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NOTICE: The sale of any Products covered hereby is expressly conditioned upon application of these Terms and Conditions. Any additional or different terms or conditions proposed by Buyer are hereby expressly objected to and will not be binding upon Seller unless specifically agreed to in writing; provided, however, that no pre-printed entry form shall modify these Terms and Conditions even if signed by Seller. Any oral or written representation, warranty, course of dealing or trade usage not contained in these Terms and Conditions shall not be binding on either party. Any order to perform work and/or Seller's performance of the work shall constitute Buyer's agreement to these Terms and Conditions.

1. Definitions:

Unless Seller otherwise agrees:

"Affiliate" means any company indirectly or directly controlled by the LinearLogiX Corporation or any subsidiary thereof.

"Buyer" means the entity to which Seller is providing Products or Services under the Contract.

"Contract" means the documents that comprise the agreement between Buyer and Seller for the sale of Products or Services, including these Terms and Conditions and any other documents incorporated by reference, such as, the final quotation, the agreed scope(s) of work, and Seller's order acknowledgment

"Hazardous Materials" means any chemical, substance, material or emission that is or may be regulated, governed, listed or controlled pursuant to any international, national, federal, provincial, state or local statute, ordinance, order, directive, regulation, judicial decision or other legal requirement applicable to the Site as a toxic substance, hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, pesticide, radioactive material, regulated substance or any similar classification, or any other chemical, substance, emission or material, including, without limitation, petroleum or petroleum-derived products or by-products, regulated, governed, listed or controlled or as to which liability is imposed on the basis of potential impact to safety, health or the environment pursuant to any legal authority of the United States or the country of the Site.

"Parties" means collectively Buyer and Seller.

"Party" means either Buyer or Seller, individually.

"Product" means all equipment, parts, materials, supplies, and other goods Seller has agreed to supply to Buyer under the Contract, including Refurbished Parts, but excluding Software (as defined in Section 11).

"Project" means an undertaking by Seller to implement a turnkey solution comprising Products and Services, including third party services, solicited by Buyer.

"Refurbished Parts" means used Products that have been repaired and/or reconditioned by Seller for resale.

"Seller" means the entity providing Products and/or Services under the Contract.

"Services" shall mean all service activities Seller has agreed to perform for Buyer under the Contract.

"Site" means the premises where Products are delivered or Services are performed, not including Seller's premises from which it performs remote Services.

"Terms and Conditions" means these terms and conditions of sale.

2. Pricing.

- 2.1. Prices are quoted in U.S. Dollars and include the cost of Seller's usual inspection and factory tests and commercial packing for export, if required. Prices do not include domestic or international shipping charges beyond the point of delivery pursuant to Section 6, the cost of insurance during the time Buyer bears risk of loss, or charges for demurrage, port fees, pier handling, marshaling, or heavy lifts or any other costs other than those expressly set forth in this Section 2. 2.2 The pricing quoted will be subject to adjustment for escalation in accordance with the Contract to which these terms and conditions are attached.

3. Payment.

Except as otherwise agreed to by Seller, in writing, and upon approved credit, the following payment terms apply:

- 3.1. Buyer shall pay Seller in U.S. Dollars, without right of set-off, as follows:
- 3.1.1. Product. Where Seller provides separately priced Products, Buyer shall pay the full purchase price of such Products including price escalation, if any, within thirty (30) days following date of Seller's invoice.
 - 3.1.2. Services. Where Seller provides separately priced Services, Buyer shall pay the full purchase price of such Services including price escalation, if any, within thirty (30) days following date of Seller's invoice.
 - 3.1.3. Project. Where Seller is retained by Buyer to provide a Project, Buyer shall pay 25% of the purchase price of such Project within thirty (30) days of Contract signing. Payment for the remaining balance of the Project purchase price shall be due upon completion by Seller of each milestone deliverable (or other section or segment as applicable) of the Project as defined by the applicable schedule of values or other milestone deliverable plan.
 - 3.1.4. Additional Purchase Commitments. In the event Buyer makes further purchase commitments pursuant to the Contract after the date of the initial Contract, The additional purchase price applicable to such further purchase commitment shall be due in accordance with Sections 3.1.1, 3.1.2 or 3.1.3 above, as applicable. If Section 3.1.3 applies, then the 25% payment applicable to the additional purchase commitment shall be made within thirty (30) days of such written commitment.
- 3.2. Seller may establish different payment terms in the event Buyer consistently fails to make payment according to the terms set forth above. If Buyer fails to make any payments to Seller when due, Buyer will also pay to Seller, without prejudice to any other rights available to Seller under the Contract, interest on any late payment, calculated from the payment due date to the date of actual remittance. Interest will be computed at 1.5% per month, prorated to an applicable daily rate, but in no event will the rate of interest be greater than the highest rate then permitted under applicable law. Further, Buyer shall reimburse Seller for all costs of Seller's collection efforts including reasonable attorney's fees.
- 3.3. Unless otherwise agreed by Seller in writing, Buyer shall establish an irrevocable, unconditional, sight letter of credit allowing for, progress payments, final payments, pro-rata payments for partial deliveries, storage, export shipment, price adjustments, cancellation or termination, and all other payments due from Buyer under the Contract, and certification of the charges and grounds for such payment. The letter of credit shall be: (i) confirmed by a bank that is acceptable to Seller; (ii) payable at the counters of the confirming bank; (iii) opened 60 days prior to the earliest scheduled shipment or payment therefore; and (iv) remain in effect until 90 days after the latest scheduled shipment. Buyer shall pay all banking charges. Seller shall not be obligated to begin performance until the letter of credit becomes operative. Buyer will increase the amounts and/or extend the validity period(s) and make appropriate modifications to any letter of credit within 5 business days of Seller's notification that such increase or extension is necessary to provide for payments to become due. In the event

such letter of credit has not been established by the time required in this Section 3.3, Seller shall be entitled to delay deliveries without penalty to Seller until such time as the letter of credit has been established and confirmed to be available for payment. In such event, Buyer shall be subject to late payment penalties (based on the date of original scheduled delivery) pursuant to Section 3.2 above until such delivery has occurred and payment through the letter of credit has been completed.

