

**COBHAM ADVANCED ELECTRONIC SOLUTIONS (CAES)
TERMS AND CONDITIONS OF SALE
July 2016**

1. ACCEPTANCE OF ORDER/TERMS

- (a) Except as otherwise mutually agreed to in writing by both the party purchasing goods or services hereunder (“Buyer”) and Cobham Advanced Electronic Solutions (“Seller”), the following terms and conditions (these “Terms and Conditions”) set forth all of the terms of the purchase and sale of Products and Services, each as hereinafter defined, between Seller and Buyer (the “Contract”), set forth the exclusive remedies of the parties, and supersede all prior agreements, offers, representations and negotiations between the parties to the extent that they conflict or are in addition to the terms contained herein, this being intended as a final expression and complete and exclusive statement of the terms of the Contract. Acceptance by Seller of the Contract is expressly made conditional on Buyer's assent to these Terms and Conditions, to the exclusion of all other terms and conditions appearing on any purchase order or in any other document provided by Buyer to Seller in connection with the Contract. Acceptance by Buyer of the products (the “Products”) or services (the “Services”) described on Seller's acknowledgment of the Contract, or, if no acknowledgment is sent by Seller, delivered to Buyer or performed by Seller shall constitute acceptance of the terms hereof. These Terms and Conditions may not be varied except as specifically set forth in a written agreement with legal consideration subsequently signed by an officer of Seller.
- (b) If the Contract includes the licensure of any software, such licensure shall be governed by the terms of the software license set forth in Attachment B (the “Software License”). The terms of the Software License shall govern all rights regarding software between the parties, and shall be in addition to these Terms and Conditions, which shall apply to the software as well as the Products and the Services, even though not specified, unless the context requires otherwise. In the event of any conflict or inconsistency between the terms of the Software License and any term or provision of these Terms and Conditions, the terms that are most protective of Seller's interests shall control.

2. AFFILIATES

- (a) “Affiliate” shall mean an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Seller. 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) Seller reserves the right to perform work 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 Seller for all purposes herein. Seller may direct Buyer to make payment directly to the Affiliate for such work, or may include the amounts due in respect of such work in its own invoices.

3. 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 above, Seller 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 Seller connected with the Contract to such third party.

4. CANCELLATION

- (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 Seller as applicable, enters into any arrangement or composition with creditors, or goes or is put into liquidation.
- (c) The Contract may only be canceled for Buyer's convenience if Buyer is obtaining the Products or the Services to fulfill a prime contract with a U.S. Government customer, and such customer has terminated all or a portion of such prime 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. For Products, such notice shall be provided at least thirty (30) days prior to the acknowledged ship date.
 - (ii) With regard to the terminated portion of the Contract, Buyer shall be liable for the sales price of all finished Products and all Services performed, plus a reasonable profit on the unperformed portion and the total cost of all work in process, all raw materials purchased for the Products or the Services, including long lead time and/or bulk material, and any other commitment made by, or cost incurred by, Seller for the specific purpose of performing the Contract. The terms provided to Seller by Buyer for any cancellation of the Contract for Buyer's convenience shall be at least as favorable to Seller 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 Seller for all Products and Services already supplied and not

paid for, for any non-recurring engineering already performed, and for other costs incurred by Seller for the performance of the Contract (including, without limitation, raw materials for the Products) that cannot be mitigated. Cancellation by Buyer of the Contract pursuant to this Article 4 shall be Buyer's sole and exclusive remedy for any breach by Seller.

5. CONFIDENTIAL INFORMATION

- (a) The provisions of this Article 5 regarding Confidential Information (as defined herein) shall be in addition to the terms of any separate, written confidentiality agreement between the parties. In the event of any conflict or inconsistency between the provisions of this Article 5 and the terms of any such separate agreement, the terms most protective of Seller's Confidential Information shall prevail.
- (b) As used herein, "Confidential Information" means all information disclosed by or on behalf of Seller 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 products or services manufactured, marketed, provided or obtained by Seller or concerning Seller's relationships with actual or potential clients, customers or suppliers which, if disclosed, will be liable to cause harm to Seller. 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 Seller of such required disclosure; and (ii) provide Seller with the opportunity to contest or seek to limit such required disclosure, including, without limitation, using commercially reasonable efforts to aid Seller in achieving same.

- (e) All Confidential Information disclosed hereunder shall remain the property of Seller.
- (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 Seller'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 Seller, and Buyer shall certify such return or destruction.

6. CORRUPT PRACTICES

- (a) Buyer represents, warrants and covenants that Buyer, its affiliates, and their respective directors, officers, employees, agents, and any other persons associated with or acting on behalf of the Buyer directly or indirectly, shall not, with regard to any aspect of Buyer's performance under the Contract or these Terms and Conditions or the use or re-sale of the Products or Services: (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"). Buyer further agrees not to make or authorize the making of any gift or payment to any third person if Buyer 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 Buyer is a government entity, Buyer further represents and warrants that neither Buyer 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 the Products and Services and in the place of incorporation of Seller 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 or re-sale of the Products or Services, to the Seller.
- (e) Buyer acknowledges and agrees that no employee or officer of Seller 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.

7. COUNTERFEIT PARTS

- (a) Seller shall only purchase material to be incorporated into its Products to be delivered to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Seller shall maintain documentation until completion of the Contract that authenticates traceability of the affected parts to the applicable OCM/OEM. Seller shall promptly notify Buyer with the pertinent facts if Seller becomes aware or suspects that Products it delivered contain counterfeit parts.
- (b) In the event that Products delivered under the Contract contain materials which were not procured in accordance with Section 7(a) and which constitute or include counterfeit parts, Seller shall, during the Product Warranty Period (as defined in Section 29(a)(i)) (Warranty), at its expense, promptly replace such counterfeit parts with genuine parts conforming to the requirements of the Contract. Replacement of any counterfeit parts shall be handled in accordance with the Product warranty terms set forth at Section 29(a) (Warranty), and shall be Buyer's sole and exclusive remedy regarding such parts.

8. DATA AND INTELLECTUAL PROPERTY RIGHTS

- (a) Any technical data or information which Seller discloses to Buyer is and shall remain proprietary to Seller and shall be Confidential Information hereunder (as defined in Section 5(b) (Confidential Information)).
- (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 existing or future Intellectual Property Rights (as defined below) or any developments or modifications thereto. Any developments or modifications made to Seller's Intellectual Property Rights, whether by Seller in the performance of the Contract or by Buyer or its customer, shall vest exclusively in Seller. As used herein, "Intellectual Property Rights" 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.

- (c) Seller hereby grants Buyer a limited right and license to Seller's Intellectual Property Rights solely for the purpose of using the Products or Services, or re-selling the Products, in Buyer's ordinary course of business. Buyer shall not cause or permit the reverse engineering, disassembly, or decompilation of the Products or any tangible objects or software that embody Seller's Intellectual Property Rights, nor develop second sources to manufacture any component or product embodying or based on Seller's Intellectual Property Rights. Buyer shall not allow any trademarks of Seller or other words or marks applied to the Products to be obliterated, obscured, or omitted nor add any additional marks or words thereto.
- (d) Unless otherwise expressly set forth in writing by Seller, non-recurring engineering charges and all charges of a similar nature which may be billed to Buyer for work performed by Seller 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 Seller. Buyer shall not acquire any right, title or interest in, or license (either express or implied) to, any drawings, designs, or Intellectual Property Rights, or any tooling or other tangible property, by virtue of any such charges.

