



Tsunami Tsolutions LLC

Standard Terms & Conditions of Purchase

1. DEFINITIONS

- 1.1 “Affiliate” means, with respect to any entity, any other entity that directly or indirectly controls, is owned by, controlled by or under common ownership or control with such entity.
- 1.2 “Agreement” means any agreement that incorporates, by reference or attachment, these Terms and Conditions.
- 1.3 “Buyer” means Tsunami Tsolutions LLC, or an Affiliate thereof, that issues an Order referencing an Agreement or these Terms and Conditions.
- 1.4 “Buyer Personal Information” means any information or data provided (directly or indirectly) or made accessible to Supplier or its agents, representatives, or subcontractors in connection with an Agreement or any Order that relate to any identified or identifiable natural person, or, to the extent of a conflict with applicable Law, that is subject to any Data Privacy Laws.
- 1.5 “Data Privacy Laws” means applicable laws relating to data privacy, the protection of personal information or data, and the cross-border transfer of personal information or data.
- 1.6 “Delivery Date” means the date of delivery for Goods and Services as specified in an Order.
- 1.7 “GT Laws” means the U.S. and applicable non-U.S. (except to the extent inconsistent with U.S. Laws) Global Trade (“GT”) Laws, including customs, export control, sanctions, and anti-boycott Laws applicable at the time of the import, export, re-export, transfer, disclosure, or provision of Technical Data, Goods, or Services.
- 1.8 “Intellectual Property” means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature, including, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.
- 1.9 “Background Intellectual Property” shall mean all Intellectual Property other than Foreground Intellectual Property.
- 1.10 “Foreground Intellectual Property” shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with an Order.
- 1.11 “Proprietary Information” shall mean all information, knowledge, or data (including without limitation financial, business, and product strategy information; product specifications; product designs; procedures; studies; tests; and reports) in written, electronic, tangible, oral, visual, or other form, (i) disclosed by, or obtained from, Buyer, or (ii) conceived, created, acquired, or first reduced to practice in connection with an Order. If Buyer furnishes sample products, equipment, or other objects or material to Supplier, the items so received shall be used and the information obtained from said items shall be treated as if they were Proprietary Information disclosed in connection with an Order.

- 1.12 “Law(s)” means all national, federal, state, provincial, and local laws, ordinances, rules, and regulations, whether U.S. or non-U.S., including, but not limited to, GT Laws and Data Privacy Laws.
- 1.13 “Order” means a paper or electronic document to initiate the ordering of Goods or Services, such as a purchase order, contract, a scheduling agreement, a statement of work (SOW), or other authorization, including Changes, supplements, or modifications thereto. The phrase “in connection with the Order” includes performance of the Order, performance in anticipation of the Order, and preparation of a bid or proposal for the Order. For clarity, an Order may incorporate these Terms and Conditions or an Agreement by reference or attachment.
- 1.14 “Party” or “Parties” means Buyer or Supplier, individually or collectively, as the context requires.
- 1.15 “Process” or “Processing” means, with respect to Tsunami Information, to use, access, manipulate, modify, disclose, store, back-up, collect, transmit, transfer, retain, and dispose of such Tsunami Information.
- 1.16 “Tsunami” or the “Company” means Tsunami Tsolutions LLC or its affiliates and subsidiaries as applicable.
- 1.17 “Tsunami Information” means any (i) Proprietary Information; (ii) Buyer Personal Information; and (iii) other data, materials, or information owned or managed by Buyer, or which Buyer is obligated to manage or protect on behalf of others: (a) provided to Supplier by Buyer; (b) that Supplier Processes or generates for or on behalf of, or at the direction of Buyer in providing the Services, including in each case metadata from Buyer’s use of the Services and derivatives of any of the foregoing (e.g., aggregations of Tsunami Information, profiles of users of the Services, or analysis of the content of Buyer data records or how Buyer uses the Services).
- 1.18 “Tsunami Supplier Site” means the “Suppliers” section of <https://tsunamitsolutions.com>.
- 1.19 “Goods” means tangible work products and any Changes (as defined in the Section hereof entitled “Order Changes”) to the foregoing, that are required to be delivered pursuant to, or in connection with, an Order
- 1.20 “Services” means services described in Orders as well as services that are necessary and incidental to the delivery of Goods under an Order.
- 1.21 “Supplier” means the legal entity providing Goods or Services or otherwise performing work pursuant to an Order.
- 1.22 “Supplier Personnel” means Supplier’s employees, agents, representatives, subcontractors, subcontractor employees, and any person used by Supplier in the performance under an Order.
- 1.23 “Technical Data” means information that is necessary for the design, development, production, operation, modification, or maintenance of Goods or Services as set forth in applicable GT Laws. Technical Data includes derived Technical Data that is of non-U.S. origin, but subject to U.S. jurisdiction, which may include, but is not limited to, drawings, specifications, or operation sheets containing U.S. origin data or that were developed using U.S. origin data.

- 1.24 "Terms and Conditions" means the Standard Terms and Conditions of Purchase contained in this document.
- 1.25 "Unauthorized" means not authorized pursuant to the terms of an Agreement, an Order, or Buyers express written permission.
- 1.26 "U.S." means United States.

2. ORDER ACCEPTANCE

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

3. PAYMENT TERMS

- 3.1 Payment of invoices issued under any Order shall be made in U.S. dollars and shall be due and payable 90 days following Buyer's receipt thereof, provided (i) the associated Goods or Services have been delivered or performed pursuant to Buyer's requirements and (ii) Buyer's invoicing requirements have been satisfied.

4. QUALITY

- 4.1 Supplier shall comply with all requirements and specifications provided in an Order. Supplier shall immediately notify Buyer in writing of any failure to comply with requirements or specifications.
- 4.2 In the event that Supplier delivers a Good or Service that is found to be nonconforming (does not conform to requirements), Supplier shall respond with the following actions as applicable and/or requested by Buyer: (i) immediately notify Buyer of the nonconformity, (ii) implement containment actions to correct and/or contain the error, (iii) investigate the root cause of the nonconformity, (iii) implement appropriate corrective action to prevent recurrence of the nonconformity, (iv) evaluate the effectiveness of corrective action(s) taken, (v) provide Buyer with documented evidence of root cause analysis and corrective action for the nonconformity upon request.

5. DELIVERY

- 5.1 Time is of the essence in Supplier's performance of an Order and Supplier shall deliver Goods and/or perform Services by the Delivery Date.
- 5.2 Buyer may from time-to-time adjust its delivery schedules, and unless otherwise agreed in writing, such changes in schedule shall not affect the prices of the Goods or Services ordered. Buyer may defer payment for any Goods or Services delivered in advance of the scheduled Delivery Date or in excess of the quantity specified for such items.
- 5.3 All Goods and Services provided by Supplier are subject to approval by Buyer as appropriate and necessary for ensuring conformity to applicable requirements.

