

General Terms and Conditions for Purchase of Goods and Services  
Effective June 2025

These General Terms and Conditions for Purchase of Goods and Services (these “Terms”) are entered into by and between Prologis L.P., a Delaware Limited Partnership (collectively with its Affiliates, “Buyer”), and the party to whom the applicable Contract is addressed (“Seller”) and shall apply to each Purchase Orders (“PO”), Statement of Work (“SOW”), or other written agreement for goods and services which references these Terms as of the Effective Date. Buyer and Seller are each referred to herein as a “Party” and collectively as the “Parties.”

**1. Offer/Acceptance.**

**1.1. Contract.**

- 1.1.1. Upon the earlier of (a) the date that the Parties execute a written agreement, including as applicable, any SOW or (b) Seller’s acceptance of a PO (as set forth in Section 1.1.2), the terms of such SOW, PO or other written agreement, together with these Terms will form a binding contract between Buyer and Seller (the “Contract”).
- 1.1.2. A PO is Buyer’s offer to purchase specified Goods and/or Services from Seller and sets forth applicable commercial terms including Product descriptions, quantities, pricing, and payment instructions. A PO may be issued independently or may incorporate or reference a SOW. A PO shall be deemed accepted by Seller upon the earliest of (i) written or electronic acknowledgment, (ii) shipment of goods or commencement of services, or (iii) any other conduct that reasonably indicates acceptance. If Seller objects to any terms in a PO, it must notify Buyer and propose alternative terms. No such alternative terms shall be binding unless expressly accepted in a revised PO issued by Buyer. In the absence of such revision, the Parties agree that any proposed alternative terms are rejected.
- 1.1.3. A SOW is a separate written document where additional detail beyond what is provided in a PO is necessary. SOW must be in writing, and shall comprehensively define and describe, among other things, the Goods to be delivered, Services to be performed by Seller, payment schedules, the fees associated with such Good and/or Services, the nature of any Deliverable, acceptance criteria, time frames and milestone dates for the completion and delivery of the Good and/or Services, project coordination and any other significant matters germane to the Services requested by Buyer.
- 1.1.4. Acceptance is expressly limited to the terms of the Contract. No purported acceptance of any purchase order or written agreement on terms and conditions which modify, supersede, supplement or otherwise alter these Terms shall be binding upon Buyer and such terms and conditions are expressly rejected and replaced by these Terms unless Seller’s offered alternative terms or conditions are agreed in writing by Buyer, notwithstanding Buyer’s acceptance of or payment for the Goods or Services by Buyer.
- 1.1.5. A PO, SOW or separate written agreement referencing these Terms shall not constitute acceptance of any offer, quotation, or other proposal made by Seller. If any such Seller document is deemed an offer, it is expressly rejected and replaced in its entirety by the Contract. By accepting a PO, SOW or separate written agreement referencing these Terms, Seller agrees to perform the goods and/or services in accordance with these Terms.

1.2. **Master Purchase Agreement.** The Parties may, but are not required to, enter into a Master Purchase Agreement for Goods and Services (“Master Agreement”), which establishes the framework conditions for an ongoing business relationship between Buyer and Seller. A Master Agreement shall incorporate these Terms and may contemplate the issuance of multiple POs and/or SOWs for specific Goods and Services. In such cases, the Master Agreement serves as the governing framework for each individual PO, SOW or separate written agreement referencing the Master Agreement and these Terms.

1.3. **Order of Precedence.** In the event of a conflict among the documents comprising the Contract, the following order of precedence shall apply: (a) any written amendment or change order executed by Buyer, (b) the applicable PO, (c) the applicable SOW (d) the Master Agreement (if any), and (e) these Terms.

**2. Price; Fees; Payment.**

2.1. **Price and Fees.** The purchase price and/or fees for the Products, along with any applicable payment schedules or other relevant commercial terms, shall be set forth in the Contract. The purchase price and/or fees stated in the Contract are: (a) firm and not subject to increase for any reason, including without limitation changes in currency exchange rates, raw material or component costs, labor, overhead, tariffs, customs duties, trade restrictions, or other governmental charges or market conditions, unless expressly agreed to in writing by Buyer; (b) inclusive of all taxes, duties, and charges for which Seller is responsible pursuant to

Section 2.3, unless expressly stated in the Contract as the responsibility of Buyer; and (c) inclusive of all other costs and expenses incurred by Seller in connection with performance under this Contract, including without limitation all charges for storage, handling, packaging, labeling, shipping, transportation, insurance, and related services provided that any such charges under (b) and (c) may be identified as a separate line item within the purchase price and/or fee under the Contract.

2.2. Payment Terms. Buyer shall pay for the undisputed Goods and Services in accordance with the Contract. All payments of undisputed invoices are due Net 30 from the date of receipt of invoice, provided, however, Buyer may withhold payment for any invoiced charges that Buyer disputes in good faith. Buyer may set off any amount owed by Seller to Buyer against any amount owed by Buyer under the Contract. Payment of charges shall not be deemed an approval of such charges or acceptance of non-conforming Products, and Buyer may later dispute such charges, and payment of charges shall not relieve Seller of any of its warranties or other obligations under the Contract, or limit or affect any rights or remedies of Buyer.

2.3. Taxes. Unless otherwise prohibited by Law or expressly stated in the Contract, Seller shall be solely responsible for, and shall pay, all federal, state, and local taxes, duties, tariffs, and other governmental charges, including without limitation transportation taxes, customs duties, and import/export fees, imposed on or by reason of the sale, delivery, or performance of the Goods or Services under this Contract. All prices and fees stated in the Contract shall be deemed inclusive of such taxes and charges, and Buyer shall not be liable for any such taxes or charges except to the extent that applicable Law expressly requires Buyer to pay them directly. Buyer may, at its discretion, provide Seller with a valid sales tax exemption certificate or other documentation reasonably required to establish its tax-exempt status. Upon receipt of such documentation, Seller shall not charge or collect the applicable taxes covered by the exemption.

2.4. Invoices. All invoices will be issued in the currency set forth in the Contract. All invoices for Goods provided must reference as applicable, the Goods and/or Services, Seller's name and number and where applicable the Buyer's or Seller's part number, quantity of pieces in shipment, number of cartons or containers and bill of lading number, before any payment will be made for Goods by Buyer. Buyer reserves the right to return all invoices or related documents submitted incorrectly. Payment terms will commence upon the receipt and input of a correct invoice. Any payment by Buyer of a nonconforming invoice is not an acceptance of any non-conforming or additional terms on such invoice. In the event Buyer has not received an invoice, in whole or in part, for the Goods or Services 180 (one-hundred and eighty) Days after the date of delivery of the Goods or performance of the Services, such Goods or Services shall not qualify for invoicing and any such invoice presented shall not be payable.

