

HARDWARE AND SERVICES AGREEMENT

THIS HARDWARE AND SERVICES AGREEMENT (“Agreement”) is executed as of the ___ day of _____, 2018 (“Effective Date”), by and between _____, a _____ having an address at _____ (“Customer”) and **Omni Security Rochester Inc. (d/b/a Hoptix)**, a New York domestic business corporation having its principal address as 350 East Ave Rochester, NY 14204 (“Provider”).

WITNESSETH:

WHEREAS, Provider is owner of certain hardware; and

WHEREAS, Provider desires to provide the “Hardware” (as defined below) to Customer and Customer desires to utilize such Hardware in Customer’s business; and

WHEREAS, Provider performs or arranges certain business, efficiency and logistics consulting services; and

WHEREAS, Customer wishes to engage Provider to provide such services on a continuing basis; and

WHEREAS, Customer desires to obtain from Provider a non-exclusive license of certain software and support of said software; and

WHEREAS, Provider desires to provide Customer such license and support..

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. RECITALS

The above recitals are incorporated herein by reference as if fully set forth herein.

2. HARDWARE AS A SERVICE

Subject to the terms and conditions set forth in this Agreement, Provider hereby agrees to provide Customer the Hardware described in **Schedule A to this Agreement** (the “Hardware”, “Hardware” shall refer to the Hardware individually and collectively).

3. PERFORMANCE OF SERVICES

Subject to the terms and conditions set forth in this Agreement, Provider shall perform or arrange for the performance of services described in **Schedule B** to this Agreement (the

“Services”, “Services” shall refer to Services individually and collectively) at each Customer “Location” (as defined below). Notwithstanding anything contained herein to the contrary, Customer expressly understands that Provider may substitute contractors for Provider’s personnel.

4. LICENSE AND RESPONSIBILITIES

(a) **Grant.** Subject to the terms and conditions of this Agreement, Provider grants Customer a non-exclusive, non-transferable license and/or sub-license to access and use the software described on **Schedule C** to this Agreement (the “Software”, “Software” shall refer to Software and individually and collectively) during the Comfort Guarantee Period, Term and/or any Renewal Term or Extended Renewal Term, as applicable (“License”). Such License includes use of the Software by Customer and its employees, agents, and contractors, and the right to allow remote access and use of the Software by “Authorized Users” (as defined below). During the term of this Agreement, Provider shall provide Customer and “Authorized User(s)” access to the Software via an online user interface in accordance with the terms of this Agreement. Customer shall be responsible for authorizing and determining which individuals are able to access the Software user interface (“Authorized Users”). The Software may only be utilized in relation to the applicable Location(s) (as defined below).

(b) To the extent the Software contains third-party software under license to Provider, including open source software (collectively, the “Third-Party Software”), the Third-Party Software is licensed to Customer under and subject to the terms of the applicable Third-Party Software licenses. The use of the Third Party Software is subject to all of the restrictions with respect to the licensed software as set forth in this Agreement, including the Schedules hereto.

(c) Except as otherwise provided in this Agreement, Customer may not, carry out any modifications, alternations or adaptations on or to the Software without the prior written consent of Provider. Customer may not directly or indirectly, grant sublicenses, leases, or other rights under the License to third parties. Customer shall not, directly or indirectly, modify, reverse engineer, reverse compile, or disassemble the Software. Customer shall not remove any copyright, trademark, or other proprietary notices of Provider and/or any third party as they appear in the materials provided by Provider hereunder. Customer shall not: (i) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious matter; (ii) send or store malicious code; (iii) interfere with or disrupt the integrity or performance of the Software, the user interface, or the data contained therein; or (v) attempt to gain unauthorized access to the Software, user interface, or their related systems or networks.

(d) This Agreement does not include, and Customer is not entitled to receive any Software source code or any proprietary programming documentation for the Software. Notwithstanding the foregoing, Customer shall use reasonable efforts to protect any Software source code or proprietary programming documentation to which Customer gains access.

(e) Customer agrees to promptly suspend access to the Software for any person who: (i) ceases to qualify as an Authorized User; (ii) Customer no longer wishes to have access to the

Software; or (iii) Customer knows or reasonably believes is causing Customer to breach this Agreement.

(f) In connection with Customer's use of the Software, Customer shall: (i) comply with all applicable laws, court orders, rules and regulations, including without limitation, the Digital Millennium Copyright Act and related copyright laws; (ii) comply with applicable Provider policies for access to and use of the Software; (iii) cooperate with Provider's investigation of outages, security problems, unauthorized use of the Software and/or any suspected breach of this Agreement and any applicable law, court order, rule or regulation; (iv) comply with applicable license terms or terms of use for any Software, content, service or website which Customer or any of its Authorized Users accesses or uses when using the Software; (v) give Provider true, accurate, current, and complete account information; (vi) keep Customer account information up to date; (vii) be responsible for the use of the Software and compliance with this Agreement by all Authorized Users; and (viii) promptly notify Provider of any known or suspected unauthorized use of Customer's account, the Software or any other breach of security.

