



ENGINEERING SERVICES TERMS AND CONDITIONS

1. General.

1.1 These Engineering Services Terms and Conditions (“**Terms and Conditions**”), together with the terms of the proposal attached to these Terms and Conditions (the “**Proposal**”) and any other documents referred to in these Terms and Conditions (collectively, this “**Agreement**”), apply to the provision of Services by Telgian Engineering & Consulting, LLC, an Arizona limited liability company, with offices located at 10230 South 50th Place, Suite 100, Phoenix, Arizona 85044 (the “**Service Provider**”) to the entity to whom the Proposal is addressed (the “**Customer**”). Customer and Service Provider may be referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties.**”

1.2 Customer shall be deemed to have accepted the terms and conditions of this Agreement and a contract is formed under the provisions of this Agreement upon the first to occur of Customer doing any one of the following: (i) signing and returning to Service Provider a copy of any Proposal; (ii) paying for all or any part of the Services; or (iii) indicating in some other manner Customer’s acceptance of this Agreement. Customer’s acceptance is expressly limited to the terms of this Agreement and this Agreement exclusively governs the engagement between the Parties and the provision of Services by Service Provider. This Agreement expressly supersedes and excludes any terms and conditions set forth in any purchase order placed by Customer or any other document issued or deemed to be issued by Customer to Service Provider (including, without limitation, Customer’s general terms and conditions of purchase), each of which are expressly rejected. Any additional or different terms proposed by Customer, whether in Customer’s purchase order or otherwise, or any attempt by Customer to vary the terms of this Agreement in any way, are expressly rejected by Service Provider, are not part of this Agreement and do not apply to the delivery or sale of Services, and are not binding on Service Provider without the express prior written acceptance of such terms by Service Provider’s authorized representative.

1.3 Capitalized terms used but not defined in this Agreement have the meanings given to them in the attached Exhibit A.

2. SERVICES

2.1 Service Provider shall provide the Services to Customer in accordance with the Statement of Work (attached as Exhibit B to this Agreement) and the other terms and conditions of this Agreement.

2.2 Each Statement of Work may include, as applicable to the Services, the following information:

- (i) a detailed description of the Services;
- (ii) the date upon which the Services will commence and the term of such Statement of Work;
- (iii) the names of the Service Provider Contract Manager and any Key Personnel;
- (iv) the fees to be paid to Service Provider under the Statement of Work;
- (v) the Project implementation plan, including a timetable;
- (vi) Project Milestones and payment schedules; and
- (vii) any other terms and conditions agreed upon by the Parties in connection with the Services to be performed pursuant to such Statement of Work.

3. SERVICE PROVIDER'S OBLIGATIONS

3.1 The Service Provider shall appoint:

- (i) a Service Provider employee to serve as a primary contact with respect to this Agreement and who will have the authority to act on behalf of Service Provider in connection with matters pertaining to this Agreement (the “**Service Provider Contract Manager**”); and
- (ii) Service Provider Personnel, who shall be suitably skilled, experienced and qualified to perform the Service.

3.2 Unless otherwise mutually agreed as set forth in the a Statement of Work, Services under this Agreement will be performed between the hours of 8:00 a.m. and 5:00 p.m. local-site time, Monday through Friday (excluding Client holidays).

3.3 Unless otherwise provided in a Statement of Work, Service Provider will provide and pay for all labor, materials, tools, construction equipment, including transportation thereof to the job site, as necessary for the proper execution and completion of the Services.

3.4 Service Provider will comply with all material laws and codes applicable to the performance of the Services.

3.5 Service Provider will comply with Customer’s security and similar job site rules as communicated to Service Provider in writing.

3.6 If any installation services are required by the Statement of Work, Service Provider will keep the job site reasonably free of accumulation of waste materials caused by the performance of the Services, and shall keep the job site reasonably clean during any installation.

3.7 If any testing services are provided as a part of the Statement of Work, Service Provider will not be responsible for equipment failure occurring while it is in the process of following its inspection and testing procedures and techniques, or where the failure results, in whole or in part, from the age, obsolescence, or normal wear and tear of the item. The parties understand and agree that in performing some of types of inspection Services, damage or destruction to equipment and property is not uncommon and is a normal part of the testing process. IN addition, with respect to destructive testing, Service Provider is not engaged to repair any damage or destruction caused by the testing unless specifically covered in the Statement of Work applicable thereto.