### 3. Services; Deliverables.

3.1. Obligation to Provide the Services. Seller shall diligently and completely render all Services and deliver all Deliverables as described and defined in the Contract and any amendment or change orders hereto accepted by both Parties. All obligations of Buyer relating to the applicable time schedule for Deliverables hereunder are preconditioned on the due fulfillment of all contractual obligations hereunder by Seller. Seller shall promptly notify Buyer of any factor, occurrence, or event that may affect Seller's ability to meet the requirements of the Contract or that is likely to result in delay of delivery of the Deliverables.

3.2. Out of Pocket Expenses. If specified in the Contract, Buyer agrees to reimburse Seller for out-of-pocket expenses or pre-approved by Buyer in writing, subject to Buyer's travel or other applicable policies. Seller shall provide to Buyer all documentation reasonably requested by Buyer to support the price and fees and Buyer reimbursable out-of-pocket expenses incurred by Seller.

3.3. Acceptance. Buyer shall be obligated to pay only for Services performed and Deliverable delivered and accepted per the terms of the Contract. The acceptance criteria and procedure shall be set forth in the applicable Contract.

3.4. Rejection of Non-Conforming Services or Deliverables. In the event of any deficiencies in the Services or non-conformity of the Deliverables to the Specifications, Buyer has the right to take remedial steps and shall be entitled to require (a) Seller's re-performance of the deficient portion of the Services and re-delivery of the Deliverables, or (b) a price reduction or refund of the deficient portion of the Services and non-conforming portion of the Deliverables, provided that such steps shall be in addition to, and not in exclusion of, any other rights or remedies of Buyer hereunder.

3.5. Ownership and Use of Documents. Unless specified in the Contract, all designs, drawings, plans, specifications, and other Deliverables prepared by Seller (or its consultants) under this Contract shall be the sole property of Buyer upon payment of amounts due for such Services. To the extent not deemed works made for hire, Seller hereby assigns all rights, title, and interest in such Deliverables.

### 4. Personnel.

4.1. Use of Personnel; Removal. The Seller shall cause all its employees, agents and subcontractors utilized by the Seller

(collectively "Personnel") to perform the Services in accordance with the terms and conditions of the applicable Contract. All such Services shall be performed by Personnel who are reasonably acceptable to Buyer. In the event that any Personnel performing the Services are found to be unacceptable to Buyer, Buyer shall have the right, without any liability or penalty of any kind owed to the Seller, to require the Seller to immediately remove said Personnel from performing such Services and promptly provide a qualified replacement. Notwithstanding the foregoing, Buyer acknowledges and agrees that Seller shall have the sole discretion to employ, promote, discipline, or discharge any Personnel.

4.2. Seller Responsibility. Any Personnel supplied or used by Seller shall be deemed to be employees or subcontractors of Seller and shall not be considered employees, agents, or subcontractors of Buyer for any purpose. Seller assumes full responsibility for the actions of all such Personnel while performing Services and producing and delivering the Deliverables under the Contract and for the payment of compensation, (including, if applicable, the payment and withholding of federal, state, provincial and/or local income taxes, and social security and other payroll taxes), workers' compensation, disability benefits and related liabilities and obligations therefor.

4.3. Drug & Alcohol Use. The Seller acknowledges that Buyer prohibits the use, possession, and/or distribution of alcohol and drugs by Personnel while on the premises of Buyer and/or while performing any Services for Buyer. This prohibition includes being under the influence of alcohol or drugs while on the premises of Buyer and/or while performing any Services for Buyer. The Seller will inform all Personnel that this policy is in full force and effect and will ensure that its Personnel strictly comply with said policy. The Seller warrants and represents that it complies with all Laws with respect to drug-free workplace initiatives and testing requirements.

4.4. Background Check. To the extent permitted by Law, and at its sole cost and expense, the Seller shall conduct criminal background checks for any and all employees used to perform the Services contemplated under an applicable Contract. Seller hereby certifies that, with respect to any and all Personnel used to perform any Services there is nothing revealed by such background checks of said Personnel that would create a reasonable doubt about the utilization of same for the Services in a safe manner and with proper regard for the security of Buyer and its employees, affiliates, subsidiaries, customers, and other third parties.

4.5. Security Training. Upon request by Buyer, all Personnel performing Services may be required to complete annual Buyer-provided privacy and security training.

4.6. Safety Requirements. Buyer may provide information to Seller, and its Personnel performing Services, regarding applicable Buyer safety requirements. Seller shall ensure that its Personnel performing Services comply with all such Buyer safety requirements while they are performing Services on Buyer' premises.

## 5. **Delivery.**

5.1. Delivery Terms. Seller shall deliver the Goods in the quantities and at the times specified in the Contract. Unless otherwise stated in the Contract, the delivery terms shall be Delivered Duty Paid (DDP) per Incoterms® 2020 to the Buyer designated facility specified in the Contract, with export customs formalities completed by Seller. Seller shall bear all costs and risks associated with delivering the Goods in accordance with the delivery terms, including without limitation all freight, insurance, customs clearance, duties, and other related charges.

5.2. Delivery Requirements. Seller shall provide packing slips with all shipments of Goods, and all packing slips and related shipping documents (including bills of lading) shall reference the applicable purchase order number, part number(s), Seller's name, and item and reference numbers. For international shipments, Seller shall include a customs valuation invoice (pro forma or commercial, using the value stated in the purchase order), a master packing slip, and all documentation required for lawful export/import processing. Export and trade credits shall belong exclusively to Buyer. Seller shall timely provide all documentation reasonably required by Buyer to support compliance with applicable export, import, and trade programs now or hereafter in effect, including but not limited to certificates of origin, documentation of value added by country, export licenses or authorizations, and all documentation required under applicable free trade or bilateral/multilateral trade agreements. Seller represents and warrants that all such documentation shall be true, complete, and accurate, and shall indemnify Buyer for any damages, duties, penalties, interest, or other losses arising from any false or inaccurate documentation.

5.3. Damage. All Goods shall be properly packed, marked, loaded, and shipped in full compliance with the requirements of the Contract, applicable Laws, and the standards of the transporting carrier. If Buyer does not provide specific packing or shipping instructions, Seller shall pack and ship the Goods in accordance with applicable industry standards to ensure safe and damage-free delivery. Seller shall be responsible for and shall promptly reimburse Buyer for, any and all costs, expenses, or damages (including damage to the Goods) arising from improper packing, marking, loading and delivery of the Goods.