(g) Provider will defend Customer and its officers, directors, employees, successors assigns, and agents ("Infringement Indemnified parties") against any allegation or claim to the extent that the allegation or claim directly arises out of or relates to any infringement or misappropriation of any third party U.S. intellectual property or proprietary rights resulting from the Software, or other materials provided by or on behalf of Provider to Customer (an "Infringement Claim"). Notwithstanding the foregoing, Provider will have no obligation or liability for any infringement allegation or claims that is based on: (i) use of the Hardware, Software, Services, or any other material provided by or on behalf of Provider in violation of the terms of this Agreement, provided that the allegation or claim would not have occurred absent such use; (ii) use of the Hardware, Software, Services, or any other material provided by or on behalf of Provider in combination with other products, provided that the allegation or claim would not have occurred absent such combination; or (iii) any modification of the Hardware, Software, Services, or any other material provided by or on behalf of Provider made by a party other than Provider, provided that the allegation or claim would not have occurred absent such modification.

(h) If Provider or Customer is enjoined from using the Hardware, Software, Services, or any other material provided by or on behalf of Provider, or if Provider learns or believes that the Hardware, Software, Services, or any other material provided by or on behalf of Provider to Customer may infringe on any third party right, Provider must (at its option and expense) do one of the following: (i) procure the right for Customer to continue use of such Hardware, Software, Services or other material; (ii) replace or modify such Hardware, Software, Services, or other material so as to make it non-infringing without substantial change in functionality; or (iii) if neither (i) nor (ii) is provided to Customer's reasonable satisfaction within twenty (20) days, Provider will provide Customer a refund of any and all "Hardware as a Service Investment" (as defined below), Service Fees and Service Payments Customer paid to Provider for the affected Hardware, Software, Service, or other material, less a reasonable portion of such fees for the period of time during which Customer used the Hardware, Software, Services or other material.

This Section 4(h) states Provider's entire liability and Customer's sole and exclusive remedy for infringement actions.

5. TERM & TERMINATION

(a) This Agreement shall commence on the Effective Date and shall continue for a comfort guarantee period of ninety (90) days ("Comfort Guarantee Period"). Customer shall utilize the Comfort Guarantee Period to evaluate the effect and results of the Hardware, Services and Software. During the Comfort Guarantee Period, the Agreement may be terminated by Customer for "Good Cause" (as defined below), if, and only if, Customer provides timely written notice to the Provider stating the basis for such "Good Cause," including the nature and character of any alleged deficiencies, and provides Provider a minimum of twenty (20) business days to audit Customer's use of the Hardware, Services and Software and address the deficiencies identified in writing by Customer. Customer agrees to cooperate with such audit and provide reasonable assistance and access to materials and Location(s) reasonably necessary to conduct such audit. For purposes of this Section, "Good Cause" shall mean that: (a) Customer has actively used the Hardware, Services and Software in accordance with Provider's instructions for a minimum of seventy-five (75) calendar days, as determined by Provider in its sole discretion; and (ii) Customer experienced no performance and behavioral improvements relating to its staff/employees during such period at the Location(s), as determined by Provider in its sole discretion. If Customer terminates this Agreement for Good Cause during the Comfort Guarantee Period, Customer remains obligated to pay Provider: (i) the "Initial Payment" (as defined below); and (ii) a pro rata share of any and all Hardware as a Service Investment payments, Service Fees and Service Payments up to and including the date of the termination.

(b) Following the expiration of the Comfort Guarantee Period, in the event Customer has not terminated this Agreement for Good Cause, the term of the Agreement shall be for a period of five (5) years (excluding the Comfort Guarantee Period) (the "Term"). The Term shall automatically renew for successive one (1) year periods (each a "Renewal Term"). Notwithstanding the foregoing, following the Term, if mutually agreed to in writing by the parties, the Term may be extended for successive five (5) periods (each an "Extended Renewal Term"). At the commencement of each Extended Renewal Term, Provider shall ship and/or deliver updated Hardware to Customer and be responsible for installation of the updated Hardware at the Location(s) within twenty (20) business days of the commencement of the Extended Renewal Term. Either party may terminate this Agreement effective the last day of the then current Term, Renewal Term or Extended Renewal Term by providing ninety (90) days prior written notice to the other party of its intent to terminate the Agreement.

(c) Notwithstanding the foregoing, this Agreement may be terminated at any time by either party if the other party breaches any material provision of this Agreement. The party desiring to terminate shall give the breaching party written notice stating the nature and character of the breach and allow the breaching party thirty (30) calendar days from the date of the notice to correct the breach. If the breach has not been corrected within the thirty (30) day notice period, this Agreement shall then be automatically terminated. In the event this Agreement is

terminated by Provider for breach by Customer, Customer shall remain fully responsible for all payments due under any remaining portions of the Term, Renewal Term or Extended Renewal Term, as applicable, as well as payment of all amounts accrued and due hereunder to Provider through the effective date of termination hereunder.

(d) Notwithstanding the foregoing, this Agreement may be immediately terminated by Provider, in Provider's discretion, in the event that:

- i. bankruptcy or insolvency proceedings are commenced by or against Customer; or
- ii. if a receiver is appointed for the business of Customer; or
- iii. if Customer discontinues its business.

Termination by Provider under this Section 5(d) shall be without prejudice to Provider's right to damages and other rights at law or otherwise.

(a) Notwithstanding the foregoing, if Customer fails to pay any amount due hereunder when such amount shall become due, then Provider may, upon fifteen (15) days prior written notice to Customer, terminate this Agreement if the failure to pay is not cured within fifteen (15) days after Customer's receipt of such notice. Termination by Provider under this Section 5(e) shall be without prejudice to Provider's right to damages and other rights at law or otherwise.

