



new eagle

TAKE
CONTROL

NEW EAGLE, LLC

TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES

ARTICLE 1. GENERAL APPLICATION, FORMATION, MODIFICATION.

1.1 General Application. These General Terms and Conditions of Sale (“General Terms”), together with the (i) terms of any other document referred to in these General Terms or to which these General Terms are attached or are incorporated into, (ii) terms of any document provided, signed, or issued by New Eagle, LLC (“Seller”) which reference the applicable transaction, and (iii) subject to the provisions of these General Terms, the quantity and delivery location terms contained in Buyer’s purchase order (collectively, the “Agreement”) apply to all (x) proposals and quotations submitted by Seller, (y) purchase orders submitted by Buyer, and (z) goods and services sold by Seller (collectively “Goods”). All references to “Seller” include any affiliate of Seller that receives a purchase order referencing or otherwise subject to these General Terms.

1.2 Formation. A written quotation issued by Seller is an offer to sell. Buyer accepts the offer and forms a contract under these General Terms upon the first to occur of Buyer: (i) signing and returning to Seller a copy of any quotation or written acknowledgment of a quotation within the time provided therein; (ii) placing a purchase order or giving instructions to Seller with respect to the Goods (including instructions to build and hold); (iii) accepting delivery of all or any part of the Goods; (vi) paying for all or any part of the Goods; or (iv) indicating in some other manner Buyer’s acceptance of these General Terms. Buyer’s acceptance is expressly limited to the terms of the Agreement and the Agreement exclusively governs the sale of Goods by Seller. This Agreement expressly supersedes and excludes any terms and conditions set forth in any purchase order placed by Buyer or any other document issued or deemed to be issued by Buyer to Seller (including, without limitation, Buyer’s general terms and conditions of purchase), each of which are expressly rejected. Any additional or different terms proposed by Buyer, whether in Buyer’s purchase order or otherwise, or any attempt by Buyer to vary the terms of the Agreement in any way, are expressly rejected by Seller, are not part of the Agreement and do not apply to the sale of Goods, and are not binding on Seller without the express prior written acceptance of such terms by Seller’s authorized representative.

1.3 Modification. This Agreement may not be modified, altered or amended except in a written instrument signed by a duly authorized representative of Seller. Any agreed upon change will (i) be subject to an equitable adjustment in the quoted or purchase price of the Goods, the time for performance, or both and (ii) not affect Buyer’s liabilities to Seller accrued prior thereto. Seller may correct unilaterally mathematical and typographical errors in the Agreement.

1.4 Engineering Services. To the extent that Buyer desires the benefit of engineering services from Seller or Seller’s affiliate, New Eagle Consulting, LLC (“NEC”), Seller agrees that all such engineering services, any activities under any statement of work or proposal between Buyer on the one hand and at least one of Seller or NEC on the other hand will be governed solely in accordance with those certain Engineering Services Terms and Conditions attached hereto as Exhibit A notwithstanding any terms advanced by Customer in any format and at any time. All such other terms shall be considered void..

ARTICLE 2. RESALE AND DIRECTED SOURCE SUPPLIES.

2.1 Resale. Unless Buyer is an authorized distributor of Seller, Buyer may not resell the Goods and Buyer may only incorporate the Goods into Buyer’s value-added product. If Buyer is an authorized distributor, Buyer may only sell the Goods under Seller’s brand name. Buyer shall not remove any markings on Goods as received from Seller.

2.2 Directed Source Supplies. Buyer may direct Seller to obtain components or services from third parties (“Directed Source Supplies”) for use in the Goods. Seller hereby disclaims and is not responsible to Buyer or any third party for any warranty or other claims arising from or related to Directed Source Supplies. Buyer hereby waives any and all claims against Seller arising out of or related to Directed Source Supplies.



ARTICLE 3. QUANTITY.

If the Agreement does not require Seller to supply a specified quantity of Goods or a purchase order is designated as “blanket” or does not contain a specific quantity, the Agreement is not a requirements contract and Seller is only obligated to supply Buyer Goods in an amount not less than 1 unit.

ARTICLE 4. PRICES AND PAYMENT.

4.1 Prices. Unless provided otherwise in the Agreement, all prices are in U.S. dollars. Prices contained in Seller’s published price lists, if any, are subject to change without notice. Unless otherwise set forth in the quotation, prices contained in quotations are firm for only 30 days from the date of the quotation unless modified in writing by Seller prior to Buyer’s acceptance. Prices are for the Goods only and do not include transportation costs, taxes, duties, or any similar fiscal contribution related to the Goods (including all government fees levied on the installation and inspection of the Goods), all of which shall be the sole responsibility of Buyer and payable by Buyer in addition to Seller’s price.

4.2 Changes to Goods and Schedule at Buyer’s Request. If Buyer requests changes to the Goods after the date of quotation, Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, or manufacturing of the Goods and adjust the delivery schedule or any other performance by Seller. Seller is not obligated to perform any such changes requested by Buyer, but Buyer must compensate Seller for such change if Seller complies with such requested changes. In addition, if there is a delay in delivery caused by Buyer (including as a result of a requested change), Seller may adjust the price and may charge Buyer for storage of Goods prior to final delivery, plus all expenditures incurred for space, insurance, and handling.

