

**CAES
TERMS AND CONDITIONS OF SALE
SERVICES
2023**

1. ACCEPTANCE OF ORDER/TERMS

(a) Except as otherwise mutually agreed to in writing by both the party requesting services hereunder ("**Buyer**") and the CAES legal entity providing such services ("**Service Provider**"), these terms and conditions (these "**Terms and Conditions**") shall apply to and form a part of all purchase orders ("**Order(s)**") for Services (defined below) between Service Provider and Buyer (the "**Contract**"). All Orders shall be governed by these Terms and Conditions in lieu of all other terms and conditions and provisions printed on or attached to the Order.

(b) Buyer shall place an Order with Service Provider in compliance with these Terms and Conditions. The Order shall include a Statement of Work (defined below), which shall include information related to the specifications of the Services to be provided as well as information with regard to the fees and expenses to be paid by Buyer for the Services.

2. DEFINITIONS

(a) "**Affiliate**" or "**Affiliates**" shall mean an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Service Provider. For the purpose of the foregoing, "control" (including the terms "controlling," "controlled by," and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity.

(b) "**Buyer**" means the entity requesting Services.

(c) "**Completion**" means that the Services have been fully performed and completed in accordance with the Contract.

(d) "**Confidential Information**" means all information disclosed by or on behalf of Service Provider to Buyer in connection with the Contract in any manner (including, without limitation, electronically, in writing, orally, or by inspection) such that a reasonable person would understand its confidential or proprietary nature, without any requirement that such information be marked or otherwise designated as such, including, without limitation, any ideas; business methods; prices; business, financial, marketing, development, or manpower plans; customer lists or details; computer systems and software; know-how; or any other information connected with the services manufactured, marketed, provided or obtained by Service Provider or concerning Service Provider's relationships with actual or potential clients, customers or suppliers which, if disclosed, will be liable to cause harm to Service Provider.

(e) "**Event of Force Majeure**" means an event or circumstance not reasonably within the control of a Party, which restrains or delays the performance by a Party of its obligations under the Contract, and which could not be prevented or overcome by the exercise of due diligence and planning.

(f) "**Intellectual Property**" means all intellectual and industrial property rights, including, without limitation, patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights, and any other rights in any invention, discovery or process, in each case in the United States of America and all other countries in the world and together with all renewals and extensions thereof.

(g) "**Parties**" means collectively Service Provider and Buyer and "**Party**" means one of them as the context requires.

(h) "**Personnel**" means a Party's officers, employees, contract personnel, representatives, advisors and agents, other individuals under the Party's direction or supervision, and, in respect of the Service Provider, includes direct field labor, if applicable, which meaning shall also apply to Affiliates of a Party and to Subcontractors.

(i) "**Services**" means all labor, supervision, consultation, administration, supplies, tools, equipment and other work and materials to be supplied, installed, performed, or otherwise used by the Service Provider as required by the Contract.

(j) "**Statement of Work**" or "**SOW**" means a detailed description of the Services to be performed by Service Provider, which SOW shall be attached to the Order.

3. AFFILIATES

Service Provider reserves the right to perform the Services under the Contract through any of its Affiliates. In such event, such work shall be treated as a separate Contract between Buyer and Affiliate, governed by these Terms and Conditions, with Affiliate taking the place of Service Provider for all purposes herein. Service Provider may direct Buyer to make payment directly to the Affiliate for such Services or may include the amounts due in respect of such Services in its own invoices.

4. ASSIGNMENT

The Contract shall not be assigned, in whole or in part, by either party without the written consent of the other party, which shall not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, Service Provider may assign the Contract, without consent, in whole or in part, for the purposes of corporate reconstruction, reorganization or analogous proceeding, or to: (a) any Affiliate; or (b) a third party in the event of a merger, recapitalization, conversion, consolidation, other business combination or sale of all or substantially all of the assets of Service Provider connected with the Contract to such third party.

