# Enterprise Service Agreement (ESA)

This Vigilant Solutions Enterprise Service Agreement (the "Agreement") is made and entered into as of this_____ Day of _____, 201_ by and between **Vigilant Solutions, LLC**, a Delaware corporation, having its principal place of business at 1152 Stealth Street, Livermore, CA 94551 ("Vigilant") and _____, a having its principal place of business at_____("Customer").

**WHEREAS,** Vigilant designs, develops, licenses and services advanced video analysis software technologies for security markets;

**WHEREAS,** Customer will separately purchase License Plate Recognition (LPR) hardware components from Vigilant and/or its authorized reseller for use with the Software Products (as defined below);

**WHEREAS**, Customer desires to license from and receive service for the Software Products provided by Vigilant;

**THEREFORE,** In consideration of the mutual covenants contained herein this Agreement, Customer and Vigilant hereby agree as follows:

## I.      Definitions:

**"CLK"** or **"Camera License Key"** means an electronic key that will permit each license of Vigilant's CarDetector brand LPR software (one CLK per camera) to be used with other Vigilant LPR hardware components and Software Products.

**"Effective Date**" means the date set forth in the first paragraph of this Agreement.

**"Enterprise License"** means a non-exclusive, non-transferable license to install and operate the Software Products, on any applicable media, without quantity or limitation. This Enterprise Service Agreement allows Customer to install the Software Products on an unlimited number of devices in accordance with the selected Service Package, and allow benefits of all rights granted hereunder this Agreement.

**"LPR Data"** refers to LPR data collected by the Customer and available on Client Portal for use by the Customer.

**"Service Fee"** means the amount due from Customer prior to the renewal of this Agreement as consideration for the continued use of the Software Products and Service Package benefits according to Section VIII of this Agreement.

**"Service Package"** means the Customer designated service option which defines the extent of use of the Software Products, in conjunction with any service and/or benefits therein granted as rights hereunder this Agreement.

**"Service Period"** has the meaning set forth in Section III (A) of this Agreement.

**"Software Products**" means Vigilant's Software Suite including CarDetector, Client Portal, Target Alert Service (TAS) server/client alerting package, and other software applications considered by Vigilant to be applicable for the benefit of security practices.

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VS Initials          Customer Initials

**"Technical Support Agents"** means Customer's staff person specified in the Contact Information Worksheet of this Agreement responsible for administering the Software Products and acting as Customer's Software Products support contact.

**"User License"** means a non-exclusive, non-transferable license to install and operate the Software Products, on any applicable media, limited to a single licensee.

**"Users"** refers to individuals who are agents of the Customer and who are authorized by the Customer to access Client Portal on behalf of Customer through login credentials provided by Customer.

## II.   Enterprise License Grant; Duplication and Distribution Rights:

Subject to the terms and conditions of this Agreement, Vigilant hereby grants Customer an Enterprise License to the Software Products for the Term provided in Section III below.  Except as expressly permitted by this Agreement, Customer or any third party acting on behalf of Customer shall not copy, modify, distribute, loan, lease, resell, sublicense or otherwise transfer any right in the Software Products. Except as expressly permitted by this Agreement, no other rights are granted by implication, estoppels or otherwise. Customer shall not eliminate, bypass, or in any way alter the copyright screen (also known as the "splash" screen) that may appear when Software Products are first started on any computer. Any use or redistribution of Software Products in a manner not explicitly stated in this Agreement, or not agreed to in writing by Vigilant, is strictly prohibited.

## III.   Term; Termination.

A.   Term.  The initial term of this Agreement is for one (1) year beginning on the Effective Date (the "Initial Term"), unless earlier terminated as provided herein.  Sixty (60) days prior to the expiration of the Initial Term and each subsequent Service Period, Vigilant will provide Customer with an invoice for the Service Fee due for the subsequent twelve (12) month period (each such period, a "Service Period").   This Agreement and the Enterprise License granted under this Agreement will be extended for a Service Period upon Customer's payment of that Service Period's Service Fee, which is due 30 days prior to the expiration of the Initial Term or the existing Service Period, as the case may be. Pursuant to Section XIII below, Customer may also pay in advance for more than one Service Period.

B.   Customer Termination.  Customer may terminate this Agreement at any time by notifying Vigilant of the termination in writing thirty (30) days prior to the termination date, and deleting all copies of the Software Products.  If Customer terminates this Agreement prior to the end of the Initial Term, Vigilant will not refund or prorate any license fees, nor will it reduce or waive any license fees still owed to Vigilant by Customer.  Upon termination of the Enterprise License, Customer shall immediately cease any further use of Software Products.   Customer may also terminate this agreement by not paying an invoice for a subsequent year's Service Fee within sixty (60) days of invoice issue date.

