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Cleveland, OH 44145
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QUOTE

DATE 03/22/2021
QUOTE # 210322-54
SALES REP Karen Larson

Quote Presented To:
Norton City School District
Attn: Angie Wagler
4128 Cleveland-Massillon Rd
Norton, OH 44203

Project Summary:
Security Server Replacement

#	ITEM DESCRIPTION	QTY	RATE	AMOUNT
1	VCS-12R12-8T Video Capture System: VCS Surveillance and Video Management Software, Unlimited User License for up to 65 cameras, OpenSUSE Linux operating system, Dell PowerEdge Rackmount Server, 96TB Storage (12x8TB), 12 video disk drive max capacity, 2 o/s disks, quad-processors, 32GB memory, 4xGbE NIC ports, RAID5 capable, Redundant Power Supplies, includes Dell 3-year onsite hardware warranty (5x8 Next Business Day response) subject to the terms and conditions set forth in Acuity-vcts Software License Agreement.	1	18,156.00	18,156.00
2	SSMA-MG VCS Annual Software Maintenance Agreement - Includes software updates and documentation releases, includes hot-line telephone support, hardware/software troubleshooting, and remote diagnostics, subject to Acuity-vct's Software Maintenance Agreement. Includes discounted on-site engineering services. Replacement Server for Old Server Serial # 1042709 Effective	0	0.00	0.00
3	INST-AS On-site VCS server installation - includes installation of VCS server, transfer existing camera, user, camera layouts, network and other key data from existing Video Capture System to new server hardware. Includes setup & configuration and testing of new server	1	800.00	800.00
4	S/H/T Shipping, Handling & Travel	1	125.00	125.00

Payment Terms: Standard Terms

Note: Credit card payments incur a 4% surcharge

To submit an order, please email orders@acuity-vct.com

SUBTOTAL

TAX

TOTAL

\$19,081.00

Accepted By (Signature)

Date

Subject to the current Standard Limited Warranty and Conditions

Acuity-vct Standard Limited Warranty and Conditions

The following are additional terms and conditions that govern orders placed by Customer named on Order (Customer) with Acuity-vct, LLC (Company)

Order means purchase order, which details the transaction including prices or estimates on hardware, software, and services. A quote qualifies as the purchase order if Customer approved the quote, either expressly or inherently, by placing an order from the Quote.

Installation Date means the date of receipt of good and services by Customer, or the date on or after a system is installed at the Server Site, and Company provides Customer with a password to access the Program, if applicable.

Hardware Limited Warranty. Company warrants to Customer, and to no other party, that any equipment, camera, hardware, and physical media (collectively "hardware") supplied by Company in connection with the System, as and when delivered to Customer, will be free of physical defects in materials and workmanship for a period of ninety (90) days after the date that said hardware is delivered. Company will replace any defective hardware returned to Company within the warranty period. This warranty does not apply to damages resulting from misuse, abuse, neglect, and/or force majeure. Any replacement hardware will be warranted as above for the remainder of the original warranty period or twenty (20) days from the date that it is shipped to Customer, whichever is longer. This warranty is separate from the Manufacturers' warranties which may cover the hardware beyond this period.

Installation Limited Warranty. Company warrants the installation of any equipment, camera, hardware, and physical media (collectively, "hardware") supplied by Company in connection with the system for a period of ninety (90) days from the date the installation is performed by Company at Customer's premises. During the warranty period, Company warrants that, when installed by Company, the hardware is calibrated and operational at the first installation. During the warranty period, for any hardware not supplied by Company in connection with the system but installed by Company, Company warrants that, to Company's knowledge, the hardware is calibrated and operational at the first installation. Company warrants that it will, for one time only, focus and calibrate cameras supplied by Company during the first installation of hardware. Licensee agrees to compensate Company for any reinstallation or recalibration of hardware performed by Company at Customer's request. At Customer's request, and with the consent of Company, Company may provide technical, operational or other assistance to the hardware beyond the initial installation at Company's standard hourly rates, or discounted rates under a Software Maintenance Agreement, then in effect.