4.3 Payment Acceleration; Solvency. All amounts owed by Buyer to Seller shall be accelerated and payable immediately if Buyer fails to make any payment, if Buyer sells or transfers the line of business for which the Goods are purchased, or if Buyer is a participant in a merger or other reorganization. Upon acceptance of the Agreement and each delivery of the Goods, Buyer represents that it is solvent and able to pay the price for the Goods and that all financial and business information given to Seller is true, complete and accurate in all respects.

4.4 Payment Terms. Buyer shall pay for the Goods without setoff, recoupment, or deduction of any kind in U.S. dollars by, in Seller’s option, cash in advance, cash on delivery or, if approved in writing in advance by Seller, Net 20 days after delivery. All deposits are refundable unless the Agreement is properly terminated for Seller’s breach. All amounts not paid to Seller when due shall incur a carrying charge of 1.0% per month above the then-current LIBOR one-month rate or at the highest interest rate allowed by law. Buyer agrees to indemnify and hold harmless Seller from any and all legal fees and costs that may be required to collect any overdue balances. Seller may allocate payments from Buyer among outstanding invoices in Seller’s sole discretion.

4.5 Installments. Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered constitutes a separate sale. Invoices may be rendered separately for each shipment (including any early shipment) and Buyer shall timely pay the price for each installment. Any Goods indicated as back-ordered shall be considered an installment delivery. A failure to pay for an installment when due is a material anticipatory breach of other installments by Buyer unless the failure to timely pay is the result of a bona- fide good faith dispute and the Buyer deposits the disputed amount into an escrow account with an independent third party.

4.6 Right of Offset. Seller may offset or recoup any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller. Buyer waives any right of offset or recoupment and shall pay all amounts owed to Seller when due regardless of any claim of Buyer.

4.7 Software Disablement for Accounts Exceeding 20 Days. Seller may include or add a disabling function within the software programming of the Goods that may be activated if any outstanding amounts have not been paid to Seller within 20 days of the due date.

ARTICLE 5. DELIVERY.

5.1 Shipping Dates and Method of Shipment. Shipping dates are estimates only and may be revised by Seller upon receipt of Buyer’s purchase order and/or delivery releases. All shipping dates are subject to all condition precedents specified in the Agreement and receipt by Seller of all other information convenient or necessary for Seller to provide the Goods or to grant any credit terms. Unless otherwise agreed in writing by Seller, Seller will deliver the Goods EX WORKS (Incoterms 2010) to Buyer’s carrier at Seller’s facility. Risk of loss to the Goods will pass to Buyer when the Goods are placed in the possession of Buyer’s carrier.

5.2 Security Interest. Buyer hereby grants a purchase money security interest to Seller in all Goods and documents related thereto and proceeds and products therefrom to secure all obligations of Buyer to Seller. Seller may file a financing statement to perfect and confirm the foregoing security interest. In case of a default by Buyer, Buyer hereby irrevocably appoints Seller as



its agent to obtain possession of the Goods and documents related thereto. Title to the Goods shall not transfer to Buyer until Seller has been paid in full. Buyer shall not sell, transfer, or encumber any Goods until payment has been made in full. Buyer shall immediately advise Seller in writing of any damage to, change in location of, or seizure of, any of the Goods the price of which has not been paid to Seller.

5.3 Delayed Shipment. If shipment of any Goods or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Goods at the place of shipment or elsewhere at Buyer's risk and expense; provided, however, Seller is under no obligation to hold the Goods and Buyer must accept the shipment in accordance with the terms of the Agreement if Seller elects. In the event of any such delay in shipment, full and final payment for Goods shall be due and payable 20 days after the Goods are ready for shipment.

ARTICLE 6. SUPPLY ALLOCATION.

6.1 Seller will not be required to sell a greater quantity of Goods than it has available or has allocated for the Agreement. If Seller is unable to supply Buyer's total demands for the Goods, Buyer agrees that Seller may allocate its available supply among itself, Buyer, and other customers in any manner Seller, in its sole discretion, deems fair and equitable to all parties. **SELLER IS NEITHER OBLIGATED UNDER ANY CIRCUMSTANCES TO PURCHASE GOODS FROM OTHERS TO MEET BUYER'S DEMANDS, NOR IS IT LIABLE FOR ANY DAMAGES OR CLAIMS ARISING THEREFROM.**

ARTICLE 7. SOFTWARE LICENSE.

All user manuals, software programs, firmware and storage media ("Software") that is provided by Seller in conjunction with the Goods is for the sole purpose of the operation of the Goods and shall be subject to any End User License Agreement ("EULA") accompanying such Software and Goods. Notwithstanding anything in such EULA, any license granted thereunder shall terminate automatically if Buyer fails to pay any amount within 20 days of its due date or is otherwise in default of its obligations under the Agreement. **ALL DISCLAIMERS AND LIMITATIONS APPLICABLE TO THE GOODS APPLY TO THE LICENSE AND SOFTWARE.**

ARTICLE 8. WARRANTY.