6. WARRANTY

- 6.1 Supplier warrants to Buyer and Buyer's successors and assigns that all Goods and Services provided under or in connection with the Order: (i) have been, if applicable, and will be performed in a professional and workmanlike manner and in accordance with current, sound, and highest generally accepted industry standards and practices by appropriately licensed, trained, and supervised personnel who are experienced in the appropriate fields; and (ii) do, if applicable, and will conform to and be in compliance with all applicable specifications, performance requirements, and other requirements contained in the Order (the "Warranty"). Supplier agrees that should any of the Goods or Services be defectively performed by Supplier, Supplier, at Buyer's option, will (i) re-perform or correct such defective Goods or Services at no additional charge, or (ii) refund amounts paid for such defective Goods or Services. In the event of failure by Supplier to correct defects in or replace nonconforming Goods or Services promptly, Buyer, after reasonable notice to Supplier, may make such correction or replace such Goods or Services and charge Supplier for the cost incurred thereby. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from the Goods or Services not conforming to the Warranty.
- 6.2 Supplier warrants to Buyer that all documentation and certifications by Supplier or Supplier Personnel related to the Goods and Services included in an Order, as applicable, are current, complete, truthful, and accurate and have been signed or stamped, as applicable, by individuals authorized and qualified to sign or stamp such documentation and certifications.
- 6.3 Except for permits and licenses required by statute or regulation to be obtained by Buyer, Supplier agrees to obtain and maintain, at its own expense, all permits, licenses, and other forms of documentation required for Supplier to comply with applicable Laws. Buyer reserves the right to review and approve all applications, permits, and licenses prior to the commencement of any work hereunder.

7. INDEMNIFICATION

- 7.1 Supplier shall indemnify and hold harmless Buyer, Buyer's insurers, Affiliates and their employees, agents, officers, and directors from and against all suits, claims, judgments, awards, losses, damages, costs, or expenses (including attorneys' fees) relating to, arising out of, or caused by (i) Supplier's performance hereunder, (ii) any act or omission of Supplier, or (iii) any Goods or Services supplied (a "Claim"). Supplier's indemnification obligation hereunder covers, without limitation, injuries, sickness, diseases (including occupational disease whenever occurring), or death of Supplier employees.
- 7.2 Supplier shall, upon written notice from Buyer, promptly assume and diligently conduct the entire defense of a Claim at its own expense. Insofar as Buyer's interests are affected, Buyer shall have the right, at its own expense and without releasing any obligation of Supplier, to participate and intervene in a Claim. Buyer shall have the right to reasonably reject counsel selected by Supplier. Supplier shall not enter into any settlement without Buyer's prior written consent, which shall not be unreasonably withheld.

7.3 Buyer may supersede Supplier in the defense of any Claim and assume and conduct the defense at Buyer's sole discretion. In such an event, Supplier shall be released from any obligation to pay for attorneys' fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Supplier's complete cooperation with Buyer in Buyer's defense of such Claim at Buyer's expense. Buyer shall not enter into any settlement without Supplier's prior written consent, which shall not be unreasonably withheld.

8. TAXES

8.1 Unless otherwise stated in the Order, all payments or prices are exclusive of any transactional taxes, including sales and use, value-added, goods and services, or any other taxes, fees, or duties ("Taxes") levied in regard to any of the transactions covered by the Order. Buyer is not responsible for any tax based on Supplier's income, payroll, or gross receipts. Any Taxes that Supplier is required to collect from Buyer shall be separately stated on the invoice and Supplier shall be responsible for remitting any such Taxes to the relevant tax authority.

8.2 Solely to the extent Buyer is required by Law to withhold an amount on account of taxes for which Supplier is responsible, Buyer shall deduct any such withholding from payment to Supplier and provide sufficient supporting documentation to Supplier.

8.3 Supplier shall, upon receipt from any tax authority of any levy, notice, assessment, or withholding of any Taxes for which Buyer may be obligated, notify Buyer in writing. The Parties shall cooperate in the resolution of disputes pertaining to any Taxes. If Buyer may directly contest any Taxes, then it may do so and, to the extent permitted by Law, withhold payment during contest pendency. If Buyer is not so permitted, Supplier shall contest the Taxes as requested by the Buyer.

8.4 Except as otherwise set forth in an Order, Supplier shall deliver electronically by way of a secure, encrypted file transfer tool, all software of any type, including manuals. Supplier shall separately itemize the prices of electronically delivered software, licenses, fees, and Services on invoices. Invoices shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via a secure, encrypted file transfer tool."

9. INSPECTION, ACCEPTANCE, REJECTION, AND AUDIT

9.1 All Goods and Services being provided to Buyer's Specifications covered by the Order may be inspected, monitored, tested, or otherwise reviewed by Buyer or its designee, at all reasonable times and places, including during production / provision. Supplier shall provide, without additional charge, reasonable facilities and assistance for such review activities.

- 9.2 Goods and Services furnished hereunder shall have zero defects, and Supplier has the obligation to properly inspect / review such items prior to delivery to Buyer as applicable. If any Goods or Services covered by the Order are defective or otherwise not in conformity with the requirements of the Order, Buyer may, (i) rescind the Order as to such Goods and Services, and rescind all Orders and/or the Agreement, if any, if such defect or nonconformity materially affects Buyer; (ii) accept such Goods and Services at an equitable reduction in price; or (iii) reject such Goods and Services and require the delivery of replacements. If Supplier fails to deliver required replacements in a commercially reasonable cure period, Buyer may (i) replace, obtain, or correct such Goods and Services and charge Supplier the cost occasioned Buyer thereby, and/or (ii) terminate the Order for cause.
- 9.3 Rejected Goods and Services may be returned to Supplier at Supplier's cost where applicable.
- 9.4 Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses, and damages related to or arising from nonconforming Goods and Services.
- 9.5 Supplier and Supplier Personnel shall at any time, and after reasonable notice by Buyer, grant to Buyer, Buyer's authorized representatives, and to any competent regulatory authority, (i) unrestricted access to (or if requested by Buyer, provide to Buyer copies of) Supplier's books, records, and documentation related to compliance with the Order (including, without limitation, those pertaining to physical and network security and data privacy and protection procedures and controls), wherever such books and records may be located; and (ii) access to Supplier's premises to perform any type of inspection, test, audit, or investigation with respect to Supplier's premises and network for the purpose of enabling Buyer to verify compliance with the requirements set forth in the Order, these terms and conditions, or any other contractual agreement between the Buyer and Supplier. Supplier information disclosed during such inspection activities shall be held as Supplier confidential information and be used only in support of the Buyer's rights herein.
- 9.6 Supplier shall maintain appropriate books, records, and documentation for all Goods and Services, which shall be available to Buyer during performance of an Order and until the later of: (i) 4 years after final payment, (ii) final resolution of any dispute involving the Goods delivered or Services performed hereunder, (iii) the latest time required by an Order, (iv) the latest time required by applicable Laws, (v) 6 years for documentation in support of a GT requirement, or (vi) as otherwise directed by Buyer.