Other Conditions

1. Company quote was developed with information provided by the customer at the time of the quote and assumes that our Company's installation personnel can work productively during the agreed upon hours. If our personnel have excessive wait times or is not able to work onsite may result in billing of time lost. Please ensure that:
 - a. Our Team Members have access to areas required to complete the installation in a timely fashion. This includes buildings, rooms, network closets, racks, cabinets and all other areas necessary.
 - b. Customer-supplied lift/ladder/tools/other installation equipment has been agreed upon to be provided by the customer are available when needed, and power is available when and where needed.
 - c. A representative is available to approve camera views as they are aimed and focused.
2. The Company estimate was developed assuming the then-current visible conditions. Pre-existing, non-visible conditions or issues on-site may be uncovered during the course of the installation. If these conditions are discovered and they contribute to a delay, extended installation time, or additional materials, these items may result in additional time/materials being billed to customer.
3. Customer may request work to be completed that is outside the scope of the original order. In this case, the installation team will write up a Change Order Request Form with an estimated cost and have the customer approve it before the installation team completes the additional work. If possible, the new work may be completed during the same visit. In some cases, the additional work will need to be scheduled for a future visit.
4. Unless our Company is managing the network, the Customer is responsible for configuring the network and providing the installation team with open network switch ports if needed. Our Company is responsible for confirming at the patch panel/cables end that the cameras/devices are fully functional. Once the cables are plugged into the network, it is the customers responsibility to confirm the correct configuration of the network to allow the cameras/devices to be seen by the server. The Company's Customer Support department will offer assistance, but the ultimate responsibility of the network configuration and troubleshooting is with the customer.
5. Most items ordered by Customer are not returnable to the supplier once the original box is opened. If there is a change in equipment after the items are ordered, Company will make every effort to return the item on the Customers behalf. If Company is unable to return the item, in limited cases Company may be able to take items into its used inventory for a 20% restocking fee.
6. Camera installations will make use of existing network cable. Installation of cable, if provided, will be quoted as a separate item.
7. The de-installation of customer cameras involves the removal of the camera from wall/ceiling. This does not include wall, ceiling, or drywall repair of pre-existing damage caused by the original installation of the camera i.e. hole left in ceiling when a recessed camera is de-installed.
8. Pole mountings will use metal straps. If straps are not used, details of how to mount the camera needs to be provided to us.
9. Cable installation will make use of existing cable trays, hooks, or rings. Quoted installation does not include cable or new cable trays. Cable material, if supplied, will be quoted as a separate item.
10. Our quote was developed with the expectation that the cable installed is properly terminated and labeled. In the case where our Company is not installing the cable, please request the **Preinstalled Cable Standards Document** to get those cabling standards. It is recommended that you supply this document to your cable installer. There may be a charge for time and material if we need to complete cabling work that was not specified in our original quote.

Acuity Computer Software License Agreement

This Computer Software Licensing Agreement (“Agreement”) is between ACUITY-VCT, LLC (“Licensor”) and Licensee. This Agreement sets forth the terms and conditions that govern Orders placed under this Agreement;

WHEREAS, LICENSOR has developed a software program (the “Program”) and related services to be used by Licensee for the purpose of video surveillance and/or object protection;

WHEREAS, LICENSOR is the owner of the Program and of all portions thereof, and has the right to grant a license to Licensee for use of the Program;

WHEREAS, LICENSOR makes the Program available as a server-level software program to Licensee at the Server Site, by licensing such use;

WHEREAS, LICENSOR makes its Program available to Licensee as a server-level software program bundled with other software applications owned by third parties (“Third Party Programs”). These Third Party Programs include, but are not limited to, the software applications set forth in the Definitions; and

WHEREAS, Licensee is desirous of using the Program and services and the Third Party Programs available at the Server Site;

IT IS THEREFORE AGREED AS FOLLOWS:

1. Definitions.

- 1.1 “Agreement” means this software license agreement, the operative provisions, the Order(s), and any annexures that relate to it.
- 1.2 “Backup Agreement” means the backup and server health services agreement covering the terms of backup services provided by LICENSOR in connection with the License of the Program.
- 1.3 “Configuration and Performance Data” means information relating to the Video System configuration and its performance metrics.
- 1.4 “Improvements” shall mean any improvement, refinement, enhancement or other modification including all Updates and Upgrades to the Program developed and offered to LICENSOR’s customers, and further including all documentation corresponding thereto. “Updates” improve the existing functionality of the module—or the specific tier or version of the module where multiple tiers or versions exist—that is covered in the Order, and generally comprise minor changes (e.g., software patches) to the Program. “Upgrades” provide functionality that is new or different from the existing functionality of the module—or the specific tier or version of the module where multiple tiers or versions exist—that is covered in the Order.
- 1.5 “Installation Date” means a date on or after the Program is installed at the Server Site, and Acuity provides Licensee with a password to access the Program.
- 1.6 “Intellectual Property” means all rights in the nature of intellectual or industrial property rights including:
 - (a) rights in relation to patents, inventions, utility models, copyright, circuit layouts, designs, trade and service marks (including goodwill in those marks), trade names and domain names, indications of source or origin, know how, trade secrets and any right to have information kept confidential.
 - (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
 - (c) rights or forms of protection of a similar nature or having equivalent or similar effect to any of the rights in paragraphs (a) or (b), which may subsist anywhere in the world (including the United States), whether or not such rights are registered or are capable of registration.
- 1.7 “Know-how” means all knowledge and intangible work, copyright materials, algorithms, data, records and research results relating to the Program.
- 1.8 “License” means the Program, Know-how and Documentation.
- 1.9 “Licensee” is the recipient of the Program and includes its affiliates, directors, officers, agents, employees and all persons acting in concert or participation with them. The recipient of the program can be the customer named in the Order(s) and/or who places(ed) the Order(s).
- 1.10 “Order” means purchase order, which details the transaction including prices or estimates on hardware, software, and services related to the Video System. A quote qualifies as the purchase order if Licensee approved the quote, either expressly or inherently, by placing an order from the Quote.
- 1.11 “Program” means the computer software program developed by LICENSOR and which utilizes the Intellectual Property of LICENSOR, including any and all products, services (including any hosted service and software maintenance), methods, processes, and components that use or incorporate, or was developed using, the Program, Know-how or derivative works thereto in whole or in part.
- 1.12 “Server Site” means a server computer or other computing device at Licensee’s premises on which the Program resides or a cloud server available to Licensee via the Internet.
- 1.13 “Service & Software Maintenance Agreement” means the Service & Software Maintenance Agreement covering the terms of support and software maintenance services provided by LICENSOR in connection with the License of the Program.

1.14 “Third Party Programs” means open source programs and may include:

<u>Product</u>	<u>License</u>
SUSE Enterprise Linux	https://www.suse.com/licensing/eula/download/sles/sles_12_SP3en.pdf
OpenSUSE Linux	https://www.gnu.org/licenses/gpl-3.0.en.html
Apache commons codec	http://www.apache.org/licenses/
Apache commons net	https://www.apache.org/licenses/
Forms	https://opensource.org/licenses/BSD-3-Clause
Javax JSon	https://www.gnu.org/licenses/lgpl-3.0.en.html
Javax Mail	https://www.gnu.org/licenses/lgpl-3.0.en.html
Java Media Framework	https://www.oracle.com/technetwork/java/javase/license-135825.html
JLayer	https://www.gnu.org/licenses/lgpl-3.0.en.html
JExcel	https://www.gnu.org/licenses/gpl-3.0.en.html
Mysql Connector	https://www.gnu.org/licenses/lgpl-3.0.en.html
SNMP4J	http://www.apache.org/licenses/
SQL Lite	Public domain

