

LICENSE, PRODUCT, SERVICE AND SOFTWARE USAGE TERMS AND CONDITIONS

These License, Product, Service and Software Usage Terms and Conditions (the “Agreement” or “Terms and Conditions”, which shall include any and all schedules, addendums, order forms, or attachments incorporated herein, as well as all amendments or supplements of such documents and the Agreement) is entered into and effective as of date set forth in the signature block to or as provided in the end of this Agreement (“Effective Date”) by and between MALUM, INC., a Delaware corporation d/b/a Malum Terminus Technologies, Inc. (“Company”) and the undersigned third-party (“Customer” or “Client”). Company and Customer at times are each referred to herein as a “Party” and, collectively, as the “Parties.”

RECITALS

A. The Company provides certain hardware products and software products/services that enables property owners to capture certain real-time video images to detect key risk, as generally described at <https://intellisee.com/> (and such website, the “Website”).

B. The Company supplies certain hardware systems (such systems or any hardware provided by Company to Customer, the “Hardware”), with its proprietary software installed (such software supplied by Company, whether pre-installed or installed by Customer, the “Software”)

C. As provided for in certain order form(s) between the Company and Customer, Customer has expressed interest to purchase certain Hardware, software, and also certain Services from the Company (such order form(s), as it may be amended or supplemented, the “Order Form”).

D. Company is willing to provide such Services and sell such Hardware and software, all pursuant to the terms of this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Description/Definition of Services, Products, and Programs

- 1.1 “Content” shall mean the Submitted Content and Processed Content.
- 1.2 “Customer,” as used in this Agreement, shall mean the third-party signing onto the Order Form to which these Terms and Conditions are attached.
- 1.3 “Hardware Products” or “Tangible Products” shall mean those certain tangible and hardware products supplied from Company to Customer, including without limitation those certain GPU appliances sold by Company to Customer.
- 1.4 “Installation Services” shall mean those services related solely to the installation of any Products or Software, including installation of Network Equipment.
- 1.5 “Network Equipment” shall mean that certain equipment the tangible and intangible equipment installed by Company to allow its Services and Products to function on the Customer’s buildings, real estate, and equipment.
- 1.6 “Processed Content” shall mean that certain Submitted Content that is processed through the Company’s Products.
- 1.7 “Products” shall mean the Hardware Products and Software Products.
- 1.8 “Repair” shall mean the repair of the Products either within or outside of warranty period described within this Agreement, which repair services, whether paid for or provided complimentary due to warranty issues are governed by the terms and conditions within this Agreement.

- 1.9 “Services,” as used in this Agreement, shall mean all services furnished by Company to Customer as set forth in any Order Form or other written purchase order between Company and Customer, that may include, without limitation, the Installation Services and all services relating to the installation, maintenance and operation of the Products and the software and other technology contained in the Products.
- 1.10 “Submitted Content” shall mean that certain data and content, including without limitation, images, sounds, and video, captured by the Products as part of operating the Products.
- 1.11 “Software Products” shall mean those certain web applications and software, operated and maintained by Company and sold or licensed to Customer pursuant to an Order Form, including without limitation certain artificial intelligence software utilized by the Company to process real time video images.
- 1.12 “Training” or “Technical Support” or “Onboarding” shall mean the initial or follow-on training to Customer to ensure safe, reliable and effective usage of the Deliverables in addition to the technical support to address questions or technical issues that may arise out of operating the Products and Services. Together, these services shall at all times be subject to any terms and conditions or terms of use provided to, or made available to, Customer.

The Services, Products, and Network Equipment provided by Company to Customer shall be referred herein as the “Deliverables.”

