



## **Empirical Systems Aerospace General Terms and Conditions**

### **Part A. Definitions**

- (a) “Buyer” means Empirical Systems Aerospace, Inc. (“ESAero”)
- (b) “Buyer’s Purchasing Representative” means the ESAero person authorized to execute or make changes to this Purchase Order.
- (c) “Purchase Order” or “Order” means this instrument of contracting, including the general terms and conditions of purchase referenced herein and all referenced supplements, documents, exhibits, attachments, and any other agreements incorporated by reference within this Purchase Order.
- (d) “Seller” or “Supplier” means the party identified on the face of the Purchase Order that is contracting with Buyer.

### **Part B. ESAero Standard Terms and Conditions of Purchase - Product (Version August 2024).**

### **Part C. ESAero Purchase Order Attachment U.S. Government Property in Possession of Seller, PT-001 (06/22).**

### **Part D. Addendum to Software Licenses with ESAero, IP-006 (05/23).**

### **Part E. As specified on Purchase Order, E104 Part E, Alternate, Flowdown Document, available on ESAero’s website link “Supplier Downloads” (<https://www.esaero.com/qualitytc>).**

Parts B-E are incorporated by reference with the same force and effect as if fully set forth herein. By acceptance of this PO, Seller acknowledges Parts B-E are in its possession and accepts the requirements contained therein.

### **Part F. Special Contract Requirements**

1. Since POs hereunder may be certified for national defense use and subject to 15 CFR 700 the Defense Priorities & Allocations System (DPAS), Buyer hereby incorporates DX/DO priority rating provisions and acknowledgment is required accordingly. Buyer shall also verbally advise Seller of the anticipated rating to be applied to this PO if it is over \$50,000, and Seller shall acknowledge its receipt and acceptance to Buyer in writing within ten (10) working days for a DX rating or fifteen (15) working days for a DO rating.

2. To aid in the handling of Seller’s goods after receipt, Buyer has added suffixes to some part numbers. Suffix examples include, but are not limited to: “-GFM”, “-CFM”, OR “-ENG”. A part number with a suffix added by Buyer is for Buyer’s internal use only, and shall not be used for marking parts. Actual part markings shall be in accordance with the top level drawing of the procured goods. Part numbers with a suffix added by Buyer shall be included on shipping documentation. Any questions should be directed to Buyer’s Purchasing Representative.

3. By accepting this Purchase Order, Seller hereby certifies that its last annual offeror registration data, representations and certifications (CR-003) submitted to ESAero is current, accurate and complete as of this date; and that Supplier is in compliance with the following clauses and is, therefore, eligible for this award:

- (a) FAR 52.203-11 “Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions” (over \$150,000)
- (b) FAR 52.209-5 “Certification Regarding Responsibility Matters” (over \$35,000)
- (c) FAR 52.222-22 “Previous Contracts and Compliance Reports” (over \$10,000)

4. If a DPAS rating is shown on the face or any line of this Purchase Order, then: this is a “DPAS rated” Order certified for national defense use, and you are required to follow all the provisions of the defense



priorities and allocations system regulation (15 CFR 700 et seq.). All “DPAS rated” Orders must be accepted or rejected as follows:

- (a) “DO” rated POs must be accepted or rejected in writing (hardcopy), or in electronic format, within 15 working days after order receipt.
- (b) “DX” rated POs must be accepted or rejected in writing (hardcopy), or in electronic format, within 10 working days after order receipt.
- (c) Rejection of “DO” or “DX” Orders must be in writing (hardcopy), or in electronic format, giving the specific reason for the rejection.
- (d) If, after acceptance of this Order, Seller subsequently finds that shipment or performance will be delayed, Seller must notify the Buyer immediately in writing (hardcopy), or in electronic format, give reasons for the delay, and advise of a new shipment or performance date.
- (e) If both DPAS rated and unrated PO quantities are reflected in this Order, you are only required to follow the DPAS regulation as it pertains to the DPAS rated quantities.

5. Seller shall comply with the applicable ESAero freight routing guidelines. Purchase Order number(s) and the relevant line item number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading, air waybills and invoices. In the event that Seller uses an unauthorized freight forwarder or carrier to ship defense articles in violation of the International Traffic In Arms Regulations (“ITAR”) and Buyer incurs costs in investigating and submitting a voluntary disclosure to the U.S. Department of State, Directorate of Defense Trade Controls (“DDTC”) as a result, Seller shall provide Buyer with a payment of either fifty thousand dollars (\$50,000.00) or an amount which represents the purchase price under this Purchase Order, whichever is less, as liquidated damages and not as a penalty, within 10 days of the date of issuance of Buyer's notice of submission of Buyer's voluntary disclosure. Seller's payment under this clause shall not reduce any cap or limits on damages recoverable by Buyer and Buyer's acceptance of such payment shall not be deemed to be a waiver by Buyer to exercise any right or remedy that it may have under this Purchase Order, at law or in equity, or waive any claims for other costs or damages under this Purchase Order.

6. Conflict minerals: if Seller is providing goods to Buyer under this Purchase Order, Seller shall use commercially reasonable efforts to:

- (a) identify whether such goods contain tantalum, tin, tungsten or gold;
- (b) conduct a reasonable country of origin inquiry regarding the origin of such minerals in such goods to determine whether such minerals originated in covered countries, as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and
- (c) conduct due diligence on the chain of custody of the source of any minerals originating in covered countries to identify the smelter of said minerals; and
- (d) assist Buyer in conducting reasonable due diligence concerning the smelters of such minerals. Seller shall include the substance of this section in any agreement between Seller and its lower tier suppliers. Seller shall provide Buyer with reasonable documentation of Seller's and its lower tier suppliers' due diligence efforts, in a format prescribed by Buyer, when requested by Buyer to enable disclosure to the securities and exchange commission.

7. Buyer and Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or



disability. Also, to the extent applicable, the employee notice requirements set forth in 29 CFR, Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Purchase Order.

**8.** If Seller is proposing under the Small Business Administration Section 8(d) Subcontracting Program, by accepting this Purchase Order Seller hereby acknowledges and certifies that its business size and its small business status as recorded in the System For Award Management (SAM) at <https://www.sam.gov/sam/>, or as otherwise certified to Buyer, was current, accurate and complete as of the date of Seller's offer for this Purchase Order.

**9.** In accordance with DFARS 252.204-7008 "Compliance with Safeguarding Covered Defense Information Controls" Seller shall indicate whether deviation from any of the security requirements in the National Institute of Standards and Technology (NIST) special publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations", <http://dx.doi.org/10.6028/nist.sp.800-171> that is in effect at the time this Order is issued is anticipated in the performance of the Purchase Order by Seller or contractors at any tier.

**10.** In accordance with DFARS 252.239-7009 "Representation of Use of Cloud Computing" Seller shall indicate whether the use of cloud computing is anticipated in the performance of the Purchase Order by Seller or contractors at any tier.

**11.** Payment terms: payment due date will 45 days. unless a shorter period is indicated on the first page of this Purchase Order, payment due date will be calculated using 43 days when goods or services provided by Seller are to be provided to the U.S. government on a cost, time & material or progress payment financing basis and payment due dates for all other procurements of goods or services for the U.S. Government will be calculated using 100 days. Calculations of payment due dates will commence from the date a complete and accurate invoice in accordance with the Purchase Order requirements and compliant with ESAero's instructions is received by ESAero accounts payable. Purchase Order number(s) must appear on all such invoices. ESAero accounts payable processes all invoice payments once a week on Friday. Payments shall be rendered to Seller on the first Friday following the net payment date. When the first Friday following a scheduled payment date is a legal U.S. banking holiday, the payment shall be made on the next U.S. business day.

**12.** With the exception of work under DPAS rated Orders, commencement of performance of the work called for by this PO in the absence of Seller's written acknowledgement thereof shall be deemed acceptance of this PO as written.

**13. Prohibited Telecom**

(a) Seller recognizes that Buyer and its respective affiliates are subject to Section 889 of the National Defense Authorization Act for fiscal year 2019 ("Section 889"), which prohibits contractors to the U.S. government from using (regardless of end use) "covered telecommunications equipment or services", as such term is defined in section 889 ("prohibited telecom").

(b) Seller represents that it 1) has not, at any time in the past, and 2) shall not furnish to Buyer any goods or services that use or contain prohibited telecom.

(c) Seller agrees (i) it has processes in place, which include reasonable diligence of its supply chain, to accurately provide the above representation; (ii) to immediately notify Buyer if the above representation is no longer true (a "prohibited telecom use notice"); and (iii) within ten (10) business days of Seller's submission of a prohibited telecom use notice, to provide Buyer with any additional available information as Buyer may reasonably request about such Seller's use of prohibited telecom in the goods and/or services it furnishes, or has furnished, to Buyer, in Order for Buyer to comply with section 889, and to confirm the measures Seller has taken, or will take, to prevent future use of prohibited telecom in the goods it furnishes to Buyer.

**14.** To the extent Supplier is subject to NIST SP 800-171 security requirements in accordance with DFARS 252.204-7012, Supplier represents that it has (1) completed within the last 3 years and will maintain at least a current basic NIST SP 800-171 DOD assessment for all Covered Contractor Information Systems related to its



business with ESAero that are not part of an information technology service or system operated on behalf of the government and (2) submitted or will submit to the government for posting to the USG's Supplier Performance Risk System (SPRS), the information required by paragraph (d) of DFARS 252.204-7020 prior to accepting this Order from ESAero.

**15.** By acknowledging this Purchase Order you (Seller) hereby certify that you or any of your principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency.

**16.** Small Business Subcontracting Plan. Under the terms of this Purchase Order, and pursuant to FAR 52.219-9 Small Business Subcontracting Plan, Seller may be required to submit a small business subcontracting plan to ESAero's Purchasing Representative and use the Electronic Subcontracting Reporting System (esrs) <http://www.esrs.gov/> to input Individual Subcontracting Reports (ISR) against Seller's Small Business Subcontracting Plans. Seller should contact ESAero's Purchasing Representative for required information to complete the ISR in ESRS.

**17.** Delivery Date for U.S. Suppliers. The delivery date listed on the Purchase Order is the date the shipment must arrive on the Buyer dock.

**18.** Seller shall ensure that regular product safety communication is made to its internal employees and subcontractors to ensure all individuals understand their contribution to product and service safety and its importance to overall product safety.

**19.** If this Purchase Order is issued pursuant to a U.S. Government contract, the Duty-Free Entry clauses FAR 52.225-8 and DFARS 252.225-7013 are hereby incorporated into this Order by reference. Supplier should carefully review the categories of the supplies provided in the FAR and DFARS to determine whether any Seller's goods being provided to ESAero hereunder pursuant to a federal government contract are eligible for an exemption. Additionally, Supplier shall notify ESAero at [contracts@esaero.com](mailto:contracts@esaero.com) when a duty-free exemption is being sought. Failure by the Supplier to fully exercise duty-free entitlements will disqualify Supplier from recovery of any costs through equitable adjustment or otherwise. This includes other applicable duty-free entitlement including, but not limited to, the United States Mexico Canada Agreement ("USMCA"). Unless mutually agreed by the Parties in writing, nothing in this Purchase Order shall be construed as a commitment that ESAero will reimburse Supplier or entitle Supplier to any reimbursement for its cost of any tariff duties. If required under DFARS 252.225-7013, Duty-Free Data requirements, Seller shall include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause.



## **E104 PART B ESAero**

### **ESAero Standard Terms and Conditions of Purchase - Product June 2025 Version**

#### **1. DEFINITIONS**

- 1.1. "Affiliate" means, with respect to any entity, any other entity that directly or indirectly controls, is owned by, controlled by or under common ownership or control with such entity.
- 1.2. "Agreement" means any agreement that incorporates, by reference or attachment, these Terms and Conditions.
- 1.3. "ASQR", including numerical suffixes thereto, means the Aerospace Supplier Quality Requirement Documents, as further set forth on the ESAero Supplier Site, as modified from time to time by Buyer.
- 1.4. "Buyer" means ESAero or Affiliate thereof that issues an Order referencing an Agreement and/or these Terms and Conditions.
- 1.5. "Buyer Personal Information" means any information or data provided (directly or indirectly) or made accessible to Supplier or its agents, representatives, or subcontractors in connection with an Agreement or any Order that relate to any identified or identifiable natural person, or, to the extent of a conflict with applicable Law, that is subject to any Data Privacy Laws.
- 1.6. "Buyer's Customer" means the ultimate owner, lessee, or operator of the Goods and/or Services and includes any purchaser of an end product incorporating the Goods and/or Services provided by Supplier under an Order.
- 1.7. "Data Privacy Laws" means applicable Laws relating to data privacy, the protection of personal information or data, and the cross-border transfer of personal information or data.
- 1.8. "Delivery Date" means the date of delivery for Goods and Services as specified in an Order or by the Delivery System.
- 1.9. "Delivery System" means Buyer's delivery scheduling system and electronic data exchange billing and invoicing system.
- 1.10. "Enterprise Quality Notes" or "Enterprise Q-Notes" means product specific quality requirements, as further set forth on the ESAero Supplier Site, as modified from time to time by Buyer.
- 1.11. "FAA" means the U.S. Federal Aviation Administration.
- 1.12. "Goods" means materials, parts, supplies, software, technology, drawings, data, reports, manuals, other specified documentation, Services, or items including any Changes (as defined in the Section hereof entitled "Changes") to the foregoing, that are required to be delivered pursuant to, or in connection with, an Order.
- 1.13. "GT Laws" means the U.S. and applicable non-U.S. (except to the extent inconsistent with U.S. Laws) Global Trade ("GT") Laws, including customs, export control, sanctions and U.S. anti-boycott Laws, applicable at the time of the import, export, re-export, transfer, disclosure, or provision of Technical Data, Goods or Services.
- 1.14. "Harmful Code" means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (i) permit Unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, any (a) computer, software, firmware, hardware, system, or network; or (b) application or function of any of the foregoing or the integrity, use, or operation of any data Processed thereby; or (ii) prevent Buyer or any authorized user from accessing or using the Services as intended by an Agreement or Order, and includes any virus, bug, trojan horse, worm, self-help code, back door, or other malicious computer



code, and any time bomb or drop dead device.

- 1.15. “Intellectual Property” means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature, including, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.
- 1.16. “Law(s)” means all national, federal, state, provincial, and local laws, ordinances, rules, and regulations, whether U.S. or non-U.S., including, but not limited to, GT Laws and Data Privacy Laws.
- 1.17. “Lead Time” means the maximum time within which Supplier agrees to deliver Goods after receipt of a delivery requirement for such Goods, taking into account the manufacturing lead time and material related to such Goods. Unless otherwise mutually agreed between Buyer and Supplier, Lead Times are measured based on the date of receipt of the relevant Goods at Buyer’s facility.
- 1.18. “Obsolescence” means when Goods contain components or materials which are generally no longer commercially available in regular markets or when Goods have become technically impractical to manufacture.
- 1.19. “Order” means a paper or electronic document, sent by Buyer to Supplier, or an entry in the Delivery System, to initiate the ordering of Goods and Services, such as a purchase order, a scheduling agreement, a statement of work or other authorization, including Changes, supplements, or modifications thereto. The phrase “in connection with the Order” includes performance of the Order, performance in anticipation of the Order, and preparation of a bid or proposal for the Order. For clarity, an Order may incorporate these Terms and Conditions or an Agreement by reference or attachment.
- 1.20. “Party” or “Parties” means Buyer or Supplier, individually or collectively, as the context requires.
- 1.21. “Process” means with respect to ESAero Information, to use, access, manipulate, modify, disclose, store, back-up, collect, transmit, transfer, retain, and dispose of such ESAero Information.
- 1.22. “Program Specific Terms” means the program attachments, including without limitation, terms corresponding to platforms related to commercial and military programs, as the Parties may agree, which set forth the specific terms and conditions for each platform or program, as applicable, and which are incorporated into applicable Orders.
- 1.23. “ESAero” means Raytheon Technologies Corporation.
- 1.24. “ESAero Information” means any (i) Proprietary Information; (ii) Buyer Personal Information; and (iii) other data, materials, or information owned or managed by Buyer, or which Buyer is obligated to manage and/or protect on behalf of others: (a) provided to Supplier by Buyer; (b) that Supplier or Supplier Personnel collects, Processes, or generates for or on behalf of, or at the direction of Buyer in providing the Services, including in each case metadata from Buyer’s or Buyer’s Affiliates’ use of the Services and derivatives of any of the foregoing (e.g., aggregations of ESAero Information, profiles of users of the Services, or analysis of the content of Buyer or Buyer’s Affiliate data records or how Buyer or Buyer’s Affiliate uses the Services).
- 1.25. “ESAero Supplier Site” means <https://www.esaero.com/qualitytc>, which URL may change from time to time. Any such change shall not affect the applicability of the material referenced therein.
- 1.26. “Services” means Supplier’s activities ancillary to manufacture or delivery of Goods, including design, engineering, installation, repair, and maintenance, even if performed prior to the Effective Date of an Agreement or the issuance of an Order.
- 1.27. “Specifications” means all requirements with which Goods and performance hereunder must comply, as specified or referenced by Buyer in Orders, including, without limitation, ASQR or its then-current successor, Enterprise Q-Notes, Program Specific Terms, drawings, instructions, and standards on a Buyer web site or elsewhere, as such requirements are modified from time to time by Buyer.





