

TERMS AND CONDITIONS FOR SALE OF PRODUCTS

[Home](#) TERMS AND CONDITIONS FOR SALE OF PRODUCTS

Evident Scientific, Inc., Evident Canada, Inc., and Evident Scientific, S. de R.L. de C.V. (collectively "Evident")

TERMS AND CONDITIONS FOR SALE OF PRODUCTS AND SERVICES IN NORTH AMERICA, CENTRAL AMERICA, AND SOUTH AMERICA

NOTICE: Sale of any Products and/or Services is expressly conditioned on Customer's assent to these Terms and Conditions. Any additional or different terms proposed by Customer are expressly objected to and will not be binding upon Evident unless agreed to in writing and signed by Evident; provided however, that no pre-printed facility entry form shall modify these Terms and Conditions even if signed by Evident's representative. Any oral or written representation, warranty, course of dealing, or trade usage shall be of no force or effect upon either party, unless expressly stated in these Terms and Conditions or in a Contract executed between the parties. Any order submitted by Customer for Evident to deliver Products or to perform Services, and Evident's delivery of Products or performance of Services requested under such order, shall constitute Customer's assent to these Terms and Conditions.

1. Definitions

Unless otherwise agreed to by Evident, the following terms shall be defined as follows:

1.1 "Customer" means the entity to which Evident is delivering Products or providing Services under the Contract.

1.2 "Contract" means the documents that comprise the agreement between Customer and Evident for the sale of Products and/or performance of Services, including these Terms and Conditions, the final quotation, the agreed scope(s) of work, Evident's order acknowledgement, and Evident's invoice.

1.3 "Documentation" means the then-current and generally available written user manuals and online help and guides provided by, or made electronically available by, Evident for Products.

1.4 "Equipment" means the hardware delivered by Evident to Customer.

1.5 "Open Source Software" means software components provided under a license approved by the Open Source Initiative or similar open source or freeware license and which are included in, embedded, utilized by, provided, or distributed with the Products or Software.

1.6 "Products" means all Equipment, parts, materials, Documentation, supplies, physical media containing Software, and other goods Evident has agreed to supply to Customer under the Contract.

1.7 "Evident" means the entity and/or its affiliate providing Products or performing Services under the Contract.

1.8 "Services" means all services Evident has agreed to perform for Customer under the Contract, including (i) services for the support and maintenance of "Evident" branded or "Olympus" branded Products ("Support Services"); and (ii) consulting, installation, implementation, or other services related to an Evident Product that are not Support Services ("Professional Services").

1.9 "Site" means the ship-to address or other location identified on the Contract or other document prepared by Evident designating the site to which the Products will be delivered or where the Services will be performed, or a subsequent location approved by Evident.

1.10 "Software" means any programming code provided by Evident to Customer as a standard product, also including microcode, firmware, and operating system software, which are collectively identified as being contained within the Products as opposed to being provided along with the Products.

1.11 "Software Release" means any subsequent version of Software provided by Evident after initial delivery of Software, but does not mean a new item of Software.

1.12 "Terms and Conditions" means these Terms and Conditions for Sale of Products and Services.

2. Payment

Except as otherwise agreed to by Evident in writing, and upon approved credit, the following payment terms apply:

2.1 Customer shall pay Evident the invoiced amount in United States ("U.S.") dollars, without right of defense, counterclaim, or set-off, within thirty (30) days from receipt of invoice.

2.2 Should Evident require payment from Customer under letter of credit, Customer shall establish an irrevocable letter of credit confirmed by a U.S. bank that is acceptable to Evident. Customer shall pay all banking charges.

2.3 If at any time Customer's financial condition does not justify the continuation of Evident's performance, Evident may require full or partial payment in advance or shall be entitled to terminate the Contract.

2.4 Evident reserves the right to revoke credit terms extended to Customer in the event (i) Customer fails to pay for any Products or Services, previously or subsequently delivered or performed, when due; or (ii) in the sole judgment of Evident there has been a material adverse change in Customer's financial condition. Upon such determination, Evident shall have the right to demand payment or other assurances that it deems adequate before shipment or performance of any other Products or Services.

3. Taxes and Duties

Prices do not include, and Customer is responsible for, all applicable taxes, VAT, duties, fees, or other charges of any nature (other than taxes imposed on Evident's net income) imposed by any government authority, whether federal, state, or local, upon production, sale, shipment, import, or use of Products and performance of Services.

4. Failure to Pay; Security Interest

Failure to make any payment when due shall cause the entire amount of the unpaid debt to become immediately due and payable, at the option of Evident. In addition to any other rights of Evident, Evident may, upon default of the Customer of any payment obligation, (i) apply a service charge at the rate of one and one half percent (1.5%) per month on the unpaid balance; and/or (ii) remove the Product from Customer's Site, or facility, and hold such Product until payment is made in full or sell the Product at public auction or private sale, with it being understood that Evident is permitted to purchase the same at any public sale Evident has initiated, where any such funds received shall be applied to any outstanding balance owed by Customer. If the unpaid balance plus interest and/or service charges is not satisfied from the net proceeds of such sale (after deducting reasonable removal, storage, taxes, attorneys' fees, and other ordinary or necessary expenses incurred in connection therewith) then Customer

shall pay on demand any such deficiency as liquidated damages for breach of contract, along with all agency, attorneys' fees, and court costs incurred by Evident in the collection of delinquent payments.

