



Terms of Service

These terms are the sole terms of service for contract engineering services and all business relationships and developments between EM Engineering Solutions LLC and its clients, partners, suppliers, vendors, heirs, assignments, and legal representatives, collectively called The Agreeing Party, agrees. The Agreeing Party acknowledges that these terms continually update and this agreement will be available and legally binding at EM's website available at <https://emengineeringsolutions.com/terms-of-service>. The Agreeing Party acknowledges that the continued use of EM's products, solutions, services, website, and continued business relationship constitutes acceptance to this agreement and any modification of these terms therein. No other writings, whether contained in requests for proposals, confirmations, purchase orders, or other documents, shall form a part of the agreement between the Parties, unless the additional terms are set forth and are in writing signed by both Parties, and both Parties expressly agree to additional or modified terms and conditions defined in section "AMENDMENTS".

(The capitalized terms used in this agreement, in addition to those above, are defined in section "DEFINITIONS".)

1 Nature of Engineering Services

It is understood and agreed that:

1.1 Design Methods

EM will use current, proven, and approved Design Methods for all mechanical, electrical, software, embedded firmware, and systems engineering, and/or other analyses during the performance of contract engineering services. All Design Methods are defined in section "DESIGN METHODS" additionally available at EM's website available at <https://emengineeringsolutions.com/solutions>.

1.2 Calculations

Calculations derived from Design Methods incorporate Current Understanding, as such, all areas of engineering development are subject to continued development and refinement.

1.3 Analyses

All analyses performed in any engineering discipline are rendered incomplete due to the involvement of Current Understanding, and as such, can be refined further through future analyses in their respective engineering discipline.



1.4 Contract Extensions

If requested by The Agreeing Party, any extension of services, extension of the contract, Statement of Work, or any other extension shall be subject to additional contracts or an amendment of the existing contract, defined in section "AMENDMENTS".

1.5 Data Sourcing

EM will use technical data used in the open literature, as well as, proprietary company data in the performance of contract engineering services. Upon request, The Agreeing Party shall timely provide EM with all data and information required for the performance of contract engineering services. After receipt of all data and information, EM shall check whether all necessary data and documentation were provided and inform The Agreeing Party in case additional documents need to be provided. Any costs incurred due to late delivery of data and information false or incomplete information or by subsequent changes of the information shall be borne by The Agreeing Party.

1.6 Data Confidentiality

EM agrees that any technical data obtained from any third party or previous client, will not be in any way used, applied, referenced, or considered in the performance of contract engineering services. Furthermore, EM agrees to not use any data from this contract or any proprietary information of The Agreeing Party in any other contract, unless contracted or approved by The Agreeing Party.

1.7 Nature of Engineering Designs

All services carried out under the scope of contract engineering services are of a prototype, developmental, and/or experimental nature, due to the use of Current Understanding. Services provided during the performance of contract engineering services are completed with respect to all engineering standards defined in "STANDARDS" in conjunction with the knowledge of Current Understanding, which can be further refined and developed in their respective engineering disciplines.

1.8 Integration of Services and Products

The Agreeing Party agrees to carefully follow all documents, design notes, diagrams, and/or any other documentation supplied by EM regarding all services and products performed by EM when implementing said services and products outlined in a Statement of Work. Failure to follow the



provided documentation, and/or implement services and products performed in this contract into final products not outlined in a Statement of Work removes all legal recourse and responsibility from EM if any damage to personal property, The Agreeing Party's property, injury, or death of any individual occurs.

1.9 External Services

EM shall have no responsibility or liabilities beyond the obligation to carry out contract engineering services aligned with a Statement of Work in a professional matter.

1.10 Damages

EM agrees that it will revise, restate, and recalculate, at its own expense, any mistakes made by its personnel during the performance of EM's services for such mistakes resulting solely from errors due to negligence or carelessness by EM's staff in the performance of contract engineering services. Such errors include avoidable miscalculations and mistakes in servicing but do not include the recalculation of projects or problems for which negative answers were obtained as a natural and possible outcome of exploration and investigation. The Agreeing Party's sole recourse shall be to obtain recalculation and restatement of results which are found to be in error solely due to an avoidable mistake of EM's employees. Otherwise, there shall be no liability or recourse.

1.11 Limited Liability Clause

EM's liability for damages in the performance of contract engineering services, regardless of whether said damages arise as a breach of warranty, breach of contract, tort, infringement, or otherwise, shall in no event exceed the amount paid to EM by The Agreeing Party for EM's performance of contract engineering services hereunder. In no event will EM have any liability of any nature for any incidental, special, indirect, consequential, multiplied, exemplary, or punitive damages. The pricing of EM's proposal for the performance of contract engineering services has been predicated on EM's and The Agreeing Party's agreement on the foregoing limitation of liability. Unless The Agreeing Party has advised EM of its objection to this limitation of liability clause and has obtained a signed amendment deleting that clause and adjusting the price of the respective deliverables in the resulting Statement of Work, The Agreeing Party agrees that it will not seek to recover damages in excess of the limitation of liability clause, and that it will not contest the validity or enforceability of that clause.

2 Incorporation and Integration of Contract Engineering Services Into a Final Product

It is understood and agreed that:



2.1 Inclusion

Any contract engineering design and development services conducted by EM are preparatory to the inclusion of the resulting components or stages in a full product system by The Agreeing Party.

2.2 Recognition

EM can never be fully cognizant of the entire range of conditions to which the Deliverables of a Statement of Work will ultimately be subjected.

2.3 EM's Responsibilities

EM shall not be responsible for the ultimate application of the Deliverables or stages in any industrial product.

2.4 The Agreeing Party's Responsibilities

The Agreeing Party is responsible for properly integrating contract engineering design and development services by EM and the resulting Deliverables into The Agreeing Party's product, continuously examining and reevaluating the appropriateness of the individual components for each application. The Agreeing Party's individual responsibilities are defined in section "NATURE OF ENGINEERING SERVICES" subsection "INTEGRATION".

2.5 No Warranty

EM makes no warranty concerning the marketability or appropriateness of the stages of components for any particular commercial application.

2.6 Commercial Applications

The commercialization of each deliverable or stage design and the final design worthiness are the sole responsibility of The Agreeing Party.

2.7 Performance Guarantees

EM shall use its best efforts in the performance of contract engineering services hereunder but makes no guarantee or warranty of any nature with regard to the use, performance, or operation of any results of any such contract engineering services.



2.8 Documentation Responsibilities

The final responsibility for the accuracy and correctness of any supplied drawings and the liability for the function of any instrumentation, hardware, apparatus, equipment, mechanism, device, software, or the like delivered by EM or prepared from EM's designs shall rest solely with The Agreeing Party. The Agreeing Party hereby indemnifies EM and holds EM harmless from any and all actions arising from The Agreeing Party's use of the instrumentation, hardware, advice, data, designs, devices, software, or other information provided by EM.

2.9 Merchant Warranties

Except as provided herein, all warranties are excluded. Implied warranties of merchantability and of fitness for a particular purpose are hereby expressly excluded.

2.10 Intellectual Property

EM claims ownership rights to all inventions, patents, copyrights, trademarks, trade secrets, and know-how, including proprietary design and manufacturing technology, (Intellectual Property) which have been previously developed by EM at EM's expense and which will be used as a basis for contract engineering services to be provided to The Agreeing Party. These terms and conditions apply solely to the provision of contract engineering services required to execute the Deliverables of a Statement of Work. An agreement concerning intellectual property derived from goods produced using EM's technology and concerning the licensing of that technology shall be set forth separately in writing and shall be signed by the parties, set forth in section "INTELLECTUAL PROPERTY".

3 Service Levels

3.1 Applicable Levels

EM shall perform the Services so as to meet or exceed the service levels listed in the applicable Statement of Work (the "Service Levels").

3.2 Errors in Services

On The Agreeing Party's notice of any errors or omissions, EM shall provide The Agreeing Party with information and adjustments in the Services for any errors or omissions in the Services.

3.3 Delays in Services

EM shall use reasonable efforts to avoid and remedy in delay in the Services.