- 1.28. “Supplier” means the legal entity providing Goods or Services or otherwise performing work pursuant to an Order.
- 1.29. “Supplier Personnel” means Supplier’s employees, agents, representatives, subcontractors, subcontractor employees, and any person used by Supplier in the performance under an Order.
- 1.30. “Technical Data” means information that is necessary for the design, development, production, operation, modification, or maintenance of Goods or Services as set forth in applicable GT Laws. Technical Data includes derived Technical Data that is of non-U.S. origin, but subject to U.S. jurisdiction, which may include, but is not limited to, drawings, specifications, or operation sheets containing U.S. origin data or that were developed using U.S. origin data.
- 1.31. “Terms and Conditions” means these ESAero Standard Terms and Conditions of Purchase - Product.
- 1.32. “Unauthorized” means not authorized pursuant to the terms of an Agreement, an Order, or Buyer’s express written permission.
- 1.33. “U.S.” means United States.

## **2. ORDER ACCEPTANCE**

Supplier's full or partial performance under an Order, or indication thereof, or acknowledgement of the Order, is acceptance of the Order and all terms and conditions contained in the Order and incorporated into the Order, including these Terms and Conditions. Any terms and conditions proposed in Supplier's offer, acceptance, acknowledgment, invoice, or other Supplier communication that add to, vary from, or conflict with the terms herein are hereby rejected.

## **3. PAYMENT TERMS**

Payment of invoices issued under any Order shall be made in U.S. dollars and shall be due and payable 100 days following Buyer’s receipt thereof, provided (i) the associated Goods have been delivered pursuant to Buyer’s delivery requirements and (ii) Buyer’s invoicing requirements have been satisfied.

## **4. QUALITY REQUIREMENTS**

- 4.1. Supplier shall comply with all Specifications, applicable at the time of delivery. Supplier shall immediately notify Buyer, in writing, of any failure of Supplier or the Goods to comply with the Specifications.
- 4.2. Supplier and Supplier’s subcontractors that are allowed access to the U.S. Government Industry Data Exchange Program (“GIDEP”) shall participate in monitoring GIDEP alerts that affect the Goods (“GIDEP Alerts”) and shall act on any GIDEP Alerts.
- 4.3. Supplier shall comply with Airworthiness Directives issued by the FAA pursuant to 14 C.F.R. Part 39 that affect the Goods (“ADs”), to correct any unsafe conditions identified therein.
- 4.4. Supplier shall promptly notify Buyer of any GIDEP Alerts and ADs related to the Goods.

## **5. DELIVERY**

- 5.1. Time is of the essence in Supplier’s performance of an Order, and Supplier shall deliver Goods and perform Services by the Delivery Date.
- 5.2. Shipment shall be to the location directed by Buyer. Buyer may serve as importer of record only as described in the sub-Section hereof entitled Customs Clearance. If Buyer will be the importer of record Supplier shall ship Goods FCA Supplier’s facility (Incoterms 2020) unless the Order or Buyer’s Delivery System provide different instructions. Title and, notwithstanding the foregoing, risk of loss shall pass to Buyer upon receipt of Goods at Buyer's facility or third party drop shipment point.

- 5.3. If Buyer requests delivery of Goods on a date which does not allow sufficient Lead Time (a “Need Date”), Supplier shall use all commercially reasonable efforts to meet such Need Date. If Supplier agrees in writing to meet a Need Date, such Need Date shall be considered the Delivery Date. If Supplier does not agree to meet the Need Date, Buyer may, without liability: (i) reduce or cancel its requirements for such Goods, (ii) reallocate to another Order or reschedule any such Goods, or (iii) waive the Need Date and accept such Goods on the original Delivery Date.

## **6. INSPECTION, ACCEPTANCE AND REJECTION OF GOODS**

- 6.1. Supplier shall only tender Goods to Buyer that have passed inspection in accordance with the applicable inspection system and that otherwise conform to all requirements of an Order.
- 6.2. Buyer may provide written notice of acceptance of the Goods to Supplier. However, in the absence of Buyer's written acceptance and notwithstanding (i) prior inspection of, (ii) payment for, (iii) use of, (iv) delivery of, or (v) transfer of title to or risk of loss of the Goods to Buyer, acceptance shall not be deemed to occur until 13 months following Buyer's receipt of Goods (“Inspection Period”).
- 6.3. During the Inspection Period, Buyer may: (i) reject all or a portion of any nonconforming Goods; or (ii) accept all or a portion of such nonconforming Goods with a price reduction for the cost of repair or the diminution of value.
- 6.4. Buyer may reject or return, at Supplier’s risk and expense, shipments of Goods made in excess of the Order quantities, or in advance of the scheduled Delivery Date. Buyer may defer payment and transfer of title to Buyer shall not occur, on Goods delivered in advance of the scheduled Delivery Date until the scheduled Delivery Date for such Goods.
- 6.5. Within 20 days of Supplier’s receipt of Buyer's notification of a nonconformity, Supplier shall, at Supplier’s sole cost and expense, investigate the nonconformity, deliver to Buyer a written report of its investigation and conclusions, and formulate a corrective action plan acceptable to Buyer. Once approved by Buyer, Supplier must then timely implement such corrective action plan.
- 6.6. With respect to nonconforming Goods rejected prior to acceptance, Buyer may at its election and at Supplier’s risk and expense (i) hold nonconforming Goods for Supplier, or (ii) return nonconforming Goods to Supplier for, at Buyer's option, either (a) full credit or refund, or (b) replacement Goods to be received within 24 hours of nonconformity notification. Title to such rejected Goods returned to Supplier shall transfer to Supplier upon such delivery and such Goods shall not be replaced by Supplier except upon written instructions from Buyer. Replacement Goods delivered to Buyer hereunder shall be shipped at Supplier’s expense and risk of loss. Additionally, nonconforming Goods rejected prior to acceptance shall not be tendered again to Buyer for acceptance unless permitted by Buyer and applicable Law and accompanied by a disclosure of Buyer's prior rejection.
- 6.7. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer’s actual costs, expenses and damages related to or arising from nonconforming Goods, including, but not limited to labor and other costs related to transportation, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, re-inspection, retrofit, replacement, and any and all other such corrective action costs incurred by Buyer.

## **7. OBSOLESCENCE**

- 7.1. Supplier shall incorporate and maintain in its processes a comprehensive Obsolescence management program to preclude any Goods delivery disruption due to, among others, electronic, mechanical, or chemical Obsolescence (an “Obsolescence Program”). Such Obsolescence Program shall, at a minimum: (i) use appropriate external data sources to identify on a component-basis the predicted level of Obsolescence risk for the Goods and anticipated Lead Time should a replacement of the Goods be required; (ii) require Supplier to issue product change notifications per the relevant industry standard (e.g., JESD46 for the semi-conductor industry); and (iii) be implemented by Supplier’s subcontractors. Supplier shall evaluate its own as well as its subcontractors’ compliance with such Obsolescence Program and provide Buyer with documented evidence thereof at least twice per calendar year.



- 7.2. Supplier shall notify Buyer at least 25 months prior to an anticipated Obsolescence issue related to a Good or a component thereof, or otherwise as soon as reasonably practical once known (an “Obsolescence Notice”). If Supplier has the opportunity to execute a final purchase for all of its expected demand of the relevant Good or component (“Last Time Buy”), Supplier shall immediately notify and work jointly with Buyer to determine the quantity of its Last Time Buy purchase. If Supplier is not able to fully mitigate Buyer’s risk associated with the anticipated Obsolescence issue by executing a Last Time Buy, then Supplier shall prepare a detailed Obsolescence replacement plan that assesses available alternatives and possible design modifications, including the associated testing and qualification. Supplier shall submit the plan to Buyer within 10 days of Buyer receipt of the Obsolescence Notice unless the Parties otherwise agree. Such plan shall be mutually agreed to by the Parties.
- 7.3. In no event shall Buyer accept any cost increase due to Obsolescence of the Goods or any component thereof. Provided that Supplier has implemented the Obsolescence Program and provided Buyer with the Obsolescence Notice at least 25 months prior to the occurrence of such Obsolescence, Buyer and Supplier shall share the responsibility for implementing the Obsolescence replacement plan as follows: Supplier shall perform the necessary re-qualification of the Goods at no charge to Buyer, except for Buyer’s own internal costs and expenses arising from such Obsolescence and Buyer’s necessary engineering and development activities required to validate and implement the replacement Goods. Should Buyer’s Customers pass their requalification or other costs resulting from such Obsolescence on to Buyer, both Parties agree to discuss the reasonable settlement of such costs.
- 7.4. Should Supplier fail to implement the Obsolescence Program, or if Supplier has not provided Buyer with an Obsolescence Notice at least 25 months prior to the occurrence of an Obsolescence, Supplier shall perform necessary re-qualification of the Goods at no charge to Buyer, and Supplier shall be liable for (i) all costs, expenses, and damages incurred by Buyer and Buyer’s Customers related to or arising from such Obsolescence, including any internal costs and expenses, and (ii) Buyer’s necessary engineering and development activities required to validate and implement the replacement of the Goods.
- 7.5. Upon request, Supplier shall deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier in manufacturing such Obsolete Goods and provide to Buyer, without charge, a worldwide, non-exclusive, irrevocable, license, with the right to grant sublicenses, to Supplier’s information, data, know-how, and other intellectual property, including proprietary and manufacturing information, to the extent necessary to enable Buyer to make, have made, use, sell, maintain and license the Goods affected by the Obsolescence issue.

## 8. WARRANTY

- 8.1. Supplier warrants to Buyer, Buyer's successors, assigns, and Buyer’s Customers that all Goods provided under the Order shall be, upon acceptance thereof, new and thereafter continue to be: (i) merchantable; (ii) fit for the purpose intended; (iii) free from defects in material and workmanship; (iv) free from defects in design if the design is not provided by Buyer; (v) manufactured in strict accordance and compliance with the Specifications; (vi) free from liens or encumbrances on title; and (vii) free of Harmful Code (collectively, “Warranty”). If the Order requires specific Goods to perform as a system, the foregoing Warranty shall also apply to those Goods as a system. Inspection (including Buyer’s approval of Supplier’s inspection process and any subsequent remedial measures), testing, and acceptance or use of Goods furnished hereunder shall not affect Supplier’s obligations under this Warranty, and the Warranty shall survive any such inspection, testing, acceptance, and use.
- 8.2. Supplier warrants to Buyer, Buyer’s successors ,assigns, and Buyer’s Customers that all Services provided under or in connection with an Order: (i) have been, if applicable, and will be performed in a professional and workmanlike manner and in accordance with current, sound and highest generally accepted industry standards and practices by appropriately licensed, trained, and supervised personnel who are experienced in the appropriate fields; and (ii) do, if applicable, and will conform to and be in compliance with all applicable Specifications, performance requirements and other requirements contained in the Order (the “Additional Service Warranty”).
- 8.3. Buyer may require Supplier to promptly (i) repair, replace, or refund amounts paid for, at Buyer's option, any Goods which breach the Warranty; and (ii) re-perform, correct, or refund amounts paid for, at Buyer’s option,

any Services which breach the Additional Service Warranty. If Supplier fails or is unable to repair, replace, or correct non-conforming Goods or Services, Buyer may, at Buyer's option, make such repair, replacement, or correction and Supplier shall recompense Buyer for the cost incurred thereby. Goods returned to Buyer hereunder shall be shipped at Supplier's expense and risk of loss and shall be accompanied by a notice stating whether they are new replacements or repaired originals and shall continue to be covered under this Warranty. Supplier shall conduct intake, review, analysis, and any other activity required to evaluate whether the returned Goods are covered by the Warranty at no expense to Buyer.

- 8.4. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from Goods or Services not conforming to the Warranty or the Additional Service Warranty, as applicable, including but not limited to labor and other costs related to transportation, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, re-inspection, retrofit, replacement, and any and all other such corrective action costs incurred by Buyer.
- 8.5. Supplier warrants to Buyer that all documentation and certifications by Supplier or Supplier Personnel related to the Goods, Services and Order, as applicable, are current, complete, truthful, and accurate and have been signed or stamped, as applicable, by individuals authorized and qualified to sign or stamp such documentation and certifications.

## **9. INDEMNIFICATION**

Supplier shall indemnify and hold harmless Buyer, Buyer's Customers, insurers, Affiliates and their employees, agents, officers, and directors from and against all suits, claims, judgments, awards, losses, damages, costs, or expenses (including attorneys' fees) relating to, arising out of, or caused by (i) Supplier's performance hereunder, (ii) any act or omission of Supplier, or (iii) any Goods or Services. Supplier's indemnification obligation hereunder covers, without limitation, injuries, sickness, diseases (including occupational disease whenever occurring), or death of Supplier employees.

## **10. TAXES**

- 10.1. Unless otherwise stated in the Order, all payments or prices are exclusive of any transactional taxes, including sales and use, value-added, goods and services, or any other taxes, fees or duties ("Taxes") levied in regard to any of the transactions covered by the Order. Buyer is not responsible for any tax based on Supplier's income, payroll, or gross receipts. Any Taxes that Supplier is required to collect from Buyer shall be separately stated on the invoice and Supplier shall be responsible to remit any such Taxes to the relevant tax authority.
- 10.2. Solely to the extent Buyer is required by Law to withhold an amount on account of taxes for which Supplier is responsible, Buyer shall deduct any such withholding from payment to Supplier and provide sufficient supporting documentation to Supplier.
- 10.3. Supplier shall, upon receipt from any tax authority of any levy, notice, assessment, or withholding of any Taxes for which Buyer may be obligated, notify Buyer in writing at its stipulated address, directed to: Director, Indirect Tax. The Parties shall cooperate in the resolution of disputes pertaining to any Taxes. If Buyer may directly contest any Taxes, then it may do so and, to the extent permitted by Law, withhold payment during contest pendency. If Buyer is not so permitted, Supplier shall contest the Taxes as requested by the Buyer.
- 10.4. Except as otherwise set forth in an Order, Supplier shall deliver electronically by way of the Internet all software of any type, including manuals. Supplier shall separately itemize the prices of electronically delivered software, licenses, fees, and Services on invoices. Invoices shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via the Internet."

## **11. INSPECTION AND AUDIT RIGHTS**

- 11.1. Supplier and Supplier Personnel shall at any time, and after reasonable notice by Buyer, grant to Buyer, Buyer's authorized representatives, Buyer's Customers and to any competent regulatory authority, (i) unrestricted access to (or if requested by Buyer, provide to Buyer copies of) Supplier's books, records, and

documentation related to compliance with the Order (including, without limitation, those pertaining to quality, legal and regulatory compliance, inspection and testing of Goods and Services, physical and network security and data privacy and protection procedures and controls, and ethics and compliance programs), wherever such books and records may be located; and (ii) access to Supplier's premises to perform any type of inspection, test, audit or investigation with respect to Supplier's premises and network, for the purpose of enabling Buyer to verify compliance with the requirements set forth in the Order or for any other purpose indicated by Buyer's Customers or said authority in connection with the design, development, certification, manufacture, sale, use, or support of the Goods or Services.

- 11.2. Supplier shall maintain such complete books, records, and documentation for all Goods and Services, which shall be available to Buyer during performance of an Order and until the later of: (i) 5 years after final payment, (ii) final resolution of any dispute involving the Goods or Services delivered hereunder, (iii) the latest time required by an Order, (iv) the latest time required by applicable Laws, (v) the latest time required by ASQR or Enterprise Q-Notes version effective as of the date of the Order, as applicable, (vi) 6 years for documentation in support of a GT requirement, or (vii) as otherwise directed by Buyer.
- 11.3. Any corrective action requested by Buyer, Buyer's Customers, or any said authority following any such inspection, test, audit, or investigation shall be implemented by Supplier at Supplier's cost.

