



## LIMITED CUSTOMER PILOT EVALUATION TERMS AND CONDITIONS

This Limited Customer Pilot Evaluation Agreement (“**Agreement**”) is made and entered into as of the Effective Date of the first Pilot Evaluation Order Form executed between Envysion, Inc. (“**Envysion**”) and the customer identified in such Pilot Evaluation Order Form (“**Customer**”). CUSTOMER SHOULD CAREFULLY READ THE TERMS OF THIS AGREEMENT BEFORE SIGNING A PILOT EVALUATION ORDER FORM. BY SIGNING A PILOT EVALUATION ORDER FORM OR USING THE SERVICES, CUSTOMER CONFIRMS THAT CUSTOMER HAS READ AND ACCEPTED THIS AGREEMENT.

The terms and conditions of this Agreement shall govern the Service(s) to be provided by Envysion pursuant to any Pilot Evaluation Order Form submitted by Customer and accepted by Envysion, as though the provisions of this Agreement were set forth in their entirety within such Pilot Evaluation Order Form, and so that each Pilot Evaluation Order Form and this Agreement shall be considered one, fully integrated document and agreement. Capitalized terms herein used which are not herein defined shall have the respective meanings ascribed to them in Section 18.

### 1. SERVICE.

Envysion provides managed video as a service over the Internet that includes Envysion Insight™ and/or Envysion Video™ (the “**Service**”). The Service consists of access and use of (a) the EnVR® and the EnVR® Software, (b) the Envysion Application™ Software (c) the Envysion Player™ Software and (d) the Service Equipment. Envysion reserves the right to make changes, modifications and enhancements to the Service from time to time in its sole discretion.

### 2. LIMITED LICENSE GRANT.

Subject to the terms and conditions of this Agreement, Envysion hereby grants Customer, during the Pilot Evaluation Term, a limited, non-exclusive, non-transferable, non-sublicensable, non-assignable license to use the Service as provided hereunder solely for Customer to conduct a trial or evaluation of the Service at the location(s) specified on an Pilot Evaluation Order Form and not for general production purposes.

### 3. LICENSE RESTRICTIONS AND LIMITATION OF USE.

Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way; (ii) interfere with or disrupt the integrity or performance of the Service or the Content in any manner; (iii) attempt to gain unauthorized access to the Service or its related systems or networks; (iv) remove, alter, or obscure any proprietary notices (including copyright notices) of Envysion or its licensors contained within the Documentation or displayed in connection with the Service (including Software); (v) modify or make derivative works based upon the Service or the Content; (vi) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; (vii) itself, or permit others, to duplicate, copy, translate, disassemble, decompile, reverse engineer or remanufacture the Software in whole or in part or otherwise attempt to derive the source code for the Software; (viii) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service; or (ix) otherwise use the Service or the Software except as expressly allowed under this Agreement.

Customer may not release to any third party the results of the Service performed by or on behalf of Customer for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes without the prior written approval of Envysion.

Additionally, Customer shall not use the Service to: (i) send spam or duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; or (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs.

### 4. PILOT EVALUATION ORDERS.

Customer shall order the evaluation of the Service and/or Installation Services by completing and signing a Pilot Evaluation Order Form. Each Pilot Evaluation Order Form shall be subject to acceptance by Envysion, in its sole discretion, through Envysion’s signature or performance thereunder. An accepted Pilot Evaluation Order Form may only be modified by an executed Change Order.

Each accepted Pilot Evaluation Order Form and Change Order shall become incorporated herein by reference. Terms, provisions or conditions on any purchase order, acknowledgement, or other business form or writing that Customer may use in connection with the provision of the Service and/or Installation Services by Envysion will have no effect on the rights, duties or obligations of the parties hereunder, regardless of any failure of Envysion to object to such terms, provisions or conditions. To the extent there is any inconsistency with or conflict between the terms of this Agreement and those contained in an Pilot Evaluation Order Form or Change Order, this Agreement will control and take precedence unless otherwise agreed in writing in that Pilot Evaluation Order Form or Change Order (as the case may be) specifically citing the provisions of this Agreement that will be modified or changed.

