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# **THE VILLAGE OF TINLEY PARK**

**Cook County, Illinois**

**Will County, Illinois**

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## **RESOLUTION NO. 2021-R-088**

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**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE VILLAGE OF TINLEY  
PARK AND APPROVING THE PURCHASE OF TWO MFP COPIERS AND A CONTRACT FOR  
MFP COPIER MAINTENANCE/SERVICE WITH PROVEN IT**

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**MICHAEL W. GLOTZ, PRESIDENT  
KRISTIN A. THIRION, VILLAGE CLERK**

**WILLIAM P. BRADY  
WILLIAM A. BRENNAN  
DIANE M. GALANTE  
DENNIS P. MAHONEY  
MICHAEL G. MUELLER  
COLLEEN M. SULLIVAN  
Board of Trustees**

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**RESOLUTION NO. 2021-R-088**

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE VILLAGE OF TINLEY PARK AND APPROVING THE PURCHASE OF TWO MFP COPIERS AND A CONTRACT FOR MFP COPIER MAINTENANCE/SERVICE WITH PROVEN IT**

**WHEREAS,** the Village of Tinley Park, Cook and Will Counties, Illinois, is a Home Rule Unit pursuant to the Illinois Constitution of 1970; and

**WHEREAS,** the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, have considered entering into a contract with Proven IT, a true and correct copy of such Contract being attached hereto and made a part hereof as **EXHIBIT 1**; and

**WHEREAS,** the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, have determined that it is in the best interests of said Village of Tinley Park that said Contract be entered into by the Village of Tinley Park;

**NOW, THEREFORE, Be It Resolved** by the President and Board of Trustees of the Village of Tinley Park, Cook and Will Counties, Illinois, as follows:

**Section 1:** The Preambles hereto are hereby made a part of, and operative provisions of, this Resolution as fully as if completely repeated at length herein.

**Section 2:** That this President and Board of Trustees of the Village of Tinley Park hereby find that it is in the best interests of the Village of Tinley Park and its residents that the aforesaid "Contract" be entered into and executed by said Village of Tinley Park, with said Contract Extension to be substantially in the form attached hereto and made a part hereof as **EXHIBIT 1**, subject to review and revision as to form by the Village Attorney.

**Section 3:** That the President and Clerk of the Village of Tinley Park, Cook and Will Counties, Illinois are hereby authorized to execute for and on behalf of said Village of Tinley Park the aforesaid Contract.

**Section 4:** That this Resolution shall take effect from and after its adoption and approval.


**ADOPTED** this 5<sup>th</sup> day of October, 2021, by the Corporate Authorities of the Village of Tinley Park on a roll call vote as follows:

**AYES:** Brady, Brennan, Galante, Mueller, Mahoney, Sullivan

**NAYS:** None

**ABSENT:** None

**APPROVED** this 5<sup>th</sup> day of October, 2021, by the President of the Village of Tinley Park.

  
\_\_\_\_\_  
Village President

**ATTEST:**

  
\_\_\_\_\_  
Village Clerk


# **EXHIBIT 1**

STATE OF ILLINOIS        )  
COUNTY OF COOK        )     SS  
COUNTY OF WILL        )

CERTIFICATE

I, KRISTIN A. THIRION, Village Clerk of the Village of Tinley Park, Counties of Cook and Will and State of Illinois, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2021-R-088, **“A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE VILLAGE OF TINLEY PARK AND APPROVING THE PURCHASE OF TWO MFP COPIERS AND A CONTRACT FOR MFP COPIER MAINTENANCE/SERVICE WITH PROVEN IT,”** which was adopted by the President and Board of Trustees of the Village of Tinley Park on October 5, 2021.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Tinley Park this 5<sup>th</sup> day of October, 2021.

  
\_\_\_\_\_  
VILLAGE CLERK



Proven IT  
18450 Crossing Drive | Tinley Park, IL 60487  
Phone: 708 614 1770 | Fax 708 614 1760  
provenIT.com

## SERVICE AGREEMENT

Customer:	Village of Tinley Park	Phone:	(708) 444-5000
Contact:	Anthony Ardolino	Email:	aardolino@tinleypark.org
Address:	16250 S Oak Park Ave	City:	Tinley Park
		State:	IL
		Zip:	60477

Model	Serial#	ID#	Meter	Meter Contact
Toshiba e-STUDIO5516AC				
Toshiba e-STUDIO5018A				

Attach Schedule A for additional equipment. Attach Schedule B for additional customer owned equipment. Maximum 7 Devices above.

