



EMAGIN CORPORATION

GENERAL TERMS AND CONDITIONS

For Supply & Services Subcontracts

Effective Date: October 31, 2017

This document, together with the attachments appended hereto constitutes the Terms and Conditions for the Subcontract between the parties, and acceptance is strictly limited to the terms and conditions contained herein. Additional or differing terms, conditions or limitations of liability proposed by Seller, whether in a quote, acceptance or delivery document shall have no effect unless accepted in writing by Buyer. In particular, any limitation of liability or disclaimer of warranty is expressly rejected. Agreement by Seller to furnish the goods or services to these terms and conditions, or Seller's commencement of such performance or acceptance of payment shall constitute acceptance by Seller of these Terms and Conditions.

1. Definitions

The following terms shall have the described meaning:

- (a) **"Buyer"** shall mean eMagin Corporation.
- (b) **"Subcontract"** shall mean the Purchase Order, Subcontract, or Contract, these General Terms and Conditions, and any special conditions appended hereto or documents incorporated herein.
- (c) **"Goods"** shall mean those Goods identified in this Subcontract, which may be changed, from time to time by the mutual written agreement of the parties.
- (d) **"Services"** shall mean those Services identified in this Subcontract, which may be changed, from time to time by the mutual written agreement of the parties.
- (e) **"Seller"** shall mean the party identified as the Seller in this Subcontract.
- (f) **"Franchise Distributor"** shall mean a Distributor with which the Original Component Manufacturer (OCM) or the Original Equipment Manufacturer (OEM) has a contractual agreement to buy, stock, re-package, sell, and/or distribute its products lines.
- (g) **"Independent Distributor (Broker)"** shall mean a Distributor that purchases parts with the intention to sell or redistribute them.

2. Price

- (a) The prices established by this Subcontract are firm fixed prices unless otherwise stated in the Subcontract. Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to other customers in substantially similar transactions.
- (b) In the event Seller is liable to Buyer for any amounts, Buyer may, at its election, set-off against any amounts payable to Seller under this Subcontract.

3. Schedule and Delivery; Notice of Delay

Seller shall strictly adhere to all Subcontract schedules. Time is and shall remain of the essence in the performance of this Subcontract. Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Subcontract, the causes thereof, the actions being taken to mitigate such causes of non-on-time delivery, and when on-schedule status will be regained. Such notice shall include a revised schedule and shall not constitute a waiver to Buyer's rights and remedies hereunder. Buyer may take whatever reasonable action



necessary, with or without Seller's consent, to meet Buyer's Subcontract schedules at Seller's sole cost and expense.

4. New Materials; Packaging and Shipping

- (a) All goods to be delivered hereunder shall consist of new materials;
- (b) Seller shall prepare and package the goods to prevent damage or deterioration and shall use best commercial practice for packing and packaging of items to be delivered under this Subcontract, unless otherwise specified in the Subcontract; and
- (c) Unless otherwise stated in the Subcontract, F.O.B. point shall be Destination (Incoterms 2010 DDP for International transactions).
- (d) **For Subcontractors, Contract Manufacturers, OEM's and Franchised Distributors** - Only new and authentic materials are to be used in products delivered to Buyer. No Counterfeit Item or suspect Counterfeit Items (See Section 18(b)) for a definition of Counterfeit Items) are to be contained within the delivered product. Parts shall be purchased directly from the OCMs/OEMs, or through the OCM/OEMs Franchised Distributor. Documentation must be available that authenticates traceability to the applicable OCM/OEM. Independent Distributors (Brokers) shall not be used without written consent from Buyer.
- (e) **For Independent Distributors** - Independent Distributor's procedures shall meet the requirements of IDEA-STD-1010 & SAE AS5553 and have a Quality Management System certified to AS9120:2002. The original manufacturers Certificate of Conformance (C of C) and all traceability documentation shall be included with each shipment of parts. It shall include the manufacturer's name, part number, date codes, lot codes, serializations, and / or any other batch identifications. Seller is to contact Buyer in the event that the original OEM/OCM C of C and traceability documentation is not available. Inspections and tests required are as noted on the Subcontract. All inspecting and testing shall be performed to the original manufacturer's specifications and parameters. Recorded evidence of all testing performed shall be included with each shipment. If suspect/counterfeit parts are furnished under this Subcontract and are found in any of the Goods delivered hereunder, such items will be impounded by Buyer. The Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer and the Seller shall be liable for all costs relating to the removal and replacement of said parts as specified in the Subcontract requirements or Distributor's insurance policies. All occurrences of suspect and/or counterfeit parts will be immediately reported to the Buyer. Buyer reserves all contractual rights and remedies to address grievances and detrimental impacts caused by suspect/counterfeit parts."

