, with such additional license agreements.

3.4. <u>Customer Restrictions</u>. Customers and Authorized Users will comply with the applicable Documentation in connection with their use of the Products. Customer will not and will not allow others, including the Authorized Users, to: (a) make the Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; (b) reverse engineer, disassemble, or reprogram the Software or any portion thereof to a human-readable form; (c) modify, create derivative works of, or merge the Software with other software or equipment; (d) copy, reproduce, distribute, lend, lease, or transfer the Software or Documentation for or to any third party without the prior express written permission of WatchGuard; (e) take any action that would cause the Software or Documentation to be placed in the public domain; (f) use the Software to compete with WatchGuard; or (g) remove, alter, or obscure, any copyright or other notice.

3.5. <u>Copies</u>. Customer may make one (1) copy of the Software solely for archival, back-up, or disaster recovery purposes during the term of the applicable Software license. Customer may make as many copies of the Documentation reasonably required for the internal use of the Software during such Software license term. Unless otherwise authorized by WatchGuard in writing, Customer will not, and will not enable or allow any third party to: (a) install a licensed copy of the Software on more than one (1) unit of a Designated Product; or (b) copy onto or transfer Software installed in a unit of a Designated Product onto another device. Customer may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Customer provides written notice to WatchGuard of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Customer must provide prompt written notice to WatchGuard at the time temporary transfer is discontinued.

3.6. <u>Resale of Equipment.</u> Equipment contains embedded Software. If Customer desires to sell its used Equipment to a third party, Customer must first receive prior written authorization from WatchGuard, which shall not be unreasonably withheld and obtain written acceptance of the applicable Software license terms, including the obligation to pay relevant license fees, from such third party.

4.   Term.

4.1.   Term. The term of this EPSLA (the "**EPSLA Term**") will commence upon either (a) the Effective Date of the MCA, if this EPSLA is attached to the MCA as of such Effective Date, or (b) the EPSLA Date set forth on the signature page below, if this EPSLA is executed after the MCA Effective Date, and will continue until the later of (i) three (3) years after the first order for Products is placed via an Ordering Document, or (ii) the expiration of all applicable warranty periods (as set forth in **Section 6.1 – WatchGuard Warranties** below) under this EPSLA, unless this EPSLA or the Agreement is earlier terminated in accordance with the terms of the Agreement.

4.2.   Termination. Notwithstanding the termination provisions of the MCA, WatchGuard may terminate this EPSLA (and any Ordering Documents hereunder) immediately upon notice to Customer if Customer breaches **Section 3 – Software License and Restrictions** of this EPSLA, or any other provision related to Software license scope or restrictions set forth in an Ordering Document, EULA, or other applicable Addendum. For clarity, upon termination or expiration of the EPSLA Term, all WatchGuard obligations under this EPSLA (including with respect to Equipment and Software delivered hereunder) will terminate. If Customer desires to purchase additional Services in connection with such Equipment or Software, Customer may enter into a separate Addendum with WatchGuard, governing such Services. Customer acknowledges that WatchGuard made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation, and that Customer's breach of the Agreement will result in irreparable harm to WatchGuard for which monetary damages would be inadequate. If Licensee breaches this Agreement, in addition to termination, WatchGuard will be entitled to all available remedies at law or in equity, including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation.

4.3.   Equipment as a Service. In the event that Customer purchases any Equipment at a price below the MSRP for such Equipment in connection Customer entering into a fixed- or minimum required-term agreement for subscription-based Software, and Customer or WatchGuard terminates the Agreement, this EPSLA, or other applicable Addendum (such as the Addendum governing the purchase of such subscription-based Software) prior to the expiration of such fixed- or minimum required-term, then WatchGuard will have the right to invoice Customer for, and Customer will pay, the amount of the discount to the MSRP for the Equipment or such other amount set forth in the applicable Addendum or Ordering Document. This Section will not limit any other remedies WatchGuard may have with respect to an early termination.

5.   Payment. Customer will pay invoices for the Products and Services provided under this EPSLA in accordance with the invoice payment terms set forth in the MCA. Generally, invoices are issued after shipment of Equipment or upon WatchGuard's delivery of Software (in accordance with **Section 2.1 – Delivery and Risk of Loss**), as applicable, but if a specific invoicing or payment schedule is set forth in the applicable Ordering Document, EULA or other Addendum, such schedule will control with respect to the applicable Products and Services referenced therein. WatchGuard will have the right to suspend future deliveries of Products and Services if Customer fails to make any payments when due.

6.   Representations and Warranties; Liability.

6.1.   WatchGuard Warranties. Subject to the disclaimers set forth in the MCA and this EPSLA, (a) for a period of one (1) year commencing upon the delivery of WatchGuard-manufactured Equipment under **Section 2.1 – Delivery and Risk of Loss**, WatchGuard

represents and warrants that such WatchGuard-manufactured Equipment, under normal use, will be free from material defects in materials and workmanship; (b) to the extent permitted by the providers of third-party software or hardware included in the Products and Services, WatchGuard will pass through to Customer any warranties provided by such third parties, which warranties will apply for the period defined by the applicable third party; and (c) for a period of ninety (90) days commencing upon the delivery of WatchGuard-owned Software under **Section 2.1 – Delivery and Risk of Loss**, WatchGuard represents and warrants that such Software, when used in accordance with the Documentation and the Agreement, will be free from reproducible defects that prevent operation of features critical to the primary functionality or successful operation of the WatchGuard-developed Software (as determined by WatchGuard). The warranty set forth in subsection (c) will be referred to as the "**WatchGuard Software Warranty**". As Customer's sole and exclusive remedy for any breach of the WatchGuard Software Warranty, WatchGuard will use commercially reasonable efforts to remedy the material defect in the applicable Software; provided, however, that if WatchGuard does not remedy such material defect within a reasonable time, then at WatchGuard's sole option, WatchGuard will either replace the defective Software with functionally-equivalent software, provide substitute software to Customer, or terminate the applicable software license and refund any paid license fees to Customer on a pro-rata basis. For clarity, the WatchGuard Software Warranty applies only to the most current version of the Software issued by WatchGuard, and issuance of updated versions of any Software does not result in a renewal or extension of the WatchGuard Software Warranty beyond the ninety (90) day warranty period.