9. DELIVERY

- (a) Unless otherwise explicitly agreed upon in writing, Seller's delivery terms are FCA-Origin per the latest revision of Incoterms, at which time transfer of title and risk of loss to Buyer shall occur. Buyer hereby grants Seller a purchase money security interest in the Products and any proceeds thereof to secure Buyer's obligation to pay all sums due with respect to the Products. Such security interest shall terminate upon receipt of payment in full, in readily available funds, of such sums by Seller. Buyer shall execute such further documents, financing statements and other instruments as may be requested by Seller to perfect such security interest.
- (b) Seller will use reasonable efforts to deliver the Products or Services within the time(s) agreed in the Contract, or, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those efforts, Seller is unable to achieve delivery on the specified date, Seller shall not be deemed to be in breach of the Contract unless and until Buyer has given Seller one hundred and twenty (120) days' written notice requiring the delivery to be made and Seller has not completed the delivery in that period, at which time Buyer may cancel the Contract immediately, in accordance with Article 4 (Cancellation).
- (c) If shipment of any Products is delayed at Buyer's request, delivery shall still be deemed to have occurred in accordance with Section 9(a), and Seller may invoice Buyer for such Products at such time. Seller may, at its election, store or arrange for storage of such Products until shipment to Buyer and charge Buyer for all related costs and expenses (including, without limitation, storage and insurance), and acting in such capacity shall have all rights as are available to parties offering commercial storage services under applicable law.
- (d) Rescheduling of shipments shall be by mutual agreement. Notwithstanding the foregoing, Buyer acknowledges that Seller's extensive line of products requires close coordination of Buyer's requirements with Seller's production schedules to avoid possible delays in shipment. Accordingly, Seller reserves the right to ship in advance

of the Seller-acknowledged delivery date unless Buyer is established as a “Just in Time” (JIT) account.

- (e) Unless otherwise agreed in writing, Seller may ship all Products to be furnished, or perform all Services to be provided, at one time, or in separate installments, from time to time, within the specified shipment or delivery period. Seller may invoice Buyer for each installment separately. Claims that Seller did not ship the total quantity of Products specified in the Contract will be researched and reconciled by Seller with all due diligence.

10. EXECUTIVE ORDER 11246

In connection with performance of work hereunder, Seller agrees to comply with all provisions, including specifically paragraphs (1) through (7), Sec. 202, of Executive Contract No. 11246 of September 24, 1965, as amended, and the rules, regulations and orders pertaining thereto.

11. EXPORT CONTROL

- (a) Buyer acknowledges and agrees that the Products and Services may be subject to the export or import laws and regulations of: (i) the United States of America, including, without limitation, the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. Parts 120-130), the U.S. Export Administration Regulations (“EAR”) (15 C.F.R. Parts 730-774), and the economic and trade sanctions administered by the U.S. Department of Treasury Office of Foreign Assets Control; (ii) the European Union and its member states, including, without limitation, Council Regulation (EC) No. 1334/2000; and (iii) other countries (collectively, “Export/Import Laws”).
- (b) Buyer agrees to comply strictly with all Export/Import Laws applicable to the Products and Services. Buyer shall promptly notify Seller of any authorization requirements under Export/Import Laws that may apply to delivery of the Products or Services to Buyer. Buyer acknowledges and agrees that the Products and Services shall not be exported, re-exported, trans-shipped or otherwise transferred to Cuba, Iran, North Korea, Syria, Sudan, or any other countries for which the United States of America or the European Union maintains an embargo (collectively, “Embargoed Countries”), or a national or resident thereof, or to any person or entity on the U.S. Department of Treasury List of Specially Designated Nationals, the U.S. Department of Commerce Denied Parties or Entity List, or to any person on any comparable list maintained by the European Union or its member states (collectively, “Denied or Restricted Parties”). The lists of Embargoed Countries and Denied or Restricted Parties are subject to change without notice. Buyer represents and warrants that neither it nor any of its customers or their users is located in, a national or resident of, or under the control of an Embargoed Country or similarly Denied or Restricted Party. Buyer specifically shall obtain all required authorizations from the U.S. Government (or EU Government, as applicable) before transferring or otherwise disclosing technical data or technology (as those terms are defined in 22 C.F.R. § 120.10 and 15 C.F.R. § 722, respectively) to any Foreign Person (as defined in 22 C.F.R. § 120.16).
- (c) Acceptance of these Terms and Conditions certifies to Seller that Buyer is in compliance with 22 C.F.R. Part 120 as required and Buyer’s registration will remain valid during the terms of this agreement.

- (d) Buyer further certifies that:
- (i) Buyer understands its obligation to protect EAR- or ITAR-controlled Products and Services as data as necessary from unauthorized disclosure or access to foreign person employees or visitors.
 - (ii) In the performance of the Contract, Buyer understands its obligation to determine whether it will require the use of third-party subcontractors to access any technical data regarding the Products or Services. If required, Buyer is responsible for identifying and licensing any activity that requires export authorization from the Department of Commerce, Bureau of Industry and Security or the Department of State, Directorate of Defense Trade Controls.

12. FAIR LABOR STANDARDS ACT OF 1938

Seller represents that with respect to the production of the Products and/or the performance of the Services stated herein, it has fully complied with all of the applicable provisions of the Fair Labor Standards Act of 1938, as amended, including sections 6, 7, and 12, regulations under section 14, and all other applicable Administrative regulations.

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 events outside the reasonable control of Seller, as well as other force majeure cases commonly recognized under applicable law ("Force Majeure"), Seller shall be released from performing its contractual duties under the Contract to the extent that such Force Majeure is partially or wholly preventing Seller from performing its contractual duties as performed prior to the Force Majeure incident or as performed in the normal course of business. In such an event, Seller shall inform Buyer about the nature of the Force Majeure incident and the expected duration of the incident. In no event shall Seller be responsible or liable for any default, procurement costs, or any claim in connection with the non-performance or late performance of its contractual duties as a result of the Force Majeure event. In the event the Force Majeure event lasts longer than one hundred eighty (180) days, Seller shall have the right to cancel the Contract and recover costs in accordance with Section 4(d) (Cancellation).

14. FOREIGN OFFSETS

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

15. GOVERNING LAW; DISPUTES

- (a) Buyer and Seller 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 Seller, 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).
 - (i) Any action arising out of or pertaining to the Contract or these Terms and Conditions shall be referred to and finally resolved by arbitration under the AAA Arbitration Rules (for purposes of this Section 15(b), the “Rules”). The Rules are incorporated by reference herein, and capitalized terms that are not otherwise defined herein shall have the meaning given to them in the Rules. The number of arbitrators shall be three (the “Tribunal”). Buyer and Seller shall each nominate one arbitrator for appointment by the AAA Court. The two arbitrators so nominated shall jointly nominate the Chairman for appointment by the AAA Court. Any requirement in the Rules to take account of the nationality of a person considered for appointment as an arbitrator shall be dis-applied and a person may be nominated or appointed as an arbitrator (including as Chairman) regardless of his or her nationality. The seat, or legal place of arbitration, shall be New York, New York. The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by a certified English translation. Witnesses who are unable to speak English shall be permitted to give evidence through a translator. Unless Buyer and Seller agree to extend this period, the Tribunal will render its award in writing as soon as is reasonably practicable of the close of the hearing. In no event shall the Tribunal have the right or power to award punitive or exemplary damages. The jurisdiction of all State and federal courts in the State of New York is excluded, except for enforcement of judgment on any award of the Tribunal (which may occur in any court of competent jurisdiction).
 - (ii) If, following the time specified for service of the Statement of Case, the Statement of Defense, the Statement of Reply/Defense to Counterclaim and/or the Statement of Reply to Defense to Counterclaim, as applicable (the “Statements”), it appears to the Tribunal that there is or may be no real prospect of succeeding on any or all of the claims made in the Statements or of successfully defending any or all of the claims made in the Statements, the Tribunal may determine such claim(s) by a summary procedure if it considers that it is in the interests of justice to do so. In the event that a summary procedure is adopted, the Tribunal shall proceed to determine such claim(s) as soon as reasonably practicable. The Tribunal may call for further short written submissions in relation to such claim(s) and shall only hold an oral hearing to determine such claim(s) if it feels that it is necessary to do so. The Tribunal may decide to determine only certain claims advanced in the arbitration by the summary procedure.
 - (iii) Service of any Request for Arbitration made pursuant to this Section 15(b) shall be by written notice in accordance with Section 25(c). This Section 15(b) does not affect any other method of service allowed by law.