5. Inspection and Acceptance

- (a) Buyer's final acceptance of Goods or Services is subject to Buyer's inspection within sixty (60) days after receipt at Buyer's facility or such other place as may be designated by Buyer, notwithstanding any payment or prior test or inspection.
- (b) Seller and its suppliers shall establish and maintain a quality control and inspection program as specified in the Subcontract. Subject to applicable national security regulations, Buyer and Buyer's representatives shall have the right of access, on a non-interference basis, to any area of Seller's or Seller's supply chain sub-tier premises where any part of the work is being performed. Seller shall flow this right of access requirement down to its sub tier supply chain suppliers as a condition of this Subcontract. Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities, and assistance for the safety and convenience of the Buyer and the Buyer's representatives in the performance of their duties.
- (c) Seller shall keep and maintain inspection, test and related records, which shall be available to Buyer or Buyer's representative. Seller shall allow copies to be made and shall furnish all information required by the Buyer or Buyer's representative.

6. Rejection

If Seller delivers non-conforming Goods or Services, Buyer may, at its option and Seller's sole cost and expense: (i) return the Goods for refund or credit; (ii) require Seller or a third-party to promptly correct or replace the Goods or Services; (iii) correct the nonconformance; or (iv) obtain conforming Goods or Services from another source. Buyer shall specify the reason for any return or rejection of nonconforming Goods or Services and/or shall describe the action taken. Seller shall be liable for any increase in costs, including procurement costs attributable to Buyer's rejection of the non-conforming Goods or Services. If Buyer determines or has reason to believe that Goods provided contain suspect and/or Counterfeit Items or parts, Buyer shall provide Seller notice, impound the suspect/Counterfeit Items parts, and report all occurrences to ERAI and GIDEP.

7. Invoices

(a) Invoices may be mailed when Goods are shipped, but the time for payment shall not commence until Buyer's actual or scheduled receipt, whichever is later, of items at their destination or upon satisfactory completion of Services.

(b) Buyer shall promptly pay Seller the amount due within 45 days, except if identified elsewhere in the Subcontract, unless the invoiced amount is in dispute. Buyer may withhold payment for shortages and/or non-conforming Goods or Services. Buyer may entertain discounts on Goods for expedited payments.

8. Changes

(a) **Buyer Initiated Changes.** By written order, Buyer may from time to time direct changes to Seller, including without limitation, changes to: (i) technical requirements; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities, delivery schedules or both; (v) amount of Buyer-furnished property; (vi) time of performance; (vii) place of performance; and/or, (viii) terms and conditions of this contract required to meet Buyer's obligations under Government prime contract or subcontract. Any changes pursuant to this Section 8(a) will not affect the price of the Goods or Services or time required for Seller to comply with its obligations under this Agreement unless Seller promptly notifies Buyer thereof and asserts its detailed claim for equitable adjustment in writing within thirty (30) days after the change is ordered, which shall include all sufficient information and documentation regarding such claim to allow Buyer to perform an audit and verify such claim. Following Buyer's acceptance of such claim (such acceptance not to be unreasonably withheld, conditioned or delayed), an equitable adjustment shall be made to the extent necessary to allow for Seller to reasonably comply with such ordered change and/or compensate Seller for any commercially reasonable cost increases (but not to allow for any additional gross or net margin or profit). However, nothing in this provision shall excuse Seller from proceeding immediately with the directed change(s).

(b) **Seller Initiated Changes.** In the event Seller wishes to make any minor change to the Goods or Services, it shall provide to Buyer at least thirty (30) days' prior written notice of such minor change. Except for minor changes, Seller may not make any changes with respect to the Goods or scope of this Agreement without Buyer's advance written approval, which may be given or withheld in Buyer's sole discretion, including without limitation, any changes to (i) the location at which the Goods are manufactured, (ii) any subcontractors to Seller with respect to the Goods, (iii) the processes or procedures used by Seller in the production, manufacture, assembly or supply of the Goods, (iv) the composition, fit, form, function or appearance of the Goods, or (v) chemicals, Materials (defined below) or any components used in production of the Goods. If Seller learns of a possible change to the Goods that may reduce costs, improve quality, or otherwise be beneficial to Buyer, Seller shall promptly notify Buyer of the possible change. Changes shall not be binding upon Buyer except when specifically confirmed in a written Subcontract or Change Order.