## SERVICE

B/W Monthly Copies	15,000	x Service Rate:	0.00600	\$90.00
	B/W Overages Billed at	0.00600		
Color Monthly Copies	4,000	x Service Rate:	0.05000	\$200.00
	Color Overages Billed at	0.05000		
B/W Monthly Prints	0	x Service Rate:	0.00000	\$0.00
	B/W Overages Billed at	0.00000		
Color Monthly Prints	0	x Service Rate:	0.00000	\$0.00
	Color Overages Billed at	0.00000		
Contract Start Date:	upon install	Total:		\$290.00
Term:	36			

Select a Base Billing Cycle	Monthly	Select an Overage Cycle	Annual
<input checked="" type="radio"/> Unlimited Remote Support: \$200 Annually		<input type="radio"/> Decline Remote Support: \$150/hr Chargeable	
Meter Contact:		Phone:	Email:

### Meter Collection Method:

FM Audit Installed on Print Server. Required for Auto-Toner Replenishment

### Notes:

  
Authorized Customer Signature

October 5, 2021  
Date

  
Proven IT Authorized Signature

October 10, 2021  
Date

Agreement is not binding until accepted by Proven IT, Tinley Park, IL

Leased equipment-Maintenance Agreement will run full term of lease and is non cancellable.

provenIT.com

708 614 1770



## SERVICE AGREEMENT

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Contact:	Anthony Ardolino	Email:	aardolino@tinleypark.org				
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Color Overages Billed at	0.05000			
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B/W Overages Billed at	0.00000			
Color Monthly Prints	0	x Service Rate:	0.00000	\$0.00
Color Overages Billed at	0.00000			
Contract Start Date:	upon install	Total:	\$290.00	
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Select a Base Billing Cycle	Monthly	Select an Overage Cycle	Annual
<input checked="" type="radio"/> Unlimited Remote Support: \$200 Annually		<input type="radio"/> Decline Remote Support: \$150/hr Chargeable	
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Date

Proven IT Authorized Signature

Date

Agreement is not binding until accepted by Proven IT, Tinley Park, IL

Leased equipment-Maintenance Agreement will run full term of lease and is non cancellable.