10. ORDER CHANGES

- 10.1 Buyer may unilaterally make changes within the general scope of the Order, including changes in whole or part to: (i) any designs, specifications, and drawings, (ii) the statement of work, (iii) the method or manner of performance, and/or (iv) quality requirements (collectively "Change(s)"). Supplier shall perform any Changes ordered by Buyer. Any Order terms that incorporate flexibility for variations or modifications shall not be considered Changes within the meaning of this Section.

10.2 If any Changes cause an increase or decrease in the cost, the time required for the performance, or otherwise affect any other provision of the Order, an equitable adjustment shall be made, and the Order shall be modified in writing accordingly, provided that the equitable adjustment is adequately justified by Supplier. Supplier's claims for adjustment under this Section shall be deemed waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within 15 days from the date Supplier receives the Change order.

11. INSURANCE

11.1 Without limiting Supplier's liability and duty to hold harmless and indemnify hereunder, Supplier agrees to secure, maintain, and require its subcontractors to maintain the following insurance coverages and limits:

11.1.1 Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the Laws of the U.S., non-U.S. country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence; and

11.1.2 Commercial General Liability Insurance and Umbrella Liability Insurance, including Premises Liability and Contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of \$5,000,000 for any one occurrence.

11.2 All such insurance shall be issued by companies authorized or permitted to do business under the Laws of the state or jurisdiction in which all or part of the Goods and Services are to be performed and must have an AM Best financial rating of A- or better or an equivalent rating as produced by another rating agency acceptable to Buyer.

- 11.3 The insurance policies described herein, and in an Order, shall be in a form satisfactory to Buyer and shall contain a provision prohibiting cancellation or material change except upon at least 30 days' prior notice to Buyer. All such insurance policies or self-insurance will be primary in the event of a loss arising out of Supplier's performance and shall provide that where there is more than one insured the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured and shall operate without right of contribution from any other insurance carried by Buyer. Certificates evidencing such insurance and endorsements naming Tsunami Tsolutions LLC and Buyer as an additional insured under the Commercial General Liability and Umbrella Liability insurance or, in the case of All Risk Property Insurance, naming Tsunami Tsolutions LLC and Buyer as a loss payee, shall be filed with Buyer upon execution of an Agreement or any Order and before commencement of any work hereunder, and within 30 days after any renewals or changes to such policies are issued. To the extent permitted by Law, Supplier and its insurer(s) agree that subrogation rights against Tsunami Tsolutions LLC and Buyer are hereby waived under the Commercial General Liability, Umbrella Liability, Auto Liability and Workers Compensation insurance; such waiver shall be reflected on the insurance policies. Supplier shall, if requested by Buyer, advise Buyer of the amount of available policy limits and the amounts of any self-insured retention. The certificate of insurance shall identify the contract number or work to be performed and shall acknowledge that such coverage applies to liabilities incurred by Supplier, its employees, invitees or agents under an Agreement or any Order and that such insurance shall not be invalidated by any act or neglect of Supplier such as a breach or violation of the policies.
- 11.4 Any self-insurance, self-retained layer, deductibles, and exclusions in coverage in the insurance policies described above or in the applicable Additional Insurance Coverage Requirements, will be assumed by, for the account of, and at the sole risk of Supplier.

12. TERMINATION FOR CONVENIENCE

- 12.1 Buyer may, at any time, terminate all or part of an Agreement or any Order for its convenience upon written notice to Supplier.
- 12.2 Upon termination, in accordance with Buyer's written direction, Supplier will immediately: (i) cease work and place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Order; (ii) prepare and submit to Buyer an itemization of all completed and partially completed Goods and Services; (iii) if requested by Buyer, deliver to Buyer any and all Goods and Services completed up to the date of termination at the pre-termination Order price; and (iv) if requested by Buyer, deliver any work-in-process.
- 12.3 In the event Buyer terminates an Agreement or Order for its convenience after performance has commenced, Buyer will compensate Supplier only for the actual and reasonable work-in-process costs incurred by Supplier on Goods and Services required to be delivered within the reasonable average time required to manufacture and deliver the Goods or perform the Services. Supplier shall use reasonable efforts to mitigate its own and Buyer's liability under this Section. To receive compensation, Supplier must submit its termination claim, as directed by Buyer, within 90 days from the effective date of the termination.

12.4 Buyer shall not be liable to Supplier for costs or damages other than as described above, and in no event for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the price allocated to the portion of the Order terminated.

13. TERMINATION FOR DEFAULT

13.1 Buyer may, by written notice, terminate the Agreement or any Order, or any portion thereof, for default without any liability or obligation whatsoever to Supplier for the portion terminated, in the following circumstances: (i) Supplier fails to perform any obligation hereunder (other than a delivery obligation) and fails to cure such obligation within 10 days (or as otherwise mutually agreed) (the "Cure Period"); (ii) Supplier fails to perform any delivery obligation hereunder; (iii) when Buyer has reasonable grounds for insecurity, and Supplier fails to provide adequate assurances of performance in writing within 10 days following Buyer's demand or, (iv) should Supplier (a) become insolvent, (b) become unable to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, or (d) have a receiver appointed for the whole or any substantial part of its assets, make an assignment for the benefit of creditors or become in any way the subject of a bankruptcy petition (each in Subsection (iv), a "Supplier Insolvency"). Notwithstanding the foregoing, if a cure is not possible within such Cure Period, Supplier shall submit to Buyer, within a period of 10 days after receipt of notice from Buyer specifying such failure, a detailed plan to cure such failure (including related time period) acceptable to Buyer in its sole discretion, provided, however, that if such a cure plan is approved by Buyer, Supplier's subsequent failure to comply with such cure plan shall be deemed a default hereunder, and Buyer may terminate immediately without additional cure periods.

13.2 Buyer shall have no liability in relation to those Goods and Services terminated for Supplier's default. Supplier shall be liable to Buyer for any and all expenses, costs, and damages including increased re-procurement costs and other non-recurring costs, except in the circumstance of any failure or delay constituting a "Force Majeure Event" as set forth in the Section herein entitled "Force Majeure".

13.3 If the Agreement or any Order is entirely or partially terminated under this Section other than pursuant to a Supplier Insolvency, in addition to any other rights Buyer may have:

13.3.1 Supplier shall grant and promises to grant to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable license, with the right to grant sublicenses, to Supplier's information, data, know-how, and other Intellectual Property, including proprietary information, to the extent necessary to enable Buyer to use, license, and/or perform or have performed, the Services; and

13.3.2 Buyer may require Supplier, at no charge to Buyer, to deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary information, utilized by Supplier in performing the Order.

13.4 In addition to and not in lieu of other rights to Intellectual Property otherwise set forth in the Order and these Terms and Conditions, Supplier hereby grants to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license (“Additional License”), with the right to grant sublicenses, to Supplier’s information, data, know-how, tooling, test equipment and other Intellectual Property, including without limitation proprietary and manufacturing information to enable Buyer to use, sell and license the Goods and/or perform, or have performed, the Services, subject to Buyer’s agreement not to exercise such rights under this Additional License except in the event of a Supplier Insolvency, whether or not the Order is terminated. As part of such Additional License, Supplier shall upon Buyer’s written request and at no charge to Buyer, promptly (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier in performing the Order, and (ii) provide technical and transition assistance in order to ensure Buyer’s continuing requirements for Goods and Services, including continuing to provide access to Buyer’s Information stored by Supplier until delivered to Buyer or Buyer’s designee.

