

## TERMS AND CONDITIONS OF SALE

### 1. Definitions.

(a) **"Buyer"** means the individual or entity identified on Buyer's purchase order, or, if different, on Seller's quotation, Order Acknowledgment or statement of work.

(b) **"End User"** means a person who is a subscriber or customer of Buyer which uses the Product for their individual use.

(c) **"Seller"** means the entity identified on Seller's quotation, Order Acknowledgment or statement of work or on Appendix B hereto.

(d) **"Hardware"** means equipment designed and manufactured by or on behalf of Seller, or any third-party manufacturer's equipment offered for sale by Seller to Buyer.

(e) **"Open Source Software"** means any software that: (i) contains or is derived in any manner (in whole or in part) from software that is distributed under license terms where any party can be a licensee without notice to the licensor with a right to modify, including without limitation distribution models similar to the GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); the Artistic License (e.g., PERL); the Massachusetts Institute of Technology (MIT) Public License; the Mozilla Public License; the Netscape Public License; the Sun Community Source License (SCSL); the Sun Industry Source License (SISL); and/or the Apache Software license; or (ii) software that is licensed pursuant to any of the following terms (a) any requirement for licensee to distribute source code, including without limitation derivatives or modifications thereof, to non-licensor third parties, (b) any requirement for any patent non-assert or patent license be conferred by Seller to non-licensor third parties, or (c) any requirement to provide licensor attribution(s) to non-licensor third parties.

(f) **"Order Acknowledgment"** means a document or email furnished by Seller acknowledging the receipt of Buyer's purchase order and Seller's agreement to supply the Products and/or Services stated therein under the terms and conditions stated herein.

(g) **"Product"** means (i) any product designed or manufactured by or on behalf of Seller, or (ii) any third-party manufacturer's product offered for sale by Seller, and includes any combination of Hardware and Software.

(h) **"Services"** means site engineering, system integration, product installation, implementation, training, maintenance and technical support services for Products, or other professional services provided by Seller to Buyer. Services exclude managed services and hosted cloud services provided by Seller. Appendix A, attached hereto, sets forth additional terms and conditions specific to Services.

(i) **"Software"** means Seller-licensed software, either embedded or standalone, including any updates, enhancements, modifications and bug fixes provided thereto, in object code form only (unless otherwise specified), and any full or partial copies thereof. Software does not include software created or owned by third parties for which Seller does not have the right to license to Buyer ("Third Party Software").

2. **Terms; Seller's Acceptance.** Unless Seller expressly agrees otherwise in writing, these Terms and Conditions will govern all purchase orders, quotations and statements of work. Seller specifically rejects, and Buyer disclaims, all pre-printed provisions in Buyer's purchase order and any other Buyer forms or documents, including any terms and conditions on Buyer's internet site. Seller's failure to object to any term or condition in any communication from Buyer will not be construed as agreement to such term or condition, nor will it be deemed a waiver of these Terms and Conditions. Seller reserves the right, in its sole discretion, not to accept any purchase order, including any purchase order issued in connection with a quotation provided by Seller. Seller's acceptance to supply Products and/or Services, as identified in Buyer's purchase order, shall be in writing, as evidenced by the issuance of an Order Acknowledgment. In the event the Buyer and Seller have executed a definitive contract relating to the Products and/or Services purchased (a "Definitive Contract"), then the terms and conditions set forth in such Definitive Contract shall supersede any conflicting terms and conditions set forth herein for as long as such Definitive Contract is in effect and not terminated or expired.

3. **Entire Agreement; Amendments.** These Terms and Conditions, including any applicable Appendices, and Seller's quotation, Order Acknowledgment and/or statement of work, (a) constitute the entire agreement of the parties covering the Products and/or Services provided by Seller to Buyer, and (b) supersede all other written or oral agreements between the parties, except in the event of a Definitive Contract executed by the parties. Seller and Buyer may modify these Terms and Conditions, or the associated quotation, Order Acknowledgment and/or statement of work, only by an express written agreement signed by both parties. Appendix A contains specific terms applicable to the sale of Services. Appendix B contains specific terms applicable to the sale of Products and/or Services in the countries identified therein.

4. **Commercial Contract.** The procurement rules and regulations of any

local, state, federal or other government or governmental authority will not apply to any sales of Products and/or Services by Seller to Buyer.

5. **Quotations and Prices.** Except as otherwise specifically provided in Seller's quotation, Order Acknowledgment or statement of work, the prices of Products and/or Services will be Seller's list prices in effect at the time of Seller's quotation or Seller's Order Acknowledgment or the effective date of statement of work and are not subject to trade or other discounts. Except as otherwise stated in writing by Seller, a quotation or proposal is valid for a period of sixty (60) days from date of issue; however, prices set forth in a quotation or a proposal are subject to increases due to market conditions. Seller may correct errors or omissions in published or quoted prices or change its published list prices at any time without notice. Unless stated otherwise in Seller's quotation or Order Acknowledgment or statement of work, prices do not include any costs related to insurance, special packaging or insulation, source inspection, testing, service calls or service work performed by Seller, all of which must be paid by Buyer. Notwithstanding the foregoing, prices in Seller's quotations, Order Acknowledgments and/or invoices may be subject to a price increase and/or surcharge.

6. **Taxes.** Prices do not include occupation, sales, use, privilege, excise or similar taxes, duties, tariffs, assessments or levies (including, but not limited to copyright levies) now or hereinafter imposed on the Products and/or Services, and Buyer will pay any such amounts in connection with the Products and/or Services. In lieu of payment, Buyer may, prior to delivery of the Products, provide Seller with a tax exemption certificate acceptable to the appropriate taxing authority.

7. **Terms of Payment.** Unless otherwise agreed by Seller in writing, all payments shall be in U.S. Dollars and due within thirty (30) days of the date of the invoice. Seller shall invoice Buyer on or about shipment of the Products and/or performance of Services, as applicable. Buyer will pay interest on any past due invoices at a rate of 1.5% per month on the unpaid balance, or, if lower, the maximum rate permitted under applicable law. Buyer will pay all costs, including reasonable attorneys' fees, court costs and collection agency fees that Seller incurs in the enforcement of these Terms and Conditions against Buyer. If in Seller's judgment, Buyer's financial condition or payment history does not justify the payment terms set forth above or continuation of the existing payment terms, Seller may: (i) require full or partial payment of Buyer's account; (ii) require payment in advance of shipment and/or performance; (iii) change Buyer's credit terms; or (iv) any combination of the above. Buyer acknowledges that Seller retains a security interest in all Products, and all proceeds and products thereof, until Buyer renders payment in full, and Buyer hereby authorizes Seller to file any documents necessary to perfect Seller's security interest.

8. **Shipping.** Seller will pack, package and crate Products in accordance with its standard commercial practices. Seller may make partial shipments and submit invoices for such partial shipments in accordance with the payment terms set forth in Section 7 above. Seller may ship overages or underages of weight, length, size and/or quantity in accordance with Seller's standard practices.