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## Terms and Conditions

1. **ITEMS INCLUDED:** This Agreement includes the following as applicable: unlimited service calls, parts (as classified by the manufacturers) and consumable supplies (maintenance kits, transfer kits, fuser kits, process kits, developer and imaging drums and toner). Supplies consumption is based off the manufacturer's suggested yields and fill rate. If supplies consumption is excessive, a surcharge may be assessed. Proven IT reserves the right to reset supply items (i.e. fuser and maintenance kits) in lieu of replacement so long as the device functionality and print quality are not affected.
2. **ITEMS EXCLUDED:** This Agreement excludes the following unless otherwise specified:
  - a. Paper and staples.
  - b. Any items damaged by Customer such as, but not limited to, doors, paper trays and covers. Replacement of these items will be charged to the Customer at current Proven IT rates.
  - c. Fax Machines: Thermal heads, process units and fuser units.
  - d. **Network Connected Equipment:** Network connected equipment will be covered up to the network connection of the Printer/MFP. Service calls caused by computer or network issues will be charged to the Customer at current Proven IT rates.
3. Proven IT reserves the right, at reasonable times during Customer's normal business hours and upon reasonable notice to customer, to inspect all equipment covered under this Agreement to determine that it is in good mechanical condition prior to the effective date on the front of this Agreement. Should the equipment require significant repair or overhaul, such repairs may be chargeable to the Customer at current Proven IT rates. Such repairs will be performed only upon Agreement of both parties.
4. **SERVICE:** Proven IT agrees to provide emergency service and all maintenance on the equipment listed on the attached schedule(s) for the term of the Agreement except as follows:
  - a. Use of supplies, spare parts, or paper that do not meet manufacturer's specifications and cause abnormal service problems.
  - b. Fire, accident, theft or damage to the machine due to repairs or movement by someone other than an authorized Proven IT representative.
  - c. If replacement of consumable items recommended by Proven IT service representatives is not complied with and results in additional service calls, the Customer will be charged at our normal hourly rates. These consumable items are to include, but not limited to toner, developer, drums and supply modules.
  - d. Proven IT shall not be responsible for repairs or maintenance resulting from the use of supplies or parts not obtained from Proven IT. Any repairs resulting from the use of supplies or parts not obtained through Proven IT will be charged to the Customer at current Proven IT rates. For these purposes, the term "supplies" will not include paper, envelopes, labels or other related paper products.
  - e. Proven IT shall not be responsible for delays, inability to provide service calls due to strikes, accidents, act of God or any other event beyond its reasonable control. All Service under this Agreement shall be rendered during normal working hours of 8:00am to 5:00pm Monday through Friday, local time, unless otherwise agreed upon by both parties.
  - f. Proven IT does not guarantee that parts will be available during the term of the Agreement, but in the event a manufacturer discontinues parts or supplies for a specific device, the unused portion of the services under this Agreement can be transferred to a new machine purchased through Proven IT. Should all or some parts become unavailable and no longer are supported by the Original Equipment Manufacturer ("OEM") the products shall be considered "End of Life". In such cases, Proven IT will make all reasonable efforts to honor any respective contract Maintenance Agreement term or as agreed upon service coverage. "End of Life" defined products will not be available under new or renewed Contracted Maintenance Agreements.
5. **EQUIPMENT:** All equipment covered under the Agreement must adhere to the following guidelines:
  - a. Equipment must be located in a normal office setting with sufficient amount space for access, free from excessive dust, humidity, temperature and ammonia or other corrosive fumes.
  - b. Equipment must be operated on an isolated electrical line, if so noted on the Scope of Work Agreement or the OEM. Equipment must always be operated on a UL approved electrical circuit, with proper current, voltage and type of outlets as specified by the OEM.
  - c. Equipment should be operated within the specified operational (including usage) specifications of the OEM.
  - d. Only Proven IT furnished supplies may be used.
6. **PREVENTATIVE MAINTENANCE:** Proven IT will perform preventative maintenance on each machine based on the manufacturer's recommended interval. This will include cleaning toner and paper dust out of the inside, checking and proactively replacing high-mortality parts (i.e. rollers) and a wipe-down of the exterior of the machine.
7. **METERS:** Proven IT utilizes Print Management Software to electronically report meters and supply consumption. Customer agrees to work with Proven IT's software administrator to install the Print Management software prior to the New Customer Onboard. Customer grants Proven IT permission to upgrade, modify, or maintain the Print Management software or to install new releases or additions. Under no circumstances will the Print Management software provide Proven IT access to confidential information other than data directly related to the Printers/Copiers on the network. Customer agrees not to delete, alter, modify, or otherwise render the software unusable during the term of this Agreement and agrees to reinstall the software in the event their actions inadvertently affect reporting capabilities. If Customer declines to install Proven IT's Print Management Software, then Proven IT retains the right to invoice Customer at the prevailing hourly labor rate for services due to manual meter collections. Manual meter collection will be performed during standard business 8:00am to 5:00pm Monday through Friday, local time.
8. **NEW EQUIPMENT ADDED:** Throughout the duration of the Agreement, if additional metered devices of like models to those on the Agreement today are discovered in the Customer fleet, they will be automatically added to this Agreement and initiated for coverage and billing.  
  