2. General Use; Use Restrictions.

- 2.1 Subject to the terms and conditions set forth in this Agreement and any applicable schedule, Customer is hereby granted a restricted, limited, revocable, non-transferable, non-exclusive license to use the Products, subject always to the following terms: (a) access will be limited to the permitted users identified by Customer from time to time, each of whom is an employee or authorized agent of Customer; (b) Customer’s rights are personal, non-transferable, non-sub licensable, non-exclusive; (c) repairs, alterations, or modifications done by Customer or third-party that are not authorized by Company in writing shall invalidate warranty and performance specifications of any processing service relating to the Deliverables; (d) access to certain Deliverables may be terminated and this license revoked by Company upon any breach by Customer of this Agreement or any Website Policies or additional terms and conditions that may be set forth in separate schedules, statements, or other documents provided to Customer; (e) all use of the Deliverables may be subject to certain third-party license terms or terms and conditions that are not under the control of the Company; and (f) Customer shall, when using the Deliverables, only use software or firmware pre-approved by the Company or sold by the Company pursuant to this Agreement.
- 2.2. Customer will not: (a) alter, modify or adapt the Deliverables including, but not limited to, translating or creating derivative works of the Deliverables or any data or Content contained therein; or (b) distribute, resell, permit access to, publish, commercially exploit (except as permitted in this Agreement), disclose or otherwise transfer or make the Deliverables available to any other person or organization, except as otherwise agreed to by the parties in an addendum to the Order Form, this Agreement, or with the prior written consent of Company; (c) perform repairs, alterations, or modifications or overhaul to Deliverables described herein without Company authorization in writing, or (d) update, install, or alter any software or firmware used by the Products without the consent of the Company and in all cases in accordance with this Agreement and any terms and conditions provided by any applicable third-party software or firmware provider. Customer agrees that any user identifications, passwords or other entitlement information related to Customer’s authorized users shall be maintained in confidence and used only by the user to which such information is assigned. Customer agrees to use the Deliverables only as expressly permitted by this Agreement and in accordance with all applicable laws, rules and regulations. Customer shall have no rights or license of any kind with respect to the Deliverables other than as set forth in this Agreement. Customer agrees that, upon reasonable notice during the term of this Agreement, Company may, at its sole discretion, request documentation from Customer to confirm that Customer is in compliance with the terms and conditions of this Agreement. If Company is required to bring any action or suit to enforce Customer’s obligations hereunder or to pursue any remedies Company may have for Customer’s violation of this Agreement, Company shall be entitled to recover from the Customer, in addition to any other rights and remedies it may have, all reasonable costs and expenses, including without limitation all attorneys’ fees for such suit and/or enforcement.
- 2.3. Company shall have the right, in its sole discretion, upon thirty (30) days written notice to Customer, terminate this Agreement and all of Customer’s rights to use the Deliverables hereunder, provided however, (i) to the extent Customer

has purchased certain Hardware, Customer shall have the right to retain ownership of such Hardware, all in accordance with the terms of this Agreement, and (ii) Customer shall have the right to retain any license granted herein with respect to any Submitted Content processed and delivered by Company to Customer prior to the date of termination, pursuant to the terms of this Agreement, including such requirement that all such Processed Content be paid for in full.

2.4 Notwithstanding the foregoing, Customer acknowledges and agrees that, except as provided in this Agreement (including without limitation the terms set forth in Section 2.3), Company owns the Deliverables, and shall have a non-exclusive, unrestricted, irrevocable, transferable, worldwide, and perpetual license to all Content.

3. Proprietary and Confidential Information

3.1 **Company's Ownership of Intellectual Property.** Unless specifically provided in Section 2 above, Company retains all of its right, title and interest in all now known or hereafter known or developed tangible and intangible intellectual property, including without limitation, all: (a) rights associated with works of authorship throughout the universe, including, but not limited to, copyrights, moral rights and mask works; (b) trademarks, services marks, trade names and any other indicia of origin; (c) technical and non-technical information (regardless of whether such information is in tangible or intangible form) including source code, object code, computer code, data, ideas, concepts, formulae, methods, techniques, processes, financial business plans and business methods (including any derivatives of any of the foregoing) that derive economic value, actual or potential, from not being generally known to other persons who could obtain economic value from the disclosure or use thereof, and which are the subject of efforts that are reasonable under the circumstances to maintain their secrecy ("Trade Secrets"); (d) patents, pending patent applications, designs, algorithms and other industrial property rights; (e) other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated, including "rental" rights and rights to remuneration), whether arising by operation of law, contract, license or otherwise; (f) registrations, initial applications, renewals, extensions, continuations, divisions or reissues now or hereafter in force (including any rights in any of the foregoing); and (g) all Proprietary Information (as defined herein) of the Company (collectively, "Intellectual Property"). Customer covenants not to prejudice or impair the interest of Company in any of its Intellectual Property. At no time shall Customer challenge or assist others to challenge any of Company's Intellectual Property or the registration thereof.