## **12. BUYER-FURNISHED AND BUYER-FUNDED ITEMS**

- 12.1. All material, including information, furnished by Buyer to Supplier under the Order ("Buyer Furnished Items") shall be delivered as specified in the Order or, if not specified, in sufficient time to enable Supplier's timely performance. Buyer shall have no liability to Supplier for any delays or failures in the delivery of Buyer Furnished Items. If Buyer Furnished Items are not delivered to Supplier in sufficient time to enable Supplier to meet Delivery Dates, Supplier may notify Buyer of the delay and shall be entitled to an extension of such schedule equal to the period of the delay. Such adjustment shall be Supplier's sole and exclusive remedy. Title to Buyer Furnished Items shall remain with Buyer.
- 12.2. Title to all tooling, test equipment, and material identified as a separate line item under an Order or referred to in any Agreement between Buyer and Supplier, and fabricated or acquired by Supplier ("Buyer Funded Items") shall vest in Buyer. Buyer shall have the right to have Supplier convey possession of Buyer Funded Items to Buyer promptly upon written request.
- 12.3. Buyer Furnished Items and Buyer Funded Items (collectively, "Buyer Items") shall be used only for the purposes of the Order. Supplier shall, at its own expense: (i) furnish Buyer with drawings and documentation describing such Buyer Items, (ii) mark and identify the Buyer Items as directed by Buyer, (iii) periodically (upon Buyer's request) audit the physical location and condition of such Buyer Items, and (iv) keep such Buyer Items in good condition, normal wear and tear excepted. In addition, with respect to Buyer Items: (x) Buyer shall pay shipping, duty, and taxes as applicable; (y) the Parties will jointly establish a maintenance schedule, which shall be comparable to the maintenance schedule currently maintained by Buyer (if applicable); and (z) Supplier shall absorb the labor costs associated with implementing the maintenance schedule.
- 12.4. Buyer Items, excluding U.S. Government property, shall be held by Supplier as bailee thereof. Supplier shall be the bailee of such Buyer Items until the expiration or termination of the Order or Buyer requires Supplier to return such Buyer Items, whichever occurs first. Supplier will not permit any third party to assert any liens against the bailed Buyer Items, nor use the bailed Buyer Items as collateral, nor perfect any security interest in or otherwise encumber the bailed Buyer Items. Buyer and its agents shall not be liable for any claims, including claims for bodily injury or property damage, arising from Supplier's use of the bailed Buyer Items. Buyer, to protect its interests, may require Supplier to execute documents that are related to Buyer Items, including, Uniform Commercial Code financing statements or any similar documents.
- 12.5. Upon Buyer's request, Supplier shall provide an annual written inventory of Buyer's Items, including certification of compliance with this Section and proof of adequate insurance covering full replacement cost of Buyer Items.
- 12.6. Supplier shall, upon discovery, provide notification to Buyer if any Buyer Items are lost, damaged, or



destroyed. Upon completion or termination of the Order, or at any time upon Buyer's request, Supplier shall, at its own expense, dispose of Buyer Items in accordance with Buyer's instructions.

### 13. CHANGES

- 13.1. Buyer's authorized procurement representative (which does not include Buyer's engineering and technical personnel) may unilaterally make changes within the general scope of the Order, including changes in whole or part to: (i) shipping, waste reduction or packing instructions, (ii) place of delivery, (iii) any designs, Specifications and drawings, (iv) the statement of work, (v) the method or manner of performance, (vi) Buyer Items, facilities, equipment, or materials, (vii) flowdown requirements from contracts between Buyer and Buyer's Customer, and/or (viii) quality requirements (collectively "Change(s)"). Supplier shall perform any Changes ordered by Buyer. Any Order terms that incorporate flexibility for variations or modifications shall not be considered Changes within the meaning of this Section.
- 13.2. Except as set forth herein, or as otherwise agreed, if any Change under this Section causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both ("Adjustment Claim"), and Buyer shall modify the Order accordingly. Notwithstanding the foregoing, if any Change is the result of a requirement by Buyer's Customer, Supplier is entitled to an equitable adjustment only to the extent that Buyer receives such an adjustment from Buyer's Customer. If the cost of property or material made obsolete or excess as a result of a Change is included in the Adjustment Claim, Buyer may direct the disposition of such property or material. Supplier must submit an Adjustment Claim in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's procurement representative no later than 10 days after Supplier's receipt of the Change. Supplier acknowledges and agrees that changes in delivery/performance schedule are normal and anticipated in the course of the program. Supplier further agrees that the cost of such changes is included in the prices provided under the Order, and that any such change does not constitute a Change under this Section. Notwithstanding any pending Adjustment Claims, Supplier shall diligently proceed with the performance of the Order, inclusive of the Change, as directed by Buyer.

### 14. INSURANCE

- 14.1. Without limiting Supplier's liability and duty to hold harmless and indemnify hereunder, Supplier agrees to secure, maintain, and require its subcontractors to maintain, the following insurance coverages and limits:
- 14.1.1. Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the Laws of the U.S., non-U.S. country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence; and
- 14.1.2. Commercial General Liability Insurance and Umbrella Liability Insurance, including Premises Liability and Contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of \$5,000,000 for any one occurrence.
- 14.2. In addition to the insurance requirements set forth above, Supplier also agrees to secure, maintain, and require its subcontractors to maintain, the additional insurance coverages and limits relevant to Supplier's performance of the Order, as specified in Attachment A hereto (the "Additional Insurance Coverage Requirements").
- 14.3. All such insurance shall be issued by companies authorized or permitted to do business under the Laws of the state or jurisdiction in which all or part of the Services are to be performed and must have an AM Best financial rating of A- or better or an equivalent rating as produced by another rating agency acceptable to Buyer.
- 14.4. The insurance policies described herein and, in an Order, shall be in a form satisfactory to Buyer, and shall contain a provision prohibiting cancellation or material change except upon at least 30 days' (7 days in the case of War Risks Insurance) prior notice to Buyer. All such insurance policies or self-insurance will be primary in the event of a loss arising out of Supplier's performance and shall provide that where there is more than one

insured the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured and shall operate without right of contribution from any other insurance carried by Buyer. Certificates evidencing such insurance and endorsements naming Buyer as an additional insured under the Commercial General Liability and Umbrella Liability insurance or, in the case of All Risk Property Insurance, naming Buyer as a loss payee, shall be filed with Buyer upon execution of an Agreement or any Order and before commencement of any work hereunder, and within 30 days after any renewals or changes to such policies are issued. To the extent permitted by Law, Supplier and its insurer(s) agree that subrogation rights against Buyer are hereby waived under the Commercial General Liability, Umbrella Liability, Auto Liability and Workers Compensation insurance; such waiver shall be reflected on the insurance policies. Supplier shall, if requested by Buyer, advise Buyer of the amount of available policy limits and the amounts of any self-insured retention. The certificate of insurance shall identify the contract number or work to be performed and shall acknowledge that such coverage applies to liabilities incurred by Supplier, its employees, invitees or agents under an Agreement or any Order and that such insurance shall not be invalidated by any act or neglect of Supplier such as a breach or violation of the policies.

- 14.5. Any self-insurance, self-retained layer, deductibles, and exclusions in coverage in the insurance policies described above or in the applicable Additional Insurance Coverage Requirements, will be assumed by, for the account of, and at the sole risk of Supplier.

## **15. TERMINATION FOR CONVENIENCE**

- 15.1. Buyer may, at any time, terminate all or part of an Agreement or any Order for its convenience upon written notice to Supplier.
- 15.2. Upon termination, in accordance with Buyer's written direction, Supplier will immediately: (i) cease work and place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Order; (ii) prepare and submit to Buyer an itemization of all completed and partially completed Goods and/or Services; (iii) if requested by Buyer, deliver to Buyer any and all Goods and/or Services completed up to the date of termination at the pre-termination Order price; and (iv) if requested by Buyer, deliver any work-in-process.
- 15.3. Buyer shall not be liable to Supplier for an Order terminated prior to the commencement of Lead Time.
- 15.4. In the event Buyer terminates an Order or Agreement for its convenience after performance has commenced, Buyer will compensate Supplier only for the actual and reasonable work-in-process costs incurred by Supplier on Goods and Services required to be delivered within the Lead Time period, calculated from Buyer's issuance of the notice of termination. If the Order does not specify Lead Time, Lead Time shall be the reasonable average time required to manufacture and deliver the Goods and/or perform the Services. Supplier shall use reasonable efforts to mitigate its own and Buyer's liability under this Section. In order to receive compensation, Supplier must submit its termination claim, as directed by Buyer, within 75 days from the effective date of the termination.
- 15.5. Buyer shall not be liable to Supplier for costs or damages other than as described above, and in no event for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the price allocated to the portion of the Order terminated.
- 15.6. Notwithstanding anything to the contrary in these Terms and Conditions, an Agreement, or an Order, Buyer shall not be liable to Supplier for any costs or damages whatsoever for a termination for convenience with respect to a particular program of any of Buyer's Customers, if the termination is due to the cancellation, in whole or in part, of such program by Buyer's immediate customer(s) or Buyer's ultimate customer(s) or the bankruptcy or insolvency of such customer(s).

## **16. TERMINATION FOR DEFAULT**

- 16.1. Buyer may, by written notice, terminate an Order or Agreement, or any portion thereof, for default without any liability or obligation whatsoever to Supplier for the portion terminated, in the following circumstances: (i) Supplier fails to perform any obligation hereunder (other than a delivery obligation) and fails to cure such obligation within 5 days (or as otherwise mutually agreed) (the "Cure Period"); (ii) Supplier fails to perform



any delivery obligation hereunder; (iii) when Buyer has reasonable grounds for insecurity, and Supplier fails to provide adequate assurances of performance in writing within 5 days following Buyer's demand or, (iv) should Supplier (a) become insolvent, (b) become unable to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, or (d) have a receiver appointed for the whole or any substantial part of its assets, or become in any way the subject of a bankruptcy petition (each in Subsection (iv), a "Supplier Insolvency"). Notwithstanding the foregoing, if a cure is not possible within such Cure Period, Supplier shall submit to Buyer, within a period of 5 days after receipt of notice from Buyer specifying such failure, a detailed plan to cure such failure (including related time period) acceptable to Buyer in its sole discretion, provided, however, that if such a cure plan is approved by Buyer, Supplier's subsequent failure to comply with such cure plan shall be deemed a default hereunder, and Buyer may terminate immediately without additional cure periods.

- 16.2. Buyer shall have no liability in relation to those Goods and/or Services terminated for Supplier's default. Supplier shall be liable to Buyer for any and all expenses, costs, and damages including increased re-procurement costs, requalification costs, and other non-recurring costs, except in the circumstance of any failure or delay constituting a "Force Majeure Event" as set forth in the Section herein entitled "Force Majeure".
- 16.3. If the Order or Agreement is entirely or partially terminated under this Section other than pursuant to a Supplier Insolvency, Buyer, in addition to any other rights Buyer may have:
  - 16.3.1. Supplier shall grant and promises to grant to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable license, with the right to grant sublicenses, to Supplier's information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, to the extent necessary to enable Buyer to make, have made, use, sell, and license the Goods and/or perform, or have performed, the Services; and
  - 16.3.2. Buyer may require Supplier, at no charge to Buyer, to: (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier in performing the Order; (ii) deliver the tooling and test equipment necessary to make or have made the Goods and perform the Services, and (iii) provide technical and transition assistance.
- 16.4. In addition to and not in lieu of other rights to Intellectual Property otherwise set forth in the Order and these Terms and Conditions, Supplier hereby grants to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license ("Additional License"), with the right to grant sublicenses, to Supplier's information, data, know-how, tooling, test equipment and other Intellectual Property, including without limitation proprietary and manufacturing information to enable Buyer to make, have made, use, sell and license the Goods and/or perform, or have performed, the Services, subject to Buyer's agreement not to exercise such rights under this Additional License except in the event of a Supplier Insolvency, whether or not the Order is terminated. As part of such Additional License, Supplier shall upon Buyer's written request and at no charge to Buyer, promptly (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier in performing the Order, and (ii) deliver the tooling and test equipment necessary to make or have made the Goods, provide the Services and (iii) provide technical and transition assistance in order to ensure Buyer's continuing requirements for Goods and Services.

## 17. INTELLECTUAL PROPERTY RIGHTS

- 17.1. "Background Intellectual Property" shall mean all Intellectual Property other than Foreground Intellectual Property.
- 17.2. "Foreground Intellectual Property" shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the Order.
- 17.3. Each Party retains its existing rights in Background Intellectual Property.
- 17.4. Buyer shall own all Foreground Intellectual Property. Supplier shall disclose to Buyer all Foreground



Intellectual Property. If not expressly required to be delivered in the Order, Supplier shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Supplier hereby irrevocably assigns and promises to assign to Buyer all right, title and interest to all Foreground Intellectual Property. Supplier agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Supplier to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property shall be considered Buyer's Proprietary Information (defined hereinafter). Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of the Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire." For any works of authorship that do not come under such categories, Supplier, warranting that it has the right to do so, hereby assigns and promises to assign all right, title, and interest to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.

- 17.5. Supplier represents and warrants that Supplier has sufficient rights in all Goods, Services, and Intellectual Property and other items that Supplier uses or transfers to Buyer in connection with the Order to allow Supplier to lawfully comply with the Order.
- 17.6. Supplier hereby grants and promises to grant to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made Goods and Services; and (ii) to enable Buyer to practice the Foreground Intellectual Property.
- 17.7. Supplier hereby irrevocably waives and promises to waive all moral rights to the extent permissible by Law, all rights of privacy and publicity, and the like, in all Goods provided to Buyer and in all activities in connection with the Order.
- 17.8. Supplier represents and warrants that Supplier shall not provide, in the performance of the Order, any software, including without limitation source code, compiled code, embedded software, or firmware, including without limitation free software, open source software, freeware, general public license- governed software, or any hardware designs in any form that are subject to any obligations or conditions that may provide a legal right to any third party to such software, or hardware designs, or that could otherwise impose any limitation or condition on Buyer's use, reproduction, modification, distribution, publication, or conveyance of such software or hardware designs.
- 17.9. Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Supplier a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.

## **18. INTELLECTUAL PROPERTY INDEMNIFICATION**

- 18.1. Supplier shall indemnify and hold harmless Buyer, Buyer's Customers, and Affiliates, and their agents, directors, officers, and employees, and each subsequent purchaser or user, from any losses, costs, damages, and liabilities, including, without limitation, any attorney's fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging infringement or violation of any Intellectual Property rights or license, related to the manufacture, use, sale, offer for sale, import, or other exploitation of any Goods or Services delivered or performed in connection with the Order ("IP Claim").
- 18.2. Supplier shall not be liable for any IP Claim to the extent such IP Claim is based on Supplier's compliance with any Specification created by Buyer, unless: (i) Supplier could have complied with Buyer's Specification using a solution that was non-infringing; (ii) the relevant portion of the Specification was provided by Supplier; or (iii) Supplier knew or should have known of an IP Claim or potential IP Claim and did not promptly notify Buyer in writing.
- 18.3. Supplier shall, upon written notice from Buyer of an IP Claim, promptly assume and diligently conduct the entire defense of an IP Claim at its own expense. Insofar as Buyer's interests are affected, Buyer shall have the right, at its own expense and without releasing any obligation of Supplier, to participate and intervene in an



IP Claim. Buyer shall have the right to reasonably reject counsel selected by Supplier. Supplier shall not enter into any settlement without Buyer's prior written consent, which shall not be unreasonably withheld.

- 18.4. Buyer may supersede Supplier in the defense of any IP Claim and assume and conduct the defense at Buyer's sole discretion. In such an event, Supplier shall be released from any obligation to pay for attorneys' fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Supplier's complete cooperation with Buyer in Buyer's defense of such IP Claim at Buyer's expense. Buyer shall not enter into any settlement without Supplier's prior written consent, which shall not be unreasonably withheld.
- 18.5. If the manufacture, use, sale, offer for sale, import, export, or other exploitation of any Goods or Services is enjoined by a court, if delivery is precluded by a government entity, or should Supplier refuse to provide or supply any Goods or Services to avoid a potential IP Claim, Supplier shall avoid any disruption to Buyer and shall (i) secure for Buyer the right to provide, use or sell such Goods or Services; (ii) modify or replace such Goods or Services with equivalent non-infringing Goods or Services; or (iii) provide such other solution acceptable to Buyer. Supplier shall reimburse Buyer for Buyer's costs incurred in obtaining all internal, external and Buyer's Customer approvals, qualifications, certifications, and the like, necessary for making, using, providing, and selling alternate non-infringing Goods or Services. Supplier shall refund to Buyer the purchase price of any such Goods or Services that Buyer is prohibited from providing, using, selling, offering for sale, importing, exporting, or otherwise exploiting.

## 19. PROPRIETARY INFORMATION

- 19.1. In order to deliver the most effective and efficient Goods and/or Services possible and meet Buyer's requirements for those Goods and Services, Buyer and Supplier anticipate the need to exchange Proprietary Information (as defined below) for the design, development, testing, manufacture and/or repair of Goods and Services, as applicable in connection with an Order. In recognition of the value of that Proprietary Information, as well as to protect Buyer's goodwill and reputation in its products, Supplier agrees to the terms and conditions of this Section.
- 19.2. "Proprietary Information" shall mean all information, knowledge, or data (including without limitation financial, business, and product strategy information; product specifications; product designs; procedures; studies; tests; and reports) in written, electronic, tangible, oral, visual, or other form, (i) disclosed by, or obtained from, Buyer, or (ii) conceived, created, acquired, or first reduced to practice in connection with an Order. If Buyer furnishes Buyer Items to Supplier, such Buyer Items shall be used and the information obtained therefrom shall be treated as if they were Proprietary Information disclosed in connection with an Order.
- 19.3. Unless Supplier has received Buyer's express written consent to the contrary, Supplier shall (i) use the Proprietary Information solely for the purposes of an Order, and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing equipment for entities other than Buyer; providing services to entities other than Buyer; or obtaining any government or third party approvals to do any of the foregoing); (ii) safeguard the Proprietary Information to prevent its disclosure to or use by third parties; (iii) not disclose the Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Proprietary Information.
- 19.4. Supplier may disclose the Proprietary Information to officers, directors, employees, contract workers, consultants, agents, affiliates, or subcontractors of Supplier who have a need to know such Proprietary Information for the purposes of performing the Order and who have executed a written agreement with Supplier obligating such entity or person to treat such information in a manner consistent with the terms of this Section.
- 19.5. No Order shall restrict Supplier from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of Supplier or a third party; (ii) is received by Supplier without restriction as to disclosure by Supplier from a third party having a right to disclose it; (iii) was known to Supplier on a non-confidential basis prior to the disclosure by Buyer; or (iv) was independently developed by employees of Supplier who did not have access to any of Buyer's Proprietary Information.

