



## Envistacom Commercial Terms & Conditions

**1. Proposal.** These terms and conditions ("Terms and Conditions") are provided to "Customer" (either a natural person or single legal entity) by Envistacom, LLC ("EVC"), along with EVC's proposal or quote, including any Statement of Work (SOW), Specifications, Exhibits, etc. referenced in it (the "Proposal"). The Proposal is a request for an offer by Customer to purchase Equipment, Products, or Services, or to license the Software, or a combination of them, as shown in the Proposal.

**2. Offer.** By signing and returning the Proposal, submitting any order ("Order"), or sending an item to EVC for installation of the Software or performance of Service, Customer is making an offer to purchase Equipment, Products, or Services, or to license the Software, or a combination of them, from EVC under these binding Terms and Conditions and the Proposal ("Offer").

**3. Offer Acceptance.** Delivery of any Equipment, Products, or Services, or to license the Software, will not commence until EVC receives and accepts a valid Order (Purchase Order, Contract, Subcontract, or contractually binding agreement) signed by EVC and Customer. EVC, at its sole option, may accept the Offer by issuing a written confirmation (which may be in electronic form), by shipping Equipment, Products, or the Software, or a combination of them, or by beginning Services specified in the Proposal.

**4. Agreement.** The Proposal, these Terms and Conditions, and all Orders (if any) constitute this "Agreement" which is a legal contract between Customer and EVC. No other terms or conditions in an Order, or otherwise, including any prior or subsequent understanding, agreement, term, condition, or trade custom at variance with or supplemental to these Terms and Conditions, shall apply, unless EVC and Customer expressly agree in writing (e.g., in a "Change Order"). Any attempt by Customer to incorporate or impose purchase order or subcontract terms and conditions will not be binding upon EVC, except for FAR Clauses (required by Customer's Prime Government Contract) which may be incorporated into Purchase Orders based on reaching separate agreement in accordance with Article 6-Prices, Article 30-Government Contracts, and Article 31-Special Government Clauses delineated herein.

**5. Definitions.** "Deliverable" means any Equipment, Product, Service, or Software shown in the Proposal. "Equipment" means a good not made by EVC. "Product" means a good made by EVC. "Service" means a service provided by EVC. "Software" means copyrighted software licensed and sold by EVC and includes accompanying user documentation. "Third-party software" means copyrighted software licensed and sold by a third-party supplier that may be used in conjunction with EVC Software. "USA" means the United States of America.

**6. Prices.** Prices shown in EVC's Proposal expire 30 days after the Proposal date (or a longer period if specified in the Proposal), unless otherwise agreed in writing by EVC. Prices are in U.S. dollars and are fixed only for deliveries made within agreed upon period of performance after EVC's acceptance of the Offer. Customer acknowledges that all work (Equipment, Product, Service or Software) is being provided on a Firm Fixed Price Commercial Item Basis (Unit Price) in accordance with FAR 2.101 and FAR Part 12-Acquisition of Commercial Items. Should such work being provided herein be under a U.S. Government Prime Contract, Customer hereby acknowledges that one (or all) of the following FAR Clauses are contained in the Prime Contract: FAR 52.212-4 (OCT 2018), Contract Terms and Conditions-Commercial Items, 52.212-5 (JUL 2020) Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, and FAR 52.244-6 (JUN 2020)-Subcontracts for Commercial Items. Such clauses, with the exception of clauses delineated in Article 31-Special Government Clauses, shall be the only FAR Clause(s) applicable to the work being conducted hereunder. Customer shall provide EVC the U.S. Government Prime Contract Number and confirmation that all or one of the above noted FAR Clauses are incorporated in the Government Prime Contract. Prices may also be offered on a Time and Materials (T&M) basis, and such are based on commercially, market-based prices, inclusive of EVC's indirect rates and factors and fee. Prices offered on Cost Reimbursable basis (CPFF, CPIF, CPAF, LOE, etc.) shall be based on a separate EVC Terms and Conditions and addressed in any