8.1 GENERAL. BUYER AGREES THAT THE GOODS AND ALL TECHNICAL SUPPORT ARE BEING PROVIDED TO BUYER ON AN "AS IS WHERE IS" BASIS AND SELLER HAS NOT MADE ANY, AND MAKES NO, REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE GOODS, WHETHER EXPRESSED, STATUTORY OR IMPLIED BY STATUTE, USAGE, CUSTOM OR TRADE, OR OTHERWISE, ALL OF WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY SELLER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON- INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

8.2 Seller is not under any duty to inspect the Goods. All design, application engineering, parts, labor, service, software and training, if any, provided by Seller or its agents are subject to all limitations and disclaimers set forth in the General Terms. No third party, including any agent or representative of Seller, is authorized to make any affirmation, waiver, representation or warranty concerning the Goods other than to refer Buyer to the provisions of these General Terms. Notwithstanding anything to the contrary in this Agreement, Buyer is solely responsible for (i) the selection of Goods and (ii) Buyer's ability to achieve the results it intends with the use of the Goods. Buyer is solely responsible for ensuring that all computer equipment and software included with or used with the Goods has adequate protection against viruses or other malicious software.

8.3 Assignment of Third Party Warranties. Notwithstanding Section 8(a), upon Buyer's request to Seller, and at Seller's election as determined in its sole discretion, Seller may assign to Buyer, to the extent assignable, all warranties provided to Seller from third parties related to the Goods. Upon such assignment, Buyer will accept such third party warranties on an "as is where is" basis and Seller makes no representations or warranties with respect to such warranties including, without limitation, the effectiveness of such warranties.

ARTICLE 9. RESPONSIBILITY FOR SAFETY.

Buyer agrees it is Buyer's obligation to (i) install and use the Goods in a safe and lawful manner and in compliance with the instructions provided by Seller, general industry standards of reasonable care, and all applicable health, safety, and environmental regulations and laws and (ii) provide all proper dies, devices, tools, training, and means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular installation, use, operation, setup, or service of the Goods. If Seller provides installation or assistance in installation it is without any warranty whatsoever.



ARTICLE 10. INDEMNIFICATION.

10.1 Buyer shall indemnify, hold harmless, and at Seller's request defend, Seller from any and all claims, damages and expenses (including reasonable attorney fees) whether or not arising from contract, tort (including negligence), product liability, statute or otherwise arising out of or otherwise relating to (i) breach of the Agreement by Buyer, (ii) failure of Buyer to use the Goods in a safe and/or lawful manner, or (iii) the use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts, components and systems manufactured with the Goods; provided, however, Buyer will only be responsible under this Section 10 (if the action or inaction of Buyer or its employees, customers or agents, or Buyer's or customer's design specifications, were a cause of injuries or damages giving rise to claims against Seller.

ARTICLE 11. PROPRIETARY INFORMATION.

11.1 Patentable Features. Any design, invention or other information developed by Seller in the performance of the Agreement shall remain the property of Seller, whether or not Seller charges for design, research, development, testing, or similar services. Any patentable features developed by Seller in the performance of the Agreement, alone or in cooperation with Buyer, shall be the property of Seller and Seller is under no obligation to refrain from using any information, manufacturing processes or unpatented disclosures disclosed by Buyer in the performance of the Agreement.

11.2 Trade Secrets. Goods and related Software contain valuable trade secrets of Seller, and Buyer shall not translate, reverse engineer, de-compile or disassemble or make any other unauthorized use of such Seller Software and Goods. In addition to any other remedies it may have, Seller shall be entitled to equitable relief to protect such trade secrets including, without limitation, temporary and permanent injunctive relief without providing further proof of irreparable harm by Seller.

ARTICLE 12. GOVERNMENT LAWS, RULES, AND REGULATIONS.

12.1 Buyer shall not engage in any transaction with respect to the Goods that violates any law, rule, regulation, or order. Buyer warrants that by performing the Agreement Seller is not and shall not become a government subcontractor to Buyer and shall not be required to comply with the government acquisition regulations of any governmental body. If Buyer elects to sell Goods to the U.S. government or any state, local or non-U.S. government entity, or to a prime contractor or other subcontractor selling to such purchasers, Buyer does so solely at its own option and risk.

ARTICLE 13. EXCLUSIVE REMEDY; LIMITATION OF LIABILITY.

13.1 BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER, AND SELLER'S SOLE OBLIGATION TO BUYER FOR ANY AND ALL CLAIMS ARISING OUT OF OR OTHERWISE RELATED TO THE AGREEMENT SHALL BE LIMITED TO SELLER, AT SELLER'S SOLE OPTION, REPLACING OR REPAIRING THE GOODS OR REFUNDING THE PURCHASE PRICE FOR THE GOODS. IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER OR ANY THIRD PARTY FOR ANY CLAIM UNDER THE AGREEMENT EXCEED THE PURCHASE PRICE RECEIVED BY SELLER FOR THE SPECIFIC GOODS AT ISSUE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, IN NO EVENT SHALL SELLER BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT THE AGREEMENT OR OTHERWISE RELATING TO THE USE OR INABILITY TO USE THE GOODS, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES OR ANY OTHER RELATED COSTS OR EXPENSES, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE BY SELLER OR SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. THE LIMITATIONS, WAIVERS, AND DISCLAIMERS STATED IN THESE GENERAL TERMS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE BUYER AND SELLER AND APPLY REGARDLESS OF WHETHER ANY REMEDY HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE OR WHETHER EITHER PARTY IS AT FAULT.