4 Design Standards

EM will perform contract engineering services under the following standards for each engineering discipline:

4.1 Mechanical Engineering

EM will perform contract engineering services for the engineering discipline of mechanical engineering under the standards of ANSI, ISO, ASTM, ASME, AWS, EN, IACS, and API office's standards, codes, and requirements and/or any additional regulatory standards by accredited regulatory agencies defined under the scope of work for a particular Statement of Work by The Agreeing Party's request for the mechanical engineering discipline.

4.2 Electrical Engineering

EM will perform contract engineering services for the engineering discipline of electrical engineering under the standards of ANSI, ISO, ASTM, IEEE, ISA, IEC, NEMA, UL, DIN, FCC, NABCB, and IAF's office's standards, codes, and requirements and/or any additional regulatory standards by accredited regulatory agencies defined under the scope of work for a particular Statement of Work by The Agreeing Party's request for the electrical engineering discipline.

4.3 Software Engineering

EM will perform contract engineering services for the engineering discipline of software engineering under the standards of ADA, ISO, GDPR, IEEE, IEC, and HIPAA office's standards, codes, and requirements and/or any additional regulatory standards by accredited regulatory agencies defined under the scope of work for a particular Statement of Work by The Agreeing Party's request for the electrical engineering discipline.

4.4 Embedded Firmware Engineering

EM will perform contract engineering services for the engineering discipline of electrical engineering under the standards of ISO, GDPR, IEEE, IEC, UL, DO, FCC, and the EN office's standards, codes, and requirements and/or any additional regulatory standards by accredited regulatory agencies defined under the scope of work for a particular Statement of Work by The Agreeing Party's request for the embedded firmware engineering discipline.



4.5 Systems Engineering

EM will perform contract engineering services for the engineering discipline of systems engineering under the standards of EIC, ISO, IEEE, INCOSE, EIA, MIL, IEC, DOT, DIN, ECSS, and ANSI/ISA's office's standards, codes, and requirements and/or any additional regulatory standards by accredited regulatory agencies defined under the scope of work for a particular Statement of Work by The Agreeing Party's request for the systems engineering discipline.

5 Statements of Work Standards

5.1 Contents of Statements of Work

The parties shall describe a Statement of Work to be produced under an Engineering Service Agreement for the purpose of executing the Deliverables therein is to include the following contents:

1. Article I - Introduction
 - a. Contact Persons & Personnel
 - i. CLIENT NAME Contact Persons.
 - ii. EM Personnel
 - b. Project Details
 - i. Project Background
 - ii. Purpose Statement
2. Article II - Scope of Work
 - a. Objectives
 - i. Qualitative Objectives
 - ii. Technical Objectives
 - b. Budget
 - i. Project Budgeting
 - ii. Anticipated Costs
 - c. Resource Allocation
 - i. CLIENT NAME's Supplied Resources
 - ii. EM's Supplied Resources
 - d. Dates & Deadlines
 - i. Timeline of Contract Engineering Services
 - ii. Prioritization
 - e. Location
 - i. Locations of Engineering Services
 - ii. Changes to Services
 - iii. Minimization of Disruption
 - f. Extraneous Tasks
 - i. Extraneous Tasks, Responsibilities, & Obligations



- g. Resolving Details
- 3. Article III - Definitions
- 4. Article IV - Project Deliverables
 - a. DELIVERABLES
- 5. Article V - Compensation & Execution
 - a. Compensation for Services
 - i. List Price
 - ii. Invoicing Terms
 - iii. Payment Methods
 - b. Shipping & Packaging
 - i. Shipping Details
 - ii. Packaging Instructions
 - c. Statement of Work Execution
 - i. Security Deposit
 - ii. Applied Quotation
 - iii. Security Deposit Invoice
- 6. Article VI - Other Provisions
 - a. Notice of Subcontracting & Consultancy
 - i. Terms of Subcontracting
 - b. Acceptance / Rejection Criteria
 - i. Terms of Acceptance / Rejection
 - c. Warranty
 - i. No Warranty / Additional Warranty Requested
 - d. Concluding Notes
 - i. Concluding Notes And/Or Extraneous Details
- 7. Article VII - Closure
 - a. Signature & Approval
- 8. Revisions & Approval History

5.2 Contents of a Deliverable

The parties shall describe each Deliverable to be provided under any Statement of work in its own statement of work (each, a "Statement of Work"), each one including:

- 1. The Deliverable's name,
- 2. its Deliverable ID,
- 3. description,
- 4. priority ranking,
- 5. applicable timeline or stages its included within,
- 6. qualitative objectives,
- 7. technical constraints,



8. the budget to be adhered to,
9. anticipated costs from both Parties,
10. all EM personnel required to execute the deliverable,
11. booth Party's supplied resources,
12. location(s) in which contract engineering services is to take place,
13. acceptance / rejection criteria,
14. shipping & handling instructions,
15. any warranties to be included other than the implied,
16. notes and explicit reference to this agreement.

5.3 Integration

A Statement of Work that is signed by both parties, properly marked with a unique identification number, and refers explicitly to this agreement, will be deemed an integrated part of this agreement.

5.4 Severability

Each party may terminate any individual Statement of Work without effecting the remaining agreement or any other Statement of Work.

5.5 Conflict of Terms

If there is a conflict between the terms of this agreement and any Statement of Work, the Statement of Work will control.

5.6 Changes to Statements of Work

1. **Proposing Changes.** Either party may propose changes to the Deliverables, Fees, or schedule of a Statement of Work by giving written notice to the other party.
2. **Finalizing Changes.** If both parties agree to change the Deliverables, Fees, or schedule of a Statement of Work, both parties shall cooperate to execute a written amendment to the relevant Statement of Work detailing the changes.

5.7 Additional Statements of Work

1. **Request Additional Services.** The Agreeing Party may request additional services by written notice to EM reasonably detailing the requested services.
2. **Assess the Request.** Promptly after receiving a request for additional services from The Agreeing Party, EM shall



- i. assess the request to determine if there are circumstances preventing it from providing the services, and
 - ii. if there are no circumstances preventing it from providing the requested services, provide The Agreeing Party with estimated Fees and a timeline for the requested services.
3. **Execute New Statement of Work.** If after receiving EM's estimates The Agreeing Party still wants the requested services, the parties shall execute a new Statement of Work according to the requirements of paragraph "CONTENTS OF STATEMENTS OF WORK".

6 Schedule Of Work

It is agreed and understood that

6.1 Statement of Work Start and End Date

Before signing any Statement of Work, The Agreeing Party and EM will come to an agreement, establishing the Statement of Work's start date and the Statement of Work's terminating date to which the performance of all contract engineering services are to cease unless further amended.

6.2 Work Days

EM is to perform contract engineering services needed to create deliverables defined in Statements of Work on all business days on the hours outlined on EM's website available at <https://emengineeringsolutions.com>, excluding all US federally recognized holidays. EM must notify and communicate with The Agreeing Party if EM experiences any conflicts of work for any standard Work Day.

7 Scope of Work

7.1 The Agreeing Party's Responsibilities

The Agreeing Party must provide EM in a clear, concisely written document, the scope of work that is expected to be completed in the agreed upon contract duration period between the Statement of Work's start and end date. The scope of work document provided by The Agreeing Party must include expected services, materials, quality, schedule, and any other relevant details including specific deadlines that certain criteria and deliverables are supposed to be completed by. Said document should provide clear end goals and implementation intents for the deliverables, with any necessary materials, confidential information, diagrams, and other further documentation needed to complete and perform contract engineering services. Any services not performed by EM that are relevant to the performance of contract engineering services by EM should be declared and/or provided in said document, to which EM may subcontract to execute effectively.



7.2 EM's Responsibilities

EM must follow The Agreeing Party's documentation and deadlines outlining the scope of work for contract engineering services that are to be completed for the deliverables defined in said document. EM must adhere to all deadlines provided by The Agreeing Party. If EM believes it cannot reasonably meet the deadlines provided by The Agreeing Party, EM must send a proposal to The Agreeing Party amending deadlines set by The Agreeing Party to properly achieve the quality and standards needed to produce the deliverables outlined in said document.

8 Intellectual Property

8.1 Each Party Retains Intellectual Property

Subject to paragraph "LICENSE TO EM" below, each party will retain an exclusive interest in and ownership of its Intellectual Property developed before this agreement or outside the scope of this agreement.