3.2 **Confidential Information.** Customer agrees to hold in confidence all Confidential Information (defined below) that it receives from the Company. Customer will not disclose any of the Company's Confidential Information to any party or person whatsoever other than to their respective employees or agents who have a need to know such Confidential Information consistent with the purpose for which it was disclosed. Customer will not use, directly or indirectly, any of the Company's Confidential Information for any purpose other than the purpose for which it was disclosed. Customer will not use, directly or indirectly, under any circumstances, any of the Company's Confidential Information for any purpose that is in any way detrimental to the Company. This includes, but is not limited to, contracting with Company's employees, consultants, contractors, vendors or partners to provide services to Customer similar to those provided to Customer by Company. Customer shall take reasonable precautions to protect the confidentiality and value of Company's Confidential Information, including measures to prevent loss, theft and misuse. Customer shall immediately give notice to Company of any unauthorized use or disclosure of Company's Confidential Information. Customer agrees to assist Company in remedying any unauthorized use or disclosure of Confidential Information caused by such Customer. Customer acknowledges expressly that each and every one of its employees and agents are bound to the terms and conditions of this Section 3.2.

3.3 **Definition of Confidential Information.** Confidential Information means Proprietary Information (defined below) and Trade Secrets (defined above), whether in written, oral, electronic or other form, furnished, transmitted to, observed or obtained by one of the parties. The following information, all as reasonably substantiated by documentation, however, is not Confidential Information and Customer is not restricted as to its use or disclosure: (a) information already in the possession of, or already known to, the Customer as of the Effective Date, and not under any other obligations of confidentiality due to any other agreements between the Parties; (b) information that enters the public domain after the Effective Date, or which, after such disclosure, enters the public domain through no fault of the Customer; (c) information lawfully furnished or disclosed to the Customer by a non-party to this Agreement without any obligation of confidentiality; (d) information independently developed by any Party without use of any Confidential Information or Proprietary Information; or (e) information that is explicitly approved for release by the Company.

3.4 **Definition of Proprietary Information.** Proprietary Information means information identified on, in or constituting: all strategic and development plans, financial information, results of the Applications, Services, or Products, business plans,

information about parent, subsidiaries or sister companies, co-developer identities, data, business records, client lists, identity of vendors and partners, policy information, personally identifiable information, personal financial information or personal health information (as those terms are defined by governing law), product designs, test data, project records, market reports, investor information, know-how, discoveries, ideas, concepts, specifications, models, diagrams, methodologies, research, technical and statistical data, drawings, models, flow charts, work-flow, marketing, pricing, selling, distribution, database descriptions, software code, source code, object code, Intellectual Property, and any and all other tangible or intangible information, other than Trade Secrets, encompassed in any medium, which may be disclosed, whether or not in writing, whether or not marked as “Confidential” or “Proprietary” by the Company or to which the Customer may be provided access to by Company in accordance with this Agreement, or which is generated or learned as a result of or in connection with the Deliverables and is not generally available to the public.

3.5 **Return of Confidential Information.** Upon written request of the Company, the Customer will promptly return or destroy (as directed by the Company) all Confidential Information received from the Company, including all copies thereof. Upon the request of the Company, the Customer shall furnish to the Company an affidavit providing assurances as to the return or destruction of the Company’s Confidential Information.

3.6 **Disclosure Required by Law.** A disclosure of Confidential Information in response to a valid order by a court or other governmental body or otherwise required by law is not considered to be a breach of this Agreement or a waiver of confidentiality for other purposes. Before any such disclosure, Customer shall provide prompt written notice to Company and reasonably cooperate with the Company in seeking a protective order or preventing disclosure.

3.7 **Ownership.** Except as specifically provided otherwise in this Agreement, all materials, including Deliverables, transmitted from Company to Customer and containing Confidential Information are to remain the sole and exclusive property of the Company. Except for the licenses or ownership rights granted pursuant to this Agreement, this Agreement and transmission or disclosure of any Confidential Information from Company to Customer does not grant the Customer a license or ownership of any type.

3.8 **Survival of Obligations.** All obligations and restrictions of confidentiality and ownership of Confidential Information under this Agreement are to survive the termination of this Agreement.