ARTICLE 14. TERMINATION FOR CAUSE.

14.1 Upon the occurrence of any one or more of the following events (or a comparable event), Seller has the right (but not the obligation) to terminate all or any portion of the Agreement or any purchase order for cause by providing written notice to Buyer specifying the applicable date of termination:

14.2 Buyer materially breaches the Agreement, and such breach is incapable of cure without risk of future losses or damages to Seller, or with respect to a material breach capable of such cure (other than payment), Buyer does not cure such breach within 7 days (or such longer period as Seller may designate) after receipt of written notice of such breach;

14.3 Buyer fails to make any payment due to Seller under the Agreement on or before the due date;



14.4 Buyer (a) becomes insolvent or is unable to pay its debts as they become due; (b) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (c) a general assignment for the benefit of creditors; or (d) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or

14.5 (iv) a direct or indirect change in control of Buyer occurs without Seller's prior written consent. Any termination under this Section 14 will be effective on the date of Seller's written notice of termination or such later date as set forth in the notice. Any termination by Seller pursuant to this Section 14 will not give rise to any liability of Seller nor constitute a waiver of any of Seller's rights or remedies under the Agreement or otherwise provided by law.

ARTICLE 15. CANCELLATION.

If agreed in writing by Seller in advance, Buyer may cancel its purchase order by (a) immediate payment to Seller of any cost incurred by Seller through and including the proposed effective date of termination and (b) liquidated damages equal to 25% of the sale price of the Goods. Seller may retain without cost all materials and partially-completed Goods on canceled purchase orders. The parties agree that this liquidated damages provision is a reasonable estimate of Seller's damages upon cancellation of an order.

ARTICLE 16. FORCE MAJEURE.

16.1 With the exception of payment obligations, neither party shall be responsible for any delay or any failure of or defect in any performance of an obligation under the Agreement, due in whole or in part, to: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order; (ii) shortages of raw materials or labor; (iii) the lack of usual means of transportation, fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere; or (iv) failure of Seller's suppliers to perform. In addition, Seller shall not be liable for failure to perform its obligations arising out of delays by Buyer in inspecting and accepting Goods, in furnishing requested specifications, materials, tooling or information or in making payments. If deliveries are delayed by reason of one or more of such events for a period of 30 days, Seller may, at its option, terminate the Agreement as to the undelivered Goods or waive such delay and establish a new delivery schedule.

ARTICLE 17. MISCELLANEOUS.

17.1 Limitations of Actions; Remedies. All proceedings by Buyer arising from or in connection with the Agreement must be commenced within 1 year after the cause of action has accrued. Seller reserves and does not waive any claims, rights and remedies that it may have under the Agreement, any other agreements between Buyer and Seller, and applicable law, including the right to recover from Buyer any and all damages, costs or expenses (including attorneys' or other professionals' fees and labor, material and apportionable overhead costs and expenses) incurred by Seller on account of Buyer's breach of the Agreement (including any cancellation by Buyer of the Agreement or any purchase order placed by Buyer pursuant to the Agreement unless otherwise agreed in writing by Seller). Without limiting the foregoing, if Buyer defaults, threatens to default, or there is a reasonable likelihood that Buyer will default under this Agreement, Seller has the right to cease performance of its obligations, recover delivered Goods or Goods in transit, or disable delivered Goods. In addition, if there is a good faith reason to doubt Buyer's ability to make payment under this Agreement, Seller may require Buyer post security for any or all amounts to be paid by Buyer no later than 7 days following Seller's written demand. If demand is made and such security is not timely posted, Buyer will be deemed in default under this Agreement and Seller may, in addition to any other rights and remedies it has, cease performance of its obligations under this Agreement. The rights and remedies provided to Seller under the Agreement are cumulative and in addition to any other remedies available to Seller under applicable law.

17.2 Waiver; Severability. The failure of Seller to require performance by Buyer of any provision of this Agreement will in no way affect Seller's right to require such performance at any time thereafter, nor will the waiver of Seller of any breach or default by Buyer hereunder constitute a waiver of any succeeding breach of the same provision or any other term, condition, breach or default, whether of the same or a similar type or not. To be effective, any waiver by Seller of any provision of this Agreement must be in writing signed by Seller. If any clause in the Agreement is determined by a court of competent jurisdiction to be invalid, the invalidity of such clause shall not affect the validity of the remainder of the Agreement.

17.3 Survival. Sections 4, 5(b), 7-11, 13, and 17 of this Agreement (together with any other section which according to its terms should continue in effect) and any right or remedy of Seller under this Agreement or applicable law shall survive and remain in effect after the termination or cancellation of this Agreement.

17.4 No Third Party Beneficiaries. The Agreement is solely for the benefit of Seller and Buyer, except all disclaimers and limitations applicable to Seller shall be also for the benefit of Seller's affiliates, agents, employees, contractors, and other suppliers.



17.5 Assignment. Neither the Agreement nor any right or interest in the Agreement may be assigned by Buyer without the prior written consent of the Seller. Any purported assignment in violation of this Section shall be void and ineffective for all purposes.

