

Brickeye Terms of Service

(Construction Risk Mitigation Platform)

THIS AGREEMENT is made BETWEEN:

ADVANCED OPTO-MECHANICAL SYSTEMS AND TECHNOLOGIES INC. (o/a Brickeye)

(hereinafter referred to as “Brickeye”)

-and-

Any legal entity that enters into this Agreement with Brickeye for the purpose of receiving the Services described herein

(hereinafter referred to as “Customer”)

WHEREAS, Brickeye provides equipment and software services for monitoring and mitigation of risks and enhancing productivity at construction sites, buildings and facilities (collectively, the “**Services**”).

WHEREAS, Customer desires to obtain the Services for one or more construction site(s) or building(s) or facilities managed by the Customer (the “**Project Site**” or “**Project**”), and Brickeye desires to provide the Services to the Customer, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

ARTICLE 1 - ORDER FORM

- 1.1 This Agreement is related to and deemed incorporated in the accompanying Order Form for each Project delivered by Brickeye to the Customer (the “**Order Form**”) which identifies the Project Site and the Services to be provided on each Project Site and the parties acknowledge that both agreements are enforceable in accordance with their respective terms. In the event of a conflict between the respective terms of this Agreement and the Order Form, this Agreement shall govern to the extent of the conflict.

ARTICLE 2 - DEFINITIONS

- 2.1 “**Service Term Start Date**” shall mean the date the Services are activated for the Customer on each Project.
- 2.2 “**Analytics**” means any additional aggregated data or meta data created from the analysis of raw sensor or device data.
- 2.3 “**Annual Service Fee**” means the portion of the total Service Fee that corresponds to 12 months of services. The Annual Service Fee is calculated by dividing the total Service Fee by the Service Term (in months) and multiplying the result by 12.
- 2.4 “**Brickeye Owned and Installed Equipment**” refer to sensors, monitoring devices, network equipment and other accessories that are provided and installed at the Project Site by Brickeye, and are utilized for the purpose of providing Services to the Customer and are not included as part of an equipment sale to the Customer, nor is their title transferred to the Customer through any business transaction between Brickeye and the Customer.
- 2.5 “**Confidential Information**” shall mean: (a) any and all information which is disclosed by either party (“**Discloser**”) to the other (“**Recipient**”) verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary; and (b) the terms, including without limitation, the pricing of

the Services and any proposals or other documents that preceded this Agreement. Confidential Information may include, but not be limited to, trade secrets, computer programs, software, hardware, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning any of Customer's past, current or possible future programs or projects, and confidential information concerning Customer's business or organization, as Customer has conducted it or as Customer may conduct it in the future. In addition, Confidential Information may include information concerning any of Customer's past, current, or possible future products or methods, including information about Customer's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing and/or software (including third party software). Confidential Information does not include information which: (a) is or becomes part of the public domain through no fault of the Recipient; (b) is lawfully received by the Recipient from a third party who is not in breach of a legal or contractual obligation in respect to the Confidential Information; (c) is independently developed by the Recipient without access or reference to any Confidential Information of the Customer; or (d) is known to the Recipient prior to the disclosure by the Customer. The burden of proof that Confidential Information of the Customer resides within one of the foregoing exceptions will be on the Recipient.

- 2.6 **"Service Term"** shall mean the time between Service Term Start Date and Final Date for each Project.
- 2.7 **"Customer Content"** means any data, information, trademarks, logos, files, images, text, or other content that may be provided by Customer or its authorized users to Brickeye for use in conjunction with the Services.
- 2.8 **"Customer Owned and Installed Equipment"** shall refer to equipment sold and delivered to the Customer under the terms of this Agreement.
- 2.9 **"Documentation"** shall mean user guides or operating manuals containing the functional specifications and information for the Services, as may be reasonably modified from time to time by Brickeye.
- 2.10 **"Effective Date"** shall mean the date that this Agreement becomes effective and binding on the parties, which date shall be the date that the Order Form is executed by the last party to sign it as indicated by the date below such party's signature.
- 2.11 **"Final Date"** shall mean the date all the Brickeye Owned and Installed Equipment is removed from the Project Site after deactivation of Services on each Project.
- 2.12 **"Force Majeure Event"** shall mean any cause beyond the reasonable control of the party that could not, by reasonable diligence, be avoided, including act of God, acts of war, terrorism, riots, embargoes, acts of civil or military authorities, denial of or delays in processing of export license applications, fire, flood, earthquakes, pandemic, accidents, or strikes or lockouts.
- 2.13 **"Party"** shall mean Customer or Brickeye in this Agreement.
- 2.14 **"Permitted User"** means any individual including Customer employee, consultant, independent contractor, or other Customer affiliates who has need to use of the Services based upon a contractual relationship with Customer, so long as (i) such user is not a Brickeye competitor, (ii) Customer remains responsible for use of the Services by such user, and (iii) such user is subject to confidentiality and use restrictions at least as strict as those contained in this Agreement.
- 2.15 **"Service Call"** means a Customer-initiated request for inspection, maintenance, repair, or troubleshooting of equipment, software, or systems provided by Brickeye under this Agreement, excluding regularly scheduled services or work outside the agreed scope unless otherwise specified.
- 2.16 **"Software"** means Brickeye's proprietary cloud-based software used to access real-time sensor data and analyzed data in the form of graphs, charts, tables, reporting or other means as provided by Brickeye and described in Order Form.
- 2.17 **"Service Fee"** means the total amount of subscription fees payable for the services provided under this Agreement to each Project.