5. Delivery; Title Transfer; Risk of Loss; Storage

5.1(i) For shipments within the country of origin or manufacture, and for U.S. exports, Evident shall deliver Products to Customer EXW (Incoterms 2020) from Evident's facility, place of manufacture, or warehouse. (ii) For all other export shipments, Evident shall deliver Products to Customer FCA (Incoterms 2020) from Evident's facility. (iii) Customer shall pay all delivery costs and charges and, where Customer designates an agent for exports from the U.S. Customer, shall inform Evident of the name and contact information for the agent prior to the shipment being exported from the U.S. Except for those obligations that are consistent with Incoterms 2020 specifically stated above, Evident shall not be liable in any claim asserted by Customer with respect to such delivery. Partial deliveries will be permitted. Evident may deliver any or all Products in advance of the delivery schedule.

5.2 Title to Products shipped from the U.S. shall pass to Customer immediately when Products are made available for shipment from Evident's facility. Title to Products shipped from within the country where Products will be installed or from a non-U.S. storage facility utilized by Evident shall pass to Customer when Products are made available for shipment from the manufacturer's factory or Evident's storage facility. Title to Products shipped directly from a manufacturer located in the European Union ("EU") shall pass to Customer the earlier of (i) the port of export immediately after Products have been cleared for export; or (ii) immediately after each item departs from the territorial land, seas, and overlying airspace of the EU country from which Products are shipped. Title to Products to be shipped from any other country shall pass to Customer at the port of export immediately after Products have been cleared for export. Evident shall remain responsible for risk of loss to all Products until the later of passage of title pursuant to this Section 5.2 or delivery pursuant to Section 5.1. Software may be provided by (i) delivery of physical media; or (ii) electronic download (when so offered by Evident). Notwithstanding the foregoing, for any Software or Product including Software provided by Evident hereunder, only a license to the Software transfers as set forth herein. All claims for breakage and damage should be made directly to the carrier; however, Evident will assist in securing satisfactory payment or adjustment of such claim, and Evident shall not be liable for any delay in delivery of Products or performance of Services due to causes beyond the reasonable control of Evident.

5.3 If any Products cannot be shipped to Customer when ready due to any cause not attributable to Evident, Evident may notify Customer and then ship Products to a storage facility, including a facility within the place of manufacture. If Evident places Products in storage under this Section 5.3, the following conditions shall apply: (i) title and all risk of loss or damage shall immediately pass to Customer if they had not already passed; (ii) any amounts otherwise payable to Evident upon delivery or shipment shall be payable upon presentation of Evident's invoices; (iii) all expenses and charges incurred by Evident, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, removal, and any taxes shall be payable by Customer upon submission of Evident's invoices; and (iv) when conditions permit and upon payment of all amounts due hereunder, Evident shall resume delivery of Products to the originally agreed point of delivery.

5.4 Customer is solely responsible for ensuring that (a) the installation location meets Evident's operating environment and power rating specifications, (b) all surfaces over which the Equipment will travel between the carrier and the final point of installation meet the weight specifications for the Equipment, and (c) Evident has the contact information for a responsible point of contact at the installation location.

6. Inspection, Acceptance and Returns

6.1 All shipments have been carefully inspected by trained Evident personnel prior to transit and should be thoroughly inspected upon receipt. Failure to reject any delivery upon receipt shall constitute acceptance of that delivery and shall be deemed a waiver of any other right to reject or revoke acceptance. All claims arising from over, short, defective, or damaged Products shall be made within ten (10) days of receipt (or thirty (30) days for Microscopy Products) and should reference the original purchase order. Evident may in its discretion require payment of a restocking fee as a condition to authorizing a return. Notwithstanding such acceptance, Customer retains all rights and remedies set forth in the Section entitled "Warranty."

6.2 CREDIT CANNOT BE ALLOWED FOR PRODUCTS RETURNED WITHOUT PRIOR WRITTEN AUTHORIZATION. All original containers and packing materials must be returned with a shipment to insure proper credit. Credit and/or replacement will be given against Customer's account; no cash refunds will be made.

7. Excusable Delays

7.1 Evident shall not be liable nor in breach or default of its obligations under the Contract to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of Customer or Customer's suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of such excusable delay. If Evident is delayed by any acts (or omissions) of Customer, or by the prerequisite work of Customer's other contractors or suppliers, Evident shall be entitled to an equitable price and/or performance adjustment.

8. Compliance with Laws, Codes and Standards

8.1 The Contract price will be equitably adjusted to reflect additional costs incurred by Evident resulting from a change in industry specifications, codes, or standards, or changes to inapplicable laws and regulations.

8.2 Customer shall comply with all applicable U.S. laws and regulations relating to the exportation of the Products, including, without limitation, the Export Administration Regulations (set forth at 15 CFR Parts 730-774) ("EAR"), Foreign Trade Regulations (set forth at 15 CFR Part 30 ("FTR"), the regulations of the Office of Foreign Assets Control (set forth at 31 CFR Parts 500-598), and embargos and sanctions (collectively, the "Trade Compliance Laws"). Customer warrants that it is not restricted from making or receiving U.S. exports and acknowledges that Evident will secure licenses to export, re-export, or transfer the Product, unless otherwise specified by Evident, and will provide Evident with any information, materials, or support necessary to secure such licenses. Upon the request of Evident, Customer shall provide Evident such assistance as Evident may reasonably require with respect to complying with any and all export laws and regulations applicable to Evident's export, re-export, or transfer of the Products and documentation of any Product. Customer understands that these items may be controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. Customer further agrees that the items may not be resold, transferred, or otherwise disposed of to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

8.3 Notwithstanding, any other provisions herein, Customer shall timely obtain any required authorization, such as an import license, foreign exchange permit, work permit, or any other governmental authorization, even though Evident may apply for such.