3.9 **Responsibility for Affiliates and Representatives.** Customer is solely responsible for any breach of this Agreement by its representatives including, without limitation, any improper use or disclosure by its representatives of the Company’s Confidential Information. Customer may disclose Confidential Information to its representatives who in Customer’s reasonable judgment have the need to know such information in connection with this Agreement. Customer shall inform its representatives of the confidential nature of such Confidential Information, shall direct them to hold Confidential Information in strict confidence, shall take all reasonable precautions to prevent improper use of Confidential Information by them, and shall be responsible for any breaches by them of the terms found in this Agreement.

3.10 **Certain Rights Granted to Company.** Customer authorizes and grants to Company a right and license to use Customer’s name and logo on its marketing and promotional material, including on its website and customer lists. Customer grants Company the right to make certain press releases available to the general public regarding the services provided by Company to Customer. Customer acknowledges and agrees that Company may collect and retain aggregate non-identifiable data derived from performance of the Company Products and Services in accordance with Company’s privacy policy or terms of use.

4. Fees

4.1 **Fees and Payment Terms.** Customer shall pay the fees set forth in that certain (i) Customer Order Form provided to Customer by the Company and signed by or agreed to by Customer, (ii) as found on any relevant invoices provided to Customer by Company, or (iii) as provided to Customer by Company through the Company’s Website or other ordering platform. For the avoidance of doubt, Customer acknowledges and agrees that the fees provided in the Order Form are subject to change by the Company, in its sole discretion. If invoiced, all fees are due and owing within thirty (30) days of Company sending such invoice to Customer. Customer shall pay interest computed at the rate equal to the higher of (i) one and one-half percent (1 1/2%) per month or (ii) the maximum rate permitted by law, on any amounts due hereunder that are remitted more than thirty (30) days late. Customer shall be responsible for all costs and expenses, including court costs and attorneys fees, incurred by Company in collecting any fees owed to it under this Section 4.1 or enforcing its rights under this

Agreement. Failure to pay invoices and amounts owing when due is a material breach of this Agreement. Company shall have the right to interrupt service with no warning if any payments are considered late under this Agreement.

4.2 **Taxes.** Customer shall be responsible for all taxes applicable to Customer and arising as a result of this Agreement, other than taxes based on Company's income. The prices provided to Customer from Company do not include any taxes associated with the Deliverables, however designated.

4.3 **Replacement/Early Termination Fees.** Company may require Customer to pay early termination fees or fees in regards to lost or damaged Hardware. Such fees may be set forth in the Order Form or the Policies and Customer acknowledges and agrees that such fees shall be binding and enforceable.

4.4 **Pricing Modifications.** Customer specifically acknowledges and agrees that, in addition to providing written notice or notice through e-mail, the Company may post or provide updated pricing terms to the Company's Website or such other website that is utilized by Customer to access the Deliverables, and such action shall be considered an effective method of the Company to provide notice to the Customer of such updated pricing terms.

4.5 **Disputes of Collected Fees of Invoiced Amounts.** To the extent Customer disputes any fees charged to Customer, Customer shall dispute such amounts within thirty (30) days of the invoice date and to the extent Customer does not meet such deadline date to dispute any charges or fees, Customer shall have waived all rights to contest such fees and charges.

5. Term; Termination

5.1 The term of this Agreement shall commence on the date Customer first accepts and agrees to the terms of this Agreement (the "Effective Date"). This Agreement may be terminated by Company upon thirty (30) days prior notice unless terminated sooner as permitted below.

5.2 Company may terminate this Agreement with respect to the Deliverables and its obligations hereunder and Customer's rights thereto, upon notice to the Customer of a material breach of this Agreement. Such termination shall become effective immediately, unless such material breach is capable of being cured in Company's sole discretion, in which case termination shall be effective if such breach is not cured within seven (7) days after receipt of such written notice.

6. Customer Data

6.1 Company has no obligation to retain any of Customer's data that has been provided by Customer to Company or generated through Customer's use of the Deliverables ("Customer Data", which shall include for the avoidance of doubt, all Content) after the termination of this Agreement, for whatever reason. Company shall be entitled to irretrievably delete Customer Data at any time after thirty (30) days following the termination of this Agreement, and Company shall have no obligation to notify Customer of its intention to delete or its deletion of any or all of Customer Data.