5.4. Risk of Loss. Risk of loss remains with Seller until the Goods are received and accepted at the Buyer designated facility specified in the Contract. Title to all Goods under an applicable Contract pass to Buyer when the Goods are received and accepted at the Buyer-designated facility specified in the Contract.

5.5. Inspection/Nonconforming Goods. All Goods delivered by Seller are subject to inspection, testing, and acceptance or rejection by Buyer within a reasonable time after receipt at the Buyer designated facility specified in the Contract. Inspection may include, at Buyer's discretion, verification of quantity, quality, conformity to specifications, and compliance with the Contract. Payment for Goods prior to inspection shall not constitute acceptance, and Buyer's failure to inspect or reject the Goods upon delivery shall not waive any of its rights. If any Goods are found to be defective, damaged, or nonconforming, whether upon inspection or due to latent defects discovered after acceptance, Buyer shall have the right, in addition to exercising all other rights Buyer may have under the Uniform Commercial Code and any other applicable Law at its sole option and without prejudice to any other rights or remedies, to reject the Goods as non-conforming or defective, and at Buyer's option and Seller's sole expense: (a) return the Goods to Seller for full reimbursement of any amounts paid for the returned Goods; (b) retain the non-conforming or defective Goods in whole or in part with an appropriate adjustment in the price for the Goods; (c) require Seller to reperform, repair or replace the non-conforming or defective Goods at Seller's and/or (d) correct or replace the non-conforming or defective Goods with similar items and recover all costs relating thereto from Seller. Seller shall be responsible for all costs and expenses including all shipping, transportation, and installation costs due to non-conforming or defective goods. All repaired or replacement Goods shall be subject to the same inspection and acceptance rights as the original Goods, and title and risk of loss for any rejected or returned Goods shall revert to Seller upon Buyer's notice of rejection or return.

5.6. Timely Delivery and Specification Compliance. Time, quantity, and quality are of the essence with respect to all Goods and Services provided under the Contract. Seller shall deliver all Goods and perform all Services in strict accordance with the schedule, quantities, specifications, and quality standards set forth in the Contract. Seller shall be in default if it fails to meet the delivery dates, quantities, or quality requirements specified in the Contract, and shall promptly notify Buyer of any actual or anticipated delay, shortfall, or nonconformance. In such event, and without prejudice to any other rights or remedies available to Buyer, Buyer may, at its sole option: (i) terminate the Contract, in whole or in part, without liability; (ii) require Seller to expedite delivery at Seller's sole expense, including using premium freight; and/or (iii) obtain substitute Goods or Services from an alternative supplier, with all costs and expenses associated with such procurement—including any price difference, and any related shipping, insurance, handling, taxes, or duties—borne by Seller. Any premium shipping or other extraordinary delivery expenses required to meet the delivery schedule set forth in the Contract shall be the sole responsibility of Seller. If these remedies, individually or collectively, are inadequate to meet Buyer's requirements, or if Seller is unable or unwilling to comply (as determined by Buyer in its sole discretion), Buyer may pursue any additional remedies available under the Contract or at Law or equity. If the provisions in Section 5.6 alone or together, are insufficient to meet Buyer's requirements or if Seller will be unable to comply with such provisions (as determined by Buyer in its sole discretion), Buyer may purchase substitute goods and procure alternative services and hold Seller accountable for the difference between the price of the Goods or Services and the price paid by Prologis for the substitute goods or services, if higher, including amounts charged for shipping, insurance, handling, and any taxes or duties.

## 6. Changes; Cancellation.

6.1. Changes and Suspension. Buyer may, at any time and in its sole discretion, change or suspend any and all work regarding the Products in progress under the Contract. Such changes may include, without limitation, modifications to the design (including drawings and Specifications), processing methods, packaging and shipping methods, delivery quantities, the rate or timing of scheduled shipments, the date or place of delivery of the Products, or any other aspect of the scope of work. Except as expressly provided in the applicable PO, SOW or separate written agreement referencing these Terms, Seller shall not be entitled to any adjustment in price or additional compensation due to such change by Buyer.

6.2. Cancellation. Buyer may cancel all or any portion of a PO, SOW or separate written agreement referencing these Terms at any time without cause, in accordance with Section 7.2.1 below. Except for early cancellation costs and expenses as specified under an applicable PO, SOW or separate written agreement referencing these Terms, Seller shall not be entitled to any adjustment in price or additional compensation due to the change or modification.

## 7. Term and Termination.

7.1. Duration. The Contract shall be effective as of the Effective Date and shall remain in effect until completion of the supply of Goods or performance of Services as specified in the Contract unless sooner terminated under this Section 7 or by mutual written agreement of the Parties.

7.2. Termination.

- 7.2.1. For Convenience. Buyer shall have the right, with or without cause, to terminate all or any part of a Contract by providing ten (10) days prior written notice to Seller.
- 7.2.2. For Cause. Except as provided in Sections 7.2.3 (Nonpayment by Buyer) and 7.2.4 (Insolvency), either Party may terminate all or any part of a Contract, without liability, by providing written notice if the other Party materially breaches any obligation under the Contract and fails to cure such breach within fifteen (15) days after receiving written notice from the non-breaching Party. Termination under this Section shall be without prejudice to any other rights or remedies available at law or in equity.
- 7.2.3. For Non-payment by Buyer. If Buyer fails to pay Seller when due for undisputed charges and fails to make such payment within forty-five (45) days after the date Buyer receives notice of non-payment from Seller, Seller may terminate the applicable Contract as of a date specified in a written notice of termination referencing this Section 7.2.3 and expressly stating Seller's intent to terminate the Contract.
- 7.2.4. For Insolvency. Either Party may be terminated the Contract automatically, without notice, (i) upon the institution by or against Buyer or Seller of any insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts, (ii) upon Buyer or Seller's making an assignment for the benefit of creditors, or (iii) upon Buyer or Seller's dissolution.