6.2. <u>ADDITIONAL EXCLUSIONS</u>. IN ADDITION TO THE EXCLUSIONS FROM DAMAGES SET FORTH IN THE MCA, AND NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, WATCHGUARD WILL HAVE NO LIABILITY FOR (A) DEFECTS IN OR DAMAGE TO PRODUCTS RESULTING FROM USE OTHER THAN IN THE NORMAL AUTHORIZED MANNER, OR FROM ACCIDENT, LIQUIDS, OR NEGLECT; (B) TESTING, MAINTENANCE, REPAIR, INSTALLATION, OR MODIFICATION BY PARTIES OTHER THAN WATCHGUARD; (C) CUSTOMER'S OR ANY AUTHORIZED USER'S FAILURE TO COMPLY WITH INDUSTRY AND OSHA OR OTHER LEGAL STANDARDS; (D) DAMAGE TO ANTENNAS, UNLESS CAUSED BY DEFECTS IN MATERIAL OR WORKMANSHIP; (E) EQUIPMENT WITH NO SERIAL NUMBER; (F) BATTERIES OR CONSUMABLES; (G) FREIGHT COSTS FOR SHIPMENT TO REPAIR DEPOTS; (H) COSMETIC DAMAGE THAT DOES NOT AFFECT OPERATION; (I) NORMAL WEAR AND TEAR; (J) ISSUES OR OBSOLESCENCE OF SOFTWARE DUE TO CHANGES IN CUSTOMER OR AUTHORIZED USER REQUIREMENTS, EQUIPMENT, OR SYSTEMS; (K) TRACKING AND LOCATION-BASED SERVICES; OR (L) BETA SERVICES.

6.3. <u>Voluntary Remedies</u>. WatchGuard is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed issues in the MCA or **Section 6.2 – Additional Exclusions** above, but if WatchGuard agrees to provide Services to help resolve such issues, Customer will reimburse WatchGuard for its reasonable time and expenses, including by paying WatchGuard any Fees set forth in an Ordering Document for such Services, if applicable.

7.   Copyright Notices. The existence of a copyright notice on any Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

8.   Survival. The following provisions will survive the expiration or termination of this EPSLA for any reason: **Section 3 – Software License and Restrictions**; **Section 4 – Term**; **Section 5 – Payment**; **Section 6.2 – Additional Exclusions**; **Section 8 – Survival**.

Subscription Services Addendum

This Subscription Services Addendum (this "**SSA**") is entered into between WatchGuard Video, Inc. , with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 ("**Motorola**") and the entity set forth in the signature block below or in the MCA ("**Customer**"), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of [_____] (the "**MCA**"). Capitalized terms used in this SSA, but not defined herein, will have the meanings set forth in the MCA.

1.   Addendum. This SSA governs Customer's purchase of Subscription Services (and, if set forth in an Ordering Document, related Services) from Motorola, and will form part of the Parties' Agreement. Additional Subscription Service-specific Addenda or other terms and conditions may apply to certain Subscription Services, where such terms are provided or presented to Customer. "**Subscription Services**" means subscription-based software Products.

2.   Delivery of Subscription Services.

2.1.   Delivery. During the applicable Subscription Term (as defined below), WatchGuardwill provide to Customer the Subscription Services set forth in an Ordering Document, in accordance with the terms of the Agreement, subject to any interruptions caused by planned downtime, unavailability due to reasons beyond Motorola's reasonable control, or disruptions caused by Customer, third parties, Customer-Provided Equipment, Non-WatchGuardContent, or third-party software, systems, applications, or hardware. WatchGuardwill provide Customer advance notice (which may be provided electronically) of any planned downtime. Delivery will occur upon Customer's receipt of credentials required for access to the Subscription Services or upon WatchGuardotherwise providing access to the Subscription Services. If agreed upon in an Ordering Document, WatchGuardwill also provide Services related to such Subscription Services.

2.2.   Modifications. In addition to other rights to modify the Products and Services set forth in the MCA, WatchGuardmay modify the Subscription Services and any related systems so long as their functionality (as described in the applicable Ordering Document) is not materially degraded. Documentation for the Subscription Services may be updated to reflect such modifications. For clarity, new features or enhancements that are added to any Subscription Service may be subject to additional Fees.

2.3.   User Credentials. If applicable, WatchGuardwill provide Customer with administrative user credentials for the Subscription Services, and Customer will ensure such administrative user credentials are accessed and used only by Customer's employees with training on their proper use. Customer will protect, and will cause its Authorized Users to protect, the confidentiality and security of all user credentials, including any administrative user credentials, and maintain user credential validity, including by updating passwords. Customer will be liable for any use of the Subscription Services through such user credential (including through any administrative user credentials), including any changes made to the Subscription Services or issues or user impact arising therefrom. To the extent WatchGuardprovides Services to Customer in order to help resolve issues resulting from changes made to the Subscription Services through user credentials, including through any administrative user credentials, or issues otherwise created by Authorized Users, such Services will be billed to Customer on a time and materials basis, and Customer will pay all invoices in accordance with the payment terms of the MCA.