6.2 Any Customer Data generated by Customer's use of the Deliverables shall be deemed non-confidential to Customer. Customer hereby grants and assigns to Company, a worldwide, royalty-free, irrevocable, and non-exclusive license, with the right to sublicense, the rights to use and disclose the Customer Data on an anonymous basis in any manner Company chooses, and to display, perform, copy, make, have made, use, sell, and otherwise dispose of any Company's products embodying the Customer Data in any manner without obligation to Customer. Customer shall have no rights to any future uses or value derived by Company relating to any Customer Data.

6.3 Customer specifically acknowledges and agrees that Company has no obligation to retain or collect any Customer Data as part of Customer's use of the Products and Services and Customer shall indemnify and hold Company harmless regarding any Customer Data retained by Customer.

7. Company Policies

Customer agrees to abide by and accept all policies and terms of use posted on Company's Website, including, without limitation, Company's (i) Privacy Policy, (ii) the general terms of use contained or provided for therein, and (iii) all policies regarding use of the Deliverables, fees relating to the Deliverables, and other terms (collectively, the "Website Policies", each a "Website Policy"). Customer further agrees to abide by and accept all policies and terms posted on Company's Website

relating to Customer's use of the Deliverables or Company providing of the Deliverables and modifications of any terms and conditions (such Deliverables or statements, the "Policy Statements" and together with the Website Policies, the "Policies"). The Policies may change from time to time in Company's sole discretion and Company will post such changes on its Website or provide such updated Policies to Customer. In the case of a direct conflict between any provision of a Policy and the provisions of this Agreement, the provision of this Agreement shall prevail unless Customer specifically acknowledges or agrees to such additional terms. It is Customer's sole obligation to read all Policies and updates, amendments, and supplements thereto. Customer agrees that failure to comply with any Policy shall be a material breach of this Agreement, and may result in the immediate termination of Customer's right to access the Website and the Deliverables. Customer's continued access of the Website and the Deliverables constitutes Customer's assent to any changed terms of any of the Policies.

To the extent Customer's use of the Deliverables would be subject to any other applicable law or regulation, including without limitation, the Family Educational Rights and Privacy Act (FERPA) or The Health Insurance Portability and Accountability Act (HIPAA), such additional terms and conditions may govern Customer's use, all of which shall be posted on the Company's Website and shall govern Customer's use of the Deliverables.

At service level terms relating to the Software Products shall be set forth in that certain service level terms, addendum, or exhibit set forth on the Company's Website or included in the Policies or on the applicable Order Form.

8. Customer Representations and Warranties and Covenants

Customer represents, warrants, and covenants (as applicable) to the Company that:

8.1 Customer it is duly organized and validly existing under the laws of its state of incorporation or formation, has the necessary authority, licenses and other permissions to conduct the business in which it is currently engaged and is in compliance with all applicable laws. Customer further represents and warrants that it has the legal capacity to agree to the terms of this Agreement, perform its obligations hereunder, has obtained and shall maintain all necessary authorizations or registrations from appropriate authorities to carry out the activities contemplated in this Agreement, and entering into this Agreement will not violate any applicable law or regulation.

8.2 This Agreement and performance by Customer of its obligations hereunder shall not (i) violate any law, rule or regulation applicable to Customer or (ii) be in breach of, or constitute a default under, the provisions of any agreement, instrument or undertaking by which Customer is bound.

8.3 Customer's use of the Deliverables shall at all times be (i) in compliance with any law, rule or regulation applicable to Customer and Customer shall undertake to diligently review any changes to such laws, rules or regulations, including, but not limited to, any Federal Aviation Administration regulations relating to unmanned aerial systems and privacy, and any laws governing surveyors and the use of unmanned aerial systems and privacy; and (ii) in compliance with, and not violate the rights of any third-parties (including without limitation, all privacy rights).

8.4 Customer shall not, and shall ensure its affiliates do not, disparage the Company or any of its directors, officers, agents or executives or otherwise take any action which could reasonably be expected to adversely affect the reputation of the Company or its products or the personal or professional reputation of any of its directors, officers, agents or employees.

8.5 Customer and its affiliates that they shall promptly notify the Company of any restrictions imposed by law on the use of the Deliverables by Customer or use of the Submitted Content by the Company in accordance with the terms of this Agreement.