9. Warranty

9.1 Subject to the limitations provided herein, including Section 9.10 below, Evident warrants to Customer that (a) Equipment, and Equipment upgrades installed into Equipment, when purchased from Evident and operated with normal usage and regular recommended service; and the physical media, if any, on which Software is provided by Evident shall be free from material defects in material, workmanship, and title and perform substantially in accordance with Documentation provided for Equipment or the physical media for Software during the warranty period specified herein; and (b) the labor portion of Support Services shall be performed in a workmanlike manner in accordance with generally accepted industry standards. Except as expressly authorized by Evident in writing, any items manufactured by entities other than Evident carry only the warranty provided by the manufacturers thereof and Evident gives no warranty on behalf of the manufacturers of such items. Unless stated otherwise, all warranty periods begin at time of delivery of the Equipment or, for Services, at time the Services are completed.

9.2 Unless otherwise stated in the Contract, the warranty period from Evident for Equipment shall be as set forth below. Equipment warranty commences upon delivery. Equipment upgrades are warranted in the same manner as the Equipment in which the upgrades are installed. Equipment upgrade warranty period is from delivery of the upgrade until the end of the warranty period for the Equipment into which the upgrades are installed. Microscopy upgrades have a one (1) year warranty independent of the Equipment warranty. The warranty for physical media for Software provided by Evident, if any, is ninety (90) days and commences upon delivery.

9.3 Products: All Products and related accessories, except for those listed in Table A (below) or otherwise stated in Evident's documentation or these Terms and Conditions, carry a warranty period of one (1) year.

9.3.1 Microscope systems, which include Evident's life science and industrial microscopy Products ("Microscopy Products") with an original warranty limited to (a) one (1) year for optical or mechanical defects and (b) one (1) year for electrical, electro-mechanical, electronic, or wear-related components include1:

- FLUOVIEW™ Confocal Microscope Series and Evident MPE Objectives
- APX™ Microscope System
- cellFRAP Microscopy Accessory
- Cell Counter Model R1
- DSU (Disk Scanning Unit)
- IXplore™ TIRF / cellTIRF Microscope System
- IXplore™ Spin Microscope System
- IXplore™ SpinSR Microscope System
- LV200 Inverted Microscope System
- Provi CM20
- VS™ Virtual Slide Scanner Series
- AL Wafer Handler Series
- CIX™ Cleanliness Inspector Series

LEXT™ OLS™ Laser Scanning Microscope Series 9.4 Services: Unless otherwise stated in Evident's Documentation, the duration of the warranty period for all Support Services begins upon completion of onsite Support Services or shipment from Repair Center and shall be ninety (90) days, except for those listed in Table A (below).

9.5 Refurbished Product / Demo Units: Unless otherwise stated in Evident's Documentation, the duration of the warranty for all refurbished products or demo units shall be ninety (90) days.

9.6 Replacement Parts: Unless otherwise stated in Evident's Documentation, the duration of the warranty period for all replacement parts shall be ninety (90) days, except for those listed in Table A (below).

Table A Product/Services Warranty Period

PRODUCT

	Warranty Period	Effective Date
Transducers, Probes, and Transducer- and Probe-related accessories (excludes Phased Array Probes, which carry a one (1) year warranty)	Ninety (90) days	July 1, 2014
Thickness Gauges, IPLEX™ RT and IPLEX RX, IPLEX GT and IPLEX GX Videoscopes, DELTA™ Analyzers (excluding the DELTA Inspector and Element), XRF Work Stations and Docking Stations	Two (2) years	July 1, 2014
IPLEX G Lite Videoscope	One (1) year	May 1, 2018
GoldXpert™ XRF Analyzer	One (1) year	July 1, 2014
Vanta™ (L, C and M Series), Vanta Element™, and Vanta Element-S XRF Analyzers, LEDs in the IPLEX RT and IPLEX RX Videoscopes; IPLEX FX and IPLEX NX Videoscopes and related accessories	Three (3) years	August 28, 2017
Vanta iX In-Line XRF Analyzer	One (1) year	January 28, 2021
SEA-Mate™ Analyzer	Fifteen (15) months	July 1, 2014
Vanta (L, C, and M Series), Vanta Element, and Vanta Element-S X-Ray Tube	Five (5) years	July 1, 2014
Vanta Element and Element-S X-Ray Tube	Five (5) years	January 28, 2021

	Warranty Period	Effective Date
Standard BX, CKX, CX, GX, IX, MVX, MX, SZ, and SZX Microscope Microscope Applies to U.S. and Canada Customers Only	Five (5) years: Optical and Mechanical Defects One (1) year: Electrical, Electro-mechanical, Electronics and wear-related components Demonstration and refurbished Products are limited to (a) one (1) year for optical or mechanical defects and (b) ninety (90) days for electrical, electro-mechanical, electronic defects or wear-related components. Those third party (non-Olympus or non-Evident) demonstration and refurbished products sold by Evident that are listed as a line item on the Evident invoice for the sale of the third party demonstration or refurbished product, are provided a thirty (30) day warranty by Evident in the absence of an available warranty from such third party manufacturer.	October 12, 2017
Standard BX, CKX, CX, GX, IX, MVX, MX, SZ, and SZX Microscope Applies to Mexico, Central America, and South America Customers	One (1) year: Optical and Mechanical Defects One (1) year: Electrical, Electro-mechanical, Electronics and wear-related components	December 20, 2020
DSX and STM Microscope Applies to U.S. and Canada Customers	Five (5) year: Optical Defects One (1) year: Mechanical, Electrical, Electro-mechanical, Electronics and wear-related components Demonstration and refurbished Products are limited to (a) one (1) year optical defects and (b) ninety (90) days for mechanical, electrical, electro-mechanical, electronic defects or wear-related components. Those third party (non-Olympus or non-Evident) demonstration and refurbished products sold by Evident that are listed as a line item on the Evident invoice for the sale of the third party demonstration or refurbished product, are provided a thirty (30) day warranty by Evident in the absence of an available	November 10, 2019