- 1.15 “Video System” means the entire system including hardware and software components detailed in the Order.
2. Grant of License. LICENSOR hereby grants to Licensee a License to use the Program provided at the Server Site subject to all the terms and conditions of this Agreement. The License shall be revoked if Licensee does not comply with these terms and conditions.
- 2.1 License. LICENSOR grants Licensee, and Licensee hereby accepts, a perpetual, non-exclusive and non-transferable (except as expressly provided herein) License to use the module—and the specific tier or version of the module where multiple tiers or versions exist—of the Program that is covered in the Order.
- 2.2 Limited Scope of Use. The Program shall initially be used in connection with equipment and at location(s) identified in the Order. The Program shall only reside at the Server Site. The Program may be transferred to another server site upon (1) the approval and consent of LICENSOR and (2) payment of a license transfer fee to LICENSOR.
- 2.3 Assignability. Licensee may not sell, assign, give, or otherwise transfer this License or the Program or its obligations under this Agreement to any third party, in whole or in part, without LICENSOR’s prior written consent. Notwithstanding anything in this Agreement to the contrary, this Agreement shall endure to the benefit of and be binding upon each of the parties and their respective successor(s).
- 2.4 Acceptable Use. Licensee may not decompile, disassemble, or otherwise reverse engineer, nor have the same performed on Licensee’s behalf, the Program or defeat protection methods used for preventing unauthorized use of or access to the Program. Licensee may not copy or otherwise reproduce the Program or any part of it except as expressly permitted in this Agreement, and Licensee shall not remove any copyright notices or other proprietary notices from the Program. Nothing in this Agreement shall be construed to grant Licensee any ownership rights in the Program. Licensee may capture, copy, transfer or display any Configuration and Performance Data as needed.
- 2.5 Password. LICENSOR will provide Licensee with necessary keys and passwords and permit access to the Program and to the Third Party Programs available at the Server Site.
- 2.6 All rights not specifically granted to Licensee hereunder are reserved to LICENSOR.
3. Fees and Payments. As consideration for the License hereby granted to Licensee, Licensee shall pay to LICENSOR a nonrefundable, one-time up-front License fee set forth in the Order.
- 3.1 Payment for Services. Charges for related services provided under this Agreement will normally be invoiced at the occurrence of a milestone event. Licensee shall pay to LICENSOR milestone payments according to the events and fees set forth in the Order. Each milestone payment shall be nonrefundable.
- 3.2 Payment for Improvements. Licensee agrees to compensate LICENSOR for any Improvements made to the Program after the Installation Date of the Program at the Server Site. Under a separate Service & Software Maintenance Agreement, Licensee shall have the right to such Improvements (limited, however, by the specific terms hereto) in the form of modifications or Updates without payment of any additional fee and in the form of enhancements or Upgrades with payment of an additional fee. Additional functionality can also be provided by the purchase of a different module added onto Licensee’s existing module. For each enhancement, Licensee shall pay LICENSOR according to terms and conditions set forth in a new Order, the terms and conditions of which shall be incorporated hereunder.
4. Maintenance. LICENSOR offers an annual Service & Software Maintenance Agreement to provide maintenance, support, modifications, Updates and options to enhancements in connection with the Program. Licensee has the option to the Service & Software Maintenance Agreement attached to the Order. If exercised, Licensee may continue to renew the Service & Software Maintenance Agreement and the rights granted thereunder for additional terms of one (1) year during the duration of this Agreement, upon the approval and consent of LICENSOR.
5. System Data. After the Installation Date, when a remote connection is enabled, LICENSOR shall receive Configuration and Performance Data transmitted from the Server Site. LICENSOR may maintain and store the Configuration and Performance Data necessary to support Licensee should a technical issue arise with the Video System. Licensee has the option to a Backup Agreement attached to the Order. The Backup Agreement will require an annual fee for providing Licensee with access to backup data in addition to other system and server health checks. Licensee may continue to renew the Backup Agreement and the rights granted thereunder for additional terms of one (1) year during the duration of this Agreement, upon the approval and consent of LICENSOR.