- (iv) Nothing in this Section 15(b) shall prevent Buyer or Seller from commencing any proceedings: (i) where reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions; or (ii) in the case of non-payment of an undisputed invoice.
- (c) Nothing in this Article 15 (Governing Law; Disputes) shall prevent Seller from seeking and obtaining injunctive and other equitable remedies to prevent or restrain any breach or threatened breach of Articles 5 (Confidential Information), 8 (Data and Intellectual Property Rights), or 18 (Insurance; Indemnity) of these Terms and Conditions. Buyer agrees and acknowledges that in the event of any such breach or threatened breach, Seller will suffer irreparable damage for which there is no adequate remedy at law, and thus Seller 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. INSPECTION AND ACCEPTANCE OF PRODUCTS

- (a) Buyer may, on a non-interference basis, inspect all Products at reasonable times and places at Seller's facility, including, when practicable, during manufacture and before shipment. Seller shall provide all reasonable information, facilities, and assistance necessary for safe and convenient inspection, provided that Seller may require Buyer or Buyer's representative to execute confidentiality agreements prior to performing such inspections. Buyer shall pay all costs arising from or relating to such inspections.
- (b) Final acceptance of Products shall not be delayed or refused for minor errors or omissions that do not materially affect use of the Products. If final inspection and acceptance does not occur at the time of shipment, it shall be conclusively presumed to have occurred within thirty (30) days of such shipment or upon Buyer's use of the Products, whichever occurs first.

18. 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 Seller 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 Seller with a "Certificate of Insurance" evidencing Buyer's compliance with these requirements.
- (b) Buyer agrees to indemnify, defend, and hold Seller harmless from and against all losses, damages, claims, costs, and expenses (including attorneys' fees) arising from or relating to: (i) any claims by Buyer's customers, end users or other third parties;

- (ii) death, personal injury, or property damage resulting from Buyer's acts or omissions or those of its employees, agents, or contractors; (iii) Seller's compliance with Buyer's instructions; or (iv) any act or omission of Buyer or its employees, agents, or contractors resulting in death, personal injury, or property damage while such Buyer parties are present at Seller's facility or while Seller is performing Services at Buyer's facility.
- (c) Buyer is solely responsible for the use of the Products and Services after delivery, and compliance with all laws applicable thereto.

19. INTELLECTUAL PROPERTY INDEMNIFICATION

- (a) Seller shall defend a claim made against Buyer by reason of an infringement or alleged infringement of an Intellectual Property Right of a third party arising solely from Buyer's use or sale of the Products, and shall pay any settlement or the reasonable costs and damages awarded against Buyer resulting therefrom, provided that:
 - (i) Buyer shall promptly notify Seller in writing of such claim;
 - (ii) Seller shall have the exclusive conduct of the defense of such claim and all negotiations for its settlement or compromise;
 - (iii) The liability claimed shall have arisen solely because of Seller's selection as to the design, composition or manufacture of the Products;
 - (iv) Buyer (at the reasonable expense of Seller) shall give Seller all reasonable assistance requested by Seller in the defense or settlement of such claim;
 - (v) Buyer shall not make any statements prejudicial against Seller's interests; and
 - (vi) Buyer shall mitigate its damages, if any.
- (b) In the event the use of the Products is enjoined, and in conjunction with the provisos above, Seller shall, at its option, either obtain for Buyer the right to continue using such Products, replace or modify such Products so that they are non-infringing, or grant Buyer a credit for the purchase price of such Products.
- (c) Seller shall not be liable to Buyer for an infringement or alleged infringement of an Intellectual Property Right of a third party to the extent that such infringement arises from or relates to:
 - (i) Use of the Products in combination with other goods or items not supplied by Seller;
 - (ii) Information, data or programs furnished by Buyer in the course of the design, manufacture, sale, or repair of the Products;
 - (iii) Actions taken by Seller at the request of Buyer;
 - (iv) Alteration of the Products other than by Seller or as authorized in writing by Seller;

- (v) Failure of Buyer to use or otherwise implement solutions provided by Seller in order to avoid such infringement, including, without limitation, replaced or modified parts of the Products;
 - (vi) Use of the Products in a manner for which they were not intended; or
 - (vii) Any Intellectual Property Right in which Buyer, its Affiliate(s), or the user of the Products has a direct or indirect controlling interest or where Buyer, its Affiliate(s), or the end user is an existing licensee of that Intellectual Property Right for the same use.
- (d) Seller shall not be liable to Buyer:
- (i) With respect to any infringement or alleged infringement of an Intellectual Property Right of a third party that results from the use of the Products in a country other than the country in which the Products are manufactured or delivered by Seller; or
 - (ii) To the extent that Federal Acquisition Regulation clause 52.227-1 “Authorization and Consent” applies to Buyer’s prime contract with a U.S. Government customer for infringement of a U.S. patent, such that Buyer and its customers are not subject to actions for claims, damages, losses, costs, or expenses, including reasonable attorneys’ fees.
- (e) This Article 19 sets forth Seller’s entire liability to Buyer, and Buyer’s exclusive remedy, with respect to the infringement or alleged infringement of an Intellectual Property Right of a third party.

20. 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 Seller’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 20(c), Seller’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), counterfeit parts, 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 Seller under the Contract. Seller’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 Seller 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 Seller was made aware of the possibility of such damages. No action shall be brought for any breach by Seller more than one (1) year after such cause of action has accrued.

- (c) Notwithstanding anything to the contrary herein, Seller does not exclude or limit its liability (if any) to Buyer for: (i) death or personal injury resulting from Seller's negligence; (ii) any matter for which it would be illegal for Seller to exclude or limit or to attempt to exclude or limit its liability; or (iii) fraud.
- (d) For any Products that will be launched into space, Seller shall have no liability for damages arising from or relating to events that occur after the commencement of the launch procedure of the vehicle carrying such Products into space.
- (e) 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 Seller's agreement to the Contract, without which the prices and fees paid by Buyer would be significantly greater.

21. OBSOLESCENCE

In the event it becomes necessary to replace obsolete or unobtainable materials necessary to manufacture or repair the Products, a mutually agreed upon equitable price and schedule adjustment will be made to the Contract. Such adjustment will include non-recurring and recurring costs, and any associated impact.

22. PAYMENT

- (a) 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 Seller. 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 Article 15 (Governing Law; Disputes). Non-payment or delay in payment by Buyer shall be considered a breach of the Contract. Seller, among other remedies, shall have the legal right, without being in breach, either to cancel the Contract or to stop or suspend deliveries in the event that Buyer fails to pay for any invoice or shipment 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.
- (b) Unless specifically otherwise agreed in writing by Buyer and Seller, 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 Seller receives readily available funds.

23. PUBLICITY

Notwithstanding any clauses to the contrary, Seller reserves the right to publish, distribute, or use any information about the existence of this Purchase Order, 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 goods or service endorsement without the need of obtaining Buyer's approval. Buyer agrees that should Seller 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, Seller in its sole discretion will determine the contents and the timing of the final release.

24. RESALE

Buyer shall not, without the express prior written approval of Seller, resell the Products in exactly the same condition in which they were supplied by Seller at the delivery point. Seller may make approval subject to such conditions as Seller, in its discretion, deems appropriate, including, but not limited to, informing Seller of each occasion on which Buyer resells the Products. For the purposes of this Article 23 (Resale) the term “resell” shall not include where Buyer integrates the Products as part of a larger Buyer system or product for onward sale.

25. 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 Seller to enforce any of the provisions of the Contract, these Terms and Conditions, or any applicable laws shall not constitute a waiver of the requirements of such provisions or laws, or as a waiver of the right of Seller thereafter to enforce such provisions or laws. A waiver by Seller of any provision of the Contract, these Terms and Conditions, or applicable law 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 Manager/Company Secretary (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.

26. SURVIVABILITY

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

Article 5 (Confidential Information), Article 6 (Corrupt Practices), Article 8 (Data and Intellectual Property Rights), Article 11 (Export Control), Article 13 (Force Majeure), Article 15 (Governing Law; Disputes), Article 18 (Insurance; Indemnity), Article 20 (Limitation of Liability), Article 22 (Payment), Article 25 (Severability; Waiver; Other Matters), Article 27 (Taxes and Import Duties), Article 29 (Warranty), and Article 30 (Government Contracts).