subsequent Order. Unless otherwise agreed, the price for products include all applicable federal, state, and local taxes. Deviations or changes in the SOW, Specifications or Terms and Conditions of EVC's Proposal may result in revised pricing, and adjustment to the performance/delivery schedule and/or the placement of material orders. Deviations or changes must be agreed upon in writing in a Change Order) between EVC and Customer. Orders placed for materials contained in a Proposal and subsequently canceled may be subject to Vendor/Supplier cancellation or re-stocking fee of 15%. EVC will have no obligation to deliver or perform any deviations from the SOW or Specification which affect the pricing contained in EVC's Proposal. Rough Order of Magnitude (ROM) estimates delineated in an EVC proposal or quote does not constitute a formal quote or commitment from either EVC or the Government (if applicable). Submission of a ROM is only intended for budget planning purposes. A formal Request of Quote (RFQ) shall be issued by Customer to EVC delineating the EVC Equipment, Products, Services and/or Software, Customer desires to purchase.

**7. Taxes and Duties.** Except where the law otherwise provides, and in cases where additional taxes are required over and above the EVC price for the products that include all applicable federal, state and local taxes, Customer shall promptly pay EVC, in addition to the Deliverable's price, the amount of all governmental taxes, excise, and other charges (except taxes on or measured by EVC's net income) that EVC may be required to pay with respect to the production of the Deliverable and the sale or licensing of the Deliverable. EVC pricing is exclusive of transportation costs, export fees, import duties and/or levies. Customer shall reimburse EVC for Value Added Tax (VAT), sales and usage tax, or any similar transaction taxes imposed on the sale of Equipment, Products, Services or Software sold under the resulting Order provided the taxes are statutorily imposed on Customer.

**8. Invoice.** An invoice shall be dated on or after the Software, Equipment, or Product is delivered or the Service is performed. Customer agrees that all Services will be invoiced either in advance of the service on a monthly basis, or after the Services are provided, based upon the requirements of the Order. Annual Services quoted herein have a twelve (12) month commitment and will auto-renew automatically thirty (30) days from the end of the term based on the period of performance. Early termination will result in the invoice of the remaining services balance. Pay-Per-Month Services auto-renew automatically thirty (30) days from the end of the term unless a Cancellation Notice is provided to EVC two (2) months prior to the end of the term.

**9. Payments.** Within 30 days after the invoice date for Deliverables, Customer shall pay EVC in full in U.S. dollars, unless otherwise agreed in writing by EVC. An invoice not paid in full within 30 days shall incur a service charge at the annual rate of 18% compounded monthly or the maximum rate permitted by law (whichever is less) on the unpaid amount until paid in full. Customer shall reimburse EVC for all collection costs (including attorneys' fees and costs) and for all repossession costs incurred to recover the Software, Equipment, or cost to repair or replace if damaged or unrecoverable) or Product for which payment was not made in full.

**10. Delivery.** Shipment of the Software, Equipment, and Product is EXW (ExWorks) INCOTERMS 2020 (FOB Origin) or per the directions listed in the Order. Delivery shall be deemed to have occurred when the Software, Equipment, or Product is placed at Customer's disposal (including into the possession of the carrier) at EVC's designated place of shipment. All title to Equipment and Product, and risk of loss, and damage to the Software, Equipment, and Product, including risks incurred in transport, shall pass to Customer upon delivery to the Customer or EVC's elected freight carrier at EVC's facility. Any claims for loss or damage in transit shall be against the carrier only. Unless otherwise agreed in writing by EVC and Customer, shipments shall be freight prepaid, and added to the price on the invoice. Unless specifically instructed by Customer to the contrary, shipment shall be by a method and carrier ("Best Way") deemed appropriate by EVC. EVC will provide packing, packaging, and marking in accordance with commercial practices at the quoted price. EVC reserves the right to adjust the quoted price for any unique or special requirements required by the Customer. Delivery schedules are estimates only and cannot be guaranteed. EVC shall not be responsible for any delay in delivery.



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**11. Deliverable Acceptance.** Customer shall have ten days after receipt of a Deliverable to accept or reject the Deliverable. Customer shall have no right to revoke Deliverable acceptance. Rejected Equipment, Product, and Software shall be stored in accordance with standard commercial practices and returned to EVC only after EVC's prior authorization. Services rendered shall be deemed acceptable within three (3) business days of performing such Services, unless EVC receives written notice from Customer within such timeframe addressing such non-performance, with specific reference to the SOW or specification to enable EVC to correct the performance of such Services.