14. TRANSITION SERVICES

14.1 In addition to and not in lieu of any other Buyer rights, at Buyer’s request, upon termination or expiration of the Agreement or Order, or any portion thereof, Supplier will provide technical and transition assistance services (“Transition Services”) pursuant to these Terms and Conditions to ensure an orderly and timely transfer to Buyer or a third party at no increased rate charges to Buyer. As part of such Transition Services, Supplier will use commercially reasonable efforts to perform assistance as reasonably requested by Buyer to: (i) facilitate an orderly transition, including assisting with preparing and planning for transition, timely execution of the transition plans and post-transition support and assistance; (ii) continue to provide the Goods and Services in accordance with any Order, including, without limitation, providing access to Buyer’s Information; and (iii) perform such other transition assistance required to minimize disruption in Buyer’s operations.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 Each Party retains its existing rights in Background Intellectual Property.

- 15.2 Buyer shall own all Foreground Intellectual Property. Supplier shall disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Supplier shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Supplier hereby irrevocably assigns and promises to assign to Buyer all right, title, and interest to all Foreground Intellectual Property. Supplier agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Supplier to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property shall be considered Buyer's Proprietary Information (defined hereinafter). Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of the Order, those works that come under one of the categories of "Works Made for Hire," in United States copyright law (17 U.S.C. §101) shall be considered "Works Made for Hire." For any works of authorship that do not come under such categories, Supplier, warranting that it has the right to do so, hereby assigns and promises to assign all right, title, and interest to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.
- 15.3 Supplier represents and warrants that Supplier has sufficient rights in all Goods, Services, Intellectual Property, and other items that Supplier uses or transfers to Buyer in connection with the Order to allow Supplier to lawfully comply with the Order.
- 15.4 Supplier hereby grants and promises to grant to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully paid, irrevocable, transferable license to Background Intellectual Property to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, perform and have performed Services in order to enable Buyer to practice the Foreground Intellectual Property.
- 15.5 Supplier hereby irrevocably waives and promises to waive all moral rights to the extent permissible by Law, all rights of privacy and publicity, and the like, in all Goods and Services provided to Buyer and in all activities in connection with the Order.
- 15.6 Supplier represents and warrants that Supplier shall not provide, in the performance of the Order, any software, including without limitation source code, compiled code, embedded software, or firmware, including without limitation free software, open source software, freeware, general public license-governed software, or any hardware designs, in any form that are subject to any obligations or conditions that may provide a legal right to any third party to such software or hardware designs, or that could otherwise impose any limitation or condition on Buyer's use, reproduction, modification, distribution, publication, or conveyance of such software or hardware designs.
- 15.7 Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Supplier a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.

16. INTELLECTUAL PROPERTY INDEMNIFICATION

- 16.1 Supplier shall indemnify and hold harmless Buyer, Buyer's Affiliates, and their agents, directors, officers, and employees, and each subsequent purchaser or user, from any losses, costs, damages, and liabilities, including, without limitation, any attorney's fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging infringement or violation of any Intellectual Property rights or license, related to the use or other exploitation of any Goods and Services performed in connection with the Order ("IP Claim").
- 16.2 Supplier shall not be liable for any IP Claim to the extent such IP Claim is based on Supplier's compliance with any Specification created by Buyer, unless: (i) Supplier could have complied with Buyer's Specification using a solution that was non-infringing; (ii) the relevant portion of the Specification was provided by Supplier; or (iii) Supplier knew or should have known of an IP Claim or potential IP Claim and did not promptly notify Buyer in writing.
- 16.3 Supplier shall, upon written notice from Buyer of an IP Claim for which it is liable, promptly assume and diligently conduct the entire defense of an IP Claim at its own expense. Insofar as Buyer's interests are affected, Buyer shall have the right, at its own expense and without releasing any obligation of Supplier, to participate and intervene in an IP Claim. Buyer shall have the right to reasonably reject counsel selected by Supplier. Supplier shall not enter into any settlement without Buyer's prior written consent, which shall not be unreasonably withheld.
- 16.4 Buyer may supersede Supplier in the defense of any IP Claim and assume and conduct the defense at Buyer's sole discretion. In such an event, Supplier shall be released from any obligation to pay for attorneys' fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Supplier's complete cooperation with Buyer in Buyer's defense of such IP Claim at Buyer's expense. Buyer shall not enter into any settlement without Supplier's prior written consent, which shall not be unreasonably withheld.
- 16.5 If the manufacture, use, sale, offer for sale, import, export, or other exploitation of any Goods or Services is enjoined by a court; if delivery is precluded by a government entity; or should Supplier refuse to provide or supply any Goods or Services to avoid a potential IP Claim, Supplier shall avoid any disruption to Buyer and shall (i) secure for Buyer the right to provide, use or sell such Goods or Services; (ii) modify or replace such Goods or Services with equivalent non-infringing Goods or Services; or (iii) provide such other solution acceptable to Buyer. Supplier shall reimburse Buyer for Buyer's costs incurred in obtaining all internal, external and Buyer's Customer approvals, qualifications, certifications, and the like, necessary for making, using, providing, and selling alternate non-infringing Goods or Services. Supplier shall refund to Buyer the purchase price of any such Goods or Services that Buyer is prohibited from providing, using, selling, offering for sale, importing, exporting, or otherwise exploiting.

17. PROPRIETARY INFORMATION

- 17.1 Unless Supplier has received Buyer's express written consent to the contrary, Supplier shall (i) use the Proprietary Information solely for the purposes of an Order, and not for any other purpose (including, without limitation, providing Goods and Services to entities other than Buyer; or obtaining any government or third party approvals); (ii) safeguard the Proprietary Information to prevent its disclosure to, or use by, third parties; (iii) not disclose the Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Proprietary Information.
- 17.2 Supplier may disclose the Proprietary Information to officers, directors, employees, contract workers, consultants, agents, affiliates, or subcontractors of Supplier who have a need to know such Proprietary Information for the purposes of performing the Order and who have executed a written agreement with Supplier obligating such entity or person to treat such information in a manner consistent with the terms of this Section.
- 17.3 No Order shall restrict Supplier from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of Supplier or a third party; (ii) is received by Supplier without restriction as to disclosure by Supplier from a third party having a right to disclose it; (iii) was known to Supplier on a non-confidential basis prior to the disclosure by Buyer; or (iv) was independently developed by employees of Supplier who did not have access to any of Buyer's Proprietary Information.
- 17.4 If Proprietary Information is required to be disclosed pursuant to judicial process, Supplier shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Proprietary Information pursuant to judicial process shall not be deemed a breach of an Order provided that the obligations of this Section are fulfilled by Supplier.
- 17.5 Buyer shall have the right to audit all pertinent documentation of Supplier, and to make reasonable inspection of Supplier's premises, in order to verify compliance with this Section.
- 17.6 Obligations in this Section regarding Proprietary Information shall continue until such time as all Proprietary Information is publicly known and generally available through no improper act or omission of Supplier or any third party.
- 17.7 Unless required otherwise by Law or an Order, Supplier shall promptly return, or otherwise dispose of, Proprietary Information as Buyer may direct.
- 17.8 Notwithstanding any proprietary markings, all information of Supplier disclosed to Buyer hereunder may be disclosed by Buyer to any of Buyer's Affiliates, and to Buyer's subcontractors and potential subcontractors having a need to access or know such information and who have executed a written agreement with Buyer obligating such entity or person to treat such information in a manner consistent with the terms of this Section.
- 17.9 For Proprietary Information exchanged in connection with the Order, the terms of this Section shall supersede any provisions regarding the protection of proprietary information in any other agreements between the Parties.