8.2 License to EM

The Agreeing Party hereby grants to EM a non-exclusive, non-transferable, non-sublicensable, world-wide, and royalty-free license to use The Agreeing Party's pre-existing Intellectual Property solely for the purpose of providing the deliverables.

8.3 Developed Intellectual Property

If any Intellectual Property is developed under this agreement, whether by one party on its own or jointly-developed by both parties, the parties shall cooperate to execute a separate agreement regarding the ownership of and any licenses regarding that newly-developed Intellectual Property.

9 Budget

9.1 The Agreeing Party's Responsibilities

The Agreeing Party must provide EM in a clear, concisely written document, the budget that is expected to be adhered to in the agreed upon contract duration period. The Agreeing Party's budget must include expected services, materials, quality, schedule, and any other relevant items including specific deadlines that certain criteria and deliverables are supposed to be completed by, of which a specific budget is to be assigned for each item.



9.2 EM's Responsibilities

EM must follow The Agreeing Party's provided budget and deadlines for professional engineering services that are to be completed for the deliverables defined in said document. EM must adhere to all budgets provided by The Agreeing Party. If EM believes it cannot reasonably stay within budgets provided by The Agreeing Party, EM must send a proposal to The Agreeing Party, amending said budget set by The Agreeing Party to properly achieve the quality and standards needed to produce the deliverables outlined in any agreement.

10 Compensation

All prices are deemed as net, as such, The Agreeing Party shall pay EM's list price for the performance of each contract engineering service, in freely available United States Dollars (USD), as listed on EM's website available at <https://emengineeringsolutions.com/solutions>.

11 Payment of Compensation

it is understood and agreed that

11.1 Invoice Delivery

EM shall invoice The Agreeing Party bi-weekly (a Billing Period) for the duration of the performance of contract engineering services.

11.2 Customer Portal

The Agreeing Party agrees to *Zoho Books*'s terms of conditions when using The Agreeing Party's customer portal.

11.3 Invoice Terms

The Agreeing Party agrees to pay each invoice received from EM, in full, within a time period of no more than thirty (30) days from the receiving of each invoice. The Agreeing Party agrees that all items (including, but not limited to products, solutions, services, documents, analyses, and digital files) listed on each invoice are hereby accurate. If The Agreeing Party believes any items to be inaccurate, The Agreeing Party may hold EM indemnified for the inaccuracies. The Agreeing Party and EM must come to a written agreement addressing and solving the inaccuracies, per terms of section "INDEMNIFICATION". **The Agreeing Party holding EM in indemnification does**



not remove any legal responsibility from The Agreeing Party paying any invoice in full, within the specified thirty (30) day time period. If The Agreeing Party and EM cannot reach an agreement within the thirty (30) days of the invoicing payment period, The Agreeing Party shall pay the invoice in its entirety, by the invoice deadline, and EM will reimburse The Agreeing Party for all terms agreed upon in the adjustment agreement once signed by both parties. EM will adjust items, terms, and services listed on the invoice to reflect the agreed-upon solution, signed by both parties.

11.4 No Invoicing

If no invoiceable work occurs during a billing period, EM will not bill The Agreeing Party for that billing period and will resume for the next billing period. EM is not required to notify The Agreeing Party of a blank billing period.

11.5 Payment

The Agreeing Party shall pay each invoice to EM

1. within no more than thirty (30) days after receiving each invoice,
2. in immediately available funds, and
3. to the account number EM specifies below.

11.6 Accounting

EM shall

1. maintain records of its Services to The Agreeing Party, and
2. make these records available to The Agreeing Party on request.

11.7 Invoice Procedure and Requirements

EM shall

1. make each invoice to The Agreeing Party in writing, including
 - i. an invoice number,
 - ii. the invoice date and accounting period,
 - iii. the total amount due,
 - iv. the routing number, direct deposit number, or address the payment should be



- made to, and
- v. the accounting that details the specific deliverables the invoice is for, and
- 2. send each invoice to the recipient The Agreeing Party specifies at the bottom of said agreement

12 Taxes

Each party shall pay the Taxes arising from the party's performance of its obligations and from compensation paid to the party.

13 Late Payments

13.1 Right to Suspend

If The Agreeing Party fails to make payments when due three times over any six-month period, EM may suspend the deliverables until The Agreeing Party pays all outstanding fees. EM may also charge a 10% reinstatement fee for the invoice.

13.2 Interest on Late Payments

Any amount not paid when due will bear interest from the due date until paid at a rate equal to 1% per month (12.68% annually) or the maximum allowed by Law, whichever is less.

14 Acceptance and Rejection

14.1 Inspection Period

The Agreeing Party will have 14 Business Days after it receives each deliverable to inspect and test the deliverable to ensure it meets the acceptance criteria outlined in the applicable Statement of Work (the "Inspection Period").

14.2 Acceptance

If in The Agreeing Party's opinion, the deliverable meets the acceptance criteria, The Agreeing Party shall accept the deliverable and notify EM that it is accepting the deliverable.

14.3 Deemed Acceptance

The Agreeing Party will be deemed to have accepted the deliverable if

1. The Agreeing Party fails to notify EM on or before the expiration of the Inspection Period, or
2. if during the Inspection Period, The Agreeing Party uses or attempts to use the deliverable beyond what is necessary for inspection and testing and in a way a reasonable



person would consider consistent with The Agreeing Party having accepted the deliverable from EM.

14.4 Rejection

If in The Agreeing Party's opinion, the deliverable fails in a material way to meet the acceptance criteria, The Agreeing Party may reject the deliverable by delivering to EM a written list detailing each failure to satisfy the acceptance criteria.

14.5 Opportunity to Cure

If The Agreeing Party rejects the deliverable, EM will have 3 opportunities to promptly cure each failure in the deliverable and re-deliver the deliverable to The Agreeing Party to re-inspect and test.

14.6 Continued Failure to Cure

If in The Agreeing Party's opinion, EM's corrections fail to satisfy the acceptance criteria 3 times, The Agreeing Party may either

1. terminate this agreement, or
2. adjust the acceptance criteria for that deliverable, and
3. require EM to pay the Adjustment Fee.

14.7 Adjustment Fee

"Adjustment Fee" means 10% of deliverable value with a maximum of \$1500.

14.8 Liquidated Damages Statement

The Agreeing Party acknowledges that

1. the actual damages likely to result from the late delivery of a deliverable, due to EM's failure to comply with the Acceptance Criteria, are difficult to estimate when entering this agreement and would be difficult for The Agreeing Party to prove,
2. and The Agreeing Party agrees that EM's payment of the Adjustment Fees serves to compensate The Agreeing Party for EM's failure to timely deliver a deliverable that complies with its acceptance criteria, not to serve as punishment for any such breach by EM.

15 Improvement Opportunities



15.1 Identification

EM shall implement formal processes to proactively identify, investigate, and analyze opportunities to improve the overall success of the parties' relationship and the deliverables, including opportunities to

1. continue to improve the quality of the deliverable ,
2. suggest new deliverables (including new predictive models that could enable The Agreeing Party to maintain or enhance its industry advantages),
3. drive additional revenues to, or cost savings for, The Agreeing Party through technological innovation,
4. optimize EM's business and technical assets through shared or leveraged services, expanded re-use, and consolidation, and
5. provide increased business operational and technical resilience to continue the timely delivery of deliverables despite unforeseen external events.

15.2 Implementation of Improvements

1. **Notice of Opportunities and Costs.** If EM determines that an improvement opportunity is technically possible and could result in meeting one or more of the objectives, EM shall notify The Agreeing Party of the improvement opportunity and any potential increases in Compensation it would require.
2. **Amendments.** If The Agreeing Party requests the improvement, the parties shall cooperate to amend this agreement to provide for the improvement, including any appropriate adjustment in Compensation the parties agree on.

15.3 Tracking Improvements

Each quarter EM shall deliver written reports to The Agreeing Party tracking the implementation of any improvement opportunities and reconciling the expected potential savings with actual related savings.

16 Delivery

16.1 Interpretation

Contract engineering services delivery dates shall be interpreted as estimated, and in no event shall such dates be construed as falling within the meaning of "time is of the essence."