Customer shall provide Envysion a fully executed purchase order or executed purchase order exception form (provided by Envysion) for each accepted Pilot Evaluation Order Form or Change Order.

### 5. INSTALLATION SERVICES.

Customer may purchase Installation Services from Envysion for the following services:

- (a) installation and setup of the EnVR® and/or Service Equipment;
- (b) installation and any associated wiring for all cameras (subject to restrictions below);
- (c) connection to a standard Internet connection; and
- (d) integration with Envysion’s approved point of sale system if Customer has ordered and paid for this capability. Envysion’s point of sale integration does not request, process or collect personal credit card information.

Installation Services do not include services, hardware, setup, configuration, or wiring associated with Customer’s Internet connection for which Customer is solely responsible. All installation schedules will be mutually agreed to by the parties. Customer must obtain all local permissions and approvals for Installation Services prior to initiation. Customer must advise Envysion of any specific code related, union, or landlord requirements that would impact the install (e.g., special wiring, etc.). Customer will be responsible for any incremental costs incurred based on lack of Internet access, point of sale configuration issues, and permitting or compliance issues associated with the installation. These incremental costs, should they arise, will be documented and presented to Customer as separate line items on the applicable invoice(s).

Installation will be deemed completed when Envysion or its authorized third-party installer informs Customer that it has completed the Installation Services. Promptly after completion of the installation, Customer shall perform acceptance testing of the Service to confirm conformity with the Pilot Evaluation Order Form (or Change Order) and with applicable Envysion specifications and Documentation. Customer shall notify Envysion in writing of any material non-conformities of the Service within two (2) business days after installation. Envysion will use reasonable commercial efforts to correct any such non-conformities.

If the Service is in material conformance with Envysion's applicable specifications and Documentation or Customer fails to notify Envysion of any non-conformities within such two (2) business day period, the Service will be deemed to have been accepted ("**Accepted**" or "**Acceptance**"). Acceptance shall not be delayed due to any non-performance by Customer of its obligations associated with the Service or Installation Services.

## 6. CUSTOMER COOPERATION.

Customer shall provide Envysion with such resources, information and assistance as Envysion may reasonably request in connection with Envysion's performance of the Installation Services and the Service, including Internet access, assistance with the integration with Customer's point of sale system, applicable hardware and a suitable work environment. Customer acknowledges and agrees that Envysion's ability to successfully perform the Installation Services and the Service in a timely manner is contingent upon its receipt from Customer of the information, resources and assistance requested, including assistance as may be required to perform integration with the Customer's point of sale system. Envysion shall have no liability for deficiencies in the Installation Services or the Service resulting from the acts or omissions of Customer, its agents or employees, and in the event Envysion is required to expend additional efforts under this Agreement due to any lack of Customer information, resources and assistance, the schedule in the applicable Pilot Evaluation Order Form or Change Order and the fees payable under Section 8 of this Agreement shall be equitably adjusted.

## 7. ACCOUNT INFORMATION AND DATA.

Envysion does not own any Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data. Envysion shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. Customer agrees and acknowledges that Envysion is not obligated to retain Customer Data. Upon the expiration or termination of the Pilot Evaluation Term, Customer's right to access or use Customer Data shall immediately cease, and Envysion shall have no obligation to maintain or forward any Customer Data.

## 8. FEES AND PAYMENT TERMS.

The fees and charges for the Service, Installation Services or other products/services shall be set forth in the applicable Pilot Evaluation Order Form or Change Order. Customer acknowledges that the fee for the Service is based on the number of cameras connected to the EnVR® and shall include a license fee for each EnVR®, including any related part upgrades, and license fees, and fees for use of Service Equipment (collectively, the "**Service Fee**"). All payment obligations are non-cancelable and all amounts paid are nonrefundable. A Change Order shall be executed for any incremental charges that result from changes or unanticipated problems during the installation process, including additional equipment required, additional labor charges or other changes requested by Customer.