- 2.18 **“Total Contract Value”** shall mean the final agreed-upon amount specified in the applicable Order Form for each Project, representing the total fees payable by the Customer for the provision of Services under the terms of the Agreement, including any adjustments, amendments, or variations made before the Service Term Start Date.

ARTICLE 3 - PAYMENT TERMS

- 3.1 **Pre-Mobilization and Submittals Payment.** The Customer shall pay the Pre-Mobilization and Submittals Payment as specified in the applicable Order Form. This amount will be invoiced upon signing the Order Form and covers the delivery of the Risk Mitigation Plan, Certificate of Protection, submittal package, and project startup activities. The Pre-Mobilization and Submittals Payment is non-refundable.
- 3.2 **Customer Owned and Installed Equipment Payment.** The Customer shall pay the cost of the Customer Owned and Installed Equipment, if applicable, no later than 90 days before the Service Term Start Date. Brickeye shall only procure Customer Owned and Installed Equipment when such payment is received. The value of this payment will be determined by Brickeye for each Project in an associated Order Form.
- 3.3 **Annual Service Fee (Service Terms of 12 months or more).** For Service Terms of 12 months or more, Customer shall pay the Annual Service Fee, less any Pre-Mobilization and Submittals Payment or other payments made toward the Service Fee, on the Service Term Start Date. Customer shall also pay the Annual Service Fee on each anniversary of the Service Term Start Date before the termination of the Agreement.
- 3.4 **Term Service Fee (Service Terms of less than 12 months).** For Service Terms of less than 12 months, Customer shall pay the Service Fee, less any Pre-Mobilization and Submittals Payment or other payments made toward the Service Fee, on the Service Term Start Date.
- 3.5 **Service Calls.** Customer-initiated Service Calls will be charged at \$90/hour.
- 3.6 **Service Extension.** If the scope of any Services for each Project requires extension beyond what is specified in the applicable Order Form, the Parties shall mutually agree in writing on the scope, duration, and fees associated with the extended services (the "Extension Scope"). The Customer agrees to pay all fees for the Extension Scope as specified in the agreed-upon terms. Brickeye is not obligated to provide any services beyond the originally specified scope unless and until the Extension Scope and corresponding fees have been agreed to in writing by both parties. In the event that Services for a particular Project continue beyond the period specified in the applicable Order Form, Brickeye shall reconcile the value of the Services provided and shall invoice the Customer for that value of those extended Services within thirty (30) business days after the Final Date.

ARTICLE 4 - TERMINATION

4.1 **Termination**

i) **Termination for Convenience.**

- Termination within 90 days of Service Term Start Date: The Customer may terminate the Order Form for each Project within 90 days after the Service Term Start Date by written notice given at least thirty (30) days before the termination date to Brickeye. The customer will be refunded on a pro-rated basis upon Termination for Convenience for any amount pre-paid toward the services excluding any payment made toward the Pre-Mobilization and Submittals Payment.
- Termination after 90 days of Service Term Start Date: Customer may terminate the Order Form for each Project by written notice given to Brickeye at least 30 days before the cancellation date Brickeye. Any amount pre-paid toward the services including Term Service Fee or Annual Service Fee will not be refunded to the Customer.

ii) **Termination for Breach.** Each Party may terminate this Agreement or any Order Form immediately upon notice to the other Party if the other Party: (i) materially breaches this Agreement or such Order Form, which for certainty includes

failure by the Customer to make a payment to Brickeye after 60 days of receiving an invoice by the Customer, and fails to remedy, or fails to commence reasonable efforts to remedy, such breach within ten (10) days after receiving notice of the breach from the terminating Party, (ii) infringes the terminating Party's intellectual property rights and fails to remedy, or fails to commence reasonable efforts to remedy, such breach within five (5) days after receiving notice of the breach from the terminating Party, or (iii) becomes bankrupt, insolvent, is liquidated or dissolved (v) Customer provides Brickeye's competitors access to the Software or Brickeye Owned and Installed Equipment.