9. Force Majeure

The following events, and only the following events, shall constitute force majeure under this Subcontract: (a) acts of God or of a public enemy; (b) acts of Government; (c) fires; (d) floods;

(e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and, (i) unusually severe weather. In each case, the failure to perform must be entirely beyond the control and without the fault or negligence of the Seller. Each party shall give the other immediate notice of any event that such party claims is a *Force Majeure* Condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party's notice under this Section shall include the party's good faith estimate of the likely duration of the *Force Majeure* Condition.

10. Termination for Convenience

(a) Buyer may, by notice in writing, direct Seller to terminate work under this Subcontract in whole or in part, at any time, and such termination shall not constitute default. In such event, Buyer shall have all rights and obligations accruing to it either at law or in equity, including Buyer's rights to title and possession of the goods and materials paid for. Buyer may take immediate possession of all work so performed upon notice of termination.

(b) Seller shall immediately stop work and limit costs incurred on the terminated work.

(c) If such termination is for the convenience of the Buyer, Buyer, after deducting any amount(s) previously paid, shall reimburse Seller for the actual, reasonable, substantiated and allowable costs with the total amount to be paid by the Buyer being determined by negotiation.

11. Termination for Default

(a) Buyer may, by written Notice of Default to Seller, terminate this Subcontract in whole or in part if the Seller fails to: (i) deliver the Goods or to perform the Services within the time specified in this Subcontract or any extension; (ii) make progress, so as to endanger performance of this Subcontract; or, (iii) perform any of the other provisions of this Subcontract.

(b) Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed Goods and raw material, parts, tools, dies, jigs, fixtures, plans, drawings, Services, information and contract rights (collectively, "**Materials**") as Seller has produced or acquired for the performance of this Subcontract, including the assignment to Buyer of Seller's subcontracts. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed Goods delivered to and accepted by Buyer shall be at the Subcontract price. Payment for unfinished Goods or Services, which have been delivered to and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof except that Seller shall not be entitled to profit. Buyer may withhold from Seller monies otherwise due Seller for completed Goods and/or Materials in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said Goods and Materials.

(c) Seller shall promptly notify Buyer if Seller is the subject of any petition in bankruptcy. In the event of Seller's bankruptcy, Buyer may require Seller to post such financial assurance, as Buyer, in its sole discretion, deems necessary. Failure to post such financial assurance upon ten (10) days written notice shall constitute a default under this Subcontract. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Subcontract.

12. Continued Supply

Seller shall, at Buyer's election and request, sell and supply the Goods to Buyer for a period of up to three (3) years following the expiration of this Agreement at prices and terms of sale consistent with past practice or as otherwise mutually agreed to by the Parties; provided, however, for a period requested by Buyer of up to one (1) year following the date of expiration or termination of this Agreement, Seller shall continue to supply uninterrupted Goods deliveries



to Buyer at the prices and under the same terms of sale as in effect prior to expiration or such termination of this Agreement. Subject to the preceding sentence, Seller hereby agrees and covenants with Buyer that Seller will provide Buyer written notice at least twelve (12) months prior to Seller reducing or relinquishing its ability to supply the Goods in accordance with Buyer's needs and specifications, including any discontinuation or obsolescence of any Goods, and in such event, Seller will afford Buyer the right to make one or more final bulk purchases at mutually agreed pricing.

13. Compliance with Laws

Seller shall comply with all applicable Federal, state, and local laws, regulations ordinances and lawful orders in the jurisdictions where Seller operates or otherwise conducts business. This includes, but is not limited to, any applicable labor, environmental, health or safety laws such as the Hazard Communication Standards promulgated pursuant to the Occupational Health and Safety Act.

14. Anti-Corruption & International Trade

(a) Seller shall comply with all applicable anti-bribery, anti-corruption, and anti-kickback laws including, without limitation, the U.S. Foreign Corrupt Practices Act ("**FCPA**") the U.S. Anti-Kickback-Act, and other laws of similar effect in the jurisdictions where it conducts business. To that end, Seller will not offer, promise, or give anything of value to a government official or other party for the purposes of obtaining an improper business advantage for itself or Buyer. Seller acknowledges that these laws govern conduct occurring outside the United States.