	Warranty Period	Effective Date
	warranty from such third party manufacturer.	
DSX and STM Microscope Applies to Mexico, Central America, and South America Customers	One (1) year: Optical and Mechanical Defects One (1) year: Electrical, Electro- mechanical, Electronics and wear- related components	December 20, 2020

SERVICE

	Warranty Period	Effective Date
XRF Repair Services involving Tube and/or Detector replacements	One hundred and eighty (180) days	July 1, 2014
SSG Laser-Based Microscopy Imaging Systems	One (1) year: Laser defects	October 12, 2017

REPLACEMENT PARTS

	Warranty Period	Effective Date
Microscopy Lasers	One (1) year	October 12, 2017

9.7 Software: Evident warrants to Customer that Software included in the Products will, for a period of ninety (90) days following delivery or notice of availability for electronic download, substantially conform to the applicable Documentation, provided that Software: (i) has been properly installed and used at all times in accordance with the applicable Documentation; and (ii) has not been modified or added to by persons other than Evident or its authorized representative. Evident will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to

Evident by Customer in writing during the 90-Day Warranty Period. If Evident is unable to correct the error or replace Software within a reasonable time, then Evident shall refund the amount paid by Customer for the affected Product as depreciated on a straight-line basis over a five (5) year period upon return of such Product to Evident, and the license for all Software in the Product shall terminate.

9.8 Customers may be entitled to a service loaner if the Product is sent for repair and the Product is under warranty. Evident shall provide service loaners based on availability of Equipment and at the discretion of Evident. Service loaners may also be issued in limited circumstances, such as part of a repair or service contract. Evident may at its discretion establish additional criteria by which it may issue a service loaner. Service loaners are subject to the terms and conditions of a loaner agreement. Customer is not guaranteed a service loaner.

9.9 If Products (excluding Software) do not meet the above warranties during the applicable warranty period, Customer shall promptly notify Evident in writing within such warranty period, and Customer's exclusive remedy and Evident's entire liability under the foregoing warranties shall be for Evident to, at its option, (i) repair the

Product; (ii) replace the defective Products, or defective Part, as the case may be; or (iii) if, after reasonable efforts, Evident is not able to correct such deficiencies, refund/credit monies paid by Customer for the Product as depreciated on a straight line basis over a five (5) year period, upon return of such Product to Evident. Any repair, replacement, or re-performance by Evident hereunder shall not extend the applicable warranty period. Evident utilizes the right to use reconditioned, refurbished, and/or serviceable used parts (that meet Evident's quality assurance standards).

9.10 If Services do not meet the above warranties, Customer's exclusive remedy and Evident's entire liability under the foregoing warranties shall be for Evident to, at its option, (i) use reasonable efforts to (a) re-perform the deficient labor Services within a reasonable time or (b) replace any replacement parts, which become defective during the remainder of the warranty period for the Product or Support Services coverage applicable to the Product containing the replacement part, or ninety (90) days after installation thereof, whichever occurs later; (ii) if, after reasonable efforts, Evident is not able correct such deficiencies, then Customer has the right to terminate for breach in accordance with Section 15 below.

9.11 Excluded from this limited warranty and not warranted by Evident in any fashion, either express, implied, or by statute, are: (a) products not manufactured by Evident and/or not bearing the "OLYMPUS" brand label or the "EVIDENT" brand label (the warranty coverage for products of other manufacturers, which may be distributed by Evident, is the responsibility of the manufacturers of such products in accordance with the terms and duration of such manufacturers' warranties); (b) products not purchased from Evident or an Evident authorized distributor; (c) any Product which has been disassembled, repaired, tampered with, altered, changed, or modified by persons other than Evident's own authorized service personnel, unless repair by others is made with the written consent of Evident; (d) defects or damage to the Products resulting from wear, tear, accident, misuse, fire, earthquake, negligence, sand, liquids, impact, improper storage, non-performance of scheduled operator and maintenance items, custom hardware integration not performed by Evident or an Evident authorized service provider, or use of non-Olympus brand or non-Evident brand accessories, consumables, or supplies; (e) use in an environment, in a manner, or for a purpose for which the Product was not designed; (f) supplies and consumables; (g) operating the Product outside the permitted or intended uses or the applicable Documentation; (h) cosmetic damage; and (i) modification, alteration, or repair of the Product by anyone other than Evident or its authorized representative without the prior written permission of Evident. Evident has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment that was moved from the installation Site without Evident's consent or whose original identification marks have been altered or removed. Evident has the right to make the final good faith determination concerning the existence and cause of any defect, nonconformity, or warranty issue.

9.12 OTHER THAN THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, SERVICES, OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, EVIDENT (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INsofar as PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. EVIDENT AND ITS SUPPLIERS DO NOT WARRANT THAT SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET CUSTOMER'S REQUIREMENTS.

9.13 Evident shall not be responsible for removal or replacement of systems, structures, or other parts of Customer's facility. The costs of preventative maintenance, de-installation, re-installation, table rigging, and transportation of Products to Evident and back to Customer shall be borne by Customer, and this warranty does not include any such costs. If anyone other than Evident performs de-installation, the Customer is responsible for any needed repairs discovered upon Evident's re-installation of the Product.

9.14 Evident is not responsible for damage to or loss of any programs or data. Evident is not responsible for the restoration or reinstallation of any programs or data other than originally installed software at the time of the Product manufactured, or, if such software is not available, its equivalent. The costs of software upgrades shall be borne by Customer.