9. **Title; Risk of Loss.** Title to the Products (but excluding any Software included in or with the Products) and the risk of loss or damage to the Products will pass to Buyer when delivery of the Products is made in accordance with Section 10.

10. **Delivery.** Unless stated otherwise in Seller's quotation or Order Acknowledgment, all Products will be delivered FCA Seller's facility (Incoterms 2020). Seller does not and will not guarantee any shipping or delivery date, and no person is authorized to commit to a delivery date except in writing signed by an authorized officer of Seller. Seller may estimate shipping or delivery dates to the best of Seller's knowledge based on information provided by Buyer and conditions existing at the time of the estimate. Seller will make commercially reasonable efforts to ship the Products by the estimated shipping date, but will not be liable for any damages, loss or expense (direct, incidental, indirect, economic, consequential or otherwise) arising from a delay in shipment.

11. **Force Majeure.** Seller will not be liable for any delay caused by any act of God, fire, flood, explosion, war, terrorism, insurrection, riot, pandemic, embargo, action, statute, ordinance, regulation or order of any government or government agency, shortage of labor, material, fuel, supplies or transportation, strike or other labor dispute or any other cause, contingency, occurrence or circumstance of any nature beyond Seller's control. If there is such a delay, Seller will have a reasonable extension of time in which to complete performance. If Seller is partially excused from performance either by any of the conditions listed above or by the provisions of any applicable laws or regulations, Seller will not be required to make any allocation of production, shipments or deliveries, notwithstanding any applicable laws or regulations that may provide otherwise.

12. **Acceptance of Products and Services.** The Products and Services provided by Seller are deemed accepted by Buyer upon delivery of Products in accordance with Section 10 and performance of Services, respectively.

13. **Delivery Delays.** If Buyer delays delivery of the Products, Buyer shall

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reimburse Seller for any and all costs of storage incurred by Seller after the date that Seller is prepared to deliver the Products. Seller may also invoice Buyer for the Products, and Buyer must pay for the Products in accordance with the terms of the original sale.

14. **Warranties.** Seller warrants the Products and Services to Buyer in accordance with the terms, conditions and limitations of Seller's Limited Warranty for such Products and Services as in effect as of the date of shipment or completion of work, respectively. Unless otherwise provided to Buyer in writing, Seller's Limited Warranty for the Products and Services is located on Seller's website: **Limited Product Warranty** and is incorporated by reference into these Terms and Conditions. No person is authorized to give any additional warranties on Seller's behalf or to assume for Seller any other liability, except in a writing signed by an authorized officer of Seller. Nothing in these Terms and Conditions or in Seller's Limited Warranty shall be construed to provide Buyer with a warranty for any system implementation using the Products. Warranties for system implementations or projects will be available only on terms set forth in a mutually agreed statement of work. Otherwise, all system projects, implementations and designs are the sole responsibility of Buyer. In the event of a conflict between this Section 14 and the Seller's Limited Warranty, this Section 14 shall prevail.

15. **Indemnity.** Seller will indemnify, defend and hold Buyer harmless from any liability arising out of any third-party claim that Products manufactured by Seller and sold to Buyer infringe any U.S. patent, including any damages awarded against Buyer in a final, non-appealable judgment of a court of competent jurisdiction. As a condition to Seller's obligation to indemnify Buyer, Buyer must

(i) notify Seller in writing within 10 days after Buyer knows a claim has been asserted against Buyer, (ii) grant to Seller complete control over the defense of the claim, and (iii) provide to Seller all available documents and information regarding the claim. If the court finds that the Products are infringing, or if Seller believes that such a determination is possible, Seller may, in its sole discretion and at its expense, (w) provide non-infringing replacement Products to Buyer, (x) procure on Buyer's behalf a license for the continued use of the Products, (y) modify the Products to the extent necessary to cure any problems of infringement, or (z) refund the purchase price paid for the Products that are claimed to be infringing, less a reasonable amount for depreciation, in which event Buyer will promptly discontinue using such Products. If infringement is alleged prior to completion of delivery of a Product, Seller may provide a substitute product or decline to make further shipments without being in breach of these Terms and Conditions. Seller's obligations hereunder shall not apply to any alleged infringement occurring after Buyer has received notice of such alleged infringement unless Seller thereafter gives Buyer express written consent for such continuing alleged infringement. Seller will have no liability under this Section 15, and Buyer will indemnify Seller for any resulting liability, (A) if the Buyer is in breach of any term herein, (B) to the extent that any claim arises from or is caused by designs or specifications provided by Buyer, any modifications to any Product made by anyone other than Seller, the combination of any Product with any hardware, software or other components, use of a version of a Software or a Product other than the current version, if the current version would be non-infringing, the use of any Product for purposes not contemplated by the parties at the time of sale as indicated by contemporary product documentation, or an action of Buyer initiating a claim against a third party; or (C) except as agreed by the Parties in writing, for any claims resulting from, caused by or related to (i) royalties payable, other than a reasonable royalty based upon revenue derived by Seller from Buyer from sales or license of the infringing Products or associated Software; (ii) royalties payable, or intellectual property claims related to compliance with the Moving Picture Experts Group's ("MPEG") MPEG-2 specification of Generic Coding of Moving Pictures and Associated Audio: Video (ISO/IEC 13818-2) and the Transport Stream defined in the MPEG-2 Systems specification (ISO/IEC 13818-1) ("MPEG-2 Standards"), the MPEG-4 Visual and MPEG-4 Systems standards defined in ISO/IEC 14496-2 and ISO/IEC 14496-1, respectively, and the AVC/H.264 Standard, defined in ISO/IEC IS 14496-10; the MPEG HEVC standard (defined in ISO/IEC 23008-2 MPEG-H Part 2 and ITU-T H.265); or VP8 or VP9 by Google, Inc.; (iii) royalties payable, or intellectual property claims related to compliance with or implementation of standards issued by public or private standards bodies (including ITU, IEEE, ANSI, ISO/IEC, WiFi and Cable Labs standards), as well as third party private standards such as 5C Digital Transmission Content Protection, DVB and Dolby Digital Audio; and, (iv) infringement by any software (other than the Software). Without limiting the foregoing, Seller shall not be liable for an infringement claim to the extent that such claim could have been avoided by Buyer obtaining Content Provider Licenses (as defined herein) under patents offered to providers of audio, video or data content to end user subscribers by entities that offer licenses for such patents on reasonable and non-discriminatory bases. For purposes hereof, "Content Provider License" means a

license intended solely for use by the entity that provides audio, video or data content to an end user subscriber and does not include any licenses ordinarily imposed on, or available to, manufacturers or distributors of equipment, software or middleware.

In no event shall Seller be liable to Buyer or any third party and Buyer will indemnify Seller for any resulting liability caused by, relating to or arising from (A) Buyer's intentional misconduct, (B) programming services offered by Buyer or Buyer's programmers using or accessed by the Products and/or Software, including any assertion that any such programming services involve tortious conduct or the infringement of any third-party rights; (C) any disputes between Buyer and any of its program distributors or other distributors or affiliates; and (D) any disputes or claims involving the subscriber's use of the Product for the services of Buyer, including, but not limited to, a subscriber altering or modifying media, data or programming content, a subscriber streaming, transmitting, downloading, storing, viewing or playing media, data or programming content to/on the Product or other devices which may be located within or outside subscriber's premises. This paragraph of this Section 15 shall survive termination or expiration of these Terms and Conditions.

