

These Terms and Conditions for purchase of Goods and/or Services by Siemens in the USA ("Terms") and all documents attached hereto or referenced herein ("Exhibits"), including the Purchase Order form amendments or change orders if any, shall constitute the contract for the Goods/Services purchased by Customer (collectively "Purchase Order"). "Customer" means the Siemens entity identified in the Purchase Order. "Supplier" means the party identified in the Purchase Order. Supplier and Customer are authorized to do business or maintain a registered agent in the USA. Customer and Supplier are, individually, referred to as a "Party" and, collectively as the "Parties." "Affiliate" means, with respect to a Party, any other party who directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such Party. "Representatives" mean a Party's and its respective Affiliates' directors, officers, employees, agents, representatives and/or subcontractors. "Goods" mean products, materials, raw materials, supplies, equipment, information, Work Product, data, drawings, designs, specifications, reports and/or off-the-shelf software furnished by Supplier hereunder. "Services" mean the tasks/deliverables to be provided/performed by Supplier as set forth in the Purchase Order. The Purchase Order is effective and is expressly conditional upon Supplier's assent to all terms and conditions in the Purchase Order that are different from or additional to those stated in Supplier's quotation, proposal, or other offering documents. Customer hereby gives notice of objection to any different or additional terms in any response to this Purchase Order. Shipment of any Goods or the performance of any Services by Supplier shall be deemed to constitute Supplier's assent to this provision.

### **1. COMMUNICATIONS AND CHANGE ORDERS.**

(A) All written communications shall (i) be directed to the addresses set forth in the Purchase Order, (ii) refer to the Purchase Order number, and (iii) be delivered in accordance with this Purchase Order.

(B) If Customer requires modifications to the Goods/Services, the Parties shall negotiate an equitable adjustment in the form of a change order or amendment. Supplier shall not make any changes without Customer's prior written consent.

### **2. PRICING, TERMS OF PAYMENT, TAXES AND DUTIES.**

(A) The purchase price set forth in the Purchase Order shall be in U.S. Dollars, shall be firm, and shall include Supplier's overhead, insurance, packaging, storage and shipping, wages or other amounts owed to Supplier's Representatives, including all administrative and travel expenses, taxes, and all other costs and expenses (including transfer pricing) applicable to the Goods/Services. The purchase prices for Goods (both tangible and intangible) and Services shall be separately stated.

(B) Customer shall not be responsible for the payment of any taxes, fees or duties other than those required to be paid by Customer under Applicable Law (defined below) and which are clearly itemized on Supplier's invoice(s). Customer shall provide tax exemption certificates or other applicable tax documents as reasonably requested by Supplier.

(C) Unless otherwise set forth in the Purchase Order, invoices are due and payable net ninety (90) days after receipt of the Goods (including all documents required in the Purchase Order), performance of the Services, and a receipt of a correct undisputed invoice by Customer. Payment(s) shall be by electronic banking method identified in the Purchase Order.

### **3. TITLE, RISK OF LOSS, DELIVERY.**

(A) Title to Goods, and title or license to Services, shall pass to Customer at the earlier of (i) payment by Customer or (ii) receipt of the Goods/Services by Customer per the delivery terms in the Purchase Order. In the event of advance or progress payments, Supplier shall (a) reasonably identify or otherwise mark the Goods/Services as Customer's property; (b) sign and deliver such documents for Customer to confirm that title or license has passed to Customer; and (c) if requested by Customer, provide an advance payment bond acceptable to Customer. Goods/Services shall be delivered free and clear of all liens or claims.

(B) For Goods purchases, the Purchase Order shall state the (i) mode, manner and timing of delivery to Customer, its end user(s) or designee(s), and (ii) address of final destination. Regardless of the shipping terms used, risk of loss to the Goods shall remain with Supplier until Goods are in the possession, custody and control of Customer.

(C) Shipments sent C.O.D. without Customer's written consent will not be accepted and will be at Supplier's risk. Supplier is instructed to ship only the quantities specified in the Purchase Order. Any deviation caused by conditions of loading, shipping, packing, or allowances in manufacturing processes may be accepted by Customer, and only pursuant to a duly executed amendment or change order as set forth in Section 1(B). Customer reserves the right to return, without liability, any overshipment at Supplier's expense.

(D) Supplier shall comply with Customer's delivery dates at its sole cost unless the Parties otherwise agree in writing. If a delay originates with Supplier or its Representatives, Supplier shall be solely responsible for expedited delivery and other charges to meet delivery dates. Goods shipped in advance of Customer's delivery dates may, at Customer's option, be returned to Supplier at Supplier's expense. Customer reserves the right to delay shipment of the Goods for up to thirty (30) days at no additional cost.

**4. INSPECTION AND QUALITY CONTROL.** Customer, its Representatives and/or end user(s) may inspect, test, reject or accept Goods/Services during manufacture or performance. If inspections/tests are made on Supplier's premises, Supplier, without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of Customer's inspectors. Customer's inspections/tests will not unduly interfere with Supplier's business. Supplier shall maintain quality control and inspection systems as mutually agreed upon by the Parties and provide Customer with quality assurance documentation, manuals or certifications. Notwithstanding prior inspection or testing, payment, or passage of title, all Goods/Services shall be subject to final inspection and written acceptance at final destination, with such rights of inspection/rejection being in addition to any other rights or remedies of Customer under this Purchase Order or Applicable Law. If Customer rejects all or part of the Goods, Customer may return Goods to Supplier, at Supplier's sole risk and expense, for rework or replacement, and Supplier shall ship conforming Goods within ten (10) days of Supplier's receipt of the rejected Goods. If Customer determines, in its sole discretion, that Supplier is unable to rework or replace Goods within the time required by Customer, Customer may: (A) rework or have another supplier rework the Goods, the cost of such rework to be paid by Supplier; (B) return Goods to Supplier for full credit and obtain replacement from an alternate source, at Supplier's expense; or (C) produce replacement Goods at Supplier's expense. All Services found to be defective or nonconforming shall be re-performed at Supplier's expense.

**5. GOODS AND SERVICES WARRANTY.**

(A) Supplier represents and warrants that it shall perform the Services and furnish the Goods in a professional and workmanlike manner, and the Goods/Services furnished hereunder:

(1) shall (i) be new and of merchantable quality; (ii) be fit for and capable of the intended use; (iii) be of high quality and free from any defect or nonconformity in design, workmanship or materials; (iv) not be government or commercial surplus, used, remanufactured or reconditioned or of such age or so deteriorated as to impair the usefulness or safety thereof; and (v) strictly conform to the requirements of this Purchase Order, Customer's specifications, drawings, samples and other descriptions or instructions furnished by Supplier or Supplier's Representatives, generally accepted professional, engineering, manufacturing and/or technology standards, and Applicable Law; in each instance, until the later of eighteen (18) months after the Goods are first placed into service or thirty-six (36) months after delivery, and in the case of Services, eighteen (18) months after the completion of the Services; and

(2) (i) are free of any liens, encumbrances or claims, (ii) are free of Asbestos, Asbestos containing materials, or any other materials prohibited by Applicable Laws; (iii) bear all markings, labels, warnings, notices or other information required under Applicable Law; and (iv) do not contain any substance prohibited by national or international regulations applicable to the Supplier or Customer, or at the point of delivery.

(B) *TECHNOLOGY WARRANTIES:* Supplier represents and warrants that (i) the Goods/Services do not (a) infringe, violate or misappropriate any intellectual property right(s) of third parties or (b) violate Applicable Laws; (ii) Supplier has all of the rights, permits, licenses and authority necessary to perform its obligations hereunder; (iii) Goods/Services including any software, related documentation, updates furnished hereunder and the media it is delivered on, or any "Software as a Service" or "Cloud" service, have been scanned for viruses and other malicious code and have been found to be free from viruses and malicious code; and (iv) the Goods/Services do not (a) grant access to servers, systems or programs of Customer, its Affiliates or Representatives by person(s) other than Customer, its Affiliates or Representatives or (b) contain any program, routine, code, device or other undisclosed feature including but not limited to a time bomb, virus, software lock, Trojan horse, worm or trap door ("Disabling Feature") that is designed to delete, disable or interfere with the Goods/Services, and if any Disabling Feature is discovered or reasonably suspected to be present, Supplier shall immediately notify Customer and, at its sole expense, delete such Disabling Feature and carry out the recovery necessary to remedy its impact.