- 4.2 **Effect of Termination.** In the event the Agreement is terminated by Customer for convenience or by Brickeye as a result of a material breach by Customer, Customer shall pay the prorated amounts owed to Brickeye under this Agreement up to the date of termination.
- 4.3 **Obligations upon Termination or Expiration.** Upon the termination or expiration of this Agreement, Customer will promptly lose access to all Software services and the Customer shall grant Brickeye access to the Project Site for removal of any equipment deployed in the Project Site delivering Services to the Customer.
- 4.4 **Survival of Provisions.** Those provisions of this Agreement that, by their nature, are intended to survive termination or expiration of this Agreement will remain in full force and effect.
- 4.5 **Transfer of Agreement.** This Agreement is transferrable to Customer's affiliates upon written notice to Brickeye and written approval of Brickeye which will not be unreasonably withheld. This transfer may require changes in the terms of this Agreement.

ARTICLE 5 - EQUIPMENT OWNERSHIP

- 5.1 **Ownership of Customer Owned and Installed Equipment.** It is expressly understood that the title to the Customer Owned and Installed Equipment shall pass from Brickeye to the Customer upon the complete payment for the equipment and upon the completion of delivery to the location specified by the Customer. Upon transfer of title, the Customer shall assume ownership of the equipment, along with all associated rights and responsibilities. The Customer acknowledges and agrees that the equipment is sold by Brickeye as a distributor or reseller and not as a manufacturer. As such, any warranties, obligations, or liabilities pertaining to the condition, use, or performance of the Customer Owned and Installed Equipment shall be the sole responsibility of the Original Equipment Manufacturer (OEM), except as expressly stated in this Agreement.

ARTICLE 6 - PAYMENT TERMS

- 6.1 **Payment Terms.** All invoices are due and payable within 30 days after receiving by the Customer.
- 6.2 **Late Payments.** A service charge of 1.5% per month (18% per annum) will be added to overdue invoices.
- 6.3 **Suspension of Services.** Brickeye reserves the right to suspend provision of any services under the following conditions:
- i) If any invoiced amount remains overdue for more than 60 days, Brickeye will first provide written notice to the Customer specifying the overdue amount. If the Customer does not remedy the overdue payment or otherwise respond within 10 business days of receiving such notice, Brickeye may proceed to suspend the Services.
 - ii) If such suspension is necessary to comply with any applicable law or order of any governmental authority. Reactivation of suspended Services is subject to \$250 fee.

ARTICLE 7 - INTELLECTUAL PROPERTY RIGHTS

- 7.1 **Ownership and Use of Brickeye IP.** Customer agrees that the Software, the Brickeye Owned and Installed Equipment, and Documentation (collectively called "Brickeye IP") are proprietary products and services and that all right, title and interest in and to Brickeye IP, including all associated intellectual property rights, are and shall at all times remain with Brickeye and its third-party licensors. The Brickeye IP contain trade secret and proprietary information owned by Brickeye or its third-party licensors and is protected by copyright laws and international trade provisions. Customer must treat the Brickeye IP

like any other copyrighted material and Customer may not copy or distribute the Brickeye IP, electronically or otherwise, for any purpose. Customer hereby grants to Brickeye a non-exclusive right to use all Customer Content as necessary solely for the purposes of providing the Services to Customer, and its Permitted Users pursuant to this Agreement.