(b) Seller shall comply with all applicable anti-money laundering laws, including the U.S. Currency and Foreign Transactions Reporting Act of 1979, Title III of the USA PATRIOT ACT of 2001, the Trading with the Enemy Act of 1917, U.S. Executive Order No. 13,224 on Terrorist Financing, and any other law of similar effect in the jurisdictions where it conducts business.

(c) Seller shall comply with all applicable economic sanctions laws, including the International Traffic in Arms Regulations, ("**ITAR**"), the Export Administration Regulations ("**EAR**"), and other laws of similar effect in the jurisdictions where it conducts business. Under no circumstances will Seller export, re-export, or otherwise transfer any of Buyer's products, technology, or technical data to any country or party restricted under applicable export control laws without prior written authorization from Buyer and the relevant governmental authorities.

(d) Seller acknowledges that it must register with the U.S. Department of State's Directorate of Defense Trade Control ("**DDTC**") before undertaking any order involving the design, assembly, testing, repair, maintenance or modification of ITAR-controlled products and represents by its offer and/or acceptance of this order that it possess a valid DDTC registration and any other registrations required under other applicable U.S. or foreign laws.

(e) Seller shall acquire and maintain any other required registrations, licenses, or other export authorizations throughout the performance of this order, including any warranty period, and shall immediately notify Buyer in the event that any registrations, license, or other required authorizations expire, are revoked, or become invalid for any reason. Seller will promptly provide proof of any registrations, license, or other required export authorizations to Buyer upon request.

(f) Seller's failure to comply with the entirety of this Article 14 shall be cause for default.

15. Standards of Business Ethics and Conduct

Buyer will conduct its business fairly, impartially, and in an ethical and proper manner. Buyer's expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner consistent with Buyer's published Code of Ethics and Business Conduct, which is available at www.emagin.com or if available Seller's version which is consistent with the terms of Buyer's Code of Ethics and Business Conduct. Seller shall not engage in any personal, business or investment activity that may be defined as a conflict of interest, whether real or perceived. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically under this contract, Seller is encouraged to exert reasonable effort to report such behavior when warranted.

16. Intellectual Property (see *Alternate I below for International application*)

(a) Any work, writing, idea, discovery, improvement, invention (whether patentable or not), trade secret or intellectual property of any kind first made or conceived by Seller in the performance of this Subcontract or which is derived from the use of information supplied by Buyer shall be the exclusive property of the Buyer. Seller shall disclose promptly all such works, writings, ideas, discoveries, improvements, inventions, trade secrets or intellectual property to Buyer, and shall execute all necessary documents to perfect Buyer's title thereto and to obtain and maintain effective protection thereof. Any work produced under this Subcontract is to be deemed a work-for-hire to the extent permitted by law, and, to the extent not so permitted, shall be assigned to, and shall be, the exclusive property of, the Buyer.

(b) Seller hereby grants to Buyer, and to Buyer's subcontractors and customers, in connection with the use, offer for sale, or sale of products provided to or work being performed for Buyer, an irrevocable, non-exclusive, paid-up worldwide license under any and all intellectual property (whether domestic or foreign), including patents, copyrights, industrial designs and/or mask works owned or controlled by Seller at any time or licensed to Seller, provided such a sublicense does not conflict with any provisions of the license to the Seller.

(c) Seller hereby grants to Buyer, and to Buyer's subcontractors and customers, a perpetual, non-exclusive, paid-up worldwide license to reproduce, distribute copies of, perform publicly, display publicly or make derivative works from any software included in or provided with Goods or Services under this Subcontract (Software Documentation) as reasonably required by Buyer in connection with Buyer's testing or use of the Good or Service.

[Alternate I - for International application]

Intellectual Property

(a) Background (Preexisting) Intellectual Property. Seller grants to Buyer, and to Buyer's subcontractors, suppliers, and customers in connection with goods or work being performed by Buyer, an irrevocable, nonexclusive, paid-up, worldwide license under any information, know-how, inventions, patents, industrial designs, and mask works (whether domestic or foreign) owned or controlled by Seller at any time before or during the term of this contract, but only to the extent that the absence of such would otherwise interfere with Buyer's or Buyer's subcontractors', suppliers', or customers' use or enjoyment of goods or the work product or foreground inventions belonging to Buyer under this Subcontract.

(b) Foreground Intellectual Property. All information, know-how, inventions, patents, industrial designs, and mask works (whether domestic or foreign) conceived, developed, or first reduced to practice by, for, or with Seller in the course of any work that is performed under this Subcontract and any patents resulting from such inventions (both domestic and foreign) shall be the property of Buyer. Seller will (i) promptly disclose all such inventions to Buyer in written detail and (ii) execute all papers, cooperate with Buyer, and perform all acts necessary and appropriate in connection with the filing, prosecution, maintenance, or assignment of related patents or patent applications on behalf of Buyer.