8.6 Customer shall provide the Company with all necessary cooperation in relation to this Agreement and all necessary access to such information as may be required by Company in order to render the Services or to provide the Deliverables.

8.7 Customer shall operate and use all Products, Software, and Services in accordance with this Agreement, the Policies, and for their intended purposes.

8.8 To the extent Customer or its staff receives any Training, Customer covenants and agrees that it will ensure all staff using the Products are included in such Training, and Customer and its agents shall use the Products as directed by the

Company, including without limitation, the use of any battery chargers recommended or provided by the Company.

9. Indemnity

Each Party (the “Indemnifying Party”) agrees to indemnify and hold harmless the other Party (the “Indemnified Party”), and such Indemnified Party’s employees, contractors, agents, successors, officers, and assigns, from and against any suits, losses, claims, demands, liabilities, costs and expenses (including attorney and accounting fees) that such Indemnified Party may sustain or incur as a result of any third-party claim against such Indemnified Party based upon the breach of this Agreement by the Indemnifying Party or the gross negligence or intentional misconduct of the Indemnifying Party.

10. Limited Warranty; Disclaimers; Limitation of Liability; Remedies

10.1 Company represents and warrants to Customer that (a) this Agreement and performance by Company of its obligations hereunder shall not (i) violate any law, rule or regulation applicable to Company in any material respect or (ii) be in breach of, or constitute a default under, the provisions of any agreement, instrument or undertaking by which Company is bound; (b) this Agreement, when signed, is valid, binding, and enforceable against Company, and (c) the Deliverables shall be performed and/or provided in a diligent, timely, technically competent and professional manner. Company further represents and warrants to Customer (which warranty is not transferable), that the Hardware Products shall be free from material defects in the material and workmanship under normal use and service, in accordance with this Agreement, for a period of the shorter of (i) One (1) year from the date of original sale or transfer from Company to Customer, or (ii) the applicable warranty period provided from the supplier or manufacturer of such Hardware Products (the “Warranty Period”). This warranty shall not apply if Customer uses the Hardware Products in violation of this Agreement, in violation with directions or guidance provided by Company, or if the Hardware Products have been subject to accident, negligence, abuse, misuse, or criminal acts. Customer’s sole and exclusive remedy for a breach of this limited warranty by Company shall be for Company to repair or replace (as determined by Company), at no charge to Customer, the Hardware Products in breach of such warranty; provided however, in the event of such a breach of warranty Company may, in its sole discretion, elect to terminate this Agreement immediately in which event Company shall return to Customer an amount equal to the amount paid by Customer to Company during the Warranty Period for such Hardware Products and as a condition of receiving such payment Customer shall return to Company all Hardware Products delivered to Customer by Company under this Agreement.

EXCEPT FOR THE REMEDY SPECIFICALLY SET FORTH IN THIS SECTION, CUSTOMER HEREBY WAIVES ANY AND ALL OTHER RIGHTS AND REMEDIES THAT CUSTOMER MAY OTHERWISE BE ENTITLED TO AT LAW OR IN EQUITY UNDER ANY THEORY OF LIABILITY ARISING FROM A BREACH OF SAID LIMITED WARRANTY.

10.2 EXCEPT FOR THE SPECIFIC REPRESENTATIONS OF COMPANY CONTAINED HEREIN OR SPECIFICALLY PROVIDED FOR IN ANY ORDER FORM, THE DELIVERABLES ARE PROVIDED TO CUSTOMER “AS IS” AND NEITHER COMPANY, NOR ITS AFFILIATES MAKE ANY REPRESENTATION OR WARRANTY OF ANY OTHER KIND EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE DELIVERABLES, OR THE ACCURACY OR COMPLETENESS THEREOF, OR THE RESULTS TO BE OBTAINED BY THE USE THEREOF OR ANY OTHER MATTER. COMPANY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, SECURITY, COMPATIBILITY, NON-INFRINGEMENT MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT THAT THE DELIVERABLES WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE DELIVERABLES WILL OPERATE IN COMBINATION WITH OTHER SOFTWARE OR APPLICATIONS.