- 19.6. If Proprietary Information is required to be disclosed pursuant to judicial process, Supplier shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Proprietary Information shall not be deemed a breach of an Order provided that the obligations of this Section are fulfilled by Supplier.
- 19.7. Buyer shall have the right to audit all pertinent documentation of Supplier, and to make reasonable inspection of Supplier's premises, in order to verify compliance with this Section.
- 19.8. Obligations in this Section regarding Proprietary Information shall continue until such time as all Proprietary Information is publicly known and generally available through no improper act or omission of Supplier or any third party.
- 19.9. Unless required otherwise by Law or an Order, Supplier shall promptly return, or otherwise dispose of Proprietary Information as Buyer may direct. Absent contrary instructions, Supplier shall destroy all Proprietary Information 1 year after termination or completion of the Order and provide written acknowledgement to Buyer of such destruction.
- 19.10. Supplier agrees to cause all information regardless of form (including, for example, electronic, magnetic, and optical media, software, and compilations), containing or derived in whole or in part from Proprietary Information to bear the following legend:

**This document contains the property of Empirical Systems Aerospace, Inc. and/or a Empirical Systems Aerospace, Inc. Affiliate. You may not possess, use, copy or disclose this document or any information in it for any purpose, without express written permission. Neither receipt, from any source, nor possession of this document, constitutes such permission. Possession, use, copying or disclosure by anyone without express written permission of Empirical Systems Aerospace, Inc. and/or the Empirical Systems Aerospace, Inc. Affiliate issuing the Order is not authorized and may result in criminal and/or civil liability.**

- 19.11. Notwithstanding any proprietary markings, all information of Supplier disclosed to Buyer hereunder may be disclosed by Buyer, with confidential or proprietary labels and markings, to officers, directors, employees, contract workers, consultants, or agents of Buyer, and to any of Buyer's Affiliates, Buyer's Customer, or Buyer's subcontractors and potential subcontractors having a need to access or know such information. Moreover, Buyer may disclose all Supplier information, in accordance with applicable governmental regulations, to the FAA, any other governing airworthiness certifying authority, any investigatory authority (to any airworthiness certifying authority), or any other department or agency of the U.S. Government, including, without limitation, for the purpose of obtaining necessary government approvals or supporting safety investigations.
- 19.12. Supplier agrees that it will not accept from any third party, or use, any information that appears to be similar to Proprietary Information without first obtaining Buyer's express written consent, except that Supplier may receive solicitations or purchase orders issued by a partner or higher-tier supplier of Buyer that expressly reference a Buyer Order and contain obligations no less stringent than this Section. Supplier shall promptly notify Buyer if Proprietary Information is offered to Supplier by a third party or of the suspected possession of Proprietary Information by a third party.
- 19.13. Supplier acknowledges that exposure to Buyer's Proprietary Information and other Intellectual Property will make it easier for Supplier to manufacture or repair, or to apply for or assist another entity in obtaining FAA or other government approval for, parts that are the same parts or that have the same form, fit, and function, as parts Supplier supplies to Buyer pursuant to an Order hereunder. Supplier also acknowledges that Buyer's goodwill and reputation which become associated with Goods supplied by Supplier pursuant to an Order hereunder once approved for use in Buyer's products make it easier for Supplier to manufacture or repair, or to apply for or assist another entity in obtaining FAA or other government approval for those parts, or parts that have the same form, fit and function, for use in Buyer's products. Supplier agrees that it shall not manufacture or repair parts that Supplier supplies to Buyer pursuant to an Order hereunder, or manufacture or repair parts having the same form, fit and function, for use in Buyer's products, or apply for or assist another entity in obtaining FAA or other government approval for any such parts, without Buyer's written

consent. Supplier agrees to notify Buyer in writing and to obtain Buyer's written consent prior to manufacturing or repairing any parts or applying for or assisting another entity in obtaining FAA or other government approval for any parts, for itself or another entity, that have the same form, fit, and function as any parts Supplier supplies to Buyer pursuant to an Order hereunder. Supplier's notification shall (i) describe the parts to be manufactured or repaired, or for which application for or assistance to another entity in obtaining FAA or other government approval for such parts is to be provided, (ii) identify the corresponding parts Supplier supplies to Buyer, and (iii) provide Buyer with sufficient information to demonstrate that Supplier will manufacture or repair, or apply for or assist another entity in obtaining FAA or other government approval for such parts (as the case may be) without reference to or use of Buyer Proprietary Information or other Buyer Intellectual Property. If Supplier manufactures or repairs any such parts without obtaining Buyer's written consent (or applies for or assists another entity in obtaining FAA or other government approval for such parts), then it shall be considered a breach of the Order and Buyer shall be entitled to injunctive relief and such other remedies as a court may order.

- 19.14. Supplier shall not make accessible or sell completed or partially completed or defective Goods manufactured using or containing Proprietary Information to any Unauthorized third party. Goods not provided to Buyer shall be disposed of in a manner that prevents disclosure of Proprietary Information (including by reverse engineering).
- 19.15. For Proprietary Information exchanged in connection with the Order, the terms of this Section shall supersede any provisions regarding the protection of proprietary information in any other agreements between the Parties.

## 20. SECURITY FOR ESAERO INFORMATION

The following provisions are applicable whenever the Supplier will Process ESAero Information. The obligations contained in this Section are in addition to and do not alter Supplier's obligations under applicable U.S. Government procurement regulations.

- 20.1. "Security Incident" means (i) any circumstance that involves, or which a Party reasonably believes may involve the actual or potential (a) Unauthorized Processing, destruction, or loss of ESAero Information in Supplier's custody, or control; or (b) interference with any information system or any medium or format, including paper (hard) copy documents, that subjects ESAero Information to risk of such Unauthorized Processing, destruction, or loss; or (ii) any other similar incident as may be so defined by any Data Privacy Law and by any Laws relating to the protection of ESAero Information.
- 20.2. Supplier agrees to (i) develop, implement, maintain, and update a reasonable, written information security policy and program incorporating technical and organizational measures, and (ii) install and implement security hardware and software, in each case, designed to (a) protect the security, confidentiality, integrity, and availability of Supplier's systems, the Goods and Services, and the ESAero Information from Security Incidents; and (b) align to a generally accepted cybersecurity framework.
- 20.3. Supplier further agrees to:
  - 20.3.1. Not allow Unauthorized third parties to Process ESAero Information in the performance of its obligations under the Order.
  - 20.3.2. Only provide ESAero Information to third parties upon prior written approval of Buyer and subject to the terms of the Order.
  - 20.3.3. Not make any Unauthorized or secondary or other use (e.g., for the purpose of data mining) of ESAero Information except as required by Law.
  - 20.3.4. Provide Buyer, upon request, with a report demonstrating that Supplier's information security policies and program are consistent with a generally accepted cybersecurity framework. Upon Buyer's request, Supplier shall provide Buyer with an updated index or summary of its information security policies.



- 20.3.5. Use best efforts to segregate (physically or logically) all ESAero Information into a separate database only accessible by Buyer and those Supplier Personnel who require access to provide the Goods or Services or to maintain the equipment and the program on which it runs.
- 20.3.6. Use industry standard encryption methods or other secure technologies in connection with the Processing of ESAero Information. Notwithstanding any provision to the contrary herein, unencrypted Buyer Personal Information shall not be stored on any Supplier mobile computing devices (e.g., laptop computers).
- 20.3.7. Upon termination or expiration of the Agreement or Order, or at such earlier time as specified by Buyer, Supplier shall return or destroy ESAero Information as Buyer may direct. Supplier may retain ESAero information stored in routine back-ups maintained in the ordinary course until such back-ups are overwritten.
- 20.3.8. Provide information to and reasonably cooperate with Buyer in response to any subpoena or investigation seeking ESAero Information in the possession of Supplier. Supplier shall promptly notify Buyer upon the receipt of any request requiring that ESAero Information be supplied to a third party.
- 20.3.9. Provide prompt written notice to Buyer of a Security Incident, but no later than 72 hours after its discovery. Except as may be required by applicable Law, Supplier agrees that it will not inform any third party (excluding law enforcement) of any Security Incident without first obtaining Buyer's prior written consent.
- 20.3.10. (i) Use commercially reasonable efforts to investigate, contain, and remediate Security Incidents; (ii) cooperate with Buyer in the investigation, containment, and remediation; and (iii) preserve all information and evidence related to Security Incidents (including, without limitation, by suspending routine overwriting or deletion of data or log files). Supplier shall provide Buyer with a report of the investigation that summarizes in reasonable detail the impact on Buyer, its agents, and employees affected by Security Incident containment and remediation actions taken or proposed to be taken by Supplier.

## **21. ACCESS TO FACILITIES, SYSTEMS OR ESAero INFORMATION**

- 21.1. Supplier shall perform identity screenings, work authorization verifications, and background checks on any and all Supplier Personnel seeking access to Buyer's or Buyer's Customers' (i) facilities, (ii) computer systems or databases, or (iii) ESAero information ("Access") to identify persons or entities ineligible for such Access. In furtherance of this obligation, Supplier shall, in advance of any request or grant of such Access:
  - 21.1.1. Verify the identity and requisite work authorization of Supplier Personnel requiring Access.
  - 21.1.2. Except to the extent not permissible by applicable Law, perform a background screen on Supplier Personnel using a company approved by Buyer evidencing that (i) Supplier Personnel do not have any criminal convictions, or (ii) if they do have criminal convictions, Supplier Personnel were hired only after an individualized assessment was conducted in accordance with all applicable Laws and taking into consideration the nature and severity of the underlying offenses, the nature and scope of the Access to be granted, the specific jobs at issue, and the length of time since the convictions.
  - 21.1.3. Not seek Access for any Supplier Personnel ineligible for such Access based on the failure to meet the above criteria, and notify Buyer immediately, in writing, if any of Supplier's Personnel with Access is no longer eligible.
- 21.2. Supplier agrees that Buyer shall have sole discretion as to whether Supplier is granted Access and agrees that any Access privileges granted to Supplier will be defined by Buyer. Buyer reserves the right to impose additional requirements before granting Supplier Personnel Access, as applicable, to meet any additional compliance related or site-specific policies and procedures.



- 21.3. Supplier is responsible for ensuring that any Supplier Personnel requiring Access meet the Access requirements set forth herein. Supplier shall immediately notify Buyer if, at any time during the performance of the Order, (i) any Supplier Personnel information relied upon in making an Access determination has changed or been rendered inaccurate for any reason, or (ii) the need for Access by any Supplier Personnel ceases. The need to Access shall automatically cease for any Supplier Personnel who are terminated, transferred, or otherwise no longer employed by Supplier.
- 21.4. Supplier or Supplier Personnel's refusal or failure to meet Buyer's Access requirements at any time during the performance of the Order may result in Buyer's refusal to grant Supplier Personnel Access. Any such refusal by Buyer shall not constitute an employment action by Buyer.
- 21.5. Supplier acknowledges and agrees that any breach of this Section may result in a violation of Law for which Buyer, Supplier, and/or Supplier Personnel may be liable. At Buyer's request, Supplier will provide Buyer (i) written certification, in a form provided by Buyer, that the Access requirements have been met, and (ii) documentation to verify the methodology, process, and results relied upon by Supplier to comply with the Access requirements. The current certification form is available at the ESAero Supplier Site.

## **22. ENVIRONMENTAL, HEALTH, AND SAFETY**

- 22.1. To the extent Supplier Personnel will be performing work within Buyer's facility or at Buyer's jobsite, Supplier shall: (i) provide to Supplier Personnel, and require all Supplier Personnel to wear, specified safety equipment, including but not limited to, eye and foot protection; (ii) comply with, and ensure that Supplier Personnel comply with, all applicable environmental, occupational health, and safety related Laws, as well as Buyer's environmental, health, and safety standards, including without limitation, Buyer's jobsite safety rules, requirements, and instructions; and (iii) notify Buyer immediately prior to commencement of any work or Services.
- 22.2. If Supplier is unable or unwilling to comply with the foregoing, Buyer, in its sole discretion, may withdraw any Orders impacted by Supplier's failure to comply without further recourse by Supplier.

## **23. COMPLIANCE WITH LAWS**

- 23.1. Supplier warrants that it shall comply with all Laws applicable to the performance of the Order, except to the extent inconsistent with U.S. anti-boycott laws. Supplier agrees to cooperate with and support Buyer's and Buyer's Customers' efforts to comply with all Laws, by providing supporting documentation, as applicable, and using the tools and systems provided by Buyer to ensure such compliance.
- 23.2. Supplier shall, at the earliest practicable time, notify Buyer in writing if Supplier is subject to any federal, state, or foreign government criminal proceeding alleging fraud or corrupt practices, once initiated by the filing of a formal charging document in a court of law; and further notify Buyer of any subsequent felony convictions or deferred prosecution agreement(s) related to the foregoing.
- 23.3. Supplier shall comply with Data Privacy Laws and shall be responsible for providing any notice required by Law to the data subjects whose personal data it provides to Buyer.
- 23.4. Supplier represents that it shall not furnish to Buyer any Goods or separately identifiable items or components of Goods that (i) are an unauthorized copy or substitute of an original equipment manufacturer or original component manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but are represented as OEM authentic or as new; (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes; (vi) fail to meet the requirement of an "Approved Part" as defined in FAA Advisory Circular 21-29C and any updated version thereof; or (vii) are otherwise counterfeit or suspected counterfeit. Such counterfeit or suspected counterfeit Goods shall be deemed non-conforming, and Supplier shall disclose the source of the counterfeit or suspect counterfeit Goods to Buyer and cooperate with Buyer with respect to any investigations or remedial actions undertaken by Buyer.





- 23.5. Supplier shall provide to Buyer, upon Buyer's reasonable request, the identity of its subcontractors and the location of manufacture of the Goods or any subcomponents of the Goods, or provision of Services, as applicable, to confirm compliance with applicable Law and the Order.

## **24. PROHIBITED TELECOMMUNICATIONS EQUIPMENT & SERVICES**

- 24.1. Supplier recognizes that ESAero, Buyer, and their respective Affiliates are subject to Section 889 of the National Defense Authorization Act for Fiscal Year 2019 ("Section 889"), which prohibits prime contractors to the U.S. Government from using (regardless of end use) "covered telecommunications equipment or services", as such term is defined in Section 889 ("Prohibited Telecom").
- 24.2. Supplier represents that it shall not furnish to Buyer any Goods or Services that use or contain Prohibited Telecom.
- 24.3. Supplier commits to (i) have in place processes to determine whether it furnishes, or has furnished, to Buyer Goods, separately-identifiable items or components of Goods, or Services that use or contain Prohibited Telecom; (ii) notify Buyer, within 1 business day of Supplier's identification, of the use or existence of Prohibited Telecom in the Goods and Services it furnishes, or has furnished, to Buyer (a "Prohibited Telecom Use Notice"), which shall include the brand, model number, and item description of such Goods and Services; and (iii) within 5 business days of Supplier's submission of a Prohibited Telecom Use Notice, provide Buyer with such further available information as Buyer may request about such Supplier's use of Prohibited Telecom in the Goods and/or Services it furnishes, or has furnished, to Buyer, and the efforts Supplier has taken, and will take, to prevent the use of Prohibited Telecom in the Goods and/or Services it furnishes to Buyer.

## **25. CONFLICT MINERALS**

Supplier recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten, and gold (the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries ("DRC Countries"). Accordingly, Supplier commits to comply with Section 1502 of the Act and its implementing regulations; to the extent Supplier is not a "Registrant" as defined in the Act, Supplier shall comply with Section 1502 of the Act and its implementation regulations except for the filing requirements. In particular, Supplier commits to have in place a supply chain policy and processes to undertake (i) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into Goods it provides Buyer; (ii) due diligence of its supply chain, following a nationally or internationally recognized due diligence framework, as necessary, to determine if Conflict Minerals sourced from the DRC Countries directly or indirectly support unlawful conflict there; and (iii) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures. Upon written request, Supplier will promptly provide Buyer with commercially reasonable information regarding the foregoing requirements to support ESAero's obligations under the Act.

## **26. GLOBAL CHEMICAL REGULATIONS AND MATERIALS OF CONCERN**

- 26.1. To the extent the Goods contain, or the manufacturing processes for the Goods use, chemical substances subject to Global Chemical Regulations or Materials of Concern ("MOC"), as defined below, Supplier shall:
- 26.1.1. Comply with all applicable Laws regarding the global regulation of chemicals, including but not limited to any: (i) registration, notification, authorization, restriction, or ban obligations; and (ii) hazard classification, labeling, packaging, Safety Data Sheet, or safe use compliance and communication obligations (the "Global Chemical Regulations").
- 26.1.2. Cooperate with Buyer's efforts to comply with Global Chemical Regulations and applicable customer requirements and to develop products and manufacturing processes that minimize risk to human health and the environment. Such cooperation includes, and generally requires information and documentation in advance of shipment, but is not limited to: (i) investigating and communicating to Buyer the nature and extent of any MOCs contained in the Goods or in the processes used to manufacture, assemble, use, maintain, or repair any Goods; (ii) providing all reasonably necessary documentation to verify the material composition, on a substance by

substance basis, including quantity of each MOC contained in any Goods; (iii) providing Buyer with safe use communications and safety data sheets; (iv) promptly responding to Buyer's requests for information, in the form requested by Buyer, regarding MOC used or intended to be used in connection with the Goods and related regulatory controls such as use restrictions and permit and authorization requirements; (v) upon request, cooperating with efforts to obtain necessary regulatory approval(s); and (vi) using the tools and forms provided by Buyer through the ESAero Supplier Site, or other means.