2.4.   Beta Services. If WatchGuardmakes any beta version of a software application ("**Beta Service**") available to Customer, Customer may choose to use such Beta Service at its own

discretion, provided, however, that Customer will use the Beta Service solely for purposes of Customer's evaluation of such Beta Service, and for no other purpose. Customer acknowledges and agrees that all Beta Services are offered "as-is" and without any representations or warranties or other commitments or protections from Motorola. WatchGuardwill determine the duration of the evaluation period for any Beta Service, in its sole discretion, and WatchGuardmay discontinue any Beta Service at any time. Customer acknowledges that Beta Services, by their nature, have not been fully tested and may contain defects or deficiencies.

3.   Subscription Services License and Restrictions.

3.1.   Subscription Services License. Subject to Customer's and its Authorized Users' compliance with the Agreement, including payment terms, WatchGuardhereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicenseable, and non-exclusive license to use the Subscription Services identified in an Ordering Document, and the associated Documentation, solely for Customer's internal business purposes. The foregoing license grant will be limited to use in the territory and to the number of licenses set forth in an Ordering Document (if applicable), and will continue for the applicable Subscription Term. Customer may access, and use the Subscription Services only in Customer's owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Subscription Services remotely from any location. No custom development work will be performed under this Addendum.

3.2.   End User Licenses. Notwithstanding any provision to the contrary in the Agreement, certain Subscription Services are governed by a separate license, EULA, or other agreement, including terms governing third-party software, such as open source software, included in the Subscription Services. Customer will comply, and ensure its Authorized Users comply, with such additional license agreements.

3.3.   Customer Restrictions. Customers and Authorized Users will comply with the applicable Documentation and the copyright laws of the United States and all other relevant jurisdictions (including the copyright laws where Customer uses the Subscription Services) in connection with their use of the Subscription Services. Customer will not, and will not allow others including the Authorized Users, to make the Subscription Services available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; reverse engineer, disassemble, or reprogram software used to provide the Subscription Services or any portion thereof to a human-readable form; modify, create derivative works of, or merge the Subscription Services or software used to provide the Subscription Services with other software; copy, reproduce, distribute, lend, or lease the Subscription Services or Documentation for or to any third party; take any action that would cause the Subscription Services, software used to provide the Subscription Services, or Documentation to be placed in the public domain; use the Subscription Services to compete with Motorola; remove, alter, or obscure, any copyright or other notice; share user credentials (including among Authorized Users); use the Subscription Services to store or transmit malicious code; or attempt to gain unauthorized access to the Subscription Service or its related systems or networks.

4.   Term.

4.1.   Subscription Terms. The duration of Customer's subscription to the first Subscription Service ordered under this SSA (or the first Subscription Services, if multiple are ordered at once) will commence upon delivery of such Subscription Service(s) and will continue for a twelve (12) month period or such longer period identified in an Ordering Document (the "**Initial**

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Subscription Period"). Following the Initial Subscription Period, Customer's subscription to the Subscription Service(s) will automatically renew for additional twelve (12) month periods (each, a "**Renewal Subscription Year**"), unless either Party notifies the other Party of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. (The Initial Subscription Period and each Renewal Subscription Year will each be referred to herein as a "**Subscription Term**".) WatchGuardmay increase Fees prior to any Renewal Subscription Year. In such case, WatchGuardwill notify Customer of such proposed increase no later than thirty

(30) days prior to commencement of such Renewal Subscription Year. Unless otherwise specified in the applicable Ordering Document, if Customer orders any additional Subscription Services under this SSA during an in-process Subscription Term, the subscription for each new Subscription Service will (a) commence upon delivery of such Subscription Service, and continue until the conclusion of Customer's then-current Subscription Term (a "**Partial Subscription Year**"), and (b) automatically renew for Renewal Subscription Years thereafter, unless either Party notifies the other Party of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. Thus, unless otherwise specified in the applicable Ordering Document, the Subscription Terms for all Subscription Services hereunder will be synchronized.

4.2. Term. The term of this SSA (the "**SSA Term**") will commence upon either (a) the Effective Date of the MCA, if this SSA is attached to the MCA as of such Effective Date, or (b) the SSA Date set forth on the signature page below, if this SSA is executed after the MCA Effective Date, and will continue until the expiration or termination of all Subscription Terms under this SSA, unless this SSA or the Agreement is earlier terminated in accordance with the terms of the Agreement.

4.3. Termination. Notwithstanding the termination provisions of the MCA, WatchGuardmay terminate this SSA (or any Addendum or Ordering Documents hereunder), or suspend delivery of Subscription Services, immediately upon notice to Customer if (a) Customer breaches **Section 3 – Subscription Services License and Restrictions** of this SSA, or any other provision related to Subscription Service license scope or restrictions set forth in an Addendum or Ordering Document, or (b) it determines that Customer's use of the Subscription Services poses, or may pose, a security or other risk or adverse impact to any Subscription Service, Motorola, Motorola's systems, or any third party (including other WatchGuardcustomers). Customer acknowledges that WatchGuardmade a considerable investment of resources in the development, marketing, and distribution of the Subscription Services and Documentation, and that Customer's breach of the Agreement will result in irreparable harm to WatchGuardfor which monetary damages would be inadequate. If Customer breaches this Agreement, in addition to termination, WatchGuardwill be entitled to all available remedies at law or in equity (including immediate injunctive relief).

4.4. Wind Down of Subscription Service. In addition to the termination rights in the MCA, WatchGuardmay terminate any Ordering Document and Subscription Term, in whole or in part, in the event WatchGuardplans to cease offering the applicable Subscription Service to customers.

5. **Payment.** Unless otherwise provided in an Ordering Document (and notwithstanding the provisions of the MCA), Customer will prepay an annual subscription Fee set forth in an Ordering Document for each Subscription Service, before the commencement of each Subscription Term. For any Partial Subscription Year, the applicable annual subscription Fee will be prorated based on the number of months in the Partial Subscription Year. The annual subscription Fee for Subscription Services may include certain one-time Fees, such as start-up

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fees, license fees, or other fees set forth in an Ordering Document. WatchGuardwill have the right to suspend the Subscription Services if Customer fails to make any payments when due.