(b) Notwithstanding the foregoing, the Parties may terminate the Agreement at any time by mutual written consent by the Parties.

(e) Notwithstanding the expiration or other termination of this Agreement, Customer shall not be released from any obligation that accrued prior to the date of such expiration or termination, including, but not limited to, the obligations of Customer to pay Provider for any and all Hardware as a Service Investment, Service Fees and Service Payments. performance of any Services for Customer or any other act after termination of this Agreement shall not be construed as a renewal of this Agreement for any further term nor a waiver of the termination hereof.

(f) All provisions of this Agreement relating to intellectual property, confidentiality, ownership, indemnification, limitation of liability and any other subject that would, by its nature, be deemed to survive termination of this Agreement, will survive the termination of this Agreement.

6. LOCATION; USE OF HARDWARE

The Hardware shall at all times be located at the Customer's locations identified on **Schedule D** hereto (each a "Location" or "Premise"), and shall be used by Customer in furtherance of

Customers business at the Location(s). Any use of the Hardware must be: (a) consistent with the use and function of the Hardware according to the manufacture's design and instructions and consistent with the Provider's standards; (b) consistent with the terms of this Agreement; and (c) in accordance with all applicable government laws, rules and regulations.

7. INITIAL PAYMENT

In consideration for set up, installation and onboarding services, Customer shall pay Provider an initial amount of two thousand five hundred and 00/100 dollars (\$2,500.00) per Location ("Initial Payment"). The Initial Payment shall be payable on the Effective Date of this Agreement.

8. HARDWARE AS A SERVICE INVESTMENT PAYMENTS

(a) In consideration for use and possession of the Hardware, throughout the Comfort Guarantee Period, Term and any Renewal Term or Extended Renewal Term hereof, Customer agrees to pay Provider in monthly installments the payments set forth on **Schedule E** hereto, payable in advance on the 1st day of each month, for the right to possess and use the Hardware.

(b) Provider will invoice Customer for each installment of the Hardware as a Service Investment and any other charges payable by Customer. Payments received by Provider after thirty (30) days after the date of the invoice date shall, among other things, be subject to a per diem interest charge at the rate of nine sixteen (16%) per annum or the maximum rate permitted by law, whichever is less.

(c) Provider may charge and Customer will pay applicable federal, national, state or local sale or use taxes or value added taxes that Provider is legally obligated to charge. ("Taxes"). Customer may provide Provider with an exemption certificate or equivalent information acceptable to the relevant taxing authority, in which case, Provider will not charge or collect the taxes covered by such certificate. Notwithstanding the foregoing, any and all Taxes payable in connection with this Agreement shall be the sole responsibility of Customer.

9. SERVICE FEES; SERVICE PAYMENTS

(a) In consideration for the Services, throughout the Comfort Guarantee Period, Term and any Renewal Term or Extended Renewal Term hereof, as applicable, Customer agrees to pay Provider the monthly "Service Fees" and "Service Payments" as set forth on **Schedule E** hereto, payable in advance on the 1st day of each month.

(b) Provider will invoice Customer for each installment of the Service Fees and Service Payments and any other charges payable by Customer. Payments received by Provider after thirty (30) days after the date of the invoice date shall, among other things, be subject to a

per diem interest charge at the rate of sixteen percent (16%) per annum or the maximum rate permitted by law, whichever is less.

(c) Provider may charge and Customer will pay Taxes. Customer may provide Provider with an exemption certificate or equivalent information acceptable to the relevant taxing authority, in which case, Provider will not charge or collect the taxes covered by such certificate. Notwithstanding the foregoing, any and all Taxes payable in connection with this Agreement shall be the sole responsibility of Customer.

10. CHANGES IN HARDWARE AS A SERVICE INVESTMENT, SERVICE FEES, AND SERVICES PAYMENT RATES

At the end of each current Term year, Renewal Term year, or Extended Renewal Term year, Provider shall have the right to change the Hardware as a Service Investment, Service Fees, Service Payments rates and/or any other fees or rates charged to Customer, and shall provide a fifteen (15) day written notice to Customer that such Hardware as a Service Investment, Service Fees, Service Payments rates and/or any other fees or rates will be changed.

11. OWNERSHIP OF HARDWARE

(a) The Hardware shall, at all times, be the sole and exclusive property of Provider. Customer shall have no rights or property interest therein, except for the right to use the Hardware in the normal operation of its business, during the term of this Agreement, consistent with the terms of this Agreement.

(b) Customer shall keep the Hardware, at all times, free and clear from all claims, levies, liens, encumbrances and process. Customer shall give Provider immediate notice of any such attachment or other judicial process affecting the Hardware.

(c) Customer shall not pledge, lend, create a security interest in, sublet or part with possession of the Hardware, or any part thereof, or attempt in any other manner to dispose thereof, without Provider's prior written consent.

(d) Customer shall not, without the prior written consent of Provider, make or permit any changes or alterations to the Hardware or any attachment thereto. All Hardware replacements, parts and substitutions for or which are added to or become attached to the Hardware shall immediately become accessions to the Hardware, which shall be the property of Provider, and shall be subject to the terms and conditions of this Agreement.

(e) Customer shall, at any times hereafter, whenever requested by Provider, execute and deliver to Provider all agreements, instruments and documents, in a form satisfactory to Provider, necessary to fully consummate all of the transactions contemplated herein and necessary for the protection of Provider's title to and interest in the Hardware.