For purposes of this Section, "MOC" means substances that are substances of concern to Buyer or Buyer's customer identified in a Materials of Concern list made available through the ESAero Supplier Site or provided through other means.

## **27. COMPLIANCE COVENANTS**

### **27.1. Supplier represents and warrants that:**

- 27.1.1. Supplier has not offered or given and shall not offer or give anything of value (in the form of entertainment, gifts, gratuities, or otherwise) to Buyer's employees or representatives for the purpose of obtaining any Order or favorable treatment under any Order.
- 27.1.2. Supplier has not made, nor will it make, or offer to make any political contributions, or pay, or offer to pay any fees or commissions in connection with any Order; and
- 27.1.3. Supplier Personnel assigned to perform Buyer work shall remain free of any actual or apparent conflicts of interest with Buyer, including, but not limited to, the existence of conflicting roles that might bias Supplier or Supplier Personnel's judgment, or circumstances that may create an unfair competitive advantage for Supplier. Supplier shall ensure that any actual, apparent, or potential conflicts of interest are properly identified and mitigated by Supplier. Supplier shall promptly notify Buyer of any change in circumstances that creates an actual, apparent, or potential conflict of interest.

Any breach of this warranty shall be a material breach of each and every contract between Buyer and Supplier.

### **27.2. If Supplier engages directly or indirectly in representing, lobbying, marketing, or advocating on behalf of Buyer in connection with U.S. or non-U.S. Government contract or procurement activities, Supplier shall conduct affirmative screening of Supplier Personnel proposed for engagement in such activities to ensure that any such activities will not result in a violation of U.S. or non-U.S. post-government employment (e.g., "Revolving Door") Laws.**

## **28. SUPPLIER CODE OF CONDUCT**

- 28.1. Supplier shall adopt and comply with a code of conduct or policy statement regarding business conduct, ethics and compliance that satisfies, at a minimum, the principles and expectations set forth in the ESAero Supplier Code of Conduct available at the ESAero Supplier Site ("Supplier Code of Conduct"). Supplier acknowledges and agrees that failure to satisfy the requirements of this Section shall constitute a material breach of the Order.
- 28.2. Supplier shall have management systems, tools and processes in place that (i) ensure compliance with applicable Laws and the requirements set forth in the Supplier Code of Conduct; (ii) promote an awareness of and commitment to ethical business practices, including, without limitation, the expectations set forth in the Supplier Code of Conduct; (iii) facilitate the timely discovery, investigation (including cooperation with any Buyer initiated investigation involving Supplier), disclosure (to Buyer and others as appropriate), and implementation of corrective actions for violations of Law, an Agreement, Order, or the expectations set forth in the Supplier Code of Conduct; and (iv) provide training to its employees on compliance requirements, including the expectations set forth in the Supplier Code of Conduct.

## **29. GLOBAL TRADE COMPLIANCE**

- 29.1. Compliance with GT Laws. Supplier agrees that no Technical Data, Goods, or Services controlled under any GT Laws and provided by Buyer in connection with the Order shall be provided to any U.S. or non-U.S. person or entity, unless the transfer is expressly permitted by a U.S. or non-U.S. Government license or other authorization, or, where no such authorization is required, is in accordance with applicable GT Laws.
- 29.2. Restricted Party Screening. Supplier shall not engage any Supplier Personnel who is ineligible to perform hereunder because of any embargo, sanction, debarment, or designation as a Specially Designated National or a restricted party, as maintained by the U.S. government or any applicable non-U.S. government or union of states.
- 29.3. GT Authorizations. If, pursuant to applicable GT Laws, the performance of any Order requires either Party to obtain government-approved export or other GT authorization, the Parties shall mutually exercise reasonable efforts to support the preparation, submission, and management of such authorization. Upon request, the Parties shall exchange copies, redacted as appropriate, of all government GT authorizations related to the Order, and all provisions, conditions, and limitations relating to the authorization. Each Party shall ensure all required GT authorizations remain valid for the duration of the Order, and, as applicable, shall be individually responsible for compliance with all government GT authorizations, including without limitation ensuring that all export and import related documentation is properly completed and timely filed.
- 29.4. Export and Import Classification; Registration. Where known, or where Supplier is the design authority for the Technical Data, Goods or Services that are subject to the Order, Supplier shall provide Buyer with (i) the applicable Harmonized Tariff Schedule Number and the applicable U.S. export jurisdiction and classification; and (ii) any analogous classification under any other applicable GT Law, and (iii) timely notification in writing of any changes to any such classifications. If, under any Order, Supplier will engage in any manufacturing or exporting of items on the U.S. Munitions List or engage in the provision of defense services (as defined in 22 C.F.R. § 120.32), Supplier shall maintain registration with the U.S. Department of State, Directorate of Defense Trade Controls (“DDTC”) as may be required by Part 122 of the International Traffic in Arms Regulations (“ITAR”). Upon request, Supplier shall provide Buyer annually with evidence of its DDTC registration.
- 29.5. Certifications. If the Order forms the whole or a part of a sale by Buyer of defense articles or defense services being sold in support of a Foreign Military Sale or commercially to or for the use of the armed forces of a foreign country or international organization, Supplier shall upon acceptance of the Order, or within 5 days of being requested by Buyer to do so, provide information, in the format specified by Buyer, in furtherance of the requirements stipulated in Part 130 of the ITAR, 22 CFR §§130.9 and 130.10.
- 29.6. Brokering. Supplier acknowledges that it shall not engage in “brokering activity” as that term is defined in 22 C.F.R. § 129.2 in connection with any Order.
- 29.7. Technical Data Transfer. Supplier shall not export, re-export, transfer, disclose, or otherwise provide physical or electronic access to Technical Data to any person or destination not authorized to receive Technical Data under existing GT Laws or government export authorization (including third party information technology service providers), or where such access is otherwise inconsistent with applicable GT Laws or policy (e.g., European Union policy against re-exports to or for use in Russia or Belarus). Supplier shall not modify or divert Technical Data to any military application or other end- use prohibited by applicable GT Laws. Supplier shall develop and implement information technology security procedures to ensure that Technical Data is accessible only by authorized persons.
- 29.8. Destruction of Technical Data, Controlled Goods & Controlled Buyer Items. Upon completion of performance, and expiration of recordkeeping obligations under the Order, all Technical Data, controlled Goods, and controlled Buyer Items, shall be destroyed or returned to Buyer, as instructed by Buyer. Destruction of the foregoing items in physical and electronic form must render such items useless beyond repair, rehabilitation, restoration, and recognition of unique characteristics or identifiers, Supplier shall provide a written certification of the method of destruction and its completion to Buyer.
- 29.9. Technology Control Plan. When the terms of an Agreement or Order require access to or possession of Technical Data controlled under the ITAR or at an Anti-Terrorism level or higher under the Export Administration Regulations (“EAR”), or the equivalent level of controls under applicable non-U.S. GT Laws,

Supplier shall create and follow a Technology Control Plan (“TCP”) that, at a minimum, incorporates the following elements: (i) facility security; (ii) GT compliance training program; (iii) information technology security; (iv) record keeping requirements; (v) restricted party screening as defined above in this Section; and (vi) Supplier Personnel oversight, and (vii) visitor management. Supplier shall make a signed copy of the TCP available to Buyer within 30 days of request.

29.10. Country of Origin.

29.10.1. “Country of Origin” shall mean the country where a Good is wholly obtained or produced entirely, or, when two or more countries are involved in the production of a Good, the country where the last substantial transformation of the Good was performed. Supplier shall identify the Country of Origin of all Goods inclusive of those not originally produced by the Supplier, (i) on the commercial invoice or pro forma invoice accompanying the shipment, and (ii) as Buyer may direct, on any other documentation used to identify Goods (e.g., Supplier proposals and certifications), in each case, in electronic, or scan-readable format.

29.10.2. Country of Origin Marking. Supplier shall mark all Goods with the name of the Country of Origin in accordance with the Laws of the destination country. Where the Good is exempt from the Country of Origin marking requirements of the destination country or no such markings are otherwise required, Supplier shall mark the container of such Good with the name of the Country of Origin of the Good.

29.11. Preferential Treatment and Certifications. Upon Buyer’s request, Supplier shall provide, or assist in obtaining from its subcontractors, certificates of origin, declarations, and affidavits necessary to support Buyer’s claims for duty-free or preferential duty treatment under international agreements, multi-lateral or bilateral free trade agreements, or other preferential tariff programs (e.g., Agreement on Trade in Civil Aircraft, Military Duty-Free, Free Trade Agreements, Goods Returned, Generalized System of Preferences, etc.) (“Preferential Treatment”).

29.12. Advanced Security Filing, and Supply Chain Security Programs.

29.12.1. Supplier agrees to comply with or assist Buyer or Buyer’s designated agent to comply with advanced manifest regulations based on the jurisdiction of the shipping and receiving destinations.

29.12.2. Supplier and any of its subcontractors who either ship Goods directly or package Goods for shipment shall participate in or comply with all requirements of SAFE Framework security programs of the destination country (e.g., CTPAT, Authorised Economic Operator, or similar programs). Supplier must also make all shipments under the Order with transportation companies that are certified and validated through CTPAT or the trade security program in the country of shipment.

29.13. Duty Drawback. Supplier agrees to assign to Buyer all of Supplier’s U.S. Customs duty drawback rights and any such rights obtained from subcontractors related to the Goods in order for Buyer to seek duty drawback. Supplier agrees to (i) inform Buyer of the existence of such duty drawback rights of which Supplier becomes aware; (ii) furnish upon request the documentation that Buyer reasonably requires to pursue any such duty drawback rights; and (iii) provide such assistance to Buyer as requested in connection with the recovery of such import duties.

29.14. Customs Documentation. Supplier shall provide Buyer with complete and accurate customs documentation, including without limitation, documentation required for customs clearance, Harmonized Tariff Schedule classification, valuation, origin, applicable export authorization, Preferential Treatment, duty drawback, and other terms, as required.

29.15. Customs Clearance. If the Order is issued in the U.S. for goods shipped directly to the U.S. from the country where Supplier is located, Buyer may elect to serve as importer of record. Supplier agrees in all other cases to serve as importer of record and to be responsible for Customs clearance and for payment of all duties, taxes, and fees for Goods entering the U.S. or other relevant country. If Supplier acts as importer of record, the price may include, if separately stated on Supplier’s invoice, duties, taxes, and fees resulting from that importation,



unless Buyer has furnished a valid exemption certificate or other evidence of exemption. For any Order that includes customs clearance services, such services shall be quoted and charged at a fixed sum and performed by Supplier as the importer of record in accordance with any Program Specific Terms incorporated into the Order. In no event shall an Order that includes customs clearance services allow or provide for contingent or success fees.

- 29.16. Government Trade Remedies. Supplier shall inform Buyer of any applicable governmental trade remedy action relating to the Order, and shall provide Buyer any documentation necessary to establish, where applicable, that imported Goods are outside the scope of the trade remedy.
- 29.17. Required Notices. Supplier shall promptly notify Buyer if Supplier becomes aware of any failure by Supplier or its subcontractors to comply with this Section and shall cooperate fully with Buyer in any investigation of such failure to comply. Supplier shall also promptly notify Buyer of any changes to Supplier's name, address, or DDTC registration status.

### **30. INTERNATIONAL OFFSET**

- 30.1. To the extent work is being performed outside the U.S., Supplier grants to Buyer exclusive rights to all offset and industrial participation credits and benefits generated by Supplier, and Supplier Personnel arising out of the Order. Buyer may use all or any part of the value of the Order, including the value of any subcontracts placed by Supplier for the Order to satisfy international offset or industrial participation obligations of Buyer, Buyer's Affiliates, or any entity to which Buyer transfers such value.
- 30.2. Supplier shall support Buyer in meeting Buyer's offset requirements in proportion to the value of the Goods and Services supplied by Supplier to the value of the end item sold by Buyer into the particular country.
- 30.3. Upon Buyer's request, Supplier shall (i) report all subcontract sources outside the U.S. utilized in the fulfillment of the Order, including the name and location of each such source, amounts paid and committed thereto, and identification of the Goods and Services procured; (ii) provide copies of all purchase orders; and (iii) execute all necessary documents to evidence Buyer's right to use, claim, or assign any offset credits or industrial participation. Supplier shall include the substance of this sub-Section, in favor of Buyer, in its subcontracts issued at all tiers pursuant to the Order.

### **31. ASSIGNMENT**

Any assignment by Supplier of an Agreement or Order, in whole or in part, without Buyer's prior written consent shall be null and void and shall constitute a material breach of such Agreement or Order.

### **32. SUBCONTRACTING**

- 32.1. Supplier may not delegate, or subcontract all or substantially all of its rights, responsibilities or obligations due or to become due under the Order (collectively, "Subcontract") without the prior written consent of the Buyer.
- 32.2. Any such Subcontracting by Supplier without Buyer's prior written consent, shall be wholly void, invalid, and totally ineffective for all purposes. In the case of any Subcontracting, Supplier shall perform all sub-tier supply management activities that are necessary for the on-time delivery of Goods and Services conforming to the requirements set forth herein. Supplier shall be solely and fully responsible for monitoring its subcontractors under all provisions of the applicable subcontracts, and for ensuring that each of its subcontractors comply with the requirements set forth herein. Supplier shall remain fully liable to Buyer for, and shall be Buyer's sole point of contact for, all aspects of proper performance of the Order, regardless of (i) any Subcontracting; (ii) Buyer approval of the subcontractors; or (iii) Supplier's failure to ensure the relevant Subcontracts contain provisions that comply in substance with the requirements set forth herein.

### **33. CHANGE IN CONTROL OR GRANT OF SECURITY INTEREST**

- 33.1. For purposes of this Section:



“Change in Control” means and is deemed to have occurred if there is (i) a change in the beneficial ownership of Supplier, either directly or indirectly, of 25% or more; (ii) any change, of any amount, in the beneficial ownership of Supplier, either directly or indirectly, which involves a direct or indirect competitor of Buyer; (iii) any change in ownership or control of Supplier involving a country designated under ITAR Section 126.1 or EAR Part 740, Supp. No. 1, Country Group D:5, E:1, or E:2; (iv) a sale, lease, exchange, transfer, or other disposition, directly or indirectly, of substantially all of either (a) the assets of Supplier or (b) the assets Supplier uses to perform its obligations under an Agreement or Order; or (v) the entry by Supplier or its Affiliate into any agreement contemplating any of the foregoing transactions.

“Security Interest” means an interest in the assets of Supplier by any third party or parties, collectively, that accounts for a value equal to 25% or more of the Supplier’s total assets.

- 33.2. No less than 100 days prior to the effective date of a potential Change in Control or grant of Security Interest, Supplier will promptly notify Buyer in writing thereof (including the identity of and reasonable information regarding the potential third party or parties) and obtain Buyer’s written consent prior to the effectiveness of such Change in Control or grant of Security Interest, consistent with applicable Law and confidentiality restrictions. In the event of a Change in Control or grant of Security Interest by Supplier, Buyer shall have the right to (i) require Supplier to obtain a guarantee from the new controlling party or secured party or other adequate assurances of performance, as applicable; and (ii) extend the effective term of an Agreement for up to an additional 37 months, under the pricing and other terms and conditions contained herein, by providing written notice thereof to Supplier. In the event such consent is not sought or obtained in accordance with the terms hereof, Buyer shall have, in addition to the rights described above, the right to terminate the Agreement and/or Order, or any portion thereof, for default without a right to cure and without any liability or obligation whatsoever to Supplier for the portion terminated and Buyer’s rights and remedies as set forth in the Section herein entitled “Termination for Default” shall apply.
- 33.3. In addition, Buyer shall have 190 days following its receipt of notice of the foregoing or the effective date thereof, whichever is later, to inform Supplier, upon 20 days advance written notice, of Buyer’s intention to terminate the Agreement and/or Order, or any portion thereof, with Buyer’s only obligation to pay for those conforming Goods and Services actually received prior to the expiration of such 20 day period. If Buyer chooses to terminate the Agreement and/or Order under this Section and the remaining term of the Agreement is in excess of 5 months, Supplier shall, at no additional charge to Buyer, (i) provide Buyer with unrestricted access to all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier and necessary for the production of the Goods, (ii) deliver or have unrestricted access to the tooling and test equipment necessary to make or have made the Goods, (iii) provide to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license, with a right to grant sublicenses, to Supplier’s information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, to the extent necessary, to enable Buyer to make, have made, use, sell and license the Goods; and (iv) assist and compensate Buyer for the costs associated with transitioning to another supplier or Buyer assuming the production of the Goods itself, protecting the tooling and other equipment necessary for production of the Goods, and taking other reasonable steps to ensure the Goods are produced without interruption according to Buyer’s Specifications.