16.2 Liabilities

EM Engineering Solutions LLC shall not be held liable to The Agreeing Party for any costs or



damages due to nonperformance under any Agreement arising out of any cause or event not within the reasonable control of EM Engineering Solutions LLC and without its fault or negligence including, but not limited to: riots, wars or hostilities between any nations, Acts of God, fires, storms, floods or earthquake, strikes, labor disputes, shortages or curtailments of raw materials, labor, power or other utility services, governmental restrictions, or other contingencies.

17 Lead Procurement Clause

If the nature in which EM has been introduced to The Agreeing Party arises from one of EM's partners, vendors, or suppliers, arising from the industries including but not limited to manufacturing, consulting, distribution, construction, and or engineering, for the purposes of utilizing EM as a subcontractor or partial provider to said partner, vendor, or supplier's services or complete solutions, EM is required to perform the contract engineering services requested within the scope of the applicable Statement of Work collaboratively developed with said partner, vendor, or supplier. Upon completion, EM relinquishes the right to develop the contract engineering services and solutions falling under the scope and responsibility of said partner, vendor, or supplier, which duly performs under the terms of the subcontracting for which EM is utilized. EM will deliver The Agreeing Party and all contracted deliverables, documentation, and property to the partner, vendor, or supplier for completion of the services and solutions allocated under the respective Statement of Work under the responsibility of the partner, vendor, or supplier.

18 Management

18.1 Project Managers

Each party shall appoint a relationship manager to manage the relationship established by this agreement (each a "Project Manager") who will

1. have overall managerial responsibility for the party's responsibilities under this agreement, including for EM's Project Manager, coordinating, overseeing, and monitoring the EM's performance of each deliverable,
2. on the other party's request, attend the other party's regularly scheduled executive level meetings and planning sessions in connection with this agreement,
3. serve as the primary liaisons between the parties,
4. maintain steady communication with each other regarding the performance of each deliverable, and
5. be authorized to call on the experience, expertise, and resources of its respective party as necessary and desirable to properly perform their duties.

18.2 Communications Through Project Managers

The parties shall direct all significant communications between themselves to the other party's Project Manager, except that The Agreeing Party may direct communications regarding



disruptions, outages, latency, or other issues with a deliverable to EM's emergency contact designated under paragraph "EMERGENCY CONTACT".

18.3 Contact Information

1. **Project Manager Information.** Promptly after the Effective Date, each party shall provide the other party with the name, telephone number, facsimile number and e-mail address of its Project Manager.
2. **Emergency Contact.** In addition, EM shall provide the name, telephone number, facsimile number and e-mail address of its personnel who The Agreeing Party should contact in case of any disruptions, outages, latency, or other issues with a deliverable.

18.4 Change to Contacts or Contact Information

Either party may change their Project Manager or the contact information of their Project Manager, and in EM's case it's emergency contact and the contact information of the emergency contact, by giving written notice to the other party detailing the changes.

19 Personnel

19.1 Skilled Personnel

EM shall retain and employ personnel, including subcontractors under section "SUBCONTRACTORS" who have the experience, skill, diligence, and expertise necessary and appropriate to perform the deliverables according to standards and service levels required under this agreement.

19.2 Security Training

EM shall ensure that its personnel, on hiring and at least once a year afterward, participate in security awareness training, including at a minimum, EM's security policies, including acceptable use, password protection, data classification, incident and breach reporting, the repercussions of violations, and brief overviews of applicable laws and regulations.

19.3 Supervision of Personnel

EM shall be responsible for all personnel assigned to provide the deliverables to The Agreeing Party.

19.4 The Agreeing Party Supervision and Input on Personnel Activities



1. **Supervision.** The Agreeing Party may direct and supervise the daily responsibilities of EM's personnel only to the extent necessary to perform the deliverables and for security purposes, but not in the capacity of engaging personnel for work.
2. **Input.** The Agreeing Party will not evaluate, test, counsel, or discipline EM's personnel.

19.5 Key Personnel

EM will not, without good cause, replace any Key Personnel unless The Agreeing Party consents in writing.

19.6 Review of Staffing Levels

The parties shall cooperate to

1. regularly review all staffing levels across all Statement of Works to identify appropriate personnel assignments, adjustments, and corrective actions, and
2. if required, make any adjustments to personnel assignments to ensure that the timeline of each Statement of Work is met, and in a way that minimizes the interference on the timelines and projected cost for any Statement of Work that may be affected by a personnel adjustment.

19.7 Replacement Personnel

1. **Request for Good Cause.** For good cause, The Agreeing Party may request a replacement of any of EM's personnel.
2. **Response to Request.** If The Agreeing Party has good cause to request a replacement, within five [5] Business Days of receiving the request, EM shall use reasonable efforts to provide substitute personnel of sufficient skill, knowledge, and training, subject to their availability.

19.8 Exclusivity of Personnel

EM will not assign any of its personnel responsible for providing any deliverables to The Agreeing Party to do any work for any other of EM's clients unless The Agreeing Party consents in writing.

19.9 Background Checks, Criminal Records Checks, and Credit Checks

To the extent permitted by Law and after obtaining the applicable consents from the affected personnel, before assigning any personnel to provide deliverables under this agreement EM shall

1. complete background checks on all these personnel,
2. on The Agreeing Party's reasonable request and sole expense, update any background



checks, and

3. on The Agreeing Party's reasonable request, perform or update criminal records checks and credit checks on these personnel, at The Agreeing Party's expense unless criminal records checks and credit checks are required under a Statement of Work applicable to the personnel in question.

19.10 Failing Background Check

EM will not permit any personnel who fail any of the checks described in the paragraph directly above to continue to provide any deliverables or have access to any of The Agreeing Party's Data.

19.11 Obligations as Employer

EM shall be solely responsible for setting compensation rates and methods of pay for its personnel, including

1. determining and paying all wages and salaries,
2. determining and providing benefits,
3. ensuring all compensation complies with Law, and
4. filing any reports on the personnel providing any deliverables required by Law and with the appropriate Governmental Authorities.

20 Subcontractors

20.1 Subcontracting Permitted

EM may subcontract, either wholly or partially, any Work under this agreement to its Affiliates or any other third party.

20.2 Protective Restrictions on Subcontractors

If EM subcontracts, it shall ensure the subcontract contains at least the same level of restrictions on the subcontractor, including confidentiality, non-solicitation and non-competition, compliance with Law, and security obligations, are at least as restrictive as those contained in this agreement.

20.3 EM Remains Responsible

EM will

1. be deemed to have performed any Work actually performed by a subcontractor, and
2. remain responsible and liable for any Work performed by a subcontractor as if EM had provided the Work itself.



21 Facilities and Equipment

21.1 Services Requiring The Agreeing Party's Equipment at EM's Facilities

The following terms will apply to the extent EM is providing using The Agreeing Party Equipment at EM's facilities:

1. **Use Only for Services.** EM shall install The Agreeing Party's Equipment in EM's facilities only to the extent necessary and desirable for the purpose of providing the deliverables.
2. **Right to Use.** The Agreeing Party hereby grants EM all necessary rights and permissions necessary to use The Agreeing Party's equipment for the purpose of providing the deliverables.
3. **No Ownership Interests.** EM's use and placement of The Agreeing Party's Equipment in EM's facilities will not create or vest in The Agreeing Party any easement, leasehold interest, or other property right of any nature in EM's facilities or in any property located in EM facilities, except for The Agreeing Party's Equipment.
4. **No Restrictions on EM's Use of Facilities.** Nothing in this section will limit EM's right to access, operate, and use its facilities.
5. **The Agreeing Party's Access to EM's Facilities**
 - i. **Access on Notice.** On 48 hours written notice from The Agreeing Party, EM shall provide The Agreeing Party, and its Representatives, with reasonable access to The Agreeing Party's Equipment in EM's facilities during EM's regular business hours.
 - ii. **Contents of Notice.** The Agreeing Party shall include in its notice to EM the identity of its Representatives who will access EM's facilities, the specific purposes for which The Agreeing Party needs access to its Equipment, and the work The Agreeing Party intends to undertake.
 - iii. **Reject Access.** Subject to paragraph "EMERGENCY ACCESS" directly below, EM may reasonably reject, delay, or restrict The Agreeing Party's access for good cause.
 - iv. **Emergency Access.** In the case of a bona fide emergency in which The Agreeing Party's Representatives need immediate access to its Equipment in EM's facilities, EM shall use reasonable efforts to grant immediate access, provided that The Agreeing Party's Representatives must comply with EM's emergency access procedures as posted or as otherwise communicated in writing, and with any other reasonable terms of access EM requires.
6. **Maintenance**
 - i. **Periodic Maintenance.** EM may periodically conduct routine scheduled maintenance of its facilities during which time The Agreeing Party's Equipment may be unable to transmit or receive data, and The Agreeing Party may be unable to access its Equipment.
 - ii. **Notice and Timing Maintenance.** EM shall