9.15 The warranties and remedies set forth herein are conditioned upon (i) the proper storage, installation, operation, and maintenance of Products and conformance with the operation instruction manuals (including revisions thereto) provided by Evident and/or its suppliers or subcontractors, as applicable and (ii) repair or modification pursuant to Evident's instructions or prior approval.

9.16 In no event shall Evident be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of Products or Services (unless such discovery or repair is normally discoverable by tests expressly specified in the scope of work under the Contract) or caused by the use of Products or Services by Customer against the advice of Evident.

9.17 This Section 9 sets forth the exclusive remedies for all claims based on failure of or defect in Products or Services, whether the failure or defect arises before or during the applicable warranty period and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

9.18 This limited warranty is exclusively for the benefit of the original customer and cannot be transferred or assigned.

9.19 Except as otherwise stated herein, **international warranty service is NOT available under this warranty.**

10. Limitation of Liability

10.1 The total liability of Evident, on all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, arising out of the performance or breach of the Contract or use of any Products or Services shall not exceed the price of the specific Products or Services giving rise to the claim. All Evident's liability under the Contract shall terminate upon the expiration of the applicable warranty period, provided that Customer may enforce a claim of such liability accruing during the applicable warranty period by an action timely commenced in accordance with the applicable statute of limitations and/or statute of repose, but in no event greater than one (1) year after the expiration of such warranty period.

10.2 In no event, whether as a result of breach of contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise, shall Evident be liable for any special, consequential, incidental, indirect, or exemplary damages, including loss of profit or revenues, loss of use of Products or Services or any associated equipment, interruption of business, cost of capital, cost of substitute equipment, facilities, services, or replacement power, downtime costs, claims of Customer's customers for such damages, or for any special, consequential, incidental, indirect or exemplary damages, and Customer shall indemnify Evident against such claims of Customer's customers.

10.3 If Customer cannot obtain for Evident from any subsequent purchaser(s) the protections specified in this Section 10, Customer shall indemnify, defend, and hold Evident harmless from and against any and all claims made by any subsequent purchasers of Products or Services against Evident for loss or damage arising out of the performance or non-performance of Products or Services provided under the Contract.

10.4 If Evident furnishes Customer with advice or assistance that is not required under the Contract, the furnishing of such advice or assistance will not subject Evident to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

10.5 For the purposes of this Section 10, the term "Evident" shall mean Evident, its parent, subsidiaries, affiliates, subcontractors, and suppliers of any tier, and their respective officers, directors, agents and employees, whether individually or collectively.

10.6 The provisions of this Section 10 shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the Contract, except to the extent that such provisions further restrict Evident's liability.

11. Dispute Resolution, Governing Law

11.1 Any dispute involving a customer out of Europe, Asia, Africa, or Australia, and arising out of or in connection with the Contract, including any question regarding its existence, validity, or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ("LCIA") Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one (1) unless the amount in dispute exceeds the equivalent of one million U.S. dollars (\$1,000,000), in which event it shall be three (3). When three (3) arbitrators are involved, each party shall have the right to nominate an arbitrator, and the Chairman shall be appointed by the LCIA Court. The seat, or legal place, of arbitration shall be London, England. The arbitration shall be conducted in the English language. In reaching their decision, the arbitrator shall give full force and effect to the intent of the parties as expressed in the Contract, and if a solution is not found herein, shall apply the law as described in Section 11.3. The decision of the arbitrator shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authorities to appeal for revisions of such decision.

11.2 Any dispute involving a U.S. Customer, or a Customer from North America, Central America, South America, or the Caribbean, and arising out of or in connection with the Contract, including any question regarding its existence, validity, or termination, shall be brought by either party against the other party in the U.S. District Court for the District of Massachusetts; or in the event that court lacks jurisdiction to hear the claim, in the appropriate state courts of Massachusetts, and the parties hereto consent to the exclusive jurisdiction of such courts in respect of all such claims. Each party hereby submits to and accepts generally and unconditionally the jurisdiction of those courts with respect to its respective person and property, and irrevocably consents to the service of process in connection with any such action or proceeding by personal delivery to the party or by the mailing thereof by registered or certified mail, postage prepaid to the other party at the address for the party. Evident and Customer hereby agree to waive any right to trial by jury.

11.3 The validity, performance, and all matters relating to the interpretation and effect of the Contract shall be construed and interpreted in accordance with the laws of the state of Massachusetts, U.S, excluding its law on the conflict or choice of laws, provided that any provision of such law invalidating any provision of the Contract or

modifying the intent of the parties as expressed in the Contract shall not apply. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

12. Confidentiality

12.1 In connection with the Contract, Evident and Customer (as to information disclosed, the “Disclosing Party”) may each provide the other party (as to information received, the “Receiving Party”) with “Confidential Information.” “Confidential Information” as used in the Contract shall mean any information that is marked “confidential” or “proprietary” or any other similar term, or such information provided where, under the circumstances and the type of information disclosed, a reasonable person would understand such information to be confidential, which shall include, but not be limited to all pricing for Products and Services, and all information related to the business or products of the Disclosing Party that is not generally known to the public, provided that the obligations of this Section shall not apply as to any portion of the Confidential Information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its representatives or its affiliates, or (ii) is or becomes available to the Receiving Party or its representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party’s knowledge, subject to a confidentiality obligation to the Disclosing Party, or (iii) has been or is subsequently independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information, or (iv) is required to be disclosed by order of a competent court or government agency.