#### **34. STOP WORK ORDER**

Buyer may, from time to time, require Supplier to stop all or any portion of the work called for by the Order for a period of up to 130 days at each such time, or such longer period of time as may be required by Buyer’s Customers (“Stop Work Period”). Upon receipt of written notice detailing the length and scope of the Stop Work Period, Supplier shall immediately comply with its terms at no charge. Within the Stop Work Period, Buyer may either: (i) cancel the stop-work order and Supplier shall resume work; or (ii) terminate the work covered by the stop-work order, for default or convenience, as the context requires, in accordance with the provisions of the Order. If Buyer has not exercised its rights set forth in either (i) or (ii) above prior to the expiration of the Stop Work Period, then at least 40 days prior to said expiration, Supplier shall notify Buyer of its intent to resume work under the applicable Order and shall obtain Buyer’s written consent prior to resuming work.



### **35. FORCE MAJEURE**

- 35.1. Supplier shall be liable for any failure or delay in performance in connection with an Order, except where such failure or delay results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of its control and without its fault or negligence, provided Supplier gives Buyer, within 2 days of Supplier's learning of such cause, written notice to the effect that a failure or delay by Supplier will occur or has occurred (a "Force Majeure Event"). If a failure or delay in performance is caused by an event affecting any of Supplier's subcontractors, such failure or delay shall not be excusable unless such event is a Force Majeure Event as defined above and the good or service to be provided by such subcontractor is not obtainable by Supplier from other sources in time for timely delivery of the Goods to Buyer. Buyer may cancel any Order without liability to Supplier for its purchase of any Goods affected by Supplier's failure or delay in performance and, if the delay is expected to last for a period that could impact deliveries to Buyer's Customers, Buyer may cancel, without liability, any portion of or the entire Order.
- 35.2. Buyer shall be excused for any failure or delay in performance due to any cause beyond its reasonable control, including an unforeseen reduction in demand or any cause attributable to Buyer's Customers.

### **36. DUTY TO PROCEED**

Supplier shall proceed diligently with the performance of the Order. Except as expressly authorized in writing by Buyer, no failure of Supplier and Buyer to reach any agreement regarding a dispute related to any Order shall excuse Supplier from proceeding with performance and delivery obligations during the pendency of such dispute.

### **37. ASSURANCE OF PERFORMANCE**

At any time, if Buyer, in its reasonable discretion, believes that Supplier may not have the ability, for any reason, to continue performing any Order, including, without limitation, any material change to Supplier's financial condition, balance sheet, or its credit or similar rating, Buyer may request, and Supplier shall provide, written adequate assurances from Supplier of its ability, desire and intent to continue performing. Buyer will specify the nature of its concerns, and Supplier will provide Buyer with documents, financial data, or other information needed to satisfy Buyer's concerns. Further, Supplier will immediately notify Buyer in the event Supplier believes it may be unable to pay its debts when due or there is a material change in Supplier's financial position, balance sheet or its credit or similar rating. In the event either or both Parties have concern about Supplier's ability to continue its performance, the Parties will coordinate to ensure that Buyer receives Goods and Services without interruption in accordance with the Order. In particular, Supplier will assist and compensate Buyer for the costs associated with transitioning to another supplier, Buyer assuming the production of the Goods or performance of the Services itself, protecting the tooling and other equipment necessary for production of the Goods and performance of the Services, and taking other reasonable steps to ensure the Goods are produced and Services performed without interruption according to Buyer's Specifications. Buyer shall also have the right to require Supplier to (i) obtain a guarantee from a controlling party of, or a secured party to, Supplier, if applicable, and (ii) implement remedial actions directed by Buyer to improve Supplier's performance under the \ Order.

### **38. SETOFF**

Buyer and Buyer's Affiliates may withhold, deduct and/or set off all money due, or which may become due to Supplier arising out of Supplier's performance under any Order or any other transaction with Buyer or Buyer's Affiliates.

### **39. GOVERNING LAW AND FORUM**

- 39.1. The Agreement and any Order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the Laws in force in the State of California, USA without regard to conflicts of Law principles, except that the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980, as amended to date, will not apply. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of an Order in the appropriate court in San Luis Obispo or Los Angeles Counties, California and Supplier hereby irrevocably consents to personal jurisdiction and



venue in any such court, hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process. If Supplier or any of its property is entitled to immunity from legal action on the grounds of sovereignty or otherwise, Supplier hereby waives and agrees not to plead such immunity in any legal action arising out of the Agreement and/or Order. To the extent permitted by applicable Law, the Parties waive any right they may have to a trial by jury.

- 39.2. Any action or claim by Supplier with respect hereto shall also be brought in California, if Buyer so elects. Accordingly, Supplier shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within 40 days from receipt thereof, makes its election as aforesaid. If Buyer and Supplier mutually agree to participate in alternative dispute resolution, Supplier agrees that all alternative dispute resolution proceedings shall take place in San Luis Obispo California.

#### **40. DISPUTE RESOLUTION**

- 40.1. Except as provided below, prior to a Party initiating a formal legal proceeding relating to a dispute under the Order, such Party must provide the other with a written request for dispute resolution. Each Party shall, within 5 calendar days after such written request is received, designate a representative who will be responsible for negotiating, in good faith, a resolution of the dispute. Should the representatives fail to reach agreement within 30 calendar days of receipt of the request, executives of each Party shall attempt to resolve the issue within 60 calendar days of receipt of such written request.
- 40.2. Either Party may (i) resort to a formal legal proceeding for equitable relief at any time and (ii) institute litigation in order to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors.
- 40.3. The dispute resolution procedures set forth herein do not supersede, delay or otherwise affect any rights of termination that are expressly set forth herein.

#### **41. ORDERS UNDER U.S. GOVERNMENT CONTRACTS**

For Orders issued under contracts between Buyer and the U.S. Government Department of Defense or National Aeronautics and Space Administration, or subcontracts at any tier under such U.S. Government contracts, the terms and conditions of the Flowdown Document in Part E in effect on the date of the particular Order shall apply.

#### **42. SUPPLIER SUSTAINABILITY**

In support of Buyer's commitment to reduce environmental, social, and governance ("ESG") risk in the aerospace and defense industry, upon Buyer's request, Supplier shall complete an ESG sustainability assessment, at no additional cost to Buyer, with Buyer's ESG assessment provider.

#### **43. NEWS RELEASES, PUBLICITY AND OTHER DISCLOSURES**

Supplier shall not make or authorize any news release, advertisement, or other disclosure that relates to the Agreement or Order or the relationship between Buyer and Supplier, deny or confirm the existence of the Agreement or Order, or make use of Buyer's name or logo without the prior written consent of Buyer.

#### **44. DELAYS**

Whenever there is an actual delay or threat to delay the timely performance of the Order, Supplier shall immediately notify Buyer in writing of the probable length of any anticipated delay and take, and pay for, all activity to mitigate the potential impact of any such delay.

#### **45. REMEDIES**

Supplier shall be liable for any costs, expenses and damages incurred by Buyer related to or arising from Supplier's acts or omissions under the Agreement and/or Order. Except as expressly provided herein, the rights



and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity.

#### **46. PARTIAL INVALIDITY**

If in any instance any provision of the Agreement or Order shall be determined to be invalid or unenforceable under any applicable Law by any competent court or arbitration tribunal, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms unless the purposes of the Agreement or Order can no longer be preserved by doing so. The provision declared invalid or unenforceable shall be deemed to be restated to reflect as nearly as possible the meaning and essence of such provision without rendering such amended provision invalid or unenforceable, to the extent permissible by applicable Law.

#### **47. SURVIVAL**

All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of the Agreement or Order, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of Intellectual Property and Proprietary Information), and product support obligations shall survive the expiration or termination of the Agreement or any Order.

#### **48. NO WAIVER**

No failure of any Party to exercise any right under, or to require compliance with, the Order, nor any knowledge of past performance at variance with the Order, shall constitute a waiver by such Party of its rights hereunder, except to the extent expressly stated in writing. Nor shall any such failure or knowledge prevent such Party from enforcing any rights in the future under similar circumstances.

#### **49. RELATIONSHIP OF THE PARTIES**

The relationship between Supplier and Buyer will be that of independent contractors and not that of principal and agent, nor that of legal partners. Neither Party will represent itself as the agent or legal partner of the other Party nor perform any action that might result in other persons believing that it has any authority to bind or enter into commitments on behalf of the other.

#### **50. INTERPRETATION**

These Terms and Conditions and any Agreement or Order shall be construed as if drafted jointly by the Parties and no provision therein shall be interpreted for or against any Party because that Party or that Party's legal representative drafted the provision.

#### **51. ORDER OF PRECEDENCE**

- 51.1. The order of precedence provision in an Agreement, if any, shall prevail over this Section.
- 51.2. In the event of any conflict between the provisions applicable to the Order and these Terms and Conditions, such conflict shall be resolved by giving precedence to the provision in the following order of priority:
  - 51.2.1. any written, non-preprinted express terms contained in any Order, including Part A;
  - 51.2.2. any Buyer-issued Specifications and work statements incorporated by Buyer in any Order;
  - 51.2.3. any Program Specific Terms incorporated into the Order;
  - 51.2.4. these Terms and Conditions; and
  - 51.2.5. pre-printed terms and conditions on Buyer's Orders and terms incorporated in the Order not described in the Subsections above.



Notwithstanding the above sub-Sections, for Orders issued under contracts between Buyer and the U.S. Government or subcontracts at any tier under U.S. Government contracts, the Parties agree that in the event of any conflict or inconsistency between the provisions applicable to the Order and the provisions of the Flowdown Document incorporated by reference pursuant to the Section of these Terms and Conditions entitled, "Orders Under U.S. Government Contracts" (collectively, the "USG Provisions and Clauses") the USG Provisions and Clauses shall control.

- 51.3. Supplier shall promptly and duly execute and deliver to Buyer such further documents and take such further actions as Buyer may from time-to-time reasonably request to effectively carry out the intent and purpose of the Order.



## **ATTACHMENT A**

### **Additional Insurance Coverage Requirements**

In addition to the insurance requirements set forth in the Section of these Terms and Conditions entitled “Insurance”, Supplier shall secure, maintain and require its subcontractors to maintain, the following additional insurance coverages and limits relevant to Supplier’s performance of the Order:

#### **General Liability:**

If Supplier is providing asbestos abatement/removal, armed security services, demolition work, fire/sprinkler installation, general construction, excavation work, plumbing work or electrical work supplier must maintain Commercial General Liability insurance in the minimum amount of \$10,000,000.

#### **Automobile Liability:**

If Supplier is operating motor vehicles in performance of the Order, Supplier must maintain the following coverage and limits:

Private Passenger Vehicles: \$1,000,000 per accident covering all owned, non-owned, and hired vehicles.

Commercial<sup>i</sup> Vehicles: \$5,000,000 per accident covering all owned, non-owned, and hired vehicles.

#### **Professional Liability:**

If Supplier is providing any computer software (other than standard, off the shelf, non-customized software), computer coding or algorithms, information technology services, non-commercial communications products or services, or technology products and services, Supplier must maintain Technology Errors & Omissions (“E&O”) Liability Insurance in the minimum amount of \$10,000,000.

If Supplier will process or store ESAero Information, in its possession through an arrangement to externally host data, or Supplier is responsible for managing or having access to Buyer’s network, Supplier must maintain Network Security and Privacy Liability Insurance, as part of a Professional Liability (E&O) Insurance policy or as stand- alone “Cyber Coverage”, in the minimum amount of \$10,000,000.

If the Supplier is providing architect and engineering services, including, but not limited, to designs or structural calculations, the Supplier must maintain Architects & Engineers Professional Liability Insurance in the minimum amount of \$5,000,000.

If the Supplier is providing consulting services, media services and/or other professional services, Supplier must maintain Professional Liability E&O Insurance in the minimum amount of \$1,000,000.

For a claims-made-policy, the retroactive coverage date shall be no later than the effective date of the Agreement and coverage shall be maintained for a period of 4 years after expiration or termination of the Agreement and any Order.

#### **Aviation Completed Operations Liability:**

If Supplier will use an aircraft in performance of any Order, Supplier must maintain Hull All Risks Insurance in an amount not less than fair market value of the aircraft, including Hull War and Allied Perils.

For manned aircraft used for test flight purposes when (i) Supplier will pilot the aircraft, (ii) the test flight path will be over unpopulated areas and (iii) there will be no Buyer personnel onboard, Supplier must maintain Aviation Liability, including war risk liability (AVN52) with a minimum limit of \$5,000,000 per occurrence.

For manned aircraft used for test flight purposes when Supplier is chartering or leasing an aircraft (piloted by Supplier) (i) with 10 seats (or its equivalent if seats are removed) or less, or a test flight with Buyer personnel on-board, Supplier must maintain Aviation Liability, including war risk liability (AVN52) with a minimum limit of \$50,000,000 per

occurrence; (ii) with 11-15 seats (or its equivalent if seats are removed) on the aircraft, Supplier must maintain Aviation Liability, including war risk liability (AVN52) with a minimum limit of \$100,000,000 per occurrence; or (iii) with 16 or more seats (or its equivalent if seats are removed) on the aircraft, or any wide body, or specialty jet aircraft, Supplier must maintain Aviation Liability, including war risk liability (AVN52) with a minimum limit of \$200,000,000 per occurrence. Such coverage must be world-wide and not have a per passenger sublimit when passengers are onboard.

If the Supplier will use a Drone / UAV / UAS in performance of any Order, Supplier must maintain Aviation Liability with a minimum limit of \$2,000,000 if 55 lbs. or less; or \$5,000,000 if over 55 lbs.

Such insurance coverage shall remain in effect for 3 years after the expiration or termination of the Agreement and any Order.

#### **Hangarkeepers Legal Liability:**

If Supplier will have a Buyer aircraft (or an aircraft for which Buyer is responsible) stored, maintained, repaired, or refueled on Supplier's premises/hangar; or Supplier will have care, custody and control of the aircraft for any reason, Supplier must maintain Hangarkeepers Legal Liability Insurance in the minimum amount of \$50,000,000 per aircraft/per occurrence.<sup>ii</sup>

Such insurance shall remain in effect for 2 years after the expiration or the termination of the Agreement and any Order.

#### **Aircraft Products Liability:**

In performance of any Order, if Supplier will be (i) providing original or spare component parts for any aviation product, including, but not limited to, commercial or military jet engines, or missiles, or satellites; (ii) providing repairs or other service to an aircraft (e.g., helicopters, missiles, spacecraft, satellites, launch vehicles); or (iii) supplying products for an aircraft, including ground support or control equipment, and original or spare parts for aircraft, or repair services for aircraft, the Supplier must maintain Aircraft Products Liability and Completed Operations Insurance in the minimum amount of \$50,000,000 per occurrence. The Supplier's insurance policy shall not contain any exclusions in coverage for: (A) product, component parts, and materials which are classified as Flight Safety Parts, or its equivalent, or having Critical Characteristics, or its equivalent, in accordance with the current revision of ASQR, Quality Notes, and any documents referenced therein and are critical to the successful take-off, landing, or flight of an aircraft; and (B) the propulsion, telemetry or guidance of a missile, or satellite, or detection used in a radar.

Such insurance coverage shall remain in effect for 3 years after the expiration or termination of the Agreement and any Order.

#### **All Risk Property / Builder's Risk:**

If Supplier will have custody and control (via a bailment agreement or similar agreement) over any Buyer or Buyer's Customer owned equipment or materials, for which it has risk of loss, Supplier must maintain All Risk Property Insurance, including extended coverage for flood and earthquake, for all equipment and materials in Supplier's custody and control used in performance of the Order against loss or damage resulting from any insurable causes. The policy must include business interruption and terrorism coverage, with replacement cost value at 100%. In the case of third-party storage facilities or warehouses, the limit of insurance shall be in the minimum amount of \$5,000,000. Notwithstanding the foregoing, minimum All Risk Property Insurance limits for third party logistics services shall be set forth in the applicable Order.

If the Order requires Supplier to insure the property while the buildings or structures are being constructed, Supplier must maintain All Risk Builder's Risk Property Insurance, upon the entire project, including work and materials, for the full replacement cost at the time of loss. This insurance shall include as "named insureds," the owner of the property and Buyer, and as "additional insureds," the engineer and suppliers at any tier. The policy shall provide All Risk coverage to insure against direct risk of physical loss or damage including, but not limited to: terrorism; flood or other water damage; earthquake or other earth movement; property in transit; off-site temporary storage; damage resulting from defective design, faulty workmanship, or materials; or delay in start-up (soft cost), business interruption; boiler and machinery; delay in opening; and testing (both hot & cold).





### **Crane and Riggers Legal Liability or Installation Floater:**

If, in performance of the Order, Supplier is operating a crane, or using rigging materials or equipment to lift, move and set in place property of Buyer, Supplier must maintain Crane / Riggers Liability Insurance (via an inland marine policy or by attaching a riggers liability endorsement to the Commercial General Liability policy that modifies or deletes the “care, custody or control” exclusion) for 100% replacement cost value of the asset / equipment being lifted at any one time in the minimum amount of \$1,000,000.

If, in performance of the Order, Supplier will be installing, fabricating, or erecting project materials for Buyer, an Installation Floater is required (via an inland marine or property insurance policy) for 100% replacement cost value of the property (materials, supplies, machinery, fixtures and equipment) during the transport and until the installation work is completed and is accepted by Buyer.