**12. Damage Exclusion and Maximum.** IN NO EVENT SHALL EVC BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR LIABILITIES OF ANY KIND, EVEN IF THE CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES ARISING FROM ANY PROVISION OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO BUSINESS INTERRUPTION, INCOME OR LOST PROFITS OR REVENUES, OR ANTICIPATED PROFITS OR LOST BUSINESS, LOSS OF USE, LOSS OF BUSINESS OPPORTUNITIES OR LOSS OR CORRUPTION OF DATA, OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES UNDER ANY THEORY OF LIABILITY, ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT. IN NO EVENT SHALL EVC'S LIABILITY TO CUSTOMER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, WILL NOT EXCEED, IN AGGREGATE FOR ALL CLAIMS, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, THE SUM OF PAYMENTS RECEIVED BY EVC FOR A THREE-MONTH PERIOD THAT PAYMENTS ARE MADE BY CUSTOMER FOR THE AFFECTED DELIVERABLE, OR THE PURCHASE ORDER ASSOCIATED WITH THE AFFECTED DELIVERABLE, WHICHEVER IS LESS. These limitations shall apply even if the applicable limited warranties fail of their essential purpose. Limitation on Damages. In no event will the measure of damages payable by either include, nor will either Party be liable for, any amounts for loss of income, profit or savings or indirect incidental, consequential, exemplary, punitive, or special damages of any Party, including third parties, even if such Party has been advised of the possibility of such damages in advance, and all such damages are expressly disclaimed.

**13. Limited Warranties of Equipment, Products, and Services.** EVC warrants to Customer: (a) good title to all Equipment and Products; (b) conformance of Products to EVC's applicable printed specifications and no material defects in workmanship or materials of Products for one (1) year after Customer's receipt; (c) pass-through to Customer (where possible without extra charge to EVC) of vendor and manufacturer warranties and obligations by others (if any) concerning Equipment; (d) non-infringement by Products of any U.S. patent; and (e) performance of Services in a good, professional, and workmanlike manner consistent with generally accepted industry standards. EVC agrees that it will pass-through to Customer any rights it obtains under warranties and indemnities given by its third-party suppliers in connection with any products provided by or through Customer pursuant to EVC's Proposal and resultant contract to the extent permitted by the applicable suppliers. Where EVC gives technical advice to Customer with respect to Equipment, Products, or Services. Customer agrees that such advice is given without any liability on EVC's part. Any guarantee of specific properties of or in Equipment, Products, or Services shall only be effective if and to the extent specifically confirmed by EVC in writing. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, EQUIPMENT, PRODUCTS, AND SERVICES ARE PROVIDED AS IS, AS AVAILABLE, AND WITH ALL FAULTS. EVC EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY, AND ANY WARRANTY ARISING OUT OF A COURSE OF DEALING. These warranties shall not apply for Equipment or Product failure or deficiency due to (i) failure to use Equipment or Product properly and in accordance with the specifications and instructions provided in the accompanying documentation; (ii) improper installation by Customer; (iii) accident, neglect, act of God, or misuse; (iv) a cause not arising out of a defect in material or workmanship; (v) failure or defect of electrical power, external electrical circuitry, air conditioning, humidity control, or

environmental conditions exceeding the specifications; (vi) use of Equipment or Product in conjunction with an item not provided or approved by EVC; (vii) repair or adjustment to or service on Equipment or Product by any person not authorized by EVC or certified by EVC or Product manufacturer to perform repair, adjustment to, or service; or (viii) alteration of Equipment or Product or the consequence of use of Equipment or Product for which the Equipment or Product was not designed or that adversely affects its integrity, reliability, or performance. In addition, EVC does not warrant that the Software or any equipment, system, or network on which it is used will be free of vulnerability to intrusion or attack.