18. SECURITY FOR TSUNAMI INFORMATION

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- 18.1 The following provisions are applicable whenever the Supplier will Process Tsunami Information. “Security Incident” means (i) any circumstance that involves, or which a Party reasonably believes may involve (a) Unauthorized Processing, destruction, or loss of Tsunami Information in Supplier’s custody or control; or (b) interference with any information system or any medium or format that subjects Tsunami Information to risk of such Unauthorized Processing, destruction, or loss; or (ii) any other similar incident as may be so defined by any Data Privacy Law and by any Laws relating to the protection of Tsunami Information.
- 18.2 Supplier agrees to comply with industry standard information security protocols, including only using appropriately secure hardware and software designed to (a) protect the security, confidentiality, integrity, and availability of Supplier’s systems, the Goods and Services, and Tsunami Information from Security Incidents; and (b) align to a generally accepted cybersecurity framework.
- 18.3 Supplier further agrees to:
- 18.3.1 Not allow Unauthorized third parties to Process Tsunami Information in the performance of its obligations under the Order.
 - 18.3.2 Only provide Tsunami Information to third parties upon prior written approval of Buyer and subject to the terms of the Order.
 - 18.3.3 Not make any Unauthorized or secondary or other use (e.g., for the purpose of data mining) copy of Tsunami Information except as required by Law.
 - 18.3.4 Provide Buyer, upon request, with a summary of its information security protocols to allow Buyer to confirm acceptable practices.
 - 18.3.5 Use reasonable efforts to ensure “least access” best practices are implemented, whereby all Tsunami Information is only accessible by Buyer and those Supplier Personnel who require access to provide the Goods or Services or to maintain the equipment and the program on which it runs.
 - 18.3.6 Use industry standard encryption methods or other secure technologies in connection with the Processing of Tsunami Information. Notwithstanding any provision to the contrary herein, unencrypted Buyer Personal Information shall not be stored on any Supplier mobile computing devices (e.g., laptop computers and mobile phones).
 - 18.3.7 Upon termination or expiration of the Agreement or Order, at Buyer’s request, return or destroy Tsunami Information as Buyer may direct. Supplier may retain Tsunami Information stored in routine back-ups maintained in the ordinary course until such back-ups are overwritten.
 - 18.3.8 Provide information to, and reasonably cooperate with, Buyer in response to any subpoena or investigation seeking Tsunami Information in the possession of Supplier. Supplier shall promptly notify Buyer upon the receipt of any request requiring that Tsunami Information be supplied to a third party.
 - 18.3.9 Provide prompt written notice to Buyer of a Security Incident, but no later than 72 hours after its discovery. Except as may be required by applicable Law, Supplier agrees that it will not inform any third party (excluding law enforcement) of any Security Incident without first obtaining Buyer’s prior written consent.

- 18.3.10 (i) Use commercially reasonable efforts to investigate, contain, and remediate Security Incidents; (ii) cooperate with Buyer in the investigation, containment, and remediation; and (iii) preserve all information and evidence related to Security Incidents (including, without limitation, by suspending routine overwriting or deletion of data or log files). Supplier shall provide Buyer with a report of the investigation that summarizes in reasonable detail the impact on Buyer, its agents, and employees affected by Security Incident containment and remediation actions taken or proposed to be taken by Supplier. Supplier shall provide report updates that summarize in reasonable detail any pertinent changes that impact the Buyer, its agents, and employees affected by the Security Incident.

19. SUPPLIER PERSONNEL

- 19.1 Supplier shall establish key Supplier Personnel for each project in the applicable Order. Supplier shall use commercially reasonable efforts to retain Supplier Personnel who are reasonably considered by Buyer to be critical to the performance of the Services under an Order. Upon termination or resignation of any key Supplier Personnel, Supplier shall provide notice to Buyer of such termination or resignation and promptly identify a suitable replacement with no disruption to performance hereunder.
- 19.2 Supplier will be responsible and liable for the acts and omissions of Supplier Personnel in connection with the provision of the Services as if such acts or omissions were Supplier's acts or omissions. Supplier will ensure that all Supplier Personnel are trained regarding, advised of, and comply with the provisions of any Order.
- 19.3 Supplier is responsible for any and all discipline of its Supplier Personnel. Buyer may require Supplier to replace any Supplier Personnel who are not in compliance or performing to Buyer's reasonable satisfaction, at any time.
- 19.4 If Supplier is an individual, Supplier acknowledges that they are not an employee of Buyer and are not entitled to the rights and benefits of a Buyer employee. If Supplier is a company or other entity, it acknowledges that Supplier Personnel are not Buyer employees and are not entitled to the rights and benefits of a Buyer employee.

20. ACCESS TO FACILITIES, SYSTEMS, OR TSUNAMI INFORMATION

- 20.1 Supplier shall perform identity screenings, work authorization verifications, and background checks on any Supplier Personnel seeking access to Buyer's (i) facilities, (ii) computer systems or databases, or (iii) Tsunami Information (collectively, "Access") to identify persons or entities ineligible for such Access. In furtherance of this obligation, Supplier shall, in advance of any request or grant of such Access:
- 20.1.1 Verify the identity and requisite work authorization of Supplier Personnel requiring Access.