12.2 The Receiving Party agrees, except as otherwise required by law: (i) to use the Confidential Information only in connection with the Contract and permitted use(s) of Products and Services, and (ii) to take reasonable measures to protect from disclosure to any third parties, by use of a standard of care equivalent to that as used by recipient to protect its own information of a similar nature and importance, and, no less than the use of reasonable care, any Confidential Information disclosed by the Disclosing Party for a period commencing upon the date of disclosure until three (3) years after the termination or expiration of this Contract, except with respect to Confidential Information that constitutes, contains, or reveals, in whole or in part, Evident proprietary rights, which shall not be disclosed by the Receiving Party at any time, and except with respect to any information deemed a “trade secret” under applicable law. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to its employees, or employees of a parent, subsidiary, affiliate or authorized service provider who have a need to know the Confidential Information in order to perform its obligations hereunder or to use Products or Services as long as such employees comply with the foregoing. Evident may collect, use, disclose, retain, or otherwise process technical and related information about Customer’s use or processing of the Products, which may include, without limitation, internet protocol address, hardware identification, operating system, application software, peripheral hardware, and usage statistics to facilitate the provisioning of updates, support, invoicing, or online services and may disclose that information to its affiliates.

12.3 If either party or any of their respective affiliates or representatives is required (by interrogatories, subpoena, or similar legal process) to disclose any Confidential Information, such party agrees to provide the Disclosing Party with prompt notice of each such request, to the extent practicable, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this Section 12, or both.

12.4 Nothing herein shall be construed as granting to the Receiving Party, either expressly, by implication, estoppel, or otherwise, any license under any invention, patent, trademark, or copyright now or hereinafter owned

or controlled by the Disclosing Party.

12.5 Any information, suggestions, ideas, or other feedback provided by Customer to Evident regarding its Products and Services in connection with the Contract (collectively, "Feedback") are not to be regarded as Confidential Information, and Customer agrees that Evident may freely use, disclose, reproduce, license, distribute, and otherwise commercialize the Feedback in any Evident Product, Service, and Documentation.

12.5.1 If Confidential Information is required to be disclosed to perform work hereunder, Customer warrants that it has the right to disclose such information and shall indemnify and hold Evident harmless against any claims or damages resulting from the disclosure.

12.6 Sections 12.1–12.5 shall not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

13. Health and Safety Matters.

13.1 Customer shall take all necessary precautions, at all times, for the safety of Evident personnel at the Site. If, in Evident's opinion, the safe execution of the Contract at the Site is, or is apt to be, imperiled by local conditions, Evident may remove some or all of its personnel from the Site and/or supervise performance of all or any part of the Contract at a location solely determined by Evident; any such removal by reason of health or safety matters shall be considered to be an excusable delay as set forth in Section 7 above.

13.2 Before issuing its purchase order, Customer shall advise Evident in writing of all applicable Site-specific rules, regulations, safety codes, and laws that apply to Products and Services.

14. Site Access and Conditions; Hazardous Materials

14.1 Customer shall provide Evident no-charge access to the Site and any other facilities, including the operating and development environment and information, as necessary for Evident's performance hereunder.

14.2 Evident shall promptly and, if feasible, before such conditions are disturbed, notify Customer in writing of: (i) subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract, or (ii) unknown physical conditions at the Site, differing materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Contract. Customer shall promptly investigate the conditions. If it is determined that such conditions do materially differ and cause an increase in Evident's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and time for performance shall be made and the Contract modified in writing accordingly.

14.3 If, at the Site, Evident encounters toxic substances, hazardous substances, or hazardous wastes (as such terms may be defined in any statute or ordinance or regulations promulgated by any federal, state, or local governmental authority of the U.S. or the country of the Site) (collectively, the "Hazardous Materials") that require special handling and/or disposal, Customer shall immediately take whatever precautions are required to legally eliminate such hazardous conditions so that the work under the Contract may safely proceed. If any such Hazardous Materials cause an increase in Evident's cost of or the time required for performance of any part of the work, an equitable adjustment shall be made to the price and schedule. Customer agrees to properly dispose of all Hazardous Materials produced or generated in the course of Evident's work at the Site.

14.4 Customer shall indemnify and hold Evident harmless for any and all claims, damages, losses, causes of action, demands, judgments, and expenses arising out of or relating to (i) the presence of any Hazardous Materials that are present on the Site prior to the commencement of Evident's work or (ii) improperly handled or disposed of by Customer or (iii) brought on to the Site or produced thereon by parties other than Evident.

15. Termination and Suspension

15.1 Customer shall have the right to terminate the Contract (or any portion thereof) for cause in the event that Evident: (i) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or (ii) substantially breaches and fails to comply or perform its material obligations hereunder (but only with respect to a material obligation for which the Contract does not provide exclusive remedies), provided that: (a) Customer shall first have provided Evident with written notice of the nature of such breach and of Customer's intention to terminate the Contract as a result of such breach, and (b) Evident shall have failed, within thirty (30) days after receipt of such notice (or such extended period as is considered reasonable by the parties), to either (1) commence to cure such breach and diligently thereafter to pursue such cure, or (2) provide reasonable evidence that no such breach has occurred. Any other reason for termination of the Contract will be considered a full breach of the Contract by Customer. If Customer terminates the Contract as provided in this Section 15.1, Customer shall pay to Evident (i) that portion of the Contract price allocable to Products completed or partially completed prior to the termination and (ii) all hours for Services performed at Evident's then-current standard time and material rates.

15.2 Evident shall have the right to terminate the Contract (or any portion thereof) immediately for cause in the event that: (i) Customer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; (ii) there is an excusable delay (as per Section 7 above) lasting longer than one hundred and twenty (120) days; or (iii) Customer fails to comply with any terms of the Contract, including but not limited to, failure to make any payment when due or to fulfill any payment conditions.