5. SCOPE OF SERVICES

(a) **Services.** Service Provider shall perform the Services, in accordance with the requirements of the Contract, these Terms and Conditions, and the SOW.

(b) **Statement of Work.** The SOW shall be attached to the Contract and shall describe in detail the Services to be performed and how they will be delivered. Each SOW should contain, at a minimum, the following:

- (i) Background: A brief statement of the services to be performed and the location where the services will be performed;
- (ii) Scope of Services: A more detailed description of the services, including all technical, functional, or design specifications to which the deliverables must conform. The Scope of Services can reference a technical resource, such as a manual or code, but the reference must be detailed and not generic;
- (iii) Material and Equipment: A listing of material and equipment that will be provided by Buyer and material and equipment that will be provided by Service Provider;
- (iv) Fees and Expenses: Specific information concerning fees and expenses to be paid to Service Provider including hourly rates, allowed expense reimbursements, fee schedules or fee installments; and
- (v) Deliverables/Schedule: Detailed list of all expected deliverables as well as a timetable for each phase of the project.

(c) **Time.** Service Provider shall perform the Services in the time frames outlined in the SOW. Service Provider shall notify Buyer if all or any portion of the Services will not be or are not likely to be completed by the date of Completion and other progress dates and milestones required by the SOW.

(d) **Change Orders.** In the event Buyer requires a change to the Services or any terms or conditions of this Contract, the Parties shall mutually agree to the requirements, cost, schedule, and schedule impacts, if any, prior to implementation of such changes.

6. Fees and Pricing

(a) **Fees:** Service Provider's fees for the Services under the Contract will be invoiced monthly on a time and material basis pursuant to the specifications set forth in the SOW.

(b) **Expenses:** Service Provider will also invoice Buyer for any expenses incurred by Service Provider and its Personnel while providing the Services. Expenses will be regularly tracked and will be supported by written receipts which will be provided with each monthly invoice.

(c) **Invoices:** Service Provider shall invoice Buyer once per month based on the actual number of hours each resource has worked plus expenses.

(d) **Payment:** Payment shall be due and payable thirty (30) days from date of invoice. No discounts are allowed. Payment shall not be withheld on account of any claim by Buyer against Service Provider. If Buyer disputes any portion of an invoice, Buyer shall pay the undisputed portion when due, and the Parties shall resolve the disputed portion in accordance with Section 15 (Governing Law; Disputes). Non-payment or delay in payment by Buyer shall be considered a breach of the Contract. Service Provider, among other remedies, shall have the legal right, without being in breach, either to cancel the Contract or to stop or suspend the delivery of Services in the event that Buyer fails to pay for any invoice when payment becomes due, or is otherwise in breach of the Contract. Late payments shall bear interest at three percent (3%) per annum over the then-current Prime Rate, as published by the Wall Street Journal.

(e) **Currency:** Unless specifically otherwise agreed in writing by Buyer and Service Provider, all payments are to be made in United States Dollars (USD\$). If made by check, the check must be drawn on a U.S. Bank. All banking charges, if any, are to be pre-paid by Buyer. No payment shall be deemed to have been received until Service Provider receives readily available funds.

(f) **No Withholding or Setoff:** Buyer shall not, and acknowledges that it will have no right, under the Contract, any other agreement, document or law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Service Provider or any of its Affiliates, whether under the Contract or otherwise, against any other amount owed (or to become due and owing) to it by Service Provider or its Affiliates, whether relating to Service Provider's or its Affiliates' breach or non-performance of this Agreement or any other agreement between Buyer or any of its Affiliates, and Service Provider or any of its Affiliates, or otherwise.

7. SERVICE PROVIDER REPRESENTATIONS/WARRANTIES

(a) Service Provider represents and warrants that:

- (i) the Services shall be performed in a professional, good, and workmanlike manner in accordance with law, and the Contract;
- (ii) Service Provider will supply the Services using Personnel of required skill, experience, licenses, and qualifications;
- (iii) the Service Provider has obtained or will obtain, and will maintain all required permits, licenses, and authorizations necessary to the supply of the Services; and
- (iv) the Services shall be performed in accordance with generally recognized industry standards in Service Provider's field.