**14. Limitation of Liability for Equipment, Products, and Services.** In case of alleged failure by any Equipment, Product, or Service to conform to this Agreement, Customer shall promptly notify EVC of such alleged failure in writing. Customer shall submit evidence to support the claim of alleged nonconformity, and Customer shall provide any associated details reasonably requested by EVC in EVC's attempt to remedy the problem. If such claim is made in accordance with this Agreement and proves justified, EVC shall, at its option, offer Customer: (a) a reasonable reduction of the price; or (b) for Equipment or Product, replacement of the Equipment or Product to the extent that the Equipment or Product has not been treated, processed, or otherwise used or modified; or (c) for Service, re-performance of the Service at no cost to Customer. Any repaired or replacement parts or equipment furnished hereunder shall be warranted for the remaining unexpired portion of the original warranty period of that part or equipment. The original warranty period shall not be extended unless agreed to in writing by EVC. The foregoing remedies are exclusive and will be Customer's sole remedies with respect to any claim arising out of or relating to any breach of warranty or other failure of Equipment, Product, or Service, whether based in contract, breach of warranty, tort, or otherwise. Leased equipment (if applicable) shall be returned to EVC in good working condition (less reasonable wear and tear) at the end of the lease period. Returned and damaged equipment shall be billed to Customer at the then market price.

**15. Infringement Indemnification.** EVC will indemnify, defend, and hold Customer harmless from any loss, damage, or cost (including reasonable attorneys' fees and court costs actually incurred) to the extent arising out of any third-party claim that any Software or Product infringes any copyright, trade secret, or U.S. patent right of any other party. EVC's obligation to indemnify Customer under this Agreement does not extend to any Equipment, Service, or third-party software. EVC's obligation to indemnify Customer is contingent upon Customer promptly notifying EVC of any such claim, granting EVC the sole control over the defense and settlement (except as set forth below) of such claim, and cooperating with EVC in the defense of the claim (at the expense of EVC). EVC will have the sole right to defend or settle any claim subject to indemnification under this Agreement. Customer will have the right to participate with EVC in the defense or appeal of any such claim or judgment, at Customer's option and at Customer's own expense (such expense not being indemnified by EVC), but EVC will have sole control and authority with respect to any such defense, compromise, settlement, appeal, or similar action. At EVC's option, EVC may satisfy its entire obligation under this Section by: (a) modifying or replacing the affected Product or Software so that it performs comparable functions without infringement; (b) procure the right for Customer to use the affected Product or Software; or (c) refunding to Customer an amount equal to the amount paid with respect to the affected Product or Software, less the portion of the amount paid attributable to the period during which Customer actually used the Software. The foregoing represents EVC's entire obligation to Customer regarding any infringement of any patent, copyright, trademark, trade secret, or other intellectual property right of any other person. EVC will have no obligation to Customer under this Section to the extent that the alleged infringement or violation is based upon (i) Customer's use of the Software or Product other than as set forth in this Agreement and in its documentation; (ii) any modification to or alteration of the Software or Product performed by anyone other than EVC; (iii) EVC's compliance with Customer's designs, specifications, or instructions; or (iv) a combination of the Product or Software with a third party's component, device, computer software or system, including Equipment.



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**16. Compliance with Laws.** Both Parties agrees to comply with all applicable laws, rules, and regulations including the Foreign Corrupt Practices Act (FCPA), the UK Bribery Act of 2010, and all applicable anti-bribery laws, rules, and all regulations of the U.S. regarding export control (U.S. Export Controls), including without limitation the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), and the Foreign Asset Control Regulations administered by the Office of Foreign Assets Control (OFAC) in the U.S. Department of Treasury. All Equipment, Products, technical data, software, or technology to be exchanged between the Parties must be handled in compliance with U.S. Export Controls. Both Parties will comply with all export laws, restrictions, national security controls, and regulations of the U.S. or other applicable domestic or foreign agency or authority, at a Party's sole expense, and not export or re-export, or allow the export or re-export, of the Equipment, Products, Services or Software, in violation of any such restrictions, laws, or regulations, or in violation of the embargo provisions of the U.S. Export Administration Regulations (or any successor regulations or supplement), except in accordance with all licenses and approvals required under applicable export laws and regulations, including those of the U.S. Department of Commerce.