15.3 If the Contract (or any portion thereof) is terminated for any reason other than those set forth in Section 15.1 above, Evident shall be paid for all Products completed or partially completed and Services performed prior to the date of termination, plus a cancellation charge equal to twenty five percent (25%) of the Contract price allocable to the uncompleted Products and unperformed Services. The following shall apply when determining the amount due from Customer for Services performed prior to the date of termination: (i) for Services performed under time and material pricing, Customer shall pay for all hours performed at Evident's then-current standard time and material rates and (ii) for Services performed under a firm fixed price, Customer shall pay (a) the applicable price for all milestones achieved and (b) for any milestone not yet achieved, all hours performed in connection with the unachieved milestone(s) at Evident's then-current standard time and material rates. Contract must be cancelled within thirty (30) days of receipt of Product or Service. Return of custom-built Products are not accepted.

15.4 Evident shall have the right to suspend any work immediately upon the failure of Customer to make any payment when due. Any expenses incurred by Evident in accordance with a suspension under this Section 15.4 (including storage costs) shall be payable by Customer upon submission of Evident's invoice(s). Performance of Evident's obligations shall be extended for a period of time reasonably necessary to overcome the effects of such suspension.

16. Software

16.1 Except as otherwise provided in Section 16.7, Evident grants Customer a limited, non-exclusive, non-transferable license to use the Software and the Documentation during the period of the license solely for Customer's internal business operations and for the purposes for which they are provided under the Contract. Customer may copy Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only. Microcode, firmware, or operating system software needed by the Equipment with which it is shipped to perform its basic functions is licensed for use solely on such Equipment. Unless otherwise indicated in these Terms and Conditions or the applicable Contract, licenses granted to Customer will be perpetual, will be for use of object code only, and will commence on either delivery of the physical media or the data Customer is notified of availability for electronic download. Use of Software may require Customer to complete Evident's then-current product registration process, if any, to obtain and input an authorization key or license file.

16.2 Any and all Software that is licensed by Evident to Customer shall be subject to these Terms and Conditions and Evident's applicable end-user license agreement(s) (the "License") and support exhibit(s) (the "Support Exhibit"), if any, which are attached hereto and incorporated fully herein by reference. To the extent there is any conflict between these Terms and Conditions and the License and/or the Support Exhibit(s), the License and/or the Support Exhibit(s) shall prevail. If requested by Evident at any time, Customer shall execute a copy of the License and the Support Exhibit(s).

16.3 Notwithstanding anything herein to the contrary, Open Source Software and any other Software (or component therein) provided by Evident may be accompanied by license terms ("Alternate License Terms") that are typically in the form of a (i) "click-to-accept" agreement included as part of the installation and/or download process; (ii) "shrink-wrap" agreement included in the packaging; (iii) notice indicating that by installation and/or use thereof the Alternate License Terms apply; or (iv) notice found in the an Open Source Software disclosure included in the related code or Documentation. All Open Source Software (regardless of licensor), and any Software (or component therein) for which the licensor is not Evident, are licensed solely under the Alternate License Terms, which shall control in case of conflict with or deviation from other license terms in these Terms and Conditions. To the extent that Alternate License Terms apply and control, Customer (a) agrees that Alternate License Terms may be updated by or on behalf of Evident from time to time; (b) authorizes Evident to accept Alternate License Terms on Customer's behalf as part of the installation and configuration; and (c) is responsible for complying with Alternate License Terms. Except for Open Source Software, Alternate License Terms shall not apply if the licensor is Evident.

16.4 Without Evident's prior written consent, Customer must not, and must not allow any third party to: (i) use Software in an application service provider, service bureau, or similar capacity for third parties; (ii) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of a Product done by or on behalf of Customer; (iii) make available Software in any form to anyone other than Customer's employees or contractors reasonably acceptable to Evident and that require access to use Software on behalf of Customer in a matter permitted by these Terms and Conditions; (iv) transfer or sublicense Software or Documentation to an affiliate or any third party; (v) use Software in conflict with the terms and restrictions of the Software License and other requirements specified in the Documentation and Contract; (vi) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from Software, or reverse assemble or disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from Software; (vii) remove any copyright or other proprietary notices on or in any copies of Software; or (viii) violate or circumvent any

technological restrictions within Software or specified in these Terms and Conditions, such as via software or services.

16.5 Software Releases shall be subject to the license terms applicable to Software.

16.6 During the license term for Software and for two (2) years after its expiration or termination, Customer will maintain accurate records of its use of Software sufficient to show compliance with the terms of these Terms and Conditions. During this period, Evident will have the right to audit Customer's use of Software to confirm compliance with these Terms and Conditions. That audit is subject to reasonable notice by Evident and will not unreasonably interfere with Customer's business activities. Evident may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. Customer will reasonably cooperate with Evident and any third-party auditor and will, without prejudice to other rights of Evident, address any non-compliance identified by the audit by promptly procuring additional licenses. Customer will promptly reimburse Evident for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of Software fees payable by Customer for the period audited, or that Customer has materially failed to maintain accurate records of Software use.

16.7 Evident may terminate licenses for cause if Customer breaches the terms governing use of Software and fails to cure within thirty (30) days after receipt of Evident's written notice thereof. Upon termination of a license, Customer shall cease all use and return or certify destruction of applicable Software (including copies) to Evident.

16.8 Evident reserves all rights not expressly granted to Customer and does not transfer any ownership rights in any Software.

16.9 To the extent that Evident is performing Services hereunder related to Evident's own proprietary software, Customer agrees that Evident owns all proprietary rights, including, but not limited to any patent, copyright, trade secret, trademark, and other proprietary rights, in and to such Software and any derivative works thereof as defined under U.S. copyright law.