17.6 Choice of Law and Jurisdiction. The Agreement shall be governed, construed and enforced under the laws of the State of Michigan without regard to any conflict of law provisions. The U.N. Convention on the International Sales of Goods does not apply to the Agreement. The courts of Michigan located in Washtenaw County shall have sole and exclusive jurisdiction over the parties and the claims arising under the Agreement. Each party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and Buyer agrees not to bring any action, litigation, or proceeding in any other court.

17.7 Entire Agreement. The Agreement, including any attachments, exhibits or supplements attached hereto, and other matter incorporated herein by specific reference, constitutes the entire agreement between Seller and Buyer with respect to the subject matter of the Agreement and supersedes all prior or contemporaneous oral or written discussions, understandings, representations and agreements.



EXHIBIT A

ENGINEERING SERVICES TERMS AND CONDITIONS

ARTICLE 1. GENERAL

1.1 These Engineering Services Terms and Conditions (“**Terms and Conditions**”), together with the terms of the quotation or proposal referencing Terms and Conditions (the “**Proposal**”) and any other documents referred to in these Terms and Conditions (collectively, this “**Agreement**”), apply to the sale of Services by New Eagle Consulting, LLC, a Michigan limited liability company, with offices located at 3588 Plymouth Road, #274, Ann Arbor, MI 48105 (the “**Service Provider**”) to the entity to whom the Proposal is addressed (the “**Customer**”). Customer and Service Provider may be referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**.”

1.2 Customer shall be deemed to have accepted the terms and conditions of this Agreement and a contract is formed under the provisions of this Agreement upon the first to occur of Customer doing any one of the following: (i) signing and returning to Service Provider a copy of any Proposal; (ii) paying for all or any part of the Services; or (iii) indicating in some other manner Customer’s acceptance of this Agreement. Customer’s acceptance is expressly limited to the terms of this Agreement and this Agreement exclusively governs the engagement between the Parties and the provision of Services by Service Provider. This Agreement expressly supersedes and excludes any terms and conditions set forth in any purchase order placed by Customer or any other document issued or deemed to be issued by Customer to Service Provider (including, without limitation, Customer’s general terms and conditions of purchase), each of which are expressly rejected. Any additional or different terms proposed by Customer, whether in Customer’s purchase order or otherwise, or any attempt by Customer to vary the terms of this Agreement in any way, are expressly rejected by Service Provider, are not part of this Agreement and do not apply to the delivery or sale of Services, and are not binding on Service Provider without the express prior written acceptance of such terms by Service Provider’s authorized representative.

1.3 Capitalized terms used but not defined in this Agreement have the meanings given to them in the attached Exhibit A.

ARTICLE 2. SERVICES

2.1 Service Provider shall provide the Services to Customer in accordance with the Statement of Work and the other terms and conditions of this Agreement.

2.2 Each Statement of Work may include, as applicable to the Services, the following information: (a) a detailed description of the Services; (b) the date upon which the Services will

commence and the term of such Statement of Work; (c) the names of the Service Provider Contract Manager and any Key Personnel; (d) the fees to be paid to Service Provider under the Statement of Work; (e) the Project implementation plan, including a timetable; (f) Project Milestones and payment schedules; and (g) any other terms and conditions agreed upon by the Parties in connection with the Services to be performed pursuant to such Statement of Work.

ARTICLE 3. SERVICE PROVIDER’S OBLIGATIONS

3.1 The Service Provider shall appoint: (i) a Service Provider employee to serve as a primary contact with respect to this Agreement and who will have the authority to act on behalf of Service Provider in connection with matters pertaining to this Agreement (the “**Service Provider Contract Manager**”); and (ii) Service Provider Personnel, who shall be suitably skilled, experienced and qualified to perform the Services.

ARTICLE 4. CUSTOMER’S OBLIGATIONS

4.1 Customer shall: (a) cooperate with Service Provider in all matters relating to the Services and appoint a Customer employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of Customer with respect to matters pertaining to this Agreement (the “**Customer Contract Manager**”); (b) provide access to Customer’s premises, and such office accommodations and other facilities as may reasonably be requested by Service Provider for the purposes of performing Services; (c) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of this Agreement; (d) provide such Customer Materials and other information as Service Provider may request, in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects; (e) ensure that all Customer Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements; and (f) obtain and maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services.

4.2 If Service Provider’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Service Provider shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.



4.3 Customer shall maintain (i) commercial general liability (“CGL”) insurance issued by one or more insurance carriers rated A/VII or higher by A.M. Best, insuring against bodily injury to or death of persons and property damage, naming the Service Provider and its affiliates and subsidiaries as additional insureds, with coverage limits for such liability insurance of not less than \$1,000,000 each occurrence, and \$2,000,000 aggregate, including a “Per Project Aggregate” endorsement; and (ii) comprehensive automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired, and non-owned in the amount of not less than \$1,000,000, including Property Damage and Bodily Injury on a per person/per occurrence basis. The CGL insurance shall be written using an occurrence form and shall cover liability arising from Premises operations, independent-contractors, product-completed operations and personal injury and advertising injury, with an insurance company acceptable to the Landlord. The Customer’s policies of insurance shall contain primary and non-contributory wording relating to the Service Provider’s insurance policies. Customer will cause its insurers to furnish certificates of insurance each year within 30 days of the expiration date of the prior policy term in a form reasonably acceptable to the Service Provider, evidencing that such insurance is in effect and otherwise complies with the requirements of this Section. The Service Provider shall have the right to inspect such insurance policies upon reasonable request. Prior to any cancellation or material modification of such insurance described herein, Customer will provide 60 days’ prior written notice, directed to the attention of the Service Provider.