The rights set forth in this Section 15 are Buyer's exclusive rights with respect to any claim of patent infringement and, except as set forth in this Section 15, the Products are sold subject to any third-party claims of infringement.

16. **Property Furnished by Buyer.** If Buyer furnishes any components, tools, dies, jigs or other property, equipment, material, or facilities to Seller in connection with its performance under these Terms and Conditions, Buyer shall bear all risk of loss or damage with respect to such property, equipment, material, or facilities and shall indemnify and hold Seller harmless from and against all loss, cost, expense or liability arising in connection with its use of any such property, equipment, material, or facilities. Seller shall not be responsible for any delay in performance or nonperformance hereunder or the failure of any Product to conform to applicable specifications resulting, in whole or in part, from Seller's use of property, equipment, material, or facilities furnished by Buyer.

17. **Software License.** Unless specified in a Definitive Contract, provided that the Buyer has paid all applicable fees to Seller, Seller hereby grants to Buyer a limited, nonexclusive, nontransferable, non-sublicensable license (except for use by End User) to use, distribute, and otherwise commercially exploit the Software, solely with and as embedded or installed on the Hardware (if applicable and sold in conjunction with the Software), for its intended purposes, which purposes preclude Buyer's provision of any product or service to a third party that would alleviate any third party from the obligation or need to obtain a separate license to the Software. Except as otherwise expressly set forth herein, use of the Software is limited to the internal business operations of Buyer and its End Users. Buyer is responsible for its agent's, contractor's, and End User's use of the Software and their compliance with these Terms and Conditions. The Software is licensed and not sold, either separately or with the Hardware. Except as expressly set forth herein, no other licenses or rights are granted, and all rights, title to and ownership of all applicable intellectual property rights in the Software, including but not limited to patents, copyrights and trade secrets remain with Seller and its licensors. Buyer shall not attempt to acquire any other rights or attempt to assign or transfer any intellectual property rights in the Software in contravention of Seller's or its licensor's rights. Seller's rights extend to any accompanying printed materials and online or electronic documentation of the Hardware and/or Software, and any authorized copies of the above materials. Seller has no obligation to provide any updates or upgrades to the Software under these Terms and Conditions.

Unless otherwise agreed to in writing, Buyer shall not copy, modify, lend, share, lease, rent, assign, sub-license, provide service bureau, time-sharing, hosting, outsourcing or subscriptions services, create derivative works, reverse engineer, decompile, disassemble or in any manner attempt to derive the source code from the Software (including but not limited to review of data structures or similar materials produced by Software), or distribute or transfer the Software or any copies thereof, in whole or in part, or make the Software available in any manner to any third party for use in the third party's business operations. Buyer is entitled to make a single copy of the Software solely for backup or archival purposes and all title, trademark, copyright, restricted rights or any other proprietary notices shall be reproduced in such copy. The publication or disclosure of any results of benchmark tests run on the Software is prohibited. Buyer shall not remove, obscure or alter any markings or notice of copyright, patent, trade secret, trademark or other proprietary right or disclaimer appearing in or on any Software or accompanying materials.

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Seller Products may contain Open Source Software. If Open Source Software is used, upon written request from Buyer, Seller will make available the appropriate Open Source Software as per the applicable Open Source Software license terms. To the extent any license to any Open Source Software requires Seller to provide Buyer the rights to copy, modify, distribute or otherwise use any Open Source Software that are inconsistent with the limited rights granted to Buyer under these Terms and Conditions, then such rights in the applicable Open Source Software license shall take precedence over the rights and restrictions granted under these Terms and Conditions, but solely with respect to such Open Source Software. Buyer acknowledges that unless otherwise required by the applicable Open Source Software license, the use of Open Source Software is subject to the applicable license terms for that Open Source Software component and such license is solely between Buyer and the applicable licensor of the Open Source Software. Buyer shall fully comply with the terms of all applicable Open Source Software licenses, if any. Buyer shall not use any Open Source Software in such a way that would cause the non-Open Source Software portions of the Software to be subject to an Excluded License or any Open Source Software licensing terms and obligations. Buyer acknowledges that the Software includes unpublished software, trade secret and confidential or proprietary information of Seller or its licensors, and any unauthorized disclosure or use thereof may cause irreparable injury to Seller for which damages might be an inadequate remedy, and Seller shall be entitled to seek equitable relief, including injunction, in the event of such breach.

Buyer agrees to inform Seller promptly if it becomes aware of any breach of the Software license and Buyer agrees to enforce the terms of these Terms and Conditions against its customers and, if Seller requires Buyer to do so, to protect its interest, at Seller's request, Buyer shall assign to Seller or its designee the right to enforce these Terms and Conditions. The licenses granted in this Section 17 shall terminate automatically upon Buyer's or End User's breach of any of the terms set forth herein. Upon termination of the Software license resulting from any breach of these Terms and Conditions, Buyer shall discontinue use and destroy or return to Seller all copies of the Software and related documentation and provide Seller written declaration of compliance.

**18. Limitations on Liability. THE WARRANTIES IN SECTION 14 ARE EXCLUSIVE AND ARE MADE ONLY TO BUYER. SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS AND EXCLUDES ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE AND ANY REPRESENTATION OR WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OR PERFORMANCE. SELLER'S TOTAL LIABILITY FOR ANY CLAIM OR DAMAGE ARISING OUT OF AND/OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS OR SERVICES (INCLUDING UNDER SECTION 15) WILL BE LIMITED TO PROVEN DIRECT DAMAGES, NOT TO EXCEED (I) FOR PRODUCTS, THE DEPRECIATED VALUE OF THE PURCHASE PRICE OF SUCH AFFECTED PRODUCTS PURCHASED UNDER THESE TERMS AND CONDITIONS OR (II) FOR SERVICES, THE ACTUAL AMOUNT PAID TO SELLER FOR SERVICES DURING THE 12 MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT (OR SERIES OF EVENTS) GIVING RISE TO THE LIABILITY. IN NO EVENT (INCLUDING UNDER SECTION 15) WILL SELLER BE**

**LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY CLAIM FOR LOSS OF ACTUAL OR ANTICIPATED DATA, USE, REVENUES OR PROFITS. The Products are not specifically designed, tested, manufactured or intended for operation or use in any inherently dangerous, life endangering or life support applications where any failure of the Products could lead to death, personal injury or significant physical or environmental damage (High Risk Activities). If Buyer uses the Products in High Risk Activities, including but not limited to nuclear facilities or the flight, navigation or communication of aircraft, Buyer agrees that neither Seller nor its third party licensors are liable in whole or in part, for any claims or damages arising from such use, and that Buyer shall indemnify and hold Seller and its third party licensors harmless from any and all claims for loss, cost, damage, expense or liability arising out of or in connection with any use of the Products in High Risk Activities. The limitations on liability in these Terms and Conditions, including warranty limitations, shall apply regardless of the form of action, whether in contract, tort, strict liability or otherwise, and whether damages were foreseeable. The limitations of liability in this Section 18 shall survive failure of any exclusive remedies provided in these Terms and Conditions or in Seller's Limited Warranty. In the event of a conflict between this Section 18 and Seller's Limited Warranty, this Section 18 shall prevail.**