(b) THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE SOLE WARRANTIES MADE BY SERVICE PROVIDER WITH REGARD TO THE SERVICES. SERVICE PROVIDER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS, OR IMPLIED, THAT MIGHT OTHERWISE SUBSIST IN FAVOR OF BUYER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, DESIGN, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM COURSE OF DEALING OR USAGE IN TRADE. THIS SECTION 7 CONSTITUTES BUYER'S SOLE REMEDY AND SERVICE PROVIDER'S SOLE LIABILITY FOR BREACH OF WARRANTY.

8. CANCELLATION/TERMINATION

(a) Except as specifically set forth otherwise in these Terms and Conditions, in the event that either party materially breaches any of the terms, conditions, obligations, undertakings, covenants, or liabilities set forth herein, the other party shall give the defaulting party written notice of such breach. If the breaching party does not diligently commence to remedy such breach within thirty (30) days following receipt of written notice thereof, the party giving notice may cancel the Contract by providing the breaching party with a written notice of cancellation. Failure to pay any sums when due is a material breach of these terms and conditions.

(b) Either party may cancel the Contract by providing written notice to the other party in the event the other party becomes insolvent, unable to meet its debts as they become due, files a petition for bankruptcy under any chapter of the bankruptcy laws in the country of Buyer or Service Provider as applicable or goes or is put into liquidation.

(c) The Contract may be canceled for Buyer's convenience only if Buyer is obtaining the Services to fulfill a prime contract with a U.S. Government customer, and such customer has terminated all or the portion of such prime contract that corresponds to the Services being sold pursuant to this Contract for its convenience. In such an event:

- (i) Buyer may cancel the portion of the Contract that corresponds to the portion of its prime contract that has been terminated by providing written notice thereof.
- (ii) With regard to the terminated portion of the Contract, Buyer shall be liable for the total cost of all work in process, all materials purchased which were necessary for the performance of the Services, including long lead time and/or bulk material, and any other commitment made by, or cost incurred by, Service Provider for the specific purpose of performing the Contract, plus a reasonable profit. The terms provided to Service Provider by Buyer for any cancellation of the Contract for Buyer's convenience shall be at least as favorable to Service Provider as the terms upon which the corresponding portion of Buyer's prime contract was terminated.

(d) Cancellation of the Contract shall not relieve either party from any obligations under the Contract or these Terms and Conditions that have accrued prior to such cancellation. Buyer agrees that for any cancellation or termination of the Contract, it will provide payments to Service Provider for all Services already performed and not paid for, for any non-recurring engineering already performed, and for other costs incurred by Service Provider for the performance of the Contract that cannot be mitigated. Cancellation by Buyer of the Contract pursuant to this Section 8 shall be Buyer's sole and exclusive remedy for any breach by Service Provider.

9. CONFIDENTIAL INFORMATION

(a) The provisions of this Section 9 regarding Confidential Information shall supersede the terms of any separate, written confidentiality agreement between the Parties.

(b) Notwithstanding the above, the restrictions of this section shall not apply to information that:

- (i) was independently developed by Buyer without any use of Confidential Information;