### 17. Dispute Resolution.

**A. Arbitration Procedures.** The Parties shall endeavor to settle all claims, controversies, or disputes arising out of or relating to this Agreement involving threatened, alleged, or actual breach of the Agreement, including without limitation, any claim, controversy, or dispute concerning any determination, negotiation, or agreement to be reached by the Parties under this Agreement by mediation under the then current Center for Public Resources (CPR) Institute for Dispute Resolution Mediation Procedure in effect on the date of this Agreement. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals. Any Dispute which remains unresolved thirty (30) days after the appointment of a mediator shall be settled by binding arbitration by a sole arbitrator in accordance with CPR Rules for Non-Administered Arbitration in effect on the date of this Agreement. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1-16 to the exclusion of state laws inconsistent therewith, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be in the State of Georgia. The arbitrator is not empowered to award punitive damages or damages in excess of compensatory damages and each party hereby irrevocably waives any right to recover such punitive damages or excess damages.

**B. Continue to Perform.** The parties will continue to perform under this Agreement, as directed by EVC during the Dispute resolution process.

**C. Injunctive Relief.** The Parties agree to the confidentiality provisions contained in Article 19 hereto and acknowledge that the unauthorized disclosure of any information required to be kept confidential pursuant to this Agreement will give rise to immediate irreparable injury to the Party that owns the information. Notwithstanding the Dispute Resolution provision contained herein, each Party may seek immediate and injunctive relief against the breach or threatened breach by the other Party of the covenants to keep such information confidential. The Parties further agree that the covenants contained herein are reasonably necessary for the protection of legitimate business interests of the Parties and are reasonable in scope and content.

**18. Relationship of the Parties.** The parties acknowledge that in performing their obligations, each is acting as an independent contractor. Nothing in this Agreement shall be construed to make either party a partner, principal, agent, or employee of the other. Neither party has the authority to enter into any agreement or make any warranty or representation on behalf of the other party, except where and to the extent specifically authorized to do so in writing.

**19. Confidentiality.** The parties acknowledge that, during the term of this Agreement, and for any renewal periods and thereafter for a period of five (5) years following the expiration or termination of this Agreement, except that Customer's obligations with respect to trade secrets will continue so long as such item remains a trade secret under applicable

law, each party may provide the other with confidential or proprietary information, including data, information, ideas, materials, specifications, procedures, schedules, software, technical processes and formulas, source code, object code, trade secrets, product designs, sales, cost, and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, marketing data, or other relevant information that is marked "confidential" (or similarly) or, if not so marked, is clearly intended to be confidential (collectively, "Confidential Information"). Each party agrees that it will not disclose, provide, or otherwise make available any Confidential Information of the other party without the other party's prior written consent. Neither party may use, disclose, provide, or permit any person to obtain any such Confidential Information in any form, except for employees, agents, or independent contractors whose access is required to carry out the purposes of this Agreement and who have agreed to be and have been made subject to the same restrictions as set forth herein. The foregoing confidentiality obligations will not apply to any information received by a party that: (a) is generally available to or previously known to the public; (b) can reasonably be demonstrated to have been known to such party before the negotiations leading to this Agreement; (c) is independently developed by such party outside the scope of this Agreement without use of or reference to the other party's Confidential Information; or (d) is lawfully disclosed pursuant to a court order, provided that the party subject to such order will promptly notify the party whose Confidential Information is to be disclosed, so such party may seek a protective or similar order.

**20. Notice.** All notices provided under this Agreement will be in writing to the addresses shown in this Agreement (or Order issued hereunder) and will be deemed given or made on the date delivered if delivered in person, on the date delivered (or attempted delivery is refused by the recipient) if delivered by a nationally recognized overnight courier service, or electronically by e-mail, or on the third (3rd) business day after it is mailed, if mailed by registered or certified mail, return receipt requested (with postage and other fees prepaid). The party sending such notice shall promptly send the other party a copy of such notice (which shall not itself constitute notice) by facsimile or e-mail.