(c) Preexisting Works of Authorship and Copyright. Unless superseded by an attached Seller Software License Agreement agreed to in writing by both Buyer and Seller, Seller grants to Buyer, and to Buyer's subcontractors, suppliers, and customers in connection with goods or work being performed by Buyer, a perpetual, irrevocable, nonexclusive, paid-up, worldwide license in Seller's copyrights to reproduce, distribute copies of, perform publicly, display publicly, and make derivative works from software included in or provided with or for Goods (software) and related information and materials (software documentation) that is owned or controlled by Seller at any time before or during the term of this Subcontract, but only to the extent that such copyrights would otherwise interfere with Buyer's or Buyer's subcontractors', suppliers', or customers' use or enjoyment of Goods or the work products,

inventions, or works of authorship belonging to Buyer and resulting from this Subcontract.

(d) Foreground Works of Authorship and Copyrights. All works of authorship (including, but not limited to, documents, data, drawings, software, software documentation, photographs, video tapes, sound recordings, and images) created by, for, or with Seller in the course of any work performed under this Subcontract, together with all copyrights subsisting therein, shall be the sole proprietary property of Buyer. To the extent permitted under United States copyright law, all such works will be works made for hire, with the copyrights therein vesting in Buyer. The copyrights in all other such works, including all of the exclusive rights therein, will be promptly transferred and formally assigned free of any additional charges to Buyer.

(e) Buyer Supplied Data. Any information supplied by the Buyer shall remain Buyer's property, shall not be photo-stated or otherwise duplicated without Buyer's written consent and shall be returned to Buyer upon completion of Subcontract or upon demand.

17. Proprietary Information and Rights

a) Subject to Section 17(d) and Article 16, Intellectual Property, the Parties shall only share proprietary or confidential Information under a particular Purchase Order pursuant to an existing written confidentiality and/or proprietary information agreement;

(b) Unless otherwise agreed to in a subsequent writing or expressly set forth in this Subcontract and subject to Section 17(d), all specifications, information, data, drawings, software and other items supplied to Buyer shall be disclosed to Buyer without any restrictive rights on a non-proprietary basis;

(c) Unless otherwise agreed to in a subsequent writing or expressly set forth in this Subcontract and subject to Section 17(d), all specifications, information, data, drawings, software and other items which are: (i) supplied to Seller by Buyer; or, (ii) paid for by Buyer during the performance of this Subcontract shall be treated as proprietary to Buyer and shall not be disclosed to any third party without Buyer's express written consent. Seller agrees not to use any such furnished information except to perform this Subcontract; and,

(d) Applicable U.S. Government Procurement Regulations incorporated into this Subcontract shall take precedence over any conflicting provision of this Article 17 to the extent that such Regulations so require. The incorporation by reference of such U.S. Government Regulations dealing with Seller's rights in Technical Data, subject inventions, copyrights, software and similar intellectual property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between the parties.

18. Goods Warranty

(a) Seller warrants the Goods delivered pursuant to this Subcontract, unless specifically stated otherwise in this Subcontract, shall (i) be new; (ii) be and only contain materials obtained directly from the OEM or an authorized OEM reseller or distributor (Note - Independent Distributors (Brokers) shall not be used by Seller without written consent from Buyer); (iii) not be or contain Counterfeit Items; (iv) contain only authentic, unaltered OEM labels and other markings; (v) have documentation made available upon request that authenticates traceability to the applicable OEM; and (vi) be free from defects in workmanship, materials, and design and be in accordance with all the requirements of this Subcontract. Seller further warrants that the performance of work and services shall conform with the requirements of this Subcontract and to high professional standards. These warranties shall survive inspection, test, final acceptance and payment of Goods and Services;

(b) For purposes of this Section 18 Warranty, and Article 6 – Rejection, a “**Counterfeit Item**” is defined to include, but is not limited to, (i) an item that is an illegal or unauthorized



copy or substitute of an OEM item; (ii) an item that does not contain the proper external or internal materials or components required by the OEM or that is not constructed in accordance with OEM specification; (iii) an item or component thereof that is used, refurbished or reclaimed but the Seller represents as being a new item; (iv) an item that has not successfully passed all OEM required testing, verification, screening and quality control but that Seller represents as having met or passed such requirements; or (v) an item with a label or other marking intended, or reasonably likely, to mislead a reasonable person into believing a non-OEM item is a genuine OEM item when it is not;