ARTICLE 5. CHANGE ORDERS

5.1 If either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other in writing. Service Provider shall, within a reasonable time after such request (and, if such request is initiated by Customer, not more than seven (7) business days after receipt of Customer’s written request), provide a written estimate to Customer of: (a) the likely time required to implement the change; (b) any adjustments to the fees and other charges for the Services arising from the change; (c) the likely effect of the change on the Services; and (d) any other impact the change might have on the performance of this Agreement.

5.2 Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a “**Change Order**”). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with **16.11**.

ARTICLE 6. TERM

This Agreement shall commence upon acceptance of this Agreement in accordance with **1.2** and shall continue thereafter until the completion of the Services under all Statements of Work, unless sooner terminated pursuant to **ARTICLE 13**.

ARTICLE 7. FEES AND EXPENSES; PAYMENT TERMS

7.1 In consideration of the provision of the Services by the Service Provider and the rights granted to Customer under this Agreement, Customer shall pay the fees and expenses set forth in the applicable Statement of Work and any other fees or expenses agreed to in writing by both Parties. Customer shall be responsible for all sales, use and excise taxes, and any other similar duties and charges imposed by any governmental entity on amounts payable by Customer hereunder; provided, however, Customer shall not be responsible for any taxes imposed on Service Provider’s income, personnel or assets.

7.2 Where the Services are provided on a time and materials basis, the fees payable for the Services shall be calculated as set forth in the applicable Statement of Work. Service Provider may increase its standard fee rates specified in the applicable Statement of Work upon written notice to Customer; *provided, that*: Service Provider provides Customer written notice of such increase at least fifteen (15) days prior to the effective date of such increase.

7.3 Where Services are provided for a fixed price, the total fees for the Services shall be the amount set out in the applicable Statement of Work. The total price shall be paid to Service Provider in accordance with the Statement of Work. Service Provider shall issue invoices to Customer for the fees that are then payable, together with a detailed breakdown of any expenses incurred in accordance with **7.4**.

7.4 Customer agrees to reimburse Service Provider for all reasonable travel and out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services.

7.5 By entering into this Agreement, Customer agrees to allow Service Provider or one of its agents to verify Customer’s credit and bank references and instruct these references to provide reasonable assistance and information to Service Provider for purposes of performing a credit evaluation.

7.6 Service Provider shall issue invoices to Customer in accordance with the terms of this **ARTICLE 7**. Unless otherwise stated on Service Provider’s invoices after the performance of a credit evaluation, Customer shall pay all properly invoiced amounts due to Service Provider within thirty (30) days after Customer’s receipt of such invoice. All payments hereunder shall be in US dollars and made by check or wire transfer. Payment to Service Provider of the fees and expenses pursuant to this **ARTICLE 7** shall constitute payment in full for the performance of the Services.

ARTICLE 8. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP

8.1 If Customer has fulfilled all of its obligations hereunder (including, without limitation, the payment in full to Service Provider of all amounts due hereunder) and Customer is not in breach of this Agreement, then, with the exception of Developer



Rights under 8.2, Customer is, and shall be, the sole and exclusive owner of all right, title and interest in and to the Deliverables, including all Intellectual Property Rights therein. Subject to the provisions of this 8.1, (a) Service Provider agrees, and will cause its Service Provider Personnel to agree, that with respect to any Deliverables that may qualify as “work made for hire” as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a “work made for hire” for Customer and (b) to the extent that any of the Deliverables do not constitute a “work made for hire”, Service Provider hereby irrevocably assigns, and shall cause the Service Provider Personnel to irrevocably assign to Customer, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. Notwithstanding the foregoing, if any of the Deliverables can be used on goods Service Provider sells and Customer intends to purchase those types of goods, Customer agrees to purchase those goods exclusively from Service Provider and no third party including, without limitation, any third party manufacturer of the goods.

8.2 Service Provider and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to the Developer Rights, including all Intellectual Property Rights therein, whether incorporated into the Deliverables or otherwise. Service Provider expressly reserves all rights in and to the Developer Rights. Accordingly, Customer agrees that it may require a license to access, copy, use, sell or otherwise exploit any such Developer Rights. In the event Service Provider grants to Customer a license in the Developer Rights, such license will only permit Customer to purchase from Service Provider the goods that incorporate the Developer Rights that are sold by Service Provider only and no third parties.

8.3 Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein. Service Provider shall have no right or license to use any Customer Materials except solely during the Term of this Agreement and only to the extent necessary to provide the Services to Customer. All other rights in and to the Customer Materials are expressly reserved by Customer.