All amounts due hereunder are exclusive of, and Customer shall pay, all freight, insurance, sales, use and other taxes, export and import fees, customs duties, network access fees, regulatory charges and similar charges applicable to the transactions contemplated by this Agreement, except for taxes based upon Envysion's net income.

Payment of all fees due under this Agreement shall be as follows:

- (i) Installation Service fees: For each Pilot Evaluation location, fifty percent (50%) due upon the execution of the Pilot Evaluation Order with the remaining fifty percent (50%) due upon Acceptance;
- (ii) Service Fees: Monthly payment shall commence for each Pilot Evaluation location when the Service at such location has been Accepted.

Unless otherwise expressly provided in an applicable Pilot Evaluation Order Form, and subject to credit approval, Customer will pay Envysion all amounts due within thirty (30) days after the date of invoice. Customer acknowledges that Envysion reserves the right to require automatic payments by credit card or automated clearing house (ACH). All payments must be made in U.S. dollars.

## 9. NONPAYMENT AND SUSPENSION.

In addition to any other rights granted to Envysion under applicable law and/or this Agreement, Envysion reserves the right to suspend Customer's access to the Service if Customer's account becomes delinquent and is uncured for a period of ten (10) days. Delinquent invoices are subject to interest of 1.5% per month on any outstanding balance, or the maximum amount permitted by law, whichever is less, from the date due, plus all expenses of collection. Customer will continue to be charged for Service Fees during any period of Service suspension.

## 10. TERM AND TERMINATION.

The term of this Agreement shall be specified in the Pilot Evaluation Order Form (the "**Pilot Evaluation Term**") unless terminated as set forth in this Section 10. The Pilot Evaluation Term may be extended for an additional period by written agreement by the parties.

Envysion may terminate this Agreement upon written notice to customer. Either party may terminate this Agreement upon written notice if the other party (a) is in default with respect to any material term or condition of this Agreement and such failure or default continues unremedied for a period of thirty (30) days (ten (10) days for nonpayment) following written notice of such failure or default; (b) shall formally declare bankruptcy, insolvency, reorganization, liquidation, or receivership; or (c) shall have instigated against it bankruptcy, insolvency, reorganization, liquidation, or receivership proceedings, and shall fail to remove itself from such proceedings within ten (10) days from the date of institution of such proceedings.

In the event of any termination of this Agreement, any amounts owed to Envysion under this Agreement before such termination or expiration will be immediately due and payable.

Upon termination or expiration of this Agreement for any reason, (i) all Pilot Evaluation Order Forms immediately terminate; (ii) all rights granted by Envysion to Customer in this Agreement will immediately cease to exist; (iii) the Service shall be disconnected (unless the parties enter into a master customer agreement for the commercial use of the Service); and (iv) Customer must (a) discontinue all use of the Service; (b) return to Envysion or destroy (as instructed by Envysion), at Customer's expense, all copies of Documentation in Customer's possession or control; (c) return to Envysion, at Envysion's expense, all EnVR's in good working order; and (d) either return to Envysion, at Customer's expense, all Service Equipment in good working order or purchase such Service Equipment at Envysion's then-current list price amortized over the twenty-four (24) month period following the commencement of the Pilot Evaluation Term.

Sections 3, 7, 11, 13, 14, 15, 16 and 17, together with any accrued payment obligations, will survive expiration or termination of this Agreement for any reason.

## 11. PROPRIETARY RIGHTS AND RESPONSIBILITY FOR SERVICE EQUIPMENT.

Notwithstanding anything contained herein to the contrary, the Service, Software and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of Envysion and its licensors. For the avoidance of doubt, Customer acknowledges and agrees that (a), title to each EnVR® (including any Software incorporated or embedded therein, which is licensed and not sold to Customer hereunder), shall remain with Envysion and (b) title to all Service Equipment shall remain with Envysion. All rights not expressly granted to Customer under this Agreement are reserved by Envysion and its licensors.