27. TAXES AND IMPORT DUTIES

- (a) 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 Seller's net income, unless Buyer has furnished Seller with an exempt purchase or resale certificate.
- (b) Any and all customs, duties, taxes or other fees of any nature which may be imposed, charged or assessed with respect to the Contract for the importation into any foreign country of any Product, documentation or information furnished or sold are not included in the prices and shall be for the account of and paid for by Buyer. Buyer shall immediately reimburse Seller for any such tax, duty, custom or other fees that Seller is required to prepay.

28. TEST DATA

Unless specifically noted hereon, qualification tests and any test data are not included in the selling price. Qualification tests may be performed by Seller and test data supplied at the specific request and expense of Buyer at a price mutually agreed to by the parties.

29. WARRANTY

- (a) For Products:
 - (i) The warranty period for Products (the "Products Warranty Period") shall begin on the date of shipment and end on the earlier of: (1) the date that is twelve (12) months after the date of shipment; or (2) for Products that will be launched into space, the commencement of the launch procedure of the vehicle carrying such Products into space.
 - (ii) Seller warrants that, during the Product Warranty Period, the Products will be free from defects in materials or workmanship that would cause them not to be in conformity with Seller's specifications therefor (the "Specifications"); provided, however, that this warranty shall not apply to any Product: (1) that has been improperly altered, installed, or connected in any way, or abused or misused physically or electrically; (2) on which Seller's trademark or other markings shall have been defaced or obliterated; (3) that has been reworked or repaired by any party other than Seller without Seller's prior written authorization; or (4) that has not been maintained or stored in full compliance with Seller's instructions.
 - (iii) In the event that Buyer believes that the preceding warranty has been breached, Buyer shall request written return material authorization ("RMA")

from Seller prior to the return of the allegedly nonconforming Product. In order for the warranty to apply, Buyer must request the RMA within the Product Warranty Period, and Seller must receive the allegedly nonconforming Product by the later of: (1) the end of the Product Warranty Period; or (2) the date that is thirty (30) days after the date of the RMA. The RMA shall not commit Seller to the making of any repair or replacement hereunder. Each request for an RMA shall list the types and quantities of Products involved, the reasons for the request, information concerning operating conditions involved, and the period of use. In addition, the Contract number and, where possible, the original invoice number covering the original purchase of the Products involved must be shown. Returned Products must be shipped, transportation prepaid, by the most practical method of shipment. Shipping costs will be credited to Buyer for all Products found to be subject to warranty adjustment. Excessive transportation costs will not be allowed. Seller can accept no billing for packing, inspection, labor charges or other incidental costs in connection with any Products returned.

- (iv) If Seller determines that any returned Product is not in conformity with this warranty, the remedy will take the form, at Seller's option, of a replacement or repair of the defective or nonconforming Product. In the event that it is uneconomical to replace or repair a warranted Product, Seller may, at its sole option, remit the dollar equivalent based upon the original Product sales price and said remittance will be calculated by applying the pro rata percentage of the unexpired warranty to the original Product sales price. Unless otherwise requested by Buyer, returned Products found not subject to this warranty will be sent back to Buyer, transportation collect. In all cases, Seller's determination will be final.
- (v) In the event of repair or replacement pursuant to the foregoing warranty, such warranty shall apply to the repaired or replaced Product for the remaining balance of the Product Warranty Period.
- (b) For Services: Seller warrants that the Services, for a period of ninety (90) days following the performance thereof (the "Services Warranty Period"), shall have been performed in a workmanlike manner using reasonable skill in accordance with Seller's service policy and practice. In the event that Buyer believes the forgoing warranty has been breached, it shall notify Seller in writing of same. If Seller determines, in its sole discretion, that the Services are not in compliance with this warranty, it may, at its election: (i) correct or re-perform the Services; or (ii) if such correction or re-performance is uneconomical, refund the cost of the affected Services. This warranty shall not apply with regard to failure or breakdown of goods or equipment that were the subject of the Services, if such goods or equipment were subject to abuse, abnormal usage, or improper maintenance, or if such failure or breakdown was the result of normal wear and tear.
- (c) THE WARRANTIES SET FORTH IN THIS ARTICLE 29 ARE THE SOLE WARRANTIES MADE BY SELLER WITH REGARD TO THE PRODUCTS AND THE SERVICES. SELLER 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 ARTICLE 29 CONSTITUTES BUYER'S SOLE REMEDY AND SELLER'S SOLE LIABILITY FOR BREACH OF WARRANTY.

30. GOVERNMENT CONTRACTS

- (a) In the event that the Products or Services being acquired hereunder are for ultimate sale to the United States Government, unless otherwise stated, the Product(s) or Services being purchased are "commercial items" (48 C.F.R. §52.202-1) under the Federal Acquisition Regulation ("FAR"). Accordingly, the following clauses shall apply:
 - (i) Equal Opportunity (E. O. 11246) 48 C.F.R. §52.222-26; Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U. S. C. 2012(a)) 48 C. F. R. §52.222.35; and
 - (ii) Affirmative Action for Handicapped Workers (29 U.S.C. §793) 48 C.F.R. §52.222-36.
- (b) If the Product(s) or Services are not a commercial item, but are being acquired hereunder for ultimate sale to the United States Government, the following FAR and Defense Federal Acquisition Regulation Supplement ("DFARS") clauses set forth in Attachment A with their applicable notes are incorporated by reference, but only to the extent that Buyer's contract with its customer includes such clauses, and only if the flow-down of such clauses to Buyer's vendors is required by law. If the applicability threshold changes by FAR, DFARS, law, or regulation, then such revised threshold shall apply accordingly.
- (c) Except as otherwise noted, where the terms "Contracting Officer" and "Contractor" appear in the text of the clauses, such terms shall mean "Buyer" and "Seller" respectively. References in the clauses to the "Government" shall remain as stated. All references in such clauses to the "Contract" shall mean the terms of the Contract and these Terms and Conditions. Under no circumstances, however, will Buyer have access to confidential or proprietary information of Seller.

Attachment A**FAR and DFARS Clauses**

| <u>Notes</u> | <u>FAR Clause</u> | <u>Title</u> | <u>Applicability</u> |
|---------------------|--------------------------|--|---|
| | 52.202-1 | Definitions | If over Simplified Acquisition Threshold |
| | 52.203-3 | Gratuities | If over Simplified Acquisition Threshold |
| | 52.203-6 | Restrictions on Subcontractor Sales to the Government | If over Simplified Acquisition Threshold |
| | 52.203-7 | Anti-Kickback Procedures | If over Simplified Acquisition Threshold |
| | 52.203-8 | Cancellation, Rescission and Recovery of Funds for Illegal or Improper Activity | If over Simplified Acquisition Threshold |
| | 52.203-10 | Price or Fee Adjustment for Illegal or Improper Activity | If over Simplified Acquisition Threshold |
| | 52.203-11 | Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions | If over \$150,000 |
| | 52.203-12 | Limitation on Payments to Influence Federal Transactions | If over \$150,000 |
| | 52.203-13 | Contractor Code of Business Ethics and Conduct | If over \$5,000,000 and the performance period is more than 120 days |
| | 52.203-14 | Display of Hotline Poster(s) | If over \$5,000,000, except for: (1) contracts for commercial items; and (2) contracts performed entirely outside of the U.S. |
| | 52.204-2 | Security Requirements | If access to classified information is required |
| | 52.204-9 | Personal Identity Verification of Contractor Personnel | If Seller's employees will have routine access to a Federally controlled facility or Federally controlled information system. |
| | 52.209-6 | Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment | If over \$30,000 |
| | 52.211-15 | Defense Priority and Allocation Requirements | If a rated Contract |
| | 52.214-26 | Audit and Records - Sealed Bidding | If over \$700,000 |
| | 52.214-28 | Subcontractor Certified Cost or Pricing Data— Modifications – Sealed Bidding | If over \$700,000 |
| (1) | 52.215-2 | Audit and Records – Negotiation | As set forth in clause |
| (2) | 52.215-10 | Price Reduction for Defective Certified Cost or Pricing Data – Modifications | If Certified Cost or Pricing Data required |