7.3. Termination Claims; Obligations Following Termination.

- 7.3.1. Upon receipt of notice of termination pursuant to Section 7.2, Seller, unless otherwise directed in writing by Buyer, shall stop all work pertaining to the Contract or the portion of the Contract as applicable; incur no further costs, and protect all property in which Buyer has or may acquire an interest including reports, data, work products, and Confidential Information (alternatively, as requested by Buyer, Seller will destroy such property). Buyer will not be responsible for any costs in connection with a terminated Contract except for payment of the portion of the Goods delivered and/or Services performed prior to notice of the termination, provided that such Goods and/or Services meet all of the Specifications and requirements of the Contract and that (i) were ordered no earlier than applicable lead times of the materials and components order to meet the delivery dates specified in the Contract; and (ii) could not be returned for a refund or credit or used for or sold to any of Seller's other customers or suppliers.
- 7.3.2. In the event of termination by Buyer under Section 7.2.2 or 7.2.4, Buyer may retain the services of a replacement seller(s) to complete the applicable delivery of Good or performance of Services and Seller shall be responsible for costs reasonably incurred by Buyer to complete the delivery of Goods or performance of Services under the applicable PO, SOW or separate written agreement referencing these Terms to extent that such aggregated costs of replacement supplier(s) when added to amounts previously paid to Seller, exceeds the applicable fees provided that the that (i) the substitute procurement is commercially reasonable, (ii) the Goods and/or Services are substantially similar in scope and quality.
- 7.3.3. Except as expressly set forth in this Section 7, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, capital costs or expenditures, internal labor costs or charges, or general and administrative burden charges resulting from termination of the Contract or otherwise. Notwithstanding anything to the contrary, Buyer's obligation to Seller upon termination shall not exceed the obligation Buyer would have had to Seller in the absence of termination under the Contract.
- 7.3.4. The termination of an applicable Contract or a portion of such Contract, shall have no impact on the continuing validity and effect of any PO, SOW or separate written agreement referencing these Terms that may have been entered into between the Parties prior to such termination or the remaining portion of such Contract which was not terminated, unless and to the extent such PO, SOW or separate written agreement referencing these Terms are terminated as described elsewhere in this Section 7.

8. Intellectual Property.

- 8.1. Background Intellectual Property. Each Party is, and shall remain, the sole and exclusive owner of, and retain all right, title and interest in and to, any Intellectual Property owned, acquired, or created prior to the Effective Date or developed in a strictly independent and separate manner from this Contract or the development or sale of the Products to Buyer ("Background IP"). Nothing in this Contract shall be construed as granting any rights in or license, express or implied, to the Background IP of the

other Party except that Seller hereby grants to Buyer, and causes its Affiliates and personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, royalty free, fully paid-up license, with right to sublicense to Buyer's Affiliates, all Background IP necessary to use, distribute, display, modify, perform, repair, remanufacture, rebuild, offer to sell, sell, and import the Products that are the subject of the Contract.

8.2. **Foreground Intellectual Property.** Intellectual Property and Intellectual Property Rights (other than Background Intellectual Property owned by Seller) which incorporates development services, designs, specifications, modifications, or requirements provided by Buyer or incorporates Buyer's Confidential Information ("Foreground IP") shall be the property of the Buyer.

## 9. **Representations and Warranties of Seller.**

9.1. **General.** In addition to any express warranties set forth in the Contract, and any statutory or implied warranties under applicable Law, Seller, on behalf of itself and its subcontractors and sub-suppliers, expressly warrants to Buyer, and to Buyer's customers, successors, and assigns, that all Products provided, produced, and delivered under the Contract: (i) shall strictly conform to all applicable Specifications, drawings, statements on containers or labels, descriptions, and samples furnished to or by Buyer, and shall comply with all applicable industry standards, Laws, and regulations in the jurisdictions in which the Products are produced, provided, or delivered; (ii) shall be free from defects in design, materials, and workmanship, shall meet or exceed the quality standards set forth in the Contract, and shall be safe, fit, and sufficient for the particular purposes intended by Buyer; (iii) shall be merchantable, free and clear of all liens, claims, and encumbrances, with Seller conveying good and marketable title to Buyer; and (iv) in the case of any Services provided under the Contract, shall be performed in a professional, competent, and workmanlike manner, and in conformance with all applicable policies, procedures, and schedules established by Buyer and in accordance with the standard of care and professional practices applicable to Seller's industry or such other level of standards agreed in the Contract. These warranties shall survive inspection, test, delivery, acceptance, use and payment by Prologis and shall inure to the benefit of Prologis, its successors, assigns, and the users of Prologis's Goods and Services.

9.2. **Warranty Period; Defects.** Unless specified in the Contract, the above warranties in Section 9.1 shall be provided for a period of twelve (12) months from the later of Buyer's date of delivery such Goods and/or completion of the Services. If any defects or non-conformity appear within the warranty period, Seller will promptly repair, replace or correct such materials affected by defects or non-conformity at no cost to Buyer. Seller will pay or reimburse Buyer for all shipping and other reasonable costs incidental to such correction. If Buyer decides that the timing or impact of the corrective measures will be prejudicial to its interests or if Seller fails to correct promptly any defective Goods or redeliver Services in accordance with its obligations, Buyer may, subject to informing Seller in writing and allowing 24 (twenty four) hours for Seller to propose an alternative solution acceptable to Buyer, undertake (in full or in part) Seller's responsibilities for such delivery corrective measures, which may include engaging a third party to carry out remedial work. In these circumstances, Buyer may recover from Seller all costs reasonably incurred by Buyer in undertaking the delivery or corrective measures, subject to production of appropriate receipts and evidence. Any such work carried out by or on behalf of Buyer shall not relieve Seller of any warranty, obligation or liability hereunder.

9.3. **Non-Infringement.** Seller represents and warrants that there is no claim, litigation or proceeding pending or, to the knowledge of Seller, threatened with respect to the Product or any component thereof alleging infringement or misappropriation of any, copyright, trademark, trade secret, patent or other proprietary right of any person. Seller warrants that the Product does not and will not infringe or misappropriate any copyright, trademark, trade secret, patent or other proprietary right of any third party.

9.4. **Malware.** As applicable, Seller warrants that its software, code and/or firmware that is delivered to Buyer shall be free of viruses, malicious code, time bombs, Trojan horses, back doors, drop dead devices, worms, or other code of any kind that may disable, erase, display any unauthorized message on, permit unauthorized access to or otherwise impair Buyer' network, software, hardware, data or systems.

9.5. **Manufacturer Warranties.** Seller hereby assigns to Buyer all manufacturer warranties furnished with the Goods. Seller will furnish appropriate Material Safety Data Sheets where required by Laws including applicable U.S. Department of Labor regulations for each Good.