Throughout the duration of the Agreement, if additional metered devices of dissimilar models to those on the Agreement today are discovered in the Customer fleet, or are reported by the Customer to be added to the Agreement, they will be added to the Agreement at the then current rates and be included for coverage and billing. For devices of this kind, the Customer will have the opportunity to remove the devices from the Agreement 90 days from the date they were added.
9. **REMITTANCE:** Payment is due thirty (30) days from date of Customer's receipt of invoice. Delinquent accounts which are not being disputed in good faith by Customer shall accrue interest at a rate of one and one half percent of the past due amount per month or, (if lower, the maximum rate of interest chargeable under applicable law). Customer shall pay all federal, state and local sales, use, property, excise or other taxes imposed with respect to the purchase price listed on this Agreement.
10. **BILLING AND CONTRACT ADJUSTMENT:** Proven IT will invoice the Customer monthly for the Monthly Payment and usage will be reconciled on the frequency indicated on the front of this Agreement. Customer will be invoiced for any overages multiplied by the rates indicated on the front of this Agreement. The contract volume can be adjusted at the end of each reconciliation period. The Contract volume may be adjusted down to the previous quarters' actual usage; not to exceed 15% of the current volume at the time of the adjustment. At the end of the first year of this Agreement and once each successive twelve month period, we may increase the base contract payment and coverage rates by a maximum of 15% or an equivalent amount to that stated on any associated Value Agreement or Lease Agreement between both parties.
11. **BREACH OR DEFAULT:** If the Customer does not pay all charges as provided hereunder promptly when due Proven IT may (a) Refuse to service the equipment or (b) Furnish service on a C.O.D., "Per Cal" basis at current Proven IT rates.  
  
The Customer agrees to pay Proven IT costs and expenses of collection including reasonable attorney's fees permitted by law in addition to all other rights and remedies available to Proven IT.
12. **AGREEMENT:** This Agreement is not refundable or transferable to a third party unless agreed upon in writing by both parties.
13. **PENALTY FOR EARLY CANCELLATION:** This Agreement is binding and noncancelable. If the Customer wishes to terminate the Agreement in advance of the Agreement maturity date then the Customer is responsible for buying out the remaining term of the Agreement.  
  
The penalty is calculated using the then current service rates multiplied by the remaining term published on the front of the Agreement or the remaining term based on any Supplements that have been executed modifying the term of the Agreement.  
  
For Customer Agreements billing using Actual Meter reads or Usage Based programs, the penalty is calculated based on the prior 12 months average monthly billing multiplied by the remaining term published on the front of the Agreement or the remaining term based on any Supplements that have been executed modifying the term of the Agreement.  
  
If there is no request for cancellation, but all devices covered under this Agreement have been removed from service, this will be considered a cancellation of the Agreement and the formula(s) listed above will apply.
14. **RESPONSIBILITY:** Other than the obligations set forth herein, Proven IT disclaims all warranties, expressed or implied, including any implied warranties or merchantability for use or fitness for a particular purpose. Proven IT shall not be responsible for direct, incidental or consequential damages, including but not limited to, damages arising out of the performance of the equipment or the loss of the use of the equipment and the Customer hereby waives any claims related thereby.
15. **INDEMNIFICATION:** Each party shall indemnify, defend and hold harmless the other party and its officers, directors, employees, agents and representatives from any and all claims, losses, damages or expenses, including but not limited to, court costs, fees and expenses of counsel and attorney fees to the extent any such claim, loss, or damage results from a breach of the terms of the Agreement by a party, or resulting from the death or bodily injury for any person or damage to any property to the extent it was caused by the negligent act, willful misconduct, tortious or other unlawful act, error or omission of a party or its officers, directors, employees, agents and representatives on connection with the subject matter of this Agreement.
16. **JURISDICTION:** This Agreement shall be governed by and construed according to the laws of the State of Illinois applicable to Agreements wholly negotiated, executed and performed in Illinois. It constitutes the entire Agreement between parties and may not be modified except in writing signed by duly authorized officer of Proven IT and the Customer.
17. **TRAINING:** The customer agrees to make available and designate a key contact for training on the use of any Proven IT furnished equipment. Should the employment status of designated operator change so as to affect the contact's availability to perform the assignment, the Customer shall inform Proven IT as soon as reasonably practical.
18. **RENEWAL:** This Agreement shall be renewed automatically upon approval by Proven IT unless Customer notifies Proven IT in writing between 90 and 150 days prior to the end of the Agreement term. Customer agrees to pay the then current rates at the beginning of each subsequent renewal Agreement period.