(c) Seller warrants that any hardware, software, and firmware Goods delivered under this Subcontract to the extent reasonably possible:

(i) do not contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to (a) damage, destroy, or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; and (ii) do not contain any 3rd party software (including software that may be considered free software or open source software) that (a) may require any software to be published, accessed or otherwise made available without the consent of Buyer or (b) may require distribution, copying or modification of any software free of charge;

(d) This warranty entitlement shall inure to the benefit of both Buyer and Buyer's customer and shall cover a period 12 months following delivery; and,

(e) Seller shall be liable for and save Buyer harmless from any loss, damage, or expense whatsoever that Buyer may suffer from the breach of any of these warranties. Remedies shall be at Buyer's election, including those specified in Article 6 herein.

19. Services Warranty

Unless stated otherwise in the documents accompanying these terms and conditions, Seller shall warrant all Services against defects in performance for a period of one year following delivery. If this Subcontract includes the provision of Services, Seller warrants that it has and will maintain sufficient trained personnel to promptly and efficiently execute the Services contemplated under this Subcontract. Seller further warrants that the Services shall be performed to at least the standard of performance reasonably expected of similar service providers in Buyer's geographic region.

20. Recalls

If Buyer, or any of Buyer's customers or any governmental agency determines that any Goods sold to Buyer or its customers are defective and a recall campaign is necessary or advisable, then Buyer will have the right to implement such recall campaign and return defective Goods to Seller or destroy such Goods, as determined by Buyer in its discretion, at Seller's sole cost and risk. If a recall campaign is implemented, at Buyer's option and Seller's sole cost, Seller shall promptly replace any defective Goods and provide such replacement Goods to Buyer and its customers. The foregoing will apply even if the warranty support set forth in Articles 18 and 19, or any other product warranty applicable to the Goods, has expired. Seller will be liable for all of Buyer's losses associated with any recall campaign if such recall campaign is based upon a determination by Buyer that such Goods fail to conform to the warranty set forth in Articles 18 and 19 of this Agreement. Where applicable, Seller shall pay all losses associated with determining whether a recall campaign is necessary or advisable.

21. International Transactions

(a) Payment will be in United States dollars unless otherwise agreed to by specific reference



in this Subcontract.

(b) When Buyer has identified an offset obligation directly related to the performance of this Subcontract in its solicitation or in relation to any properly enacted modification, and Seller's performance of this Subcontract generates offset credits which Buyer could use to satisfy that identified offset obligation, then Buyer shall have the right to such Seller offset credits. The Buyer shall have no rights to any other offset credits that may be generated by the Seller in connection with this Subcontract. The Seller agrees to provide all reasonably necessary information in such form as may be required to enable Buyer to obtain the aforementioned offset credits.

22. Indemnification

(a) Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Goods or Services provided under this Subcontract, including, without limitation: (i) the breach by Seller of any representation, warranty or covenant contained herein; (ii) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean-up costs; (iii) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor; (iv) any claim based on the negligence, omissions or willful misconduct of Seller or any of Seller's agents, subcontractors, employees or anyone acting on behalf of Seller; (v) any claim by a third party against Buyer alleging that the Goods or Services (including but not limited to software), the results of such Services, or any other products or processes provided under this Subcontract, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes; or (vi) product recalls. Seller shall not settle any such suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including attorneys' fees.

(b) Should Buyer's use, or use by its distributors, subcontractors or customers, of any Goods or Services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either: (i) substitute fully equivalent non-infringing Goods or Services; (ii) modify the Goods or Services so that they no longer infringe but remain fully equivalent in functionality; (iii) obtain for Buyer, its distributors, subcontractors or customers the right to continue using the Goods or Services; or, (iv) if none of the foregoing is possible, refund all amounts paid for the infringing Goods or Services.

(c) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all liens which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

d) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all Worker's Compensation or Occupational Disease laws claims for bodily injury including death to employees of the seller brought forth by the Seller's employees and/or their family arising out of or in connection with this Subcontract.

23. Buyer's Property

(a) All drawings, tools jigs, dies, fixtures, materials, and other property supplied or paid for by Buyer shall be and remain the property of Buyer; and if Seller fails to return such property upon Buyer's demand, Buyer shall have the right, upon reasonable notice, to enter Seller's premises and remove any such property at any time without being liable for trespasses or damages of any sort.