C.   Vigilant Termination.  Vigilant has the right to terminate this Agreement by providing thirty (30) days written notice to Customer. If Vigilant's termination notice is based on an alleged breach by Customer, then Customer shall have thirty (30) days from the date of its receipt of Vigilant's notice of termination, which shall set forth in detail Customer's purported breach of this Agreement, to cure the alleged breach. If within thirty (30) days of written notice of violation from Vigilant Customer has not reasonably cured the described breach of this Agreement, Customer shall immediately discontinue all use of Software Products and certify to Vigilant that it has returned or destroyed all copies

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VS Initials          Customer Initials

of Software Products in its possession or control.  If Vigilant terminates this Agreement prior to the end of a Service Period for no reason, and not based on Customer's failure to cure the breach of a material term or condition of this Agreement, Vigilant shall refund to Customer an amount calculated by multiplying the total amount of Service Fees paid by Customer for the then-current Service Period by the percentage resulting from dividing the number of days remaining in the then-current Service Period, by 365.

**IV.     Warranty and Disclaimer; Infringement Protection; Use of Software Products Interface.**

A.     <u>Warranty and Disclaimer</u>.  Vigilant warrants that the Software Products will be free from all Significant Defects (as defined below) during the lesser of the term of this Agreement (the "Warranty Period") or one year. "Significant Defect" means a defect in a Software Product that impedes the primary function of the Software Product. This warranty does not include products not manufactured by Vigilant. Vigilant will repair or replace any Software Product with a Significant Defect during the Warranty Period; *provided, however*, if Vigilant cannot substantially correct a Significant Defect in a commercially reasonable manner, Customer may terminate this Agreement and Vigilant shall refund to Customer an amount calculated by multiplying the total amount of Service Fees paid by Customer for the then-current Service Period by the percentage resulting from dividing the number of days remaining in the then-current Service Period, by 365. The foregoing remedies are Customer's exclusive remedy for defects in the Software Product. Vigilant shall not be responsible for labor charges for removal or reinstallation of defective software, charges for transportation, shipping or handling loss, unless such charges are due to Vigilant's gross negligence or intentional misconduct.  Vigilant disclaims all warranties, expressed or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose. In no event shall Vigilant be liable for any damages whatsoever arising out of the use of, or inability to use, the Software Products.

B.     <u>Infringement Protection</u>.  If an infringement claim is made against Customer by a third-party in a court of competent jurisdiction regarding Customer's use of any of the Software Products, Vigilant shall indemnify Customer, and assume all legal responsibility and costs to contest any such claim.  If Customer's use of any portion of the Software Products or documentation provided to Customer by Vigilant in connection with the Software Products is enjoined by a court of competent jurisdiction, Vigilant shall do one of the following at its option and expense within sixty (60) days of such enjoinment: (1) Procure for Customer the right to use such infringing portion; (2) replace such infringing portion with a non-infringing portion providing equivalent functionality; or (3) modify the infringing portion so as to eliminate the infringement while providing equivalent functionality.

C.     <u>Use of Software Products Interface</u>.  Under certain circumstances, it may be dangerous to operate a moving vehicle while attempting to operate a touch screen or laptop screen and any of their applications.  It is agreed by Customer that Customer's users will be instructed to only utilize the interface to the Software Products at times when it is safe to do so.  Vigilant is not liable for any accident caused by a result of distraction such as from viewing the screen while operating a moving vehicle.

**V.     Software Support, Warranty and Maintenance.**

Customer will receive technical support by submitting a support ticket to Vigilant's company support website or by sending an email to Vigilant's support team.  Updates, patches and bug fixes of the Software Products will be made available to Customer at no additional charge, although charges may be assessed if the Software Product is requested to be delivered on physical media.  Vigilant will provide Software Products support to Customer's Technical Support Agents through e-mail, fax and telephone.

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VS Initials          Customer Initials

**VI.     Camera License Keys (CLKs).**

Customer is entitled to use of the Software Products during the term of this Agreement to set up and install the Software Products on an unlimited number of media centers within Customer's network in accordance with selected Service Options.  As Customer installs additional units of the Software Products and connects them to LPR cameras, Customer is required to obtain a Camera License Key (CLK) for each camera installed and considered in active service. A CLK can be obtained by Customer by going to Vigilant's company support website and completing the online request form to Vigilant technical support staff. Within two (2) business days of Customer's application for a CLK, Customer's Technical Support Agent will receive the requested CLK that is set to expire on the last day of the Initial Term or the then-current Service Period, as the case may be.

**VII.     Ownership of Software.**

A.     Ownership of Software Products.  The Software Products are copyrighted by Vigilant and remain the property of Vigilant.  The license granted under this Agreement is not a sale of the Software Products or any copy. Customer owns the physical media on which the Software Products are installed, but Vigilant retains title and ownership of the Software Products and all other materials included as part of the Software Products.