- 3.4. In the event a Contract or any portion thereof is terminated by Seller in accordance with Section 10, below, at any time prior to the shipment of the Products or performance of the Services, pursuant to which Seller will be entitled to calculate and collect certain termination charges from Buyer, Seller shall be entitled to draw on the letter of credit established by Buyer hereunder for such termination charges as calculated by Seller, upon presentation of the following documents: (i) Seller's invoice showing the amount of termination charges due by Buyer; and (ii) one (1) copy of the termination notice. The letter of credit established by Buyer hereunder shall contain language necessary to acknowledge and permit a draw by Seller in accordance with this Section 3.4.
- 3.5. All payments by Buyer, not otherwise covered by an applicable letter of credit, shall be made by wire transfer to the account identified by Seller.
- 3.6. Any order for Products or Services by Buyer shall constitute a representation that Buyer is solvent and adequately capitalized in order to fulfill the applicable purchase commitments. If at any time Seller reasonably determines that Buyer's financial condition does not justify the continuation of Seller's performance, Seller may require full or partial payment in advance or shall be entitled to suspend or terminate the Contract.
- 3.7. Regardless of the manner of shipment or delivery, Seller shall retain a security interest in Products until Buyer makes payment to Seller of the full purchase price therefor. Seller shall have the right to file financing statements and any other documents that may be necessary to evidence and perfect such security interest in the Products in any jurisdiction, and Buyer shall provide reasonable assistance upon request of Seller. Further, in the event that at any time Buyer has failed to pay Seller for any Products or Services provided in accordance with the provisions of the Contract or any other agreement to which these terms and conditions apply, Buyer expressly consents to Seller's removal of "Software" (as defined in Section 11, below), as applicable.

4. Taxes and Duties.

- 4.1. The price and other amounts to be assessed by Seller and paid by Buyer under the Contract do not include taxes, duties, fees, or other charges of any nature (including, but not limited to, ad valorem, excise, franchise, gross receipts, import, license, property, sales, service, stamp, turnover, use, or value-added taxes and any and all items of withholding, deficiency, penalty, addition to tax, interest or assessment related thereto), other than "Seller Taxes" (as defined in Section 4.2 below), whether levied against the Buyer, against Seller or its employees or against any of Seller's suppliers, subcontractors or their respective employees.
- 4.2. Seller's taxes: Seller shall be responsible for, and shall pay directly, any and all corporate and individual income taxes that are measured by net income or profit imposed by any governmental authority of any country on Seller, its employees or sub-contractors due to the execution of this Contract or the performance of or payment for work hereunder ("Seller Taxes").
- 4.3. Buyer's taxes: Buyer shall be responsible for payment of any taxes, other than Seller Taxes, (including, without limitation, income, stamp and turnover, service, sales or value-added taxes), duties, fees, charges or assessments of any nature levied by any governmental authority in connection with the Contract, whether levied against Buyer, against Seller or its employees, or against any of Seller's subcontractors or their employees. Such taxes shall be paid directly by Buyer to the governmental authority concerned. If Seller or its subcontractors, or the employees of either, are required to pay any such levies and/or fines, penalties or assessments in the first instance, or as a result of Buyer's failure to comply with any applicable laws or regulations governing the payment of such levies by Buyer, the amounts shall be promptly paid by Buyer to Seller upon submission of Seller's invoices therefor.
- 4.4. All rights to drawback on customs duties paid by Seller with respect to Products (or material or components thereof) belong to and shall remain in Seller. If Buyer arranges for export shipment, Buyer agrees to furnish without charge evidence of exportation or other evidence of tax or duty exemption acceptable to the taxing or customs authorities when requested by Seller, failing which the amount of any taxes or duties imposed on Seller in connection with the Contract shall be promptly reimbursed in U.S. Dollars by Buyer to Seller upon submission of Seller's invoices therefor.
- 4.5. Any and all payments to be made by Buyer pursuant to or related to the Contract shall be free of all withholding of any nature whatsoever except to the extent otherwise required by law, and if any such withholding is so required, Buyer shall pay an additional amount such that after the deduction of all amounts required to be withheld, the net amount actually received by Seller shall equal the amount that Seller would have received if such withholding had not been required.

5. Compliance with Laws.

- 5.1. Seller represents that the Products will be produced, and any Services rendered, in compliance with applicable United States laws, rules, orders and regulations in effect at the date of this Contract. Price and, if necessary, delivery will be subject to adjustment to compensate Seller for the additional obligations required to comply with any other laws or regulations. Upon Buyer's inspection of the Products and/or completed Services, it shall notify Seller immediately in writing of any noncompliance of such goods and services with any applicable governmental laws, rules, orders or regulations. The price and delivery will be subject to adjustment to compensate Seller for the additional obligations undertaken by Seller due to a change in industry specifications, codes, standards, applicable laws or regulations as further set forth in Section 13.3, below.
- 5.2. Seller's obligations are conditioned upon Buyer's compliance with all applicable trade control laws and regulations. All shipments hereunder shall at all times be subject to the export control laws and regulations of the United States of America and any amendments thereto. Buyer agrees that it shall not make any disposition

of United States origin products purchased from Seller by way of transshipment, re-export, diversion or otherwise, other than in and to the ultimate country of destination to be specified on either Buyer's order, an end-user certificate provided by Buyer to Seller, or as declared as the country of ultimate destination on Seller's invoice, except as permitted by said laws and regulations. Seller shall not comply with any law, regulation or requirement that would subject Seller to criminal or civil penalties or loss of tax benefits under any applicable laws or regulations and the furnishing of any quotation or acknowledgment of any order does not constitute the furnishing of or an agreement to furnish any information that would subject Seller to any of the above-mentioned penalties or loss of tax benefits.