ARTICLE 8 - SOFTWARE SERVICES

- 8.1 **Grant of Rights.** Brickeye hereby grants the Customer a limited, non-exclusive, non-transferable right to access the Software via internet and use the Software and the Documentation only for the purposes defined in the Order Form for each Project subject to the terms and conditions set forth herein, during the Service Term. The Software will not be provided to Customer in CD-ROM form (or any other form of media) and, subject to the Order Form, will not be installed on any servers or other computer equipment owned or otherwise controlled by Customer. Instead, Brickeye will be responsible for arranging for the remote hosting of the Brickeye Software and will provide Customer with required username and password to access and use the Software through the use of the internet and Customer's computers or mobile devices. Customer shall be responsible for all use of the Brickeye Software using Customer's username and password. Customer shall have the right to export data from the Brickeye software into its own systems, and the Parties shall reasonably cooperate to enable such transfer.
- 8.2 **Use of Software.** Use of the Software and Services is restricted to use by the Customer and Customer affiliates only, and only for Customer's internal business purposes. Customer may not use the Software or Services for the benefit of any third parties or provide other access or use of the Software or the Services to third parties. Customer may not, directly or indirectly, sublicense, assign, transfer, sell, rent, lend, lease or otherwise provide the Software, the Brickeye Owned and Installed Equipment, the Services (or any portion thereof, including without limitation any capacity) or the Documentation, or any portions thereof, to any third party, and any attempt to do so is null and void.
- 8.3 **Permitted Users.** The Software services may only be used by Permitted Users of the Customer. Brickeye has the right to refuse access to individuals who are not Permitted Users.
- 8.4 **Service Schedule Determination, Modifications, and Disclaimer of Liability.** The schedule for the operation of Services (the "Service Schedule") on each Project Site shall be determined by the Customer or its designated affiliates who are stakeholders in the relevant Project Site, including but not limited to project managers and superintendents. The Service Schedule may be modified upon the Customer's request, provided that all modifications are communicated to Brickeye in writing. For the purposes of this clause, an electronic email request from an authorized representative of the Customer shall be deemed a formal written request. Brickeye will endeavor to accommodate requested schedule changes but reserves the right to reasonably adjust timelines or other conditions as necessary based on operational feasibility. Brickeye shall not be liable for any delays, disruptions, or other impacts to the Customer's operations or project timelines arising from the Service Schedule or any modifications thereof, whether initiated by the Customer or as a result of any operational adjustments required by Brickeye. The Customer assumes full responsibility for all schedule-related decisions, and Brickeye expressly disclaims any liability related to adherence to, or modification of, the Service Schedule.
- 8.5 **Restrictions on Use.** Customer may not reverse engineer, disassemble, decompile, or make any attempt to ascertain, derive or obtain the source code for the Software. The Software and Services shall not be used for any commercial purpose beyond the functionality driven by the Software. Customer will not use the Software, the Brickeye Owned and Installed Equipment or Services to take any actions that: (a) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) violate any applicable law, statute, ordinance or regulation (including those regarding export control); (c) are defamatory, trade libelous, threatening, harassing or obscene; (d) constitute unauthorized entry to any machine accessible via the network; (e) give Brickeye competitors access to Software, Brickeye Owned and Installed Equipment, and Service. Customer shall not interfere with or disrupt network users, services, or equipment with the intent to cause an excessive or disproportionate load on Brickeye or its third-party vendor(s)'s infrastructure by means of (but not limited to) distribution of unsolicited bulk emails or chain letters, viruses, Trojan horses, worms, or other similar harmful or deleterious programming routines.

ARTICLE 9 - WARRANTIES

- 9.1 **Transfer of OEM Warranty.** Upon delivery, the ownership of the Customer Owned and Installed Equipment will be transferred to the Customer. Along with this transfer of ownership, any and all warranties related to the equipment, including but not limited to the Original Equipment Manufacturer (OEM) warranty, shall also be transferred to the Customer. Brickeye hereby disclaims all warranties, either express or implied, related to the Customer Owned and Installed Equipment, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose. The Customer acknowledges that Brickeye is not the manufacturer of the equipment, and therefore, Brickeye shall not be held liable for any defects, warranty claims, or issues arising from the equipment's performance, quality, or functionality. The Customer agrees to look solely to the OEM for any claims related to the equipment warranty. Brickeye will provide reasonable assistance to the Customer in facilitating communication with the OEM for warranty-related matters, but shall not be obligated to provide any direct warranty support or service for the equipment.
- 9.2 **Mutual Warranties.** Each party warrants that: (a) it has the right and power to enter into this Agreement; and (b) it will comply with any applicable laws and regulations pertaining to this Agreement.
- 9.3 **Brickeye Limited Warranty.** Except as otherwise set forth in Section 9.19-1, Brickeye represents, warrants and guarantees to Customer that during the Service Term that the Services (i) shall conform to the requirements defined in the Order Form for each Project; (ii) shall be fit and will function for the particular purpose it was designed or intended; and (iii) shall comply with all Governmental Requirements, if applicable (the “**Warranty**”).
- 9.4 **Remedies.** During the Service Term, if the Software, the Brickeye Owned and Installed Equipment or the Services fail to comply with the Warranty, Brickeye’s entire liability and Customer’s exclusive remedy will be to repair or replace the Software and/or the Brickeye Owned and Installed Equipment. This limited warranty is void if failure of the Software or the Brickeye Owned and Installed Equipment has resulted from accident, abuse, misuse, or negligence of any kind in the use, handling or operation of the Software or the Brickeye Owned and Installed Equipment, including any use not consistent with the Documentation or Brickeye training. Notwithstanding the forgoing, if Brickeye is unable to repair or replace the Software or Brickeye Owned and Installed Equipment within 15 business days, Customer shall have the option to immediately terminate this Agreement and be entitled to a refund of the prorated fees paid under this Agreement or the applicable Order Form for each Project. Brickeye’s entire liability and Customer’s exclusive remedy for any breach of the Warranty shall be Brickeye repeating the Services performed.
- 9.5 **Disclaimer.** Customer acknowledges that the Software, Services, and Brickeye Owned and Installed Equipment provided by Brickeye are intended for the purpose of reducing or mitigating the risk of incidents and generating data and analytics to assist the Customer with making business decisions; The provision of the same under this Agreement are not intended as a replacement of the Customer’s and/or its Separate Contractors supervisory duty over the Project Site. Customer hereby acknowledges that it has relied on no warranties other than the express warranties set forth in this Agreement.
- 9.6 **Intellectual Property Warranty.** Brickeye represents and warrants that it has all rights necessary to provide Customer access to the Software. In the event that any suit is brought against Customer based on a claim that the Software infringes any existing U.S. or Canadian patent, copyright, or trade secret, Brickeye agrees that it will indemnify, defend, and hold harmless Customer and its employees, officers, directors and agents from all claims, liabilities, or damages, including attorneys’ fees. If the Software is found to infringe a valid U.S. or Canadian patent, copyright, or trade secret, Brickeye may, at its own expense and election, either acquire rights to use the infringing property or modify the Software to be non-infringing but substantially conform to Documentation. If neither option is commercially reasonable, either party may terminate this Agreement.