- (ii) becomes known to Buyer, without restriction, from a third party without breach of these Terms and Conditions and who had a right to disclose it;
 - (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of Buyer; or
 - (iv) was rightfully known to Buyer, without restriction, at the time of disclosure.
- (c) Except as otherwise specifically authorized herein, Buyer shall:
- (i) Retain in strict confidence all Confidential Information;
 - (ii) Use Confidential Information solely in furtherance of Buyer's rights and obligations under the Contract and these Terms and Conditions; and
 - (iii) Not disclose any Confidential Information to any third party other than those of Buyer's Affiliates, employees, agents, or consultants that have a bona fide need to know such Confidential Information in order to facilitate Buyer's performance hereunder.
- (d) If any Confidential Information in Buyer's possession is required to be disclosed by law, whether pursuant to any statute, rule, or regulation of any federal, state, or local governmental agency or any order of any federal, state, or local administrative body or court, Buyer shall:
- (i) immediately notify Service Provider of such required disclosure; and
 - (ii) provide Service Provider with the opportunity to contest or seek to limit such required disclosure, including, without limitation, using commercially reasonable efforts to aid Service Provider in achieving same.
- (e) All Confidential Information disclosed hereunder shall remain the property of Service Provider.
- (f) Buyer shall protect Confidential Information from disclosure to third Parties with at least the same degree of care with which Buyer guards its own confidential information, but in no event with less than reasonable care.
- (g) Upon thirty (30) days' written notice or the cancellation of the Contract for any reason, and at Service Provider's option, all Confidential Information, and any copies thereof, in whatever form and wherever stored, then in the possession or control of Buyer shall be destroyed or promptly returned to Service Provider, and Buyer shall certify such return or destruction.

10. CORRUPT PRACTICES

- (a) Each Party represents, warrants, and covenants to the other Party that the representing Party and their respective directors, officers, employees, agents, and any other persons acting on behalf of the representing Party directly or indirectly, shall not, with regard to any aspect of representing Party's performance under the Contract or these Terms and Conditions:
- (i) violate any provisions of the Foreign Corrupt Practices Acts of the United States or similar statute in the United Kingdom (the "**Principal ABAC Statutes**");
 - (ii) violate any applicable anti-bribery or anti-corruption law or regulation enacted in any jurisdiction, whether in connection with or arising from the OECD Convention Combating Bribery of Foreign Public Officials in International Business Transactions or otherwise; or
 - (iii) make, or offer to make, promise to make, or authorize the payment of or giving of, directly or indirectly, any bribe, rebate, payoff, influence payment, facilitation payment, kickback or other unlawful payment or gift of money, or anything of value prohibited under any applicable law or regulation (any such payment, a "**Prohibited Payment**"). The representing Party further agrees not to make or authorize the making of any gift or payment to any third person if the representing Party knows or has reason to suspect that all or any portions of such gift or payment will be used for any Prohibited Payment.

(b) Unless the Buyer is a government entity, the Buyer further represents and warrants that neither it or any of its owners or any of its affiliates nor any of its or their directors, officers, employees, agents or representatives:

(i) is a government official; or

(ii) has been subject to any investigation by any governmental agency with regard to any Prohibited Payment.

(c) Buyer understands the provisions of any relevant laws in the jurisdiction in which it will be receiving Services and in the place of incorporation of Service Provider relating to the prevention of corruption and agrees to comply with them. Buyer hereby represents and warrants that it is familiar with the terms and provisions of the Principal ABAC Statutes and the purposes of them, and particularly that it is familiar with the Principal ABAC Statutes' prohibition on the payment or giving of anything of value, either directly or indirectly, to any foreign government, any official of a foreign government, any foreign political party, or any candidate for political office for the purpose of influencing any act or decision of such foreign government, influencing any act or decision of such a person in his or her official capacity, or inducing such person to use his or her influence with a foreign government to assist in obtaining or retaining business for or with, or directing business to, any person.

(d) Buyer agrees to report promptly any breach or possible breach of the law of which it may become aware (including any Prohibited Payment), whether enacted pursuant to the OECD Convention on Combating Bribery of Foreign Public officials in International Business Transactions or otherwise concerning bribery and corrupt practices (including, but not limited to, where relevant, the Principal ABAC Statutes), with regard to any aspect of Buyer's performance under the Contract or these Terms and Conditions or Buyer's use of the Services, to the Service Provider.

(e) Buyer acknowledges and agrees that no employee or officer of Service Provider shall have any authority to give any direction, written or oral, with respect to the making of any commitment by Buyer to any third party in contravention of the above representations, warranties, and covenants.