- 5.3. Notwithstanding anything set forth herein to the contrary, Buyer shall be responsible for timely obtaining any required authorization(s), such as an export license, import license, foreign exchange permit, work permit or any other governmental authorization(s), even if Seller applies for the authorization(s). Seller shall not be liable if any authorization of any government is delayed, denied, revoked, restricted or not renewed, and in such event Buyer shall not be relieved thereby of its obligations to pay Seller for the Products or Services, or any other charges that are the obligation of Buyer hereunder. Further, Buyer shall be solely responsible for obtaining, maintaining and/or effectuating any governmental authorizations or notifications, if any, required for the lawful performance of the Services at the Site.
- 5.4. If Buyer is an agency or instrumentality of, or is owned by, the government of any country, Buyer hereby unconditionally and irrevocably represents, warrants and covenants to Seller that, to the maximum extent permitted by law (including, without limitation, any future governmental decree or legal notification): (a) the execution, delivery and performance by Buyer of the Contract constitutes private and commercial acts, rather than public or governmental or sovereign acts; (b) Buyer is generally subject to civil and commercial law and to legal proceedings, and neither Buyer nor any of its assets is entitled to any immunity (governmental, sovereign or otherwise) from any set-off judgment, execution, attachment or other legal process; (c) should any proceedings be brought against Buyer or any of its assets in any jurisdiction in relation to the Contract, no immunity (governmental, sovereign or otherwise) from such proceedings shall be claimed by or on behalf of Buyer or with respect to Buyer's assets; (d) Buyer hereby waives any right of immunity (governmental, sovereign or otherwise) which Buyer or any of its assets may have in the future; and (e) Buyer consents generally, in respect of the enforcement of any judgment against it in any such proceedings, to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation, the making, enforcement or execution against or in respect of any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.

6. Delivery, Title Transfer, Risk of Loss.

- 6.1. For shipments within the country of origin or manufacture and for U.S. exports, Seller shall deliver the Products to Buyer EXW (Incoterms 2000) Seller's facility, place of manufacture or warehouse. For all other export shipments, Seller shall deliver the Products to Buyer FCA (Incoterms 2000) Port of Export. Delivery times are approximate and are dependent upon prompt receipt by Seller of all material and information necessary to proceed with work without interruption. Seller may deliver all or any part of the Products in advance of the delivery schedule agreed upon between Buyer and Seller. Any claim for shortages will not be considered unless Seller receives written notice thereof within 120 days after Seller's delivery.
- 6.2. Notwithstanding delivery, title to Products shipped from the U.S. to a destination outside the U.S. shall pass to Buyer immediately after each item departs from the territorial land, seas and overlying airspace of the U.S. The Parties acknowledge and agree that the territorial seas of the U.S. extend to twelve nautical miles from the baseline of the country determined in accordance with the 1982 United Nations Convention of the Law of the Sea. Title to Products shipped from within the country of the Products' final shipment destination shall pass to Buyer when Products are made available for shipment from the manufacturer's factory or the storage facility utilized by Seller. Title to Products shipped directly from a European Union ("EU") manufacturer or an EU storage facility outside the country where the Product will be installed shall pass to Buyer the earlier of (a) the port of export immediately after the Products have been cleared for export; or (b) immediately after each Product departs from the territorial land, seas and overlying airspace of the EU sending country. Title to Products to be shipped from any other country shall pass to Buyer at the port of export immediately after the Products have been cleared for export. Notwithstanding the foregoing, for any Software (as defined in Section 11, below) provided by Seller hereunder, only the license to the software transfers as set forth herein, and title to the Software shall remain at all times with Seller.
- 6.3. In all events risk of loss shall transfer to Buyer upon title transfer.
- 6.4. Buyer shall bear the sole risk of loss for Buyer's equipment during the term of the Contract, whether at the Site, the Seller's facility or in transit from the Seller's facility. If repair Services are to be performed on Buyer's equipment at Seller's facility, Buyer shall be responsible for transporting the equipment to and from Seller's facility. Buyer shall reimburse Seller at Seller's then current storage rate if the equipment remains at Seller's facility beyond 10 days after notification that the Services have been completed.

7. Excusable Delays.

Seller shall not be liable nor in breach or default of the Contract to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of Buyer or Buyer's sellers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. Seller shall notify Buyer of any delay or failure excused by this Section 7 and shall specify the revised delivery or performance date as soon as practicable. Subject to Section 10.3, below, in the event of such delay or failure, there shall be no termination of the Contract, and the time of delivery or of performance shall be extended for a period equal to the time lost by Seller by reason of the

delay or failure.

8. Warranty.

- 8.1. Seller warrants to Buyer that (i) the Products shall be shipped free from defects in material, workmanship and title and (ii) the Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. To the extent any such Products include "Software" (as defined in Section 11), whether included in a Product furnished hereunder or provided separately, Seller warrants that such Software will, at the time of delivery by Seller, conform to Seller's documentation relating to such Software ("User Documentation"). Unless Seller expressly agrees otherwise in writing, any Product (or part thereof) not manufactured by Seller shall carry only the warranty that the original manufacturers provide, and Seller gives no warranty on behalf of the manufacturers of such items. Furthermore, used Products other than Refurbished Parts shall be sold "AS IS."
- 8.2. Unless otherwise stated in the Contract: (i) the warranty period with respect to a Product shall be fifteen (15) months from the date of Product shipment, or twelve (12) months from the date the Product has been placed in service, whichever occurs first; (ii) the warranty period for Services shall be twelve (12) months from completion of the Services; (iii) notwithstanding the foregoing, the warranty period for Projects shall be twelve (12) months from completion by Seller of each milestone deliverable (or other section or segment as applicable) of the Project as defined by Seller's schedule of values or other milestone deliverable plan; and (iv) notwithstanding the foregoing, unless otherwise expressly agreed by Seller, the warranty period for repair services performed on out-of-warranty Products shall be ninety (90) days from the completion of the repaired services. The warranty for the repair services performed on out-of-warranty Products shall be limited to the workmanship of the services and any new parts provided as part of the service, but does not extend to the failed Product itself. If the original new Product warranty period applicable to the failed Product has not expired, no additional warranty or extension of such warranty period shall be granted for the repaired Product. (as applicable, the "Warranty Period").
- 8.3. If Buyer believes that any Product or Service does not meet the above warranties within the applicable Warranty Period, Buyer shall promptly notify Seller in writing within thirty (30) days from the date of such occurrence and, if applicable, make the Product available to Seller, per Seller's specifications, for inspection. In the event Seller determines that the Product or part thereof, or Services performed, failed to meet the foregoing warranties set forth in this Section 8 (except as to title) within the Warranty Period, Buyer's sole remedy, and Seller's sole obligation, shall be limited to: (i) at Seller's sole option, repair or replacement of the defective Product; or (ii) re-performing the defective Services. If in Seller's reasonable judgment the Product cannot be repaired or replaced or the Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for that portion of Products or Services that do not meet the above warranties. Any such failure shall not be cause for an extension of the Warranty Period, and any repaired or replacement Product or re-performed Service shall have warranty coverage equal to the time remaining on the initial warranty of the failed Product or defective Services, as applicable. The expense of freight and transportation of the Products to and from Seller's facility, or other facility designated by Seller for purposes of a warranty claim, shall be the responsibility of Buyer. In no event shall Seller be responsible for removal and installation costs associated with the repair or replacement of the Products. If any Product or part thereof fails to meet the foregoing warranty as to title, Seller shall remedy any defects in title promptly.
- 8.4. Seller's obligations under this Section 8 shall not apply to normal wear and tear, or to any Product or part thereof, or Service as applicable, that: (a) is normally consumed in operation; (b) has a normal life inherently shorter than the warranty period specified in Section 8.1; (c) is not properly stored, installed, used, maintained or repaired, or is modified other than pursuant to Seller's instructions or approval; or (d) has been subjected to any other kind of misuse or detrimental exposure, has been involved in an accident, or has been subject to an event of force majeure including, without limitation, any of the events described in Section 7; (e) has been repaired or altered in such a way as to impair its safety of operation or efficiency; or (f) has been subjected to any other defect or cause (whether sole or contributory) not within the control of Seller. In the event Buyer uses non-Seller parts or non-Seller approved repairs, then any damage to, failure of, or performance degradation of the Products or Services indirectly or directly resulting from the use of such parts or repairs, shall not be warranted by Seller. Further, if such parts or repairs cause personal injury, death or property damage to third parties, Buyer shall indemnify and hold Seller harmless from all claims and liabilities connected therewith. This indemnification shall survive the termination or expiration of this Contract.
- 8.5. This Section 8 provides the exclusive remedies for all claims based on failure of or defect in Products and Services, whether the failure or defect arises before or during the applicable Warranty Period and whether a claim, however described, is based on contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability or otherwise. The warranties provided in this Section 8 are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. **NO IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.**