12. INSTALLATION AND TRAINING

(a) Provider shall ship and/or deliver the Hardware and be responsible for installation of the Hardware at the Location(s) within twenty (20) business days of the Effective Date of this Agreement. Customer shall provide a suitable installation and environment for the use of the Hardware, consistent with any applicable manufacturer's or vendor's specifications. Provider or its agents may, after providing Customer with reasonable notice thereof, enter the Location(s) for the purpose of inspecting the Hardware and the manner in which it is being used.

(b) Provider will deliver the Software and any relevant documentation within twenty (20) business days of the Effective Date of this Agreement. Unless otherwise mutually agreed to in writing by the parties, delivery of any upgrades, including new versions of the Software and relevant documentation, shall be delivered to Customer by electronic means if and when available.

(c) Provider will provide training on the Hardware and Software pursuant to the terms and at the rates listed in **Schedule E** of this Agreement.

13. **OPERATION AND MAINTENANCE**

(a) **Defined Terms.**

(i) "Regular Business Hours" shall mean the hours between 8:30 A.M. and 5:00 P.M. local time, Monday through Friday, excluding public holidays;

(ii) "Preventative Maintenance" or "PM" shall mean the performance of periodic inspections of the Hardware, Software, and other services necessary to maintain the Hardware and Software in good working order, including cleaning, adjustment, updating and troubleshooting. Customer understands and acknowledges that the Hardware and Software are subject to ordinary wear and tear and periodic malfunctions that will require repairs and/or updates. Ordinary wear and tear or periodic malfunctions shall not be deemed a breach or a failure to perform;

(iii) "Contracted Period of Maintenance" or "CPM" shall mean, unless otherwise stated herein, Regular Business Hours during which Provider personnel shall provide the Services to Customer;

(iv) "Remedial Maintenance" or "RM" shall mean the repair, update or replacement (at Provider's option) of Hardware parts that fail and/or Software.

(b) Customer shall use the Hardware and Software in a careful and proper manner, in accordance with all applicable manufacturer, developers and/or vendor specifications, solely in the conduct of its business, and will comply with and conform to all federal, state or local laws, ordinances and regulations relating to the possession, use and maintenance of the Hardware and Software.

(c) During the Contracted Period of Maintenance, Provider shall provide Preventative Maintenance and Remedial Maintenance for the Hardware and Software during Regular Business Hours and/or the CPM, as applicable, and shall furnish any and all parts or updates required to keep the Hardware and Software in good mechanical, operational and/or working order in accordance with Schedules A, B, C, and E of this Agreement.

(d) **Supplemental Services.**

(i) If Provider begins to perform services during CPM or Regular Business Hours, but is unable to complete such services during the applicable time period, then Provider will offer Customer the option of completing the services immediately or during the next CPM or Regular Business Hours. If Customer elects to have the services completed immediately, then Provider shall bill Customer for the time required to complete such services at a rate of one hundred and ninety-five dollars (\$195.00) per hour, including any time for Provider's related travel. ("Supplemental Services"). If Customer elects to have the services completed during the next CPM or Regular Business Hours (whichever is applicable to the services selected), then Customer shall not incur any additional charges except as set forth herein.

(ii) If Customer requests to have Provider perform services outside of CPM or Regular Business Hours (other than the Supplemental Services described in Section 13(d)(i)), and Customer provides Provider eight (8) or more hours' advance notice prior to the requested commencement of such services, then Provider shall bill Customer for the time required to complete such services at a rate of one hundred and ninety-five dollars (\$195.00) per hour, including any time for related travel. ("Supplemental Services").

(e) **Emergency Services.** If Customer requires emergency maintenance or repair services on a public holiday or outside of the CPM or Regular Business Hours (other than Supplemental Services), and Customer provides Provider less than eight (8) hours' advance notice prior to the requested commencement of such services, then Provider shall bill Customer for the time required to complete such services at rate of two hundred and twenty-five dollars (\$225.00) per hour, including any time for related travel ("Emergency Services")..

(f) **Access.** Customer agrees to give Provider reasonable access to the Hardware and Software during Regular Business Hours or CPM (whichever is applicable to the Services selected) to provide all Services provided hereunder. Customer further agrees to provide Provider access to additional information, facilities and resources as may necessary for Provider to provide the Services contemplated. If Customer fails to provide Provider reasonable access to service the Hardware and Software, then Provider shall have no responsibility to perform Services or provide credits, if applicable.

14. **REPRESENTATIONS AND WARRANTIES**

(a) Customer represents and warrants that (i) it has the right and authority to enter into and perform this Agreement, including, without limitation to grant the rights and licenses provided for in this Agreement; (ii) neither the execution and delivery of this Agreement nor the performance of any of its obligations hereunder will violate its organizational documents; (iii) it shall comply in all material respects with all applicable federal, state, and local statutes, regulations and ordinances in the performance of its obligations hereunder; and (iv) that it owns all right, title and interest in and to or has all necessary license rights to all “Customer Content” (as defined below) provided to Provider. In the event that Customer requests Provider to provide any Services with respect to any third party applications and software (including all applications, software installed, implemented and configured by Provider on Customer’s behalf), Customer represents and warrants to Provider that (i) it has the right to grant access to Provider to perform and deliver such Services or has otherwise obtained all necessary consents, and (ii) it is in compliance with all relevant applications or software licensing requirements.