ARTICLE 10 - EQUIPMENT SERVICES

- 10.1 **Customer Owned Equipment Installation Responsibility and Liability.** The Customer shall engage a certified and qualified subcontractor for the installation of the Customer Owned and Installed Equipment. The Customer is responsible for ensuring the subcontractor’s compliance with industry standards, Governmental Requirements, and any specific guidelines provided by the Original Equipment Manufacturer (OEM). Upon transfer of title, following full payment and delivery, the Customer assumes all responsibilities associated with the installation of the Customer Owned and Installed Equipment. Brickeye expressly disclaims liability for any installation-related losses, damages, or delays. This includes issues due to workmanship, installation timing, or any direct or indirect consequences thereof. The Customer agrees to address any installation-related claims or liabilities with the engaged subcontractor, absolving Brickeye of such responsibilities. Brickeye will assist the

Customer in addressing any issues covered by the warranty of the Customer Owned and Installed Equipment for the duration that such warranty is valid which may include the Brickeye's direct engagement with the Original Equipment Manufacturer for replacement or repair of the Customer Owned and Installed Equipment.

- 10.2 **Brickeye Owned Equipment Installation Responsibility and Liability.** Subject to applicable fees set forth in the Order Form for each Project, unless otherwise agreed between Parties, Brickeye or Brickeye affiliates will provide and install the Brickeye Owned and Installed Equipment required to provide the Services in the Project Site. Brickeye shall engage a qualified subcontractor for the installation of Brickeye Owned and Installed Equipment. Brickeye is responsible for ensuring the subcontractor's compliance with industry standards, Governmental Requirements, and any specific guidelines required for the installation of the equipment. The ownership of Brickeye Owned and Installed Equipment will always remain with Brickeye, unless otherwise set forth in the Order Form for each Project. If the installation of Brickeye Owned and Installed Equipment requires hardwired electrical connections, the Customer shall engage a certified and qualified subcontractor for the installation of those hardwired electrical connections. The Customer is responsible for ensuring the subcontractor's compliance with industry standards, Governmental Requirements, and any specific guidelines provided by the Brickeye.
- 10.3 **Brickeye Owned and Installed Equipment Location and Security.** The Brickeye Owned and Installed Equipment will be located at mutually acceptable locations at the Project Site and shall not be moved or accessed by Customer except with the prior written consent of Brickeye. The Customer shall be responsible for maintaining the security of the Brickeye Owned and Installed Equipment at the Project Site.
- 10.4 The Customer acknowledges that the Software and the equipment including but not limited to Customer Owned and Installed Equipment or Customer Owned and Installed Equipment, are designed to operate within specific parameters and settings to ensure optimal performance and compliance with safety and operational standards. Any changes, modifications, or overrides to these parameters or settings made by the Customer or any third party acting on the Customer's behalf, without prior written authorization from Brickeye, shall be done at the Customer's sole risk. Brickeye expressly disclaims all liability for any losses, damages, claims, or liabilities (collectively, "Losses") arising out of or related to such unauthorized changes, modifications, or overrides. The Customer agrees to indemnify, defend, and hold harmless Brickeye from and against all Losses resulting from such actions, including but not limited to, property damage, equipment failure, data loss, or personal injury.