9. Limitation of Liability.

- 9.1. The liability of Seller to Buyer on any claim, whether in contract, warranty, tort (including, without limitation, negligence or patent infringement) or otherwise, arising out of, connected with, or resulting from the performance or non-performance of any agreement resulting herefrom or from the manufacture, sale, delivery, resale, repair, replacement or use of any Product, or the furnishing of any Service, shall not exceed the purchase price (or in the absence of a purchase price, the fair market value) allocable to the Product or Service that gives rise to the claim. Further, the total liability of Seller for all such claims shall not exceed (a) the total Contract price or (b) if the Contract is in the form of an ordering, frame, or master agreement under

- which Buyer places an order with Seller for the Products and Services to be purchased, the final price of the particular order under which the specific Products or Services giving rise to the claim are supplied or performed. Any such liability shall terminate upon the expiration of the Warranty Period specified in Section 8, above. The foregoing shall constitute the sole remedy of Buyer and the sole liability of Seller.
- 9.2. Seller shall not be liable for loss of profit or revenues, loss of product, loss of use of Products or Services or any associated equipment, interruption of business, cost of capital, cost of cover, downtime costs, increased operating costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect, punitive, speculative, treble or exemplary damages.
 - 9.3. If Buyer is supplying Seller's Products or Services to a third party, Buyer shall require the third party to agree to be bound by this Section 9. If Buyer does not obtain this Contract for Seller's benefit, Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims made by the third party in excess of the limitations and exclusions of this Section 9. Seller shall not be liable for any advice or assistance that is not required under the Contract.
 - 9.4. If Seller furnishes Buyer with advice or other assistance that concerns any Product or Services supplied hereunder, or any system or equipment in which any such Product may be installed, and that is not required by the terms of any agreement to which these terms and conditions apply, the furnishing of such advice or assistance shall not subject Seller to any liability, whether in contract, warranty, tort (including, without limitation, negligence or patent infringement) or otherwise.
 - 9.5. For the purposes of this Section 9, the term "Seller" shall mean Seller, its Affiliates, suppliers and subcontractors, and their respective agents and employees, individually or collectively. The limitations and exclusions in this Section 9 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability or otherwise. Buyer's and Seller's rights, obligations and remedies arising out of or relating to the Products or Services are limited to those rights, obligations and remedies described in this Contract. This Section 9 shall prevail over any conflicting or inconsistent terms in this Contract, except to the extent that such terms further restrict Seller's liability.

10. Termination; Suspension.

- 10.1. Buyer may terminate the Contract (or any portion thereof) for cause if Seller: (a) substantially breaches a material obligation which does not otherwise have a specified contractual remedy, provided that Buyer provides Seller written notice of the breach and Seller has failed, within sixty (60) days after receipt of the notice (or such extended period as is considered reasonable by the parties), to either: (i) commence and diligently pursue cure of the breach, or (ii) provide reasonable evidence that the breach has not occurred; or (b) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws.
- 10.2. If Buyer terminates the Contract as provided in Section 10.1 Buyer shall pay to Seller the applicable purchase price for any completed or partially completed Products and Services performed before the effective date of termination, and any lease fees incurred. Seller shall pay Buyer, as Buyer's sole and exclusive remedy for termination set forth in Section 10.1, the difference between that portion of the Contract price allocable to the terminated scope and the actual amounts reasonably paid by Buyer to another seller for that scope.
- 10.3. Seller shall have the right to suspend performance or terminate the Contract (or any portion thereof) immediately for cause if: (a) Buyer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; (b) there is an excusable delay (as per Section 7, above) lasting longer than 120 days; (c) any representation or warranty made by Buyer herein or in any document or certificate furnished by Buyer in connection herewith proves to be incorrect in any material respect; (d) Buyer materially fails to comply with any terms of the Contract, including but not limited to, failure to make any payment when due or to fulfill any payment conditions; or (e) Buyer commits an anticipatory breach of the Contract.
- 10.4. In the event Seller terminates the Contract as provided in Section 10.3: (i) Seller shall be entitled to retain any down payment, advance payments, progress payments and/or milestone payments made by Buyer; (ii) Buyer shall pay to Seller the applicable purchase price for any completed or partially completed Products and Services performed before the effective date of termination; (iii) Buyer shall pay to Seller all costs and expenses incurred by Seller in connection with the Contract and/or the termination thereof; and (iv) Buyer shall pay to Seller a termination penalty as necessary such that the sum of such amount plus the payments retained by Seller pursuant to (i) above with respect to the uncompleted Products and/or Services shall equal no less than 25% of the purchase price allocable to the uncompleted Products and/or Services, escalated to the date of termination.
- 10.5. For purposes of Sections 10.2 and 10.4 above, the following shall apply when determining the amount due from Buyer for Services performed before the date of termination: (i) for Services performed under time and material pricing, Buyer shall pay for all hours performed at Seller's then-current standard time and material rates and (ii) for Services performed under a firm fixed price, Buyer shall pay (a) the applicable price for all milestones achieved and (b) for any milestone not yet achieved, all hours performed in connection with the unachieved milestone(s) at Seller's then-current standard time and material rates.
- 10.6. Subject to Section 10.1, above, Buyer may not terminate, suspend or cancel the Contract (or any portion thereof) without the prior written consent of Seller, which consent shall be at Seller's sole discretion. Seller may condition its consent upon any or all of the remedies set forth in Section 10.4 above. Notwithstanding the foregoing, in no event shall Seller consent to the termination, suspension or cancellation of any Product or Services Order for which Seller has already begun production or performance, as applicable.
- 10.7. Buyer shall pay any reasonable expenses incurred by Seller in connection with a suspension of the Contract by Seller pursuant to Section 10.3, above, including expenses for repossession, fee collection, duties, carrying costs, taxes, demobilization/remobilization or costs of storage during suspension upon submission of Seller's