| <u>Notes</u> | <u>FAR Clause</u> | <u>Title</u> | <u>Applicability</u> |
|--------------|-------------------|---|--|
| (3) | 52.215-11 | Price Reduction for Defective Certified Cost or Pricing Data | If Certified Cost or Pricing Data required |
| | 52.215-12 | Subcontractor Certified Cost or Pricing Data | If above \$700,000 |
| | 52.215-13 | Subcontractor Certified Cost or Pricing Data – Modifications | If above \$700,000 |
| | 52.215-14 | Integrity of Unit Prices | If over Simplified Acquisition Threshold |
| | 52.215-15 | Pension Adjustments and Asset Reversions | If Certified Cost or Pricing Data required |
| | 52.215-16 | Facilities Capital Cost of Money | |
| | 52.215-18 | Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) | If Certified Cost or Pricing Data required |
| (1) | 52.215-20 | Requirements for Certified Cost or Pricing Data and Other than Certified Cost or Pricing Data | As set forth in clause |
| (1) | 52.215-21 | Requirements for Certified Cost or Pricing Data and Other than Certified Cost or Pricing Data – Modifications | As set forth in clause |
| (1) | 52.215-23 | Limitations on Pass-Through Charges | If contract is cost reimbursement and exceeds the Simplified Acquisition Threshold, except that for DoD contracts, it applies to all cost reimbursement and fixed-price contracts that exceed the threshold for obtaining cost and pricing data per FAR 15.403-4, other than those identified in FAR 15.408(n)(2)(i)B)(2). |
| | 52.216-7 | Allowable Cost and Payment | If contract is cost reimbursement or time-and-materials |
| | 52.216-8 | Fixed Fee | If contract is cost-plus-fixed-fee |
| | 52.216-10 | Incentive Fee | If contract is cost-plus-incentive-fee |
| | 52.222-2 | Payment for Overtime Premiums | If contract is cost reimbursement and over Simplified Acquisition Threshold |
| | 52.222-4 | Contract Work Hours and Safety Standards Act-Overtime Compensation | If over \$150,000 |
| | 52.222-20 | Walsh-Healey Public Contracts Act | If over \$15,000 |
| | 52.222-21 | Prohibition of Segregated Facilities | If over \$10,000 |
| | 52.222-26 | Equal Opportunity | If over \$10,000 |
| | 52.222-35 | Equal Opportunity for Veterans | If over \$100,000 |

| <u>Notes</u> | <u>FAR Clause</u> | <u>Title</u> | <u>Applicability</u> |
|--------------|-------------------|--|--|
| | 52.222-36 | Affirmative Action for Workers with Disabilities | If over \$15,000 |
| | 52.222-37 | Employment Reports on Veterans | If over \$100,000 |
| | 52.222-40 | Notification of Employee Rights Under the National Labor Relations Act | If over Simplified Acquisition Threshold |
| | 52.222-50 | Combating Trafficking in Persons | |
| | 52.223-3 | Hazardous Material Identification and Material Safety Data | If contract requires delivery of hazardous materials |
| | 52.223-7 | Notice of Radioactive Materials | All subcontracts for radioactive materials meeting the criteria set forth in subsection (a) of the clause. |
| | 52.223-11 | Ozone Depleting Substances | As set forth in clause |
| | 52.223-18 | Encouraging Contractor Policies to Ban Text Messaging While Driving | If over the micro-purchase threshold |
| | 52.225.8 | Duty Free Entry | If over Simplified Acquisition Threshold |
| | 52.225-13 | Restriction on Certain Foreign Purchases | As set forth in clause |
| | 52.227-1 | Authorization and Consent | |
| | 52.227-2 | Notice and Assistance Regarding Patent and Copyright Infringement | |
| | 52.227-9 | Refund of Royalties | As set forth in clause |
| | 52.227-10 | Filing of Patent Applications – Classified Subject Matter | As set forth in clause |
| | 52.227-11 | Patent Rights – Ownership by the Contractor | |
| | 52.227-13 | Patent Rights – Ownership by the Government | As set forth in clause |
| (12) | 52.227-14 | Rights in Data | As set forth in clause |
| | 52.228-5 | Insurance – Work on a Government Installation | Any contract requiring work on a Government installation |
| (4) | 52.230-2 | Cost Accounting Standards | As set forth in clause |
| (4) | 52.230-3 | Disclosure and Consistency of Cost Accounting Practices | As set forth in clause |
| (4) | 52.230-6 | Administration of Cost Accounting Standards | As set forth in clause |
| | 52.232-16 | Progress Payments | |
| | 52.232-20 | Limitation of Cost | If contract is cost reimbursement |
| | 52.232-22 | Limitation of Funds | If contract is cost reimbursement |
| | 52.232-32 | Performance-Based Payments | |
| | 52.234-1 | Industrial Resources Developed Under Defense Production Act Title III | As set forth in clause |

| <u>Notes</u> | <u>FAR Clause</u> | <u>Title</u> | <u>Applicability</u> |
|--------------|-------------------|---|---|
| (5) | 52.242-15 | Stop-Work Order | |
| (6) | 52.243-1 | Changes – Fixed Price | If contract is fixed price |
| (6) | 52.243-2 | Changes – Cost-Reimbursement | If contract is cost reimbursement |
| (6) | 52.243-3 | Changes – Time-and-Material or labor hours | If contract is time-and-materials |
| | 52.244-6 | Subcontracts for Commercial Items | As set forth in clause |
| (7) | 52.245-1 | Government Property | As set forth in clause |
| | 52.248-1 | Value Engineering | If over Simplified Acquisition Threshold |
| | 52.246-23 | Limitation of Liability | In contracts not requiring delivery of high-value end items |
| | 52.246-24 | Limitation of Liability – High Value Items | In contracts requiring delivery of high-value items |
| | 52.247-63 | Preference for U.S.-Flag Air Carriers | As set forth in clause |
| | 52.247-64 | Preference for Privately Owned U.S.-Flag Vessels | As set forth in clause |
| | 52.248.1 | Value Engineering | As set forth in clause |
| (8) | 52.249-2 | Termination for Convenience of the Government (Fixed-Price) | If contract is fixed price |
| (9) | 52.249-6 | Termination (Cost Reimbursement) | If contract is cost reimbursement |
| (10) | 52.249-8 | Default (Fixed-Price Supply and Service) | If contract is fixed price |
| | 52.249-14 | Excusable Delays | As set forth in clause |

| <u>Notes</u> | <u>DFARS Clause</u> | <u>Title</u> | <u>Applicability</u> |
|--------------|---------------------|---|---|
| | 252.203-7001 | Prohibition on Persons Convicted of Fraud or other Defense-Contract-Related Felonies | If over the Simplified Acquisition Threshold |
| | 252.203-7003 | Display of Fraud Hotline Poster(s) | If over \$5,000,000, except for: (1) contracts for commercial items; and (2) contracts performed entirely outside of the U.S. |
| | 252.204-7008 | Export-Controlled Items | |
| | 252.208-7000 | Intent to Furnish Precious Metals as Government-Furnished Material | As set forth in clause |
| | 252.211-7000 | Acquisition Streamlining | |
| | 252.211-7003 | Item Identification and Valuation | As set forth in clause |
| | 252.215-7000 | Pricing Adjustments | If FAR 52.215-11, 52.215-12, or 52.215-13 apply |
| | 252.222-7000 | Restrictions on Employment of Personnel | As set forth in clause |
| | 252.223-7001 | Hazardous Warning Labels | In contracts requiring submission of hazardous material data sheets |
| | 252.223-7008 | Prohibition of Hexavalent Chromium | As set forth in clause |
| | 252.225-7006 | Quarterly Reporting of Actual Contract Performance Outside the United States | As set forth in clause |
| | 252.225-7007 | Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies | As set forth in clause |
| (11) | 252.225-7008 | Restriction on Acquisition of Specialty Metals | If over the Simplified Acquisition Threshold |
| (11) | 252.225-7009 | Restriction on Acquisition of Certain Articles Containing Specialty Metals | If over the Simplified Acquisition Threshold |
| | 252.225-7013 | Duty-Free Entry | |
| | 252.225-7016 | Restriction on Acquisition of Ball and Roller Bearings | |
| | 252.225-7025 | Restriction on Acquisition of Forgings | As set forth in clause |
| | 252.225-7033 | Waiver of United Kingdom Levies | As set forth in clause |
| | 252.226-7001 | Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns | All subcontracts exceeding \$500,000 |
| (12) | 252.227-7013 | Rights in Technical Data – Noncommercial Items | As set forth in clause |
| (12) | 252.227-7014 | Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation | As set forth in clause |
| (12) | 252.227-7015 | Technical Data - Commercial Items | As set forth in clause |
| (12) | 252.227-7016 | Rights in Bid or Proposal Information | As set forth in clause |