- a. provide The Agreeing Party with written notice at least 15 Business Days before any routine maintenance. EM shall
 - b. use reasonable efforts to conduct this maintenance during non-peak hours and to complete this maintenance as promptly and efficiently as possible so as to minimize any inconvenience to The Agreeing Party, any interruption of the deliverables, and any failure to achieve applicable service levels.
 - iii. **No Liability.** During this routine maintenance, EM will not be liable for any interruption to the deliverables or failures to achieve any applicable service levels, unless the interruption or failure to achieve any applicable service levels is the result of EM's gross negligence or willful misconduct.
 - iv. **Emergency Maintenance.** If EM is required to conduct emergency maintenance on its facilities, the notice provisions of this paragraph "MAINTENANCE" will not apply, and EM will only be required to give as much notice as practicable.
7. **Placement.** EM may decide the placement of The Agreeing Party's Equipment within EM's facilities.

21.2 Services Requiring The Agreeing Party's Equipment at The Agreeing Party's Facilities

The following terms apply to the extent EM is providing deliverables using The Agreeing Party's Equipment at The Agreeing Party's facilities:

1. **Access.** The Agreeing Party shall provide EM with reasonable and safe access to The Agreeing Party's facilities, at all times reasonably required by EM to provide the deliverables.
2. **No Liability for Impact on Services Caused by Delay.** EM will not be liable to The Agreeing Party for any negative impact on the deliverables or service levels that is caused by or is the direct result of The Agreeing Party's unreasonable denial or delay of EM's access to The Agreeing Party's facilities.
3. **Use of Facilities and Support.** The Agreeing Party shall provide EM, at no expense to EM, temporary use of space, Equipment, and support at The Agreeing Party's facilities as reasonably necessary for EM to provide the deliverables, including all heat, light, power, air conditioning, uninterruptible power supply and other similar utilities, reasonable office space, furniture, reasonably secure storage space and equipment staging facilities, office supplies, telephone service, office support services (including security and janitorial), coordination of facilities security requirements, and administrative support.
4. **Provide Safe Working Environment.** The Agreeing Party shall ensure that its facilities constitutes a safe working environment, and complies with all applicable Laws.
5. **No Ownership Interest.** EM's use of any The Agreeing Party's facilities will not constitute, create, or vest in EM any leasehold interest, easement, or other property right in The Agreeing Party's facilities or Equipment.
6. **No Restrictions on The Agreeing Party's Use of Facilities.** Nothing in this section will limit



The Agreeing Party's right to access, operate, and use its facilities.

7. **EM's Equipment at The Agreeing Party's facilities.** The Agreeing Party shall maintain all EM Equipment (if any), whether owned, rented, or leased by EM, that is located at The Agreeing Party's facilities in a room accessible only by using a key or computerized card-access security system, and only by The Agreeing Party employees who are responsible for the operation or maintenance of that Equipment and any EM-authorized personnel.

21.3 Parties Conduct While at Each Other's Facilities

Each party shall exercise due care and diligence to

1. prevent any injury to Persons or damage to property while at the other party's facilities, and
2. comply with the other party's policies and procedures the other party gives it notice of.

22 Business Continuity and Disaster Recovery Plans

22.1 Business Continuity Plans

EM shall maintain a business continuity plan for each deliverable, describing measures EM will implement to recover from a Disaster.

22.2 Disaster Recovery Plans

EM shall include in each business continuity plan a plan for the recovery of critical technology systems, and procedures for restoring business operations at the primary location or at a designated recovery site for those critical technology systems, if necessary.

22.3 Alternative Communications Plans

The parties shall cooperate to establish a plan for alternative communications in the event of a Disaster.

22.4 Disaster Definition

"Disaster" means, for the purpose of this agreement, any unplanned impairment or interruption of those systems, resources, or processes that enable standard performance or functionality of the applicable deliverable.

23 Publicity

23.1 Consent

Neither party will use the other party's name, logo, or trademarks, or issue any press release or



public announcement regarding this agreement, without the other party's written consent, unless specifically permitted under this agreement or required by Law.

23.2 Cooperation

The parties shall cooperate to draft all appropriate press releases and other public announcements relating to the subject matter of this agreement and the relationship between the parties.

23.3 No Unreasonable Delay

The parties will not unreasonably withhold or delay their consent to press releases or public announcements.

24 Use of Name

Neither party will use the other party's name, logos, trademarks, or other marks without that party's written consent.

25 Inspection and Audit of Books and Records

25.1 Retain Books and Records

Each party shall keep its Books and Records (including personnel files) that relate to this agreement, and maintain them in a manner reasonably consistent with prior practices.

25.2 Inspection and Audit

On reasonable notice from the other party, each party shall provide the other party, and the other party's Representatives, reasonable access to its Books and Records that relate to this agreement (and allow the other party to make photocopies, at the other party's expense), during normal business hours.

25.3 Corrections

If either party's audit reveals errors or discrepancies in the other party's Books and Records, the other party shall promptly correct the error or discrepancy, including refunding any over-payments or making up any under-payments.

26 Inspection and Audit of Facilities and Employees

26.1 Inspection

On reasonable notice from EM, The Agreeing Party shall provide EM access to its facilities,



[specified] Representatives relevant to this agreement during normal business hours, so that EM can inspect and audit The Agreeing Party's facilities, and [specified] Representatives, to verify The Agreeing Party is complying with this agreement.

26.2 Conduct of Inspection

1. **Minimal Interference.** EM shall conduct any inspection and audit in a manner meant to minimize disruption to The Agreeing Party's business, including reasonably restricting the scope, manner, and duration of any inspection to minimize disruption.
2. **Cooperation.** The Agreeing Party shall cooperate with EM's inspection and audit.

27 Definitions

"Affiliate" of any Person means, at the time the determination is made, any other Person that, directly or indirectly, controls, is controlled by, or is under common control with that Person.

"Books and Records" means all books and records, including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, lists of parties to and prospects for franchise agreements, supplier lists, production data, quality control records and procedures, customer complaints, inquiry files, research, development files, records, data (including all correspondence with any Governmental Authority), sales material and records (including pricing history and sales and pricing policies and practices), strategic plans, marketing and promotional surveys, and material, research, and files relating to Intellectual Property.

"Business Day" means a day other than a Saturday, a Sunday, or any other day on which the principal banks located in New York, New York are not open for business.

"Compensation" is defined in section "COMPENSATION".

"Confidential Information" is defined in the section "CONFIDENTIALITY OBLIGATIONS".

"Current Term" is defined in section "TERM".

"Current Understanding" is defined as the knowledge that EM and its employees possess at the time of the performance of services outlined in this contract. Current Understanding renders some processes incomplete as they can be further expanded with more experience, developments, and refinements in the discipline of engineering performed. Defined further in



section "NATURE OF ENGINEERING SERVICES".

"Data" means all information of, about, or relating to The Agreeing Party, including information

1. The Agreeing Party provides to EM in connection with the deliverables,
2. EM learns about The Agreeing Party arising directly or indirectly from EM's performance of services, and
3. any of The Agreeing Party's Confidential Information.

"Deliverable" means any good or product arising out of the performance of contract engineering services by EM

"Design Method" means any technique, methodology, logical conclusion, application of data, engineering, software feature, or other method of contract engineering service provocation that is used to enhance and execute a Deliverable of a Statement of Work.

"Disaster" is defined in section "BUSINESS CONTINUITY AND DISASTER RECOVERY PLANS".

"Effective Date" is defined in section "TERM".