11. DATA AND INTELLECTUAL PROPERTY

(a) Any Intellectual Property or other technical data or information which Service Provider discloses to Buyer is and shall remain proprietary to Service Provider and shall be Confidential Information hereunder.

(b) Except as specifically set forth otherwise herein, neither the performance of the Contract nor anything in these Terms and Conditions shall grant either party any right, title, or license of any kind in any of the other party's Intellectual Property or any developments or modifications thereto. Any developments or modifications made to Service Provider's Intellectual Property, whether by Service Provider in the performance of the Contract or by Buyer or its customer, shall vest exclusively in Service Provider.

(c) Buyer shall use Service Provider's Intellectual Property solely for the purposes of the provision of Services under this Contract and only in accordance with this Contract and the instruction of Service Provider. Buyer shall not cause or permit the reverse engineering, disassembly, or decompilation of the products or any tangible objects or software that embody Service Provider's Intellectual Property, nor develop second sources to manufacture any component or product embodying or based on Service Provider's Intellectual Property.

(d) Unless otherwise expressly set forth in writing by Service Provider, non-recurring engineering charges and all charges of a similar nature which may be billed to Buyer for work performed by Service Provider in connection with the Contract (including, but not limited to, tooling charges, partial preparation charges, drawing or design charges, set-up or fit-up charges, and the like) represent only part of the cost thereof incurred by Service Provider. Buyer shall not acquire any right, title, or interest in, or license (either express or implied) to, any drawings, designs, or Intellectual Property, or any tooling or other tangible property, by virtue of any such charges.

12. PERSONAL DATA PROTECTION

As used herein, "**personal data**" refers to any information that relates to an identified or identifiable natural person, as defined by applicable privacy laws and regulations. This may include, but is not limited to, names, contact information, government-issued identifiers, financial information, and any other data that, alone or in combination with other information, can be used to identify an individual. Seller and Buyer acknowledge that the exchange of personal data between the parties is solely for the purpose of executing and performing the terms of this Contract. The parties agree that no personal data beyond what is necessary shall be shared unless explicitly required by applicable laws or regulations, including the California Consumer Privacy Act of 2020, as amended (CCPA) or other relevant privacy laws. Neither party will provide personal data of the other to any third party without the consent of the other party. In the event that either party inadvertently provides personal data beyond what is necessary, the receiving party shall promptly notify the sending party and take immediate steps to destroy or securely dispose of the excess personal data. The receiving party shall maintain appropriate security measures to prevent unauthorized access, use, or disclosure of the personal data. Both parties agree to comply with all applicable data protection laws and regulations, including but not limited to the General Data Protection Regulation (GDPR), the California Consumer Privacy Act (CCPA), and the California Privacy Rights Act (CPRA), as well as any other applicable national, regional, or industry-specific data protection laws. The Party providing personal data remains the Data Controller for all legal purposes.

13. FORCE MAJEURE

In the event of the occurrence of any strikes, labor disputes, embargos, epidemics, quarantine restrictions, natural disasters, unusually severe weather, floods, earthquakes, fire, explosions, power surges, acts of God or of the public enemy, war, civil unrest, acts or threats of terrorism, delays caused by Government priorities or by regulations, delays in transportation or delivery, defaults of suppliers or sub-contractors (where such default itself is caused by a circumstances beyond its reasonable control), or other Event of Force Majeure, Service Provider shall be released from performing its contractual duties under the Contract to the extent that such Force Majeure is partially or wholly preventing Service Provider from performing its contractual duties as performed prior to the Event of Force Majeure or as performed in the normal course of business. In such an event, Service Provider shall inform Buyer about the nature of the Event of Force Majeure and the expected duration of the incident. In no event shall Service Provider be responsible or liable for any default, re-procurement costs, or any claim in connection with the non-performance or late performance of its contractual duties as a result of the Event of Force Majeure. If the Event of Force Majeure event lasts longer than one hundred eighty (180) days, Service Provider shall have the right to cancel the Contract and recover costs in accordance with Section 8 (Cancellation/Termination).

