# *Product Sales Agreement*

## Terms and Conditions

1. **Parties**. These terms represent the agreement ("Agreement") that governs the purchase of products and services from the [SUPPLIER NAME] ("Supplier") by the [CUSTOMER NAME] ("Customer").

2. **Purchase Orders**

   2.1. **Use of Standard Form**. The Purchaser shall submit Product purchase orders on the Supplier's standard form.

2.2. **Contents of Order**. The purchase order will

   (a) Identify the items requested and their price, and

   (b) State the quantity, date, time, and mode and place of delivery.

   2.3. **Acceptance of Order**. The Supplier shall respond promptly to the Purchaser's purchase order, advising the Purchaser whether it accepts the order. Purchase orders will only become binding on the parties when the Supplier gives the Purchaser Notice of its acceptance. The Supplier will be deemed to have waived any objection to the terms of a purchase order upon its delivery of the Products detailed in the order.

   2.4. **Rejection of Order**. The Supplier's Notice of rejection shall state the specific grounds for rejection.

3. **Prices and Taxes**.

   3.1. **Prices**. Prices will be as quoted in writing by Supplier or, in the absence of a written quote, as set out on our website, customer-specific portal, or Supplier published list price at the time an order is submitted to Supplier.

   3.2. **Taxes**. Prices are exclusive of taxes, duties, and fees (including installation, shipping, and handling) unless otherwise quoted. If a withholding tax is required by law, please contact the Supplier order representative to discuss appropriate procedures.

4. **Invoices and Payment**

   4.1. **Payment upon Invoice**. Customer agrees to pay all invoiced amounts within thirty (30) days of Supplier's invoice date.

   4.2. **Failure to Pay**. The Supplier may suspend or cancel its performance of open Orders or services if Customer fails to make payments when due.

5. **Sale of Products**. The Supplier agrees to sell, transfer and deliver the products to Customer subject to all of the terms and conditions of this agreement.

5.1. **Delivery**. The Supplier will use all commercially reasonable efforts to deliver products in a timely manner. The Supplier may elect to deliver software and related product/license information by electronic transmission or via download.

5.2. **Title and Risk of Loss**. The risk of loss or damage and title for hardware products will pass upon delivery to the Customer or its designee. Where permitted by law, the Supplier retains a security interest in products sold until full payment is received.

6. **License of Software**. The Supplier grants the Customer a non-exclusive license to use the version or release of the Supplier-branded software listed in the Order.

6.1. **Permitted Uses**. The Customer may use the software for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information that is in the software product or its Supporting Material. For non-Supplier branded software, the third party's license terms will govern its use.

6.2. **License Restrictions**. The Supplier may monitor use/license restrictions remotely and, if Supplier makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licensed software product only for archival purposes or when it is an essential step in the authorized use of the software. Customer may use this archival copy without paying an additional license only when the primary system is inoperable. Customer may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Customer's intranet require restricted access by authorized users only. Customer will also not modify, reverse engineer, disassemble decrypt, decompile or make derivative works of any software licensed to Customer under this Agreement unless permitted by statute, in which case Customer will provide Supplier with reasonably detailed information about those activities.

6.3. **License Transfer**. Customer may not sublicense, assign, transfer, rent or lease the software or software license except as permitted by Supplier. Supplier-branded software licenses are generally transferable subject to Supplier's prior written authorization and payment to Supplier

of any applicable fees. Upon such transfer, Customer's rights shall terminate and Customer shall transfer all copies of the software to the transferee. The transferee must agree in writing to be bound by the applicable software license terms. Customer may transfer firmware only upon transfer of associated hardware.

6.4. **Updates**. The Customer may order new software versions, releases or maintenance updates ("Updates"), if available, separately or through a Supplier software support agreement. Additional licenses or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the license terms in effect at the time that the Supplier makes them available to the Customer.

6.5. **License Term and Termination**. Unless otherwise specified, any license granted is perpetual, provided however that if Customer fails to comply with the terms of this Agreement, Supplier may terminate the license upon written notice. Immediately upon termination, or in the case of a limited-term license, upon expiration, Customer will either destroy all copies of the software or return them to Supplier, except that Customer may retain one copy for archival purposes only.

6.6. **License Compliance**. The Supplier may audit Customer compliance with the software license terms. Upon reasonable notice, Supplier may conduct an audit during normal business hours (with the auditor's costs being at Supplier's expense). If an audit reveals underpayments then Customer will pay to Supplier such underpayments. If underpayments discovered exceed five (5) percent of the contract price, Customer will reimburse Supplier for the auditor costs.