"Engineering Service Agreement" is an agreement between EM and another Party defining the standards and practices both parties will abide by during the performance of contract engineering services. The ESA sets deliverables for what will be produced, how it will be produced, when it will be produced by, how much will it cost, and how those fees will be paid. In the performance of professional engineering services, the ESA sets liabilities and protections for both parties where necessary, defining obligations, property rights, default standards, acceptance & rejection, and delivery liabilities.

"Equipment" means, for either party, the computer and telecommunications equipment owned by that party and used in connection with providing and/or receiving the deliverables.

"Initial Term" is defined in section "TERM".

"Inspection Period" is defined in "ACCEPTANCE AND REJECTION".



"Intellectual Property" means any and all of the following in any jurisdiction throughout the world

1. trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing,
2. copyrights, including all applications and registrations related to the foregoing,
3. trade secrets and confidential know-how,
4. patents and patent applications,
5. websites and internet domain name registrations, and
6. other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys' fees for past, present, and future infringement, and any other rights relating to any of the foregoing).

"Key Personnel" is defined in section "STATEMENTS OF WORK".

"Law" means

1. any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and
2. any official directive, protocol, code, guideline, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.

"Non-Solicitation Period" is defined in section "MUTUAL NON-SOLICITATION".

"Person" includes

1. any corporation, company, limited liability company, partnership, Governmental Authority, joint venture, fund, trust, association, syndicate, organization, or other entity or group of persons, whether incorporated or not, and
2. any individual.

"Project Manager" is defined in section "MANAGEMENT".

"Renewal Term" is defined in section "TERM".

"Representative" means, for any Person, that Person's directors, officers, shareholders, owners, partners, employees, agents, professional advisors[, in connection with the transactions



contemplated in this agreement], and any other authorized representatives.

"Services" is defined in section "SERVICES".

"Statement of Work" is defined in section "STATEMENTS OF WORK".

"Subsidiaries" means any legal entity

1. that a party owns more than 50% of the entity's outstanding voting securities or equity interests, or
2. of which a party is a general partner (excluding partnerships in which such party or any Subsidiary of such party does not have a majority of the voting interests in such partnership).

"Taxes" includes all taxes, assessments, charges, duties, fees, levies, and other charges of a Governmental Authority, including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other taxes of any kind for which a party may have any liability imposed by any Governmental Authority, whether disputed or not, any related charges, interest or penalties imposed by any Governmental Authority, and any liability for any other person as a transferee or successor by Law, contract or otherwise.

"The Agreeing Party" is defined in the introduction of this agreement.

28 Interpretation

1. References to Specific Terms

- i. **Accounting Principles.** Unless otherwise specified, where the character or amount of any asset or liability, item of revenue, or expense is required to be determined, or any consolidation or other accounting computation is required to be made, that determination or calculation will be made in accordance with the generally accepted accounting principles defined by the professional accounting industry in effect in the United States ("GAAP").
- ii. **Currency.** Unless otherwise specified, all dollar amounts expressed in this agreement refer to American currency.
- iii. **"Including."** Where this agreement uses the word "including," it means "including without limitation," and where it uses the word "includes," it means "includes



without limitation."

- iv. **"Knowledge."** Where any representation, warranty, or other statement in this agreement, or in any other document entered into or delivered under this agreement,] is expressed by a party to be "to its knowledge," or is otherwise expressed to be limited in scope to facts or matters known to the party or of which the party is aware, it means:
 - a. the then-current, actual knowledge of the directors and officers of that party, and
 - b. the knowledge that would or should have come to the attention of any of them had they investigated the facts related to that statement and made reasonable inquiries of other individuals reasonably likely to have knowledge of facts related to that statement.
 - v. **Statutes, etc.** Unless specified otherwise, any reference in this agreement to a statute includes the rules, regulations, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those rules or policies.
2. **Number and Gender.** Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.
 3. **Headings.** The headings used in this agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.
 4. **Internal References.** References in this agreement to sections and other subdivisions are to those parts of this agreement.
 5. **Calculation of Time.** In this agreement, a period of days begins on the first day after the event that began the period and ends at 5:00 p.m. Eastern Standard Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 5:00 p.m. Eastern Standard Time on the next Business Day.
 6. **Construction of Terms.** The parties have each participated in settling the terms of this agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party will not apply in interpreting this agreement.
 7. **Conflict of Terms.** If there is any inconsistency between the terms of this agreement and those in any schedule to this agreement or in any document entered into under this agreement, the terms of this agreement will prevail. The parties shall take all necessary steps to conform the inconsistent terms to the terms of this agreement.

29 Notices

1. **Method of Notice.** The parties shall give all notices and communications between the parties in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid[, (iv) fax][, or (v) electronic mail] to the party's address specified in this agreement, or to the address that a party has notified to be that party's address for the purposes of this section.



2. **Receipt of Notice.** A notice given under this agreement will be effective on
 - i. the other party's receipt of it, or
 - ii. if mailed, the earlier of the other party's receipt of it and the [fifth] business day after mailing it.

30 Limitation on Liability

Neither party will be liable for breach-of-contract damages that are remote or speculative, or that the breaching party could not reasonably have foreseen on entry into this agreement.

31 No Admission of Liability

Neither party will consider, deem, or suggest that anything in this agreement constitutes the other party's admission of liability, wrongdoing, or violation of Law.

32 Term

32.1 Initial Term

The initial term of this agreement begins on the Effective Date and will continue indefinitely until all deliverables are accepted, rendering the contract complete, unless terminated earlier (the "Initial Term").

32.2 Term Definition

"Term" means either the Initial Term.

32.3 Trade Secrets

In connection with Confidential Information that constitutes a trade secret, the obligation of confidentiality will continue until that information is no longer a trade secret.

32.4 Other Confidential Information

In connection with all other Confidential Information, the obligations of this agreement will begin on the Effective Date and will continue indefinitely.

33 Confidential Information

33.1 For purposes of this agreement, "Confidential Information" includes:

1. any trade secret, know-how, invention, concept, software program, source code, object code, application, documentation, schematic, procedure, contract, information,



knowledge, data, database, process, technique, design, drawing, program, formula or test data, work in progress, engineering, manufacturing, marketing, financial, sales, supplier, technical, scientific, customer, employee, investor, or business information, whether in oral, written, graphic, or electronic form;

2. any non-public business information, including personnel data, correspondence with any Governmental Authority, historical customer information and data, historical cost information such as budgets, operating expenses, and capital costs, and projected capital additions, operating cost information, and other business, and financial reports and forecasts;
3. any document, diagram, photograph, drawing, computer program, or other communication that is either conspicuously marked "confidential", or is known or reasonably should have been known by the Receiving Party to be confidential; and
4. any advice, information, exhibits, documentation, or any other information that the Receiving Party should reasonably expect would be protected by attorney-client privilege or work product doctrine or other applicable privileges.

34 Confidentiality

34.1 Confidentiality Obligation

The receiving party shall hold in confidence all Confidential Information disclosed by the disclosing party to the receiving party.

34.2 Use Solely for Purpose

A receiving party may only use the Confidential Information according to the terms of this agreement[and solely for the Purpose]. Neither Party will use the other Party's Confidential Information to solicit, for any purpose, the other Party's affiliates, competitors, customers, suppliers, or other business associates, or recruit the other Party's employees.

34.3 Non-Disclosure

Discloser may not disclose Confidential Information, [the existence of this agreement, the Transaction, or the Purpose], except to the extent allowed under paragraphs "PERMITTED DISCLOSURE" and "REQUIRED DISCLOSURE".

1. **Permitted Disclosure.** Discloser may disclose Confidential Information to its Representatives
 - i. if and to the extent that Recipient consents in writing to such disclosure, or
 - ii. to the Discloser's officers, directors, employees, Affiliates, or Representatives who
 - a. need to know the Confidential Information in connection with the Purpose,
 - b. have been informed of the confidentiality obligations of this agreement,



and

c. agree comply with the confidentiality obligations of this agreement.

2. **Required Disclosure.** Discloser may disclose Confidential Information if it is required to do so by Law but only if Discloser
- i. gives Recipient Notice to allow it a reasonable opportunity to either seek a protective order or other appropriate remedy or waive the recipient's compliance with the confidentiality obligations,
 - ii. reasonably cooperates with Recipient in its reasonable efforts to obtain a protective order or other appropriate remedy,
 - iii. discloses only that portion of the Confidential Information that, having consulted with its counsel, it is legally required to disclose, and
 - iv. uses reasonable efforts to obtain reliable written assurance from the third party that the Confidential Information will be kept confidential.