16.10 For the purposes of this Section 16, the term "Evident" shall mean Evident, its parent, subsidiaries, affiliates, and their successors or assigns.

17. US. Government Restricted Rights

17.1 To the extent Products and Services include or are related to software, such Products and Services are deemed to be "commercial computer software", "commercial computer software documentation", and "commercial computer software services", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable, and are delivered with Restricted Rights. Such restricted rights are those identified in the Contract, and as set forth in the "Restricted Rights Notice" contained in paragraph (g) (3) (Alternate III) of FAR 52.227-14, Rights in Data-General, including Alternate III (June 1987). Any use, modification, reproduction release, performance, display or disclosure of such Products, Services or associated material to or by the U.S. Government shall be governed solely by the terms of the Contract and shall be prohibited except to the extent expressly permitted by the terms of the Contract.

18. Indemnification

18.1 Subject to the terms of the Contract, Evident shall (i) at its own expense, defend Customer against any suit, claim, or proceeding (collectively referred to as a "Claim") alleging that Product or Service as provided under these

Terms and Conditions infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the Claim, or pay the amounts stated in a written settlement negotiated and approved by Evident. The foregoing obligations are subject to the following: Customer (a) promptly notifies Evident in writing of any such Claim; (b) makes no admission of liability and grants Evident sole authority to direct and control all defense and settlement thereof; (c) provides Evident with full disclosure and assistance that may be reasonably required to defend any such Claim; and (d) is not in material breach of these Terms and Conditions or the Contract.

18.2 Evident shall have no obligation or liability with respect to any Claim based upon: (a) any Products or Services that have been altered, modified, or revised; (b) the combination, operation, or use of any Products or Services with other products when such combination is part of any allegedly infringing process; (c) failure of Customer to implement any update provided by Evident that would have prevented the Claim; or (d) unauthorized use of Products or Services, including, without limitation, a breach of the provisions of the Contract.

18.3 Should any Products or Services, or any portion thereof, become or, in Evident's opinion, are likely to become the subject of a Claim, Evident shall at its option (a) procure for Customer the right to make continued use thereof, (b) replace or modify it to make it non-infringing, or (c) failing (a) or (b), notify Customer to return the Products or Services and, upon receipt thereof, refund the price paid by Customer, less straight-line depreciation based on a five (5) year useful life.

18.4 Evident shall have no obligation or liability to the extent that the alleged infringement arises out of or relates to: (A) combination, operation, or use of a Product as provided by Evident to Customer with any products, services, items, or technology that (i) were not provided as part of the Products by Evident to Customer; or (ii) were provided by Evident to Customer but were obtained by Evident from a third-party provider and were not identified in the Contract as Equipment or Software that comprised the Product (such as a brokerage product or any other technology, item, or service not developed, performed, or manufactured by Evident except if provided by Evident to Customer as an embedded component of Equipment or Software that comprises the Product); (B) use for a purpose or in a manner for which the Product was not designed or use after Evident notifies Customer to cease such use due to a possible or pending claim of infringement; (C) any modification made by any person other than Evident or its authorized representatives; (D) any modifications to a Product made by Evident pursuant to instructions, designs, specifications, or any other information provided to Evident by or on behalf of Customer; (E) use of any version of Software when an upgrade or newer Software Release thereof made available by Evident would have avoided the infringement; (F) services provided by Customer and/or any revenue Customer derives therefrom; or (G) any data or information which Customer or a third-party records on or utilizes in connection with the Product.

18.5 THIS SECTION 18 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND EVIDENT'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

19. General Clauses

19.1 Products and/or Services sold hereunder are not intended for use in connection with any nuclear end use, rocket, or ballistic missile systems or drones or for use in a chemical or biological weapons facility or activity without the written consent of Evident. Customer warrants that it shall not use, or permit others to use, Products and/or Services for such purposes, unless Evident agrees to such use in writing. If, in breach of the foregoing, any

such use occurs, Evident disclaims all liability for any damages, injury, or contamination, and in addition to any other legal or equitable rights of Evident; Customer shall indemnify and hold Evident harmless against any such liability.

19.2 The parties will not exchange and do not intend to exchange any export controlled or International Trade in Arms ("ITAR") regulated information. In the event a party desires to share such information, the Disclosing Party shall notify the Receiving Party of its intent to disclose export-controlled or ITAR-regulated information prior to its disclosure to allow the Receiving Party the opportunity to ensure proper receipt or decline its receipt.

19.3 Customer is responsible for complying with all import requirements applicable to the sale to destination, including but not limited to proper classification under the Harmonized Tariff Schedule, valuation, country of origin, determination, or any other requirement necessary for proper importation.

19.4 Evident may assign or novate its rights and obligations regarding the Contract, in part or in whole, to any entity controlling, controlled by, or under common control with Evident. The delegation or assignment by Customer of any or all of its duties or rights under the Contract without Evident's prior written consent shall be void.

19.5 If any provision of the Contract is found to be void or unenforceable, the remainder of the Contract shall not be affected, and the parties hereby agree that they will replace any such void or unenforceable provision with a new provision that achieves substantially the same practical or economic effect, and which is valid and enforceable.

19.6 The following Sections shall survive termination of the Contract: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18 and 19, and all attachments and exhibits appended hereto use occurs, Evident disclaims all liability for any nuclear or other damages, injury, or contamination, and in addition to any other legal or equitable rights of Evident; Customer shall indemnify and hold Evident harmless against any such liability.

19.7 Evident products falling under the WEEE directive shall display the WEEE symbol, directly on the product when permitted by product form, fit, or function. Where applicable, products that do not permit the display of the WEEE symbol directly on the product will have the symbol placed on the packaging and instructions for use.