7. **Professional Services**. The Supplier will deliver any ordered IT consulting, training or other services as described in the applicable order or statement of work.

7.1. **Professional Services Acceptance**. The acceptance process (if any) will be described in the applicable Supporting Material, will apply only to the deliverables specified, and shall not apply to other products or services to be provided by Supplier.

8. **Change Orders**. The parties agree to appoint a project representative to serve as the principal point of contact in managing the delivery of services and in dealing with issues that may arise. Requests to change the scope of services or deliverables will require a change order signed by both parties.

9. **Warranty**

9.1. **Product Warranty**. All Supplier-branded hardware products are covered by Supplier's limited warranty statements that are provided with the products or otherwise made available. Hardware warranties begin on the date of delivery or if applicable, upon completion of Supplier installation, or (where Customer delays Supplier installation) at the latest [PRODUCT WARRANTY PERIOD] from the date of delivery. Non-Supplier branded products receive warranty coverage as provided by the relevant third party supplier.

9.2. **Software Warranty**. The Licensor warrants that for a period of [PERFORMANCE WARRANTY PERIOD] commencing upon the date of delivery or installation, whichever is earlier, that when operated in accordance with the documentation and other instructions provided by the Licensor, the Software will perform substantially in accordance with the functional specifications set forth in the documentation.

9.3. **Service Warranty**. The Licensor warrants for a period of [SERVICE WARRANTY PERIOD] following the completion of performance of the service that its services will be performed consistent with generally accepted industry standards.

9.4. **Product Warranty Claims**. Upon receipt of a valid warranty claim for a Supplier hardware or software product, the Supplier will either repair the relevant defect or replace the product. If the Supplier is unable to complete the repair or replace the product within a reasonable time, the Customer will be entitled to a full refund upon the prompt return of the product to Supplier (if hardware) or upon written confirmation by the Customer that the relevant software product has been destroyed or permanently disabled. The Supplier will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to Supplier.

9.5. **Warranty Restrictions**. The Supplier's service, support and warranty commitments do not cover claims resulting from:

(a) Improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;

(b) Modifications or improper system maintenance or calibration not performed by or authorized by the Supplier

(c) Failure or functional limitations of any non-Supplier software or product impacting systems receiving Supplier support or service;

(d) Malware (e.g. virus, worm, etc.) not introduced by Supplier; or

(e) Abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond Supplier's control.

9.6. **Remedies**. This Agreement states all remedies for warranty claims. To the extent permitted by law, Supplier disclaims all other warranties.

10. **Intellectual Property Rights**.

10.1. **Retention of Ownership**. No transfer of ownership of any intellectual property will occur under this Agreement.

10.2. **Customer Grant of License**. Customer grants Supplier a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for Supplier and its designees to perform the ordered services.

10.3. **Supplier Grant of License**. If deliverables are created by Supplier specifically for Customer and identified as such in Supporting Material, Supplier hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverables internally.

11. **Confidentiality**.

11.1. **Protected Information**. Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment.

11.2. **Excluded Information**. These obligations do not cover information that:

(a) Was known or becomes known to the receiving party without obligation of confidentiality;

(b) Is independently developed by the receiving party; or

(c) Where disclosure is required by law or a governmental agency.

11.3. **Confidentiality Obligations**. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to support that purpose.

11.4. **Confidentiality Term**. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or

disclosure for [CONFIDENIALITY PERIOD] from the date of receipt or (if longer) for such period as the information remains confidential.

12. **Personal Information**. Each party shall comply with their respective obligations under applicable data protection legislation. Supplier does not intend to have access to personally identifiable information ("PII") of Customer in providing services. To the extent Supplier has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. Supplier will use any PII to which it has access strictly for purposes of delivering the services ordered.

13. **US Federal Government Use**. If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under Supplier's standard commercial license.

14. **Global Trade Compliance**. Products and services provided under these terms are for Customer's internal use and not for further commercialization. If Customer exports, imports or otherwise transfers products and/or deliverables provided under these terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. Supplier may suspend its performance under this Agreement to the extent required by laws applicable to either party.

15. **Intellectual Property Rights Infringement**.

15.1. **Defence against Claims**. The Supplier will defend and/or settle any claims against Customer that allege that a product or service as supplied under this Agreement infringes the intellectual property rights of a third party.