(b) Provider represents and warrants that: (i) it is the sole owner of the Hardware and Provider has the unrestricted right to lease the Hardware to Customer as provided herein; (ii) as of the Effective Date, all licenses, permits, approvals and consents, if any, required from any governmental authority or third party for Provider to perform the Services and/or make the Software available to Customer for the purposes contemplated by this Agreement have been obtained by Provider; (iii) neither the execution and delivery of this Agreement nor the performance of any of Provider’s obligations hereunder will violate its organizational documents; (iv) it shall comply in all material respects with all applicable federal, state, and local statutes, regulations and ordinances in the performance of its obligations hereunder; and (v) the Services under this Agreement will be performed by qualified personnel in a professional, workmanlike manner

15. DISCLAIMER.

(a) EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN SECTION 14(b) OF THIS AGREEMENT, PROVIDER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR OTHERWISE, REGARDING HARDWARE, THE SOFTWARE, SERVICES, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY PROVIDER HEREUNDER, AND SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES WITH RESPECT TO TITLE OR NON-INFRINGEMENT WITH RESPECT TO THE SERVICES AND SOFTWARE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROVIDER DOES NOT WARRANT:

(i) THE FITNESS, DESIGN OR CONDITION OF THE HARDWARE; OR

(ii) THE QUALITY OR CAPACITY OF THE HARDWARE; OR

- (iii) THE WORKMANSHIP OF THE HARDWARE; OR
- (iv) THAT THE HARDWARE WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THEREOF; OR
- (v) ANY GUARANTEE OR WARRANTY AGAINST PATENT INFRINGEMENT OR LATENT DEFECTS; OR
- (vi) THAT CUSTOMER'S USE OF THE SOFTWARE WILL BE UNINTERRUPTED; OR
- (vii) THAT OPERATION OF THE SOFTWARE WILL ERROR FREE.

16. INDEMNIFICATION

Except as otherwise specifically set forth in this Agreement, Customer to the fullest extent permitted by law, shall release, indemnify and hold harmless Provider and Provider's affiliates, parents, and subsidiaries and their respective employees, officers, directors, agents and contractors from and against all liabilities, obligations, losses, damages, claims (whether of Customer or third parties) and all corresponding costs and expenses (including legal fees and expenses) in any way relating to or arising of this Agreement and/or the performance or non-performance of obligations hereunder, including without limitation liabilities or claims pertaining to Customer's possession, use, operation, storage, transportation, maintenance, repair, replacement and/or return of the Hardware, Software and/or Services, excepting however, any liabilities, obligations, losses, damages and claims resulting solely from the gross negligence or willful misconduct of Provider. Customer shall give Provider prompt notice of any occurrence, event or condition in connection with which Provider may be entitled to release and/or indemnification hereunder. The provisions of this paragraph shall survive the expiration or early termination of this Agreement.

17. TAXES

Customer shall pay promptly all taxes, fees and assessments levied on the Hardware, Services, or relating to this Agreement, including, but not limited to, all sales, use, property, gross receipts, excise or other taxes or charges, together with any fines, penalties or other interest thereon, now or hereafter imposed by any governmental body, upon or with respect to any of the Hardware, Services, or the use, possession, ownership, leasing, operation, receipt, delivery or return thereof.

18. RISK OF LOSS, DAMAGE OR DESTRUCTION OF THE HARDWARE

(a) Customer shall bear the entire risk of loss, theft, damage or destruction, partial or complete, to any or all of the Hardware, incurred or occasioned by Customer's use or operation

of the Hardware from and after the execution of this Agreement, from any and every cause whatsoever. The operation and use of the Hardware shall be at Customer's sole risk.

(b) Any loss, theft, damage or destruction, partial or complete, to any part or all of the Hardware shall not, in any way, release, abate, affect, reduce or impair any of Customer's obligations, including without limitation Customer's obligation to pay Hardware as a Service Investment.

(c) In the event that any part or all of the Hardware is, in Provider's opinion, partially or totally lost, stolen, damaged or destroyed, Customer shall promptly notify Provider and Customer shall: (i) cause the Hardware to be restored to the same condition as when received by Customer, in good repair and working order, or (ii) replace the Hardware with like Hardware of the same make and of the same or later model, and in the same condition as when received by Customer and in good repair and working order; and continue to pay Hardware as a Service Investment for the remainder of the term of this Agreement.

19. INSURANCE

(a) Customer, at its expense, agrees to obtain and maintain insurance coverage on the Hardware against loss or damage by fire, explosion and all other hazards and risks ordinarily subject to extended coverage insurance, for the full fair replacement value of the Hardware, by policies and in such form and amounts, and with such companies as are reasonably satisfactory to Provider. At Provider's request, each such policy shall name Provider as an additional insured.

(b) Customer, at its expense, agrees to obtain and maintain, for the protection of Provider and Customer, as their interests may appear, general and comprehensive liability insurance and Network Security and Privacy liability insurance, with insurance companies and in such amounts as are satisfactory to Provider, against claims for bodily injury or death or property damage arising out of the use, possession, operation or condition of the Hardware. At Provider's request, each such policy shall name Provider as an additional insured.

(c) Copies of such insurance policies shall be delivered to Provider, upon demand, and shall contain a provision showing loss payable to Provider.

(d) Customer agrees to provide Provider with at least 30 days prior written notice of the material alteration or cancellation of any such insurance policies.