**21. U.S. Government's Restricted Rights.** If the Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government's rights in the Software will only be as set forth in this Agreement. Licensor software is a "Commercial Item", as that term is defined in FAR 2.101 and DFARS 252.227-7014(a)(1), as such terms are used in FAR 12.212 and DFARS 227.7202. The Software is being licensed to U.S. Government end users as Commercial Items. The U.S. Government is granted rights to EVC developed Software per DFARS 252.227.7014 noncommercial data rights clauses. This grant of rights does not apply to third party COTS software, open-source software, Licensor Commercial Software or Licensor Software Modifications/Developments, which occurred subsequent to the Software being determined to be a commercial item. Executable software, except for the exclusions listed in the previous sentence, is provided to the U.S. Government with unlimited data rights, except for those components, which are identified as Restricted and Government Purpose Rights. All third-party COTS software is licensed to the U.S. Government end users strictly as Commercial Items per DFARS 227.7202, per this commercial license, for use in the Licensor Products only. No restricted, unlimited, government purpose, or specially negotiated license rights per DFARS 252.227-7014 are granted to the Government for this software. Government rights in open-source software utilized in the Software vary based on the licensing requirements of each application. All open-source software is licensed to U.S. Government end users as Commercial Items per DFARS 227-7202, for use of the software as part of the Licensor Products per the open-source licenses attached to the specific product. Some open-source software licenses may grant additional rights to the government to modify, distribute, etc. the open-source application.

**22. Governing Law.** This Agreement is governed by the laws of the State of Georgia, U.S., without reference to its choice of law provisions. Each party hereby consents to the jurisdiction of any federal or state court within the State of Georgia, U.S. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. When applicable in connection with this Agreement, the Equal Opportunity



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Clauses set forth in Section 202 of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and Section 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended, are incorporated by reference.

**23. Severability; No Waiver; No Assignment.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach. This Agreement may not be assigned by either party without the prior written consent of the other party, and any such attempted assignment shall be void.

**24. Force Majeure.** EVC shall not be in default if its performance is delayed or rendered impracticable or impossible by act of God, war, terrorism, sabotage, civil commotion, governmental action or inaction, fire, storm, flood, casualty, explosion, strike, walkout, other industrial disturbance, inability to obtain raw material, component, or transportation from usual source, or any other cause beyond EVC's reasonable control.

**25. Term and Termination.** This Agreement is effective until terminated. Customer may terminate this Agreement in writing by providing thirty (30) days advanced notice to EVC as to Software at any time (after such written notification to EVC) by destroying all copies of the Software in its possession and control, including any related documentation, and providing EVC written certification of such destruction. At any time, Customer is in default of the provisions of this Agreement, EVC may notify Customer in writing of such default and, if such default remains uncured ten days after the date of such notice, EVC may terminate this Agreement at any time thereafter. Upon termination of this Agreement, Customer must cease all use of the Software and must destroy all copies of the Software in its possession and control, including any related documentation. Upon early termination of this Agreement through no fault of EVC, Customer agrees to pay to EVC all charges, fees, expenses, and restocking fees (if applicable), that may have been incurred through the date of such early termination. If a Deliverable is for ultimate delivery to the U.S. Government or other public agency ("Government"), as evidenced by a Government contract number on the Order, termination may be made when a valid and directly applicable termination order is issued to Customer by the Government. In such case, settlement of EVC's claims for termination will be under applicable provisions of Governmental agency rules and regulations; provided, however, Customer shall promptly process EVC's termination claim and receive in trust and promptly remit to EVC all funds received from the Government that are applicable to EVC's termination claim.

**26. References.** Unless specifically provided otherwise, as used in this Agreement, "or" includes "and"; "including" means "including without limitation"; and "Section" means a section of this Agreement.

**27. Survival.** The following Sections (and other portions of this Agreement that by their nature would naturally survive) will survive and continue in full force and effect notwithstanding the termination of this Agreement: 4, 6, 7, 9, 11-17, 19, 20, 22, 25, 28, and 29.

**28. Effect of Agreement.** This Agreement constitutes the complete understanding between the parties with respect to its subject matter and supersedes all previous written or oral agreements, understandings, and representations. This Agreement may be modified only in a writing that expressly references this Agreement and is executed by both parties to this Agreement; provided, however, EVC may revise or modify the Software, Equipment, or Products, or change pricing, without notice, and EVC may furnish materially equivalent substitutes for Equipment, Product, or Software that cannot be obtained or produced in sufficient quantity.