3.8 Unless otherwise required in this Agreement, Service Provider shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at a Customer site or other location.

3.9 Service Provider will use commercially reasonable efforts to notify Customer of errors or discrepancies it encounters in reviewing any criteria, records or information supplied by Customer or agents or representatives of Customer relevant to the Services.

3.10 Service Provider may subcontract certain portions of the Services but will remain responsible for the provision of such Services by Telgian subcontractors or agents.

3.11 Service Provider will be solely responsible to ensure that its employees or subcontractors who perform Services are in compliance with applicable immigration and employment laws and requirements.

3.12 In providing the Services, Service Provider is not an insurer and does not guarantee that damage or injury to persons or property will not occur.

(i) No representations of any kind have been made by Telgian to the Client except as set forth in this Agreement.

4. CUSTOMER'S OBLIGATIONS

4.1 Customer shall:

(i) cooperate with Service Provider in all matters relating to the Services and appoint a Customer employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of Customer with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**");

(ii) provide access to Customer's premises, and such office accommodations and other facilities as may reasonably be requested by Service Provider for the purposes of performing Services and provide reasonable notice of any hazards, exposures or other potential issues at the work site;

(iii) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of this Agreement;

(iv) provide such Customer Materials and other information as Service Provider may request, in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects;

(v) ensure that all Customer Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements; and

(vi) obtain and maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services.

4.2 If Service Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Service Provider shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

4.3 Customer shall maintain (i) commercial general liability ("CGL") insurance issued by one or more insurance carriers rated A/VII or higher by A.M. Best, insuring against bodily injury to or death of persons and property damage, naming the Service Provider and its affiliates and subsidiaries as additional insureds, with coverage limits for such liability insurance of not less than \$1,000,000 each occurrence, and \$2,000,000 aggregate, including a "Per Project Aggregate" endorsement; and (ii) comprehensive automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired, and non-owned in the amount of not less than \$1,000,000, including Property Damage and Bodily Injury on a per person/per occurrence basis. The CGL insurance shall be written using an occurrence form and shall cover liability arising from Premises operations, independent-contractors, product-completed operations and personal injury and advertising injury, with an insurance company acceptable to the Landlord. The Customer's policies of insurance shall contain primary and non-contributory wording relating to the Service Provider's insurance policies. Customer will cause its insurers

to furnish certificates of insurance each year within 30 days of the expiration date of the prior policy term in a form reasonably acceptable to the Service Provider, evidencing that such insurance is in effect and otherwise complies with the requirements of this Section. The Service Provider shall have the right to inspect such insurance policies upon reasonable request. Prior to any cancellation or material modification of such insurance described herein, Customer will provide 60 days' prior written notice, directed to the attention of the Service Provider.

5. CHANGE ORDERS

5.1 If either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other in writing. Service Provider shall, within a reasonable time after such request (and, if such request is initiated by Customer, not more than seven (7) business days after receipt of Customer's written request), provide a written estimate to Customer of: (a) the likely time required to implement the change; (b) any adjustments to the fees and other charges for the Services arising from the change; (c) the likely effect of the change on the Services; and (d) any other impact the change might have on the performance of this Agreement.

5.2 Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with **15.10**.

6. TERM

6.1 This Agreement shall commence upon acceptance of this Agreement in accordance with **1.2** and shall continue thereafter until the completion of the Services under all Statements of Work, unless sooner terminated pursuant to **ARTICLE 13**.

7. FEES AND EXPENSES; PAYMENT TERMS

7.1 In consideration of the provision of the Services by the Service Provider and the rights granted to Customer under this Agreement, Customer shall pay the fees and expenses set forth in the applicable Statement of Work and any other fees or expenses agreed to in writing by both Parties. Customer shall be responsible for all sales, use and excise taxes, and any other similar duties and charges imposed by any governmental entity on amounts payable by Customer hereunder; provided, however, Customer shall not be responsible for any taxes imposed on Service Provider's income, personnel or assets.