| | | |
|--------------|---|------------------------|
| 252.227-7019 | Validation of Asserted Restrictions – Computer Software | As set forth in clause |
| 252.227-7037 | Validation of Restrictive Markings on Technical Data | As set forth in clause |
| 252.227-7038 | Patent Rights-Ownership by the Contractor (Large Business) | As set forth in clause |
| 252.228-7001 | Ground and Flight Risk | As set forth in clause |
| 252.231-7000 | Supplemental Cost Principles | As set forth in clause |
| 252.235-7003 | Frequency Authorization | As set forth in clause |
| 252.239-7016 | Telecommunications Security Equipment, Devices, Techniques, and Services | As set forth in clause |
| 252.243-7001 | Pricing of Contract Modifications | |
| 252.244-7000 | Subcontracts for Commercial Items and Commercial Components (DoD Contracts) | As set forth in clause |
| 252.247-7023 | Transportation of Supplies by Sea | |
| 252.247-7024 | Notification of Transportation of Supplies by Sea | As set forth in clause |

NOTES

- (1) The words “Contracting Officer or Representatives of the Contracting Officer” shall mean only bona fide employees of the U.S. Government and expressly excludes Buyer or Buyer’s non-government representatives.
- (2) In Subparagraph (a) item (3), delete the word “accordingly” and substitute the words, “...by an amount not to exceed the amount of the defect at Seller’s price level and shall not include any Buyer or higher tier’s markups, such as overhead, g & a, and profit”. Additionally, Seller shall not be liable for any defective pricing resulting from Buyer’s failure to request or submit an update of any data from Seller prior to Buyer’s agreement on price with its customer.
- (3) In Subparagraph (b) item (3), delete the word “accordingly” and substitute the words, “...by an amount not to exceed the amount of the defect at Seller’s price level and shall not include any Buyer or higher tier’s markups, such as overhead, g & a, and profit”. Additionally, Seller shall not be liable for any defective pricing resulting from Buyer’s failure to request or submit an update of any data from Seller prior to Buyer’s Agreement on price with its customer.
- (4) Seller’s liability for any CAS violation shall be limited to the amount of the violation at Seller’s price level and shall not include any Buyer or higher tier’s markups, such as overhead, g & a, and profit.
- (5) Buyer shall act on Seller’s proposal with all reasonable diligence and in good faith to try to settle the claim within thirty (30) days of its submittal.
- (6) Seller is not required to ship any product which is the subject matter of any change until a written change order is received from Buyer. Buyer shall act on Seller’s proposal with all reasonable diligence and in good faith to try to settle the claim within thirty (30) days of its submittal.
- (7) A separate maintenance agreement shall be entered into between Buyer and Seller for other than routine maintenance requirements.
- (8) Buyer can terminate the Contract for convenience only in the event and to the extent that Buyer’s Contract is terminated by its Customer. The words “Contracting Officer” shall not mean “Buyer”.
- (9) Buyer can terminate the Contract for convenience only in the event and to the extent that Buyer’s Contract is terminated by its Customer. Reprocurement costs shall not apply to any termination under this clause. The words “Contracting Officer” shall not mean “Buyer”.

- (10) In paragraph (b) after the word “services” add the following:
- “Reprocurement costs shall be applicable only to that portion of the Contract terminated in whole or part for default. Buyer shall have the obligation to mitigate such costs. Said costs will not exceed 3% of the original sales value of that portion terminated for default and will be remitted upon proper justification of the aforementioned costs by Buyer to Seller. This clause sets forth Buyer’s sole and exclusive remedy and Seller’s sole liability in the event the Contract with Seller is terminated for default.”
- (11) In the event Seller is unable to locate a source compliant with DFARS 252.225-7008 or 252.225-7009 and it becomes necessary to use extensive resources to locate compliant materials required to manufacture the deliverable items under the Contract, it is agreed that an equitable price and schedule adjustment will be made to the Contract (pursuant to the “Changes” provision of the Contract). Such adjustment will include non-recurring and recurring costs, and any associated impact.
- (12) Except as otherwise expressly agreed to in writing by Seller, all data pertaining to manufacturing inspections and/or testing, methods, processes or techniques and/or computer software or other data developed by Seller, which is deemed proprietary and utilized under the Contract, shall remain the sole property of Seller and Buyer further waives any claim to such data or Intellectual Property Rights. Buyer shall have no claim to Seller’s existing or background technologies, or any future developments or modifications thereto. Any developments made by Buyer to Seller’s Intellectual Property Rights shall vest in Seller. Seller’s proprietary data shall not be a deliverable item, but may be available for review subject to the stipulations contained in a mutually agreeable Proprietary Information Agreement signed by the Parties or Article 5 (Confidential Information) of these Terms and Conditions, as applicable. Buyer shall not reverse engineer any of Seller’s intellectual property or any prototype, unit, or software product embodying Seller’s Confidential Information or decompile Seller’s intellectual property or Confidential Information.

Attachment B

**COBHAM ADVANCED ELECTRONIC SOLUTIONS
SOFTWARE LICENSE TERMS AND CONDITIONS**

October 2014

1. GRANT OF LICENSE:

- (a) Capitalized terms not otherwise defined herein or in Seller's Terms and Conditions of Sale shall have the meanings given in Article 9 (Definitions) hereof.
- (b) Seller is only willing to license the Software to Buyer pursuant to the terms and conditions of this Software License, Seller's Terms and Conditions of Sale, and the mutually agreed upon Contract. Buyer's acceptance or use of the Software, in any manner, shall be deemed to be Buyer's agreement to this Software License. Seller's grant of the license set forth herein is expressly conditioned upon Buyer's agreement to all of the terms and conditions set forth herein and in the Terms and Conditions and the Contract, to the exclusion of all others.
- (c) In consideration of the Initial License Fee and the Recurring License Fees, Seller hereby grants to Buyer a limited, nonexclusive, license to use the Software: (a) in Object Code form; (b) in accordance with any and all limitations set forth in the Contract and specifically agreed between Buyer and Seller; and (c) in accordance with the Software Documentation. Each copy of the Software may only be used or resold by Buyer as specified in the Contract. Buyer may make a single copy of the Software for safekeeping or "backup" purposes, provided all original proprietary notices are retained on any such copy.
 - (i) If Buyer is obtaining a license as an Integrator, as opposed to an End User, the license shall further be non-transferrable, and shall include the right to use, copy, modify, and create derivative works from the Software for the sole purpose of developing, creating, manufacturing, and selling Integrated Products.
- (d) Seller shall at all times retain title to and ownership of the Software and the Intellectual Property Rights therein. Buyer shall not, except as otherwise specified or permitted in this Software License or in the Contract, directly or indirectly: (a) modify, translate, reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction), attempt to discover the source code or underlying ideas or algorithms of the Software or otherwise circumvent any technological measure that controls access to the Software; (b) create derivative works based on the Software; (c) copy, sell, rent, lease, distribute, license, assign, or otherwise transfer rights to the Software; (d) remove any proprietary notices or labels on the Software; or (e) use the Software outside of any use restrictions. This Software License, the Terms and Conditions, and the Contract set forth a license, not a sale, of the Software and do not give Buyer any rights not expressly granted herein or therein. Non-payment of the Initial License Fee or the Recurring License Fees shall result in the automatic termination of this Software License.
- (e) Buyer acknowledges and agrees that it is not entitled to any source code relating to the Software.