B.     Rights in Software Products.  Vigilant represents and warrants that: (1) it has title to the Software and the authority to grant license to use the Software Products; (2) it has the corporate power and authority and the legal right to grant the licenses contemplated by this Agreement; and (3) it has not and will not enter into agreements and will not take or fail to take action that causes its legal right or ability to grant such licenses to be restricted.

**VIII.     Data Sharing.**

Vigilant will not share any LPR Data generated by the Customer without the permission of the Customer.

**IX.     Ownership of LPR Data.**

Customer retains all rights to LPR Data generated by the Customer.  Should Customer terminate agreement with Vigilant, a copy of all LPR Data generated by the Customer will be created and provided to the Customer.  After the copy is created, all LPR Data generated by the Customer will be deleted from Client Portal at the written request of an authorized representative of the Customer.

**XI.     Data Retention.**

LPR Data is governed by the Customer's retention policy.  LPR Data that reaches its expiration date will be deleted from Client Portal.

**XII.     Account Access.**

A.     Eligibility.  Customer shall only authorize individuals who satisfy the eligibility requirements of "Users" to access Client Portal.  Vigilant in its sole discretion may deny access to Client Portal to any individual based on such person's failure to satisfy such eligibility requirements. User logins are restricted to employees of the Customer.  No User logins may be provided to non-employees of the Customer without the express written consent of Vigilant.

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VS Initials     Customer Initials

B.      Security.  Customer shall be responsible for assigning an Site Manager who in turn will be responsible for assigning to each of Customer's Users a username and password (one per user account).  A limited number of User accounts is provided.  Customer will cause the Users to maintain username and password credentials confidential and will prevent use of such username and password credentials by any unauthorized person(s).  Customer shall notify Vigilant immediately if Customer believes the password of any of its Users has, or may have, been obtained or used by any unauthorized person(s).  In addition, Customer must notify Vigilant immediately if Customer becomes aware of any other breach or attempted breach of the security of any of its Users' accounts.

**XIII.      Service Package, Fees and Payment Provisions.**

A.   Service Package. This Enterprise License Agreement is based on the following Service Package:

Service Package - Basic LPR Service Package:
- Vigilant Managed/Hosted LPR server Client Portal Account
- Access to all Vigilant Software including all upgrades and updates
- Unlimited user licensing for the following applications:
   - Client Portal, CarDetector and TAS

B.      Service Fees. Payment of each Service Fee entitles Customer to all rights granted under this Agreement, including without limitation, use of the Software Products for the relevant Service Period, replacement of CLKs, and access to the updates and releases of the Software Products and associated equipment driver software to allow the Software Products to remain current and enable the best possible performance.  The annual Service Fee due for a particular Service Period is based on the Annual Service Fee schedules below:

| Annual Service Fee Schedule (multiplied by number of CLKs issued) | | | | |
|---|---|---|---|---|
| Total # of CLK's under this ESA | 0-14 CLKs | 15-30 CLKs | 31-60 CLKs | Over 60 CLKs |
| Basic Service | $525.00 | $450.00 | $400.00 | $275.00 |

| Annual Parking Fee Schedule | |
|---|---|
| Parking Enforcement System Toolkit | $1,000.00 per system |
| Parking Integration | $1,000.00 |
| Scofflaw Alerting Service | $25,000.00 |

Payment of the Service Fee is due thirty (30) days prior to the renewal of the then-current Service Period.  All Service Fees are exclusive of any sales, use, value-added or other federal, state or local taxes (excluding taxes based on Vigilant's net income) and Customer agrees to pay any such tax.  Service Fees may increase by no higher than 4% per year for years after the first year of this agreement.

C.      Advanced Service Fee Payments.  Vigilant will accept advanced Service Fee payment on a case by case basis.  If Customer makes advanced Service Fee payments to Vigilant, advanced payments to Vigilant will be applied in full to each subsequent Service Period's Service Fees until the balance of the credits is reduced to a zero balance. System based advanced credits shall be applied to subsequent Service Fees in the amount that entitles Customer

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VS Initials          Customer Initials

continued operation of the designated camera unit systems for the following Service Period until the credits are reduced to a zero balance.

  D.    Price Adjustment. Vigilant has the right to increase or decrease the annual Service Fee from one Service Period to another; *provided, however*, that in no event will a Service Fee be increased by more than 4% of the prior Service Period's Service Fees.  If Vigilant intends to adjust the Service Fee for a subsequent Service Period, it must give Customer notice of the proposed increase on or before the date that Vigilant invoices Customer for the upcoming Service Period.

## XIV.    Miscellaneous.

  A.    Limitation of Liability.  IN NO EVENT SHALL VIGILANT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES INCLUDING DAMAGES FOR LOSS OF USE, DATA OR PROFIT, ARISING OUT OF OR CONNECTED WITH THE USE OF THE SOFTWARE PRODUCTS, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF VIGILANT HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. IN NO EVENT WILL VIGILANT'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO VIGILANT FOR THE SOFTWARE PRODUCTS LICENSED UNDER THIS AGREEMENT.