**19. Remedies for Events of Default.** If Buyer (a) fails to pay any amount due within 30 days of the due date, (b) files a petition in bankruptcy or seeks relief under any bankruptcy, reorganization, insolvency, dissolution, liquidation or similar law of any jurisdiction, or (c) becomes unable to pay or suspends payment of its debts as they become due, or if a court issues an order appointing a receiver, custodian or administrator over all or part of Buyer's assets, Seller may terminate any outstanding purchase order. In addition, without waiving any other available remedies, Seller may: (v) declare immediately due and payable all sums due and to become due under any outstanding purchase order; (w) stop manufacture of any Products for Buyer; (x) stop all shipments in progress and future shipments; (y) stop performance of all Services; and (z) repossess any Products in which Seller has a security or ownership interest.

**20. Waiver of Subrogation.** Each party waives (for itself and its insurance carrier) all its rights of subrogation against the other party and the other party's employees, agents, suppliers and subcontractors to recover damages and losses to the extent such damages or losses are covered by insurance; provided that this provision will have no effect to the extent that it invalidates or otherwise limits the insurance coverage of a party.

**21. Specifications, Tooling and Product Discontinuance.** Seller may change its Product specifications and manufacturing practices at any time without notice to Buyer; provided that such changes do not materially impair the performance of the Products. Seller may also discontinue any Products and/or Services at Seller's sole discretion. Seller will exclusively own all materials and information provided by Seller to Buyer, including, without limitation, specifications, drawings, engineering data and technical designs, and all tools required for production, or engineering advances developed by Seller as a result of producing items in a purchase order.

**22. All Sales Final.** Unless otherwise expressly agreed in writing by Seller, all sales are final. No returns will be accepted by Seller without a written authorization to return materials signed by Seller.

**23. Changes; Cancellation.** Purchase orders are non-cancellable by Buyer upon Seller's acceptance of Buyer's purchase order. Buyer may cancel a purchase order only with Seller's express written consent. If Seller determines that a change order is required, Seller may request that Buyer provide a revised purchase order. Any other change order must be in writing and signed by duly authorized representatives of Seller and Buyer. Change orders will specify any resulting adjustments in delivery schedule or price.

**24. No License.** Neither these Terms and Conditions nor the purchase of any Products or Services hereunder shall be construed to confer upon Buyer or its customers any license under any patent or other proprietary rights of Seller, except the right to use such Products or Services for the purposes for which they are sold. Buyer does not acquire any right, title or interest in any tooling, set-up, fitting-up, drawings, design information, or invention or other intellectual property resulting therefrom, which remain the sole property of Seller.

**25. Compliance with Laws.** Buyer will comply with all applicable laws affecting the purchase and use of the Products and/or Services, including, without limitation, any applicable export laws. Buyer will maintain all required licenses, permits and registrations with governmental authorities and agencies, commercial registries, chambers of commerce or other offices. Buyer will dispose of Products in an environmentally responsible manner in accordance with all applicable local laws and regulations. Buyer will not export or re-export the Products to any

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country in violation of U.S. export control laws or any other applicable export control laws. Buyer shall not sell, export or re-export, directly or indirectly, to: (i) the Russian Federation or for use in the Russian Federation any Products or Services supplied under or in connection with Seller or (ii) Belarus or for use in Belarus any products or services supplied under or in connection with Seller. Buyer understands that failure to comply shall be a material breach of these Terms and Conditions subjecting Buyer to all remedies available to Seller including but not limited to termination, indemnification and hold harmless. Buyer will comply with all applicable anti-corruption and anti-bribery laws, regulations, or similar legislation. Buyer shall neither directly nor indirectly pay or offer, promise, give, or authorize to pay money or anything of value to any employee or official of a government or instrumentality or department thereof, to any political party or candidate for political office, to any employees or officials of public international organizations, or to any other person with the knowledge or belief that such money or item of value will be passed on to one of the above to influence any act or decision by such person or by any governmental body for the purpose of obtaining, retaining, or directing business or to otherwise obtain an improper advantage.

25(a). **Data Protection.** To the extent that Seller is deemed to be processing Personal Data at Buyer's direction, Seller will implement appropriate technical and organizational measures to protect Personal Data processed by Seller on behalf of Buyer in connection with these Terms and Conditions in accordance with all applicable data protection laws and any other laws, regulations, or regulatory guidance. "Personal Data" means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, or which is so classified under an applicable data privacy law. To the extent Buyer provides Personal Data to Seller for any purpose, Buyer represents and warrants that it has taken all steps legally required under applicable data protection, privacy or related laws, including but not limited to providing notice and/or obtaining individual consent, where legally required, in order to disclose, transfer or otherwise provide such Personal Data to Seller. Upon request, Buyer will furnish to Seller a certificate of compliance regarding the foregoing undertakings. When and as reasonably required by Seller from time to time, Buyer shall execute supplemental data privacy, data protection, and/or data security terms with Seller, as required in Seller's sole reasonable judgment, for compliance with applicable data protection laws.

26. **Buyer's Representations.** Buyer represents and warrants that (i) the Products and/or Services purchased hereunder will not be used, directly or indirectly, to further the illegal theft of services or any other unauthorized receipt, interception, publication, distribution of, or interference with any privately owned transmission of information and (ii) except as otherwise agreed to by the parties under a separate written agreement, Buyer will not act as a reseller of any Products and/or Services provided hereunder.

27. **Set-off.** Buyer may not set-off any amount owing from Seller to Buyer against any amount payable by Buyer to Seller, whether or not related to the same purchase order.

28. **Software Usage Audit.** Seller shall have the right, upon reasonable notice, to audit the Buyer's usage of the Software to ensure compliance with applicable terms and conditions. Audits will not occur more frequently than once per quarter. Buyer shall provide reasonable assistance and access to information in the course of such audit and shall permit Seller to report the audit results to any applicable third-party licensor. If any audit reveals any underreported, unpaid or unauthorized use of the Software, then Buyer shall promptly pay to Seller the then current fee representing the underreported, unpaid or unauthorized use of the Software, and Buyer will be responsible for the costs and expenses of the inspection and audit if such inspection and audit reveals that the then current fee representing the underreported, unpaid or unauthorized use of the Software is equal to or greater than 5% of the amounts actually paid by Buyer for such Software.

29. **Confidential Information.** Buyer will not disclose any confidential or proprietary information of Seller, including, without limitation, any information regarding pricing of the Products or Services or the other terms and conditions of sale of the Products or Services to Buyer, nor shall Buyer use any such confidential or proprietary information other than in the course of performing its obligations hereunder. Seller retains ownership of all of its confidential and proprietary information and all documentation containing such information. Upon request of Seller, Buyer shall immediately return any such confidential or proprietary information provided, including all copies made by Buyer. In addition, Buyer will not use any of Seller's trademarks, service marks or trade names without the express written consent of Seller.