ARTICLE 9. CONFIDENTIAL INFORMATION

THE PARTIES HAVE ENTERED INTO A CONFIDENTIAL AGREEMENT (“CONFIDENTIAL AGREEMENT”), WHICH IS HEREBY INCORPORATED BY REFERENCE IN ITS ENTIRETY. THE PARTIES AGREE THAT THE EXISTENCE OF THIS AGREEMENT, TOGETHER WITH ITS PROVISIONS, SHALL BE CONSIDERED AND TREATED AS CONFIDENTIAL INFORMATION UNDER THE TERMS OF THE CONFIDENTIALITY AGREEMENT.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES

10.1 Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing as a limited liability company, corporation or other entity under

the laws and regulations of its jurisdiction of incorporation, organization or chartering; (b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder; (c) the acceptance of this Agreement has been duly authorized by all necessary corporate action of the Party; and (d) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

10.2 Service Provider represents and warrants to Customer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

10.3 **EXCEPT FOR THE EXPRESS WARRANTIES IN THIS ARTICLE 9, SERVICE PROVIDER (A) HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND (B) SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.**

ARTICLE 11. INDEMNIFICATION

11.1 Each Party (an “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, successors and permitted assigns (an “**Indemnified Party**”) from and against all Losses arising out of or resulting from: (a) bodily injury, death of any person or damage to real or tangible personal property resulting from the negligent or willful acts or omissions of such Party; and (b) any breach of any representation, warranty or obligation of such Party in this Agreement.

11.2 The Indemnified Party shall promptly notify the Indemnifying Party in writing of any claim, proceeding, suit, action, or demand to which it seeks indemnification hereunder (each, an “**Action**”) and cooperate with the Indemnifying Party at the Indemnifying Party’s sole cost and expense. The Indemnifying Party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnifying Party’s sole cost and expense. The Indemnifying Party shall not settle any Action in a manner that adversely affects the rights of the Indemnified Party without the Indemnifying Party’s prior written consent. The Indemnified Party’s failure to perform any obligations under this 11.2 shall not relieve the Indemnifying Party of its obligations under this 11.2 except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnified Party may participate in and observe the proceedings at its own cost and expense.



ARTICLE 12. LIMITATION OF LIABILITY

12.1 IN NO EVENT WILL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 IN NO EVENT WILL SERVICE PROVIDER'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER IN THE THREE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

ARTICLE 13. TERMINATION; EFFECT OF TERMINATION

13.1 Either Party, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to the other Party.

13.2 Either Party may terminate this Agreement, effective upon written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party:

13.2.1. materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach.

13.2.2. (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within forty-five (45) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

13.3 Upon expiration or termination of this Agreement for any reason, each Party shall (i) return to the other Party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information, (ii) permanently erase all of the other

Party's Confidential Information from its computer systems and (iii) certify in writing to the other Party that it has complied with the requirements of this clause.

13.4 Upon expiration or termination of this Agreement, and subject to Customer's full payment of all outstanding fees and compliance with the terms of this Agreement, Service Provider shall (i) promptly deliver to Customer all Deliverables (whether complete or incomplete) for which Customer has paid and all Customer Materials, (ii) promptly remove any Service Provider Equipment located at Customer's premises, and (iii) provide reasonable cooperation and assistance to Customer upon Customer's written request and at Customer's expense in transitioning the Services to an alternate Service Provider.

13.5 Upon expiration or termination of this Agreement due to Customer's breach of this Agreement, or if Customer fails to make any payments due or outstanding, in addition to all other remedies, Customer shall immediately return any Deliverables in its possession to Service Provider and all of Customer's rights in and to any such Deliverables, including all Intellectual Property Rights therein, shall be *void ab initio*.

13.6 The rights and obligations of the Parties set forth in **ARTICLE 8, ARTICLE 9, ARTICLE 12, ARTICLE 13** and **ARTICLE 16**, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

ARTICLE 14. EXPORT

The Deliverables and Services may be subject to export controls and regulations of the U.S., the country of manufacture, or the country of shipment, and export may require a valid export license. Service Provider's entry into this Agreement is conditioned on Customer's compliance with all applicable export control laws and regulations. No goods sold or delivered to Customer may be exported or reexported unless such export or reexport fully complies with all applicable export regulations. Customer represents and warrants that: (i) it is not subject to the jurisdiction of any country that is subject to a comprehensive U.S. embargo, nor is it designated on, or associated with, any party designated on any of the U.S. government restricted parties lists, including, without limitation, the U.S. Commerce Department Bureau of Industry and Security ("BIS") Denied Persons List, Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") Specially Designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defense Trade Controls ("DDTC") Debarred Parties List; (ii) any Deliverables or Services provided to it are not intended to be shipped directly or indirectly to Crimea, Cuba, Iran, North Korea, Sudan, and/or Syria, or any national thereof, or to any other country subject to restriction under applicable laws and regulations of the United States and other nations and that Customer is not located in, under the control of, or a national of any such country; (iii) it will not use the Product(s) in any activity related to the development,



production, use or maintenance of Weapons of Mass Destruction, including, without limitation, uses related to nuclear, missile and or chemical/biological development or production; and (iv) it will not provide to Service Provider any items, and any parts or components thereof, software or technical data that is controlled for export under either the EAR's Commerce Control List or ITAR's U.S. Munitions List without notifying Service Provider of this fact and obtaining Service Provider's prior written consent to receive such controlled item, software or technical data.