7.2 Where the Services are provided on a time and materials basis, the fees payable for the Services shall be calculated as set forth in the applicable Statement of Work. Service Provider may increase its standard fee rates specified in the applicable Statement of Work upon written notice to Customer; *provided, however, that* Service Provider provides Customer written notice of such increase at least fifteen (15) days prior to the effective date of such increase. Customer agrees to reimburse Service Provider for all reasonable travel and out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services.

7.3 Where Services are provided for a fixed price, the total fees for the Services shall be the amount set out in the applicable Statement of Work. The total price shall be paid to Service Provider in accordance with the Statement of Work. Service Provider shall issue invoices to Customer for the fees that are then payable, together with a detailed breakdown of any expenses incurred in accordance with **7.4**.

7.4 Service Provider will issue invoices in accordance with the terms of this **ARTICLE 7**.

7.5 Customer shall pay all properly invoiced amounts due to Service Provider within thirty (30) days after Customer's receipt of such invoice. All payments hereunder shall be in US dollars and made by check or wire transfer. Payment to Service Provider of the fees and expenses pursuant to this **ARTICLE 7** shall constitute payment in full for the performance of the Services.

8. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP

8.1 If Customer has fulfilled all of its obligations hereunder (including, without limitation, the payment in full to Service Provider of all amounts due hereunder) and Customer is not in breach of this Agreement, then, with the exception of Pre-Existing Materials and Developer Rights under **8.2**, Customer is, and shall be, the sole and exclusive owner of all right, title and interest in and to the Deliverables, including all Intellectual Property Rights therein. Subject to the provisions of this 8.1, (a) Service Provider agrees, and will cause its Service Provider Personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for Customer and (b) to the extent that any of the Deliverables do not constitute a "work made for hire", Service Provider hereby irrevocably assigns, and shall cause the Service Provider Personnel to irrevocably assign to Customer, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. Notwithstanding the foregoing, if any of the Deliverables can be used on goods Service Provider sells and Customer intends to purchase those types of goods, Customer agrees to purchase those goods exclusively from Service Provider and no third party including, without limitation, any third party manufacturer of the goods.

8.2 Service Provider and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to the Developer Rights, including all Intellectual Property Rights therein, whether incorporated into the Deliverables or otherwise. Service Provider expressly reserves all rights in and to the Developer Rights. Accordingly, Customer agrees that it may require a license to access, copy, use, sell or otherwise exploit any such Developer Rights. In the event Service Provider grants to Customer a license in the Developer Rights, such license will only permit Customer to purchase from Service Provider the goods that incorporate the Developer Rights that are sold by Service Provider only and no third parties.

8.3 Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein. Service Provider shall have no right or license to use any Customer Materials except solely during the Term of this Agreement and only to the extent necessary to provide the Services to Customer. All other rights in and to the Customer Materials are expressly reserved by Customer.

9. CONFIDENTIAL INFORMATION

9.1 The Parties have entered into a Confidentiality Agreement ("**Confidentiality Agreement**"), which is hereby incorporated by reference in its entirety. The Parties agree that the existence of this Agreement, together with its provisions, shall be considered and treated as confidential information under the terms of the Confidentiality Agreement.

10. REPRESENTATIONS AND WARRANTIES

10.1 Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing as a limited liability company, corporation or other entity under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder; (c) the acceptance of this Agreement has been duly authorized by all necessary

corporate action of the Party; and (d) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

10.2 Service Provider represents and warrants to Customer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

10.3 EXCEPT FOR THE EXPRESS WARRANTIES IN THIS ARTICLE 10, SERVICE PROVIDER (A) HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND (B) SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

11. INDEMNIFICATION

11.1 Each Party (an “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, successors and permitted assigns (an “**Indemnified Party**”) from and against all Losses arising out of or resulting from: (a) bodily injury, death of any person or damage to real or tangible personal property resulting from the negligent or willful acts or omissions of such Party; and (b) any breach of any representation, warranty or obligation of such Party in this Agreement.

11.2 The Indemnified Party shall promptly notify the Indemnifying Party in writing of any claim, proceeding, suit, action, or demand to which it seeks indemnification hereunder (each, an “**Action**”) and cooperate with the Indemnifying Party at the Indemnifying Party’s sole cost and expense. The Indemnifying Party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnifying Party’s sole cost and expense. The Indemnifying Party shall not settle any Action in a manner that adversely affects the rights of the Indemnified Party without the Indemnifying Party’s prior written consent. The Indemnified Party’s failure to perform any obligations under this **11.2** shall not relieve the Indemnifying Party of its obligations under this **11.2** except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnified Party may participate in and observe the proceedings at its own cost and expense.