ARTICLE 11 - INSURANCE

- 11.1 **Insurance Policies.** Brickeye will maintain sufficient insurance policies to cover its obligations under this Agreement. Brickeye shall provide the Customer with a certificate of insurance upon request. Notwithstanding the foregoing, Customer acknowledges that Brickeye's liability is limited pursuant to Section ~~12.3~~[12.3](#).

ARTICLE 12 - GENERAL TERMS

- 12.1 **Confidentiality and Proprietary Rights.**
- i) **Use and Disclosure of Confidential Information.** Each Party may disclose to the other Party Confidential Information. Except as expressly permitted by this Agreement, neither Party will: (a) disclose the other party's Confidential Information except (i) to Permitted Users who are bound by confidentiality terms no less restrictive than those contained in this Agreement, or (ii) to the extent required by law following prompt notice of such obligation to the other Party. Each Party will use all reasonable care and handling and securing the other Party's Confidential Information and will employ all security measures used for its own proprietary information of similar nature. Subject to Section 10.6, upon termination of this Agreement, each Party will, upon written request, return or destroy all of the other Party's tangible Confidential Information in its possession and will promptly certify in writing to the other Party that it has done so.
 - ii) **Period of Confidentiality.** The restrictions on use, disclosure and reproduction of Confidential Information set forth in this Agreement will survive and remain in full force and effect following the termination of this Agreement.
 - iii) **Injunctive Relief.** The Parties agree that the breach, or threatened breach, of any provision of related to the Confidential Information may cause irreparable harm without adequate remedy at law. Upon any such breach or threatened breach, a Party will be entitled to injunctive relief to prevent the other Party from commencing or continuing any action

constituting such breach, without having to post a bond or other security and without having to prove the inadequacy of other available remedies. Nothing in this Agreement will limit any other remedy available to either Party (such as also suing for damages resulting from such disclosure of Confidential Information).

- iv) **Retained Rights.** Customer's rights and the Services will be limited to those expressly granted in this Agreement and any Order Form. Brickeye and its suppliers reserve all intellectual property rights not expressly granted to Customer. All changes, modifications, improvements or new modules made or developed with regard to the Services, whether or not (a) made or developed at Customer's request, or (b) made or developed in cooperation with Customer, , will be solely owned by Brickeye or its suppliers.
- v) Neither Party makes any representation, warranty, assurance or inducement, express, statutory or implied, as to the adequacy, sufficiency or freedom from defect of any kind, suitability for any particular purpose or use, or freedom from patent infringement that may result from use of any Confidential Information. Confidential Information is provided "AS-IS".

12.2 **Customer Indemnification.**

- i) **Duty to Defend.** Customer will defend, indemnify, and hold Brickeye harmless from any action or other proceeding brought by a third party against Brickeye to the extent that it is based on (a) Customer's use of the Services, or (b) Customer's breach of this Agreement. Customer will pay costs and damages (including attorneys' fees) incurred by Brickeye as a result thereof.

12.3 **Limitation of Liability.**

- i) **Limited Liability.** Brickeye's maximum liability for any action arising under this Agreement, regardless of the form of action and whether in tort, contract or other form of liability, shall in no event exceed the fees paid by Customer during the one-year period preceding notice to Brickeye of Customer's loss. If there are multiple claims, Brickeye's liability under each claim shall be proportionally reduced so that Brickeye's total liability remains limited to the above amount. In no event shall either Party be liable for indirect, special, incidental, or consequential damages of any kind, including without limitation, lost data, lost profits, opportunities or contributions, loss of use, goodwill, business interruption, or other pecuniary or non-pecuniary loss, however arising, even if Brickeye has been advised of the possibility of such damages. The parties agree to the allocation of risk set forth herein. Customer acknowledges that the fees paid by it reflect the allocation of risk set forth in this Agreement and that Brickeye would not enter into this Agreement without these limitations on its liability. Such limitation of liability does not apply to any act of any willful misconduct, fraud, abandonment or deliberate act of wrongdoing or reckless disregard on the part of Brickeye.
- ii) **Material Consideration.** THE PARTIES ACKNOWLEDGE THAT THE FOREGOING LIMITATIONS ARE A MATERIAL CONDITION FOR THEIR ENTRY INTO THIS AGREEMENT.