20. LIMITATION OF LIABILITY

EXCEPT IN CONNECTION WITH PROVIDER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 4(G), IN NO EVENT SHALL PROVIDER BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND ARISING OUT OF, RELATED TO,

RESULTING FROM, OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR GOOD WILL, EVEN IF PROVIDER HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

FURTHER, EXCEPT IN CONNECTION WITH PROVIDER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 4(G), IN NO EVENT SHALL PROVIDER'S AGGREGATE LIABILITY TO CUSTOMER FOR ANY CLAIMS, LOSSES, INJURIES, SUITS, DEMANDS, JUDGMENT, LIABILITIES, COSTS, EXPENSES OR DAMAGES ARISING OUT OR RELATED TO THIS AGREEMENT, AND REGARDLESS OF THE FORM OF THE ACTION OR LEGAL THEORY, EXCEED THE HARDWARE AS A SERVICE INVESTMENT, SERVICE FEES AND SERVICE PAYMENTS PAID BY CUSTOMER TO PROVIDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

THE PARTIES AGREE THAT THIS IS A MATERIAL PART OF THIS AGREEMENT AND HAS BEEN BARGAINED FOR.

21. ASSIGNMENT

Customer shall not assign, transfer or convey (by operation of law or otherwise) this Agreement or any interest herein, in whole or in part, without the prior written consent of Provider. Any attempt to do so by Customer shall be null and void. Notwithstanding anything to the contrary in this paragraph 21, without the consent of Provider, Customer may assign this Agreement in connection with a merger, consolidation, reorganization, sale of all or substantially all of its assets, or any similar transaction.

All rights of Provider hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, without notice to Customer.

22. SURRENDER

Upon termination of this Agreement, Provider shall de-install, inspect and repossess the Hardware from Customer. When repossessed by Provider, the Hardware shall be in good working order, and in the same condition as when received by Customer under this Agreement, reasonable wear and tear excepted. Customer shall be solely responsible for any costs, expenses, damages and/or repairs relating to the installation, de-installation and/or removal of the Hardware, including, but not limited to, any damages to the Location(s) (.e.g., drill holes, remaining wires, etc.).

If the Hardware is not returned or made available to Provider within three (3) business days of expiration of the term of this Agreement, or, as applicable, earlier termination of this

Agreement, Provider shall have the right to (a) enter the Premises and repossess the Hardware, and Customer shall pay all costs and expenses incurred by Provider in removing the Hardware; or (b) deem the Hardware to be purchased by Customer, "AS IS", "WHERE IS" as of the date of expiration or earlier termination for an amount equal to two times the price determined by Provider as the "list price" of the related Hardware and Customer will pay such amount to Provider upon demand. If, as determined by the Provider in Provider's reasonable discretion, the Hardware is not returned in the specified condition, Customer shall also pay all costs and expenses incurred by Provider to re-condition and/or replace the Hardware for re-deployment by Provider.

23. **NO SET-OFF**

The right of Provider to any payment provided for under this Agreement will not be subject to any abatement, reduction, setoff, defense, counterclaim or recoupment of any amount due or alleged to be due by reason of any past, present or future claims by Customer.

24. **NONDISCLOSURE; NON-SOLICITATION**

(a) **Nondisclosure.** Customer agrees that the performance of this Agreement will result in the disclosure to Customer of information not generally known by third parties and treated as proprietary ("Confidential Information"). Customer shall not, without the written consent of the Provider, divulge, communicate, or use in any way (except as permitted by this Agreement) the Confidential Information of the Provider, and Customer shall utilize the same degree of care and precaution as Customer utilizes with respect to its own proprietary information to prevent the unauthorized disclosure of Provider's Confidential Information. All Software, service manuals, designs, findings, products, inventions, displays, sets, sketches, plans, artist renderings, copies, reproductions, operations, purposes, discoveries, equipment, hardware, samples, improvements, specifications, processes, marketing or promotional materials, know how, tests and other data, services, selling agreements, suppliers, descriptions, formulas, budgets, projects, reports, research and development, studies, contracts, source code, business policies and practices, contractors, consultants, techniques, technical bulletins, price lists, system schematics and drawings used in the performance of this Agreement are the Confidential Information and property of Provider and its licensors. The term "Confidential Information" shall not include, and the obligations of this Section shall not apply to, any information which: (a) at the time of disclosure to Customer, is in the public knowledge; (b) after disclosure, becomes part of the public knowledge by publication or otherwise, except by breach of this Agreement or by fault of the Customer; (c) was lawfully in the Customer's possession (as reflected by its written records) at the time of disclosure by the Provider, and which was not acquired, directly or indirectly, from the Provider; (d) the Customer can demonstrate by written documents resulted from its own research and development, independent of disclosure from the Provider; or (e) was received by the Customer from third parties not under an obligation not to disclose such information. The provisions of this Section shall survive the expiration or termination of this Agreement for any reason. Upon termination or expiration of this Agreement, Customer agrees to promptly return to the Provider, or if not returnable, to promptly destroy, all records, documents, memoranda, and other materials and all copies (including, without limitation, all electronic copies) of the same, of

whatever kind or nature, relating to Confidential Information. In the event Customer is requested or required as a result of a judicial or regulatory proceedings to disclose any Confidential Information, Customer agrees to provide the Provider with immediate written notice thereof so that it may seek a protective order and the Customer agree to cooperate to obtain such a protective order or other remedy. If failing the entry of a protective order or other appropriate remedy or receipt of a waiver hereunder, disclosure of any Confidential Information is required, Customer may disclose that portion of the Confidential Information which its counsel advises it is legally compelled to disclose and will exercise its best efforts to obtain reliable assurance that confidential treatment will be afforded any Confidential Information so furnished.