Proven IT  
18450 Crossing Drive | Tinley Park, IL 60487  
Phone: 708.614.1770 | Fax 708.614.1760  
provenIT.com

## SALES AGREEMENT

Sales Order Date 9/21/2021	Customer PO#	Delivery Date	Rep Name Glenn Labeledz		
Bill To: Village of Tinley Park		Ship To: Village of Tinley Park			
Address 16250 S Oak Park Ave		Address 16250 S Oak Park Ave			
City Tinley Park	State IL	Zip 60477	City Tinley Park	State IL	Zip 60477
Phone (708) 444-5000		Phone (708) 444-5000	Email aardolino@tinleypark.org		
Attention Anthony Ardolino		Attention Anthony Ardolino			
Qty	Description	Unit Price	Total		
1	e-STUDIO5516AC e-STUDIO5516AC e-STUDIO5516AC				
1	e-STUDIO5516AC Fax Unit/Second Line Fax Unit GD137				
1	e-STUDIO5516AC 50 Sheet Finisher (7505AC/8508C Ser				
1	e-STUDIO5516AC Holepunch MJ1111/1112 (7505AC/85				
1	e-STUDIO5516AC Wireless LAN/Bluetooth Module GN4				
1	e-STUDIO5018A e-STUDIO5018A e-STUDIO5018A				
1	e-STUDIO5018A 50 Sheet Finisher MJ1109B				
1	e-STUDIO5018A Bridge Kit MJ1109/1110 KN5005				
1	e-STUDIO5018A DSDF Doc Feeder MR4000B				
1	e-STUDIO5018A Paper Feed Pedestal 550 Sheets x 1 Dr				
1	e-STUDIO5018A Wireless LAN/Bluetooth Module GN40				

\*For additional items see addendum

### Networking Charges

\*Additional charges for networking will be applied after the first 2hrs at a \$100.00 hourly rate

I (We) Decline Networking Service: ☐

Initial

Customer Signature:

*Michael W. Labeledz*

Date

*10/5/2021*

Subtotal:	
Tax Rate:	0.00%
Tax	exempt
Networking:	
Delivery/Installation:	
Total:	\$19725.74

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708.614.1770



1. **GENERAL:** Invoices shall be due and payable by the Customer for all equipment, accessories, supplies or maintenance purchased pursuant to this agreement (The "Goods and Services"), within the time period specified on the front side of this document. Customer shall pay all applicable sales tax, installation and freight charges. If Customer fails to make any payment when due, there will be a service charge of five percent (5%) of the total amount due, together with an interest rate of one and one-half percent (1 1/2%) of the total amount due or the maximum legal rate allowed by law, whichever is less. Customer shall pay a \$20.00 service charge on any returned checks. Customer shall pay all collection expenses incurred by Seller ("Proven IT"), including but not limited to, court, attorneys and accounting fees.

2. **TAXES:** Customer shall be responsible for all sales tax, use tax or other taxes (including without limitations personal property taxes assessable on the equipment) and fees charged relative to this agreement. Customer agrees to reimburse Proven IT for all amounts paid or payable by Proven IT in discharge of the foregoing taxes. Customer shall not be responsible for taxes based on Proven IT's gross or net income.

3. **DEFAULT:** If Customer is in default of any term or condition, Seller may cancel this agreement in whole or part at any time upon ten (10) day's written notice. If Seller cancels, the agreement will be prorated based upon the unused portion of the term of the agreement. Any amount due to Seller will be invoiced and is payable upon receipt. Any amounts due to the customer will be applied to any unpaid invoices prior to refund. Early termination of contract is non-refundable.

4. **AVAILABILITY:** Customer agrees that the Goods and Services are subject to availability and Seller reserves the right to substitute models of like specification if practicable. Seller may cancel any order or any part of an order without cause at any time and without penalty, and Seller's sole obligation shall be to return any down payment paid by Customer. If parts become unavailable for discontinued equipment, Seller reserves the right to delete said equipment in accordance with the terms of this agreement.

5. **DELIVERY AND INSTALLATION:** Seller shall use its standard packaging. Seller shall choose the method of delivery; Seller reserves the right to deliver the goods in installments. Customer will pay an invoice when due, without regard to delivery or non-delivery of subsequent installments. Delay in delivery of any installments shall not relieve customer of its obligations to accept remaining installments. Equipment will be installed in accordance with manufacturer's specification. At customer's sole cost and expense, customer shall insure that equipment is placed in an environment that conforms with the manufacturer's specifications and requirements and will bear all costs and expenses for any additional necessities required for installation such as telephone and electrical wiring, remodeling, and noise and power filters. Any electrical work, external to the equipment (i.e. associated peripheral equipment, power, transmission and phone lines) and equipment line cord, is not covered by this agreement, unless otherwise specified on the front side of this document.