- 20.1.2 Except to the extent not permissible by applicable Law, perform a background screen on Supplier Personnel using a company approved by Buyer evidencing that (i) Supplier Personnel do not have any criminal convictions, or (ii) if they do have criminal convictions, such Supplier Personnel were hired only after an individualized assessment was conducted in accordance with all applicable Laws and taking into consideration the nature and severity of the underlying offenses, the nature and scope of the Access to be granted, the specific jobs at issue, and the length of time since the convictions.
- 20.1.3 Not seek Access for any Supplier Personnel ineligible for such Access based on the failure to meet the above criteria, and will notify Buyer immediately, in writing, if any of Supplier's Personnel with Access is no longer eligible.
- 20.2 Supplier agrees that Buyer shall have sole discretion as to whether Supplier is granted Access and agrees that any Access privileges granted to Supplier will be defined by Buyer. Buyer reserves the right to impose additional requirements before granting Supplier Personnel Access, as applicable, to meet any additional compliance related or site-specific policies and procedures.
- 20.3 Supplier is responsible for ensuring that any Supplier Personnel requiring Access meet the Access requirements set forth herein. Supplier shall immediately notify Buyer if, at any time during the performance of the Order, (i) any Supplier Personnel information relied upon in making an Access determination has changed or been rendered inaccurate for any reason, or (ii) the need for Access by any Supplier Personnel ceases. The need to Access shall automatically cease for any Supplier Personnel who are terminated, transferred, or otherwise no longer employed by Supplier.
- 20.4 Supplier or Supplier Personnel's refusal or failure to meet Buyer's Access requirements at any time during the performance of the Order may result in Buyer's refusal to grant Supplier Personnel Access. Any such refusal by Buyer shall not constitute an employment action by Buyer.
- 20.5 Supplier acknowledges and agrees that any breach of this Section may result in a violation of Law for which Buyer, Supplier, and Supplier Personnel may be liable. At Buyer's request, Supplier will provide Buyer (i) written confirmation that the Access requirements have been met, and (ii) documentation to verify the methodology, process, and results relied upon by Supplier to comply with the Access requirements.

21. DATA PRIVACY

21.1 Supplier shall:

- 21.1.1 Comply with all applicable Data Privacy Laws and promptly notify Buyer in writing if Supplier believes that Processing Buyer Personal Information pursuant to this Section infringes Data Privacy Laws.
- 21.1.2 Only Process Buyer Personal Information or transfer Buyer Personal Information to authorized third parties in performance of its obligations under an Agreement or Order in conformance with Buyer's instructions or to comply with applicable Law.

- 21.1.3 Not Process, or allow any third party to Process, Buyer Personal Information, except to provide Goods and Services pursuant to an Agreement or Order or as required by Law. If Supplier does allow a third party to Process Buyer Personal Information, Supplier shall (i) be responsible for the acts and omissions of any subcontractor or other such third party that Processes (within the meaning of the applicable Data Privacy Laws) Buyer Personal Information on Supplier's behalf in the same manner and to the same extent as it is responsible for its own acts and omissions with respect to such Buyer Personal Information; and (ii) ensure such subcontractor or third party is bound by a written agreement that contains the same or equivalent obligations and protections as those set forth in this Section, including to the extent applicable, an appropriate transfer mechanism.
- 21.1.4 Take commercially reasonable steps to ensure that Supplier Personnel (i) are only accessing Buyer Personal Information on a need-to-know basis; and (ii) are obligated to maintain the confidentiality of Buyer Personal Information, such as through a written confidentiality agreement or by application of relevant Laws.
- 21.1.5 Upon request, provide Buyer with any existing records or logs that cover access to Buyer Personal Information.
- 21.1.6 Provide Buyer with commercially reasonable assistance in: (i) responding to requests from individuals or legal representatives to delete Buyer Personal Information or opt-out; and (ii) distribute a privacy notice related to the use of Supplier's electronic data solution.
- 21.1.7 Pursuant to Buyer's written instructions, provide Buyer with the ability to purge Buyer Personal Information in bulk or as otherwise required by applicable Law.
- 21.1.8 Immediately advise Buyer in writing if it receives or learns of any legal, governmental, administrative, or regulatory request or demand for Buyer Personal Information (collectively, "Data Privacy Matters"). If Supplier learns of any Data Privacy Matters, Supplier shall provide assistance to, and fully cooperate with, Buyer in investigating the matter. Buyer shall be responsible for communicating with individuals regarding their Buyer Personal Information in connection with such Data Privacy Matters unless Buyer authorizes Supplier to do so on its behalf. Supplier shall use commercially and legally reasonable efforts to limit the nature and scope of any required disclosure to the minimum amount of Buyer Personal Information required to comply with applicable Law. Unless prevented by applicable Law, Supplier shall provide Buyer with advance written notice of any such Data Privacy Matters sufficient to allow Buyer to contest any such processes.

- 21.2 Supplier shall provide written notice to Buyer as soon as possible and, whenever possible, within 48 hours of any actual or reasonably suspected incident of accidental or unlawful destruction or accidental loss, alteration, unauthorized or accidental disclosure of or access to Buyer Personal Information of which it becomes aware (a "Security Breach"). Using industry standard encryption methods, Supplier shall send such notice via email that contains details of the Security Breach. If Supplier is unable to provide notice within 48 hours, Supplier shall provide Buyer with an explanation for the delay that Buyer will be entitled to share with regulators. Supplier shall take all reasonable measures to contain and remedy the Security Breach, wherever possible; provide Buyer with information regarding the investigation and remediation of the Security Breach, unless restricted by Law; and not disclose any information regarding, or provide notice to third parties about, a Security Breach (a "Security Breach Notice") without the prior written consent of and approval by Buyer of the content, media, and timing of the Security Breach Notice (if any), unless required to do so by Law or court order and, even where required to do so by Law or court order, make all reasonable efforts to coordinate with Buyer prior to providing any such Security Breach Notice. Where the Security Breach (i) involves data on the Supplier's networks or systems or (ii) is the fault of the Supplier, then Supplier will, at the request of Buyer, pay for the costs of remediation, notification (including, where reasonably necessary, a call center), and, if the Security Breach involves data elements that could lead to identity theft, provide the affected individuals with credit monitoring or other commercially-reasonable identity theft mitigation service for 1 year or such longer period as required by Law or a government regulator.
- 21.3 In the event Supplier provides personal information to Buyer that is protected by Data Privacy Laws, Supplier shall ensure that such personal information is provided consistent with applicable Law, including, where required, obtaining consent or providing notice.
- 21.4 Absent contrary instructions from Buyer within 30 days after expiration or termination of an Order, Supplier shall immediately destroy all Buyer Personal Information, except to the extent required by Supplier to discharge its obligations under an Order or contrary to applicable Law.
- 21.5 If an Order involves the Processing of Buyer Personal Information from individuals in California, then the Parties agree that Supplier is a "Service Provider", as such term is defined in the California Consumer Privacy Act, Cal, Civ. Code §§ 1798.100 et. seq. and implementing regulations, and will neither sell, nor exchange Buyer Personal Information for anything of value.

22. COMPLIANCE WITH LAWS

- 22.1 Supplier warrants that it shall comply with all Laws applicable to the performance of the Order. Supplier agrees to cooperate with and support Buyer's efforts to comply with all Laws, by providing supporting documentation, as applicable, and using the tools and systems provided by Buyer to ensure such compliance.
- 22.2 Supplier shall, at the earliest practicable time, notify Buyer in writing if Supplier is subject to any federal, state, or foreign government criminal proceeding alleging fraud or corrupt practices, once initiated by the filing of a formal charging document in a court of law; and further notify Buyer of any subsequent felony convictions or deferred prosecution agreement(s) related to the foregoing.

22.3 Supplier agrees to comply with Buyer's environmental, health and safety standards, requirements, and restrictions, as applicable, during Supplier's performance hereunder and when at Buyer's jobsites, including, without limitation, notifying Buyer prior to the commencement of work, and providing Buyer with any test reports or results related to Goods and Services, as applicable.