## 10. **Compliance.**

10.1. Seller represents and warrants to Buyer that: (a) Seller shall comply with all applicable Laws in the supply of Goods and performance of Services, including Laws related to the manufacture, labeling, transportation, licensing, approval, and certification of the Products, as well as export control and sanctions Laws, environmental protection, data privacy, employment practices, health and safety, and vehicle safety; (b) to the extent required by applicable Law, the Services shall be performed by or under the supervision of duly and validly licensed professionals in the state in which the Services are located; (c) Seller is not debarred, suspended, or otherwise ineligible to do business with the United States Government and is not listed on any applicable exclusion

or debarment lists maintained by U.S. Government agencies; (d) Seller is not under investigation for, and has not been charged with, convicted of, or penalized for, violations of anti-money laundering laws, including any activity related to money laundering, terrorism, or drug trafficking, and has not had any funds seized or forfeited under such Laws; (e) Seller complies with all applicable anti-corruption Laws and will not authorize, offer, or make improper payments to Government Officials or others, and no funds received from Buyer will be used in violation of any such Laws; (f) neither Seller nor any of its Personnel is subject to sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the United Nations Security Council, the European Union, or other relevant authority, nor located in a country or territory subject to Sanctions; and (g) neither Seller nor any of its Personnel has violated Sanctions Laws or will use Buyer funds in a way that would cause a violation of Sanctions Laws.

10.2. EEO Compliance. This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

10.3. Rules of Buyer. Seller agrees to comply with all Buyer policies, standards, rules, and procedures, as they may be amended from time to time, that are disclosed to Seller in writing and are applicable to the performance of Seller's obligations under the Contract.

10.4. Code of Conduct. Seller and its representatives shall conduct all business activities in accordance with the [Supplier Code of Conduct](#).

## 11. **Confidentiality.**

11.1. Restrictions on Disclosure and Use of Confidential Information. Each Party shall, and shall cause its Representatives to, hold the Confidential Information of the other Party in trust and strict confidence, and shall not disclose, reproduce, publish, distribute, transmit, reverse engineer, decompile, disassemble, or transfer, directly or indirectly, in any form, by any means, or for any purpose any Confidential Information to any third party whether orally, electronically, on disk, in writing, or otherwise without prior written approval of disclosing Party. Receiving Party shall not use any Confidential Information for the benefit of itself or any third party or for any purpose other than the Purpose. Each Party shall take the same degree of care that it uses to protect its own confidential and proprietary information of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication, or dissemination of Confidential Information. Each Party's disclosure of Confidential Information shall be strictly limited to the receiving Party and its Representatives, who require Confidential Information so long as each such Representative acts in accordance with the Contract as if the Representative is a party hereto. Each Party shall be responsible for any breach of these Terms by any of the Representatives or for any failure to act in accordance with the provisions hereof.

11.2. Disclosure Required by Law. Notwithstanding the foregoing, it shall not be a breach of these Terms for the Receiving Party to disclose Confidential Information of the Disclosing Party if required to do so under Law or in a judicial, arbitral, or governmental proceeding or investigation, provided, that (x) the Disclosing Party has been given reasonable prior notice to allow it to take actions to protect its interest and the Receiving Party shall cooperate with all reasonable requests of the Disclosing Party in connection thereof, including any protective orders or other safeguards sought by the Disclosing Party and (y) the Receiving Party only discloses that portion of the Confidential Information (with a full copy to the Disclosing Party) required to be disclosed and shall preserve the confidentiality of all other Confidential Information of the Disclosing Party.

11.3. Ownership; No Warranty. All Confidential Information shall remain the exclusive property of the Disclosing Party and nothing in these Terms, or any course of conduct between the Parties, shall be deemed to grant the Receiving Party any license, right, title, or interest in or to the Confidential Information (unless explicitly set forth in the Contract or otherwise agreed in writing by the Parties). The Receiving Party acquires no intellectual property license or rights under the Contract except the limited right to review and use such Confidential Information to perform its obligations under the Contract. All Confidential Information provided under the Contract is provided "AS IS" without any warranty, express, implied or otherwise, except that the Disclosing Party warrants that it has the right to disclose the Confidential Information to the Receiving Party.

11.4. Period of Confidentiality. Each Party's confidentiality obligations under this [Section 11](#) will survive the expiration or earlier termination of the Contract and continue for a period of two (2) years thereafter. Following the expiration or earlier termination of the Contract, and at any time during a Contract, the Disclosing Party may request that the Receiving Party return or destroy all Confidential Information disclosed and within thirty (30) days after such request, the Receiving Party shall return or certify to the

destruction of the Disclosing Party's Confidential Information, as applicable.

11.5. Data Security. Seller shall: (i) establish, implement and maintain a data privacy and security program which includes reasonable and appropriate physical, technical, organizational and administrative measures to protect against the destruction, loss, alteration and unauthorized access and use of Buyer's Confidential Information in the possession or control of Seller (or its subcontractors); and (ii) comply with Buyer's information and data security policies as disclosed to Seller from time to time including providing Buyer with if requested: (1) copies of an annual third-party audit of such security program; and/or (2) complete a Buyer-provided security questionnaire.

11.6. Data. Buyer shall own all rights, title, and interest in and to any data generated by or through the Goods or Services, including both raw data and any processed or derived data (collectively, "Data"). Seller shall treat all Data as Buyer's Confidential Information and may only access, use, store, or share Data as expressly authorized by Buyer and solely for Buyer's benefit under the Contract. Buyer shall have a perpetual, assignable right to use, exploit, and modify the Data for any purpose. Seller shall provide reasonable assistance, subject to the applicable Contract, to enable Buyer to access and extract Data, including through system interfaces.

11.7. Non-Disparagement. During the term of the Contract and thereafter, Seller shall not make or publish any disparaging or derogatory statements with respect to Buyer, or its integrity, business or professional standing or reputation, or that of any of its Representatives.

## 12. Indemnification.

12.1. General. Seller shall indemnify, defend, and hold harmless Buyer, its Affiliates and its and their respective directors, officers, employees, contractors, representatives, invitees, agents and customers (collectively, "Indemnitees") from and against all liability, demands, claims, losses, costs, actions, judgments, fines, penalties, damages and expenses, including expert and attorneys' fees, (collectively, "Liabilities") incurred by Buyer or its Affiliates arising out of any Claim against any Indemnitee that arises from or relates to: (a) Seller's noncompliance or breach of any representation, warranty or obligation under the Contract (including these Terms); (b) any product liability claim, product recall, corrective action, or other voluntary or involuntary action or effort in which Buyer participates with respect to the Goods; (c) any infringement or misappropriation of any Intellectual Property Right relating to any Product or any portion thereof; or (d) any personal injury claim, including death or injury, or damage to property, caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller, its employees, agents, or invitees. Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity. This indemnification obligation shall apply regardless of whether the Claim arises in tort, negligence, contract, warranty, strict liability or otherwise.