6. **MAINTENANCE, SUPPORT AND SERVICE:** Any and all maintenance, support and service in relation to the goods and services shall come directly from the manufacturer, unless separately agreed to in writing by the parties. Proven IT shall not provide support, education, maintenance, or repairs in relation to the goods and services as Proven IT is acting merely as a reseller and installer of the goods. Proven IT is not acting as employee or agent of the manufacturer in conjunction with the resale or installation of the goods.

7. **INDEPENDENT CONTRACTOR:** It is understood and acknowledged that the goods and services which Proven IT provides to Customer hereunder shall be in the capacity of an independent contractor and not as an employee or agent of Customer. Proven IT shall not be eligible for and shall not receive any employee benefits from Customer and shall be solely responsible for the payment of all taxes, FICA, federal and state unemployment insurance contributions, state disability premiums and all similar taxes and fees relating to the fees earned by Proven IT hereunder.

8. **TITLE AND RISK OF LOSS:** The goods shall be identified to the contract, and risk of loss shall pass to customer when the goods are placed in the hands of the carrier. For goods purchased outright, title will pass to customer upon payment in full. For goods purchased on an installment payment basis, title will pass to Customer on the installation date.

9. **SECURITY INTEREST:** Seller expressly reserves a security interest in the goods until payment in full has been collected and Customer agrees to notify seller prior to relocation of any goods for which Seller has a security interest. Customer shall execute any other document, including a financing statement or other document similar to the UCC-1, necessary to protect Seller's security interest in the goods. Customer authorizes Seller to file, at customer's expense, any financing statement related to the goods without Customer's signature, except where prohibited by law.

10. **NO WARRANTIES:** PROVEN IT IS NOT THE MANUFACTURER OF THE GOODS AND SERVICES. CUSTOMER UNDERSTANDS AND AGREES THAT THE GOODS AND SERVICES ARE PROVIDED "AS IS" AND PROVEN IT DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE REGARDING OR RELATING TO THE GOODS AND SERVICES, OR ANY MATERIALS, SERVICES OR ITS INSTALLATION FURNISHED OR PROVIDED TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT, INCLUDING UPDATES OR SUPPORT. PROVEN IT MAKES NO WARRANTY OR REPRESENTATION REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE GOODS AND SERVICES, REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE GOODS AND SERVICES, THAT THE GOODS AND SERVICES WILL MEET THE CUSTOMER'S NEEDS OR EXPECTATIONS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. USE OF THE GOODS AND SERVICES IS AT CUSTOMER'S SOLE RISK. ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE GOODS AND SERVICES IS AT CUSTOMER'S OWN DISCRETION AND RISK. CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM USE OF THE GOODS AND SERVICES. ANY APPLICABLE WARRANTY ON THE GOODS AND SERVICES PROVIDED BY THE MANUFACTURER WILL PASS THROUGH TO THE CUSTOMER.

11. **LIMITATIONS:** The goods shall not be returned to Seller for credit without Seller's written consent. No credit will be given after fourteen (14) days from the date of the invoice. All returns for credit within fourteen (14) days are subject to up to a 20% restocking fee. All costs of return shall be the responsibility of the Customer.