(C) For a breach of Supplier's warranty, Customer's remedies shall include but not be limited to Supplier's correction of any nonconformity with the warranty at its sole expense, and at the sole discretion of Customer, Supplier shall promptly (i) repair or replace the nonconformity (and correct any plans, specifications, or drawings affected); (ii) furnish Customer or its end users any materials, parts and instructions necessary to correct the nonconformity, including reimbursement for Customer's costs; or (iii) pay Customer a mutually agreed portion of the Purchase Order price. Customer shall also be entitled to recover all costs and expenses incurred directly by Customer, its Representatives or payable to third parties, including additional costs of Customer's personnel or other labor, evaluation, re-working or scrapping, or transportation costs, or costs incurred in removing defective or nonconforming Goods/Services from property, equipment or products from property or premises where they have been incorporated.

(D) The warranty with respect to any corrected Goods/Services shall be subject to the same terms as the original warranty except that the warranty on any corrected or replaced Goods/Services shall be the longer of (i) one year from the date of repair or replacement or (ii) until the end of the original warranty period.

(E) Customer's approval of Supplier's samples, prototypes or first articles shall not be construed as a waiver of any express or implied warranty.

(F) In addition to any other obligations set forth in this Article 5, Supplier shall pass through all assignable third party manufacturers' warranties applicable to Goods/Services furnished by Supplier. In the event a third party warranty is not

assignable, Supplier shall enforce its warranty against a third party at Supplier's expense upon Customer's reasonable request. Supplier shall immediately notify Customer in writing of product recalls and/or product safety notices that concern the Goods/Services.

(G) Customer shall have the right to assign all Supplier warranties under this Purchase Order to third parties including Customer's customers/end users, who shall have all rights to enforce such warranty.

**6. CUSTOMER FURNISHED PROPERTY.** The term "Customer Furnished Property" shall mean all tools, patterns, equipment, materials or other property which is either supplied by or on behalf of Customer or its Representatives to Supplier to perform the Services or furnish the Goods, or purchased by Customer from Supplier which is to be "delivered in place" and stored at Supplier's facility. Title to Customer Furnished Property shall remain with Customer and risk of loss shall be with the Party who has possession. For Customer Furnished Property in Supplier's possession, custody or control, Supplier shall insure against loss and damage in an amount equal to full replacement cost. Customer Furnished Property shall carry no guarantee or warranty, express or implied. Supplier shall not use Customer Furnished Property on any work other than the Goods/Services. Supplier shall clearly mark Customer Furnished Property to show Customer's ownership and prevent a lien, encumbrance or challenge to Customer's title thereto. Supplier shall, at its own expense, maintain and repair Customer Furnished Property, returning it to Customer in the condition in which received, reasonable wear and tear excepted. Upon expiration or termination of the Purchase Order, Supplier shall dispose of Customer Furnished Property as Customer directs in writing. Customer reserves the right to abandon Customer Furnished Property at no additional cost to Customer. This Purchase Order shall remain in effect so long as Supplier possesses Customer Furnished Property.

## **7. PACKAGING.**

(A) Except where the Purchase Order includes alternative requirements, Supplier shall be responsible for packaging Goods, and the clear and conspicuous marking of Goods and packaging, in accordance with Applicable Law, industry standards and in a manner sufficient to permit efficient handling, to provide adequate protection and comply with requirements of carrier and Applicable Law.

(B) Packing slips identifying the Purchase Order number and part number must accompany each shipment. The exterior of each shipping container or package will be clearly marked with Customer's Purchase Order number and country of origin, which shall also be marked on Goods, and any specified packaging/marketing requirements stated in the Purchase Order, in a clear, conspicuous and permanent manner. Supplier shall provide all necessary shipping documents, including, but not limited to, customs invoices and packing lists in accordance with Customer's requirements and Applicable Law. Damages and costs incurred by Customer, its Representative or end user resulting from Supplier or its Representative's failure to comply with this Section shall be paid by Supplier. If Supplier imports wood packaging materials, in accordance with 7 CFR 319.40, Supplier warrants that such wood packaging material is treated and marked under an official program developed and overseen by the National Plant Protection Organization in the country of export.

## **8. INTELLECTUAL PROPERTY.**

(A) *Ownership:* Each Party shall retain all right, title and interest it may have with respect to Items acquired or developed before the effective date or independently of this Purchase Order. "Items" means ideas, inventions, discoveries, processes, methods, designs, know-how, strategies, techniques, formulas, models, instructions, specifications, technical information, computer programs including software (in source and object code forms), firmware and related operating instructions and documentation, trademarks, service marks, and works of authorship of all kinds, including notes, reports, memoranda, writings, plans, outlines, research, data, figures, descriptions, drawings, diagrams, charts, sketches, patterns, compilations, lists, surveys, interview guides, and recordings in any form or medium and whether or not patentable or copyrightable.

(B) As between the Parties, Customer shall be the sole owner of and shall have all right, title and interest in all Work Product, including all related copyright, patent and other intellectual property rights, including without limitation, any derivative works, or inventions or trademarks relating to existing intellectual property. "Work Product" means all Items and any other work product conceived, created, developed, produced, prepared, collected, compiled or generated by Supplier, its Affiliates or Representatives in connection with performing the Services or producing the Goods including but not limited to modifications and improvements thereto. Supplier shall not cause or permit any Work Product to be subject to any lien or encumbrance. Supplier hereby, irrevocably, in perpetuity and without further consideration, assigns to Customer all right, title and interest that Supplier, its Affiliates and/or Representatives have or may have in the future anywhere in the world in all Work Product.

(C) *Works made for Hire:* Customer will be considered the "person for whom the work was prepared" for purposes of determining the authorship of any copyright in Work Product, and all copyrightable aspects of Work Product will constitute "works made for hire" as that term is defined under Section 101 of the U.S. Copyright Act, 17 U.S.C. § 101, as amended ("Copyright Act"), or analogous provisions under other Applicable Laws, and will be owned exclusively by Customer upon creation. If (and to the extent) any of the foregoing (or any part or element thereof) is found as a matter of law not to be a "work made for hire" under Applicable Laws, Supplier hereby irrevocably, in perpetuity and without further consideration, assigns to Customer (its successors and assigns) all right, title and interest that Supplier has or may have in the future in and to all United States and foreign copyrights in Work Product and all copies thereof.

(D) *Disclosure; Further Assurances:* Supplier shall disclose and describe all Work Product to Customer and, promptly upon Customer's request, provide any requested information or documentation related to Work Product. Upon Customer's request, Supplier will execute and deliver to them all documents and provide all testimony necessary to register and enforce intellectual property rights in Work Product solely in the name of Customer (or its designee). Supplier irrevocably designates and appoints Customer (or its designee) and its legal representatives and nominees, as Supplier's agent and attorney-in-fact to prosecute and enforce any applications and intellectual property rights as to Work Product.

(E) Supplier shall promptly disclose, and hereby grants to Customer, a non-exclusive, freely transferable, royalty-free, fully paid-up, worldwide, license in and to, all Items owned or licensed by Supplier which are necessary for the use and enjoyment by Customer of Goods/Services and Work Product hereunder. Such license covers perpetual software license for software used in or required for the operation of Goods/Services, including but not limited to all modifications or additions to software, as well as all related documentation and technical information. Any software maintenance or support service shall be the subject of an Exhibit to this Purchase Order.