- (f) Buyer shall only use the Software for operations as described in the Software Documentation and for resale (as permitted by this Software License and the Contract), and Buyer shall not use the Software for any other purpose.
- (g) Buyer may not modify the Software without Seller's written consent. All Intellectual Property Rights in any modifications of the Software developed by Buyer shall, as between Seller and Buyer, vest absolutely in Seller. Buyer shall take such actions as Seller may reasonably request, at Buyer's expense, to give effect to Seller's rights.
- (h) Buyer shall, both during the continuance and following the termination of this Software License and Contract for any reason whatsoever:
 - (i) At the request and reasonable expense of Seller apply for, and do all acts and things necessary to obtain, registration or other protection in respect of Seller's Intellectual Property Rights in any part of the world.
 - (ii) Not do anything to imperil the validity of any of Seller's Intellectual Property Rights and, at the discretion and expense of Seller, render all assistance within Buyer's power to obtain and maintain such Intellectual Property Rights and any extension thereof.
- (i) To the extent that any of the rights, title and interest referred to in Section 1(g) do not vest in Seller by operation of law, Buyer hereby irrevocably assigns, transfers and conveys to Seller, without further consideration, all such rights, title and interest (including Intellectual Property Rights) and such assignment shall be an assignment (in respect of any copyright subsisting therein) of future copyright.

2. TRADEMARK LICENSE:

- (a) Seller hereby grants to Buyer a worldwide, nonexclusive, limited license to use Seller's marks solely in connection with Buyer's use (or if an Integrator, redistribution and marketing) of the Software or Integrated Products (as applicable), as set forth herein. Buyer shall only use Seller's marks in the form and manner as communicated by Seller to Buyer from time to time in writing, and in accordance with any written usage guidelines for Seller's marks provided to Buyer. The use by Buyer of any of Seller's marks in connection with the Contract or this Software License shall not create any right, title, or interest, in or to the use of Seller's marks and all such goodwill associated with Seller's marks will inure to the benefit of Seller.
- (b) If Buyer is obtaining a license as an Integrator, Buyer agrees to cooperate with Seller in facilitating Seller's monitoring and control of the nature and quality of the Integrated Products bearing Seller's marks.

3. PRICE OF THE SOFTWARE:

- (a) The Initial License Fee(s) shall become due as specified in the Contract.
- (b) Recurring License Fee(s), as may be adjusted by Seller from time to time, shall be due and payable by Buyer to Seller in advance on January 1st of each calendar year following delivery. A *pro rata* amount shall become due upon the date of delivery of the Software to Buyer, calculated for the period from date of delivery until December 31st of that calendar year.

- (c) Buyer understands that Seller may include in the Software features and functionality that Buyer is not granted a license to use but may nevertheless be accessible. If Buyer engages in any unauthorized use of such features and functionality in the Software which is not licensed, and continues such unlicensed use for more than thirty (30) days after the date that Seller issues written notice to Buyer to cease and desist such use, then, without prejudice to Seller's other rights and remedies under this Software License, the Terms and Conditions, and the Contract, Buyer shall pay the fees which would have been payable had such use been licensed.
- (d) Seller will have the right to direct a recognized, independent accounting firm to conduct an audit of Buyer's books and records relating to the payment of fees to Seller. Any such audit will be conducted at Seller's reasonable request, during normal business hours. Representatives of the accounting firm shall protect the confidentiality of Buyer's Confidential Information and abide by Buyer's reasonable security regulations while on Buyer's premises. Buyer will promptly pay to Seller any underpayment disclosed by the audit, including overdue payment charges that have accrued on underpaid amounts. The costs of conducting this audit will be paid by Buyer if the audit discloses that the amount of underpayment exceeds five percent (5%) of the amount due for the period audited or other non-monetary noncompliance. Such rights will remain in effect through a period ending two (2) years from the termination of the Contract.

4. BUYER'S OBLIGATIONS AS AN INTEGRATOR:

If Buyer is obtaining a license as an Integrator:

- (a) Buyer shall:
 - (i) Use its best efforts to develop Integrated Products and to market and distribute the Integrated Products;
 - (ii) Enter into an enforceable license agreement with each End User that includes all the limitations and restrictions of this Software License and is as protective of Seller and the Software as this Software License;
 - (iii) Retain any copyright or other notices in connection with the Software, as Seller may notify Buyer in writing from time to time;
 - (iv) At Seller's discretion, implement any updates or new releases of the Software into the Integrated Products and, upon such implementation, discontinue distribution of any prior release of the Software such that at any given time Buyer is only using a single version of the Software in Integrated Products;
 - (v) Provide Buyer's End Users, customers, distributors and resellers front-line support for Integrated Products, as Buyer deems necessary (and Seller shall not be responsible for providing support directly to such End Users, customers, distributors or resellers); and
 - (vi) Cooperate and assist Seller in bringing legal action against any of Buyer's End Users, customers, distributors or resellers for unauthorized use, copying, or distribution of the Software.

- (b) Buyer represents and warrants that it will not use, modify, incorporate, integrate, or distribute any Open Source or other third-party computer programs or code into or in relation to the Integrated Products in a manner that would require Buyer to distribute or disclose any source code, require Buyer to distribute or make available any Software without charge or at a reduced charge, permit any End User to have the right to decompile, disassemble or otherwise reverse engineer the Software (or any portion thereof), or impose any other restriction or obligation with respect to the Software or any Integrated Solution. As used herein, "Open Source" means any material that is licensed or distributed pursuant to any open source, quasi-open source, community source, freeware, shareware, copyleft or public license or distribution model, including, without limitation, any software, program, library, routine or component that is licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (1) GNU General Public License (GPL) or Lesser/Library GPL (LGPL); (2) Artistic License (e.g., PERL); (3) Mozilla Public License; (4) Netscape Public License; (5) Sun Community Source License (SCSL); (6) Sun Industry Source License (SISL); (7) BSD License; and (8) Apache Software License.
- (c) Buyer shall not develop, market, promote, demonstrate, sell, lease, solicit or procure orders for or otherwise represent any product or computer program that is the same as or similar to, or which is reasonably likely to be directly competitive with, the Software or any Integrated Product. Buyer shall conduct its business in a manner that reflects favorably upon Seller and the Integrated Products.
- (d) Buyer shall investigate and keep Seller fully informed as to any problems encountered with Integrated Products and resolutions arrived at for those problems. Buyer shall also communicate promptly to Seller any and all modifications, design changes or improvements of the Software suggested by any reseller, End User, distributor, customer, or employee of Buyer. Buyer agrees that Seller shall have, and is hereby assigned, any and all right, title, and interest in and to any such suggested modification, design change, or improvement of the Software, without payment of any consideration.