12. **LIMITATION OF LIABILITY:** TO THE MAXIMUM EXTENT PERMITTED BY LAW, OTHER THAN DAMAGES PROXIMATELY CAUSED BY REASON OF WILLFUL MISCONDUCT ON THE PART OF PROVEN IT, PROVEN IT, ITS REPRESENTATIVES, SUCCESSORS AND ASSIGNS DO NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING ANY LIABILITY CAUSED BY THE GOODS AND SERVICES NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR PRODUCTS, BUSINESS INTERRUPTION, FAILURE OR MALFUNCTION OF THE GOODS AND SERVICES, LOSS, OR OTHERWISE FOR THE PROVISION OF THE GOODS AND SERVICES, EVEN IF NEGLIGENCE. PROVEN IT PROVIDES THE GOODS AND SERVICES TO CUSTOMER "AS IS" AND WITH ALL FAULTS. PROVEN IT DOES NOT WARRANT THE ERROR-FREE OPERATION OF THE GOODS AND SERVICES. CUSTOMER ACKNOWLEDGES THIS ALLOCATION OF RISK BY EXECUTION OF THIS AGREEMENT AND/OR BY THE PAYMENT OF FEES TO PROVEN IT. IN NO EVENT WILL PROVEN IT BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS OR OTHER CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PROVEN IT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. IN NO EVENT SHALL PROVEN IT'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID TO PROVEN IT DURING THE 90-DAY PERIOD IMMEDIATELY PRECEDING THE ALLEGED CLAIM AND/OR TERMINATION OF THIS AGREEMENT.

13. **ASSIGNMENT:** This agreement shall not be assigned by Customer without Seller's express written consent. In the event that Seller assigns any of its obligations under this agreement, Seller shall remain primarily responsible to perform those obligations. Any claim or defense Customer may have relating to those obligations must be asserted on or against Seller and not its assignee.

14. **NOTICES:** All notices required to be given under this agreement shall be in writing and shall be sent by U.S. first class mail to the parties at the address listed on the front of this agreement.

15. **INDEMNIFICATION:** Customer shall bear all risk of theft, loss or damage not caused by Seller's employees or agents, to all goods and services installed under this agreement. Customer agrees to indemnify, defend and hold harmless Seller, its officers, directors, employees and agents from all loss, liability, claims or expenses (including reasonable attorneys' fees) arising or Customer's use of the goods and services, including but not limited to liabilities arising from bodily injury, including death, or property damage to any person, unless caused solely as the result of an intentional act or omission by Seller. Seller shall indemnify Customer against any costs, losses, damages or liability incurred by Customer as the result of any third party's claim of infringement of its patent, copyright trademark which claim arises out of the use of the product by Customer. Customer shall immediately notify Seller in writing of such claim or demand. Seller shall have the sole right to control, and defense, thereof, and Customer agrees that it will not settle any such claim against itself without the prior written consent of Seller. Provided however, that Seller shall not indemnify Customer with respect to any claim relating to product(s) which is/are manufactured according to Customer's instructions, or modified by Customer or combined with other non-seller products, equipment, systems and/or processes. Failure of Customer to provide timely notification of claim to Seller shall relieve Seller of its obligation to indemnify Customer.

16. **FORCE MAJEURE:** Neither party shall be responsible for delays or failure in performance of this agreement (other than failure to make payment) to the extent that such party was hindered in its performance by act of god, abuse, misuse, excess of voltage or power surges, repairs other than those provided by PROVEN IT authorized personnel, civil commotion, labor dispute, or any other occurrence beyond its reasonable control.

17. **SEVERABILITY:** If any provision of this agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of the remaining provisions of this agreement.

18. **APPLICABLE LAW:** This agreement shall be governed by the laws of the State of Illinois and the Uniform Commercial Code as adopted therein without regard to choice of law principles. In the event of litigation or other proceedings by Seller to enforce or defend any term or provision of this agreement, Customer agrees to pay all costs and expenses sustained by Seller, including but not limited to, reasonable attorney's fees.

19. **SELLER'S AGENTS:** Customer acknowledges that it has been advised that no agent, employee, or representative of Seller has any authority to bind seller to any affirmation, promise, representation, or warranty concerning any goods and services, and unless such affirmation, promise, representation, or warranty is specifically set forth in this agreement it does not form a basis of this bargain and shall not be enforceable against Seller.

20. **ACCEPTANCE:** This agreement and its terms and conditions shall not take effect until accepted and executed by an authorized Seller representative at Seller's offices in the state of ILLINOIS.

21. **ENTIRE AGREEMENT:** This instrument, and any attachments hereto, is the entire agreement between customer and seller and supersedes any proposal or prior agreement, oral written, and any other communications relating to the subject matter of this agreement. The terms and conditions of this agreement shall supersede any terms and conditions which may be contained on any purchase order or other document which may be issued by Customer.