6.   License True-Up. WatchGuardwill have the right to conduct an audit of total licenses credentialed by Customer for any Subscription Services during a Subscription Term, and Customer will cooperate with such audit. If WatchGuarddetermines that Customer's usage of the Subscription Services during the applicable Subscription Term exceeded the total number of licenses purchased by Customer, WatchGuardmay invoice Customer for the additional licenses used by Customer, pro-rated for each additional license from the date such license was activated, and Customer will pay such invoice in accordance with the payment terms in the MCA.

7.   Representations and Warranties; Liability.

7.1.   WatchGuardWarranties. Subject to the disclaimers set forth in the MCA and this SSA, WatchGuardrepresents and warrants that, following delivery of the Subscription Services, the functionality of the Subscription Services will materially conform with this Agreement and descriptions in the applicable Ordering Document. Customer's sole and exclusive remedy for any breach of the representations and warranties set forth in this **Section 7.1 – WatchGuardWarranties** will be the right to terminate the Subscription Term for the applicable Subscription Service.

7.2.   ADDITIONAL EXCLUSIONS. IN ADDITION TO THE EXCLUSIONS FROM DAMAGES SET FORTH IN THE MCA, AND NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, WATCHGUARDWILL HAVE NO LIABILITY FOR (A) INTERRUPTION OR FAILURE OF CONNECTIVITY, VULNERABILITIES, OR SECURITY EVENTS; (B) DISRUPTION OF OR DAMAGE TO CUSTOMER'S OR THIRD PARTIES' SYSTEMS, EQUIPMENT, OR DATA, INCLUDING DENIAL OF ACCESS TO USERS, OR SHUTDOWN OF SYSTEMS CAUSED BY INTRUSION DETECTION SOFTWARE OR HARDWARE; (C) AVAILABILITY OR ACCURACY OF ANY DATA AVAILABLE THROUGH THE SUBSCRIPTION SERVICES, OR INTERPRETATION, USE, OR MISUSE THEREOF; (D) TRACKING AND LOCATION-BASED SERVICES; OR (E) BETA SERVICES.

7.3.   Voluntary Remedies. WatchGuardis not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed issues in the MCA or **Section 7.2 – Additional Exclusions** above, but if WatchGuardagrees to provide Services to help resolve such issues, Customer will reimburse WatchGuardfor its reasonable time and expenses, including by paying WatchGuardany Fees set forth in an Ordering Document for such Services, if applicable.

8.   Security and Privacy. The Subscription Services will comply with the applicable provisions of the [Motorola Privacy Statement] at [https://www.motorolasolutions.com/en_us/about/privacy-policy.html#privacystatement] and the [WatchGuardSecurity Policy] at [www.motorolasolutions.com/legal], as each may be updated from time to time; provided, however, that changes will not result in a material reduction in the level of security of the Subscription Services during a Subscription Term. Customer will establish and maintain its own privacy and security policies and procedures, and is solely responsible for ensuring its, and the Authorized Users', compliance with the FBI CJIS Security Policy and other privacy and security laws, regulations, and policies.

9.   Survival. The following provisions will survive the expiration or termination of this SSA for any reason: **Section 4 – Term**; **Section 5 – Payment**; **Section 6 – License True-Up**; **Section 7.2 – Additional Exclusions**; **Section 9 – Survival**.

Video as a Service Addendum

This Video as a Service Addendum (this "**VSA**") is entered into between WatchGuard Video, Inc., with offices at 415 E. Exchange Parkway, Allen, TX 75002 ("**WatchGuard**") and the entity set forth in the signature block below or in the MCA ("**Customer**"), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of [   ] (the "**MCA**"), and the applicable Addenda. Capitalized terms used in this VSA, but not defined herein, will have the meanings set forth in the MCA or the applicable Addenda.

1.   Addendum. This VSA governs Customer's participation in WatchGuard's Video-as-a-Service Program ("**VaaS Program**"). In addition to the MCA, other Addenda may be applicable to Products offered as part of the VaaS Program, including the Subscription Software Addendum ("**SSA**"), with respect to Subscription Software, and the Equipment Purchase and Software License Addendum ("**EPSLA**"), with respect to Licensed Software and Equipment, as each of those terms are defined therein, and as further described below. This VSA will control with respect to conflicting terms in the MCA or any other applicable Addendum, but only as applicable to the Products purchased under this VSA and not with respect to other Products or Services.

2.   Equipment. All hardware provided by WatchGuard to Customer under the VaaS Program will be considered "Equipment", as defined in the EPSLA, and constitutes a purchase of such Equipment subject to the terms of the EPSLA. Additionally, the following terms and conditions apply to any Equipment purchased under the VaaS Program:

2.1.   Technology Refresh. All body cameras and associated batteries purchased under the VaaS Program ("**Body Cameras**") are eligible for a one-time replacement at no additional cost to the Customer during the three (3) year period following the date of delivery of the initial Body Cameras and associated batteries provided under the VaaS Program. In order to receive any replacement Body Camera applicable under this **Section 2.1.1 – Technology Refresh**, Customer must return the existing Body Camera to WatchGuard in working condition. The corresponding replacement Body Camera will be the then-current model of the Body Camera at the same tier as the Body Camera that is returned to WatchGuard. For clarity, any other Equipment received by Customer as part of the VaaS Program, other than Body Cameras, will not be eligible for a technology refresh hereunder.