5. **WARRANTY:**

- (a) Seller warrants to Buyer that the unaltered Software will operate substantially in conformance with the Software Documentation for a period of ninety (90) days after the date of delivery to Buyer. Any warranty claim under this Section 5 must be made in writing to Seller during such ninety (90) day period. Seller's sole obligation and Buyer's exclusive remedy in respect thereof is to use reasonable efforts to repair or replace any Software that Seller determines, in its reasonable judgment, is nonconforming or, at Seller's sole discretion, to accept return of the nonconforming software and upon receipt thereof, Seller shall refund to Buyer the amount that Seller received therefor.
- (b) The foregoing warranty shall apply only to the Software and shall not apply to any nonconformity resulting from any hardware, operating system or third-party software. The foregoing warranty shall not apply to any software that was:
 - (i) Used in violation of this Software License, the Contract, or the Terms and Conditions;

- (ii) Used, handled, operated, maintained or stored improperly, or in any manner not in accord with the documentation, industry standard practice or Seller's instructions or recommendations; or
 - (iii) Combined, altered, modified or repaired other than by or on behalf of Seller.
 - (iv) The foregoing warranty shall further not apply to any nonconformity in the Software that cannot be repeated by Seller or Buyer.
- (c) Except as expressly specified herein, the Software is provided "as is" without warranty of any kind. Seller does not warrant that the Software will be compatible with any application or environment or otherwise meet Buyer's requirements, or that operation will be uninterrupted or error-free.
- (d) Buyer shall not, and hereby agrees and acknowledges that it does not have the authority to, provide or create any obligation on behalf of Seller to any third party, including, without limitation, any warranty, indemnity or support obligation. In the event that Buyer purports to create any such obligation, and such third-party attempts to enforce such obligation against Seller, Buyer shall fully indemnify and hold harmless Seller for all costs and liabilities associated with such action, regardless of outcome, in accordance with Section 18(b) of the Terms and Conditions.
- (e) Except as expressly specified herein, the Software is provided "as is" without warranty of any kind. Seller does not warrant that the Software will be compatible with any application or environment or otherwise meet Buyer's requirements, or that operation will be uninterrupted or error-free. To the maximum extent permitted by applicable law, Seller hereby disclaims all other warranties, express or implied, oral or written, including, without limitation, all implied warranties of title, non-infringement, integration, accuracy, merchantability or fitness for any particular purpose, and all warranties arising from any course of dealing or performance or usage of trade. Buyer assumes and accepts the entire risk as to the use, selection, quality, and performance of the Software.

6. TERMINATION:

- (a) The licenses granted to Buyer hereunder will immediately and automatically terminate:
 - (i) If any of the usage limitations set forth in the Contract are exceeded;
 - (ii) If Buyer breaches any provision of this Software License; or
 - (iii) As otherwise set forth in the Terms and Conditions.
- (b) Seller may terminate the licenses granted to Buyer upon thirty (30) days' prior written notice in the event that Buyer fails to achieve any revenue target for the Integrated Products set forth in the Contract.
- (c) Upon any termination or expiration of this Software License or the Contract, Buyer shall:
 - (i) Discontinue all use or resale of the Software;

- (ii) Immediately destroy or erase all copies of the Software; and
 - (iii) Return or destroy all of Seller's Confidential Information that is in Buyer's possession, or that Buyer subsequently discovers is in its possession.
- (d) If Buyer has obtained a license as an Integrator, upon any expiration or termination of this Software License or the Contract, all rights and licenses of Buyer, and obligations of Seller, shall cease, except that:
- (i) All obligations that accrued prior to the effective date of termination (including, without limitation, payment obligations) and any remedies for breach of this Software License, the Terms and Conditions, or the Contract shall survive any termination.
 - (ii) Buyer shall immediately stop using Seller's marks, stop promoting, demonstrating, or procuring orders for Integrated Products, and stop taking any other action or making any representation from which it might be inferred that any relationship exists between Seller and Buyer (but not act in any way to damage the reputation of Seller, the Software, or any Integrated Product).
 - (iii) If Seller issues any termination notice, it shall be entitled, before shipment of any pending or new orders, to require advance payment or other security for payment of all previously outstanding balances (whether or not then due) plus the amount of any new or pending order.
 - (iv) Sublicenses for the Software properly granted to End Users prior to termination shall continue in effect in accordance with their terms; provided, that each such End User is not then currently in default or breach of the applicable sublicense.
- (e) Any and all conditions and restrictions of non-use, confidentiality, ownership rights, protection of Intellectual Property Rights, limitations of liability, and limitations of warranty regarding the Software shall survive any termination or expiration of this License or the Contract.

7. SUPPORT:

- (a) Seller may provide support and maintenance services related to the Software ("Support") to Buyer, subject to a separate support fee (the "Support Fee") agreed by the parties. Such Support may include, at Seller's sole election, correction of non-conformities in the Software after the expiration of the warranty provided in Article 5 (Warranty) hereof.
- (b) As part of the Support, Buyer may be entitled to receive Software updates, maintenance releases and major releases, which may be made available from time to time at Seller's sole discretion. Updates and maintenance releases only cover the minor releases within the same major version of the Software. Updates and maintenance releases may contain either or both enhancements to existing functions and corrections to non-conformities and may or may not include additional features. Seller may include error corrections in updates, maintenance releases, or new major releases of the Software. All updates, major releases, minor releases and

maintenance releases provided hereunder shall be deemed to be “Software” for purposes of this Software License.

- (c) As a condition to receiving Support, Buyer shall:
 - (i) Comply with all specified operating and troubleshooting procedures;
 - (ii) Provide immediate notification of any Software malfunction or non-conformity and provide complete information regarding any such malfunction or non-conformity;
 - (iii) Be responsible for the security of its Confidential Information;
 - (iv) Establish and maintain backup systems and procedures necessary to reconstruct lost or altered files, data or programs; and
 - (v) Provide full, good-faith cooperation to assist Seller in the diagnosis or study of errors, malfunctions, or non-conformities, including, without limitation, access to the hardware on which the Software is installed, if requested.
- (d) If requested, Buyer will promptly provide written verification of any error, malfunction, or non-conformity reported, along with supporting example files that exhibit same and other reasonable supporting information, setting forth in detail the respects in which the Software fails to perform.

8. MISCELLANEOUS:

- (a) Buyer understands and acknowledges that Seller is licensing the Software as a finished end product, and that Seller will not be performing any professional or expert services in relation to the Software, including, but not limited to, development, customization, or integration.
- (b) If Buyer, or any third-party that Buyer is transferring or providing the Software to, is an agency, department, or other entity of the U.S. Government, the use, duplication, reproduction, modification, release, disclosure or transfer of the Software is restricted in accordance with FAR 12.212 for civilian agencies and DFAR 227.7202 for military agencies. The Software is commercial computer software and the Software Documentation is commercial computer software documentation. The use of the Software and the Software Documentation is further restricted in accordance with the terms of this Software License.

9. DEFINITIONS:

- (a) “End User” means any end-user party that enters into an agreement with: (1) Seller; or (2) if Buyer is reselling the Software as an Integrator, Buyer.
- (b) “Integrated Products” means those products, solutions, or computer programs produced, manufactured, or sold by Buyer, acting as an Integrator, that incorporate, include, are based on, derived from, or are bundled with, the Software.
- (c) “Integrator” means Buyer, where Buyer is: (1) integrating or incorporating the Software into Buyer’s products; (2) modifying or further developing the Software for incorporation into Buyer’s proprietary computer programs, or into proprietary

computer programs of third parties; or (3) selling the Software only as part of a “bundle,” exclusively for use with other products that are supplied by Buyer.

- (d) “Initial License Fee” means the fee described as such in the Contract, if any.
- (e) “Object Code” means computer programming code, substantially or entirely in binary form, which is intended to be directly executable by a computer after suitable processing, but without the intervening steps of compilation or assembly.
- (f) “Recurring License Fee” means the fee described as such in the Contract, if any.
- (g) “Software” means Seller’s proprietary computer programs (in Object Code form) that are specifically identified in the Contract or otherwise intentionally delivered to Buyer under these Terms and Conditions. Without limitation, “Software” may include firmware that is installed and executes on any hardware, or that is provided on separate media and which is intended to be loaded and executed on any hardware, or that is installed on any hardware and which is intended to be loaded and executed on Buyer’s computer system for the purpose of operating or managing any hardware. All references in these Terms and Conditions and the Contract to the Software shall include the Software Documentation.
- (h) “Software Documentation” means any instructions or procedures, instruction manuals, user guides and other information which is or ought to be supplied by Seller to Buyer in connection with the Software, or that is related to the Software, including the technical specifications for the Software, and including information recorded or stored by any means whatsoever on any media whatsoever (including in writing or other visible form; on tape or disc; by mechanical or electrical, electronic, magnetic or optical means; and whether or not such reproductions will result in a permanent record being made).