(F) Supplier shall not embed or incorporate any third party Items into Goods/Services without Customer's prior written consent. In addition, Supplier shall provide to Customer and/or its end users a list of third party software or other intellectual property contained within or necessary to use Goods/Services together with royalty-free, paid-up licenses to Customer, its Affiliates, and its or their end user(s).

## **9. INDEMNIFICATION.**

(A) Supplier shall indemnify, defend and hold harmless Customer, its Affiliates, and their Representatives and assigns from and against all claims, suits, causes of action, losses, liabilities, liens, damages, assessments, costs, expenses, demands, complaints or actions including but not limited to reasonable attorneys' fees and court costs (collectively "Claims") concerning (i) death, personal injury, or property damage arising or resulting from (a) Supplier or its Representative's negligence or willful misconduct, or (b) the Goods/Services furnished hereunder; (ii) nonpayment of wages, benefits, fees, amounts owed, and/or any taxes (including penalties and interest) associated therewith arising from Supplier's Representatives, suppliers, contractors, and/or materialmen which may include liens or encumbrances on the Goods/Services or the premises on which located; (iii) a challenge to Customer's title to the Goods/Services; (iv) infringement or misappropriation of any third party's intellectual property rights in connection with the Purchase Order or Customer's, its Representatives or Customer's end user's use of the Goods/Services; (v) violation of Applicable Law; (vi) damage or loss to, or arising out of, or resulting from Customer Furnished Property; (vii) breach of the Siemens Data Security Requirements, if applicable; or (viii) breach of this Purchase Order by Supplier or its Affiliate(s) or Representative(s).

(B) If Customer receives written notice of a Claim, Customer shall give prompt written notice to Supplier. Customer's delay or deficiency in notifying Supplier shall not relieve Supplier of liability or obligation unless such delay materially impacts the defense of the Claim. If the settlement of a Claim may result in ongoing liability to or detrimentally impacts Customer, its Affiliates, Representatives or end users, then such settlement shall require the prior written consent of Customer. Customer may have its own counsel at Customer's cost at all related proceedings.

(C) In case either Party reasonably believes the Goods/Services, or any part thereof, may be the subject of an intellectual property Claim, Supplier shall at its own expense: (a) procure Customer, its Representatives and/or end user's right to continue using the Goods/Services; (b) replace with substantially equivalent non-infringing Goods/Services; or (c) modify the Goods/Services in compliance with Applicable Laws so it becomes non-infringing.

(D) Supplier expressly and specifically waives its immunity under applicable workers' compensation and/or industrial insurance laws regarding liability against Customer, its Affiliates or its or their end users for Claims brought by Supplier's employees against any of them.

## **10. CONFIDENTIALITY.**

(A) Both during and after the term of this Purchase Order, the Parties will treat as confidential all information in any form (including copies or restatements thereof) relating to, without limitation, the intellectual property, know-how, Items, businesses, operations, finances, pricing, forecasts, projections, analyses, systems, user identification numbers or passwords of a Party, and/or commercial, marketing, research and development, or other plans and strategies, end user and/or vendor information of a Party hereto marked "Confidential" or other similar markings ("Confidential Information"). Customer has the right to share confidential information with its Affiliates, Representatives, and customers in connection with transactions involving or related to the Goods and Services provided hereunder, provided those recipients are subject to the same confidentiality obligations set forth herein.

(B) Receiving Party shall refrain from disclosing and/or using disclosing Party's Confidential Information other than to perform its obligations under the Purchase Order. Receiving Party shall be responsible for any breach of the confidentiality obligations hereunder by its Affiliates or Representative(s). These confidentiality restrictions shall not apply to information which (i) is or becomes generally known to the public, without the fault of the receiving Party; (ii) is disclosed to the receiving Party, without obligation of confidentiality, by a third party having the right to make such disclosure; (iii) was previously known to the receiving Party, without obligation of confidentiality, which fact can be demonstrated by means of documents which are

in the possession of the receiving Party upon the date of this Purchase Order; (iv) was independently developed by receiving Party or its Representatives, as evidenced by written records, without the use of disclosing Party's confidential information; or (v) is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order, provided that the Party required to disclose by law will promptly advise the disclosing Party of any requirement to make such disclosure to allow the disclosing Party the opportunity to obtain a protective order and assist the disclosing Party in so doing. An individual who is a Supplier Representative will be immune from liability for the confidential disclosure of trade secrets (i) to a governmental agency to report a suspected violation of law or (ii) to a court, if the individual complies with the Defend Trade Secrets Act, 18 U.S.C. Section 1833(b).

(C) The Parties will return or destroy Confidential Information of each other within ten (10) days of receipt of a written request, or upon expiration or termination of this Purchase Order. Disclosing Party shall be entitled to specific performance and injunctive relief (including any other remedies at law or in equity) plus reasonable attorneys' fees and court costs incurred in pursuing a breach of this Section.

**11. REPRESENTATIONS, WARRANTIES AND COVENANTS.** In addition to warranties set forth elsewhere in this Purchase Order, Supplier for itself and on behalf of its Affiliates and Representatives hereby represents and warrants for the term of the Purchase Order as follows:

(A) None of Supplier, its Affiliates or Representatives is the target of or designated under any sanctions program that is established by statute or regulation of the United States, by Executive Order of the President of the United States, or by designations of any department or agency of the United States government, including but not limited to those designations reflected in the "list of Specially Designated Nationals and Blocked Persons" of the Office of Foreign Asset Control, U.S. Department of the Treasury;

(B) Supplier's Representatives are legally authorized to work in the United States, and Supplier shall complete as required by Applicable Law the Department of Labor's Form I-9 and to retain it for the statutorily designated period and, if requested by Customer, Supplier shall provide copies of such Forms I-9 to Customer unless such disclosure shall be prohibited by Applicable Law;

(C) For Services provided at Customer's, its end user or third party's premises, Supplier has examined the worksite in order to acquaint itself with the local conditions, including applicable regulations, codes, permits, licenses, registrations, environmental standards, and notification requirements concerning site safety and/or security; and

(D) Supplier has not and will not, absent prior written approval from Customer, take any actions that: (i) create, or purport to create, any obligation on behalf of Customer, or (ii) grant, or purport to grant, any rights or immunities to any third party under Customer's intellectual property or proprietary rights.

## **12. ENVIRONMENT, HEALTH AND SAFETY.**

(A) Supplier and its Representatives shall, in addition to other obligations set forth in this Purchase Order (i) comply with Applicable Laws concerning health, the environment, safety, or pertaining to or regulating pollutants, contaminants, or hazardous, toxic or radioactive substances, materials or wastes, including without limitation the handling, transportation and disposal thereof, or governing or regulating the health and safety of personnel, including but not limited to the Occupational Safety and Health Act of 1970, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act ("TSCA"), as amended (collectively referred to as "EHS Laws") (pollutants, contaminants, substances, materials or wastes as defined under EHS Laws shall be referred to collectively as "Hazardous Materials"); (ii) ensure that Goods/Services comply at all times with EHS Laws; (iii) mitigate hazards to the environment and to the health and safety of persons; (iv) ensure the Goods/Services, and any and all parts, components, or material thereof, bear all markings, labels, warnings, notices or other information required under applicable EHS Laws; (v) select and use only equipment, including but not limited to personal protection equipment, that comports with EHS Laws, train its Representatives in the use of such equipment in a safe and lawful manner, and maintain such equipment in good working order at all times; (vi) afford Customer and/or its Representatives access to all records pertaining to environmental, health and safety matters, in any form, pursuant to Customer's audit rights herein; (vii) immediately notify Customer of any incident involving death, injury or damage to any person or property in connection with the Purchase Order; (viii) upon Customer's request, conduct an incident investigation or support such investigation (at Supplier's expense) conducted by Customer; (ix) notify Customer, its end user and/or its or their Representatives of any solid or hazardous waste (as so defined under EHS Laws) generated in the course of Supplier or its Representative's providing Goods/Services at a Work Site (as defined below); and (x) comply with the substance declarations and other requirements set forth in Exhibit A.