14. FOREIGN OFFSETS

No foreign offsets shall be provided by Service Provider under the Contract. All offset credits shall be solely for the account of Service Provider.

15. GOVERNING LAW; DISPUTES

(a) Buyer and Service Provider shall attempt in good faith to resolve any dispute or disagreement ("**Dispute**") arising from the Contract promptly by negotiation between executive management of each party who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of the Contract. If any Dispute is not settled to the mutual satisfaction of Buyer and Service Provider, then it shall be settled at the option of either party as set forth in Section 15(b).

(b) The Contract and these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of New York, United States without regard to the principles of conflict of law thereof, nor the rules of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The Parties consent to the jurisdiction of the state and federal courts situated in New York, New York. **EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND**

APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT

(c) Nothing in this Section 15 (Governing Law; Disputes) shall prevent Service Provider from seeking and obtaining injunctive and other equitable remedies to prevent or restrain any breach or threatened breach of Sections 9 (Confidential Information), 11 (Data and Intellectual Property Rights), or 17 (Insurance; Indemnity) of these Terms and Conditions. Buyer agrees and acknowledges that in the event of any such breach or threatened breach, Service Provider will suffer irreparable damage for which there is no adequate remedy at law, and thus Service Provider shall be entitled to the injunctive and other equitable remedies set forth above, without the necessity of posting any bond.

16. INDEPENDENT CONTRACTOR

The Parties have entered into the Contract solely as independent contractors, and nothing contained herein shall be construed as giving rise to a joint venture, partnership, or other form of business organization. Neither party shall bind or commit the other party, contractually or otherwise.

17. INSURANCE; INDEMNITY

(a) Buyer shall maintain for the performance of the Contract workers' compensation, commercial general liability (CGL), automobile liability (AL), third party bodily injury and property damage liability (including product liability) insurance with minimum limits equal to the greater of: (i) Five Million Dollars (US\$5,000,000.00) or: (ii) the full value of any property at risk. Buyer shall provide Service Provider thirty (30) days' advance written notice prior to the effective date of any cancellation or change in the term or coverage of required insurance, provided however such notice shall not relieve Buyer of its obligations to maintain the required insurance. If requested, Buyer shall provide Service Provider with a "Certificate of Insurance" evidencing Buyer's compliance with these requirements.

(b) Subject to the terms and conditions set forth herein, Buyer (as "**Indemnifying Party**") shall indemnify, hold harmless, and defend Service Provider ("**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, costs, or expenses of whatever kind including reasonable professional and attorneys' fees and expenses, that are incurred by Indemnified Party or awarded against Indemnified Party in any action (collectively, "**Loss(es)**") arising out of any third-party claim alleging:

- (i) material breach or non-fulfillment of any representation, warranty, or covenant set forth in the Contract or these Terms and Conditions by Indemnifying Party; or
- (ii) any negligent or more culpable act or omission of Indemnifying Party, including any reckless or willful misconduct, in connection with the performance of its obligations under the Contract or these Terms and Conditions; or
- (iii) any bodily injury, death of a natural person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Indemnifying Party including any reckless or willful misconduct; or
- (iv) any failure by Indemnifying Party to materially comply with any applicable law in the performance of its obligations under this Contract or these Terms and Conditions.

18. LIMITATION OF LIABILITY

(A) NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY ANYWHERE CONTAINED OR REFERENCED IN THE CONTRACT, IT IS THE INTENTION OF BOTH PARTIES TO ESTABLISH AN

OVERALL CUMULATIVE AGGREGATE LIMITATION OF LIABILITY CAP LIMITING SERVICE PROVIDER'S LIABILITY FOR ALL COSTS, EXPENSES, FINES, PENALTIES, DAMAGES, INDEMNIFICATIONS AND THE LIKE, HOWEVER ARISING AND RELATED TO THE CONTRACT OR THESE TERMS AND CONDITIONS, AND SUCH OVERALL CAP SHALL BE AS STATED WITHIN THIS LIMITATION OF LIABILITY CLAUSE.