12.2. Indemnification Procedure. Buyer shall give Seller prompt written notice of any Claim for which indemnification is sought under this Section 12. Failure to give notice will not diminish Seller's obligation under Section 12. When provided notice of any actual or potential Liabilities, Seller, at Buyer's option and at Seller's expense, will undertake defense of such actual or potential Liabilities. Seller may select legal counsel to represent the Indemnitees (said counsel to be reasonably satisfactory to Buyer) and otherwise control the defense of such Claim; provided, however, that Seller shall first obtain authorization from Buyer before settlement is made of the actual or potential Liabilities if the terms of such settlement (a) require any action or inaction by Buyer or any Affiliate thereof or (b) could materially adversely affect Buyer, including any terms which admit the existence of a defect in Products or a failure of Buyer to fully and faithfully perform its obligations. In the alternative, Buyer may elect to undertake defense of such Liabilities to the extent asserted against Buyer, and Seller shall reimburse Buyer on monthly basis for all expenses, attorneys' fees, and other costs incurred by Buyer.

12.3. Infringement Claims. If a Good or Service becomes, or in Seller's reasonable opinion is likely to become, the subject of a claim of infringement or misappropriation of any Intellectual Property Rights, Seller shall, at its sole expense, either (a) promptly procure for Buyer the right to continue to use the Good or Service, or (b) replace or modify the Good or Service to make it non-infringing, provided that the modified Good or Service meets the Specifications and all other requirements under the Contract.

## 13. Insurance.

13.1. General. Unless otherwise specified in a separate written agreement, Seller shall maintain insurance in amounts herein naming Buyer as an additional insured, and covering general liability, public liability, product liability, product recall, completed operations, contractor's liability, automobile liability insurance, worker's compensation, and employer's liability insurance as will adequately protect Buyer against damages, liabilities, claims, losses and expenses (including attorneys' fees) with respect thereto. Seller agrees to submit certificates of insurance evidencing its insurance coverage, when and as requested by Buyer.



13.2. **Requirements.** During the term of the Contract, Seller shall provide, pay for, and maintain in full force and effect the insurance outlined herein covering claims arising out of or in connection with the Goods or performance of Service performed by or on behalf of Seller. Seller shall contractually cause all sub-vendors or anyone for whose acts they are liable to purchase and maintain insurance in coverage types, limits and endorsements as shown here and provide proof of such coverage upon request in a form acceptable to Buyer. Such insurance shall be issued by companies licensed to do business in the state where the work is performed and having a minimum Best Key rating of no less than A-VIII and shall be primary and in excess of any insurance carried by Buyer, and non-contributory with Buyer' policies with regards to Seller's indemnity obligations under the Contract: **Commercial General Liability Insurance.** Commercial General Liability insurance coverage, including contractual liability, with minimum limits of One Million Dollars (\$1,000,000) each occurrence (\$2,000,000) Aggregate. Prologis L.P. and its Affiliates shall be named as an additional insured; **Worker's Compensation Insurance.** Worker's Compensation Insurance in statutory amounts, or equivalent if not required by the state where services are performed, and Employer's Liability coverage with limits of liability of not less than \$1,000,000 covering all employees of Seller employed in, on or about Buyer' property. A waiver of subrogation in favor of Prologis L.P. and its Affiliates shall be provided, to the extent allowed by law; and **Errors and Omissions Insurance.** Errors and Omissions insurance covering the Services to be provided, with minimum limits of One Million Dollars (\$1,000,000) on a per occurrence basis, with an aggregate Two Million Dollar (\$2,000,000) limit. The insurance shall be endorsed to include coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services of technology products and violations of software copyright.

14. **Limitation of Liability.**

IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, PUNITIVE OR LOST PROFIT, LOST REVENUES DAMAGES OF ANY KIND OR NATURE ARISING OUT OF THE CONTRACT, THE GOODS AND DELIVERABLES DELIVERED HEREUNDER OR THE SERVICES RENDERED HEREUNDER REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE) AND REGARDLESS OF HOW CHARACTERIZED, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. **Force Majeure.**

In the event that either Party is prevented from performing, or is unable to perform, any of its obligations an applicable PO, SOW or separate written agreement referencing these Terms due to the following events: any act of God; fire; casualty; flood; war; terrorism; failure of public utilities; injunction or any act, exercise, assertion or requirement of any governmental authority; epidemic; public health emergency; destruction of production facilities; insurrection which are beyond the reasonable control of the Party invoking this provision ("Force Majeure Event"); and if such Party shall have used reasonable efforts to avoid such occurrence and minimize its duration and effect including providing the non-claiming Party with written status reports at least weekly of all efforts to mitigate and remedy the Force Majeure Event, and the Party has given prompt written notice to the other Party providing reasonably detailed written explanation of the nature, cause, date of commencement thereof, the anticipated extent of any delay or interruption in performance then the affected Party's failure to perform shall be excused during the occurrence of the Force Majeure Event. In the event of such delay, performance date(s) will be extended as reasonably necessary to allow for the delay; provided, that such event causes a delay of greater than thirty (30) days, Buyer shall have the right to terminate the Contract upon written notice thereof to Seller.

16. **Price Protection.**

Unless otherwise specified in a separate written agreement and notwithstanding anything contained herein to the contrary, Seller hereby represents and warrants to Buyer that the price for each Product hereunder shall not exceed the lowest prices for such Product offered by Seller to any of its other customer on substantially equivalent terms. The price shall include the totality of (a) the price for such Products and (b) all other economic terms including credits, rebates, refunds, purchase volumes, purchase commitments, discounts and allowances and whether or not such Product is being sold bundled with any other Products.

17. **Governing Law; Dispute Resolution.**

Except as specified under the Contract, the validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the principles of conflicts of law. If the dispute has not been resolved by informal dispute resolution or mediation, the parties must promptly refer the dispute, no later than one (1) year from the date of original notice and subject to applicable statute of limitations, to binding arbitration in accordance with AAA Rules. Each Party will bear its own expenses and will share equally in fees of the arbitrator(s). The award of the arbitrator(s), which may include legal and equitable relief, but which may not include punitive damages, will be final and binding upon the parties, and judgment may be entered upon it in accordance with Applicable Law in any court of competent jurisdiction. In addition to award the arbitrator(s) will have the discretion to award the prevailing Party all or part of its attorneys' fees and costs, including fees associated with arbitrator(s), if the arbitrator(s) determines that the positions taken by the other Party on material issues of the dispute were without substantial foundation. This Agreement will control if there is a conflict between the terms of this Agreement and the AAA Rules. Notwithstanding anything to the contrary set forth in this Agreement,

no dispute, action, suit or other proceeding, regardless of form, arising out of or relating to the transactions covered by this Agreement may be brought by either Party against the other Party more than twenty-four (24) months after the cause of action arose. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE CONTRACT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY ACTION OR PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THE CONTRACT SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

18. **Miscellaneous.**

18.1. **No Waiver.** A waiver by Buyer of any right or remedy shall not affect any rights or remedies subsequently arising under the same or similar clauses. The failure of the Buyer to insist upon the performance of any term or condition of the Contract, or to exercise any right hereunder shall not be construed as a waiver of the future performance of any such term or condition or the exercise in the future of any such right.