(B) Where the Purchase Order includes the presence of Supplier or its Representatives on the premises of Customer, Customer's end user, or any other location other than the premises of Supplier ("Work Site"), Supplier shall: (1) be solely responsible for the safety, health, medical surveillance, industrial hygiene, training and all other matters relating to safety and health of its Representatives at the Work Site; (2) appoint a competent person as its representative for environmental, health and safety who shall take part in safety discussions with Customer, its Representatives, end user, or the owner of the Work Site; (3) be solely responsible for the handling, use, transportation and disposal of any and all substances regulated under the EHS Laws which Supplier or its Representatives bring onto the Work Site or generate in the performance of this

Purchase Order, including but not limited to excess, waste or residue, containers or any of such substances not consumed, and for any spills, releases or discharges of such substances, strictly in accordance with EHS Laws; and (4) ensure Supplier's Representatives participate in any site-specific safety training and comply with all rules and requirements of Customer, its end user, or such other owner of the Work Site.

(C) Prior to commencing any Services at a Work Site, Supplier shall, in accordance with EHS Laws, provide and comply with a site specific health and safety plan, Work Site requirements, and shall make the same available to Customer or its Representatives at Customer's request. If Supplier fails to comply with this Section, Customer may, at its sole option and without limiting its other rights, order Supplier or its Representatives to cease Services until Supplier complies at Supplier's sole cost and expense. If Supplier is unable or refuses to take corrective action hereunder, Customer may contract with a third party or otherwise continue such Services at the Work Site and charge Supplier excess cost caused to Customer. Customer shall have the right, at its sole discretion, to remove Supplier or its Representatives from a Work Site for violation of this Section, EHS Laws, or requirements applicable to the Goods or Services.

(D) Supplier warrants that every chemical substance or material sold, transferred or delivered under this Purchase Order, including any chemical substance that is or is contained in any Goods/Services, shall, at the time of sale, transfer or delivery, be (1) on the list of chemical substances published by the Administrator of the U.S. Environmental Protection Agency pursuant to TSCA, otherwise known as the TSCA Inventory; or (2) exempted from such list under 40 CFR 720.30-38; and (3) able to be lawfully and safely used and transported in any jurisdiction to or through which such Goods will likely be shipped. Without limiting its other obligations, Supplier shall comply with Section 13 of TSCA, including without limitation requirements that importers certify that such substance or material is either in compliance with TSCA (positive certification) or are not subject to TSCA (negative certification) before importing a chemical substance, mixture or article containing a chemical substance or mixture into the USA.

### **13. TERMINATION.**

(A) Customer may suspend or terminate for its convenience this Purchase Order upon written notice to Supplier and, upon receipt of notice, Supplier and its Representatives shall, in addition to complying with the requirements of such notice, immediately (i) stop production and delivery of all Goods/Services, (ii) accept no orders for Goods/Services, and (iii) protect all Goods/Services under Supplier's control in which Customer may have a full/partial interest. In the event of a suspension, Supplier shall not resume until the suspension terminates as set forth in Customer's notice. For a terminated Purchase Order, Supplier will provide Customer with written evidence of any costs, if any, Supplier incurred resulting from the termination for convenience within thirty (30) days from the effective date of termination. If the Parties are unable to agree on compensation for such termination, Supplier shall be paid a reasonable termination charge consisting of a percentage of the Purchase Order price reflecting the percentage of work performed prior to the notice of termination plus the actual direct costs resulting from termination, with such total amount not to exceed the Purchase Order price.

(B) Without limiting any other termination rights of the Customer set forth in these Terms, a Party may terminate this Purchase Order for cause upon thirty (30) days prior written notice in the event the other Party hereto ("Non-Terminating Party") (i) materially breaches this Purchase Order and fails to cure the breach within this thirty (30) day period, or (ii) becomes insolvent, ceases business as a going concern, becomes unable to pay its debts generally as they become due; has a petition for an order for relief under the bankruptcy/insolvency laws or for reorganization, composition, adjustment or other relief of debtors, makes an assignment for the benefit of creditors, has a receiver or liquidator appointed for such Non-Terminating Party or a court of competent jurisdiction orders the winding up or liquidation of the affairs of the Non-Terminating Party.

(C) This Purchase Order may be terminated by Customer without penalty immediately upon written notice to Supplier, if Supplier or its Representatives violate any EHS Laws or Trade Regulations.

(D) Without limiting Customer's other rights or remedies, if Customer terminates this Purchase Order under (B) or (C) hereof, (i) Supplier shall immediately perform its obligations in (A)(i) through (iii) hereof, (ii) Customer may procure Goods/Services from alternative sources without obligation to Supplier, (iii) Supplier shall pay Customer any additional costs incurred for re-procured Goods/Services, and (iv) Customer or its Representatives may enter upon Supplier's premises during business hours to take possession of and remove Customer Furnished Property and Goods to which title has passed to Customer. Regardless of the reason for termination, Customer's total liability to Supplier related to such termination shall not exceed the Purchase Order price of the Goods/Services to which such termination applies.

**14. OPEN SOURCE SOFTWARE.** Supplier shall inform Customer no later than five (5) days following receipt of the Purchase Order, whether the Goods/Services include "Open Source Software." As used herein, "Open Source Software" means any software that is licensed royalty-free (i.e., fees for exercising the licensed rights are prohibited, whereas fees for reimbursement of costs incurred by licensor are generally permitted) under any license terms or other contract terms ("Open License Terms") which require, as a condition of modification and/or distribution of such software and/or any other software incorporated into, derived from or distributed with such software ("Derivative Software"), either of the following: (i) that the source code of such Software and/or any Derivative Software be made available to third parties; or (ii) that permission for creating derivative works of such Software and/or any Derivative Software be granted to third parties. If Open Source

Software is included, Supplier shall deliver to Customer, not later than the date of order confirmation, (i) a schedule of all Open Source Software files used, indicating the relevant license and including a copy of the complete text of such license; (ii) the source code of the Open Source Software; and (iii) a written declaration that Customer's intended use of the Open Source Software will not be subject to a "Copyleft Effect," which means the Open License Terms require that certain of the Supplier's products, as well as products derived thereby, may only be distributed further in accordance with the terms of the Open License Terms. Should Supplier not inform Customer of Open Source Software or otherwise breach this Section, it shall be a material breach and Supplier shall indemnify and defend Customer, its Representatives and Customer's end user(s) from all Claims arising from such breach, and Customer shall be entitled to cancel the Purchase Order without penalty.

#### **15. EXPORT CONTROL AND TRADE REGULATIONS.**

(A) For all Goods to be delivered and Services to be provided according to this Purchase Order, Supplier shall comply with all applicable export control, customs and trade regulations ("Trade Regulations"), and shall obtain all necessary export licenses, unless Customer or any party other than Supplier is required to apply for the export licenses pursuant to the applicable Trade Regulations. At the request of Customer, Supplier shall advise in writing, not later than three (3) days after the request, the necessary information required to comply with applicable Trade Regulations, including re-export limitations in case of resale. To extent Supplier is requested to deliver Goods/Services regulated under the Arms Export Control Act or the Atomic Energy Act, Supplier shall advise Customer in advance of order or contract acceptance. Regardless, and upon delivery, Supplier shall provide Customer for each Good and Service delivered the following trade data as applicable: (i) "Export Control Classification Number" (ECCN) according to the U.S. Commerce Control List or the Munitions List Category Designation according to the U.S. International Traffic in Arms Regulations, and all other export control list numbers; (ii) the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; (iii) the country of origin (non-preferential origin); and (iv) Supplier's declaration for preferential origin (for European suppliers) or preferential certificates (upon request of Customer), Supplier's declaration for non-preferential origin (for European suppliers) or preferential certificates such as NAFTA certificates of origin (for non-European suppliers). Supplier shall be liable for any expenses and/or damage incurred by Customer due to any breach of its obligations under this Section. In the event Supplier has knowledge of any alterations to origin and/or characteristics of the Goods/Services and/or to the applicable Trade Regulations, it shall notify the Customer not later than three (3) days upon discovery. Supplier shall be liable for any expenses and/or damages incurred by Customer due to the lack of or inaccuracy of said export control and foreign trade data. Customer shall not be obligated to fulfill this agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

(B) Supplier and its Representatives (including but not limited to distributors, re-Suppliers, and freight forwarders) shall ensure that Goods meeting the definition of "Hazardous Materials," "hazardous goods," "dangerous goods," or "hazardous chemical substances" under Applicable Laws are packaged, labeled, stored, used, handled and transported as required by such laws.