2.2.   No-Fault Warranty. Subject to the disclaimers set forth in the MCA and EPSLA, upon delivery of any Equipment purchased as part of the VaaS Program, WatchGuard will provide a No-fault Warranty to Customer for such Equipment that extends until the end of the Commitment Term (as defined below) applicable to such Equipment; except that the No-fault Warranty will not apply to (i) any Equipment with intentionally altered or removed serial numbers. (ii) any other damages disclaimed under the MCA or EPSLA, or (iii) any Equipment that WatchGuard determines was changed, modified, or repaired by Customer or any third party. The "**No-fault Warranty**" means that WatchGuard will repair or replace any Equipment components or parts that render the applicable Equipment unable to perform its intended purpose. With respect to any batteries in Body Cameras, a battery will be considered faulty and covered under this No-fault Warranty if it falls below sixty percent (60%) of rated capacity.

2.3.   Commitment Term. Customer accepts that following the delivery of any Equipment under the VaaS Program, Customer commits to a five (5) year subscription term for such Equipment at the rate provided in the Ordering Document (the "**Initial Commitment Term**"). If Customer, for any reason, terminates any of its obligations to WatchGuard prior to expiration of the applicable Commitment Term (as defined below), Customer will be subject to the payments described in **Section 6.3. – Termination** hereunder.

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2.4. <u>Additional Devices</u>. Any additional Equipment, including any accessory items, ordered by Customer after Customers' initial purchase of Equipment hereunder may be subject to an incremental increase in Fees. In the event Customer orders additional Equipment under the VaaS Program within the ninety (90) days immediately following its initial purchase, such Equipment will be included in and subject to the Initial Commitment Term. Any additional Equipment purchased under the VaaS Program subsequent to such ninety- (90) day period, will commence an additional subscription term commitment for such Equipment of five (5) years (a "**Subsequent Commitment Term**") with respect to the monthly Fee associated with such additional Equipment. For purposes of this Addendum, the Initial Commitment Term and each Subsequent Commitment Term are each also referred to herein as a "**Commitment Term**".

3. **Subscription Software**.

3.1. <u>EvidenceLibrary.com</u>. Subject to **Section 4.1 – VaaS Term**, the VaaS Program provides Customer with a subscription to EvidenceLibrary.com Evidence Management System ("**ELC**") during the VSA Term (as defined below), the use of which is subject to the SSA. Customer's subscription will include unlimited users, Unlimited Storage (as defined below) and unlimited sharing, provided any media or data uploaded to ELC is done so using WatchGuard Equipment actively enrolled in the VaaS Program. Following expiration of the applicable Commitment Term, if Customer desires to continue use of expired Equipment with ELC, Customer must purchase additional access to ELC based on WatchGuard's prevailing rates, or WatchGuard may disconnect connectivity of any expired Equipment to ELC.

3.2. <u>Unlimited Storage</u>. The storage available to Customer in ELC under the VaaS Program ("**Unlimited Storage**") is as follows: (a) a one- (1) year storage period for non-evidentiary recordings; and (b) a ten- (10) year storage period for evidentiary recordings; provided, however, that storage is only available for video recordings that are recorded in an event-based setting where users are not recording an entire shift under one video footage. For the purpose of this section, "evidentiary recordings" refers to data having relevance to a legal trial or regulatory hearing.

3.3. <u>CommandCentral</u>. For each Body Camera, in-car system or integrated system purchased, Customer will receive one user license Motorola's CommandCentral, which provides access to CC Community, CC Capture, CC Vault and CC Records. If the Customer requires additional licenses to CommandCentral they must be purchased for an additional fee.

3.4. <u>Applicable End User Terms</u>. Additional license terms apply to third-party software included in CommandCentral Products. Specifically, Customer agrees that the ESRI terms and conditions available at [ADD LINK] and the Microsoft terms and conditions available at [ADD LINK] apply to Customer's, and its Authorized Users', use of such Products. Customer will comply, and ensure its Authorized Users comply, with all such additional license terms.

3.5. <u>In-Car System</u>. If Customer's VaaS Program order includes an in-car system, Customer will receive a subscription to WatchGuard CarDetector Mobile during the VSA Term, the use of which is subject to the SSA.

3.6. <u>Vigilant Access</u>. Customer may opt for subscription to additional Subscription Software, including use of the Law Enforcement Archival Network ("**LEARN**"), which is subject to the SSA and any additional terms governing the use of LEARN. If Customer purchases a subscription to commercial license plate recognition data, then Customer will execute and agree to the terms of WatchGuard's standard IDP Agreement.

3.7. License Plate Recognition Data. License plate recognition ("**LPR**") data collected by Customer is considered Customer Data (as defined in the MCA) and is therefore subject to the Customer's own retention policy. Customer, at its option, may share its LPR data with other similarly situated Law Enforcement Agencies ("**LEAs**") which contract with Vigilant to access LEARN by selecting this option within LEARN. Other similarly situated LEAs may similarly opt to share their LPR data with Customer using LEARN. Such LPR data generated by other LEAs is considered Third-Party Data (as defined in the MCA), is governed by the retention policy of the respective LEA, and shall be used by Customer only in connection with its use of LEARN. LPR data that has reached its expiration date will be deleted from LEARN. Only individuals who are agents and/or sworn officers of Customer and who are authorized by Customer to access LEARN on behalf of Customer through login credentials provided by Customer ("**User Eligibility Requirements**") may access LEARN. Vigilant in its sole discretion may deny access to LEARN to any individual based on such person's failure to meet the User Eligibility Requirements. Customer will ensure no user logins are provided to agents or officers of other local, state, or Federal LEAs without the express written consent of Vigilant. Customer will be responsible for all individuals' access to, and use of, LEARN through use of Customer login credentials, including ensuring their compliance with this Agreement.

