

TERMS AND CONDITIONS

(1) INTERPRETATION & ACCEPTANCE OF PURCHASE ORDER (“PO”)

These “Terms & Conditions of Purchase” are hereby incorporated into this PO. This PO, and, as applicable, any other documents attached hereto and incorporated herein by reference, shall constitute the entire agreement and understanding between the parties and shall supersede and replace any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof (“Agreement”) entered into between the parties hereto. The headings, titles, and captions contained in this PO are merely for reference and do not define, limit, or extend the scope of this PO or any provision herein. This PO may not be varied in its terms by an oral agreement or representation or otherwise than by an instrument in writing signed or issued by a duly authorized representative of PHOENIX MIRAGE, LLC (“Phoenix mirage”). This PO becomes a binding agreement, subject to the specific terms and conditions stated herein, upon Supplier’s acceptance by acknowledgement, or provision of the Supplies and/or Services or PHOENIX MIRAGE act of accepting or paying for any Supplies, or any similar act by Phoenix Mirage . The provisions of this PO are as negotiated. SUPPLIER IS HEREBY URGED TO ONLY ACCEPT THIS PO AFTER READING IT IN FULL AND AGREEING TO THEIR TERMS AND CONDITIONS.

(2) DEFINITIONS

As used in this PO, the below terms shall have the following meanings (whether capitalized or not):

- Phoenix. Mirage, “Buyer”, “Purchaser”, “Lessee”, or “Licensee” means the legal entity purchasing the Supplies/Services
- “Purchase Order” or “PO” refers to this contractual instrument
- “End Customer” means the client organization buying the goods and/or services from Phoenix Mirage
- “Loss” means any or all of the following: claims, liabilities, damages, losses, costs, or expenses (including reasonable attorney’s fees and expenses and other legal costs)
- “Supplier”, “Seller”, “Vendor” “Lessor” or “Licensor” means the legal entity furnishing the items detailed in this PO
- “Supplies” or “Services” means what the Supplier furnishes PHOENIX MIRAGE under this PO and includes, without limitation the following:
 1. ”The work,” “materials,” “articles,” “deliverable items,” “items”, “data,” “goods”, “supplies” and/or “services,” whether tangible or intangible, or any combination thereof, all of which are itemized and fully described in this PO; and/or
 2. What is leased or licensed, pursuant to any lease(s) or license(s) signed by both Supplier and PHOENIX MIRAGE as Lessee or Licensee as applicable, and made a part of this PO.
- “Authentic” shall mean (1) genuine; (2) purchased from the Original Equipment Manufacturer (“OEM”), Original Component Manufacturer (“OCM”) or through the OEM’s/OCM’s authorized dealers; and (3) manufactured by, or at the behest and to the

standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.

- “Authorized Dealer” is a dealer or distributor that purchases directly from the OEM or OCM and is authorized or franchised by the OEM or OCM to sell or distribute the OEM’s/OCM’s Items.
- “Counterfeit Part” is a part that is an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item’s legally authorized source and has been misrepresented to be an authorized part of the legally authorized source. This definition includes used parts represented as new parts.
- “Original Component Manufacturer (OCM)”, “Original Equipment Manufacturer (OEM)” is an organization that designs and/or engineers a part or equipment and is pursuing or has obtained the intellectual property rights to that part or equipment.
- “Non-Franchised Source” is any source that is not authorized by the OEM or OCM to sell its product lines. Non-franchised sources may also be referred to as brokers or independent distributors.
- “Suspect Counterfeit Part” is a part that PHOENIX MIRAGE becomes aware, or has reason to suspect, meets the definition of “counterfeit part”, as defined above. For purposes of this document, the terms “counterfeit part” and “suspect counterfeit part” will be used interchangeably. If any individual part from a lot is determined to be counterfeit or suspect counterfeit, the entire lot of parts will be considered to be suspect counterfeit.
- “F.O.B. Destination, Freight Prepaid” means title and risk of loss pass to PHOENIX MIRAGE at Destination Point, Supplier bears and prepays freight charges; and Supplier must file claims for loss, damage, or overcharges (if any) for items in transit.
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(3) APPLICABLE LAW

This PO shall be governed by the laws of the State of Arizona, without regard to its conflicts of laws provisions. The United Nations’ Convention for the International Sale of Goods (1980), is expressly excluded from this PO, and shall have no force or effect on the Parties.