12.4 **Vandalism and Theft Liability.** In the event of the vandalism or theft of the Brickeye Owned and Installed Equipment, while installed at the Site, the Customer will promptly reimburse Brickeye for the cost of (i) such Brickeye Owned and Installed Equipment or its repair, and (ii) any additional related fees, including, without limitation any required shipping, installation and implementation fees.

12.5 **Exclusion of Liability Post-Construction and Post-Occupancy.** Notwithstanding any other provision of this Agreement, Brickeye shall not be liable for any claims, indirect, incidental, consequential, or punitive damages, losses, expenses, or liabilities (collectively, "Claims") arising out of or related to the Order Form under this Agreement, after the Final Date which may include post-construction and post-occupancy. This exclusion includes, but is not limited to, all the Services provided by Brickeye, except as may be otherwise expressly covered under a separate warranty or maintenance agreement between the Customer and Brickeye. This clause shall survive the termination or expiration of this Agreement.

12.6 **Internet Disclaimer.** Some of the Services contemplated by this Agreement will utilize the internet. Brickeye provides no warranties for the operation of the internet – which is subject to interruption or security vulnerabilities outside of its control. Brickeye disclaims all liability related to internet-related interruptions or security breaches.

- 12.7 **Cloud Services Availability.** Notwithstanding the Internet Disclaimer, Brickeye acknowledges its responsibility to ensure reliable operation of its cloud services to the extent that such operation is contingent on internet service or cellular connections under its control. In the event of a service outage or interruption within Brickeye’s cloud services due to factors within the Brickeye’s reasonable control, Brickeye shall promptly notify the Customer of the outage and provide regular updates regarding the status of the cloud services; endeavor to restore the cloud services to full functionality as expeditiously as possible; provide, upon request, a report detailing the cause of the outage and measures taken to resolve the issue and prevent future occurrences; implement necessary measures to mitigate the risk of future service interruptions that are within its control; offer reasonable support to the Customer for mitigating the impact of the service interruption, which may include providing alternative means of access to the services or recommending temporary solutions until the cloud services are fully restored. This clause does not extend liability to Brickeye for interruptions or failures of cloud services due to factors beyond the Brickeye’s reasonable control but not limited to, general internet outages, cellular network failures not attributable to Brickeye, acts of God, sabotage, or force majeure events. In such cases, the provisions of the Internet Disclaimer clause shall prevail. This is intended to clarify the circumstances under which Brickeye assumes liability for disruptions in its cloud services, specifically those disruptions that are within its reasonable control. It is not intended to override or negate any other limitations of liability or disclaimers stated in this Agreement.
- 12.8 **Not a Security Service.** THE SERVICES DO NOT INCLUDE AND ARE NOT INTENDED TO PROVIDE SERVICES RELATED TO THE MONITORING OR MAINTAINING THE SECURITY OF ANY BUILDING AND CONSTRUCTION SITE(S). BRICKEYE DISCLAIMS ANY AND ALL RESPONSIBILITY FOR THE PROVISION OF ANY SECURITY SERVICES. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR SECURITY OF THE BUILDING AND CONSTRUCTION SITES.
- 12.9 **Customer Data and Analytics.** Brickeye shall be the owner of the analytics and reports, which for certainty includes the sensor reading data that cannot be extracted from the analytics and reports, developed from Customer Data using the Brickeye Software, and Customer shall only have the right to use such Analytics subject to the terms of this Agreement and the applicable Order Form. Brickeye shall be entitled to use aggregated Customer Data and Analytics to perform its obligations hereunder and for its own business purposes, including following expiration or termination of this Agreement, provided that such use (a) does not identify the Customer, any Project Site, or any Permitted User or other stakeholder information provided to Brickeye and (b) complies with applicable laws. Upon termination or expiration of an Order Form, upon receiving a written request from the Customer, Brickeye will make a copy of the Customer Data covered by the Order Form available to the Customer on mutually acceptable terms, which may include charges for making a copy of the Customer Data or continuing to maintain Customer access to the Customer Data on Brickeye systems. Brickeye reserves the rights to use the photos, logos, videos and testimonials for marketing purposes.
- 12.10 **Electricity and Power.** Customer acknowledges that the electricity and other power sources are required for the functioning of the Software and Brickeye Owned and Installed Equipment at the Project Site. Brickeye will inform Customer via electronic mail in the event of any known disruption occurred in the electricity or other power sources at the Project Site so that the Customer can take necessary actions to eliminate such disruptions. Brickeye expressly disclaims any and all responsibility in connection with the availability of power and/or electricity at the Project Site and/or the conduct of other contractors retained by the Customer under separate agreement (the “Separate Contractors”) performing services at the Project Site. Neither Brickeye nor any of its officers, directors, members, or employees may be held liable for any claim, damage, or loss, and Customer hereby waive any and all claims or causes of action, arising from or relating to any damage or interruption of services caused by the loss of power, electricity, or any acts or omissions from Separate Contractors which cause interruptions to the functioning of the Software, Brickeye Owned and Installed Equipment, the services rendered by Brickeye in connection thereto, unless such claims or causes of action arise from gross negligence, recklessness, or willful misconduct of Brickeye.
- 12.11 **Governing Law.** This Agreement is governed by and will be construed in accordance with the laws of the state or province where the Project Site is located.
- 12.12 **Disputes.** In event of a dispute of any kind arising out of or in connection with this Agreement, the parties shall in good faith attempt a negotiated resolution, by reference of the dispute matter to their respective senior management for a period of thirty (30) calendar days. Failing resolution by senior management negotiation, the parties agree resolve the dispute by binding arbitration in accordance with the ADRIC Arbitration Rules by a single arbitrator. The parties shall mutually agree on the selection of the arbitrator, failing which the arbitrator shall be appointed in accordance with the rules. The arbitration proceedings shall take place in Toronto, Ontario. The parties agree that any arbitration award, including with respect to