3.8. Support of Downloaded Clients. If Customer purchases any software Product that requires a client installed locally on Customer-Provided Equipment or Equipment in possession of Customer, Customer will be responsible for downloading and installing the current version of such client, as it may be updated from time to time. WatchGuard will use reasonable efforts to continue supporting any version of a client for forty-five (45) days following its release, but WatchGuard may update the current version of its client at any time, including for bug fixes, product improvements, and feature updates, and WatchGuard makes no representations or warranties that any software Product will support prior versions of a client.

3.9. CJIS Security Policy. WatchGuard agrees to support Customer's obligation to comply with the Federal Bureau of Investigation Criminal Justice Information Services ("**CJIS**") Security Policy and will comply with the terms of the CJIS Security Addendum for the term of the Addendum or Ordering Document for the applicable Product. Customer hereby consents to WatchGuard screened personnel serving as the "escort" within the meaning of CJIS Security Policy for unscreened WatchGuard personnel that require access to unencrypted Criminal Justice Information for purposes of Product support and development.

4.   System Completion. All Subscription Software sold at initial purchase under the VaaS Program will be deemed completed upon Customer's (or the applicable Authorized User's) Beneficial Use of ELC (the "**System Completion Date**"). Customer will not unreasonably delay Beneficial Use of ELC, and in any event, the Parties agree that Beneficial Use of ELC will be deemed to have occurred thirty (30) days after functional demonstration. As used in this Section, "**Beneficial Use**" means use by the customer or at least one (1) Authorized User of the material features and functionalities of a Product within a Software System, in material conformance with Product descriptions in the applicable Ordering Document. Any additional Subscription Software purchased under the VaaS Program will be deemed delivered upon Customer's receipt of credentials required for access to the Subscription Software or upon WatchGuard otherwise providing access to the Subscription Software. This Section applies to Products purchased as part of the VaaS Program notwithstanding the delivery provisions of the Addendum applicable to such Products, such as the SSA or EPSLA, and this Section will control over such other delivery provisions to the extent of a conflict.

5.   Payment. Unless otherwise provided in an Ordering Document (and notwithstanding the provisions of the MCA), Customer will prepay a subscription Fee quarterly (each a "**Subscription**

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Quarter"), as set forth in an Ordering Document. If Customer orders any additional Product(s) under the VaaS Program subsequent to the initial purchase by Customer, Fees for such additional Product will be added to the quarterly subscription Fee, and will be payable on the same Fee payment schedule as the initial Product purchased under the VaaS Program; provided, however, that for the first Subscription Quarter during which such additional Product is purchased, the subscription Fee for the applicable additional Product will be pro-rated based on the applicable number of days remaining in the such initial Subscription Quarter.

6. Term and Termination.

6.1. VaaS Term. Customer's participation in the VaaS Program will commence upon the System Completion Date under this VSA, and will continue through the end of the final Commitment Term hereunder. Following the end of any Commitment Term, Customer's access to ELC with respect to the Equipment purchased relative to that Commitment Term will expire, and Customer must download or transfer all Customer Data associated with the applicable Equipment within thirty (30) days following expiration unless Customer purchases extended access to ELC from WatchGuard at the prevailing rates. WatchGuard has no obligation to retain Customer data for expired Equipment beyond thirty (30) days following expiration of the applicable Commitment Term. For example, if Customer purchases 100 devices on January 1 of Year 1 of the VSA Term, and then 100 additional devices on January 1 of Year 3, on December 31 of Year 5 (i.e., the conclusion of the Initial Commitment Term), Customer's access to ELC with respect to the first 100 devices will be discontinued, and Customer must purchase extended storage or transfer all Customer Data associated with the first 100 devices within thirty (30) days of expiration of the Initial Commitment Term. In the foregoing example, ELC access and data storage for the second 100 devices purchase will extend until December 31 of Year 7.

6.2. Term. The term of this VSA (the "**VSA Term**") will commence upon either (a) the Effective Date of the MCA, if this VSA is attached to the MCA as of such Effective Date, or (b) the VSA Date set forth on the signature page below, if this SSA is executed after the MCA Effective Date, and will continue until the expiration or termination of the last Commitment Term, unless this VSA or the Agreement is earlier terminated in accordance with the terms of the Agreement.

6.3. Termination. The termination provisions applicable to the VaaS Program will be those set forth in the MCA, EPSLA and SSA, as applicable. If Customer's participation in the VaaS Program is terminated for any reason prior to the end of the Initial Commitment Term or any Subsequent Commitment Term, Customer will pay the pro-rated remainder of the aggregate Equipment MSRP price, calculated by multiplying the MSRP price of all Equipment purchased under the VaaS Program by the percentage resulting from dividing the number of months remaining in the Commitment Term applicable to such Equipment by sixty (60). In the event Customer purchased Equipment on multiple dates, resulting in separate Commitment Terms for certain Equipment, the preceding calculation will be made relative to the applicable Commitment Term for each Equipment order. For example, if Customer purchased $1,000 worth of Equipment on January 1 of Year 1 of the VSA Term, and then $1,000 worth of Equipment on January 1 of Year 2, and then Customer's VaaS Program terminates on December 31 of Year 3, Customer will be required to repay: $1,000 x (24/60) + $1,000 x (36/60), which is equal to $1,000 in the aggregate.

7. DEMS Additional Terms. Use of and access to ELC will be subject to the additional terms and conditions set forth in the **DEMS Exhibit** attached hereto and incorporated herein.

8. Survival. The following provisions will survive the expiration or termination of this VSA for any reason: **Section 3 – Payment**; **Section 4 – Term and Termination**; **Section 6 – Survival**.

**DEMS EXHIBIT
EVIDENCELIBRARY.COM**

The following DEMS Exhibit (the "**Exhibit**") is an Exhibit to the VSA and sets forth the terms relating to Customer's use of ELC.