34.4 Standard of Care

In protecting the Confidential Information, Discloser shall exercise at least the same degree of care as it uses with its own Confidential Information, but in no event less than reasonable care.

34.5 Burden of Proof

Discloser will have the burden of proof relating to all exceptions to the definition of Confidential Information.

34.6 No Modification of Confidential Information

The receiving party will not copy, decompile, modify, reverse engineer, or create derivative works out of any Confidential Information without the disclosing party's written consent.

35 EM's Use of Data

35.1 Purpose

EM will use The Agreeing Party's Data only in furtherance of this agreement and in providing the deliverables.

35.2 Standard of Care

EM shall exercise at least the same degree of care as it uses with its own data and Confidential Information, but in no event less than reasonable care, to protect The Agreeing Party's Data from misuse and unauthorized access or disclosure.



35.3 Safeguards Around Data

EM shall use appropriate safeguards to protect The Agreeing Party's Data from misuse and unauthorized access or disclosure, including

1. maintaining adequate physical controls and password protections for any server or system on which The Agreeing Party's Data is stored,
2. ensuring The Agreeing Party's Data is not stored on any mobile device (for example, a laptop or smartphone) or transmitted electronically unless encrypted, and
3. taking any other measures reasonably necessary to prevent any use or disclosure of The Agreeing Party's Data other than as allowed under this agreement.

35.4 Permitted Disclosure

EM may disclose The Agreeing Party's Data only

1. to the extent necessary, and
2. to its officers, directors, employees, consultants, and representatives on a need-to-know basis.

35.5 Required Disclosure

If EM is compelled by Law to disclose any of The Agreeing Party's Data, EM shall notify The Agreeing Party before disclosing the compelled Data.

35.6 Unauthorized Disclosure

1. **Report.** Within three [3] Business Days' of EM becoming aware of any unauthorized use or disclosure of The Agreeing Party's Data, EM shall promptly report that unauthorized use or disclosure to The Agreeing Party.
2. **Cooperation and Mitigation.** EM shall cooperate with any remediation that The Agreeing Party, in its discretion, determines is necessary to
 - i. address any applicable reporting requirements, and
 - ii. mitigate any effects of such unauthorized use or disclosure of The Agreeing Party's Data.

35.7 Agents and Subcontractors

EM shall ensure that any employees, agents, and representatives, including subcontractors, to whom it provides The Agreeing Party's Data agree to the same restrictions and conditions listed in this agreement.



35.8 No Modification of Data

EM shall not copy, decompile, modify, reverse engineer, or create derivative works out of any of The Agreeing Party's Data.

36 Mutual Non-Solicitation

36.1 Non-Solicitation of Employees and Customers

During the period starting on the Effective Date and ending 14 Business Days after the termination or expiration of this agreement (the "Non-Solicitation Period"), neither party will directly or indirectly, on its own behalf or in the service or on behalf of others, in any capacity

1. induce or attempt to induce any officer, director, or employee to leave the other party, or
2. solicit or accept, or attempt to solicit or accept, the business of any customer, consultant, or patron of the other party.

36.2 Permitted Hirings and Business

1. **Voluntary Contacts.** Each party may employ or accept the business of the other party's officers, directors, employees, customers, consultants, or patrons who contact the party on their own initiative without any direct or indirect solicitation or encouragement by the party.
2. **Former Employees.** Each party may employ any former officer, director, or employee of the other party whose employment with the other party has terminated.
3. **Former Customers.** Each party may do business with any former customer, consultant, or patron of the other party who no longer does business with the other party.

37 Dispute Resolution

1. **Arbitration.** Any dispute or controversy arising out of this agreement and "SUBJECT MATTER OF THE AGREEMENT" will be settled by arbitration in the State of Michigan, according to the rules of the American Arbitration Association then in effect, and by two [2] arbitrators.
2. **Judgment.** Judgment may be entered on the arbitrator's award in any court having jurisdiction.
3. **Arbitrator's Authority.** The arbitrator will not have the power to award any punitive [or consequential] damages.

38 Default

38.1 Default Due to Work Stoppage

In the event of a work stoppage called by or caused by The Agreeing Party lasting more than five



(5) working days, the contract may be declared by EM to be in default.

38.2 Default by Late Payment

In the event of late payments, a ten (10) day warning will be issued by EM, after which the contract is in default.

38.3 Defaulted Contracts

A contract in default concludes all work efforts.

38.4 Default Remedies

In the event of a contract default, both parties shall negotiate in good faith to resume work as soon as possible. Work shall be resumed as soon as all issues are resolved, and an amended contract is put in place. It is understood that resumption is on a "time available basis", as other commitments may have been made in the interim.

39 Effect of Termination

39.1 Termination of Obligations

Subject to paragraph "PAYMENT OBLIGATIONS", on termination or expiration of this agreement, each party's rights and obligations under this agreement will cease immediately.

39.2 Payment Obligations

Even after the termination of this agreement, each party shall

1. pay any amounts it owes to the other party, including payment obligations for services already rendered, work already performed, goods already delivered, or expenses already incurred, and
2. refund any payments received but not yet earned, including payments for services not rendered, work not performed, or goods not delivered, expenses forwarded.

39.3 No Further Liability

On termination or expiration of this agreement, neither party will be liable to the other party, except for liability

1. that arose before the termination or expiration of this agreement, or
2. arising after the termination or expiration of this agreement and in connection with



sections "CONFIDENTIALITY", "TAXES", or "TERMINATION".

39.4 Advice as to Status of Work

On termination of this agreement or of a particular Statement of Work, EM shall

1. Inform The Agreeing Party of the status of the performance of the deliverables under any Statements of Work still in effect, and
2. on The Agreeing Party's request, provide The Agreeing Party with any deliverables, including any work in progress, under a terminated Statement of Work.

39.5 Termination Assistance Services

Unless EM terminates this agreement or a Statement of Work for The Agreeing Party's material breach, EM shall cooperate with The Agreeing Party to design and provide termination assistance services to The Agreeing Party for a period not to exceed [three] months following termination of the agreement or the particular Statement of Work, on terms that are fair and commercially reasonable and generally commensurate and consistent with leading industry practices concerning the provision of transition assistance and cooperation services for services similar to the deliverables.

39.6 Transition Plan

On The Agreeing Party's request, EM shall develop and provide to The Agreeing Party for approval, and once The Agreeing Party approves, monitor and regularly update, a detailed transition plan to provide for an orderly transition on termination that includes, among other things, a transition timeline and particulars of the resources to be assigned to implement the transition plan.

39.7 Transition of Services

On termination of this agreement for any reason, EM shall

1. cooperate with The Agreeing Party and The Agreeing Party's replacement service provider to provide for an orderly transition of the deliverables, and
2. as part of the transition plan referred in paragraph "TRANSITION PLAN", or otherwise as The Agreeing Party requests, deliver over to The Agreeing Party documentation reasonably necessary to transition the deliverables, but in no case will EM be required to disclose any of its Confidential Information or Intellectual Property under this paragraph.

40 Return or Destruction of Confidential Information



40.1 Obligation to Return or Destroy

Subject to paragraph "ARCHIVE EXCEPTION", on the expiration or termination of this agreement, or on the disclosing party's request, the receiving party shall promptly

1. return to the disclosing party all Confidential Information provided by the disclosing party,
2. destroy all copies it made of Confidential Information, and
3. if requested by the disclosing party, deliver to the disclosing party a certificate executed by the receiving party confirming compliance with the return or destruction obligation under this section.

40.2 Archive Exception

1. **Comply With Law or Policy.** The receiving party may retain an archival copy of the Confidential Information, to the extent necessary to comply with Law or archival policies.
2. **Remain Subject to Confidentiality Obligations.** The receiving party shall continue to hold any Confidential Information retained under this section in confidence, subject to all confidentiality obligations under this agreement.

41 Return of Property

On termination of this agreement, or on EM's request, The Agreeing Party shall return to EM all EM information, documents, equipment, files, and other property, including Intellectual Property, both originals and copies, in The Agreeing Party's possession or in its direct or indirect control.