30. **No Partnership or Joint Venture.** The parties agree that nothing in these Terms and Conditions will create any agency, employment, partnership, joint venture or fiduciary relationship between Buyer and Seller.

31. **Assignment.** These Terms and Conditions are binding upon, and inure to the benefit of Buyer, Seller and their permitted successors and assigns. Buyer may not assign all or any portion of its rights or obligations hereunder, by operation of law or otherwise, without the prior written consent of Seller. Any attempted assignment without such consent shall be void. Seller may assign, delegate, novate or subcontract any of its rights or obligations, in whole or in part, without Buyer's consent.

32. **Waiver.** Seller's waiver of any breach of any provision contained in these Terms and Conditions will not waive any other breach by Buyer. Seller's delay or failure to enforce its rights under these Terms and Conditions shall not be deemed a waiver of such rights.

33. **Governing Law.** These Terms and Conditions will be governed by the internal laws of the State of Delaware, including the Uniform Commercial Code as adopted in the State of Delaware, without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply. All shipping and delivery terms specified herein will have the definitions set forth in the Incoterms 2020 published by the International Chamber of Commerce.

34. **Notices.** All notices provided hereunder shall be in writing, sent by express, registered or certified mail, return receipt requested, courier service or personal delivery, or electronic mail, and shall be effective upon receipt or refusal. Notices to Buyer shall be sent to the address listed in the purchase order or other documentation to Seller. Notices to Seller shall be sent to:

Vistance Networks  
ATTN: General Counsel  
2601 Telecom Parkway  
Richardson, TX 75082

or by email to: [legalnotices@vistanetworks.com](mailto:legalnotices@vistanetworks.com)

35. **Severability.** If any provision of these Terms and Conditions is held to be invalid, illegal, or unenforceable, such provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of these Terms and Conditions shall continue in full force and effect.

36. **Signature.** Neither Buyer nor Seller are required to sign these Terms and Conditions.

37. **Venue; Limitation of Actions – US Buyers.** WHERE BUYER HAS ITS PLACE OF BUSINESS OR IS INCORPORATED IN THE UNITED STATES, BUYER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE COURT LOCATED WITHIN NEW CASTLE COUNTY, DELAWARE OR ANY FEDERAL COURT LOCATED IN THE DISTRICT OF DELAWARE AND CONSENTS THAT ALL SERVICE OF PROCESS BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO IT AT ITS ADDRESS SET FORTH ON THE PURCHASE ORDER, QUOTATION, ORDER ACKNOWLEDGMENT OR STATEMENT OF WORK. NOTHING IN THESE TERMS AND CONDITIONS AFFECT THE RIGHT OF SELLER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY ACTION OR PROCEEDING AGAINST BUYER IN THE COURTS OF ANY OTHER JURISDICTION THAT HAS JURISDICTION OVER BUYER. TO THE EXTENT PERMITTED BY LAW, BUYER WAIVES TRIAL BY JURY AND WAIVES ANY OBJECTION THAT IT MAY HAVE BASED ON LACK OF JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS.

38. **Arbitration; Non-US Buyers.** WHERE BUYER DOES NOT HAVE ITS PLACE OF BUSINESS IN THE UNITED STATES AND IS NOT INCORPORATED IN THE UNITED STATES, THE PARTIES AGREE THAT ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS BETWEEN THE PARTIES, OR THE BREACH, TERMINATION, OR VALIDITY THEREOF, SHALL BE DETERMINED BY ARBITRATION ADMINISTERED BY THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION IN ACCORDANCE WITH ITS INTERNATIONAL ARBITRATION RULES. THE PLACE OF ARBITRATION SHALL BE NEW YORK AND THE LANGUAGE OF THE ARBITRATION SHALL BE ENGLISH. IN THE EVENT THAT IT IS NECESSARY TO SEEK TO RECOGNIZE AND/OR ENFORCE THE ARBITRATION AWARD, THE PARTIES HEREBY CONSENT THAT ALL SERVICE OF PROCESS BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO IT AT ITS ADDRESS SET FORTH ON THE PURCHASE ORDER, QUOTATION, ORDER ACKNOWLEDGMENT OR STATEMENT OF WORK. NOTHING IN THESE TERMS AND CONDITIONS AFFECTS THE RIGHT OF SELLER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. JUDGMENT ON THE AWARD

**TERMS AND CONDITIONS OF SALE**

**RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. NOTHING IN THESE TERMS & CONDITIONS WILL PREVENT EITHER PARTY FROM RESORTING TO JUDICIAL PROCEEDINGS FOR THE LIMITED PURPOSE OF SEEKING INJUNCTIVE OR OTHER INTERIM RELIEF.**

**IN SUCH EVENT, THE PARTIES HEREBY CONSENT THAT ALL SERVICE OF PROCESS BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO IT AT ITS ADDRESS SET FORTH ON THE PURCHASE ORDER, QUOTATION, ORDER ACKNOWLEDGMENT OR STATEMENT OF WORK. NOTHING IN THESE TERMS AND CONDITIONS AFFECT THE RIGHT OF SELLER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.**

## Appendix A

### Terms Specific to Services

1. **Price Adjustments.** The price of Services may be adjusted to reasonably reflect the adverse cost impact to Seller of: (i) Buyer changes or delays that are outside of the scope of Services; (ii) legal/regulatory changes that occur after the issuance of a quotation and/or statement of work for the particular Services in question; or (iii) the failure of Buyer to perform its obligations under Sections 2, 3 and 4 of this Appendix A. Seller will provide a written notice and reason for an adjustment to the price within a reasonable period of time after Seller becomes aware of an event under which Seller intends to request an adjustment. The parties will then determine, in a commercially reasonable manner, the price adjustment that is appropriate. Pending such agreement, Seller will continue to perform the Services specified in the purchase order for ten (10) business days or such other greater time that may be agreed to in writing by Seller, unless Buyer fails to pay amounts due to Seller when due, an event specifically identified in the quotation and/or statement of work permitting suspension or termination of the Services occurs, or Buyer is otherwise in breach. In the event an adjustment to the price has not been made within the aforementioned ten (10) business days, Seller shall have the right to terminate the applicable purchase order, in whole or in part and in addition to any other remedy available to Seller, Buyer shall make immediate payment to Seller on account of all Products delivered and/or Services rendered.
2. **Schedule for Performance of Services.** Seller will perform the Services in accordance with the schedule stated in a quotation and/or statement of work. Seller shall select the method of performance of the Services, including without limitation the right, in its sole discretion, to use agents or subcontractors to perform the Services to be rendered. Both parties agree to adhere to the schedule; however, each party will give due consideration to any reasonable proposal by the other party regarding changes in the schedule which, if agreed upon, will be recorded in a written modification to the applicable purchase order or statement of work. Dates for performance of Services are estimated by Seller in good faith but not guaranteed by Seller. Except as otherwise set forth in a quotation and/or statement of work, Seller will have unrestricted access to Buyer's site and any other locations at which Services are to be performed at all times (including overtime hours, Saturdays, Sundays and holidays) for the purpose of performing the Services.
3. **Site Preparation and Condition for Services.** Buyer will be responsible for preparation of the site at which Seller will perform the Services, to the specifications and in accordance with the time schedule stated in a quotation and/or statement of work. Buyer warrants to Seller that each such site is in compliance with all applicable health and safety regulations and is free from all friable asbestos and hazardous contamination or pollutants, as further provided in Section 4 below.
4. **Hazardous Materials.** Prior to the date specified in a quotation and/or statement of work for the performance of Service, Buyer will take any and all steps needed to assure that each site is free from all friable asbestos and hazardous contamination or pollutants. If contamination is found to be present at a site, Seller will have no further obligations under any quotation and/or statement of work (other than with respect to any software licenses or confidentiality obligations), until such contamination is removed.
5. **Prior to the date specified in a quotation and/or statement of work for the performance of Service, Buyer will (i) obtain and pay for all governmental or third party consents, permits, approvals, licenses and public and private easements necessary for Supplier's unrestricted access to any site or location needed for performance of the Services; and (ii) will notify Seller in advance of any requirements including all local laws, regulations, ordinances and the like to which Seller is or will be required to comply in the rendering of Services hereunder.**