invoice(s). Performance of Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

11. Data and Software.

- 11.1. As used in these terms and conditions, the term "Data" means all information and data of any type, form or nature (including, but not limited to, designs, drawings, blueprints, tracings, plans, models, layouts, Software, User Documentation, specifications, technical publications, electronic transmittals, customer website data and memoranda) which may be furnished or made available to Buyer, directly or indirectly, as the result of the Contract. The term "Software" means a machine-readable, object code form only, computer program or compilation of data that is fixed in any tangible medium of expression, or any storage medium from which the program may be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device, and shall include without limitation any of Seller's proprietary operating software that is provided for the ordinary operation of the Products, any optional software to enhance the operation of the Products, as well as any upgrades or revisions of this material Seller provides to Buyer. Nothing herein shall be deemed to create an obligation on the part of Seller to provide any support, upgrades or revisions to any Software, except as otherwise agreed in writing between Buyer and Seller.
- 11.2. All Data (including Software) is proprietary to and shall remain the sole property of Seller. All Data is provided to or disclosed to Buyer in confidence, and, subject to Section 15 below, shall neither (1) be used by Buyer or be furnished by Buyer to any other person, firm or corporation for the design or manufacture or repair of any products, articles, compositions of matter, or processes, nor (2) be permitted out of Buyer's possession, or divulged to any other person, firm or corporation, nor (3) be used in the creation, manufacture, development, or derivation of any repairs, modifications, spare parts, designs or configuration changes, or to obtain any government or regulatory approval of any of the foregoing. Data shall not be used for the maintenance or repair of any products not supplied or covered under the Contract. If Seller's written consent is given for reproduction in whole or in part, any existing notice or legend shall appear in any such reproduction. Nothing in the Contract shall preclude Buyer from using such Data for the modification, overhaul, or maintenance work performed by Buyer on Buyer's Products; except that all repairs or repair processes that require substantiation (including, but not limited to, high technology repairs) will be the subject of a separate license and substantiated repair agreement between Seller and Buyer.
- 11.3. Buyer is granted a limited license for any Data delivered by Seller, whether as part of any Product or separately. This limited, non-exclusive, non-transferable, revocable, personal license allows Buyer to: (a) use the Software only on the Products on which it is installed at the time of delivery or, if the Software is supplied separately, in connection with Products supplied by Seller; (b) if the Software is supplied separately, make one copy of the Software in machine-readable form solely for backup purposes, provided that Buyer must reproduce on any such copy the copyright notice and any other proprietary legends that were on the original copy; and (c) use any Data for Buyer's internal business purposes. Buyer must obtain a supplementary license from Seller (which Seller may or may not grant in its sole discretion) before using the Software in connection with any other equipment or in any configuration other than originally anticipated at the time of delivery. In no event is any license or right granted in the source code for any Software provided by Seller.
- 11.4. Buyer may not distribute copies of the Data to others or electronically transfer the Data from one computer to another over a network. The Data contains trade secrets of Seller. In order to protect such trade secrets, Buyer may not decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form. BUYER MAY NOT MODIFY, ADAPT, TRANSLATE, RENT, LEASE, LOAN, RESELL FOR PROFIT OR OTHER PURPOSE, DISTRIBUTE, NETWORK, OR CREATE DERIVATIVE WORKS BASED UPON THE DATA OR ANY PART THEREOF. Seller and Buyer acknowledge that the Data is protected by copyright, trade secret, and patent laws of the United States of America (and by applicable international treaties).
- 11.5. If Buyer receives any Software that renders other Software that Buyer then has redundant, Buyer agrees to return the redundant Software to Seller upon Seller's request.

12. Intellectual Property Indemnification.

- 12.1. Seller warrants that any Product or Service furnished hereunder that has been manufactured or performed by Seller or any Affiliate of Seller, as applicable, shall, without any alteration or further combination, be free of any rightful claim of any third party for infringement of any United States patent. If Buyer notifies Seller within fifteen (15) days of the receipt of any claim that such Product or Service infringes a United States patent and gives Seller information, assistance and exclusive authority to settle and defend such claim, Seller shall, at its own expense and option, in its sole discretion: (a) settle or defend such claim or any suit or proceeding arising therefrom and pay all damages and costs awarded therein against Buyer; (b) procure for Buyer the right to continue using such Product or Service; (c) modify the Product or Service so that it becomes non-infringing; (d) replace the Product with a non-infringing Product or re-perform the Service with a non-infringing Service; or (e) remove the Product or reverse the Service performed and refund the applicable price paid (less reasonable depreciation) and any transportation or installation costs that have been separately paid by Buyer.
- 12.2. This Section 12 shall not apply to and Seller shall have no obligation or liability with respect to any patent infringement claim based upon: (a) any Product that is manufactured, or Service performed, to Buyer's design or specification; (b) the use of any Product or Service furnished hereunder in conjunction with any other apparatus or material; (c) the use of any Product or Service furnished hereunder to the extent that the infringement claim is based upon a modification to the Product or Service that was made by the Buyer (or Buyer's employees, agents, contractors or subcontractors); or (d) the failure of Buyer to implement any update provided by Seller that would have prevented the claim. As to any Product, Service or use described in the preceding sentence, Seller assumes no liability whatsoever for patent infringement or the unauthorized use of Products or Services, including, without limitation, a breach of the provisions of the Contract.