**16. C-TPAT AND SECURITY IN THE SUPPLY CHAIN.** Supplier, its Affiliates and Representatives, when providing Goods/Services to the Customer internationally, shall support the efforts of the Customer regarding security in the supply chain, as directed by the World Customs Organization SAFE Framework of Standards, U.S. Customs and Border Protection C-TPAT standards, or any other applicable customs trade security programs (e.g. AEO). Upon request, Supplier agrees to provide Customer's declaration on security in the supply chain or other documentation recognizing Supplier's participation in a national customs supply chain security program. The Supplier agrees to allow Customer or a Representative to reasonably verify adherence to the declaration's statements including on-site inspections. If Customer has identified that Supplier has not fulfilled obligations set forth in this Section, the Parties shall mutually agree on a remediation plan. If Supplier fails to comply with a mutually agreed remediation plan, the Customer may terminate this Purchase Order without liability. Supplier, its Affiliates and Representatives shall, if applicable, comply with United States Importer Security Filing (ISF) requirements, also known as 10+2, which requires Supplier to submit specific information for all its ocean shipments destined for U.S. ports pursuant to U.S. Customs and Border Protection (CBP) regulations. If Supplier, its Affiliates or Representatives fail to provide complete and accurate information to the ISF filing agent identified by Customer pursuant to CBP regulations, such failure may result in delays, detention of the cargo or of the ocean vessel, or liquidated damages charged by U.S. Customs and Border Protection.

**17. SIEMENS CODE OF CONDUCT.** Supplier shall comply with the principles and requirements of the "Code of Conduct for Siemens Suppliers and Third Party Intermediaries" attached hereto as Exhibit B (hereinafter the "Code of Conduct"). If and as requested by Customer, Supplier shall not more than once a year (at its option) provide to Customer either (A) a written self-assessment in the form provided by Customer or (B) a written report approved by Customer describing the actions taken or to be taken by Supplier to assure compliance with the Code of Conduct. Customer and its authorized agents and/or a third party appointed by Customer and reasonably acceptable to Supplier shall be entitled (but not obliged) to conduct at Supplier's premises inspections in order to verify Supplier's compliance with the Code of Conduct. Such inspections may only be conducted upon prior written notice, during regular business hours, and shall neither unreasonably interfere with Supplier's business activities, nor violate Supplier's confidentiality agreements with third parties. Supplier

shall reasonably cooperate in any inspections conducted. Each Party shall bear its own expenses in connection with such inspections. In addition to any other rights and remedies Customer may have, in the event of (i) Supplier's material or repeated failure to comply with the Code of Conduct or (ii) Supplier's denial of Customer's right of inspection as provided for in this Section, after providing Supplier reasonable notice and a reasonable opportunity to remedy, Customer may terminate this Purchase Order without any liability whatsoever. Material failures include, but are not limited to, incidents of child labor, corruption and bribery, and failure to comply with environmental protection requirements. The notice and remedy provisions herein shall not apply to material failures set forth in the preceding sentence.

**18. FORCE MAJEURE.** A Party shall notify the other Party hereto in writing within twenty-four (24) hours of the knowledge of and/or occurrence of a Force Majeure event, and neither Party shall be considered to be in default of this Purchase Order if and to the extent that its failure or delay in performance is actually caused by Force Majeure. "Force Majeure" means acts of God or nature, acts of civil or military authority, fires, floods, epidemic, war, or like occurrences that are beyond the control and without the fault of either Party. Strikes or other labor troubles involving a Party or its Representatives shall not constitute Force Majeure. A Party shall use commercially reasonable efforts to mitigate the effect of such Force Majeure, and relief granted to the Party experiencing Force Majeure shall be limited to an extension of the time of performance. If Supplier experiences a Force Majeure Event for more than ninety (90) days, Customer shall have the right to terminate the Purchase Order, and is entitled to a refund of all monies paid to Supplier subject to costs approved in advance by Customer in writing.

**19. COMPLIANCE WITH LAWS.** The Parties and their Representatives shall comply with all Applicable Laws and regulations, including but not limited to Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and regulations and orders of the United States Department of Labor issued under Section 14 thereof (collectively the "FLSA"), as well as all other laws relating to those relating to the manufacture, purchase, resale, exportation, transfer, assignment or use of the Goods and/or Services ("Applicable Laws"). In addition, Supplier shall obtain all required licenses, permits, authorizations, registrations or approvals required with respect to the provision of Goods and/or performance of Services hereunder.

**20. GENERAL.**

(A) Software Maintenance/Support. If Supplier provides software maintenance or support service, such service shall be the subject of an Exhibit.

(B) Audit. Customer, its Affiliate(s) or Representative(s) may conduct audit(s) of Supplier. Supplier and its Representatives shall maintain accurate and complete records ("Records") which are reasonably sufficient to determine Supplier's compliance with the Purchase Order. Such Records shall be kept in accordance with recognized commercial accounting practices and, except where a longer retention period may be provided in this Purchase Order, shall be retained by Supplier for a minimum of seven (7) years after the later of the (i) last delivery of Goods/Services or (ii) expiration of the Term of this Purchase Order. Such audits shall be conducted with reasonable prior notice to Supplier. In connection with such audit(s), Supplier shall reasonably make available, during normal business hours, personnel familiar with the Records.

(C) Data Security Requirements. To the extent Supplier handles Personnel Information (as defined below) of Customer and/or its parent, subsidiaries, Affiliates, customers or Representatives in connection with this Purchase Order, Supplier and its Representatives shall comply with the Siemens Data Security Requirements ("Requirements") set forth in Exhibit C. In addition to the Audit rights in Section 20(B), Customer, its Affiliate(s) or Representative(s) may conduct audit(s) of Supplier, its Affiliates and Representatives' compliance with the Siemens Code of Conduct and/or the Siemens Data Security Requirements on no less than forty-eight (48) hours prior notice to Supplier, this right extending to Supplier's third party data centers and vendors. Supplier's failure to comply with and/or remediate the Requirements shall be a material breach of this Purchase Order and, in addition to other remedies, Customer shall be permitted to immediately terminate this Purchase Order without penalty.

(D) Insurance and Expenses. Supplier and its Representatives shall comply with the insurance requirements set forth in Exhibit D attached hereto. Neither Supplier nor its Representatives shall incur any expense unless it has been authorized in advance by Customer.

(E) Assignment; Successors. Neither Party may assign all or part of this Purchase Order, or any rights or obligations hereunder, without the prior written consent of the other Party; but either Party may assign its rights and obligations, without recourse or consent, to any Affiliate or Affiliate's successor organization (whether as a result of reorganization, restructuring or sale of substantially all of a Party's assets). However, Supplier shall not assign this Purchase Order to (i) a competitor of Customer; (ii) an entity in litigation with Customer or its Affiliates; or (iii) an entity lacking the capability to satisfy Supplier's obligations.

(F) Subcontracting. Supplier shall be solely responsible for the proper selection, supervision, acts and omissions of its Affiliates and Representatives.