Country Specific Terms

**The Terms and Conditions of Sale apply to all regions or countries, except that the following terms shall replace, supplement or modify Terms and Conditions of Sales where a Buyer makes purchase and takes delivery wholly within the identified country or location below. All Terms and Conditions of Sale that are not modified by these country unique terms shall remain in effect.**

**AUSTRALIA**

1. **Implied Terms.** Sections 12 Acceptance of Products and Services, 14 Warranties, 18 Limitation of Liabilities and 21 All Sales Final of these Terms and Conditions and the terms of the Limited Product Warranty only apply to the extent permitted by law and are not intended to exclude or limit any rights which the Buyer may have under the Competition and Consumer Act 2010 (Cth) ("Act") or equivalent legislation. In the event that the Buyer has rights under the Act or any equivalent legislation in relation to the Product, then the Seller's liability to the Buyer shall be limited to paying an amount equal to:

- (a) the cost of replacing the Product; or
- (b) the cost of obtaining equivalent goods; or
- (c) the cost of having the Product repaired, whichever is the lowest amount.

2. **GST.** All prices are exclusive of GST. If a party makes a taxable supply in connection with these Terms and Conditions for a consideration which represents value then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply. A party's right to payment under this clause is subject to a tax invoice being delivered to the party liable to pay for the taxable supply. Expressions used in this Section have the same meaning as those expressions defined in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended)

3. **Governing Law:** These Terms and Conditions are governed by the laws of the State of Victoria, Australia. The parties irrevocably submit to the nonexclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with these Terms and Conditions.

4. **Sections 37 and 38** are not applicable.

**HONG KONG**

1. **Section 33 Governing Law** is replaced entirely by the following:

An order is valid only when accepted in writing by Seller by an Order Acknowledgment or confirmation. The contract arising from an order accepted by Seller's entity located in Hong Kong, SAR shall be governed in accordance with the laws of Hong Kong, SAR.

2. **Section 37 Venue; Limitation of Action** is replaced entirely by the following:

THE PARTIES AGREE THAT ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THE CONTRACT BETWEEN THE PARTIES, OR THE BREACH, TERMINATION, OR VALIDITY THEREOF, SHALL BE SUBMITTED TO THE NON EXCLUSIVE JURISDICTION OF THE COURT OF HONG KONG, SAR.

3. **Section 38 Arbitration; Non-US Buyers** is not applicable.

**INDIA**

1. **Section 33 Governing Law** is replaced entirely by the following:

An order is valid only when accepted in writing by Seller by an Order Acknowledgment or confirmation. The contract arising from an order accepted by Seller's entity located in India shall be governed in accordance with the laws of India.

2. **Section 37 Venue; Limitation of Action** is replaced entirely by the following:

THE PARTIES AGREE THAT ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THE CONTRACT BETWEEN THE PARTIES, OR THE BREACH, TERMINATION, OR VALIDITY THEREOF, SHALL BE SUBMITTED TO THE NON EXCLUSIVE JURISDICTION OF THE COURT OF MUMBAI, INDIA.

3. **Section 38 Arbitration; Non-US Buyers** is not applicable.

**JAPAN**

1. **Section 15 Indemnity**

The following paragraph replaces the first paragraph of this section:

Seller will indemnify, defend and hold Buyer harmless from any liability arising out of any third-party claim that Products manufactured by Seller and sold to Buyer infringe any **Japan** patent, including any damages awarded against Buyer in a final, non-appealable judgment of a court of competent jurisdiction.

The remainder of this section remain unchanged.

2. **Section 33 Governing Law** is replaced entirely by the following:

## Appendix B

The contract arising from an order accepted at Seller's entity located in Japan shall be deemed to have been entered into in Japan and its interpretation, construction and remedies for enforcement shall be governed in accordance with the laws of Japan. In relation to any legal action or proceedings arising out of, or in connection with this contract each of the parties designate the district courts in Tokyo, Japan as the exclusively agreed jurisdiction at a court of first instance. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded.

### 3. Section 37 Venue; Limitation of Action and Section 38 Arbitration; Non-US Buyers

Not applicable

## NEW ZEALAND

### 1. Section 33 Governing Law is replaced entirely by the following:

An order is valid only when accepted in writing by Seller by an Order Acknowledgment or confirmation. The contract arising from an order accepted by Seller's entity located in New Zealand shall be governed in accordance with the laws of New Zealand.

### 2. Section 37 Venue; Limitation of Action is replaced entirely by the following:

THE PARTIES AGREE THAT ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THE CONTRACT BETWEEN THE PARTIES, OR THE BREACH, TERMINATION, OR VALIDITY THEREOF, SHALL BE SUBMITTED TO THE NON EXCLUSIVE JURISDICTION OF THE COURTS OF NEW ZEALAND.

### 3. Section 38 Arbitration; Non-US Buyers

Not applicable

## PEOPLE'S REPUBLIC OF CHINA (MAINLAND)

### 1. Section 15 Indemnity.

The following sentence replaces the first sentence of this section:

Seller will indemnify, defend and hold Buyer harmless from any liability arising out of any third-party claim that Products manufactured by Seller and sold to Buyer infringe any **People's Republic of China** (mainland) patent, including any damages awarded against Buyer in a final, non-appealable judgment of a court of competent jurisdiction.

The remainder of this section remains unchanged.

### 2. Section 33 Governing Law is replaced in its entirety by the following:

An order is valid only when accepted in writing by Seller by an Order Acknowledgment. The contract arising from an order accepted at Seller's entity located in the mainland of the People's Republic of China (PRC) shall be governed in accordance with the laws of the PRC (mainland).