ARTICLE 15. FORCE MAJEURE

15.1 No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire or explosion; (c) war, invasion, riot or other civil unrest; (d) actions, embargoes or blockades in effect on or after the date of this Agreement; (e) national or regional emergency; (f) strikes, labor stoppages or slowdowns or other industrial disturbances; (g) compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licensee or consent; (h) shortage of adequate power or telecommunications or transportation facilities; or (i) any other event which is beyond the reasonable control of such Party, (each of the foregoing, a "**Force Majeure Event**"). A Party whose performance is affected by a Force Majeure Event shall give notice to the other Party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

ARTICLE 16. MISCELLANEOUS

16.1 The Parties are independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

16.2 Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement, or otherwise use the other Party's trademarks, service marks, trade names, logos, symbols or brand names, in each case, without the prior written consent of the other Party.

16.3 All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the

addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses indicated below (or at such other address for a Party as shall be specified in a notice given in accordance with this **16.3**).

If to Service Provider:

New Eagle Consulting, LLC
3588 Plymouth Road, #274
Ann Arbor, MI 48105
Facsimile: (270) 967-8706

With a copy to:

Thomas J. Appledorn
Honigman Miller Schwartz & Cohn
39400 Woodward, Suite 101
Bloomfield Hills, MI 48304
(248) 566-8522

16.4 Customer is responsible for providing Service Provider Customer's contact information for purposes of this **16.3**. If Customer fails to provide this information, Service Provider may rely on the information set forth in the Proposal.

16.5 During the term of this Agreement, and for one (1) year thereafter, Customer agrees that it will not, without the prior written consent of the Service Provider, solicit, recruit, hire, or otherwise employ or retain any employee of Service Provider or of its affiliates or subsidiaries. This restriction applies for the ninety (90) day period following an employee's termination from Service Provider.

16.6 For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, Exhibits and Statements of Work refer to the Sections of, and Schedules, Exhibits and Statements of Work attached to this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The Schedules, Exhibits and Statements of Work referred to herein shall be construed with, and as an integral part



of, this Agreement to the same extent as if they were set forth verbatim herein.

16.7 This Agreement, together with all Schedules, Exhibits and Statements of Work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule, Exhibit or Statement of Work, the following order of precedence shall govern: (a) first, this Agreement, exclusive of its Exhibits and Schedules; (b) second, the applicable Statement of Work; and (c) third, any Exhibits and Schedules to this Agreement.

16.8 Neither Party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other Party *provided, that*, upon prior written notice to the other Party, either Party may assign this Agreement to an Affiliate of such Party or to a successor of all or substantially all of the assets of such Party through merger, reorganization, consolidation or acquisition. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

16.9 This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

16.10 The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

16.11 This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by either Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16.12 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or

unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

16.13 This Agreement shall be governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule. Any legal suit, action or proceeding arising out of or related to this Agreement or the Services provided hereunder must be instituted exclusively in the federal courts of the United States or the courts of the State of Michigan in each case located in the city of Ann Arbor and County of Washtenaw, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

16.14 Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

16.15 Each Party acknowledges that a breach by a Party of **ARTICLE 8** (Intellectual Property Rights; Ownership) or **ARTICLE 9** (Confidential Information) may cause the non-breaching Party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching Party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching Party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

DEFINITIONS

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “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 a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Customer Equipment**” means any equipment, systems, cabling or facilities provided by Customer and used directly or indirectly in the provision of the Services.

“**Customer Materials**” any documents, data, know-how, methodologies, software and other materials provided to Service Provider by Customer, including computer programs, reports and



specifications.

“**Deliverables**” means those items specifically identified as Deliverables in a Statement of Work that are delivered to Customer hereunder. When Deliverables include software, the Parties agree that, unless expressly stated, such only include the application code specifically developed for Customer and specifically excludes all other code.

“**Developer Rights**” means Intellectual Property Rights, including all documents, data, know-how, methodologies, software and other materials, including computer programs, reports and specifications, (i) provided by or used by Service Provider in connection with performing the Services, in each case developed or acquired by the Service Provider prior to the commencement or independently of this Agreement; and (ii) all Improvements in any of the Intellectual Property Rights under part (i) of this definition, whether made by Service Provider or Customer.

“**Improvements**” mean any substitution, modification, improvement or derivative work of the Developer Rights.

“**Intellectual Property Rights**” means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“**Key Personnel**” means any Service Provider Personnel who is identified as being key in a Statement of Work.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Losses**” mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Project**” means a project as described in a Statement of Work.

“**Project Milestone**” means an event or task described in a

Statement of Work which shall be completed by the relevant date set forth in the Statement of Work.

“**Service Provider Equipment**” means any equipment, systems, cabling or facilities provided by or on behalf of Service Provider and used directly or indirectly in the provision of the Services.

“**Service Provider Personnel**” means all employees and Permitted Subcontractors, if any, engaged by Service Provider to perform the Services.

“**Services**” means any professional or other services to be provided by Service Provider as described in more detail in a Statement of Work and in accordance with the terms of this Agreement.

“**Statement of Work**” means each Statement of Work entered into by the Parties relating to engineering services. If no separate Statement of Work is entered into by the Parties, the Proposal shall be deemed the Statement of Work.