(b) All such items shall be used only in the performance of work under this Subcontract unless Buyer consents otherwise in writing.

(c) Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and all property to which Buyer acquires an interest by this Subcontract and shall be responsible for all loss or damage to said property except for normal wear and tear.

(d) Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss or damage.

(e) Seller shall clearly mark, maintain an inventory, and keep segregated or identifiable all of Buyer's property.

24. Insurance

If this Subcontract is for the performance of Services on Buyer's premises, or Seller utilizes their own vehicles to deliver Goods to Buyer's facility, Seller shall maintain insurance in at least the minimum amounts stated in the Subcontract.

25. Release Of Information

Seller shall not publish any information developed under this Subcontract, nor disclose, confirm, or deny any details about the existence or subject matter of this Subcontract, or use Buyer's name in connection with Seller's sales promotion or publicity without prior written approval of the Buyer.

26. Disputes

The provisions of this Subcontract shall be interpreted in accordance with the laws of the State of New York without resort to said state's Conflict of Law rule and in accordance with its fair meaning and not strictly against either party. Pending final resolution of a dispute hereunder, Seller shall proceed diligently with the performance of this Subcontract and in accordance with all the Terms and Conditions contained herein and with the Buyer's direction thereof. Buyer and Seller shall each bear its own costs of processing any dispute hereunder. In no event shall the Seller acquire any direct claim or direct course of action against the United States Government.

27. Assignments and Subcontracting

(a) Neither this Subcontract nor any interest herein nor claim hereunder may be transferred, novated, assigned or delegated by Seller; nor may all or substantially all of this Subcontract be further subcontracted by Seller without the prior written consent of Buyer. Lack of consent shall not be deemed as a waiver or otherwise relieve Seller of its obligations to comply fully with the requirements hereof.

(b) Notwithstanding the above, Seller may, without Buyer's consent, assign moneys due or to become due hereunder provided Buyer continues to have the right to exercise any and all of its rights hereunder, settle any and all claims arising out of, and enter into amendments to, the Subcontract without notice to or consent of the assignee. Buyer shall be given prompt notice of any assignment. Amounts so assigned shall continue to be subject to any of Buyer's rights to set-off or recoupment under this Subcontract or at law.

(c) Buyer may assign this Subcontract to any successor in interest.

28. Government Contracts

For each Subcontract awarded in support of a U.S. Government Contract, Supplement 1 – U.S. Government Contract Provisions from the Federal Acquisition Regulation (FAR) and Supplement 2 – U.S. Government Contract Provisions from the Department of Defense Federal Acquisition Regulation Supplement (DFARS) shall apply along with any other applicable flow-downs required by the FAR, DFARS or any other supplemental acquisition regulations. All such appended FAR, DFARS, or other clauses are incorporated by reference as if set forth at length herein. The Seller shall ensure that all such applicable flow-down clauses are included in each lower tier subcontract with Seller's suppliers.

29. Order of Precedence

In the event of a conflict between these Terms and Conditions and other portions of the Subcontract, the order of precedence shall be: (a) any typed provisions on the face of Buyer's Subcontract specifically modifying the terms of this Subcontract; (b) these Terms and Conditions; and, (c) any other provisions set forth in the Buyer's Subcontracts including any terms and conditions stated or referenced therein.

30. Independent Contractor Status

Seller is, and shall remain, an independent contractor during the performance of this Subcontract.

31. Communication with Buyer's Customer

Buyer shall be solely responsible for any and all communication with Buyer's customer regarding this or any related Subcontract.

32. Survivability

All of the provisions of this Subcontract shall survive the termination (whether for convenience or default), suspension or completion of this Subcontract unless they are clearly intended to apply only during the term of this Subcontract.

33. Audit Rights

Buyer reserves the right to audit Seller's records to assure compliance with the terms of this Subcontract. Seller shall make available all data reasonably requested by Buyer.

34. Taxes

Unless this Subcontract specifies otherwise, the price of this Subcontract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Subcontract except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

35. Electronic Transmissions

(a) The parties agree that if this Subcontract is transmitted electronically, neither party shall contest its validity, or any acknowledgment thereof, on the basis that this Subcontract or acknowledgment contains an electronic signature.

(b) Seller shall, at Buyer's request and Seller's expense, send and receive business transactions by electronic means using Web-based technologies. Such Web-based technologies for electronic transmissions may include a) email and (b) the Internet directly between Buyer and Seller.