6. Ownership and Confidentiality. The Program, or any Improvements upon the Intellectual Property made, conceived, invented or wholly acquired by LICENSOR during the term of this Agreement, is proprietary to LICENSOR and all applicable rights to Intellectual Property remain in LICENSOR. Violation of this provision shall be the basis for immediate termination of the Agreement. Termination of this Agreement shall be in addition to and not in lieu of any equitable remedies available to LICENSOR.
7. Program Modifications. LICENSOR reserves the right to make changes or permit changes to be made to the Program and in the manner of providing the Program. Whenever possible, LICENSOR will notify Licensee in writing or via electronic means of its intent to make changes at least thirty (30) days prior to implementation of the change. LICENSOR may, from time to time, enhance the performance of the Program specified in the Order, but in so doing incurs no obligations to furnish such enhancements to Licensee. Licensee agrees that LICENSOR is the owner of modifications that are to be used together with the original Program.
8. Right to Enhance. Licensee is granted a right to make certain limited enhancements, only with LICENSOR's informed consent, to the Program as necessary to adapt the Program to Licensee's hardware configurations or site.
9. Non-Disclosure. Licensee acknowledges that the Program and information provided and to be provided to Licensee by LICENSOR in the course of performance of LICENSOR's obligations under this Agreement, and the terms of this Agreement, constitute and contain confidential and proprietary information of LICENSOR. Licensee hereby agrees that the Program and its derivatives will be received and held by Licensee in strict confidence, will only be used for the purposes of this Agreement, and that none of the Program will be disclosed to any third-party by Licensee, or by Licensee's agents or employees, without prior written consent of LICENSOR, except as otherwise allowed by the Agreement.
10. Proprietary and Confidential Nature of Configuration and Performance Data. All Configuration and Performance Data pertaining to Licensee by or stored in the Program shall be and remain the property of Licensee. LICENSOR will exercise reasonable care for the protection of such data and shall maintain reasonable data integrity and safeguards against the deletion or alteration of such data.
11. Hardware Requirements. Unless otherwise contained in the Order, Licensee shall obtain, make available and maintain, at Licensee's sole expense, the necessary equipment and hardware configurations, approved by LICENSOR as adequate, for implementation of the Program with the Video System. This equipment may include a server(s), cameras, analog encoders, workstations and/or other hardware needed to make the Video System operational.
12. Licensed Location. Use of the Program at any location other than the Server Site may be the basis for immediate termination of this Agreement. Termination of the Agreement shall be in addition to and not in lieu of any equitable remedies available to LICENSOR.
13. Warranties.
 - 13.1 Ownership Warranty. LICENSOR warrants its ownership and right to license the Program, and agrees to indemnify and defend the Program, its successors and assigns, from and against any claim at law or in equity arising out of or in any way related to a claim that Licensee's use of any unaltered version of the Program infringes any valid patent, property right, or other rights of any third party.
 - 13.2 Software Limited Warranty. For a warranty period of ninety (90) days from the Installation Date of the Program at the Server Site, LICENSOR warrants that the Program conforms substantially to its specifications. LICENSOR further warrants that, when installed, and to the knowledge of LICENSOR, the Program will be free of programming code errors and any defects which substantially affect performance of the Video System. Licensee shall provide written notice to LICENSOR detailing any claimed deficiency. If the Program is found to be defective during the warranty period, LICENSOR shall promptly make, at its cost and expense, all corrections, adjustments, repairs, and modifications necessary to remedy the defect. The warranty on the Program does not cover support or maintenance services set forth in a separate Service & Software Maintenance Agreement or the backup services set forth in a separate Backup and Server Health Services Agreement. In no event shall LICENSOR be liable to Licensee or to any other party for any punitive, special or consequential damages. These remedies shall be in lieu of all other remedies to which Licensee might be entitled in law or equity.
 - 13.3 Third Party Programs. LICENSOR warrants that it has sufficient licenses to permit Licensee's use of all Third Party Programs and software tools included with the Program, but makes no warranty related to the Third Party Programs.
 - 13.4 General Disclaimer. LICENSOR disclaims all warranty obligations if modifications are made, without LICENSOR's informed consent, to the Program by Licensee during the warranty period or a maintenance period covered under a Service & Software Maintenance Agreement. Licensee will also compensate LICENSOR for time and materials incurred by LICENSOR when correcting defects to the Program or Video System which are solely attributable to Licensee.
14. DISCLAIMER AND LIABILITY. OTHER THAN AS SPECIFICALLY DESCRIBED ABOVE, LICENSEE HEREBY WAIVES ALL RIGHTS OF REFUSAL. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM FAILURE OF THE PROGRAM. EXCEPT AS PROVIDED IN SECTION 13 OF THIS AGREEMENT, LICENSOR GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO DESCRIPTION, QUALITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, PRODUCTIVENESS, OR ANY OTHER MATTER OF THE PROGRAM. THE ENTIRE RISK AS TO QUALITY AND PERFORMANCE OF THE PROGRAM IS WITH LICENSEE. EXCEPT AS PROVIDED HEREIN, SHOULD THE PROGRAM PROVE DEFECTIVE, LICENSEE ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION, AND OF ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING THEREFROM.