Customer shall use the Service Equipment during the Pilot Evaluation Term only in connection with the Service. All Service Equipment, while in Customer's custody or control, shall be held at Customer's risk and shall be kept insured by Customer at Customer's expense in an amount equal to the replacement cost with loss payable to Envysion.

## 12. NO SUPPORT.

Except as provided for in the Pilot Evaluation Order Form, Envysion has no obligation under this Agreement to provide any support or consultation concerning the Service or to provide assistance in the evaluation or testing of the Service under this Agreement. The furnishing of such support or consultation will not subject Envysion to any liability, whether in contract, tort or otherwise.

## 13. DISCLAIMER OF WARRANTY.

THE SERVICE IS PROVIDED TO CUSTOMER "AS IS" AND WITHOUT ANY WARRANTIES OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

## 14. INDEMNIFICATION.

Customer will defend, indemnify and hold harmless Envysion and its affiliated companies and each of their respective officers, directors, employees and agents from and against any claims, liabilities, losses, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and defense costs) which may be sustained or suffered by any of them arising out of or based upon (a) any activities taking place at any Customer location(s), including any property damage or personal injury (including death) occurring at such Customer location(s); (b) Customer's (and its Users') access to and use of the Service and/or Service Equipment; and/or (c) Customer's breach of its obligations under this Agreement; provided, however, Customer shall have no indemnity obligations under this Section 14 to the extent any such claim results from Envysion's gross negligence or willful misconduct.

## 15. LIMITATION OF LIABILITY.

IN NO EVENT WILL ENVYSION BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, OR FOR ANY LOST DATA, LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR ANY PENALTIES TO WHICH CUSTOMER MAY BE SUBJECT, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SERVICE IN ANY WAY, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF ENVYSION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ENVYSION'S TOTAL CUMULATIVE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICE SHALL NOT EXCEED THE AMOUNTS PAID TO ENVYSION BY CUSTOMER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENTS GIVING RISE TO SUCH LIABILITY.

## 16. CONFIDENTIALITY.

The party receiving Confidential Information ("**Receiving Party**") from the other party ("**Disclosing Party**") will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

The Receiving Party's obligations under this Section 16 with respect to any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure in writing prior to making such disclosure and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

Except as otherwise expressly provided in this Agreement, the Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or upon the expiration or termination of this Agreement; provided, however, the Receiving Party may retain one (1) archival copy for record retention purposes and compliance with applicable law. Upon the request of the Disclosing Party, the Receiving Party will certify in a writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section 16.

Each party acknowledges that a breach or threatened breach of this Section 16 would cause irreparable harm to the non-breaching party, the extent of which would be difficult to ascertain. Accordingly, each party agrees that, in addition to any other remedies to which a party may be legally entitled, the non-breaching party shall have the right to seek immediate injunctive or other equitable relief in the event of a breach of this Section 16 by the other party or any of its employees or agents.

## 17. GENERAL PROVISIONS.

### 17.1 COMPLIANCE WITH LAWS AND EXPORT REGULATIONS.

Customer shall comply with all applicable laws and regulations concerning its use of the Service, including all applicable privacy laws and export and import control laws and regulations. Customer will defend, indemnify, and hold Envysion harmless from and against any breach of this Section 17.1.

### 17.2 ASSIGNMENT.

Neither party may assign or transfer, by operation of law or otherwise, any of its rights under this Agreement (including the license rights granted to Customer hereunder) to any third party without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Envysion shall have the right to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

### 17.3 NOTICES.

All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, electronic facsimile (fax), or certified or registered mail (postage prepaid and return receipt requested) to the other party at the address for each party first set forth above, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner.

## 17.4 RELATIONSHIP OF PARTIES.

The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent or joint venture partner of or with the other, and neither party has the right or authority to assume or create any obligation on behalf of the other party.