### 3. Section 38 Arbitration; Non-US Buyer is replaced in its entirety by the following:

THE PARTIES AGREE THAT ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THE PURCHASE ORDER BETWEEN THE PARTIES, OR THE BREACH, TERMINATION, OR VALIDITY THEREOF, SHALL BE SUBMITTED TO THE COURT OF COMPETENT JURISDICTION IN THE LOCATION OF SELLER'S ENTITY ACCEPTING THE ORDER.

## COUNTRIES IN EUROPE, THE MIDDLE EAST AND AFRICA

### 1. Section 17 Software License the following supplementary terms apply:

If Buyer believes that it has a right to exercise any rights under Article 6.1 (b) of the EC Directive on the Legal Protection of Computer Programs (Directive 2009/24), or any successor or similar law, Buyer shall give reasonable notice to Seller before attempting to exercise any such right.

### 2. Section 18 Limitations on Liability is replaced in its entirety by the following:

#### Limitations on Liability

18.1 Notwithstanding anything to the contrary in these Terms and Conditions, Seller's liability to the Buyer:

1. for death or personal injury caused by the negligence of Seller, its employees, agents or sub-contractors;
  2. under part 1 of the Consumer Protection Act 1987;
  3. due to any breach by Seller of conditions as to title or warranty as to quiet possession; or
  4. for fraud (including without limit fraudulent misrepresentation)
- shall not be limited (but nothing in this Section confers any right or remedy upon the Buyer to which it would not otherwise be entitled).

18.2 The liability of Seller in respect of direct physical loss or damage to the Buyer's tangible property (excluding the Software) caused by the negligence of Seller or its employees' agents or sub-contractors shall not exceed in aggregate one million US Dollars (\$1,000,000).

18.3 Except as stated in Sections 18.1 and 18.2 above, Seller's maximum aggregate liability for all claims made under or in connection with these Terms and Conditions, howsoever arising, including (without limitation) due to negligence, breach of contract, misrepresentation (excluding fraudulent misrepresentation) or for any other reason, shall not exceed the lesser of: (i) one million US Dollars (\$1,000,000); or (ii) the total amounts paid by Buyer to Seller pursuant to these Terms and Conditions in the twelve (12) months immediately prior to the first event (or series of events) giving rise to liability.

18.4 Subject to Section 18.1 and whether or not Seller has been advised of the possibility of such loss or damage, Seller shall not be liable to the Buyer, whether such losses or damages arise due to negligence, breach of contract, misrepresentation (excluding fraudulent misrepresentation) or for any other reason, in respect of:

1. the following whether direct or indirect:

## Appendix B

- a. loss of profits;
  - b. loss of anticipated savings;
  - c. loss of revenue;
  - d. loss of business;
  - e. wasted costs;
  - f. loss, corruption, or destruction of data; and/or
2. any type of indirect loss or damage howsoever caused.
3. Buyer acknowledges that the Product and/or Services price is based on the assumption that the liability of Seller and the Buyer is as set out herein. Buyer is advised to insure against any risk not accepted by Seller.

18.5 The limitations of liability in this Section 18 will survive failure of any exclusive remedies provided in these Terms and Conditions or in Seller's Limited Warranty. In the event of a conflict between this Section 18 and the Seller's Limited Warranty, this Section 18 shall prevail.

### Warranty Limitations

18.6 The warranties in Section 14 are exclusive and are made only to Buyer. Seller makes no other representations or warranties, express or implied, and specifically disclaims and excludes any representation or warranty of merchantability, satisfactory quality, non-infringement or fitness for a particular purpose and any representation or warranty arising by usage of trade, course of dealing or course of performance. No person is authorized to give any additional warranties on Seller's behalf or to assume for Seller any other liability, except in writing signed by an authorized officer of Seller.

The Products are not specifically designed, tested, manufactured or intended for operation or use in any inherently dangerous, life endangering or life support applications where any failure of the Products could lead to death, personal injury or significant physical or environmental damage (High Risk Activities). If Buyer uses the Products in High Risk Activities, including but not limited to nuclear facilities or the flight, navigation or communication of aircraft, Buyer agrees that neither Seller nor its third party licensors are liable in whole or in part, for any claims or damages arising from such use, and that Buyer shall indemnify and hold Seller and its third party licensors harmless from any and all claims for loss, cost, damage, expense or liability arising out of or in connection with any use of the Products in High Risk Activities. The warranty limitations in these Terms and Conditions shall apply regardless of the form of action, whether in contract, tort, strict liability or otherwise, and whether damages were foreseeable.

3. **Section 25(a) Data Protection** shall be deleted in its entirety and unless otherwise agreed in writing, replaced as follows:

### 25(a). Data Protection

**25(a)(i).** To the extent that Seller is deemed to be processing Personal Data at Buyer's direction, Seller will implement appropriate technical and organizational measures to protect Personal Data processed by Seller on behalf of Buyer in connection with these Terms and Conditions in accordance with all applicable data protection laws including Regulation (EU) 2016/679 and any other laws, regulations, or regulatory guidance (as amended and/or replaced from time to time), ("Data Protection Laws"). "Personal Data" means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, or which is so classified under an applicable Data Protection Laws. The details of the Personal Data and its processing are set out in the Data Privacy Schedule attached hereto. The parties may update the Data Privacy Schedule or add new schedules from time to time by agreement in writing. Seller will not process Personal Data except as necessary for the purposes of these Terms and Conditions and only in accordance with Buyer's written instructions. Seller shall immediately notify the Buyer if, in Seller's opinion, any instruction or direction from the Buyer infringes Data Protection Laws. Following this notification, Seller shall continue processing according to such direction or instruction except to the extent the Buyer withdraws or amends such direction or instruction. In the absence of such a written withdrawal or amendment of the direction or instruction, Buyer agrees to indemnify Seller on demand against all losses that Seller may suffer as a consequence of continuing such processing, including without limitation losses arising from regulatory action or from claims made by data subjects. At Buyer's request, Seller will provide support requested by the Buyer in fulfilling its obligations subject to reimbursement of reasonable costs incurred.

**25(a)(ii).** Buyer hereby provides a general authorization for Seller to subcontract the processing of any Personal Data. Seller shall notify Buyer of any intended changes concerning the addition or replacement of sub-processors as soon as possible and where practicable in advance of the change taking place. Buyer may object to the intended change within thirty (30) days of the notification from Seller, and where it does so object, the specific impacted services shall be terminable for convenience in accordance with these Terms and Conditions. For the avoidance of doubt, if Seller engages a sub-processor, Seller remains liable to the Buyer for the performance of the sub-processor's obligations under Data Protection Laws or any acts or omissions of the sub-processor. Buyer consents to the sub-processors and processing specified in the Data Privacy Schedule attached hereto.

**25(a)(iii).** Seller shall promptly notify Buyer of any actual or suspected breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data. Seller shall provide reasonable co-operation with any investigation regarding the breach and take all necessary measures to limit further unauthorized disclosure of or unauthorized processing of Personal Data subject to reimbursement of reasonable costs incurred.