23. COMPLIANCE COVENANTS

23.1 Supplier represents and warrants that:

23.1.1 Supplier has not offered or given and shall not offer or give anything of value (in the form of entertainment, gifts, gratuities, or otherwise) to Buyer's employees or representatives for the purpose of obtaining any Order or favorable treatment under any Order.

23.1.2 Supplier has not made, nor will it make, or offer to make any political contributions, or pay, or offer to pay any fees or commissions in connection with any Order; and

23.1.3 Supplier Personnel assigned to perform Buyer work shall remain free of any actual or apparent conflicts of interest with Buyer, including, but not limited to, the existence of conflicting roles that might bias Supplier or Supplier Personnel's judgment, or circumstances that may create an unfair competitive advantage for Supplier. Supplier shall ensure that any actual, apparent, or potential conflicts of interest are properly identified and mitigated by Supplier. Supplier shall promptly notify Buyer of any change in circumstances that creates an actual, apparent, or potential conflict of interest.

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

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

24. SUPPLIER CODE OF CONDUCT

24.1 Supplier shall comply with the Supplier Code of Conduct available at the Tsunami website (<https://tsunamitsolutions.com> "Supplier Code of Conduct"). Supplier acknowledges and agrees that failure to satisfy the requirements of this Section shall constitute a material breach of the Order.

24.2 Supplier shall (i) comply with applicable laws and the requirements set forth in the Supplier Code of Conduct; (ii) promote an awareness of and commitment to ethical business practices, including, without limitation, the expectations set forth in the Supplier Code of Conduct; (iii) facilitate the timely discovery, investigation (including cooperation with any Buyer initiated investigation involving Supplier), disclosure (to Buyer and others as appropriate), and implementation of corrective actions for violations of Law, an Agreement, Order, or the expectations set forth in the Supplier Code of Conduct; and (iv) provide training to its employees on compliance requirements, including the expectations set forth in the Supplier Code of Conduct.

25. GLOBAL TRADE COMPLIANCE

- 25.1 Compliance with GT Laws. Supplier agrees that no Technical Data, Goods, or Services controlled under any GT Laws and provided by Buyer in connection with the Order, shall be provided to any U.S. or non-U.S. person or entity, unless the transfer is expressly permitted by a U.S. or non-U.S. government license or other authorization, or where no such authorization is required, in accordance with applicable GT Laws.
- 25.2 Restricted Party Screening. Supplier shall not engage any Supplier Personnel who is ineligible to perform hereunder because of any embargo, sanction, debarment, or designation as a Specially Designated National or a restricted party, as maintained by the U.S. Government or any applicable non-U.S. government or union of states.
- 25.3 GT Authorizations. If, pursuant to applicable GT Laws, the performance of any Order requires either Party to obtain government-approved export or other GT authorization, the Parties shall mutually exercise reasonable efforts to support the preparation, submission, and management of such authorization. Upon request, the Parties shall exchange copies, redacted as appropriate, of all government GT authorizations related to the Order, and all provisions, conditions, and limitations relating to the authorization. Each Party shall ensure all required GT authorizations remain valid for the duration of the Order, and, as applicable, shall be individually responsible for compliance with all government GT authorizations, including without limitation ensuring that all export and import related documentation is properly completed and timely filed.
- 25.4 Export and Import Classification Registration. Where known, or where Supplier is the design authority for the Technical Data, Goods, or Services that are subject to the Order, Supplier shall provide Buyer with (i) the applicable Harmonized Tariff Schedule Number and U.S. export jurisdiction and classification, (ii) any analogous classification under any other applicable GT Law, and (iii) timely notification in writing of any changes to any such classifications. If, under any Order, Supplier will engage in any manufacturing or exporting of items on the U.S. Munitions List or engage in the provision of defense services (as defined in 22 C.F.R. § 120.32), Supplier shall maintain registration with the U.S. Department of State, Directorate of Defense Trade Controls ("DDTC") as may be required by Part 122 of the International Traffic in Arms Regulations ("ITAR"). Upon request, Supplier shall provide Buyer annually with evidence of its DDTC registration.

- 25.5 **Certifications.** If the Order forms the whole or a part of a sale by Buyer of defense articles or defense services being sold in support of a Foreign Military Sale or commercially to or for the use of the armed forces of a foreign country or international organization, Buyer will identify the Order as such and Supplier shall, upon acceptance of the Order, or within 10 days of being requested by Buyer to do so, provide information, in the format specified by Buyer, in furtherance of the requirements stipulated in Part 130 of the ITAR, 22 CFR §§130.9 and 130.10.
- 25.6 **Brokering.** Supplier acknowledges that it shall not engage in “brokering activity” as that term is defined in 22 C.F.R. § 129.2 in connection with any Order.
- 25.7 **Technical Data Transfer.** Supplier shall not export, re-export, transfer, disclose, or otherwise provide physical or electronic access to Technical Data to any person or destination not authorized to receive Technical Data under existing GT Laws or government export authorization (including third-party information technology service providers), or where such access is otherwise inconsistent with applicable GT Laws or policy (e.g., European Union policy against re-exports to or for use in Russia). Supplier shall not modify or divert Technical Data to any military application or other end-use prohibited by applicable GT Laws. Supplier shall develop and implement information technology security protocols, as applicable, to ensure that Technical Data is accessible only by authorized persons.
- 25.8 **Destruction of Technical Data.** Upon completion of performance and expiration of recordkeeping obligations under the Order, all Technical Data shall be destroyed or returned to Buyer, as instructed by Buyer. Destruction of the foregoing items in physical and electronic form must render such items useless beyond repair, rehabilitation, restoration, and recognition of unique characteristics or identifiers. Supplier shall provide a written certification of the method of destruction and its completion to Buyer.
- 25.9 **Technology Control Plan.** When the terms of an Agreement or Order require access to or possession of Technical Data controlled under the ITAR or at an Anti-Terrorism level or higher under the Export Administration Regulations (“EAR”), or the equivalent level of controls under applicable non-U.S. GT Laws, Supplier shall create and follow a Technology Control Plan (“TCP”) that, at a minimum, incorporates the following elements: (i) facility security; (ii) GT compliance training program; (iii) information technology security; (iv) record keeping requirements; (v) restricted party screening as defined above in this Section; (vi) Supplier Personnel oversight, and (vii) visitor management. Supplier shall make a signed copy of the TCP available to Buyer within 30 days of request.
- 25.10 **Required Notices.** Supplier shall promptly notify Buyer if Supplier becomes aware of any failure by Supplier or its subcontractors to comply with this Section and shall cooperate fully with Buyer in any investigation of such failure to comply. Supplier shall also promptly notify Buyer of any changes to Supplier’s name, address, or DDTC registration status.