10.3 IN NO EVENT SHALL COMPANY OR ITS AFFILILATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR REVENUES OR OTHER ECONOMIC LOSS OF CUSTOMER OR ANY THIRD PARTY), WHETHER IN TORT, CONTRACT OR OTHERWISE, AND WHETHER OR NOT COMPANY OR ANY OF ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR ANY CLAIM OR ACTION ARISING OUT OF OR RELATING TO COMPANY’S FRAUD, COMPANY’S TOTAL LIABILITY HEREUNDER UNDER ANY OTHER THEORY OF LIABILITY IS LIMITED TO THE FEES PAID TO COMPANY BY CUSTOMER IN THE IMMEDIATELY PRECEDING TWELVE-MONTH PERIOD ANY SUCH ACT.

10.4 COMPANY DOES NOT GUARANTEE, AND SPECIFICALLY DISCLAIMS ANY WARRANTY, THAT ANY

APPLICATION OR SERVICE WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT COMPANY WILL CORRECT ALL SERVICES ERRORS (UNLESS SPECIFICALLY PROVIDED HEREIN). CUSTOMER ACKNOWLEDGES THAT COMPANY DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

10.5 Equitable Relief. Customer acknowledges and agrees that a breach of this Agreement may cause other irreparable harm on the Company without an adequate remedy at law and hereby agrees that the Company may seek equitable relief, including without limitation, temporary or permanent injunctions and other relief to limit the effect of any breach.

10.6 Time Limit on Claims. NO ACTION ON THIS AGREEMENT, EXCEPT FOR PAYMENT OWED BY CUSTOMER TO COMPANY, MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE INCIDENT OCCURS.

11. Assignment

This Agreement shall not be assigned or transferred by Customer without prior written consent of Company, and any attempt by Customer to so assign or transfer this Agreement without such written consent shall be null and void. This Agreement shall be valid and binding on the parties hereto and their successors and permitted assigns.

12. Governing Law; Submission to Jurisdiction

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Iowa without regard to its conflict or choice of laws principles. Any action brought in connection with this Agreement, its terms or the enforcement thereof shall be brought solely in the Federal or State courts located in the County of Linn County, Iowa and each Party consents to the personal jurisdiction and venue therein.

13. Notices

All notices given under this Agreement must be in writing, sent to:

COMPANY
Malum, Inc.
Attn: President
808 5th Street, Suite 5
Coralville, IA 52241
s.keplinger@intellisee.com

If to Customer, to the address provided under the Order Form; or to such other address as a Party may designate in writing to the other Party, by certified mail (return receipt requested), overnight courier, personal delivery, or email to the other parties hereto.

14. Survival

Any provision of this Agreement which, by its nature, would survive termination of this Agreement shall survive any such termination, including, without limitation, Sections 2, 3, 4, and 10.

15. Force Majeure

Company shall not be responsible for any delay or failure in performance of its obligations under this Agreement resulting from acts beyond the control of Company, including but not limited to, any act of God, act of governmental authority, act of public enemy, computer or system failure, or due to war, terrorism, riot, fire, flood, civil commotion, insurrection, labor difficulty (including, without limitation any strike, or other work stoppage or slowdown), or severe or adverse weather conditions.

16. Miscellaneous

This Agreement, together with the Order Form, any pricing sheets, and any other Deliverables provided to Customer pursuant to the terms of this Agreement or as part of the Company providing the Services, supersedes all prior agreements and understandings, and constitutes the complete agreement and understanding between the Parties with respect to the subject matter hereof. No amendment or other modification to this Agreement shall be valid or binding with respect to Company unless acknowledged and agreed to in writing and signed by a duly authorized officer of Company, provided however, it is specifically agreed by Customer that the Company may alter or amend the terms of this Agreement and Customer has an affirmative obligation to review all updated terms and comply at all times with such terms and conditions herein. The Parties are independent contractors, and nothing in this Agreement will be construed to constitute or appoint any party as the agent, partner, joint venturer or representative of the other Party for any purpose whatsoever, or to grant to any party any right or authority to assume or create any obligation, express or implied, for or on behalf of any other, or to bind any other in any way or manner whatsoever. Any forbearance or delay on the part of a Party in enforcing any provision of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or of a right to enforce same for such occurrence or any future occurrence. No other party is intended, or shall be deemed, to be a beneficiary of any provision of this Agreement. This Agreement may be executed in counterparts, which counterparts, taken together, shall constitute one agreement and each Party hereto may execute this Agreement by signing such counterpart.