(B) EXCEPT AS SET FORTH IN SECTION 18(C), SERVICE PROVIDER'S AGGREGATE CUMULATIVE TOTAL LIABILITY TO BUYER UNDER THE CONTRACT AND THESE TERMS AND CONDITIONS, WHICH IS BUYER'S EXCLUSIVE REMEDY AND IS IN FULL SATISFACTION OF ALL LIABILITY, WHETHER FOR BREACH OF WARRANTY OR CONTRACT, INDEMNIFICATION, TORT (INCLUDING NEGLIGENCE), RE-PROCUREMENT, STRICT LIABILITY, OR OTHERWISE, WHETHER ARISING AT LAW, IN EQUITY, OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO ONE HUNDRED PERCENT (100%) OF THE TOTAL AMOUNT PAID BY BUYER TO SERVICE PROVIDER UNDER THE ORDER WHICH GAVE RISE TO THE LIABILITY. SERVICE PROVIDER'S LIABILITY SHALL BE FURTHER RESTRICTED TO ITS ACTS OR OMISSIONS WHICH ARE BOTH ITS FAULT AND WHICH DIRECTLY CAUSED THE LOSS. BUYER SHALL HAVE THE OBLIGATION TO MITIGATE ALL DAMAGES. FURTHER, IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE FOR ANY LOSS OF DIRECT OR INDIRECT PROFITS OR REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF USE, INTERRUPTIONS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF BUSINESS, ECONOMIC LOSS, DOWNTIME, OR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, LIQUIDATED, OR CONSEQUENTIAL DAMAGES, EVEN IF BUYER WAS MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. NO ACTION SHALL BE BROUGHT FOR ANY BREACH BY SERVICE PROVIDER MORE THAN ONE (1) YEAR AFTER SUCH CAUSE OF ACTION HAS ACCRUED.

(C) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, SERVICE PROVIDER DOES NOT EXCLUDE OR LIMIT ITS LIABILITY (IF ANY) TO BUYER FOR:

- (I) DEATH OR PERSONAL INJURY RESULTING FROM SERVICE PROVIDER'S NEGLIGENCE;**
- (II) ANY MATTER FOR WHICH IT WOULD BE ILLEGAL FOR SERVICE PROVIDER TO EXCLUDE OR LIMIT OR TO ATTEMPT TO EXCLUDE OR LIMIT ITS LIABILITY; OR**
- (III) FRAUD.**

(D) THE PARTIES SPECIFICALLY AGREE THAT THE ARRANGEMENT SET FORTH HEREIN:

- (I) IS AN INTENTIONAL ALLOCATION OF RISK;**
- (II) IS INTENDED TO OVERRIDE ANY IMPLIED WARRANTIES, CONDITIONS, OR LIABILITIES, TO THE FULLEST EXTENT ALLOWABLE BY LAW; AND**
- (III) IS A MATERIAL PART OF SERVICE PROVIDER'S AGREEMENT TO THE CONTRACT, WITHOUT WHICH THE PRICES AND FEES PAID BY BUYER WOULD BE SIGNIFICANTLY GREATER.**

19. PUBLICITY

Notwithstanding any clauses to the contrary, Service Provider reserves the right to publish, distribute, or use any information about the existence of this Contract, its value, the products supplied, the platform, or program, or use the Buyer company name (or the name of any division, affiliate or subsidiary thereof), logo, trademark, service mark, or trade dress for the purpose of advertising, making a news release, creating a website content or for service endorsement without the need of obtaining Buyer's approval. Buyer agrees that should Service Provider choose to submit a draft release of such information, Buyer will provide any comments it would like to have incorporated into the release no later than 10 business days of receipt of the draft. However, Service Provider in its sole discretion will determine the contents and the timing of the final release.