26. ASSIGNMENT AND CHANGE IN CONTROL

- 26.1 Neither the Agreement or Order, nor any interest therein shall be assignable by or otherwise transferred by either Party in whole or in part to a third party, by way of contract, operation of Law, change in control of such Party or otherwise unless such assignment or transfer is mutually agreed to in writing by the Parties hereto; provided, however, that Buyer may assign the Agreement or Order to any Buyer Affiliate and to any corporation with which Buyer may merge or consolidate or to which Buyer may assign substantially all of its assets or that portion of its business to which the Agreement and/or Order pertains or to any third party provider of “integrated services” that will purchase the Goods and/or Services for Buyer’s benefit without obtaining the agreement of Supplier.
- 26.2 Notwithstanding the foregoing, claims for money due or to become due to Supplier from Buyer arising out of the Agreement or Order may not be assigned, unless such assignment is made to one assignee only and covers all amounts payable under the Agreement and/or Order and not already paid. Buyer shall be under no obligation to pay such assignee unless and until Buyer has received written notice of the assignment from Supplier, a certified copy of the instrument of assignment, and suitable documentary evidence of Supplier’s authority to so assign. However, any payments made to a third party subsequent to Buyer’s receipt of notice that any claims for money due or to become due hereunder have been assigned or should be paid thereto shall fulfill Buyer’s requirements to make any such payments hereunder.

27. SUBCONTRACTING

- 27.1 Supplier may not delegate or subcontract any of its rights, responsibilities, or obligations due or to become due under the Order (collectively, “Subcontract”) without the prior written consent of the Buyer.
- 27.2 Any such Subcontracting by Supplier without Buyer's prior written consent shall be wholly void, invalid, and totally ineffective for all purposes. In the case of any Subcontracting, Supplier shall perform all sub-tier supply management activities that are necessary for the on-time delivery of Goods and Services conforming to the requirements set forth herein. Supplier shall be solely and fully responsible for monitoring its subcontractors under all provisions of the applicable subcontracts, and for ensuring that each of its subcontractors comply with the requirements set forth herein. Supplier shall remain fully liable to Buyer for, and shall be Buyer's sole point of contact for, all aspects of proper performance of the Order, regardless of (i) any Subcontracting; (ii) Buyer approval of the subcontractors; or (iii) Supplier's failure to ensure the relevant Subcontracts contain provisions that comply in substance with the requirements set forth herein.
- 27.3 When subcontracting is permitted:
- 27.3.1 Supplier will apply appropriate controls to its subcontractors to ensure that work output meets all necessary requirements and specifications
- 27.3.2 Supplier will flow down to its subcontractors all relevant and applicable requirements, terms, and conditions from the Order, this document, or any other contractual agreement between the Supplier and Buyer.

28. FORCE MAJEURE

- 28.1 Supplier shall be liable for any failure or delay in performance in connection with an Order, except where such failure or delay results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of its control and without its fault or negligence, provided Supplier gives Buyer, within 3 days of Supplier's learning of such cause, written notice to the effect that a failure or delay by Supplier will occur or has occurred (a "Force Majeure Event"). If a failure or delay in performance is caused by an event affecting any of Supplier's subcontractors, such failure or delay shall not be excusable unless such event is a Force Majeure Event as defined above and the good or service to be provided by such subcontractor is not obtainable by Supplier from other sources in time for timely delivery of the Goods and Services to Buyer. Buyer may cancel any Order without liability to Supplier for its purchase of any Goods and Services affected by Supplier's failure or delay in performance.
- 28.2 Buyer shall be excused for any failure or delay in performance due to any cause beyond its reasonable control.

29. DUTY TO PROCEED

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

30. ASSURANCE OF PERFORMANCE

- 30.1 At any time, if Buyer, in its reasonable discretion, believes that Supplier may not have the ability, for any reason, to continue performing any Order, including, without limitation, any material change to Supplier's financial condition, balance sheet, or its credit or similar rating, Buyer may request, and Supplier shall provide, written adequate assurances from Supplier of its ability, desire, and intent to continue performing. Buyer will specify the nature of its concerns, and Supplier will provide Buyer with documents, financial data, or other information needed to satisfy Buyer's concerns. Further, Supplier will immediately notify Buyer in the event Supplier believes it may be unable to pay its debts when due or there is a material change in Supplier's financial position, balance sheet or its credit or similar rating. In the event either or both Parties have concern about Supplier's ability to continue its performance, the Parties will coordinate to ensure that Buyer receives Goods and Services without interruption in accordance with the Order. Supplier will assist and compensate Buyer for the costs associated with transitioning to another supplier, Buyer assuming the provision of the Goods and Services itself or taking other reasonable steps to ensure the Goods and Services are provided without interruption according to Buyer's Specifications.

31. SETOFF

- 31.1 Buyer and Buyer's Affiliates may withhold, deduct and/or set off all money due, or which may become due to Supplier arising out of Supplier's performance under any Order or any other transaction with Buyer or Buyer's Affiliates in order to settle or discharge any debts owed by the Supplier to the Buyer.

32. GOVERNING LAW AND FORUM

- 32.1 The Agreement and any Order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the Laws in force in the State of Connecticut, USA without regard to conflicts of law principles, except that the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980, as amended to date, will not apply. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of an Order in the appropriate court in Connecticut, and Supplier hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process. If Supplier or any of its property is entitled to immunity from legal action on the grounds of sovereignty or otherwise, Supplier hereby waives and agrees not to plead such immunity in any legal action arising out of the Agreement and/or Order. To the extent permitted by applicable Law, the Parties waive any right they may have to a trial by jury.
- 32.2 Any action or claim by Supplier with respect hereto shall also be brought in Connecticut, if Buyer so elects. Accordingly, Supplier shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within 30 days from receipt thereof, makes its election as aforesaid. If Buyer and Supplier mutually agree to participate in alternative dispute resolution, Supplier agrees that all alternative dispute resolution proceedings shall take place in Connecticut.

33. DISPUTE RESOLUTION

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

34. NEWS RELEASES, PUBLICITY AND OTHER DISCLOSURES

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

35. DELAYS

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

36. REMEDIES

36.1 Supplier shall be liable for any costs, expenses and damages incurred by Buyer related to or arising from Supplier's acts or omissions under the Agreement and/or Order. Except as expressly provided herein, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity.

37. PARTIAL INVALIDITY

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

38. SURVIVAL

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

39. NO WAIVER

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

40. INTERPRETATION

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

41. ORDER OF PRECEDENCE

41.1 The order of precedence provision in an Agreement, if any, shall prevail over this Section.

- 41.2 In the event of any conflict between the provisions applicable to the Order and these Terms and Conditions, such conflict shall be resolved by giving precedence to the provision in the following order of priority:
- 41.2.1 any written, non-preprinted express terms contained in any Order;
 - 41.2.2 any Buyer-issued specifications and work statements incorporated by Buyer in any Order;
 - 41.2.3 these Terms and Conditions; and
 - 41.2.4 pre-printed terms and conditions on Buyer's Orders and terms incorporated in the Order not described in the Subsections above.
- 41.3 Supplier shall promptly and duly execute and deliver to Buyer such further documents and take such further actions as Buyer may from time-to-time reasonably request to effectively carry out the intent and purpose of the Order.