(4) COMPLIANCE WITH LAWS

Supplier warrants that it will comply with all applicable federal, state, and local laws, and regulations. Supplier shall immediately report to PHOENIX MIRAGE any information concerning violation of applicable law or regulations pertaining to the performance of this PO and shall provide the PHOENIX MIRAGE any information concerning violation of applicable law or regulation pertaining to the performance of this PO and shall provide PHOENIX MIRAGE any information and/or certifications reasonably requested and related to its compliance with applicable laws and regulations.

(5) EXPORT CONTROLS

Supplier hereby represents and warrants that it has complied with all applicable US export control laws and regulations, including the Export Administration Regulations (15 CFR Parts 730 – 774), and the Foreign Assets Control Regulations (31 CFR Parts 500 – 598 and appendices). Supplier shall notify PHOENIX MIRAGE in advance of any export licensing requirements or other restrictions applicable to the export of the supplies purchased by Phoenix Mirage .

(6) INDEPENDENT CONTRACTOR

Supplier is an independent contractor in all its operations and activities hereunder. The employees utilized by Supplier to perform work under this PO shall be Supplier's employees exclusively without any relation whatsoever to Phoenix Mirage .

(7) PRICES

All purchased items will be shipped internationally. Therefore, any price of the supplies/services procured hereunder shall not include U.S. federal, state, and local taxes and duties unless otherwise stated in this PO.

(8) PRICE WARRANTY

Supplier warrants that the price(s), terms, warranties, and benefits specified in this PO are comparable to or better than those offered to any other of Supplier's customers for the same or substantially similar items.

(9) CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

Supplier certifies that the price(s) proposed and/or agreed upon for this PO have been arrived at independently, without consultation, communications, or agreement with any others for the purpose of restricting competition, and that the fact that the prices herein have been provided to PHOENIX MIRAGE has not been knowingly disclosed by Supplier and will not be disclosed by Supplier directly or indirectly, to any other party.

(10) PAYMENT TERMS

Unless otherwise specified in this PO, payment of each properly submitted invoice shall be made by PHOENIX MIRAGE within sixty (60) days following receipt of each invoice, provided however, that the PHOENIX MIRAGE may withhold an appropriate portion of the payment until any disputed Items are resolved and/or defects in the Items are corrected. Payment by PHOENIX MIRAGE shall

be deemed to have been made for the purpose of meeting the sixty (60) day requirement on the date PHOENIX MIRAGE deposited the payment in the mail or made the electronic funds payment. Final payment shall not release Supplier from any warranty and indemnification provisions contained in this Order. A signed certificate of compliance, signed by an authorized representative of Supplier's Quality Department, must be submitted with each invoice certifying that the Items delivered is of the quality specified and conforms in all respects with the Order requirements.

(11) INVOICES

Supplier shall electronically submit itemized invoices in pdf format to the address shown on this PO. The invoice should contain this PO Number, PHOENIX MIRAGEPOC, Description of Supplies/Services furnished, quantity, unit prices and total price, PO line number and part number as reflected on the PO and any other information specified by PHOENIX MIRAGE in any accompanying documentation. The invoice must also include invoice number, invoice date, remit to address and a breakout of tax and freight charges (if applicable). Any invoice with missing or incorrect information will be rejected back to the Supplier.

Submission of invoices shall constitute a certification that Supplier has complied with the terms and conditions of this PO, and certification of compliance with all laws and regulations referenced herein. Any Supplier invoice discount period or net payment period shall begin when both the invoice and the supplies/services (conforming to technical requirements) have been received and the supplies accepted and/or services have been performed.

Payment status and statement inquiries should be sent to the address indicated on this PO. Proper invoice support/documentation is required for payment. Payment of invoices may be delayed pending correction of any errors or omissions.

Supplier shall keep records of its activities under this PO. Unless otherwise stated in any applicable Statement of Work, Supplier shall provide PHOENIX MIRAGE upon request, at no additional cost, with a report on such activities as specified in this PO.

(12) SETOFF/DISALLOWANCE OF PAYMENT

PHOENIX MIRAGE shall have the right at all times to set off any amount due or payable to Supplier hereunder against any claim or charge PHOENIX MIRAGE may have against Supplier.

(13) EXTRA CHARGES

No extra charges of any kind required for the proper execution and completion of the work shall apply to this PO unless otherwise specifically agreed to in writing by Phoenix Mirage , including without limitation: charges for boxing or cartage; any permits, fees, or licenses; future Supplier price increases, and any other charges whatsoever.