- 12.3. This Section 12 states Seller's entire liability for indemnification for patent, trademark, copyright, and trade secret infringement for Products and Services.
- 12.4. Notwithstanding the foregoing, with respect to any Products or Services, or portions thereof, that are not manufactured or performed to Seller's design specifications, only the indemnity of the designing party, if any, shall apply.

13. Changes.

- 13.1. Seller may, as it deems necessary and/or from time to time, make engineering or specification changes with respect to the Products or Services. If the engineering or specification change does not constitute a material change in form, fit or function, Seller is authorized to deliver the Product or perform the Services, as changed or modified, without notice to or consent from Buyer. If the engineering or specification change constitutes a material change in form, fit or function, Seller will suspend performance and notify Buyer, and if such material change cannot be ameliorated by Seller's reasonable efforts, the Parties shall negotiate an equitable adjustment in the price and delivery of the Products and Services.
- 13.2. Buyer may propose changes to such engineering or specifications with respect to the Products and Services by written change order to Seller. Such engineering or specification changes proposed by Buyer will be subject to adjustment in price and delivery of the Products and Services. Unless otherwise specified by Seller in writing, changes to such engineering and specifications proposed by Buyer not agreed to and accepted in writing by Seller shall not apply to the Products or Services.
- 13.3. Changes in applicable laws, rules and regulations resulting in increased cost, expense, liability or risk to Seller shall only be implemented subject to the Parties negotiating an adjustment in price and delivery of the Products and/or Services to compensate Seller for such increased obligations. Seller's performance obligations with respect to the Products and/or Services affected by such changes shall be suspended for a period of time equal to the time necessary for the Parties to mutually agree to such price and delivery adjustment. In the event the Parties fail to agree to such equitable adjustment, either Party may pursue resolution pursuant to the dispute resolution process set forth in Section 16.

14. Inspection and Factory Tests.

The quality control exercised by Seller in its manufacture of Products and performance of Services shall be in accordance with Seller's normal quality control policies, procedures and practices. Seller shall attempt to accommodate Buyer's requests to witness Seller's factory tests of Products and Services, if such witnessing can be arranged without delaying the work. Such access to factory tests shall be: (a) at Buyer's sole cost and expense; and (b) limited to areas directly concerned with Products and Services ordered by Buyer and shall not include restricted areas where development work or work of a proprietary nature is being conducted.

15. Confidentiality.

- 15.1. All terms and conditions contained in the Contract are confidential and proprietary information. Buyer and Seller each agree not to disclose any of the terms of the Contract, including specifically, without limitation, pricing information, to any third party without the other Party's written consent, except where required to do so by applicable law, rule or regulation.
- 15.2. In connection with the Contract, Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other Party (as to information received, the "Receiving Party") with Confidential Information. "Confidential Information" means all information that is designated as "confidential" or "proprietary" by the Disclosing Party at the time of disclosure.
- 15.3. The obligations of this Section shall not apply as to any portion of the Confidential Information that: (a) is or becomes generally available to the public other than from disclosure by the Receiving Party, its representatives or its Affiliates; (b) is or becomes available to the Receiving Party or its representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when the source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation with respect to such information; (c) is independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (d) is required to be disclosed by law, a valid legal process or a government agency; or (e) is approved for disclosure in writing by an authorized representative of the Disclosing Party.
- 15.4. The Receiving Party agrees: (a) to use the Confidential Information only in connection with the Contract; (b) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees, agents or financing parties who have a need to know for the Receiving Party to perform its obligations under the Contract; and (c) notwithstanding anything set forth herein to the contrary, not to disclose the Confidential Information to any third party. The Receiving Party agrees to obtain a commitment from any recipient of Confidential Information to comply with the terms of this Section 15. Confidential Information shall not be reproduced without the Disclosing Party's written consent, and the Receiving Party shall return all copies of Confidential Information to the Disclosing Party upon request, except to the extent that the Contract or applicable law entitles the Receiving Party to retain the Confidential Information.
- 15.5. If either Party or any of its affiliates or representatives is required by law, valid legal process or a government agency to disclose any Confidential Information, that Party agrees to provide the Disclosing Party with prompt written notice to permit the Disclosing Party to seek an appropriate protective order or agency decision or to waive compliance by the Receiving Party with the provisions of this Section 15. In the event the foregoing efforts are unsuccessful, Disclosing Party may lawfully revise the Confidential Information to make it nonproprietary or to minimize the loss of its proprietary value.
- 15.6. If Buyer discloses Confidential Information hereunder, Buyer warrants that it has the right to disclose the

information, and Buyer shall indemnify and hold Seller harmless against any claims or damages resulting from improper disclosure by Buyer.

- 15.7. Nothing in this Section 15 grants the Receiving Party any license under any invention, patent, trademark or copyright now or later owned or controlled by the Disclosing Party. As to any individual item of Confidential Information, the restrictions of this Section 15 shall expire the earlier of ten (10) years after the date of disclosure or five (5) years after termination or expiration of the Contract. This Article does not supersede any separate confidentiality or nondisclosure agreement signed by the Parties.