**29. Software-Specific Provisions.**

**A. License.** Subject to and except as otherwise provided in this Agreement, EVC grants to Customer a nonexclusive, nontransferable, revocable, limited license to use the Software, in object code or executable code form only, solely on the Product

designated in the Order and for no other purpose or business, and not for processing the data of any third party (whether on an outsourcing, service bureau, or other basis), except data supplied by Customer's customers or suppliers that is necessary for Customer's internal business purposes or except where authorized in writing by EVC. Customer's use of the Software is limited to operation with a hardware key provided to Customer by EVC. Customer's use of the Software shall also be limited by any other restrictions set forth in the Proposal and in the printed, electronic, or online material provided by EVC in connection with the Software.

**B. General Limitations.** Except as otherwise expressly provided under this Agreement, Customer shall have no right to, and Customer specifically agrees not to: (1) transfer, assign, or sublicense its license rights to any other person, or, with respect to the Software, to transfer or distribute a copy to a third party, without the express written consent of EVC, and any such attempted transfer, assignment, or sublicense shall be void; (2) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or to permit third parties to do the same; (3) decrypt, decompile, reverse engineer, disassemble, or otherwise reduce the Software to human-readable form to gain access to trade secrets or confidential information in the Software; (4) operate the Software without use of the hardware key provided by EVC; (5) rent, lease, or lend the Software; or (6) allow any third party to access or use the Software, except as expressly provided in this Agreement. Customer will maintain records identifying the location of the Software and all copies thereof (including all backup or archival copies), as well as the identity of the operating systems and database software with which the Software is used. Such records will be subject to inspection by EVC during regular business hours upon reasonable advance notice.

**C. Customer Responsibility.** Customer is solely responsible for: (1) obtaining any third-party software required for use of the Software, including any operating system software, database software, or third-party applications software; (2) conversion of any of Customer's existing data files for use with the Software; and (3) taking reasonable backup precautions. EVC will not be responsible for loss of data, corruption of data, or loss of documentation, whether or not attributable to the Software.

**D. Ownership of the Software.** Except as otherwise expressly set forth in this Agreement, EVC retains all right, title, and interest in and to all forms of the Software, all supporting documentation, and all copies and modifications of the Software, including all worldwide rights to patents, copyrights, trademarks, and trade secrets in or relating to the Software. Customer is not acquiring any right, title, or interest of any nature whatsoever in the Software, except the license to use the Software granted in this Agreement.

**E. Upgrades and Additional Copies.** For purposes of this Agreement, the Software shall include (and the Terms and Conditions shall apply to) any upgrades, updates, bug fixes, or modified versions (collectively, "Upgrades") or additional copies of the Software. Except as expressly authorized in this Agreement, Customer shall not make any copies or duplicates of the Software without the prior written permission of EVC. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO USE ANY SUCH ADDITIONAL COPY OR UPGRADE UNLESS CUSTOMER, AT THE TIME OF ACQUIRING SUCH ADDITIONAL COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID ANY APPLICABLE FEE FOR THE ADDITIONAL COPY OR UPGRADE; AND (2) ADDITIONAL COPIES OF THE SOFTWARE MAY BE MADE AND USED FOR LAWFUL BACKUP PURPOSES ONLY, PROVIDED CUSTOMER AFFIXES TO SUCH COPIES ALL COPYRIGHT, CONFIDENTIALITY, AND PROPRIETARY NOTICES THAT APPEAR ON THE ORIGINAL.

**F. Proprietary Notices.** Customer agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software.



## Envistacom Commercial Terms & Conditions

**G. License Fees.** License fees paid by Customer are in consideration for the license rights granted to Customer under this Agreement.

**H. Protection of Software Information.** Customer agrees that aspects of the Software and associated documentation, including the specific design and structure of individual programs, constitute trade secrets, proprietary information, or copyrighted material of EVC. Customer shall not disclose, provide, or otherwise make available such trade secrets, proprietary information, or copyrighted material in any form to any third party without the prior written consent of EVC. Customer shall implement reasonable security measures to protect such trade secrets, proprietary information, and copyrighted material.