(G) Other Terms and Amendments. The terms and conditions contained in any sales order, acknowledgment, invoice, website, letter, writing, software or file (such as "clickwrap," "shrinkwrap," or website terms of use), or other document or medium shall not be applicable or amend this Purchase Order nor bind the Parties hereto or their Affiliates or



Representatives. This Purchase Order, including these Terms and Conditions, may only be amended by a change order or amendment pursuant to Section 1(B).

(H) Government Contracts. When the Goods/Services are to be used in the performance of a contract or subcontract with a governmental authority, applicable government contract requirements attached to this Purchase Order shall apply and are incorporated herein by reference.

(I) Set-Off. Customer shall have the right to set-off and deduct from Supplier's invoice(s) related to this Purchase Order any amount(s) owed by Supplier to Customer.

(J) Relationship of the Parties. Supplier, its Affiliates and Representatives are independent contractors of Customer and nothing herein shall be construed as creating any other relationship.

(K) Governing Law/Jurisdiction. All matters arising out of or in connection with this Purchase Order, including the construction and interpretation thereof, shall be governed by the federal laws, rules, regulations and executive orders of the United States and the laws of the State of New York without regard to conflicts of laws principles. The Parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods if otherwise applicable. Each Party agrees that claims and disputes arising out of this Purchase Order must be decided exclusively in a federal or state court of competent jurisdiction located in a state in which either Party maintains its principal place of business. Each Party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes. EACH PARTY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THIS PURCHASE ORDER.

(L) Publicity. No Party hereto shall refer to or use, or permit any persons to refer to or use, any other Party's name, trademarks, service marks or logos in any advertising, promotional materials, press releases or other publicity without obtaining the prior written consent of the applicable Party.

(M) Non-Exclusive Remedies and Non-Waivers. Failure of any Party to enforce its rights under this Purchase Order shall not constitute a waiver of such rights or of any other right under this Purchase Order or Applicable Law. The rights and remedies of the Parties herein shall not be exclusive and are in addition to any other rights and remedies provided by Applicable Law or in equity.

(N) Severability. If any provision of this Purchase Order is held invalid, illegal or unenforceable, the remaining provisions will not in any way be affected or impaired. A court may modify the invalid, illegal or unenforceable provision to reflect, as closely as possible, the parties' original intent.

(O) Survival. The Confidentiality, Indemnification, Warranty, Intellectual Property, Title and Risk of Loss, Termination, Export Control and Trade Regulations, General Provisions and any provision, which contemplates performance or observance subsequent to termination or expiration shall survive termination or expiration of this Purchase Order.

(P) Affirmative Action. Supplier shall comply with Customer's requirements as promulgated by the U.S. Department of Labor, Office of Federal Contract Compliance Programs set forth in Exhibit E.

(Q) Order of Precedence. In the event of a conflict, ambiguity or inconsistency, the following order of precedence of the documents within the Purchase Order shall apply: (a) if the Purchase Order is issued under a Master Agreement, then the terms of the Master Agreement (including the order of precedence set forth in that Master Agreement); (b) if there is no Master Agreement, then (i) an amendment or change order issued by Customer in accordance with this Purchase Order, (ii) the Purchase Order form, (iii) the applicable Exhibits to the Purchase Order, and (iv) these Terms and Conditions.

(R) Complete Agreement and Counterparts. This Purchase Order shall constitute the entire agreement between Customer and Supplier and shall supersede all previous communications, representations, agreements or understandings, whether oral or written, with respect to the subject matter hereof. The headings used in this Purchase Order are for reference and shall not limit or affect the meaning or interpretation of any of the terms hereof. This Purchase Order may be executed in one or more counterparts, and when delivered and executed by both Supplier and Customer, shall constitute a single binding agreement.

## **Exhibit A**

### **Substance Declaration**

If Supplier furnishes Goods that are subject to restrictions, rules or regulations for Hazardous Materials or other substances comprising, part of or contained in such Goods, including but not limited to statutes, rules, regulations, codes, standards and requirements of (1) EHS Laws; (2) governing, controlling or regulating Hazardous Materials, including but not limited to the Restriction on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (hereinafter "RoHS"), Directives 2002/96/EC and 2012/19/EU as well as their respective incorporation into EU member states' legislation including any amendments thereto (hereinafter "WEEE"); (3) the Regulation EC 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals including any amendment thereto (hereinafter "REACH"); (4) EC Directive 2006/66/EC on Batteries and Accumulators and Waste Batteries and Accumulators; and/or (5) TSCA, then, without limiting Supplier's obligations under this Purchase Order, Supplier shall comply with the requirements of this "Substance Declaration."

Supplier shall submit to Customer with each Good, the chemical substances contained therein or in the Service deliverable, and/or Material Safety Data Sheets, Safety Data Sheets, or other such documentation as required by Applicable Laws (including without limitation the OSHA Hazardous Communication Standard 29 CFR 1910.1200 et seq.). If Supplier furnishes Goods that are subject to substance restrictions, rules or regulations including but not limited to those identified in this Exhibit, Supplier shall declare such substances on the Customer web database BOMcheck ([www.BOMcheck.net](http://www.BOMcheck.net)) or, only if and approved in writing in advance by Customer, in another reasonable format provided to Customer no later than first delivery date of the Goods, and Supplier shall prior to Supplier's first delivery of Goods complete and comply with the Declarable Substances-Form (hereinafter "Substance Declaration") in the Customer supplier portal SCM STAR or in hard copy forwarded to Customer. In addition, for Goods that are subject to substance restrictions, rules or regulations, Supplier shall provide ordering entity with a Safety Data Sheet required in Article 31 of the Regulation EC 1907/2006 (REACH), and Supplier shall keep this Substance Declaration up-to-date. Should a delivery hereunder contain "dangerous goods" as so classified pursuant to Applicable Laws, Supplier shall notify Customer in writing in sufficient detail to identify the Goods, the hazards, and the laws, rules or regulations applicable thereto no later than three (3) business days after receipt of the Purchase Order.

## **Exhibit B**

### **Code of Conduct for Siemens Suppliers and Third Party Intermediaries**

This Code of Conduct defines the basic requirements placed on Siemens' suppliers and third party intermediaries concerning their responsibilities towards their stakeholders and the environment. Siemens reserves the right to reasonably change the requirements of this Code of Conduct due to changes in the Siemens Compliance Program. In such event, Siemens expects the supplier to accept such reasonable changes.

#### **The supplier and/or third party intermediary declares herewith:**

- **Legal compliance**
  - to comply with the laws of the applicable legal systems.
- **Prohibition of corruption and bribery**
  - to tolerate no form of and not to engage directly or indirectly in any form of corruption or bribery and not to grant, offer or promise anything of value to a government official or to a counterparty in the private sector to influence official action or obtain an improper advantage.
- **Fair competition, anti-trust laws and intellectual property rights**
  - to act in accordance with national and international competition laws and not to participate in price fixing, market or customer allocation, market sharing or bid rigging with competitors;
  - to respect the intellectual property rights of others.
- **Conflicts of interest**
  - to avoid all conflicts of interest that may adversely influence business relationships.
- **Respect for the basic human rights of employees**
  - to promote equal opportunities for and treatment of its employees irrespective of skin color, race, nationality, social background, disabilities, sexual orientation, political or religious conviction, sex or age;
  - to respect the personal dignity, privacy and rights of each individual;
  - to refuse to employ or make anyone work against his will;
  - to refuse to tolerate any unacceptable treatment of employees, such as mental cruelty, sexual harassment or discrimination;
  - to prohibit behavior including gestures, language and physical contact, that is sexual, coercive, threatening, abusive or exploitative;
  - to provide fair remuneration and to guarantee the applicable national statutory minimum wage;
  - to comply with the maximum number of working hours laid down in the Applicable Laws;
  - to recognize, as far as legally possible, the right of free association of employees and to neither favor nor discriminate against members of employee organizations or trade unions.
- **Prohibition of child labor**
  - to employ no workers under the age of 15 or, in those countries subject to the developing country exception of the ILO Convention 138, to employ no workers under the age of 14.
- **Health and safety of employees**
  - to take responsibility for the health and safety of its employees;
  - to control hazards and take the best reasonably possible precautionary measures against accidents and occupational diseases;
  - to provide training and ensure that employees are educated in health and safety issues;
  - to set up or use a reasonable occupational health and safety management system<sup>1)</sup>.
- **Environmental protection**
  - to act in accordance with the applicable statutory and international standards regarding environmental protection;
  - to minimize environmental pollution and make continuous improvements in environmental protection;
  - to set up or use a reasonable environmental management system<sup>1)</sup>.
- **Supply chain**
  - to use reasonable efforts to promote among its suppliers compliance with this Code of Conduct;
  - to comply with the principles of non-discrimination with regard to supplier selection and treatment.
- **Conflict minerals**
  - to take reasonable efforts to avoid in its products the use of raw materials which directly or indirectly finance armed groups who violate human rights.