**25(a)(iv).** Upon request, on a confidential basis, and no more than one (1) time in any twelve (12) month period (or more frequently if required with regard to a regulatory audit or investigation), Seller will make information available to Buyer to demonstrate its compliance with this Section and shall permit and assist with audits, including on-site inspections of Seller's business premises or processing facilities, conducted by Buyer or a third party to assess Seller's compliance with this Section. Except as provided otherwise by law, upon termination of these Terms and Conditions, Seller will, at Buyer's option, immediately delete or return all Personal Data.

**25(a)(v).** Personal Data shall only be transferred outside the European Economic Area where Buyer puts in place appropriate safeguards for the protection of the Personal Data, or where permitted by Data Protection Laws. Buyer hereby approves the use of the standard contractual clauses set forth in the EU Commission Decision 2010/87/EU of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC or the then-current standard contractual clauses ("Model Contract Clauses") as a legally enforceable mechanism for transfers of Personal Data and hereby appoints Seller as its agent for the sole purpose of Seller entering into any such Model Contract Clauses with a relevant data importer in the name and on behalf of Buyer as the relevant data exporter, provided that Seller shall not modify, vary, supplement or disapply any of the Model Contract Clauses without Buyer's prior written approval. Notwithstanding the foregoing, the Buyer agrees that Seller is authorized to enter into Model Contract Clauses on Buyer's behalf which include indemnification provisions equivalent to those set out in Section 25(a)(vi) below. Notwithstanding any other provision of these Terms and Conditions or the Model Contract Clauses, Buyer undertakes not to make a claim against any signatory of the Model Contract Clauses for any liability, fines, damage or loss which would not be recoverable from Seller under these Terms and Conditions.

**25(a)(vi).** Seller shall indemnify, defend and hold Buyer harmless from any fines imposed on Buyer by a data protection regulator and damages finally awarded against Buyer by a court of competent jurisdiction (together "Data Protection Losses"), in both cases solely to the extent such Data Protection Losses arise from or are connected with Seller's breach of the Data Protection Laws in connection with the processing of Personal Data under these Terms and Conditions. Indemnification is contingent on: (i) Buyer promptly notifying Seller of the claim, regulatory investigation or enquiry which may result or has resulted in the Personal Data Protection Losses ("Proceedings"); (ii) Seller having sole control of the defense and settlement of any such Proceedings; (iii) Buyer not making any admission of liability in respect of such Proceedings, or settling such Proceedings without the prior written approval of Seller; and (iv) Buyer providing reasonable co-operation and assistance to Seller in defense of such Proceedings. Seller's liability under this indemnity shall be limited to the price actually received or receivable by Seller for the services provided by Seller which the Proceedings determine caused the Data Protection Losses minus, for the avoidance of doubt, any damages or losses that Seller or any member of the Seller group has paid to the Buyer in respect of all liability, fines, damage or loss suffered by the Buyer arising from or in connection with this Section 39. Buyer acknowledges that the indemnity provided pursuant to this Section 25(a)(vi) represents its sole and exclusive remedy in relation to liability, fines, damage or loss arising from or connected with this Section 25(a) or any breach of Data Protection Laws by Seller.

## Appendix B

**25(a)(vii).** Buyer acknowledges that Seller is not responsible for the design or functionality of third party software or firmware, the output or results of such software or firmware, or for conducting any processing of personal data using such software or firmware, unless expressly agreed otherwise in writing by Seller.

### DATA PRIVACY SCHEDULE

#### Subject-Matter of the Processing

Service(s) procured by Buyer from Seller pursuant to these Terms and Conditions, which could include support services, maintenance services, professional services, and other services requested by Buyer. Processing could involve some/all of the following: Collection, transfer, storage, analysis, reporting, data provisioning services, application / equipment / network configuration services, technical support, engineering troubleshooting activities, application / equipment / network maintenance and management, processing in accordance with Buyer's instructions, deletion, incidental access to data, search, display in user interface functionality.

#### Duration of the Processing

The term of the relevant service(s) as specified in these Terms and Conditions or Purchase Orders placed hereunder.

#### Nature and Purpose of the Processing

As further described in these Terms and Conditions, Purchase Orders placed hereunder and/or the relevant service description.

#### Type of Data

Various categories of personal data within and in relation to Buyer's equipment and services to which access is provided for the purpose of delivering the relevant service(s) procured from Seller. This could include but is not limited to some/all of the following (to the extent that they are considered to be personal data under applicable Data Protection Laws):

- Equipment MAC addresses, IP addresses
- Names, addresses, postal codes, country, phone numbers, latitude and longitude of location of subscriber equipment, service (location) identification references, subscriber/customer identification references, equipment serial number, service priority details.

#### Special Categories of Data (if relevant)

The processing of special categories of data is not anticipated.

#### Categories of Data Subjects

Subscribers to / customers of / users of services and products supplied by Buyer and/or Seller.

#### Sub-Processors (including Country of Processing)

Information about sub-processors, including their functions and locations, is available upon request at [dataprivacylead@vistancenetworks.com](mailto:dataprivacylead@vistancenetworks.com).

#### 4. Section 33 Governing Law

The following sentence replaces the first sentence of this section:

Any transactions pursuant to these Terms and Conditions involving a Seller's entity incorporated in Europe, the Middle East or Africa shall be governed by the laws of Ireland without regard to the conflict of laws principles.

5. **Section 37 Venue; Limitation of Action** is not applicable

6. **Section 38 Arbitration; Non-US Buyers** is replaced in its entirety (including the title of this Section) by the following:

#### Jurisdiction: Non-US Buyers

Any dispute, controversy, or claim arising out of or relating to these Terms and Conditions, its validity, interpretation, or enforcement involving a Seller's entity incorporated in Europe, the Middle East or Africa, shall be subject to the exclusive jurisdiction of the Courts of Ireland. Should any term or provision hereof be held wholly or partly invalid or unenforceable, the remainder of such Section and/or these Terms and Conditions shall not be affected. Nothing herein shall be construed as limiting Seller's right to maintain an action or to enforce any judgment in any jurisdiction in which Buyer or any assets of Buyer may be located.

7. **Section 39 IR35** shall be added to the Terms and Conditions:

Any transactions pursuant to these Terms and Conditions that constitute a contract for the provision of Services, are not a contract of employment and accordingly the Buyer shall be fully responsible for and shall indemnify the Seller and/or any of its affiliates for and in respect of:

- (i) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment, or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Buyer shall further indemnify Seller and/or any of its affiliates against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by Seller and/or any of its affiliates in connection with or in consequence of such liability, deduction, contribution, assessment or claim other than where the latter arises out of negligence or willful default by Seller and/or any of its affiliates; and
- (ii) any liability howsoever arising from any employment-related claim or arising from any claim based on worker status (including reasonable costs and expenses) brought by the Buyer, its personnel or any of the Buyer's employees, agents or subcontractors against Seller and/or any of its affiliates arising out of or in connection with the provision of the Services, except where such claim is solely as a result of any act or omission of Seller and/or any of its affiliates.