12. LIMITATION OF LIABILITY

12.1 IN NO EVENT WILL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 IN NO EVENT WILL SERVICE PROVIDER’S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER IN THE THREE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

12.3 CUSTOMER SPECIFICALLY UNDERSTANDS AND AGREES THAT THE PRICE THAT IS CHARGED FOR THE SERVICES AND PRODUCTS PROVIDED HEREUNDER IS BASED ON THE

CUSTOMER'S AGREEMENT TO THIS ARTICLE 12. CUSTOMER HAS SPECIFICALLY NEGOTIATED AND AGREED TO THIS ARTICLE 12 IN EXCHANGE FOR A MORE FAVORABLE PRICE. FINALLY, CUSTOMER UNDERSTANDS AND AGREES THAT IF CUSTOMER DESIRES TO PROTECT ITSELF AGAINST ANY LIABILITY EXPOSURE ASSUMED BY IT OR DISCLAIMED BY SERVICE PROVIDER UNDER THIS AGREEMENT, CUSTOMER MAY OBTAIN INSURANCE OR TAKE OTHER ACTIONS AT ITS OWN COST AGAINST SUCH RISKS.

13. TERMINATION; EFFECT OF TERMINATION

13.1 Either Party, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to the other Party.

13.2 Either Party may terminate this Agreement, effective upon written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party:

(i) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach.

(ii) (a) becomes insolvent or admits its inability to pay its debts generally as they become due; (b) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within forty-five (45) days after filing; (c) is dissolved or liquidated or takes any corporate action for such purpose; (d) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

13.3 Upon expiration or termination of this Agreement for any reason, each Party shall (i) return to the other Party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information, (ii) permanently erase all of the other Party's Confidential Information from its computer systems and (iii) certify in writing to the other Party that it has complied with the requirements of this clause.

13.4 Upon expiration or termination of this Agreement, and subject to Customer's full payment of all outstanding fees and compliance with the terms of this Agreement, Service Provider shall (i) promptly deliver to Customer all Deliverables (whether complete or incomplete) for which Customer has paid and all Customer Materials, (ii) promptly remove any Service Provider Equipment located at Customer's premises, and (iii) provide reasonable cooperation and assistance to Customer upon Customer's written request and at Customer's expense in transitioning the Services to an alternate Service Provider.

13.5 Upon expiration or termination of this Agreement due to Customer's breach of this Agreement, or if Customer fails to make any payments due or outstanding, in addition to all other remedies, Customer shall immediately return any Deliverables in its possession to Service Provider and all of Customer's rights in and to any such Deliverables, including all Intellectual Property Rights therein, shall be *void ab initio*.

13.6 The rights and obligations of the Parties set forth in **ARTICLE 8, ARTICLE 9, ARTICLE 12, ARTICLE 13** and **ARTICLE 15**, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

14. FORCE MAJEURE

14.1 No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire or explosion; (c) war, invasion, riot or other civil unrest; (d) actions, embargoes or blockades in effect on or after the date of this Agreement; (e) national or regional emergency; (f) strikes, labor stoppages or slowdowns or other industrial disturbances; (g) compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licensee or consent; (h) shortage of adequate power or telecommunications or transportation facilities; or (i) any other event which is beyond the reasonable control of such Party, (each of the foregoing, a "**Force Majeure Event**"). A Party whose performance is affected by a Force Majeure Event shall give notice to the other Party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15. MISCELLANEOUS

15.1 The Parties are independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

15.2 Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement, or otherwise use the other Party's trademarks, service marks, trade names, logos, symbols or brand names, in each case, without the prior written consent of the other Party.

15.3 All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses indicated below (or at such other address for a Party as shall be specified in a notice given in accordance with this **16.3**).