<sup>1)</sup> For further information see [www.siemens.com/procurement/cr/code-of-conduct](http://www.siemens.com/procurement/cr/code-of-conduct)

## **Exhibit C**

### **Siemens Data Security Requirements for Personal Information**

1. Supplier (references to Supplier herein shall include Supplier's parent, subsidiaries and Affiliates that Process Personal Information) shall implement and maintain a written data security program that contains administrative, technical, and physical safeguards to protect Personal Information from loss, misuse, unauthorized access, disclosure, alteration, or destruction.

2. Definitions.

"Computer Security System" means, at a minimum, and to the extent technically feasible: (i) secure user authentication protocols including (a) control of user IDs and other identifiers, (b) reasonably secure methods of assigning and selecting passwords or use of unique identifier technologies such as token devices, (c) control of data security passwords to ensure such passwords are retained in a format and location that does not compromise the security of the data they protect, (d) restricting access to active users and active user accounts only, and (e) blocking access to user identification after multiple unsuccessful attempts to gain access or the limitation placed on access for the particular system; (ii) secure access control measures that (a) restrict access to records and files containing Personal Information to those who need such information to perform their job duties, and (b) assign unique identification numbers with passwords to each person with computer access and that are designed to maintain the integrity and security of access controls; (iii) encryption, as that term is defined herein, of (a) all transmitted records and files containing Personal Information that will travel wirelessly and across public networks, and (b) all Personal Information stored on laptops or other portable devices; (iv) reasonable monitoring of systems for unauthorized use of or access to Personal Information; (v) up-to-date firewall protection and operating system security patches reasonably designed to maintain the integrity of Personal Information; and (vi) up-to-date system security agent software that includes malware protection, up-to-date patches and virus definitions, and is regularly set to receive and deploy the most current security updates.

"Data Breach" means any access, loss, acquisition, destruction, use or disclosure of Personal Information that is either unlawful, not authorized by Customer or this Purchase Order, unintended by either Customer or the Supplier, unrelated to the Supplier's performance under this Purchase Order, or would require notification of such event to any third party pursuant to any Applicable Law.

"Encryption" means the protection of data in electronic or optical form, in storage or in transmission, by using an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key, such as by using (i) an encryption technology that has been adopted by an established standards setting body, including but not limited to, the Federal Information Processing Standards issued by the National Institute of Standards and Technology, which renders such data indecipherable in the absence of associated cryptographic keys necessary to enable decryptions of such data; and (ii) appropriate management and safeguards of cryptographic keys to protect the integrity of the encryption using guidelines promulgated by an established standards setting body, including but not limited to, the National Institute of Standards and Technology.

"Personal Information" means any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person, including but not limited to an individual's first name or first initial, and last name; Social Security number, driver's license number, or other government-issued identification number; account number, credit card number or debit card number; passwords, personal identification numbers, or other access codes for accounts; or any other item of information that could be sufficient to perform or attempt to perform identity theft.

"Processing" (including "process") means receiving, storing, maintaining, handling, collecting, transferring, transmitting, destroying, altering, using, or accessing Personal Information, whether or not by automatic means, in any form including but not limited to electrical, digital, wireless, electromagnetic technology, or written form.

"Technical and Organizational Security Measures" ("TOSMs") means the administrative, technical and physical measures designed and implemented to protect the security, confidentiality and integrity of Personal Information, including disposal thereof, arising out of Processing by Supplier, including but not limited to the implementation of (A) a Computer Security System; (B) administrative safeguards which (i) designate one or more employees to coordinate the TOSMs; (ii) identify reasonably foreseeable internal and external risks, and improve the effectiveness of the safeguards for limiting such risks, including but not limited to (1) training of employees, (2) enforcing compliance with policies and procedures, (3) adopting means for detecting and preventing security system failures; and (iii) document actions taken in connection with any incident involving a breach of security, including post-incident reviews of any events and actions taken to make changes in business practices relating to protection of personal information; (C) regular (no less than annual) monitoring and adjustment to ensure that the TOSMs are operating in a manner reasonably calculated to prevent a Data Breach; (D) technical safeguards which (i) assess risks in network and software design and in information processing, transmission and storage; (ii) detect, prevent and respond to attacks or system failures; and (iii) regularly test and monitor the effectiveness of key controls, systems and procedures; and (E) physical safeguards which

(i) detect, prevent and respond to intrusions or unlawful access (including from terminated employees); (ii) protect against Data Breaches of Personal Information during or after its collection, transportation and destruction or disposal; (iii) restrict physical access to records containing Personal Information, including locked storage of such records; (iv) assess risks of information storage and disposal, and dispose of Personal Information after it is no longer needed for business purposes or as required by Applicable Law by burning, pulverizing, shredding or modifying a physical record and by destroying or erasing electronic media so that the information cannot be read or reconstructed.

### 3. Supplier Obligations.

(a) Supplier shall, and shall cause its Representatives to Process Personal Information in accordance with these Data Security Requirements ("Requirements") and federal, state and local privacy and data security laws applicable to Supplier, Customer, and the Personal Information. Supplier shall provide information and cooperation as Customer may require in order for Customer to comply with such laws. Customer hereby instructs Supplier, and Supplier hereby agrees, to Process Personal Information only as necessary to perform Supplier's obligations under this Purchase Order and for no other purpose.

(b) Supplier shall, and shall cause its Representatives to implement TOSMs necessary to perform Supplier's obligations under this Purchase Order. Supplier shall provide Customer with copies of and/or information concerning Supplier's TOSMs upon request. Customer shall have the right to conduct onsite inspections and/or audits (at its sole cost upon advance notice during normal business hours under the supervision of a representative of Supplier) of the TOSMs, and Supplier agrees to cooperate with such inspections or audits.

(c) Supplier shall notify Customer immediately of a Data Breach and, at Supplier's cost and expense, investigate and remediate the Data Breach, and assist and cooperate with Customer concerning any legally-required notifications or disclosures to affected persons and/or government authorities.

(d) Supplier shall not, and shall cause its Representatives to not, transfer any Personal Information through an electronic, non-voice transmission to a person outside of the secure system of Supplier unless Supplier uses Encryption to ensure the security of such electronic submission.

(e) Supplier shall not move any data storage device containing Personal Information beyond the physical controls of Supplier and/or its Representatives, unless Customer consents Encryption is used to ensure the security of the Personal Information, and in any event shall notify Customer at least thirty (30) days prior to any such movement.

(f) To the extent that Supplier processes Personal Information that has been received by Customer from a data controller located in the European Economic Area, Supplier shall ensure – in coordination with Customer – an adequate level of data protection within the meaning of Article 25 of the European Data Protection Directive (or any replacement regulation), such as by entering into the EU Model Clauses with Customer and/or such data controller.