15. Training and Support. Licensee shall limit the use of the Program, the Video System and the Third Party Programs to Licensee's employees who have been appropriately trained. Terms of training and support provided by LICENSOR may be set forth in the Order.
16. Infringement. Of which Licensee becomes aware, each party must give the other notice and all known details of (a) any claim or allegation that the exercise of the rights under this Agreement constitute an infringement of the rights of any third party; and (b) any third party's actual, suspected or threatened infringement or other unauthorized use of the licensed materials in the United States.
17. Force Majeure. Neither LICENSOR nor Licensee shall be responsible to the other for failure to perform any of the obligations (other than the obligation to pay money) imposed by this Agreement, provided such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure or destruction, in whole or in part, of equipment or failure of supply of materials, discontinuity in the supply of power, governmental interference, civil commotion, riot, war, strikes, labor disturbance or labor shortage or by any cause beyond the reasonable control of the party in question.
18. SOFTWARE DISABLING DEVICE. LICENSEE ACKNOWLEDGES THAT THE PROGRAM MAY CONTAIN A DISABLING DEVICE THAT WILL AUTOMATICALLY DISABLE THE PROGRAM AT TERMINATION OF THIS AGREEMENT OR TEMPORARILY DISABLE THE PROGRAM FOR A PERIOD WHEN LICENSEE DEFAULTS ON ANY OBLIGATION UNDER THIS AGREEMENT. LICENSOR WILL GIVE WRITTEN NOTICE TO LICENSEE IN ADVANCE OF DISABLING THE PROGRAM UPON DEFAULT AND WILL NOT DISABLE THE PROGRAM WITHOUT GIVING LICENSEE THIRTY (30) DAYS TO REMEDY THE DEFAULT, AT THE EXPIRATION OF WHICH TIME LICENSOR MAY DISABLE THE PROGRAM IF SUCH DEFAULT IS NOT REMEDIED.
19. Term of License and Termination.
- 19.1 Term. This Agreement shall commence and be effective upon the first payment to LICENSOR for the Order, and shall remain in effect until terminated by either party upon at least a sixty (60) days prior written notice to the other party. Any and all payments made to LICENSOR during the term of this Agreement are nonrefundable.
- 19.2 Bankruptcy / Insolvency / Change of Ownership. If Licensee shall become bankrupt or insolvent, this Agreement terminates immediately and cannot be assumed by a receiver, assignee or trustee. In the event of a merger or consolidation to which Licensee is a party, whether by Licensee's voluntary act or otherwise, this Agreement shall immediately terminate without notice by LICENSOR.
- 19.3 Option at Default. Either party, at its option, may give notice of the termination of this Agreement if the other party defaults in the performance of any material obligation, and if the default has not been remedied within forty-five (45) days after written notice to the defaulting party describing the default.
- 19.4 Termination. In the event of any termination of this Agreement, Licensee shall have no further rights or License to use the Program. Upon the termination of this Agreement, Licensee must, at Licensee's own expense, promptly destroy or return to LICENSOR any documents which embody LICENSOR's confidential information. Licensee may retain: one copy of the foregoing documents in a secure location for record-keeping and verification purposes, including in relation to each party's compliance pursuant to this Agreement; and copies of the foregoing documents to the extent required by any applicable law. Licensee shall not be required to delete or destroy any electronic back-up tapes or other electronic back-up files that have been created solely by their automatic or routine archiving and back-up procedures.
20. No Partnership. No provisions of this Agreement shall be deemed to make the parties either partners or joint ventures.
21. Disputes.
- 21.1 Notice. If a party claims that there is a dispute, that party must give written notice of the details of the dispute to the other party before commencing any court proceeding or arbitration relating to the dispute.
- 21.2 Governing Law. This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Ohio. Any and all proceedings relating to the subject matter hereof shall be maintained in the courts of the State of Ohio or the United States District Court sitting in the Northern District of Ohio, by which Licensee submits to the jurisdiction thereof for such purpose.
- 21.3 Costs. The parties involved in the dispute will bear their own costs, except that they will share equally the costs relating to any mediator appointed under this clause relating to the dispute.
22. Taxes. Licensee shall, in addition to the other amounts payable under this Agreement, pay all sales and other taxes, national, state, or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement.
23. Entire Agreement. Licensee agrees that this Agreement and the information which is incorporated into this Agreement, together with the applicable Order(s), contains the entire understanding of the parties and supersedes any and all prior agreements, representations, written or oral, or understandings relating to the subject matter hereof.
- 23.1 Amendment. This Agreement may only be amended by written notice and written consent of both parties.
- 23.2 Severance. If any provision of this Agreement is judged invalid, illegal or unenforceable for any reason whatsoever, it is, to that extent, deemed omitted and the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- 23.3 Survival. Clauses 2.4 (Acceptable Use), 3 (Fees), 9 (Non-Disclosure), 13.1 (Ownership Warranty), 16 (Infringement) and 19.4 (effect of Termination) survive the expiration or termination of this Agreement along with any other provision which its nature survives termination or expiration of this Agreement.
- 23.4 Waiver. The waiver or failure of any party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

Acuity Service & Software Maintenance Agreement

This Service & Software Maintenance Agreement (“Maintenance Agreement”) covers the terms of software maintenance services provided by ACUITY-VCT, LLC’s (“LICENSOR”) in connection with Licensee’s use of the software program (the “Program”). Licensee accepts the terms of this Maintenance Agreement upon payment of a maintenance fee to LICENSOR;

WHEREAS, LICENSOR has licensed to Licensee a certain Program and Licensee wishes to have LICENSOR perform software maintenance services on the licensed Program pursuant to the following terms and conditions:

IT IS THEREFORE AGREED AS FOLLOWS:

1. Definitions.

- 1.1 “Improvements” shall mean any improvement, refinement, enhancement or other modification including all Updates and Upgrades to the Program developed and offered to LICENSOR’s customers, and further including all documentation corresponding thereto. “Updates” improve the existing functionality of the module—or the specific tier or version of the module where multiple tiers or versions exist—that is covered in the Order, and generally comprise minor changes (e.g., software patches) to the Program. “Upgrades” provide functionality that is new or different from the existing functionality of the module—or the specific tier or version of the module where multiple tiers or versions exist—that is covered in the Order.
 - 1.2 “Intellectual Property” means all rights in the nature of intellectual or industrial property rights including:
 - (a) rights in relation to patents, inventions, utility models, copyright, circuit layouts, designs, trade and service marks (including goodwill in those marks), trade names and domain names, indications of source or origin, know how, trade secrets and any right to have information kept confidential.
 - (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
 - (c) rights or forms of protection of a similar nature or having equivalent or similar effect to any of the rights in paragraphs (a) or (b), which may subsist anywhere in the world (including the United States), whether or not such rights are registered or are capable of registration.
 - 1.3 “Know-how” means all knowledge and intangible work, copyright materials, algorithms, data, records and research results relating to the Program.
 - 1.4 “License” means the Program, Know-how and Documentation.
 - 1.5 “Licensee” is the recipient of the Program and includes its affiliates, directors, officers, agents, employees and all persons acting in concert or participation with them. The recipient of the Program can be the customer named in the Order(s) and/or who places(ed) the Order(s).
 - 1.6 “License Agreement” means the Computer Software Licensing Agreement between LICENSOR and Licensee, which governs the Order(s).
 - 1.7 “Maintenance Agreement” means this software maintenance agreement, the operative provisions, any Order(s), and any annexures that relate to it.
 - 1.8 “Order” means purchase order, which details the transaction including prices or estimates on hardware, software, and services related to Licensee’s Video System. A quote qualifies as the purchase order if Licensee approved the quote, either expressly or inherently, by placing an order from the Quote.
 - 1.9 “Server Site” means a server computer or other computing device at Licensee’s premises on which the Program resides or a cloud server available to Licensee via the Internet.
 - 1.10 “Program” means the computer software program developed by LICENSOR and which utilizes the Intellectual Property of LICENSOR, including any and all products, services (including any hosted service and software maintenance), methods, processes, and components that use or incorporate, or was developed using, the Program, Know-how or derivative works thereto in whole or in part.
 - 1.11 “Video System” means the entire system including hardware and software components detailed in the Order.
2. The Covered Program. The software covered in this Maintenance Agreement is LICENSOR’s Program, as more fully described in the License Agreement and Order, and as updated with Improvements or modifications to the Program which are not charged for as options.
 3. Improvements. Licensee shall have the right to such Improvements (limited, however, by the specific terms hereto) in the form of modifications or Updates without payment of any additional fee and in the form of enhancements or Upgrades with payment of an additional fee. Additional functionality can also be provided by the purchase of a different module added onto Licensee’s existing module.
 4. Correction or Replacement. During the term of this Maintenance Agreement, LICENSOR shall correct or replace the Program or provide services necessary to remedy any programming error which is attributed to LICENSOR and which significantly affects use of the Video System. Such correction, replacement or services shall be promptly accomplished after Licensee has provided notice to LICENSOR detailing any claimed deficiency.
 5. LICENSOR Support:
 - 5.1 Telephone and Email Support. LICENSOR will provide standard telephone and email support Monday-Friday, from 8:00 a.m. to 5:00 p.m. EST. LICENSOR may provide support through an IT service management ticketing system.
 - 5.2 Verification. LICENSOR shall be given an opportunity to reproduce or confirm the existence of the defect or programming error, to verify that the defect or error is with LICENSOR’s Program, and to correct the defect or error.
 - 5.3 Defect Correction. LICENSOR shall correct any defect or error in the Program as part of its regular maintenance services referred to in paragraph 4 when the defect is attributable to LICENSOR’s Program. LICENSOR shall notify Licensee when it determines that an enhancement or Upgrade should be undertaken but will not perform the Upgrade