(b) **Covenant of Non-Solicitation/Hire.** During the Comfort Guarantee Period, Term or any Renewal Term or Extended Renewal Term of this Agreement and for a period of one year after the termination or expiration of this Agreement, Customer will not directly or indirectly, on behalf of itself, or on behalf of any person, firm, partnership, corporation, association or entity, hire or solicit or induce any employee, consultant or representative of Provider to discontinue its relationship with Provider or to establish a relationship with Customer or any other party. Violation of this provision shall constitute an event of default and Provider shall have the right to any or all of the following: (i) equitable relief (including without limitation injunctive relief) without having to prove damages or post a security bond; (ii) termination of this Agreement; and/or (iii) pursue all other damages and remedies available under applicable law.

25. INTELLECTUAL PROPERTY AND DATA SECURITY

(a) **Software.** As between Provider and Customer, Provider and/or its licensors shall continue to be the exclusive owner of the Software and/or Third-Party License (as defined below) and of its components, elements and features, including but not limited to Software source code, including all improvement and developments therefrom (collectively, the “Provider Property”), and Customer shall only be granted the access and use rights provided under this Agreement. Customer shall acquire no property right in the Provider Property by reason of its use thereof, and if, by operation of law, or otherwise, Customer is deemed to, or appears to, own any property rights in the Provider Property, Customer shall, at Provider’s request, execute any and all documents necessary to confirm or otherwise establish Provider’s rights therein. Customer shall take no action in denigration of the rights of Provider in the Provider Property and Customer shall not in any way during this Agreement and thereafter challenge Provider’s ownership of the Provider Property.

(b) **Reports.** Provider hereby grants Customer a limited, non-exclusive and non-transferable right to create and display printouts of reports retrieved from the Software, and to reproduce, copy, analyze, use and display such reports during the Comfort Guarantee Period, Term, any Renewal Term and/or Extended Renewal Term, as applicable.

(c) **Customer Content.** “Customer Content” means any editorial, video, report, analytic or other content or data uploaded in the Software by the Hardware and/or by or on behalf of Customer and Authorized Users. Provider is hereby granted, during the term of this Agreement and thereafter, a continuing nonexclusive right and license to create, host, reproduce,

copy, display, analyze and distribute the Customer Content on the Software as necessary for Provider to: (1) provide the Services to Customer and Authorized Users; (2) enhance, supplement, alter or modify available services to or for Customer or others; and/or (3) develop new services for Customer or third parties. Customer represents that it holds or will hold the necessary rights and licenses in and to the Customer Content in order to grant this license to Provider.

(d) **Customer Content Following Termination.** Following the termination of this Agreement, Provider shall have no obligation to maintain or provide any then available Customer Content and shall, unless legally prohibited, have the right to delete all Customer Content in its systems or otherwise in its possession or under its control.

(e) **Access to Software.** Other than the Hardware and Software, Customer is responsible for obtaining and maintaining all hardware, software, telecommunications Hardware and services necessary to access and use the Hardware and Software (collectively, "Customer Technology"). All such Customer Technology shall comply with the Provider's interface specifications provided to Customer, and as updated by Provider from time to time upon no less than thirty (30) days' notice to Customer. Provider is not responsible for the performance, accuracy, compatibility, adequacy or provision of Customer Technology. Customer acknowledges and agrees that:

(i) Customer has independently assessed and determined its own telecommunications hardware and bandwidth capacity requirements in connection with its intended use of the Hardware and Software and its own internal business requirements relating to the same;

(ii) Customer has not relied upon any advice, direction and/or instruction from Provider in relation to the selection, installation, use and/or implementation of any Customer Technology;

(iii) Provider makes no warranty that all or any part of such Customer Technology is or may be suitable for Customer's intended or desired purposes, except for the specification and requirements provided by Provider; and

(iv) In no event shall Provider be liable to Customer for any direct or indirect loss, damage, cost, expense, claim or liability arising out of or related to any partial or total failure of such Customer Technology to satisfy Customer's internal business requirements.

(f) **Data Security.** Provider shall use reasonable measures to safeguard the security of Customer Content. Provider makes no other warranty or representation regarding the security of Customer Content. Further, except with respect to Provider's express obligations set forth in this Agreement, Customer is solely responsible for any damage or losses caused by unauthorized destruction, loss, interception, or alteration of Customer Content by unauthorized persons.

26. **PERSONAL GUARANTEE**

Customer's [Title], [Name], shall execute and deliver the Personal Guarantee of Hardware and Services Agreement to Provider in the form and content attached hereto as **Schedule F**, guaranteeing Customer's obligations to Provider under this Agreement.

27. **INDEPENDENT CONTRACTORS**

Customer and Provider are acting hereunder as independent contractors. Neither party shall be considered or deemed to be an agent, employee, joint venturer or partner of the other party. A party's personnel shall not be considered employees of the other party, shall not be entitled to any benefits that the other party grants its employees, and shall have no authority to act or purport to act on the other party's behalf. Each party shall be responsible for the conduct of its personnel. Neither Customer nor Provider has the right, and shall not seek, to exercise any control over the other party or its personnel. Each party shall be solely responsible for hiring, firing, promoting, demoting, rates of pay, taxes, benefits and other terms and conditions in regard to its own personnel.