16. Governing Law; Dispute Resolution.

- 16.1. The validity, performance and all matters relating to the interpretation and effect of the Contract and all further documents executed pursuant to it shall be construed and interpreted in accordance with the laws, excluding the rules on the conflict or choice of laws, of the State of Florida, U.S.A. The Parties acknowledge that the United Nations Convention on the International Sale of Goods is not applicable to any sale of Products to which these Terms and Conditions apply.
- 16.2. Except as specifically provided for in this "Dispute Resolution" provision, Buyer and Seller agree to forsake litigation and, exclusively by the dispute resolution process identified herein, resolve with finality any and all disputes, controversies or claims between Buyer and Seller arising under or related to this Agreement, any Purchase Order or other agreement subject to this Agreement, or the breach, termination or invalidation thereof.
- 16.3. Parties will endeavor to resolve any dispute amicably, including by designating senior managers who will meet and use commercially reasonable efforts to resolve any and all disputes arising under or related to this Agreement. The Party initiating the dispute resolution procedure must provide initial written notice to a senior management representative for the other Party, such notice to indicate that the Party is utilizing this dispute resolution procedure and to set forth in detail all of its claims or issues in dispute. The other Party shall have fourteen (14) days to add any other issues or claims for resolution not identified in the initial written notice.
- 16.4. If the Parties' senior managers do not resolve the dispute within sixty (60) days of first written request, either Party may refer the matter to Mediation, to be administered pursuant to the Commercial Mediation Rules of the American Arbitration Association ("AAA"). Such Mediation must be initiated and completed within ninety (90) days from the date of referral to the AAA.
- 16.5. If the dispute or claim is not fully resolved pursuant to paragraph 16.4 above, either Party may after thirty (30) days, but not later than one hundred twenty (120) days from the date of the completion of mediation, make a written demand for final and binding arbitration before three arbitrators in accordance with the Commercial Arbitration Rules of the AAA. Each Party shall select one arbitrator and the two arbitrators so selected will select the third arbitrator. If the two arbitrators fail to reach agreement on the selection of third arbitrator within fifteen (15) days, then such third arbitrator shall be appointed by the AAA. The arbitration shall take place in the City of Sebastian, State of Florida, U.S.A.
- 16.6. The arbitration shall be conducted in the English language. Relevant documents in other languages shall be translated into English if the arbitrators so direct. In the event of a conflict between the English version and the original version of any documents so translated, the English version shall control.
- 16.7. In arriving at the decision, the arbitrator(s) shall consider the pertinent facts and circumstances and shall be guided and bound by the terms and conditions of the Agreement, including the Article titled "Limitation of Liability" of this Agreement. If a solution is not found in the applicable terms and conditions, then the arbitrator(s) shall apply the provision of the laws of the State of Florida (excluding its choice of laws rules and excluding the U.N. Convention on Contracts for the International Sale of Goods). The applicable procedural law shall be the law of the place of arbitration.
- 16.8. The award of the arbitrators shall be paid in U.S. dollars, and shall not exceed actual compensatory damages and in no case shall include punitive, exemplary or other similar damages. Buyer and Seller agree that the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards applies to any purchase orders incorporating these terms and conditions of sale and to any arbitral award resulting from any arbitration.
- 16.9. The decision of the arbitrator(s) shall be final and binding upon the parties. Neither Party shall apply or appeal to any court in connection with any question of law arising in the course of the reference or out of the award. Judgment on the award may be entered in any court having jurisdiction.
- 16.10. Seller may at any time, without inconsistency with this Dispute Resolution provision, seek from a court of competent jurisdiction any equitable, interim, or provisional relief to avoid irreparable harm or injury. This Dispute Resolution provision shall not apply to and will not bar Seller to initiate proceedings before the courts of Buyer's domicile, main place of business or any other competent court, for matters such as moneys due by Buyer to Seller, or Seller's need to protect or enforce any patent, trademark, copyright or other intellectual property right, confidential information or trade secrets.
- 16.11. With respect to the dispute resolution process described in this Section 16, or otherwise pursuant to the terms of the Contract, Seller will not be required to disclose the basis (including but not limited to costs and margins) for its determination of list prices for Products or Services set forth in its general catalogs or such other prices for Products or Services as may have been agreed to with Buyer or proposed by Seller. Furthermore, confidential or proprietary information of either Party will only be disclosed to the arbitrator or arbitrators and then only if he, she or they have agreed to keep such information in confidence and to not disclose the same to any other parties.
- 16.12. All statements made and documents provided or exchanged in connection with the Dispute Resolution process described herein are confidential and neither Party shall disclose the existence or content of the dispute or claim, or the results of any Dispute Resolution process, to third parties other than outside counsel, except with the prior written consent of the other Party or pursuant to legal process.

17. Nuclear Use

- 17.1. The Products and Services sold by Seller are not intended for use in connection with any nuclear facility or activity, without the written consent of Seller. Buyer warrants that it shall not use or permit others to use Products or Services for such purposes, unless Seller agrees to the use in writing.
- 17.2. If, in breach of Section 17.1 above, any such use occurs, Seller (and its parent, affiliates, sellers and subcontractors) disclaims all liability for any nuclear or other damages, injury or contamination, and in addition to any other legal or equitable rights of Seller, Buyer shall indemnify and hold Seller (and its parent(s), Affiliates, suppliers, sellers and subcontractors) harmless against any such liability. If Seller agrees in writing to any such use, the Parties shall agree upon special terms and conditions that provide Seller protections against nuclear liability and which are acceptable to Seller under the then current laws that apply.

18. Personal Data Protection

- 18.1. "Personal Data" is any information relating to an identified or identifiable natural person or to any legal entity if such legal entity is subject to data protection legislation in their country of incorporation ("Data Subject").
- 18.2. Buyer and Seller each agree that any Personal Data obtained from the other Party will be deemed Data of the other Party as defined in Section 11 of this Agreement whether or not the Personal Data is publicly available.
- 18.3. Buyer and Seller each represent that in providing Personal Data to one another they will comply with all applicable laws and regulations, including but not limited to providing notices to or obtaining consents from the Data Subjects when required. By entering into a Contract with Seller, Buyer consents to Seller processing Buyer Personal Data to establish and maintain its debtor database and the respective risk profiles as well as for operational and factoring purposes and to rationalize data protection issues within its group, and consents to Seller's communication of Buyer Personal Data to Affiliates for the same purposes as mentioned above.
- 18.4. Steps shall be taken to implement and maintain physical, technical and organizational measures to ensure the security and confidentiality of Personal Data in order to prevent accidental, unauthorized or unlawful access, use, modification, disclosure, loss or destruction of Personal Data. The security measures taken shall be in compliance with applicable data protection laws and shall be adapted to the risks represented by the processing and the nature of the personal data to be collected and/or stored.