- absent Licensee's express approval. Licensee shall reimburse LICENSOR at LICENSOR's hourly rates then in effect, subject to prior approval by Licensee, for all work of LICENSOR spent correcting or remedying a defect or programming error that LICENSOR reasonably determines to have not been attributable to LICENSOR.
6. Customer Support. Licensee shall (1) install and maintain, at Licensee's own expense, for the duration of this Maintenance Agreement, the equipment and hardware and software configurations necessary for LICENSOR to remotely access the Program; or (2) provide LICENSOR with a knowledgeable on-site interface; or (3) provide LICENSOR with on-site access to the Server Site. Licensee agrees to compensate LICENSOR, at LICENSOR's discounted hourly rates, for time incurred by LICENSOR when providing on-site maintenance service to the Program or Video System subject to prior approval by Licensee. LICENSOR may remotely access the Video System to ensure that the Program is operable and functional and to determine configuration information of the Video System.
 7. Customer Responsibility. Licensee shall inform LICENSOR in writing of any modifications made by Licensee to the Program. LICENSOR shall not be responsible for maintaining portions of the Program that were modified by Licensee, or portions of the Program that are affected by the modifications made by Licensee, when said modifications were made without the informed consent of LICENSOR.
 8. Price and Payment. Licensee shall pay LICENSOR the annual maintenance fee designated for the Program in the Order and upon the terms and conditions provided herein. Any renewal maintenance fee shall be payable in advance of expiration of the previous maintenance period.
 9. Term. The term of this Maintenance Agreement shall commence upon payment of the maintenance fee, or expiration of a previous maintenance period, whichever is latest, and shall continue for one year, after which it may be renewed for an additional term by payment of the annual maintenance fee.
 10. Maintenance Fee Changes. The maintenance fee is fixed for each one-year term of the Maintenance Agreement. Fees may be raised on an annual basis to cover the normal cost of doing business. LICENSOR is not required to provide notice of any increase at or below 2.5%.
 11. Travel Expenses. Licensee shall reimburse LICENSOR for any preapproved out-of-pocket expenses incurred at Licensee's request, including travel to and from the Server Site, lodging, meals, telephone and shipping, as may be necessary in connection with the duties performed by LICENSOR under this Maintenance Agreement.
 12. Additional Services. At Licensee's request, and with the consent of LICENSOR, LICENSOR may also provide technical, operational or other assistance or consulting services to Licensee beyond the maintenance services defined herein at LICENSOR's hourly rates then in effect. LICENSOR may discount its standard hourly rate, if specified in the Order, when providing additional services to Licensee under the Maintenance Agreement.
 13. Adjustments to Terms and Conditions. At the time for renewal, LICENSOR may change its software maintenance fees, terms and conditions for the next maintenance period upon at least thirty (30) days written notice. Licensee consents to the change by payment of the annual maintenance fee for an additional term.
 14. Ownership and Confidentiality. The Program, or any Improvements upon the Intellectual Property made, conceived, invented or wholly acquired by LICENSOR during the term of this Maintenance Agreement, are proprietary to LICENSOR and all applicable rights to Intellectual Property remain in LICENSOR. Violation of this provision shall be the basis for immediate termination of the Maintenance Agreement. Termination of this Maintenance Agreement shall be in addition to and not in lieu of any equitable remedies available to LICENSOR.
 15. EXCLUSION OF LIABILITY. LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE RESULTS OBTAINABLE FROM THE MAINTENANCE SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.
 16. Termination. In event of termination of the License Agreement, LICENSOR's obligations under this Maintenance Agreement immediately end. LICENSOR may terminate this Maintenance Agreement in the event of breach, bankruptcy, insolvency, change of ownership, and/or default by Licensee. The annual maintenance fee(s) made to LICENSOR during the term(s) of this Maintenance Agreement is nonrefundable.
 17. Taxes. Licensee shall, in addition to the other amounts payable under this Maintenance Agreement, pay all sales and other taxes, national, state, or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Maintenance Agreement.
 18. Force Majeure. Neither LICENSOR nor Licensee shall be responsible to the other for failure to perform any of the obligations (other than the obligation to pay money) imposed by this Maintenance Agreement, provided such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure or destruction, in whole or in part, of equipment or failure of supply of materials, discontinuity in the supply of power, governmental interference, civil commotion, riot, war, strikes, labor disturbance, labor shortage or by any cause beyond the reasonable control of the party in question.
 19. General.
 - 19.1 Entire Agreement. This Maintenance Agreement contains the entire understanding of the parties hereto relating to the subject matter, and, where there may be ambiguity, does not supersede any terms in the License Agreement relating to the same subject matter.
 - 19.2 Governing Law. This Maintenance Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Ohio. Any and all proceedings relating to the subject matter hereof shall be maintained in the courts of the State of Ohio or the United States District Court sitting in the Northern District of Ohio, by which Licensee submits to the exclusive jurisdiction thereof for such purpose.

- 19.3 Severance. If any provision of this Maintenance Agreement is judged invalid, illegal or unenforceable for any reason whatsoever, it is, to that extent, deemed omitted and the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- 19.4 Assignability. Licensee may not sell, assign, give, or otherwise transfer Licensee's rights, duties, or obligations under this Maintenance Agreement to any third party, in whole or in part, without LICENSOR's prior written consent. Notwithstanding anything in this Maintenance Agreement to the contrary, this Maintenance Agreement shall endure to the benefit of and be binding upon each of the parties and their respective successor(s).
- 19.5 Waiver. The waiver or failure of any party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.
- 19.6 ACTY 800004US01 4369606 3