  B.    Confidentiality.  Customer acknowledges that Software Products contain valuable and proprietary information of Vigilant and Customer will not disassemble, decompile or reverse engineer any Software Products to gain access to confidential information of Vigilant.

  C.    Assignment.  Neither Vigilant nor Customer is permitted to assign this Agreement without the prior written consent of the other party. Any attempted assignment without written consent is void.

  D.    Amendment; Choice of Law.  No amendment or modification of this Agreement shall be effective unless in writing and signed by authorized representatives of the parties. This Agreement shall be governed by the laws of the state of California without regard to its conflicts of law.

  E.    Complete Agreement.  This Agreement constitutes the final and complete agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, written or oral, with respect to such subject matter.

  F.    Relationship.  The relationship created hereby is that of contractor and customer and of licensor and Customer.   Nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Each party hereto represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party.

  G.    No Rights in Third Parties.  This agreement is entered into for the sole benefit of Vigilant and Customer and their permitted successors, executors, representatives, administrators and assigns. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a party to this

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Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

H.     Construction.  The headings used in this Agreement are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement. Any term referencing time, days or period for performance shall be deemed calendar days and not business days, unless otherwise expressly provided herein.

I.     Severability.  If any provision of this Agreement shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Agreement shall remain in full force and effect.

J.     Federal Government. Any use, copy or disclosure of Software Products by the U.S. Government is subject to restrictions as set forth in this Agreement and as provided by DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (Oct 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227 (ALT III), as applicable.

K.     Right to Audit.  Customer, upon thirty (30) days advanced written request to Vigilant, shall have the right to investigate, examine, and audit any and all necessary non-financial books, papers, documents, records and personnel that pertain to this Agreement and any other Sub Agreements.

L.     Notices; Authorized Representatives; Technical Support Agents. All notices, requests, demands, or other communications required or permitted to be given hereunder must be in writing and must be addressed to the parties at their respective addresses set forth below and shall be deemed to have been duly given when (a) delivered in person; (b) sent by facsimile transmission indicating receipt at the facsimile number where sent; (c) one (1) business day after being deposited with a reputable overnight air courier service; or (d) three (3) business days after being deposited with the United States Postal Service, for delivery by certified or registered mail, postage pre-paid and return receipt requested. All notices and communications regarding default or termination of this Agreement shall be delivered by hand or sent by certified mail, postage pre-paid and return receipt requested. Either party may from time to time change the notice address set forth below by delivering 30 days advance notice to the other party in accordance with this section setting forth the new address and the date on which it will become effective.

| **Vigilant Solutions, LLC** | **Customer:** _____ |
|---|---|
| Attn: Sales Administration | Attn:        _____ |
| 1152 Stealth Street | Address:   _____ |
| Livermore, CA 94551 | _____ |

M.     Authorized Representatives; Technical Support Agents.  Customer's Authorized Representatives and its Technical Support Agents are set forth below (Last Page).  Customer's Authorized Representative is responsible for administering this Agreement and Customer's Technical Support Agents are responsible for administering the Software Products and acting as Customer's Software Products support contact. Either party may from time to time change its Authorized Representative, and Customer may from time to time change its Technical Support Agents, in each case, by delivering 30 days advance notice to the other party in accordance with the notice provisions of this Agreement.

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VS Initials          Customer Initials

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


Manufacturer:         Vigilant Solutions, LLC

Authorized Agent:     Bill Quinlan

Title:                Vice President Sales Operations

Date:                 _____

Signature:            _____




Customer:             _____

Authorized Agent:     _____

Title:                _____

Date:                 _____

Signature:            _____

**Enterprise Service Agreement**

**Contact Information Worksheet**

Please complete the following contact information for your Vigilant Solutions Enterprise License program.

| Enterprise License Agreement Holder | | |
|---|---|---|
| Company Name: | | |
| Company Type: | | |
| Address: | | |
| | | |
| | | |
| | | |
| **Primary Contact** | | |
| Name: | | |
| Title: | Phone: | |
| Email: | | |
| **Supervisor Information** | | |
| Name: | | |
| Title: | Phone: | |
| Email: | | |
| **Financial Contact (Accounts Payable)** | | |
| Name: | | |
| Title: | Phone: | |
| Email: | | |
| **Technical Support Contact # 1** | | |
| Name: | | |
| Title: | Phone: | |
| Email: | | |
| **Technical Support Contact # 2** | | |
| Name: | | |
| Title: | Phone: | |
| Email: | | |

For questions or concerns, please contact Vigilant Solutions' sales team:

sales@vigilantsolutions.com

1-925-398-2079