If any term in this Exhibit conflicts with a term in the main body of the VSA or any other part of the Agreement, this Exhibit will control with respect to ELC

1.   DATA STORAGE. WatchGuard will determine, in its sole discretion, the location of the stored content for ELC, provided that all content for North American Customers will reside within North America and all content for U.S. government Customers will reside within the United States.

2.   DATA RETRIEVAL. ELC will leverage different types of storage to optimize ELC, as determined in WatchGuard's sole discretion. For multimedia data, such as videos, pictures, audio files, WatchGuard will, in its sole discretion, determine the type of storage medium used to store the content. The type of storage and medium selected by WatchGuard will determine the data retrieval speed. Access to content in archival storage may take up to eight (8) hours to be viewable.

3.   API SUPPORT. WatchGuard will use commercially reasonable efforts to maintain the Application Programming Interface ("**API**") offered as part of ELC during the term of this Addendum. APIs will evolve and mature over time, requiring changes and updates. Previous versions of APIs will be supported for a minimum of six (6) months after a new version of the applicable API is introduced. If support of the API is no longer a commercially reasonable option, WatchGuard will provide reasonable advance notice to Customer. If an API presents a security risk to ELC or any other Product or Services, WatchGuard has the right to discontinue an API without prior warning.

4.   SERVICE LEVEL TARGETS.

MSI will use reasonable efforts to provide monthly availability of the ELC of 99.9%, with the exception of maintenance windows. There are many factors beyond WatchGuard's control that may impact WatchGuard's ability to achieve this goal, including but not limited to a force majeure event.

Additionally, WatchGuard will strive to meet the response time goals set forth in the table below.

RESPONSE TIME GOALS

SEVERITY LEVEL	DEFINITION	RESPONSE TIME
1	**Total System Failure - occurs when the System is not functioning and there is no workaround; such as a Central Server is down or when the workflow of an entire agency is not functioning. This level is meant to represent a major issue that results in an unusable System, Subsystem, Product, or critical features. No work around or immediate solution is available.**	**Telephone conference within 1 Hour of initial voice notification**
2	**Critical Failure - Critical process failure occurs when a crucial element in the System that does not prohibit continuance of basic operations is not functioning and there is usually no suitable work-around. Note that this may not be applicable to intermittent problems. This level is meant to represent a moderate issue that limits a Customer's normal use of the System, Subsystem, Product or major non-critical features.**	**Telephone conference within 3 Business Hours of initial voice notification during normal business hours**
3	**Non-Critical Failure - Non-Critical part or component failure occurs when a System component is not functioning, but the System is still useable for its intended purpose, or there is a reasonable workaround. This level is meant to represent a minor issue that does not preclude use of the System, Subsystem, Product, or critical features.**	**Telephone conference within 6 Business Hours of initial notification during normal business hours**
4	**Inconvenience - An inconvenience occurs when System causes a minor disruption in the way tasks are performed but does not stop workflow. This level is meant to represent very minor issues, such as cosmetic issues, documentation errors, general usage questions, and product or System Update requests.**	**Telephone conference within 2 Standard Business Days of initial notification**

5. MAINTENANCE. Scheduled maintenance of ELC will be performed periodically. WatchGuard will make commercially reasonable efforts to notify Customer a week in advance. Unscheduled and emergency maintenance may be required from time to time. WatchGuard will make commercially reasonable efforts to notify Customer of unscheduled or emergency

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maintenance twenty-four (24) hours in advance.

6.   WI-FI NETWORK REQUIREMENTS.

6.1   If any of the below items apply, additional Fees may apply:

- Customer's internet is through county/city IT, strict firewall policies, not able to install software on PC's;
- Customer requires multiple upload locations through different internet WatchGuards at each site;
- Customer has slow internet (<20MBps or higher for 4k video upload);
- Customer doesn't have Wi-Fi;
- Customer doesn't use Google Chrome or uses Google Chrome but has conflicting Chrome extensions;
- Customer requires multiple upload locations;
- Customer has multicast disabled on their wireless network;
- Customer wants to utilize MAC address filtering.

6.2   The following conditions are not supported:

- Wi-Fi AP's do not support 802.11AC;
- Customer AP does not support DNS-SD, and/or the Apple Bonjour suite.

![City of Wenatchee logo]

CITY COUNCIL AGENDA REPORT

TO: Frank Kuntz, Mayor
              City Council

FROM: Steve Dobron, Project Engineer *SRD*
              Jacob Huylar, Engineering Services Manager *JJH*
              Public Works Department

MEETING DATE: August 26, 2021

I.   SUBJECT
      City Project 2005-P2 – Millerdale Avenue Sidewalk
      Authorization to Award Construction Contract

II.   ACTION REQUESTED
      Staff recommends that the City Council award the construction contract for Millerdale
      Avenue Sidewalk, City Project No. 2005-P2, to Rudnick and Sons LLC and authorize the Mayor
      to sign the contract documents.

III. OVERVIEW
      In 2019, the City was awarded $700,000 in grant funding through the TIB Complete Streets
      Program for pedestrian and traffic safety improvement projects. The Complete Streets work
      plan included funding to fill sidewalk gaps and the existing sidewalk gap on the north side of
      Millerdale Avenue near Vista Place was identified as a potential project location.

      The proposed project will install approximately 420 linear feet of sidewalk to eliminate the
      existing sidewalk gap. All driveway entrances within the project limits will also be
      reconstructed, which requires a large portion of the curb along this segment of Millerdale to
      be replaced.

      The project was advertised via the MRSC Small Works Roster on August 4, 2021. Two bids
      were received on August 18, 2021 with Rudnick and Sons LLC as the lowest responsive
      bidder.