Note: The Installation Floater may be used to satisfy the Crane / Riggers Liability Insurance requirement should such Installation Floater be broad enough to cover both rigging and installation risks.

### **Marine Transit:**

If, in performance of the Order, Supplier will be shipping product and risk of loss passes to Buyer upon receipt of Goods at Buyer's facility or third party drop shipment point, Supplier must maintain adequate insurance pursuant to any Supply Chain/Logistics Corporate Wide Agreement in the minimum amount of \$250,000 per conveyance. Such insurance shall insure shipments by all modes of transportation until delivery and acceptance by Buyer.

### **Contractors Pollution Environmental Impairment Liability:**

If Supplier is producing hazardous waste emissions during manufacturing, performing environmental services, waste depository services or performing construction related services, including but not limited to excavation, demolition/site work, concrete contracting services, drilling (or any subsurface work), interior/exterior renovation projects or asbestos abatement contractors, Supplier must maintain Contractors Pollution Liability coverage or Environmental Impairment Liability insurance coverage in the minimum amount of \$5,000,000.

For a claims-made-policy, the retroactive coverage date shall be no later than the effective date of the Agreement or Order and coverage shall be maintained for a period of 4 years after expiration or termination of the Agreement and any Order.

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<sup>i</sup> Commercial means all vehicles, other than passenger vehicles (e.g., box trucks, food trucks, work vans, and service utility trucks).

<sup>ii</sup> In-Flight Hangarkeepers Legal Liability Insurance is required when Supplier will have care, custody, and control of the aircraft while in-flight.



**E104 PART C**  
**ESAero**

**Government Property in Possession of Seller (06/22)**

1. The Federal Acquisition Regulation (“FAR”) clauses listed below shall apply to the Purchase Order as required by the terms of the Buyer’s higher-tier subcontract under which this Purchase Order is a subcontract (the “Government Contract”). The effective version of each FAR clause, including the applicable Alternate clauses flowing to the Purchase Order, shall be the same version as that which appears in the Government Contract. The requirements set forth in this Part C shall not be construed to limit or relieve Seller of any of its obligations, including additional Federal Acquisition Regulation (“FAR”) or other U.S. Government (“Government”) property clauses, incorporated in the Purchase Order.
  - a. FAR clause 52.245-1 or its Alternate clauses, and 52.245-2 and 52.245-9 are incorporated herein when applicable with the same force and effect as if they were given in full text. Upon Seller's request, Buyer's Purchasing Representative will make their full text available. Also, the full text of a FAR provision or clause may be accessed electronically at this address: <https://www.acquisition.gov/far/>. Terms shall be revised in the FAR clause to suitably identify the parties to establish Seller’s obligations to Buyer and to the Government; and to enable Buyer to meet its obligations under the Government Contract. In all clauses listed herein, terms shall be revised to suitably identify the party to establish Seller’s obligations to Buyer and to the Government, and to enable Buyer to meet its obligations under the Government Contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term “Government” and equivalent phrases shall mean “Buyer”, the term “Contracting Officer” shall mean “Buyer’s Purchasing Representative”, the term “Contractor” or “Offeror” shall mean “Seller”, “Subcontractor” shall mean “Seller’s Subcontractor” under this Purchase Order, and the term “Contract” shall mean this “Purchase Order”. For the avoidance of doubt, the words “Government” and “Contracting Officer” do not change when a right, act, authorization, or obligation can be granted or performed only by the Government or its Contracting Officer or duly authorized representative or when title to property is to be transferred directly to the Government. Seller shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR clauses in accordance with the flow down requirements specified in such clauses when Seller’s Subcontractor will be receiving, fabricating, or acquiring Government Property.
  - b. Applicability of the clauses are as follows:
    - i. **52.245-1 “Government Property”** (Applicable to Purchase Orders issued under non-DoD prime contracts containing FAR 52.245-1 without Alternate I and the Purchase Order is either a cost- reimbursement, time and materials, or labor hour type, or is a fixed priced Purchase Order awarded on the basis of submission of certified cost or pricing data (reference FAR 45.104). Under DoD prime contracts containing FAR 52.245-1 without Alternate I, in addition to the Purchase Order types listed at FAR 45.104, the clause is applicable to negotiated fixed-price Purchase Orders awarded on a basis other than submission of certified cost or pricing data. For Government Property issued under Installation Operation Services (FAR 52.245-2), FAR 52.245-1 is included.)
    - ii. **52.245-1 Alt I “Government Property”** (Alternate I – Applicable to Purchase Orders issued under prime contracts containing FAR 52.245-1 with Alternate I, and to Purchase Orders issued under contracts containing FAR 52.245-1 without Alternate I when the Purchase Order awarded is of a type other than a Purchase Order type listed in FAR 45.104 or DFARS 245.104.)
    - iii. **52.245-1 Alt II “Government Property”** (Applicable to Purchase Orders for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit institutions whose primary purpose is the conduct of scientific research.)
    - iv. **52.245-2 “Government Property Installation Operation Services”** (Applicable if the Purchase Order is a service contract to be performed on a Government installation when Government furnished property will be provided for initial provisioning only and the Government is not responsible for repair or replacement.)
    - v. **52.245-9 “Use and Charges”** (Applicable to all contracts where FAR 52.245-1 or either of its alternate

clauses is imposed.)

- c. In the event the provisions the Government Contract require that title to Government Property, as that term is defined in 52.245-1 (hereinafter "Property"), acquired by Seller shall vest in either Buyer or the Government, title to such Property shall vest in Buyer or the Government upon acquisition by Seller or Seller's Subcontractors. Title to such Property shall at that time immediately and directly pass to Buyer or the Government so that title shall not at any time vest in Seller or Seller's Subcontractors.
2. Seller shall obtain Buyer approval prior to acquiring or fabricating Property, excluding Material as that term is defined in 52.245-1, for this Purchase Order.
3. Seller shall establish and maintain a system to ensure the adequate control and protection of the Property in accordance with 52.245-1. The party liable for loss, theft, damage, or destruction of or to Government Property shall be in accordance with FAR 52.245-1 or the FAR 52.245-1 Alternate clause applicable to the Purchase Order.
4. Upon receipt of notification from Buyer's Property Personnel, Seller shall complete and return a completed Property Management System Survey (Form 10-3680PC), or any electronic version, describing the system that will be used to control Property according to all the requirements in FAR 52.245-1 and this Purchase Order. Seller shall submit completed form to Buyer's Property Personnel within sixty (60) days.
5. Seller shall, commencing with its receipt and during its custody or use of any Property, accomplish not less than the following.
  - a. examine Property upon receipt to detect damage in transit;
  - b. when receiving Property from Buyer or the Government, verify the contents of the Property shipment against the packing sheet as to the completeness and content and return a signed copy promptly to Buyer. If no discrepancy is reported within five (5) working days of such receipt from Buyer or the Government, Property shall be deemed to have been received in acceptable condition as listed and described on the accompanying packing sheet. If after receipt and installation of such Property Seller determines that the Property is in a condition not suitable for use, Seller shall promptly notify Buyer, in writing, so Buyer can determine further course of action;
  - c. unless otherwise specified, perform functional testing prior to further processing or installation to determine satisfactory operation. If Property is not suitable for use, Seller shall promptly notify Buyer, in writing;
  - d. establish and maintain records as required by FAR 52.245-1(f)(1)(iii) and this Purchase Order, and make such records available for review upon Buyer's request;
  - e. provide the necessary precautions to guard against damage from handling, deterioration during storage, and loss;
  - f. perform periodic inspection to assure adequacy of storage conditions; and utilize, consume, move, and store Property only as authorized in accordance with FAR 52.245-1 and this Purchase Order, and ensure Property is used only for performing this Purchase Order, unless otherwise provided in this Purchase Order or approved in writing by Buyer.
6. Seller shall perform a physical inventory of all property in the possession of Seller at a minimum every other year, or more frequently if requested by the Buyer's Property Personnel. Physical inventories of Sensitive Property, as that term is defined in 52.245-1, shall be performed as frequently as necessary in accordance with ASTM standards, but not to exceed once per year. Within sixty (60) days after the completion of each inventory, Seller shall report the results, including all Property located at the facilities of any of Seller's subcontractors at any tier, and shall validate to Buyer's Property Personnel the accuracy and completeness of such physical inventory. Seller shall submit inventory reports to Buyer's Property Personnel who requested it. Seller shall assist Buyer's Property Personnel in resolving all discrepancies related to Seller, Seller's lower-tier subcontractors, or Buyer's property inventory accounting.
7. Seller shall not make any modifications or alterations to Property, unless they are:



- a. reasonable and necessary due to the scope of work under the applicable Purchase Order or its terms and conditions;
  - b. required for normal maintenance; or
  - c. otherwise authorized in writing by Buyer.
8. Any modification or alteration made by Seller that is not authorized, is the sole responsibility of Seller and is accomplished at Seller's expense. If modifications have been authorized by Buyer, Seller shall provide Buyer with the applicable modification detail to include:
  - a. new part number;
  - b. original part number before modification occurred;
  - c. cost of modification;
  - d. engineering order, drawing revision or other engineering authorization number (as applicable);
  - e. update applicable Seller drawings;
  - f. any additional record information pertinent to the modification.
9. The Seller shall not cannibalize Property unless specifically authorized in this Purchase Order or otherwise authorized in writing by Buyer.
10. Seller agrees to store and maintain in serviceable condition, including the performance of calibration and preventative maintenance, all Property in possession of Seller or Seller's lower-tier subcontractors during the performance of this Purchase Order and until receipt and completion of disposition instructions.
11. Seller shall have a process to create and provide copies of audits and self- assessments, corrective actions, and other Property related reports as requested by Buyer.
12. Seller will promptly report Property as excess to Buyer when no future requirements exist.
13. Immediately upon termination or completion of this Purchase Order, Seller shall perform a physical inventory, and, if Property is applicable to such terminated or completed Purchase Order, shall cause its lower-tier subcontractors and the following shall apply:
  - a. Buyer will coordinate the disposition of Property with Customer on behalf of Seller. Scrap and excess Property is subject to disposition instructions provided by Buyer or the Government. Seller shall execute Buyer's or the Government's disposition instructions for Property deemed to be excess or scrap and return evidence of said disposition to Buyer. All Property return shipments, including related packing and crating tasks, require advance notification, coordination, and negotiation with Buyer.
  - b. Seller shall prepare inventory schedules using the Government Standard Form 1428, Inventory Disposal Schedule, or equivalent, of all Property in the possession of Seller, or Seller's lower-tier subcontractors. The inventory schedule(s) shall be in such detail as acceptable to Buyer. Seller shall safeguard and store Property identified on an inventory disposal schedule pending receipt of written disposition instructions from Buyer or the Government, and shall maintain such Property in accordance with the provisions of the Purchase Order, including FAR 52.245-1.
14. Seller shall be responsible and liable for the decontamination of excess or scrap if contamination occurs as a part of doing business in providing the goods or services under this Purchase Order. For Property acquired by Seller on behalf of Buyer or the Government that is contaminated, Seller shall be responsible and liable for decontamination costs.
15. Seller agrees that in placing any lower-tier subcontracts or purchase orders under this Purchase Order that involve



the use of Property, Seller shall ensure appropriate flow-down of these purchase order terms and conditions (e.g., extent of liability for loss of Government Property), and Seller agrees that it shall exercise rights for the benefit of Buyer or the Government, as Buyer or the Government may direct.

16. When the materials, and products (“goods”) or services, including the products resulting from services for use in connection with a Government Department of Defense prime contract or higher-tier subcontract regardless of dollar value, the following clause set forth in the Department of Defense FAR Supplement (DFARS) shall apply, as required by the terms of the prime contract or by operation of law or regulation. The effective version of each DFARS provision shall be the same version as that which appears in the Government Contract. In the event of a conflict between this DFARS provision and Part B or any FAR provisions, the DFARS provision herein shall control.
  - i. 252.211-7007 “Reporting of Government-Furnished Property” (Applicable to Purchase Orders when FAR Clause 52.245-1 is contained in the Government Contract and Seller is in possession of Government Property, Seller will comply with paragraph (d) of this clause by providing Buyer a Microsoft Excel report containing the data elements required in paragraph (d) when in possession of Government- furnished property.)



**E104 PART D  
ESAero**

**Addendum to Software Licenses (05/23)**

This Addendum, which is an amendment to the software license agreement ("Agreement") identified below, is made by and between Empirical Systems Aerospace Inc. ("ESAero") and the software vendor identified below ("Licensor"). ESAero or its designated affiliate are hereinafter referred to as "Licensee".

The Licensor is \_\_\_\_\_.

The Agreement is the software license agreement which is applicable to the software identified below ("Software") and which software license is either attached to this Addendum or which is a shrink-wrap, click-wrap, browse-wrap or similar license which is made applicable by acceptance on the internet or by incorporation in the Software, Software packaging, Licensor's proposal, made applicable by acceptance within a cloud computing environment (e.g., an in-cloud software sales store), or other similar means.

The Software is \_\_\_\_\_.

The Software which is the subject of this Addendum is as described either in the attached Agreement, in a separate attachment to this Addendum, or in the Associated Purchase Order between Licensee and Licensor ("Associated Purchase Order") which either has this Addendum attached or incorporated by reference. All references to Software herein shall, as appropriate by the context, include related documentation and any updates, upgrades, modifications, and bug fixes provided by Licensor.

In connection with the Agreement and the Software, Licensor and Licensee agree to the following provisions which shall take precedence over any conflicting provision in the Agreement:

**I. Use of Software**

- A. Licensee shall be permitted to transfer the Software and licenses granted with respect to the Software as set forth in the Transfer of Software section below.
- B. Licensee shall be permitted to grant access to the use of the Software to its affiliates, consultants, subcontractors, team members, customers, agents and similar parties and to their respective employees ("Authorized Users") in connection with Licensee's authorized uses thereof provided that all such parties have suitable obligations protecting Licensor's rights in the Software which are in substance consistent with the provisions of the Agreement (as hereby amended).
- C. Licensee shall be permitted to transfer the rights and licenses granted by the Agreement (as hereby amended) to any affiliate of Licensee which agrees in writing to be bound by the terms of the Agreement (as hereby amended) provided that Licensee shall be responsible for the affiliate's compliance with all applicable terms and conditions of the Agreement (as hereby amended).
- D. Licensee shall be permitted to assign the license to any party which acquires all or substantially all of Licensee's business and assets related to the activities for which the Software is licensed provided that Licensee gives Licensor notice of any such assignment and that the assignee agrees in writing to be bound by all applicable terms and conditions of this Agreement (as hereby amended).
- E. Licensee shall be permitted to use the Software with a backup computer, system, or cloud computing server if the computer, system, or server for which it was acquired is inoperative or malfunctioning.
- F. Licensee shall be permitted to copy the Software solely for archival or backup purposes in accordance with Licensee's standard disaster recovery practices.
- G. Subject to applicable prohibitions against reverse engineering and if the Software is a development tool or is provided with source code, Licensee shall be permitted to modify the Software as necessary to use the Software for its intended purpose.





- H. Licensee shall be permitted to combine the Software with other software as necessary to use the Software for its intended purpose.
- I. Licensee shall be permitted to use the Software on the computer(s) or system(s) for which it was acquired at any location to which the computer(s) or system(s) may be installed or relocated by Licensee or Licensee's cloud computing services provider.
- J. Notwithstanding anything in the Agreement to the contrary and for the sake of clarity, Licensee shall be permitted to perform all acts necessary to use the Software for its intended purpose including accessing Licensee data and/or Licensee content for Licensee's internal business purposes. It is also understood that direct or indirect access to Licensee data and/or Licensee content independently of using the licensed Software or batching data or content into or out of a database is a permitted use and no additional license fees shall be required. Licensee may freely distribute Licensee data and Licensee content that it has processed using the Software.
- K. Unless otherwise expressly provided in writing on the Associated Purchase Order, if the Software is a development tool then Licensee may deploy and distribute any resulting application software prepared by Licensee without obligation to Licensor with respect to such application software.

## II. Liability

- A. In no event shall Licensee, Authorized Users, or their respective customers, employees or agents be liable (whether in contract, tort or otherwise) for any special, exemplary, indirect, incidental, speculative or consequential damages and, in no event, shall Licensee have any liability to Licensor, howsoever arising, except for unauthorized use or disclosure of the Software.
- B. Licensor's liability shall be the greater of any limits of liability specified in the Agreement or the amounts recoverable from Licensor's insurance but in no event shall Licensor's liability, howsoever arising in connection with the subject matter of the Agreement, be less than the amounts paid to Licensor in connection therewith. Any limits on Licensor's liability shall not apply with respect to liability arising out of Licensor's gross negligence or willful misconduct or with respect to any breach of warranty or indemnity set forth herein.