18.2. **Audit Rights.** Buyer reserves the right to conduct an audit of Seller's facilities, controls, records, disaster recovery and business continuity planning and personnel, to the extent required or deemed advisable by Buyer or its customers, or its or their designated third-party auditors, to enable Buyer's full compliance with the terms and conditions of its agreements with its customers. Seller shall cooperate fully with any audits of Seller. Buyer agrees to conduct any audit during regular business hours unless otherwise agreed to between Buyer and Seller.

18.3. **Non-Solicitation.** Seller hereby acknowledges and recognizes the highly competitive nature of the respective businesses of Buyer and that Seller will have access to proprietary and confidential information regarding Buyer's business. Accordingly, unless otherwise specified in a separate written agreement, for the consideration stated herein, Seller hereby agrees that, during the term of the Contract and continuing thereafter for a period of one (1) year, Seller will not directly or indirectly (whether as an owner, principal, lender, stockholder, partner, member, employer, employee, consultant, contractor, subcontractor, representative, distributor, officer, director or otherwise) attempt to or solicit to employ or engage, or employ or engage any employee or independent contractor of Buyer, or induce or otherwise advise any employee or independent contractor of Buyer to leave the employ of or to cease being engaged by Buyer. Notwithstanding the foregoing, this provision shall not apply to individuals who respond to general advertisements placed by a party that were not specifically targeted to such individuals.

18.4. **Assignment.** Each Contract is issued to Seller in reliance upon Seller's personal performance of the duties imposed. Seller agrees not to, in whole or in part, assign the Contract or delegate the performance of its duties without the written consent of Buyer, and any attempt to do so shall be void *ab initio*. Any consent by Buyer to an assignment shall not be deemed to waive Buyer's right to recoupment from Seller and/or its assigns for any claim arising out of the Contract. Assignment shall not relieve Seller from its obligations of confidentiality under Section 11 hereof. Buyer may, in its sole discretion, transfer, novate or assign the Contract, in whole or in part, to any third party upon notice to Seller.

18.5. **Subcontracting.** Seller shall not subcontract any of its obligations under the Contract without the prior written consent of Buyer. Seller shall remain responsible and liable for the obligations, services, and functions performed by its subcontractors. Any such consent of Buyer will not release Seller from, or limit, any of Seller's obligations under the Contract. Seller warrants and guarantees that any such subcontractor's performance will satisfy all requirements and obligations applicable to Seller under the Contract.

18.6. **Independent Contractor.** Seller is an independent contractor, and nothing in this Contract shall be construed to create a partnership, agency, joint venture, pooling, franchise, employer-employee or any other legal relationship or association between the parties. Neither party shall be responsible for the acts or omissions or the compensation, payroll-related taxes, workers' compensation, accident or health insurance or other benefits of Personnel of the other party. Neither party has the power or authority to act for, represent, or bind the other (or its affiliates) in any manner.

18.7. **Severability.** If any term(s) of the Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Contract shall remain in full force and effect.

18.8. **Notices.** All notices, claims and other communications to Buyer required or permitted under the Contract shall be made in writing and sent by certified or registered mail, return receipt requested and proper postage prepaid to the Seller at the address in the applicable Contract and to the Buyer at the following address (or such other address as is provided to Seller by

Buyer) and shall be effective only upon receipt by Buyer in the form set forth in this Section 18.8:

If to Buyer:

Prologis  
1800 Wazee Street, Suite 500  
Denver, Colorado 80202  
Attention: General Counsel & Chief Legal Officer  
Email: [legalnotice@prologis.com](mailto:legalnotice@prologis.com)

Seller's failure to provide any notice, claim or other communication to Buyer in the manner and within the time periods specified in the Contract shall constitute a waiver by Seller of any and all rights and remedies that otherwise would have been available to Seller upon making such notice, claim or other communication.

18.9. Claim from Seller. In addition to any other restrictions contained in the Contract, any action by Seller under the Contract must be commenced within one year after the breach or other event giving rise to Seller's claim occurs, regardless of Seller's lack of knowledge of the breach or other event giving rise to such claim.

18.10. Electronic Communications and Electronic Signatures. Seller shall comply with any method of electronic communication specified by Buyer, including requirements for electronic funds transfer, PO transmission, electronic signature, and communication.

18.11. No Third-Party Beneficiaries. Unless expressly stated otherwise in this Contract, no provision is intended to, nor shall it be construed to, confer any rights, remedies, or benefits upon any Person other than Seller and Buyer. Notwithstanding the foregoing, the Indemnitees shall be third-party beneficiaries of Section 12 and shall have the right to enforce its terms.

18.12. Survival. The obligations, representations, warranties, and covenants of Seller under these Terms and each Contract that by their nature are intended or reasonably expected to survive the expiration or termination of these Terms and each Contract, including (a) the obligations, representations, warranties, and covenants of Seller with respect to Products delivered to or ordered by Seller prior to such expiration and termination and (b) the obligations, representations, warranties, and covenants of Seller set forth in Sections 3 (Services; Deliverables), 5 (Delivery), 6 (Changes), 7 (Term and Termination), 8 (Intellectual Property), 9 (Representations and Warranties of Seller), 11 (Confidentiality), 12 (Indemnification; 13 (Insurance), 14 (Limitation of Liability), 15 (Force Majeure), 17 (Governing Law; Dispute Resolution) and this Section 18.12, shall survive the expiration or termination of the Terms and each Contract created hereunder.

18.13. Entire Agreement. The Contract constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior representations, understandings, or agreements by the Parties, whether written or oral, with respect to the subject matter thereof. Except as authorized in Section 6, no subsequent terms, conditions, understandings, or agreements purporting to modify the Contract will be binding unless in writing and signed by both Parties.