19. Health and Safety Matters.

- 19.1. Buyer shall take all necessary precautions, at all times, for the health and safety of Seller personnel at the Site. These include, but are not limited to: providing to Seller for review, and instructing Seller's personnel regarding, Buyer's safety practices; and proper and safe handling of, and protection of Seller's personnel from exposure to, Hazardous Materials.
- 19.2. Seller may, from time to time, conduct safety audits to ensure the existence of safe site and working conditions and make recommendations to Buyer concerning them. Whether or not Seller conducts safety audits or makes recommendations, Buyer will remain responsible for providing a work environment that is safe and that complies with all applicable legal requirements. Buyer will make its local medical facilities and resources available to Seller personnel who need medical attention, for the duration of their needs. Under no circumstance will Seller personnel be required to work more than any maximum time periods allowed by applicable law.
- 19.3. If, in Seller's reasonable opinion, the safe execution of the Contract at the Site is, or is apt to be, imperiled by security concerns, local conditions, war (declared or undeclared), armed conflict or threatened conflict, civil unrest, terrorist acts or threats, threat to safety or well-being of the Site or personnel or Seller's persons or interests, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Seller may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from the Site, suspend performance of all or any part of the Contract, and/or transfer such performance and supervise it at a location solely determined by Seller. Buyer shall assist in any evacuation. Any delay that results shall be considered excusable.
- 19.4. Buyer shall advise Seller in writing of all applicable Site-specific rules, regulations, safety codes, and laws that apply to Products and Services.
- 19.5. Operation of Buyer's equipment is the responsibility of Buyer. If Buyer requires or permits Seller's personnel to operate Buyer's equipment at the Site, Buyer shall indemnify and save Seller, its employees and agents, harmless from expense and liability (including reasonable attorneys' fees) incurred by or imposed upon Seller, its employees and agents, based upon exposure to Hazardous Materials, injury to persons (including death) or damage to property resulting from operation of equipment at the Site by Seller personnel. Buyer shall not require Seller personnel to work on other projects or equipment during the term of the Contract.

20. Site Access and Conditions; Hazardous Materials.

- 20.1. Buyer shall provide Seller access to the Site and any other facilities free of charge, including the operating and development environment and information, as necessary for Seller's performance of the Contract. Prior to Seller starting any work at the Site, Buyer will (i) provide documentation that identifies any existing Hazardous Materials on or about the Site, and (ii) allow Seller, at its option, access to the Site to perform or have performed a Site evaluation, including without limitation, a review of applicable documents and visual examination of the Site. Whether or not Seller conducts any evaluation, Seller will have no responsibility or liability for existing Site conditions.
- 20.2. Seller shall promptly, and, if feasible, before such conditions are disturbed, notify Buyer in writing of: (i) subsurface, latent physical or other conditions at the Site, including but not limited to Buyer's health and safety requirements, differing materially from those indicated in the Contract or otherwise disclosed by Buyer, and (ii) previously unknown physical conditions at the Site, including archeological remains, differing materially from

- those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. Buyer shall promptly investigate those conditions. If it is determined that any conditions do materially differ and cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, the parties shall make an equitable adjustment in price and schedule and modify the Contract in writing accordingly.
- 20.3. If, at the Site, Seller encounters Hazardous Materials that require special handling or disposal, Buyer shall immediately take whatever precautions are required to eliminate legally the hazardous conditions so that the work under the Contract may safely proceed. Seller shall not be obligated to commence or continue work until Buyer causes the hazardous conditions to be removed. If any such Hazardous Materials cause an increase in Seller's cost of or time required for performance of any part of the work, the parties shall make an equitable adjustment to the price and schedule and modify the Contract in writing accordingly. Buyer agrees to properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Seller's work at the Site.
- 20.4. Buyer shall indemnify and hold Seller harmless for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to any Hazardous Materials which are or were (i) present on or about the Site prior to the commencement of Seller's work, (ii) improperly handled or disposed of by Buyer or Buyer's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on the Site by parties other than Seller.

21. General Clauses.

- 21.1. Seller may, at its sole discretion, cause some or its entire obligation under this Contract to be performed, and permit some or all of its rights hereunder to be exercised, by one or more of its affiliates. By way of example, but without limiting the generality of the foregoing, an Affiliate may assume or perform one or more rights and obligations related to the sale of the Products and Services hereunder, including, without limitation, confirmation of orders, sale, transfer of title, and/or delivery of the Products and Services, issuance of invoices and collection of payments. Buyer, without requiring evidence of assignment or delegation of authority, shall accept performance of Seller's obligations, and exercise of its rights by an Affiliate and shall accept and honor invoices issues of Seller's Affiliate.
- 21.2. Buyer shall notify Seller immediately upon any change in the ownership (on a cumulative basis) of more than fifty percent (50%) of Buyer's voting rights or in Buyer's controlling interest. If Buyer fails to do so or Seller objects to the change, Seller may, in Seller's sole discretion: (a) terminate the Contract; (b) require Buyer to provide adequate assurance of performance (including but not limited to payment); or (c) put in place special controls regarding Seller's Confidential Information.
- 21.3. If any provision of the Contract is found to be void or unenforceable, the remainder of the Contract shall not be affected. The Parties will replace any such void or unenforceable provision with a new provision that achieves substantially the same practical or economic effect and is valid and enforceable.
- 21.4. The following Sections shall survive termination or cancellation of the Contract: 3, 4, 5, 6, 8, 9, 10, 11, 12, 15, 16, 17, 18, 20 and 21.
- 21.5. The Contract represents the entire agreement between the Parties. No modification, change, amendment, rescission or waiver shall be binding on either Party unless agreed in writing by the Parties' authorized representatives.
- 21.6. To facilitate execution and delivery of the Contract, it may be signed in more than one counterpart, each of which shall be an original instrument with the same effect as if the signatures to the contract were upon the same instrument, but all such counterparts together shall constitute but a single agreement. A faxed copy of a signature page of the Contract shall have the same effect as an originally signed signature page.
- 21.7. Except as provided in the Section 9, regarding limitation of liability, and in Section 17 above, regarding nuclear use, this Contract is for the benefit of the Buyer and Seller and not for any third party.
- 21.8. Unless otherwise specified by Seller, any quotation of Seller shall expire ninety (30) days after the date of issuance and may be modified or withdrawn at any time prior to the date of Buyer's order.
- 21.9. The headings of the sections of the Contract are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of the Contract. The use of specific lists or the word "including" when used in this Contract are not intended to be exclusive, and shall mean "including, but not limited to."