42 Insurance

42.1 Insurance Requirement

Each party shall maintain the insurance necessary to cover its obligations and responsibilities under this agreement, or any amount required by Law, whichever is less.

42.2 Proof of Insurance

At the other party's request, each party shall provide the other party with certificates or other acceptable proof of its insurance, describing the coverage of its insurance, and notice of any material change to its insurance.

42.3 Additional Insurance

Either party may require the other party to obtain a reasonable amount of additional insurance, by providing the other party with

1. good reason for the additional insurance, and



2. requirements for the additional insurance.

42.4 Additional Insured

1. **Add Each Other Added to Insurance Policy.** Each party shall, within thirty [30] Business Days' of the Effective Date, have its insurer add the other party as an additional insured to its policy.
2. **Certificate of Insurance.** Each party shall also have its insurer send a certificate to the other party, proving the other party has been added to its policy, and confirming that the insurer will give the other party [30] Business Days written notice before any proposed cancelation, modification, or reduction in coverage of its policy.

42.5 No Contribution

No insurance carried by either party will be subject to contribution.

43 Indemnification

43.1 Indemnification by EM

EM (as an indemnifying party) shall indemnify The Agreeing Party (as an indemnified party) against all losses and expenses arising out of any proceeding

1. brought by either a third party or The Agreeing Party, and
2. arising out of EM's breach of its obligations, representations, warranties, or covenants under this agreement.

43.2 Mutual Indemnification

Each party (as an indemnifying party) shall indemnify the other (as an indemnified party) against all losses arising out of any proceeding

1. brought by either a third party or an indemnified party, and
2. arising out of the indemnifying party's willful misconduct or gross negligence.

43.3 Exclusions

Neither party will be required to indemnify the other against losses to the extent the other party acted unlawfully, negligently, or intentionally to cause those losses.

43.4 Notice and Failure to Notify

1. **Notice Requirement.** Before bringing a claim for indemnification, the indemnified party



shall

- i. notify the indemnifying party of the indemnifiable proceeding, and
 - ii. deliver to the indemnifying party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.
2. **Failure to Notify.** If the indemnified party fails to notify the indemnifying party of the indemnifiable proceeding, the indemnifying party will be relieved of its indemnification obligations to the extent it was prejudiced by the indemnified party's failure.

43.5 Defense

The indemnifying party may elect to defend the indemnified party in the proceeding by giving prompt written notice after receiving notice of the proceeding.

43.6 Authority to Contest, Pay, or Settle

The indemnifying party may contest, pay, or settle the proceeding without obtaining the indemnified party's consent, only if the indemnifying party's decision

1. does not require the indemnified party to make any admission that it acted unlawfully,
2. does not effect any other legal proceeding against the indemnified party,
3. provides that the indemnifying party will pay the claimant's monetary damages in full, and
4. requires claimant release the indemnified party from all liability related to the proceeding.

43.7 Exclusive Remedy

The parties' rights to indemnification is the exclusive remedy available in connection with the indemnifiable proceedings described in this section "INDEMNIFICATION".

44 Force Majeure

A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is

1. beyond the reasonable control of a party,
2. materially affects the performance of any of its obligations under this agreement, and
3. could not reasonably have been foreseen or provided against, but
4. will not be excused for failure or delay resulting from only general economic conditions or other general market effects.

45 Waiver

1. **Affirmative Waivers.** Neither party's failure or neglect to enforce any rights under this agreement will be deemed to be a waiver of that party's rights.
2. **Written Waivers.** A waiver or extension is only effective if it is in writing and signed by



the party granting it.

3. **No General Waivers.** A party's failure or neglect to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.
4. **No Course of Dealing.** No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

46 No Warranty

46.1 "As-Is"

Unless otherwise listed in this agreement, the deliverables are provided "as is," with all faults, defects, bugs, and errors.

46.2 No Warranty

Unless otherwise listed in this agreement,

1. EM does not make any warranty regarding the deliverable, which includes that
2. *EM disclaims to the [fullest] extent authorized by Law any and all [other] warranties, whether express or implied, including any implied warranties of [title, non-infringement, quiet enjoyment, integration,] merchantability or fitness for a particular purpose.*

47 Severability

If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

48 Assignment and Successors

1. **Assignment.** Neither party may assign this agreement or any of their rights or obligations under this agreement without the prior written consent of the other party.
2. **Successors.** This agreement benefits and binds the parties and their respective heirs, successors, executors, administrators, legal and personal representatives, and permitted assigns.

49 Relationship of the Parties

49.1 No Relationship

Nothing in this agreement creates any special relationship between the parties, such as a partnership, joint venture, or employee/employer relationship between the parties.

49.2 No Authority

Neither party will have the authority to, and will not, act as agent for or on behalf of the other party or represent or bind the other party in any manner.



50 No Third-Party Beneficiaries

Unless explicitly stated otherwise elsewhere in this agreement, no Person other than the parties themselves has any rights or remedies under this agreement.

51 Permits

51.1 Holding

Each party holds all Permits necessary for it to execute this agreement and perform its obligations under this agreement.

51.2 No Suspension

Neither party's Permits are subject to any, pending (or, to the respective party's knowledge, threatened) material suspension or cancellation.

51.3 Compliance

To each party's respective Knowledge, each party[, and their respective Subsidiaries,] is complying and has complied with the terms of all its Permits, except for non-compliance that would not reasonably be expected to have a Material Adverse Effect.

52 Attorney Fees

In the event of any action arising out of or relating to this agreement, each party shall bear its own expenses, including reasonable attorneys fees, incurred in connection with such action.

53 Waiver of Jury Trial

Each party hereby irrevocably waives its rights to trial by jury in any Action or proceeding arising out of this agreement or the transactions relating to its subject matter.

54 Mitigation

Each party shall use reasonable efforts to mitigate all losses under this agreement.

55 Regulatory Matters

Each party shall promptly notify the other

1. if it becomes the subject of any material claim or demand by any Governmental Authority regarding the deliverables or otherwise regarding this agreement, or Action relating to such a material claim or demand that is brought by either a Governmental Authority or other third party, and
2. of any updates in the status or disposition of any such claim, demand, or action.



56 Export Control Laws

Each party shall obtain all Permits necessary to and otherwise comply with all Laws on export control applicable to this agreement and all transactions contemplated under this agreement.

57 Compliance with Laws and Procedures

57.1 Compliance with Laws

The Agreeing Party shall

1. comply with all applicable Laws [relating to "SUBJECT MATTER OF THE AGREEMENT"],
2. keep records evidencing its compliance, and
3. on EM's reasonable request, provide these records of compliance to EM.

57.2 Compliance with Safety Procedures.

[When on EM's premises,] The Agreeing Party shall comply with EM's reasonable safety requirements, policies, and procedures bearing on the performance of this agreement.

57.3 Notice of Non-Compliance

The Agreeing Party shall notify EM if it becomes aware of any non-compliance in connection with this section.

58 Governing Law

This agreement shall be governed, construed, and enforced in accordance with the laws of the State of Michigan and the federal laws of the United States applicable therein, without regard to its conflict of laws principles.

59 Mutual Representations

59.1 Authority and Capacity

The parties have the authority and capacity to enter into this agreement.

59.2 Execution and Delivery

The parties have executed and delivered this agreement.

59.3 Enforceability

This agreement constitutes a legal, valid, and binding obligation, enforceable against the parties according to its terms.



59.4 No Conflicts

Neither party is under any restriction or obligation that may affect the performance of its obligations under this agreement.

60 Amendment and Alteration

If at any time during the continuance of this Agreement, the parties hereto shall deem it necessary or expedient to make any alteration in any article, clause, matter, or thing herein contained for the more advantageous or satisfactory management of the business, they may do so in writing signed by them endorsed on these articles and all such alteration shall be adhered to and have the same effect as if they had been originally embodied in and formed part of this Agreement.

61 Entire Agreement

The parties intend that this agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this agreement and refer to this agreement,

1. represent the final expression of the parties' intent relating to the subject matter of this agreement,
2. contain all the terms the parties agreed to relating to the subject matter, and
3. replace all of the parties' previous discussions, understandings, and agreements relating to the subject matter of this agreement.