28. **NONEXCLUSIVE**

Customer and Provider both acknowledge and agree that the rights granted to the other party in this Agreement are nonexclusive and that, without limiting the generality of the foregoing, nothing in this Agreement shall in any way be deemed or construed to prohibit Provider from participating in similar business arrangements as those described herein.

29. **SALES AND MARKETING SUPPORT**

Customer grants to Provider the right to display Customer's name and logo as part of Provider's customer listings, references and on marketing material; provided that each such use is subject to Customer's written approval. Such approval is not to be unreasonably withheld.

30. **FURTHER ASSURANCES**

Each party agrees that it shall, from and after the Effective Date, execute and deliver such other documents and take such other action as may reasonably be requested to effect the transaction contemplated hereunder.

31. **NOTICES**

All notices or other documents under this Agreement shall be in writing, and delivered personally or mailed by certified mail, return receipt requested, addressed to the addresses first written above, or to such other address as the parties may, from time to time provide by notice to the other.

32. COSTS, EXPENSES AND ATTORNEYS' FEES

If at any time hereafter Provider employs legal counsel to intervene in any suit or proceeding related to this Agreement, or to enforce any rights of Provider hereunder, or the payment of Customer's obligations, all of the reasonable costs and expenses, including without limitation reasonable attorneys' fees, shall be an additional indebtedness owing by Customer to Provider, payable on demand.

33. FORCE MAJEURE

Neither party shall incur any liability of any kind for reason of any delay or failure to perform all or any part of this Agreement due to causes beyond its reasonable control, including, but not limited to, compliance with regulations, orders or instructions of any federal, state or municipal government or any department or agency thereof, acts of God, acts or omission of either party or either party's employees or agents which are not contemplated in its performance of this Agreement, acts of civil or military authority, civil disorder or disturbance, acts of public enemies, problems arising in transportation (including car or truck shortages), civil insurrection strikes, labor disputes, embargoes, war, riot, or failure of suppliers to make timely deliveries of materials or services.

34. ENTIRE AGREEMENT

This Agreement (including all schedules hereto), constitutes the entire agreement between the parties with respect to the subject matter hereof; and this Agreement supersedes any and all other agreements, negotiations or discussions between the parties with respect to the subject matter hereof. No change or modification, including waiver of any provision hereof, shall be valid unless the same be in writing and signed by the parties.

35. SEVERABILITY

If any provision contained in this Agreement shall be inoperative for any reason whatsoever, the validity and effect of all other provisions shall not be affected thereby.

36. CHOICE OF LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its principles of conflict, and the venue of any action pertaining to the subject matter hereof shall be only Monroe County, New York.

37. HEADINGS

The headings in this Agreement are inserted for convenience only, and are not to be considered in the construction of the provisions hereof.

38. COUNTERPARTS; FACSIMILE

This Agreement may be executed in separate counterparts and by facsimile, PDF, or other form of electronic means, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same Agreement. Signatures by facsimile, PDF, or other form of electronic means shall be as effective and binding as original ink signatures.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CUSTOMER

OMNI SECURITY ROCHESTER INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Doc #02-579887.7

SCHEDULE F

PERSONAL GUARANTEE OF HARDWARE AND SERVICES AGREEMENT

Provider: **Omni Security Rochester Inc. (d/b/a Hoptix)**
1425 Mt. Read Blvd, Suite 250
Rochester New York, 14606

Customer: _____
[Address]

Guarantor: _____
[Address]

The terms and conditions set forth in this Personal Guarantee of Hardware and Services Agreement (“Guarantee”) with respect to the Hardware and Services Agreement between the Provider and Customer dated [Date] (“Agreement”), supplement the terms and conditions set forth in the Agreement.

Capitalized terms used but not defined in this Guarantee shall have meanings ascribed to such terms in the Agreement.

In consideration of the execution of the Agreement by Provider to: (1) let the Hardware to Customer; (2) grant Customer a non-exclusive, non-transferable license and/or sub-license to access and use the Software; and (3) provide the Services to Customer, the undersigned guarantor ("Guarantor") hereby guarantees the prompt and faithful payment by Customer of all Hardware as a Service Investment Payments, Service Fees, Service Payments, Taxes and interest under the Agreement and the performance of all obligations of Customer under the Agreement. The Guarantor’s liability hereunder is absolute, unconditional, irrevocable and continuing irrespective of any modification, amendment or waiver of or any consent to departure from the Agreement that may be agreed to by Customer in accordance with the terms of the Agreement. .

Guarantor further agrees that (i) no extension, forbearance or leniency extended by Provider to the Customer shall discharge Guarantor, (ii) Provider and Customer, without notice to or consent by Guarantor, may at any time or times enter into such modifications, extensions, amendments or other covenants respecting the said Agreement and Guarantor shall not be released thereby, (iii) Guarantor is bound by each and every covenant and obligation in the Agreement, it being specifically understood and agreed by Guarantor that his/her liability hereunder shall be primary, and that in any right of action which may accrue to the Provider under said Agreement, the Provider may, at Provider's option, proceed against the undersigned Guarantor with or without having commenced any action against or having obtained any judgment against the Customer. In addition to sums due under the Agreement, Guarantor shall