## III. Confidentiality

- A. Licensee's duty to protect the Software shall not exceed the use of the customary degree of care Licensee uses to protect its own proprietary information of similar character and in no event shall Licensee be liable for inadvertent disclosure if such standard of care is used. It is also understood that Licensee shall be permitted to exercise such rights with respect to the Software and related documentation as may be permitted under applicable copyright law and to treat Software and related documentation which bears a copyright notice as a published copyrighted work. Licensee's obligations of confidentiality shall cease five (5) years after the effective date of the Agreement. Nothing contained in this Section is intended to or shall modify or obviate any rights which Licensor may have under applicable copyright law which protects Licensor's rights in the Software.
- B. In order for the Software to be treated as confidential and proprietary, the Software must be identified with appropriate markings in human readable form with Licensor's name and a statement of its proprietary nature. There shall be no restrictions applicable to Software, portions thereof, or any other information supplied by Licensor which (i) has been or is independently developed by or on behalf of Licensee; (ii) was in Licensee's possession prior to receipt from Licensor; (iii) has been or is rightfully obtained from a third party; (iv) is or becomes publicly available other than through the fault or negligence of Licensee; or (v) has been or is released without restriction by Licensor.
- C. Notwithstanding anything in the Agreement to the contrary, (i) latent data such as deleted files, and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files, and metadata that can only be retrieved by computer forensics experts and that is generally considered inaccessible without the use of specialized tools and techniques and (ii) back up files of the Software made in the normal course of business as part of Licensee's disaster recovery plan will not be subject to requirements for return or destruction of proprietary information.

- D. Notwithstanding anything in the Agreement to the contrary, Licensee shall have the right to perform such activities in relation to the Software as may be reasonably necessary to satisfy security requirements and to confirm the absence of malware, latent defects and the like. Information obtained by Licensee as the result of such activities shall be used by Licensee only for the aforementioned purposes and shall otherwise be treated as Licensor's proprietary information.

#### IV. Intellectual Property Warranty and Indemnity

Licensor warrants that the Software as licensed and any other deliverable supplied by Licensor does not infringe any third party intellectual property rights. Provided that Licensee shall give prompt written notice to Licensor of any claims against Licensee, its affiliates, and/or their customers that the Software and/or related documentation and/or any other deliverable supplied by Licensor infringes any patent, copyright or other intellectual property right of a third party, Licensor shall, at Licensor's expense, indemnify and hold-harmless Licensee, its affiliates and their customers from any such claim and from any resulting costs and expenses including reasonable attorney's fees and shall also, at Licensee's written request and at Licensor's expense, defend Licensee, its affiliates and their customers against any such claim. As used herein "customer" includes any indirect customer such as an ultimate end-user or higher tier subcontractor or contractor. Failure by Licensee to give prompt written notice shall not relieve Licensor of its obligations hereunder unless such failure is material to Licensor's ability to defend or settle the claim.

##### A. Governing Law and Export Controls

- B. By adoption of the parties, the State of New York, United States of America, is deemed to be the place of contracting and, by agreement of the parties, any claim or controversy relating to the Agreement (as hereby amended), its interpretation, performance, or validity shall, except as otherwise provided in the Sections below related to the application of US Federal law when applicable, be construed and interpreted in accordance with the laws of the State of New York without giving effect to its internal principles of conflict of laws. The parties agree that the Uniform Computer Information Transaction Act, or any version thereof, adopted by any state in any form ("UCITA") shall not apply to the Agreement. To the extent that UCITA is otherwise applicable, the parties agree to opt out of the applicability of UCITA pursuant to the opt-out provisions contained therein.
- C. In the event that the Software is subject to export control limitations under the Export Control Regulations of the United States and/or under the International Traffic in Arms Regulations (ITAR) of the United States, Licensor shall be responsible to advise Licensee in writing and with specificity of the applicable limitations and controls, including advising Licensee whether ITAR applies and advising Licensee of applicable control number on the Commodity Control List under the Export Administration Regulations.

#### V. Warranties

- A. Licensor warrants that the Software shall, when delivered, perform substantially in accordance with the applicable specifications and related documentation and Licensor shall correct or replace any defective Software within thirty (30) days of Licensee's written notification of the claimed defect. If Licensor is unable to promptly correct the defective Software, Licensee may, at its option, terminate the Agreement and receive a prompt refund of all amounts paid to Licensor in connection therewith. Licensor further warrants that any media or other tangible items supplied by Licensor shall be free from defects in materials and workmanship for a period of one (1) year from the date of receipt by Licensee, and Licensor shall promptly repair or replace any item which does not conform to such warranty.
- B. Licensor warrants that it owns the Software or otherwise has all necessary rights to grant the licenses thereunder which are the subject of this Addendum.
- C. Licensor warrants that the Software furnished to Licensee shall not contain any Malicious Code which is defined as (i) any undisclosed program routine, device or other feature or hidden file, including, without limitation, a time bomb, virus, software lock, trojan horse, drop-dead device, worm, malicious logic or trap door, that is designed to delete, disable, deactivate, interfere with or otherwise harm the Software or any hardware, software, data or other programs of Licensee or its customers, or (ii) any transmitting or activating computer program, any communication feature or tool which enables Licensor to collect information regarding Licensee's activities or data, or any hardware-limiting, software-limiting, or services-limiting function

(including, but not limited to, any key, node lock, time-out or other similar functions), whether implemented by electronic or other means. Notwithstanding the foregoing, it is understood that access to the Software may be limited by means of specific number of keys as expressly set forth in the Agreement (as hereby amended) or Associated Purchase Order.

- D. If any third party software is incorporated or embedded in the Software, Licensor represents and warrants that it has all rights and licenses with respect to the third party software necessary to license the Software to Licensee on the terms provided in the Agreement (as hereby amended) and that in no event is there any third party software incorporated or embedded in the Software which would impose on Licensee any obligations which are not expressly provided in the Agreement (as hereby amended) or which would require Licensee to provide source code to any third party. Licensor shall defend, indemnify and hold harmless Licensee, its customers and permitted transferees from and against any claims, damages, losses, costs and expenses including reasonable attorneys' fees howsoever arising as the result of breach of the warranty in this paragraph.
- E. Licensor's warranties under the Agreement and under the Intellectual Property Warranty and Indemnity Section above and the Transfer of Software Section below shall extend to the benefit of any permitted transferees as set forth in the Transfer of Software Section.

#### VI. Conflicting Provisions and Order of Precedence

- A. Except as provided below, the provisions of this Addendum shall take precedence over any conflicting provision in Licensor's proposal, in the Agreement, in any pre-printed terms and conditions contained in the Associated Purchase Order issued by Licensee, or elsewhere in connection with the licensing of the Software.
- B. Terms and conditions of licenses or other agreements (including click-on licenses accepted by Licensee) for access to, or use of, the Software required by automatic sales or checkout procedures implemented through in-cloud software sales stores conflicting with the provisions of this Addendum are void and the terms and conditions of this Addendum shall apply. For clarity, the terms and conditions of this Addendum, shall have a higher order of precedence over terms and conditions of licenses or other agreements, including click-on licenses, required to be accepted by in-cloud stores.
- C. Any provisions which have been typed or written in the Associated Purchase Order (as issued by Licensee) shall take precedence over any conflicting provisions in any other document. The provisions of the Agreement (other than provisions in the Agreement which state that the Agreement contains the entire understanding between the parties or which state that additional provisions do not apply or provisions having similar meaning), as hereby amended, shall take precedence over conflicting pre-printed terms and conditions in the Associated Purchase Order. This Addendum may not be modified or amended except by a written amendment executed by an authorized representative of each party. Unless otherwise expressly set forth on the face of the Associated Purchase Order, no provision of the Agreement which purports to grant rights or immunities under Licensee's patent rights or other intellectual property of Licensee shall apply.

#### VII. Outsource Providers and Transition Services

- A. Licensee may enter into contractual arrangements, either directly or through an affiliate, with an information technology service ("outsource") provider ("ITSP") whereby the ITSP shall provide certain software products and related services to Licensee. Licensor agrees that (a) Licensee may permit the ITSP to act on behalf of Licensee in exercising rights under the Agreement (as hereby amended) as Licensee believes necessary to allow the ITSP to provide outsource services to Licensee; and (b) the ITSP may acquire Software and related services for Licensee on the basis provided for in the Agreement (as hereby amended); and (c) Licensee may grant access to the Software and related documentation and to the use thereof to the ITSP as necessary to allow the ITSP to provide outsource services.
- B. Should Licensee sell or otherwise transfer ("Transfer") assets or equity ownership of any business unit of Licensee or of any affiliate of Licensee and should Licensee agree in connection with such Transfer to provide the transferee with transition services in connection with such Transfer to perform such activities previously performed by Licensee or its affiliate in connection with the operation of the relevant business which require the use of the Software to perform such transition services, then Licensor agrees that, notwithstanding anything contained elsewhere in the Agreement to the contrary, Licensee shall have the right to utilize the Software to



provide such transition services to the transferee for a reasonable period of time not to exceed twelve (12) months.

#### VIII. Federal Law and Procurement Regulations

- A. If the Software and / or other deliverables are being supplied in connection with or pursuant to a contract with the U.S. Government or a subcontract thereunder, the applicable U.S. Federal Law and Procurement Regulations shall apply as appropriate in connection with the Agreement (as hereby amended) and with the rights and obligations of the U.S. Government, including those regulations referenced in the Associated Purchase Order.
- B. Without limiting the general applicability of the paragraph above, if the Software and/or deliverables are being supplied in connection with or pursuant to a contract with the U.S. Government or a subcontract thereunder, no provision of the Agreement (as hereby amended) shall apply with respect to the U.S. Government insofar as such provision conflicts with applicable U.S. Federal Law, Federal Procurement Regulations, or applicable published procurement policies and practices of the relevant U.S. Government agency, including by way of example:
  - (i) Provisions which conflict with 31 USC 1341 and 41 USC 11 (Anti-Deficiency Laws).
  - (ii) Provisions which conflict with 28 USC 516 (DOJ Jurisdictional Statute).
  - (iii) Provisions providing for payment of interest on late payments which are not in accordance with 31 USC 3901 et seq. (Prompt Payment Act) and 5 CFR 1315.
  - (iv) Provisions requiring payment of attorneys' fee by the U.S. Government except as provided in 5 USC 504 (Equal Access To Justice Act).
  - (v) Provisions which, directly or indirectly, make the U.S. Government responsible for federal, state, or local taxes.
  - (vi) Provisions which obligate the U.S. Government to be bound by terms imposed by third party suppliers where such terms are not expressly set forth in the Agreement.
  - (vii) Governing law or dispute resolution provisions which conflict with applicable United States Federal law or provisions which make the United States Government subject to equitable remedies.
  - (viii) Provisions which provide for unilateral termination or modification of the Government's rights or which are inconsistent with FAR 52.233-1, FAR 12.302(b), FAR 1.601(a), or FAR 43.102.
  - (ix) Provisions which are inconsistent with 5 USC 552 (Freedom of Information Act).

#### IX. Invoices and Audit

- A. Licensor shall reference the Associated Purchase Order number on all invoices. Any provision in the Agreement providing for payment of interest shall not be applicable. Any provision in the Agreement requiring payment of invoices sooner than sixty (60) days after receipt, shall not apply. Any taxes to be paid to Licensor (e.g., sales taxes) must be separately stated in Licensor's quote and invoices, and in lieu of payment of such taxes, Licensee may provide a direct payment permit or evidence of exemption.
- B. Notwithstanding anything contained in the Agreement to the contrary, any right which Licensor may have to audit compliance with the Agreement shall be limited to once per each semiannual period during the term of the Agreement, shall require reasonable prior written notice, and shall be subject to all security and confidentiality requirements applicable to the facility or facilities in question. It is understood that the United States Government may prohibit audits at United States Government facilities as necessary for security reasons. Information acquired during any such audit shall be used solely for purposes of confirming Licensee's compliance with the Agreement (as hereby amended). In the event the license granted by the Agreement is terminated, any final audit shall be completed within one (1) year of termination.

X. Transfer of Software

- A. In addition to such rights as are set forth in the Agreement or in the Use of Software Section above, Licensee may transfer the Software and applicable rights and licenses thereto to Licensee's customers in connection with the transfer of the computer(s), system(s), or application(s) for which the Software was acquired provided that:
- (i) In the case of transfers to parties other than agencies of the United States Government, such transfer may be made either (a) by assignment of the Agreement (as hereby amended) to the transferee provided that such assignment is made in writing or under other conditions which obligate the transferee to be bound by all applicable provisions of the Agreement (as hereby amended), (b) by causing the transferee to execute a license agreement directly with Licensor or to otherwise acknowledge acceptance of either Licensor's standard commercial license terms or the subject Agreement as hereby amended, or (c) pursuant to a contract with the transferee which provides in substance that (1) title to software provided by third party suppliers remains with the third party supplier, (2) transferee shall have only a non-exclusive license to use software provided by third party suppliers in connection with the equipment, system(s) or application(s) supplied by Licensee, (3) transferee shall not reverse engineer or decompile software provided by third party suppliers, (4) transferee shall not copy software provided by third party suppliers except to make appropriate back-up or archival copies, (5) the license granted with respect to software provided by third party suppliers is limited to transferee's use of such software for the authorized purposes and transferee is prohibited from sublicensing, timesharing, rental, facility management or service bureau usage of such software, and (6) transferee acknowledges that the third party supplier of such software is an intended third party beneficiary of the applicable provisions of the contract protecting third party software and may enforce such provisions against the transferee; and
- B. In the case of transfers of commercial computer software to agencies of the United States Government such transfers may be made by any of the means described in subparagraph (A)(i) above or by transfer which identifies the Software as commercial computer software subject to the applicable Federal Acquisition Regulations or supplements thereto which are applicable to supply of commercial computer software; provided, however, that Licensor agrees that in no event shall the United States Government have less than the rights provided for in FAR 52.227-19 (Dec. 2007) or equivalent successor regulation and provided that Licensor shall be responsible to ensure that Software delivered to Licensee shall be properly marked as commercial computer software where applicable in accordance with the requirements of applicable Federal Acquisition Regulations. In the event that the subject Software is not commercial computer software as defined by the applicable Federal Acquisition Regulations, then Licensor agrees that, if the Software is to be delivered to an agency of the United States Government, the United States Government shall have such rights as are required by the applicable laws and regulations. Transfers to agencies of the United States Government shall also be subject to the Federal Law and Procurement Regulations Section above. In the event that Licensee transfers the Software to a third party which is a contractor or subcontractor pursuant to a contract with an agency of the United States Government where the United States Government is the intended end-user of the Software, then such transferee and any intermediate transferees may transfer the Software and applicable license rights to the U.S. Government on the same basis as ESAero is permitted to do pursuant to subparagraph (A)(ii) above. Licensee may also transfer the Software to intermediate parties where the End User is not an agency of the United States Government for ultimate transfer to an End User provided that the intermediate parties are subject to substantially the same obligations as Licensee under the Agreement (as hereby amended) and such intermediate parties may transfer the Software to the End User in the same way Licensee is permitted to do so under subparagraph (A)(i) above.
- C. Transfers to agencies of foreign governments may be made in accordance with the applicable procurement laws and regulations of the government in question.
- D. In the event of permitted assignment as provided in this Addendum, Licensee shall remain bound by its continuing confidentiality obligations as set forth in the Agreement (as hereby amended) and its obligations to make any payments due prior to assignment; but in the event of any such assignment or other permitted transfer as provided above, Licensor shall otherwise look solely to the assignee or to the permitted transferee for performance of the assignee's or transferee's obligations with respect to the use and protection of the Software. In the event the assignee or transferee is an agency of the United States Government, Licensor agrees that any claim against or dispute with such agency shall be subject to applicable United States law such as the Federal



Tort Claims Act and the Contract Disputes Act and to the jurisdiction of the federal courts as provided in the United States Code.

- E. In addition to the foregoing, any special requirements or mandatory provisions, which may be required by Licensee's customer and which are set forth or referenced in the Associated Purchase Order, shall apply.
- F. For the avoidance of doubt, it is understood that, if Licensee has a license for multiple copies of the Software or has a multiple seat license for the Software, Licensee's rights to transfer the Software and the applicable rights and licenses as provided in this Addendum shall include the right to transfer the applicable rights and licenses in whole or only with respect to a portion of the licensed copies or licensed seats.

XI. Publicity

Licensor shall not use Licensee's name in any promotional material, advertising, customer list, or the like without Licensee's express prior written consent.

XII. Third Party Software

Upon request by Licensee, Licensor shall provide Licensee with a written list of all third party software incorporated in the Software or necessary to use the Software and with copies of the applicable license agreements.

XIII. Termination

In the event the Agreement is terminated in accordance with the provisions thereof, it is agreed that (a) such termination shall not effect any provisions of the Agreement (as hereby amended) which by their nature are inherently intended to survive termination, (b) except in the case of willful and intentional material breach of the Agreement (as hereby amended), Licensee shall be entitled to a reasonable period of time to wind down its use of the Software in an orderly fashion, and (c) such termination shall not effect any licenses previously transferred to third parties.

XIV. Notices

Any notice under, or in connection with, the Agreement or this Addendum shall be in writing and shall be deemed to have been given when received by the party to which said communication is directed at its address set forth in the Agreement, Associated Purchase Order, or at such other address as such party may have theretofore, designated in writing to the other party hereto. A receipt evidencing delivery by certified or registered mail or by recognized commercial courier service shall constitute evidence of receipt. Any notice requiring prompt action shall be contemporaneously sent by facsimile transmission or electronic mail with the receipt confirmed by answer back or similar confirmation of receipt by the receiving terminal.

XV. Licensee's Intellectual Property

Any provision in the Agreement which requires Licensee to grant Licensor rights under Licensee's intellectual property shall not apply.