(g) Supplier shall return or destroy (at Customer's election), or cause or arrange for the return or destruction, of all Personal Information, including all originals and copies in any medium and any materials derived from or incorporating such Personal Information, upon the earlier of (i) the expiration or earlier termination of this Purchase Order; or (ii) the date that the Personal Information is no longer reasonably necessary for the Supplier to perform its services under this Purchase Order.

(h) Supplier shall cause each of its Representatives who handle Personal Information to be bound in writing to standards no less stringent than these Requirements.

4. Supplier understands and agrees on behalf of itself and its Representatives that these Requirements are an integral part of this Purchase Order, and a violation of any of these Requirements shall be considered a material breach by Supplier of this Purchase Order, entitling Customer to remedies, including but not limited to, immediate termination of this Purchase Order without penalty.

## **Exhibit D**

### **Insurance**

(A) Supplier shall, at its sole expense, maintain the types of insurance coverage(s) listed below. The coverage limits for each type of insurance listed below shall be the greater of: (i) the coverage limits listed below; or (ii) if the applicable Purchase Order requires Supplier to maintain higher limits, then the coverage limits specified in the Exhibits to the Purchase Order. Evidence of insurance required by this Purchase Order is to be furnished before any Goods/Services are commenced. Supplier and its Representatives shall maintain such insurance in full force and effect during the term of this Purchase Order, and, in addition, for as long as Supplier is under any warranty obligations arising out of this Purchase Order. All insurers on required insurance coverage(s) shall have an A.M. Best Rating of A-/VIII or better. Customer and its subsidiaries, Affiliates, and its or their Representatives, and/or any other party designated in the Purchase Order as applicable shall be named as an additional insured, with respect to the Commercial General Liability and Automobile Liability policies/coverage(s). All insurance certificates shall be in a form satisfactory to Customer and shall stipulate that the insurance will not be canceled without at least thirty (30) days prior written notice beginning upon the day of receipt of registered or certified mail concerning same by Customer. Supplier shall deliver the certificates of insurance, naming Customer and, if applicable, Customer's customer/end user, as the Certificate Holder. All of Supplier's policies of insurance, except for Worker's Compensation and Employer's Liability, shall be primary insurance and noncontributing with any other insurance maintained by Customer, Customer's customer/end user and/or other parties. All of Supplier's policies of insurance, except for Worker's Compensation and Employer's Liability, shall contain a cross-liability or severability of interest clause. The limits of insurance set forth below may be satisfied by any combination of excess and primary insurance coverage. Supplier shall require all its insurers to waive all rights of subrogation against Customer, Customer's customer/end user, and their respective subsidiaries, Affiliates, and Representatives, and any other party designated as an additional insured.

(B) Supplier shall maintain the following insurance coverage(s):

**Worker's Compensation Insurance** in accordance with the statutory requirements of the location in which the Purchase Order is performed. If there is an exposure to injury to Supplier's employee under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage required by law shall be provided for same.

**Employer's Liability Insurance** with the following limits of liability:

- \$1,000,000 for each occurrence;
- \$1,000,000 Disease Policy
- \$1,000,000 Each Employee.

**Commercial General Liability Insurance**, in occurrence coverage form, with minimum limits of \$5 million per occurrence, including the following coverages:

- Products and Completed Operations
- Contractual Liability insuring the obligations assumed by Supplier under this Purchase Order
- Premises/Operations
- Underground, Undermining, Explosion and Collapse (XCU) Hazard
- Supplier's Contractor's Protective Liability
- Broad Form Property Damage (including Completed Operations)

**Automobile Liability Insurance**, including coverage for owned, hired, and non-owned automobiles and trucks used by or on behalf of the Supplier, providing insurance for bodily injury, liability and property damage liability with minimum limits for each type of coverage of \$5,000,000 per occurrence.

(C) The following are required if a Purchase Order involves such exposures:

- (i) Exposure to Hazardous Materials, then Environmental Impairment Liability Insurance (including Asbestos) with limits of \$5,000,000 per occurrence;
- (ii) Involves watercraft owned, operated or chartered by Supplier or its Representatives, liability arising out of such watercraft shall be insured by the General Liability or by Protection and Indemnity Insurance with a CSL of no less than \$1,000,000 per each occurrence;
- (iii) Involves the hauling and/or rigging of property in excess of \$100,000, Supplier shall carry "All Risk" Transit Insurance or "All Risk" Motor Truck

Cargo Insurance (Such insurance shall provide a limit of not less than the replacement cost of the highest value single lift or highest value being moved, whichever is greater, and insuring the interest of Supplier, Customer and Customer's customer/end user, as their respective interests may appear); (iv) Involves aircraft (fixed wing or helicopter) owned, operated or chartered by Supplier or its Representatives, liability arising out of such aircraft shall be insured for not less than \$1,000,000 CSL each occurrence. If required by a Purchase Order, Supplier shall obtain insurance covering loss or damage to Customer or Customer's customer's/end user's property under the care, custody and control of Supplier or Supplier's Representatives on a 100 percent replacement cost basis, and/or if the Goods/Services involve access, storage, transmission or processing of Customer's, its customer's/end user's, its or their Representatives' confidential information, a Cyber Liability Errors and Omissions Policy shall be procured by Supplier providing coverage, on a per occurrence basis, for acts, errors, omissions, and negligence of employees and contractors giving rise to potential liability, financial and other losses relating to data security and privacy, including cost of defense and settlement, in an amount of at least \$2,000,000.

(D) The procurement, maintenance or acceptance of insurance coverage by Customer, if any, shall not: (i) relieve Supplier of liability for loss or damage in excess of the policy coverage limits specified herein; or (ii) limit or release Supplier of its obligations or liabilities under the Purchase Order.

(E) No delay or failure in declaring any default or in enforcing any of the requirements of this Exhibit D, and no course of dealing between Customer and Supplier shall constitute a waiver of any of the requirements of this Exhibit.

## Exhibit E

### **Affirmative Action**

As a federal contractor/subcontractor, the Customer is required to comply with certain federal regulations, including the regulations promulgated by the U.S. Department of Labor, Office of Federal Contract Compliance Programs (“OFCCP”). As a federal contractor, the Customer is also required to ensure compliance of the OFCCP by its subcontractors, vendors and suppliers covered under the OFCCP (each, a “Covered Party”). Supplier is hereby notified of Customer’s policy related to affirmative action and our mutual OFCCP obligations to the extent Supplier, its subcontractors, vendors or suppliers is a Covered Party.

The Customer is an equal opportunity/affirmative action employer and does not discriminate on the basis of race, color, creed, religion, national origin, ancestry, sex, age, physical or mental disability, marital status, pregnancy, genetic information, sexual orientation, gender identity, protected veteran or military status, or any other consideration not related to the person’s ability to do the job or otherwise made unlawful by federal, state or local law in the following employment practices, including among others: recruiting, hiring, placement, transfer, promotion, demotion, selection for training, layoff, termination, shift assignment, determination of service, rates of pay, benefit plans, and all forms of compensation and other personnel actions.

As a federal contractor/subcontractor, the Customer’s Covered Parties (including Supplier and its Covered Parties, if applicable) also have an obligation to comply with equal opportunity and affirmative action principles. Therefore, the Customer’s Covered Parties (including Supplier and its Covered Parties, if applicable) will take appropriate action in support of these principles. Through our mutual effort and cooperation, we will continue to provide a working environment that appreciates and encourages diversity, promotes equal employment opportunity, and is free from any type of discrimination.

Supplier and its Covered Parties, if applicable, shall abide by the requirements of the “Equal Opportunity Clause” in Section 202 of Executive Order 11246. See 41 CFR 60-1.4(a).

The following shall also apply if the Supplier is a Covered Party:

**For contracts of \$100,000 or more, Supplier shall comply with the following: This Supplier, contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

**For contracts of \$10,000 or more, Supplier shall comply with the following: This Supplier, contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**