costs, may be enforced in any court of competent jurisdiction and shall be final other than with respect to errors of law, which can be appealed to a court of competent jurisdiction. The language of the arbitration shall be English. Each Party shall bear its own costs relating to the arbitration, subject to any decision of the arbitrator.

- 12.13 **Assignment and Subcontracts.** Customer will not assign this Agreement without the prior written consent of Brickeye, which will not be unreasonably withheld. Brickeye may, upon notice to Customer, assign this Agreement to any affiliate or to any entity resulting from the transfer of all or substantially all of Brickeye's assets or capital stock or from any other corporate reorganization or merger.
- 12.14 **Severability.** If any part of a provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this Agreement will not be affected.
- 12.15 **Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or: (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt.
- 12.16 **Waiver.** Failure to exercise or enforce any right under this Agreement will not act as a waiver of such right.
- 12.17 **Force Majeure.** Except for the obligation to pay money, a party will not be liable to the other party for any failure or delay caused by a Force Majeure Event, whether or not such matters were foreseeable, and such failure or delay will not constitute a material breach of this Agreement.
- 12.18 **Amendment.** This Agreement may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both parties.
- 12.19 **No Third-Party Beneficiaries.** Except as specifically set forth in this Agreement, nothing in this Agreement will convert any right, remedy, or obligation upon anyone other than Customer and Brickeye.
- 12.20 **Relationship of Parties.** This Agreement will not be construed as constituting a relationship of employment, agency, partnership, joint venture or any other form of legal association. Neither Party has any power to bind the other Party or to assume or to create any obligation or responsibility on behalf of the other Party or any other Party's name.
- 12.21 **Non-solicitation of Employees.** Neither Party will directly or indirectly solicit for employment any employee of the other Party during the Service Term and for a period of one (1) year thereafter without the written consent of the other Party. This prohibition will not apply if an employee answers a party's notice of a job listing or opening, advertisement or similar general publication of a job search or availability for employment.
- 12.22 **Marketing & Publicity.** Both Parties may publicly announce that they have entered into this Agreement and describe their relationship in general terms, excluding financial terms, and may publicly identify and announce the Project Site as using Brickeye's Services, and Customer as a Brickeye customer, subject to the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Customer is granted the non-exclusive license to use the Brickeye logo and identifiers (e.g., job site banners or hoarding graphics, social media, website, etc.) pursuant to the terms and conditions of this Agreement. Customer may participate in Brickeye's marketing and communications programs as made available to the Customer and may make additional public claims provided that Brickeye provides consent to such claims, such consent not to be unreasonably withheld or delayed. Usage of Brickeye logo and identifiers must be consistent with the Brickeye Brand Usage Guide. All marketing and publicity content relating to Customer will need to be approved by Customer's communication team. Notwithstanding the foregoing, the Parties agree to destroy any promotional material provided by the other Party within 10 business days' notice from the other Party requesting the destruction of such promotional material.

- 12.23 **Construction of Agreement.** Both parties participated in the drafting and negotiation of this Agreement. This Agreement will not be presumptively construed for or against either Party. Section titles are for convenience only. As used in this Agreement, "will" means "shall," and "include" means "Includes without limitation.
- 12.24 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.
- 12.25 **Entire Agreement.** The Agreement, including any exhibits and the Order Forms entered into hereunder, and documents incorporated by reference, represent the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing all the prior agreements, communications and understandings (written and oral) regarding its subject matter.