## 17.5 FORCE MAJEURE.

Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond the reasonable control of such party. Without limiting the generality of the foregoing, Customer acknowledges that Envysion's Service may be subject to limitations, delays and other problems inherent in the use of the Internet and electronic communications. Envysion is not responsible for delays, delivery failures or other damage resulting from such problems.

## 17.6 GOVERNING LAW AND VENUE.

This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Except for any injunctive or other equitable relief pursuant to Section 16, any action or proceeding arising from or relating to this Agreement shall be brought exclusively in a federal or state court in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

## 17.7 WAIVERS.

Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

## 17.8 SEVERABILITY.

If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

## 17.9 PUBLICITY.

Neither party may make public, in any form, Customer hereby grants to Envysion the limited right to use Customer's name and marks in marketing and publicity materials listing Customer as a customer of Envysion; provided, however, any such use must be pre-approved by Customer, which approval shall not be unreasonably withheld or delayed.

## 17.10 CONSTRUCTION.

The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to."

## 17.11 ENTIRE AGREEMENT.

This Agreement, including any Pilot Evaluation Order Forms, Change Orders and attachments hereto, constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral.

## 18. DEFINITIONS.

"**Change Order**" means a written document (in a form approved by Envysion) that is executed by the parties and that alters the terms of a previously accepted Pilot Evaluation Order Form.

"**Confidential Information**" means the terms and conditions of this Agreement and all information related to a party's business, financial affairs or operations, including information related to business plans, technology, source code, product or service development plans, pricing, techniques and methods, which is either marked or identified as confidential or which the receiving party knew or reasonably should have known, under the circumstances, was confidential. Without limiting the foregoing, the Software shall be considered the Confidential Information of Envysion.

"**Content**" means the audio and visual information, documents, software, products and services contained in or made available via the Service, other than Customer Data.

"**Customer Data**" means any data, information or material that Customer or Customer's Users, subscribers or partners may disclose or submit in the course of using the Service.

"**Documentation**" means the user manuals and other technical documentation made available by Envysion to Customer for the Service in either electronic, online help files or hard copy format.

"**EnVR®**" means a physical computer located at a Customer location that enables digital video recording and also contains the Envysion EnVR® Software product. The EnVR® is included as part of the Service.

"**Envysion Application™ Software**" means the software application hosted by Envysion that provides the Envysion Insight™ and Envysion Video™ managed video content.

"**Envysion EnVR™ Software**" means the software (in object code format) that resides on the EnVR® or other Envysion approved device.

"**Envysion Insight™**" means the Service that provides the integration of video surveillance content with point of sale or other data for the purpose of associating video with data, custom reports and alerts related to the data.

"**Envysion Player™ Software**" means the software product that is downloaded over the Internet that renders video within a web browser.

"**Envysion Site**" means the web site located at a unique URL to be provided by Envysion to Customer where Users may access and use the Service.

"**Envysion Video™**" means the Service that provides video surveillance.

"**Intellectual Property Rights**" means all present and future worldwide copyrights, trademarks, trade secrets, patents, patent applications, moral rights, contract rights, and other proprietary rights.



**"Pilot Evaluation Order Form"** means the form evidencing the evaluation subscription order for the Service and/or the purchase of any Installation Services. Each Pilot Evaluation Order Form shall be in a form approved by Envysion and shall specify, among other things, the order effective date, the products/services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties.

**"Service Equipment"** means the physical equipment, such as cameras, monitors, and other related equipment, accessories or parts (excluding the EnVR®) that Customer receives from Envysion as part of the Service and for which title does not pass to Customer.

**"Software"** means collectively the Envysion Application™ Software, Envysion EnVR® Software, and Envysion Player™ Software, including all updates, upgrades, enhancements and error corrections made generally available by Envysion in its sole discretion.

**"Users"** mean Customer's personnel who are authorized by Customer to use the Service on behalf of Customer and have been supplied user identifications and passwords for this purpose.