18.14. Advertising and Publicity. Seller shall not discuss, disclose, advertise, market or otherwise make known to third parties (including any clients, customers, or suppliers of Buyer) any information relating to any projects or business of Buyer or any Buyer Products produced and delivered under any Contract without the Buyer's prior written consent. Seller shall not use or publicly display (in advertisements, press releases or otherwise) Buyer's name, trademarks, service marks or logos without Buyer's prior written consent.

19. Definitions. All capitalized terms not defined herein shall have the meanings set forth in other documents comprising the Contract.

19.1. "Affiliate" means with respect to a Person, any other Person controlling, controlled by, or under common control with, such Person. For purposes of the Contract, "control" means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of a Person, whether through ownership of voting securities, by contract or otherwise.

19.2. "Anti-Corruption Laws" means all Laws of any jurisdiction applicable to Seller, any of its subsidiaries or any of their respective Representatives relating to bribery or corruption, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.

19.3. "Anti-Money Laundering Laws" means the anti-money laundering Laws of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any Governmental Authority.

19.4. "Claim" means any demand, or any civil, criminal, administrative or investigative claim, action or proceeding (including arbitration) asserted, commenced or threatened against a Person by an unaffiliated third party. For purposes of this definition, an employee of either Party is considered an unaffiliated third party.

19.5. "Confidential Information" of a Party (the "Disclosing Party") means any information or items, or any part thereof, that is disclosed by or on behalf of such Party to the other Party (the "Receiving Party") or to any of the Receiving Party's Representatives, that (a) is marked as confidential (or as a trade secret, proprietary, private or other similar designation), (b) is identified as confidential when it is disclosed, or (c) should reasonably have been understood by the receiving Party to be confidential, including (in each case of clause (a), (b), and (c)) marketing data, financial and pricing information, business plans and opportunities, computer programs, source code, object code, technologies, products, know-how, product specifications, designs, prototypes, test data, customer lists and information, current and future marketing plans, current and future research and development specifications, and related documentation, and all materials, processes, demonstrations, copies, reproductions, analyses, summaries or combinations derived from, based on or using any of such information or items. Notwithstanding the foregoing, "Confidential Information" of the Disclosing Party shall not include information that: (i) is or becomes generally known to the public without any act or omission on the part of the Receiving Party or its Representatives; (ii) is in the Receiving Party's lawful possession at the time of disclosure by the Disclosing Party, free of restrictions on its disclosure and use, and was not acquired directly or indirectly from Disclosing Party; (iii) is or becomes known to the Receiving Party through disclosure by an unaffiliated third party (except where such third party is known by the Receiving Party to be disclosing such information in breach of obligations of confidence); or (iv) is independently developed by or for the Receiving Party by Persons who have had no access to or been informed of the existence or substance of such information; provided, that specific disclosures shall not be deemed to be within the foregoing limitations merely because they are embraced by general information in the public domain or in the Receiving Party's possession, and combinations of features disclosed by the Disclosing Party shall not be deemed to be within the foregoing exceptions merely because individual features of such combinations are in the public domain or in Receiving Party's possession, and which do not show the combination itself.

19.6. "Deliverable(s)" means any work product required to be delivered by Seller to Buyer under the Contract.

19.7. "Effective Date" means the earliest effective date of any written agreement signed by both Parties, or in the absence of a written agreement, the date that Buyer issues a PO to which these Terms apply.

19.8. "Goods" means all products identified in a SOW, PO or other written agreement, together with these Terms and shall include (but is not limited to) (a) goods made by or on behalf of Seller and sold by Seller to Buyer, directly or indirectly including through resellers, distributors, value-added distributors and subassembly manufacturers and (b) prototype and development parts, pre-production versions of products (including software). To the extent that Goods are or include software, references to "sale" or words of similar meaning in this definition shall be deemed to refer to a "license" of such Goods consistent with the terms in the Contract.

19.9. "Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any supra-national, governmental, federal, state, provincial, local governmental or municipal entity or authority and any self-regulatory organization (including, in each case, any branch, department or official thereof).

19.10. "Intellectual Property" means all patents, patent applications, patentable subject matter, copyrights, copyrightable subject matter, work of authorship, derivative works, trademark, trade name, trade dress, trade secrets, know-how, and any other subject matter, material, or information that is considered by Buyer to be proprietary or confidential and/or that otherwise qualifies for protection under any Law providing or creating Intellectual Property Rights, including the Uniform Trade Secrets Act.

19.11. "Intellectual Property Rights" means all Intellectual Property and proprietary rights in any jurisdiction, whether registered or unregistered, including rights in and to: (a) trademarks, service marks, trade names, trade dress, logos, certification marks, domain names, and related goodwill; (b) patents and patent applications, including all continuations, divisions, reissues, extensions, foreign equivalents, and rights in inventions and improvements, whether or not patentable; (c) copyrights and rights in works of authorship (including software), and all related applications and registrations; (d) trade secrets and other confidential or proprietary business, technical, or know-how information; and (e) moral rights and similar rights recognized under applicable law.

19.12. "Law" means any and all (a) federal, territorial, state, local and foreign laws, treaties, conventions, directives, regulations and ordinances, (b) codes, standards, rules, requirements, directives, orders and criteria issued under any federal, territorial, state, local or foreign laws, ordinances or regulations, (c) rules of a self-regulatory organization (including the rules of any national securities exchange or foreign equivalent) and (d) judgments, orders, writs, directives, authorizations, rulings, decisions, injunctions, decrees, assessments, settlement agreements, or awards of any Governmental Authority.

19.13. "Person" means a natural person or any partnership (whether general or limited), limited liability company, trust, estate,

association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity or any other entity, in each case, whether domestic or foreign.

19.14. "Products" means Goods, Services, or Deliverables, or collectively for all Goods, Services, or Deliverables, as the context requires.

19.15. "Representatives," with respect to any Person, means such Person's Affiliates and such Person's and its Affiliates' respective directors, officers, members, managers, employees, contractors, subcontractors, agents, consultants, advisors or other representatives.

19.16. "Services" means (a) functions described in a SOW, PO or other written agreement, together with these Terms as functions for which Seller is responsible; (b) any functions related to the foregoing that are not specifically described in SOW, PO or other written agreement, together with these Terms but are required for the provision of Services and including but not limited to installation services, implementation services, maintenance services, professional services, purchase/ordering of hosting services (including Buyer's access to and use of the Goods on a hosted basis), and any other services that Seller provides hereunder.

19.17. "Specifications" means the most current version of all applicable specifications and requirements either provided by Buyer, including other documents or requirements specifically incorporated or referenced in these Terms, PO, SOW, bills of materials, project schedules, and drawings.