IV.   FISCAL IMPACT
      The engineer's estimate for this project was $119,980.00. Rudnick and Sons' bid was
      $140,086.88. The bid from JM Pacific Construction was $160,645.00.

      As noted above, the project will be funded entirely by the TIB Complete Streets grant.

V.   PROPOSED PROJECT SCHEDULE
      If awarded, the construction contract includes 25 working days. Notice to Proceed would be
      given no later than September 20, 2021.

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VI.   REFERENCES
1.   Bid Tabulation

VII.   ADMINISTRATIVE ROUTING
Rob Jammerman, Public Works Director
Gary Owen, City Engineer
Tammy Stanger, City Clerk

City of Wenatchee
Bid Tabulation
Millerdale Avenue Sidewalk, City Project No. 2005-P2

Item No.	Description	Quantity	Unit	Engineer's Estimate Unit Price	Engineer's Estimate Total	Rudnick and Sons LLC Unit Price	Rudnick and Sons LLC Total	JM Pacific Construction Inc. Unit Price	JM Pacific Construction Inc. Total
1	MOBILIZATION	1	LS	$ 10,000.00	$ 10,000.00	$ 4,000.00	$ 4,000.00	$ 13,000.00	$ 13,000.00
2	PROJECT TEMPORARY TRAFFIC CONTROL	1	LS	$ 5,000.00	$ 5,000.00	$ 4,100.00	$ 4,100.00	$ 13,000.00	$ 13,000.00
3	ROADWAY SURVEYING	1	LS	$ 10,000.00	$ 10,000.00	$ 4,400.00	$ 4,400.00	$ 8,500.00	$ 8,500.00
4	MINOR CHANGE	1	EST	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.00
5	RECORD DRAWINGS (MINIMUM BID $500.00)	1	LS	$ 500.00	$ 500.00	$ 1,000.00	$ 1,000.00	$ 1,250.00	$ 1,250.00
6	SPCC PLAN	1	LS	$ 500.00	$ 500.00	$ 1,100.00	$ 1,100.00	$ 1,000.00	$ 1,000.00
7	UTILITY POTHOLING	1	EA	$ 1,000.00	$ 1,000.00	$ 4,600.00	$ 4,600.00	$ 1,000.00	$ 1,000.00
8	CLEARING AND GRUBBING	236	SF	$ 10.00	$ 2,360.00	$ 32.00	$ 7,552.00	$ 5.00	$ 1,180.00
9	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	1	LS	$ 3,500.00	$ 3,500.00	$ 11,000.00	$ 11,000.00	$ 7,500.00	$ 7,500.00
10	ROADWAY EXCAVATION INCL. HAUL	120	CY	$ 55.00	$ 6,600.00	$ 69.00	$ 8,280.00	$ 85.00	$ 10,200.00
11	SAW CUTTING	388	LF	$ 5.00	$ 1,940.00	$ 4.10	$ 1,590.80	$ 5.00	$ 1,940.00
12	COMMERCIAL HMA	15	TON	$ 300.00	$ 4,500.00	$ 477.00	$ 7,155.00	$ 400.00	$ 6,000.00
13	CRUSHED SURFACING BASE COURSE	80	TON	$ 80.00	$ 6,400.00	$ 151.05	$ 12,084.00	$ 75.00	$ 6,000.00
14	CRUSHED SURFACING TOP COURSE	34	TON	$ 80.00	$ 2,720.00	$ 261.77	$ 8,900.18	$ 75.00	$ 2,550.00
15	CATCH BASIN TYPE 1	1	EA	$ 3,500.00	$ 3,500.00	$ 4,000.00	$ 4,000.00	$ 3,500.00	$ 3,500.00
16	CONNECTION TO EXISTING DRAINAGE PIPE	1	EA	$ 1,000.00	$ 1,000.00	$ 1,900.00	$ 1,900.00	$ 750.00	$ 750.00
17	NON-SKID FRAME AND COVER	2	EA	$ 500.00	$ 1,000.00	$ 342.45	$ 684.90	$ 750.00	$ 1,500.00
18	ADJUST WATER METER CHAMBER	2	EA	$ 1,000.00	$ 2,000.00	$ 350.00	$ 700.00	$ 1,000.00	$ 2,000.00
19	INLET PROTECTION	1	EA	$ 125.00	$ 125.00	$ 90.00	$ 90.00	$ 150.00	$ 150.00
20	LANDSCAPE RESTORATION	1	LS	$ 3,500.00	$ 3,500.00	$ 11,600.00	$ 11,600.00	$ 4,500.00	$ 4,500.00
21	CEMENT CONC. TRAFFIC CURB AND GUTTER	327	LF	$ 80.00	$ 26,160.00	$ 40.00	$ 13,080.00	$ 100.00	$ 32,700.00
22	CEMENT CONC. SIDEWALK	121	SY	$ 75.00	$ 9,075.00	$ 90.00	$ 10,890.00	$ 125.00	$ 15,125.00
23	CEMENT CONC. DRIVEWAY ENTRANCE TYPE 1	120	SY	$ 100.00	$ 12,000.00	$ 109.00	$ 13,080.00	$ 140.00	$ 16,800.00
24	MAILBOX SUPPORT, TYPE 1	4	EA	$ 125.00	$ 500.00	$ 450.00	$ 1,800.00	$ 750.00	$ 3,000.00
25	RELOCATE MAILBOX ON EXISTING SUPPORT	1	EA	$ 100.00	$ 100.00	$ 500.00	$ 500.00	$ 1,000.00	$ 1,000.00
26	PERMANENT SIGNING	1	LS	$ 1,000.00	$ 1,000.00	$ 1,000.00	$ 1,000.00	$ 1,500.00	$ 1,500.00
				Total	**$119,980.00**		**$140,086.88**		**$160,645.00**