20. SEVERABILITY; WAIVER; OTHER MATTERS

(a) If any term or provision of these Terms and Conditions should be found invalid or unenforceable as written, then such term or provision shall be given force and effect to the fullest extent that it is valid and enforceable, and the remainder of these Terms and Conditions shall be construed as if the invalid or unenforceable portion of such term or provision was not contained herein (but only to the extent that the result of such construal is in accordance with the Parties' intent).

(b) Failure by Service Provider to enforce any of the provisions of the Contract, these Terms and Conditions, or any laws shall not constitute a waiver of the requirements of such provisions or laws, or as a waiver of the right of Service Provider thereafter to enforce such provisions or laws. A waiver by Service Provider of any provision of the Contract, these Terms and Conditions, or laws shall not be deemed to be a continuing waiver but shall apply solely to the instance to which the waiver is directed.

(c) Any notice or demand in connection with the Contract shall be in writing and may be delivered by hand, registered mail, facsimile (provided a transmission receipt is retained), or legally binding registered e-mail, addressed to the recipient at its registered office and marked for the attention of the General Counsel (or such other address or person as specified on the Contract or which the recipient has designated in writing to the sender in accordance with this clause). The notice, demand or communication will be deemed to have been duly served:

(i) if delivered by hand, at the time of delivery;

(ii) if delivered by registered mail or e-mail, forty-eight (48) hours after being posted (or in the case of registered airmail ten (10) days after being posted); or

(iii) if delivered by facsimile, at the time received by the other party; provided, that, in the case of delivery by hand or by facsimile, if such delivery occurs either after 4:00 pm on a business day or on a day other than a business day, service will be deemed to have occurred at 9:00 am on the next following business day (such times being local time at the address of the recipient).

(d) The headings contained in these Terms and Conditions are for convenience only and shall not affect the interpretation of these Terms and Conditions. References to sections are, unless the context requires otherwise, references to sections of these Terms and Conditions.

21. SURVIVABILITY

If the Contract expires, is completed, or is terminated, the Parties shall not be relieved of those obligations contained in the following clauses:

Section 6 (Fees and Pricing), Section 7 (Service Provider Representations/Warranties), Section 9 (Confidential Information), Section 10 (Corrupt Practices), Section 11 (Data and Intellectual Property Rights), Section 12 (Personal Data Protection), Section 13 (Force Majeure), Section 15 (Governing Law; Disputes), Section 17 (Insurance; Indemnity), Section 18 (Limitation of Liability), Section 20 (Severability; Waiver; Other Matters), Section 22 (Taxes and Import Duties), Section 23 (Government Contracts), and Section 24 (Entire Agreement).

22. TAXES AND IMPORT DUTIES

Prices do not include any Federal, state, and local taxes, fees, or duties, and Buyer assumes all liabilities for same, other than taxes based upon Service Provider's net income, unless Buyer has furnished Service Provider with an exempt purchase or resale certificate.

23. GOVERNMENT CONTRACTS

In the event that the Services provided by Service Provider hereunder are for ultimate sale to the United States Government and purchased as "Commercial Items" (48 C.F.R. §52.202-1) under the Federal Acquisition Regulation ("FAR"), then Service Provider agrees to comply with FAR 52.212-5, "Contract Terms

and Conditions Required to Implement Statutes or Executive Orders-Commercial Items” as applicable. All other Government flow downs shall be negotiated by the Parties and agreed to in writing.

24. ENTIRE AGREEMENT

The Contract, including the SOW, and these Terms and Conditions constitute the entire agreement between the Parties and supersedes and replaces any and all prior agreements, undertakings, and commitments between the Parties with respect to the Services. Except for a valid amendment as described in Section 24, any terms different from or in addition to the terms of the Contract and these Terms and Conditions, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance, or other written correspondence, irrespective of the timing, shall not form a part of the Contract and these Terms and Conditions.

25. AMENDMENTS

No amendment to the Contract and these Terms and Conditions shall be binding on the Parties unless made in writing and signed by the authorized representatives of both Parties.