15.2. **Condition to Defence**. The Supplier's obligation to defend is conditioned on the Customer:

(a) Promptly notifying the indemnifying party of any claim in writing;

(b) Cooperating with the indemnifying party in the defences of any claim; and

(c) Granting the indemnifying party sole control of the defence or settlement of the claim.

15.3. **Supplier Rights**. The Supplier may

(a) Modify the product or service so as to be non-infringing and materially equivalent or

(b) May procure a license. If these options are not available, the Supplier will refund to Customer the amount paid for the affected product in the first year or the depreciated value thereafter or, for support services, the balance of any pre-paid amount or, for professional services, the amount paid.

15.4. **Exceptions**. The Supplier is not responsible for claims resulting from any unauthorized use of the products or services.

16. **Termination**.

16.1. **Termination on Notice**. Either party may terminate this agreement for any reason upon [TERMINATION FOR CONVENIENCE NOTICE] Business Days' Notice to the other party.

16.2. **Termination on Breach**. If either party commits any material breach or material default in the performance of any obligation under this agreement, and the breach or default continues for a period of [CURE PERIOD] Business Days after the other party delivers Notice to it reasonably detailing the breach or default, then the other party may terminate this agreement, with immediate effect, by giving Notice to the first party.

16.3. **Termination on Insolvency**. This agreement will terminate immediately upon either party's insolvency, bankruptcy, receivership, dissolution, or liquidation.

17. **Limitation of Liability**

17.1. **Damages**. Neither party will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages.

17.2. **Maximum Liability**. Supplier's liability to Customer under this Agreement is limited to the greater of $[MAXIMUM LIABILITY] or the amount payable by Customer to Supplier for the relevant Order.[ The existence of more than one claim will not enlarge or extend this limit.]

17.3. **Exceptions**. This provision does not limit either party's liability for:

(a) Unauthorized use of intellectual property;

(b) Death or bodily injury caused by their negligence;

(c) Acts of fraud;

(d) Wilful repudiation of the Agreement; or

(e) Any liability which may not be excluded or limited by applicable law.

## 18. General Provisions

18.1. **Entire Agreement**. This agreement contains all the terms agreed to by the parties relating to its subject matter. It replaces all previous discussions, understandings, and agreements.

18.2. **Amendment**. This agreement may only be amended by a written document signed by both parties.

18.3. **Assignment**. Neither party may assign this agreement or any of their rights or obligations under this agreement without the prior written consent of the other party.

18.4. **Notices**

(a) **Form of Notice**. All notices and other communications between the parties must be in writing.

(b) **Method of Notice**. Notices must be given by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid[, (iv) fax][ or (v) electronic mail] to the party's address specified in this agreement, or to the address that a party has notified to be that party's address for the purposes of this section.

(c) **Receipt of Notice**. A Notice given in accordance with this agreement will be effective upon receipt by the party to which it is given or, if mailed, upon the earlier of receipt and the fifth Business Day following mailing.

18.5. **Survival**. [Confidentiality, Non-Competition, Non-Solicitation, and Effect of Termination] survive the termination [or expiration] of this agreement.

18.6. **Severability**. If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

18.7. **Waiver**. A party's failure or neglect to enforce any of rights under this agreement will not be deemed to be a waiver of that party's rights.

18.8. **Force Majeure**. Neither party will be liable for any failure of or delay in the performance of any of its obligations under this agreement if its failure or delay is due to the occurrence of Force Majeure.

18.9. **Governing Law**. This agreement will be governed by and construed in accordance with the laws of the State of [GOVERNING LAW STATE], without regard to its conflict of laws rules.

18.10. **Dispute Resolution**

(a) **Arbitration**. Any dispute or controversy arising under or in connection with this agreement will be settled exclusively by arbitration in [STATE], in accordance with the rules of the American Arbitration Association then in effect by [NUMBER OF ARBITRATORS] arbitrator(s).

(b) **Damages**. The arbitrator(s) will not have the power to award punitive damages.

(c) **Judgment**. The successful party may enter the arbitral judgment in any court having jurisdiction. The arbitrator will not have the power to award punitive damages.

18.11. **Waiver of Jury Trial**. Each party irrevocably waives its rights to trial by jury in any action or proceeding arising out of or relating to this agreement or the transactions relating to its subject matter.

18.12. **Counterparts**. This agreement may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document.