36. Standards on Slavery and Human Trafficking in the Supply Chain

(a) Suppliers – Consistent with our commitment to excellence and corporate social responsibility, Buyer supports the eradication of human trafficking and slavery in supply chains around the world, including in our own. Buyer sets forth the following Company Standards that its suppliers must meet in order to do business with Seller:

- Suppliers that provide goods or services to Buyer shall operate in full compliance with the laws of their respective countries and with all other applicable laws, rules and regulations.
- Suppliers shall employ only workers who meet the applicable minimum legal age requirement for employment in the country or countries in which they are doing business.

- Suppliers shall not employ any prison, indentured or forced labor.
- Suppliers must comply with all applicable laws, regulations and industry standards on working hours and working conditions.
- Suppliers must certify that materials incorporated into goods provided to Buyer comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.

(b) As a condition of doing business with Buyer, our suppliers must comply with these Standards. Buyer will continue to develop monitoring systems to assess and ensure compliance. If Buyer determines that a supplier has violated these Standards, Buyer may, in its discretion, either terminate the business relationship and/or require the supplier to implement a corrective action plan as a condition of future business.

37. Product Content Regulation (PCR)

Seller represents, warrants, certifies, and covenants that none of the Goods supplied under the Subcontract contain or utilize minerals or chemicals in any manner in violation of, or in a manner that could create liability pursuant to any Product Content Regulations (which for purposes of this Agreement means any law, rule, regulation, order, guidance or other directive from any governmental authority (whether federal, state, local or international) regulating chemical substances, or governing or otherwise restricting the hazardous material content of finished goods and/or in manufacturing processes, including, without limitation the Toxic Substances Control Act ("**TSCA**") and the European Union's Restriction of the Use of Certain Hazardous Substances Directive ("**RoHS**") and Registration, Evaluation, Authorization and Restriction of Chemicals Regulation ("**REACH**") in any jurisdiction to which the Goods are to be shipped. Seller understands and acknowledges that this certification applies to changes to and revisions in the applicable law, and agrees that any supplies provided within six (6) months prior to the effective date of any revised, new, or additional requirement under any Product Content Regulations will be in compliance with that applicable requirement so that Buyer can ensure that all of its products are compliant as of the date the obligation takes effect. Seller shall also ensure that any components purchased from any of its suppliers contained in any Goods are compliant with the requirements of this Section 1. If Seller relies on information provided by others to make such a determination, Seller shall maintain documentation such as material content declarations for their supplied components sufficient for Seller to determine compliance and fulfill these requirements. Buyer may request confirmatory testing to ensure that Seller's components comply with the requirements of this Section 1. Buyer may also perform independent audit testing to verify Seller compliance upon reasonable notice. Seller will be responsible for any damages or other losses incurred by Buyer that arise out of Seller's non-compliance with this Section 1. Seller shall: (i) if and as requested by Buyer, include with shipments of Goods the material composition data related to all homogenous material contained within such Goods; and (ii) assist Buyer, as necessary in Buyer's reasonable opinion, in Buyer's attempts to comply with its obligations, if any, under applicable Laws.

38. Conflict Minerals

Seller shall use due diligence to comply with all Conflict Minerals legal requirements, including but not limited to section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Conflict Minerals include gold (Au), tantalum (Ta), tungsten (W) and tin (Sn) sourced from areas identified as conflict regions, including the Democratic Republic of the Congo (DRC) and Central Africa. Seller represents and warrants that no Conflict Minerals that originated in the DRC or an adjoining country are present in any Goods. For the purposes of making such representation and warranty, Seller will use due diligence protocols, standards, and procedures that meet or exceed the reasonable country of origin inquiry described in the rules promulgated by the U.S. Securities and Exchange Commission and the relevant best practices developed by industry, which shall include the current edition of the Organisation for Economic Cooperation and Development's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Seller shall indemnify, defend, and hold harmless Buyer (including its shareholders, directors, officers, employees, customers, contractors, agents and



other representatives) from and against any and all potential demands, claims, actions, causes of action, proceedings, suits, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, costs and expenses (including fees and disbursements of counsel) of every kind which arise out of any Good's actual or alleged Conflict Minerals content or Seller's noncompliance with this Section 38. Seller shall further assist Buyer with any requests for information, certifications, or other similar documents as Buyer may reasonably request to ensure Goods' and Seller's compliance with this Section 38 and shall notify Buyer promptly upon discovering or having reason to believe that any Good fails to comply with the representation and warranty in this Section 38.