If to Service Provider: **[Primary Contact]**
Telgian Engineering & Consulting, LLC
[Office address of primary contact]

With a copy to: Dave M. Gomez
General Counsel
Telgian Holdings, Inc.
10230 S. 50th Place, Suite 100
Phoenix, AZ 85044

Customer is responsible for providing Service Provider Customer's contact information for purposes of this **16.3**. If Customer fails to provide this information, Service Provider may rely on the information set forth in the Proposal.

15.4 During the term of this Agreement, and for one (1) year thereafter, Customer agrees that it will not, without the prior written consent of the Service Provider, solicit, recruit, hire, or otherwise employ or retain any employee of Service Provider or of its affiliates or subsidiaries. This restriction applies for the ninety (90) day period following an employee's termination from Service Provider.

15.5 For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, Exhibits and Statements of Work refer to the Sections of, and Schedules, Exhibits and Statements of Work attached to this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The Schedules, Exhibits and Statements of Work referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

15.6 This Agreement, together with all Schedules, Exhibits and Statements of Work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule, Exhibit or Statement of Work, the following order of precedence shall govern: (a) first, this Agreement, exclusive of its Exhibits and Schedules; (b) second, the applicable Statement of Work; and (c) third, any Exhibits and Schedules to this Agreement. If Services are ordered using a Customer document, no term or condition in such document which is in addition to, or is different than, terms, conditions or provisions contained in this Agreement and all such changes and/or additions are specifically rejected.

15.7 Neither Party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other Party *provided, that*, upon prior written notice to the other Party, either Party may assign this Agreement to an Affiliate of such Party or to a successor of all or substantially all of the assets of such Party through merger, reorganization, consolidation or acquisition. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

15.8 This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

15.9 The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

15.10 This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by either Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise

of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15.11 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.12 This Agreement shall be governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule. Any legal suit, action or proceeding arising out of or related to this Agreement or the Services provided hereunder must be instituted exclusively in the federal courts of the United States or the courts of the State of Michigan in each case located in the city of Ann Arbor and County of Washtenaw, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

15.13 Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

15.14 Each Party acknowledges that a breach by a Party of **ARTICLE 8** (Intellectual Property Rights; Ownership) or **ARTICLE 9** (Confidential Information) may cause the non-breaching Party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching Party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching Party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

EXHIBIT A DEFINITIONS

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Customer Equipment**” means any equipment, systems, cabling or facilities provided by Customer and used directly or indirectly in the provision of the Services.

“**Customer Materials**” any documents, data, know-how, methodologies, software and other materials provided to Service Provider by Customer, including computer programs, reports and specifications.

“**Deliverables**” means those items specifically identified as Deliverables in a Statement of Work that are delivered to Customer hereunder. When Deliverables include software, the Parties agree that, unless expressly stated, such only include the application code specifically developed for Customer and specifically excludes all other code.

“**Developer Rights**” means Intellectual Property Rights, including all documents, data, know-how, methodologies, software and other materials, including computer programs, reports and specifications, (i) provided by or used by Service Provider in connection with performing the Services, in each case developed or acquired by the Service Provider prior to the commencement or independently of this Agreement; and (ii) all Improvements in any of the Intellectual Property Rights under part (i) of this definition, whether made by Service Provider or Customer.

“**Improvements**” mean any substitution, modification, improvement or derivative work of the Developer Rights.

“**Intellectual Property Rights**” means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“**Key Personnel**” means any Service Provider Personnel who is identified as being key in a Statement of Work.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Losses**” mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Project**” means a project as described in a Statement of Work.

“**Project Milestone**” means an event or task described in a Statement of Work which shall be completed by the relevant date set forth in the Statement of Work.

“**Service Provider Equipment**” means any equipment, systems, cabling or facilities provided by or on behalf of Service Provider and used directly or indirectly in the provision of the Services.

“**Service Provider Personnel**” means all employees and Permitted Subcontractors, if any, engaged by Service Provider to perform the Services.

“**Services**” means any professional or other services to be provided by Service Provider as described in more detail in a Statement of Work and in accordance with the terms of this Agreement.

“**Statement of Work**” means each Statement of Work entered into by the Parties and attached to this Agreement substantially in the form of Exhibit B. If no separate Statement of Work is attached to this Agreement or if Exhibit B is blank, the Proposal shall be deemed the Statement of Work.

Exhibit B

STATEMENT OF WORK/PROPOSAL