**I. Limited Warranties of Software.** EVC warrants that Software will substantially comply with any corresponding documentation for one (1) year after Customer's receipt, provided Customer is not in breach of any of Customer's obligations under this Agreement. EVC provides no warranty for any third-party software other than the EVC provided Software. Third-party software products, licenses, maintenance, and warranties included in EVC's Proposal are subject to third-party Supplier Terms and Conditions which may include, but are not limited, to restricted licensing and distribution rights, and EVC shall pass such rights to Customer to the extent permitted by the applicable software suppliers. Customer's receipt of the Software shall be an unqualified acceptance of and a waiver by Customer of all claims with respect to such Software unless Customer gives EVC notice of claim in writing within ten days after such receipt. EVC is not liable for damage to the Software during shipment or Customer's installation. The Software is of such complexity that it may have inherent or other defects and EVC does not warrant that the Software will operate error free or that the Software will meet Customer's requirements. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SOFTWARE IS PROVIDED AS IS, AS AVAILABLE, AND WITH ALL FAULTS. EVC EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY, AND ANY WARRANTY ARISING OUT OF A COURSE OF DEALING. These warranties do not cover damage resulting from (1) failure to use the Software properly and in accordance with the specifications and instructions provided in the accompanying documentation; (2) improper Customer installation; (3) accident, neglect, act of God, or misuse; (4) a cause not arising out of a defect in material or workmanship; (5) failure or defect of electrical power, external electrical circuitry, air conditioning, or humidity control, or environmental conditions exceeding the specifications; (6) use of the Software in conjunction with an item not provided or approved by EVC, (7) use of the Software with any third-party software, firmware, or hardware not operating in accordance with its respective specifications, or (8) repair or adjustment to or service on the Software by any person not authorized by EVC, or certified by EVC or Product manufacturer to perform repair, adjustment to, or service. In addition, EVC does not warrant that the Software or any equipment, system, or network on which it is used will be free of vulnerability to intrusion or attack.

**J. Limitation of Liability of Software.** In case of alleged failure by any Software to conform to this Agreement: (1) Customer shall promptly notify EVC of such alleged failure in writing, Customer shall submit evidence to support the claim of alleged nonconformity, and Customer shall provide any associated details reasonably requested by EVC in EVC's attempt to remedy the problem; (2) if reasonably requested by EVC, Customer shall cooperate with EVC in re-creating the conditions that existed at the time the Software allegedly failed; and (3) EVC will diligently attempt to correct the reported nonconformity by repairing, modifying, or replacing the Software within a commercially reasonable period of time, or period of time based upon mutual agreement of the Parties. If EVC is unable to cure such nonconformity by repairing, modifying, or replacing the Software as provided above, then Customer may terminate its right to use the Software, and return all Software to EVC and receive a full refund of the amounts actually paid by Customer for the Software, less the portion of the amount paid attributable to the period during which Customer actually used the Software. The foregoing remedies are

exclusive and will be Customer's sole remedies with respect to any claim arising out of or relating to any breach of warranty or other failure of the Software to operate as intended, whether based in contract, breach of warranty, tort, or otherwise.

**K. Software Maintenance and Support Services.** EVC may provide software maintenance and support services to Customer under a separate EVC Software License, Maintenance and Support Agreement. Customer is encouraged to contact a EVC sales representative to inquire about available Software License, Maintenance and Support Services plans addressed in the noted Agreement.

**30. Government Contracts.** As stated in Article 4-Agreement and Article 6-Prices, unless otherwise separately agreed to in writing between EVC and Customer, which agreement shall be obtained through Customer Contracts Agency or by an authorized Contracting Officer and signed by a duly authorized signatory of EVC, no provisions required in any Governmental Authority contract or subcontract related thereto shall be a part of this Agreement, imposed on or binding on EVC, and this Agreement is not deemed an acceptance of any Governmental Authority provisions that may be included or referenced in Customers request for quotation/proposal, Purchase Order or any other document.

**31. Special Government Clauses.** For Contracts, Subcontracts, or Purchase Orders (associated with a U.S. Government Prime Contract,) at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of Contract, Subcontract or Purchase Order award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas, FAR 52.223-99-Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors. ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021)(DEVIATION) and DFARS 252.223-7999-ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 2012-00009)(OCT 2021) shall apply.

Please direct any inquiries regarding this Agreement to:  
 Envistacom, LLC  
 Six Concourse Parkway, Suite 550  
 Atlanta, Georgia 30328  
 Tel: (470) 255-2500  
 Email Address: [Contracts@envistacom.com](mailto:Contracts@envistacom.com)