(14) DELIVERY

Supplier agrees that time is of the essence in the performance of this PO. Any delivery schedule made a part of this PO is an important, material condition. Deliveries shall be strictly in accordance with this PO delivery schedule.

- Advanced Delivery. PHOENIX MIRAGE reserves the right to refuse or return, at Supplier's expense, any excess shipments or deliveries made in advance of this PO schedule. Invoices for early deliveries, when accepted, may be PO Terms & Conditions PHOENIX MIRAGE Confidential Page 2 of 5 October 30, 2022 deferred until the scheduled delivery date.
- Delays. Supplier agrees to advise Phoenix Mirage, as soon as possible, of any delays in meeting the schedule set forth in this PO for delivering supplies or services and the reason(s) therefor. If a delay is due to causes beyond Supplier's and, when applicable, its subcontractor's control, and without fault or negligence of either of them, PHOENIX MIRAGE may, at its sole discretion, either adjust the delivery schedule or terminate this PO for convenience. If the delay is due to Supplier's or its subcontractor's failure, and, in accordance with the limited rights to notice under the "Termination for Default" clause set forth herein, the failure is not cured within ten (10) days after Supplier's receipt of PHOENIX MIRAGE notice thereof, PHOENIX MIRAGE may, at its sole discretion, issue a revised delivery schedule, take an equitable reduction in this PO price, and /or terminate this PO (in whole or in part) for default. Acceptance of late deliveries shall not constitute a waiver thereof of Phoenix Mirage.
- Notice of Labor Disputes. When an actual or potential labor dispute or other condition delays or threatens to delay the timely performance of this PO, Supplier shall immediately notify PHOENIX MIRAGE in writing. Such notice shall include all relevant information regarding such dispute or other condition. Supplier shall insert the essence of this provision in all subcontracts issued hereunder.

(15) TRANSPORTATION

Unless otherwise provided in this PO, transportation charges for the shipping of supplies shall be indicated on this PO and charges shall not exceed negotiated rate. No insurance or premium transportation costs will be allowed unless authorized by Phoenix Mirage. In accordance with and subject to the "Title and Risk of Loss" clause, below, risk of Loss, regardless of cause, is Supplier's responsibility until the conforming supplies/services/data are delivered in compliance with the terms of transportation agreed upon in this PO. If Supplier is delinquent in delivery, PHOENIX MIRAGE may require shipment by the fastest means available, and any premium transportation charges therefor shall be Supplier's responsibility.

(16) PACKAGING AND PACKING

Supplier shall be responsible for safe packing in conformity with carrier's tariff, transportation regulations, good commercial practices and any other direction by Phoenix Mirage Supplier shall include an itemized packing list bearing the PO number, manufacturer part number/model, model number, description of items shipped, and any other information called for in the PO. Supplier shall label each package and itemized packing list with the corresponding numbers shown on the PO.

(17) WARRANTY OF SUPPLIES/SERVICES

Supplier warrants that all supplies/services furnished under this PO shall conform to the requirements of this PO, the Statement of Work and or any applicable PHOENIX MIRAGE drawings, specification, or other description and will be of good material and workmanship and free of defects. Supplier further warrants that the supplies/services will meet Supplier's published specifications and standards, will be new (not used or reconditioned), merchantable and suitable for the purpose intended. These warranties shall survive inspection, acceptance, and payment. Supplies/services that do not conform to the above warranties may, at any time within twelve (12) months after delivery to Phoenix Mirage , be rejected and returned to Supplier, at Supplier's expense, for correction or replacement. If Supplier does not promptly correct or replace same, PHOENIX MIRAGE may correct or replace the nonconforming supplies/services at Supplier's expense. The foregoing warranties are in addition to all other warranties expressed or implied by law, and in no way exclude any remedies otherwise available to Phoenix Mirage , including but not limited to incidental or consequential damages.

(18) COUNTERFEIT PARTS PREVENTION

Supplier represents and warrants that only new and authentic materials (including embedded software and firmware) are used in Items required to be delivered to PHOENIX MIRAGE and that the Items delivered contains no Counterfeit Parts. No material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by Phoenix Mirage . To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Supplier shall only purchase authentic parts/components directly from the Original Equipment Manufacturers ("OEMs"), Original Component Manufacturers ("OCMs") or through the OEM's/OCM's authorized dealers. Supplier represents and warrants to PHOENIX MIRAGE that all parts/components delivered under this PO are traceable back to the OEM/OCM. Supplier must maintain and make available to PHOENIX MIRAGE at PHOENIX MIRAGE request, OEM/OCM documentation that authenticates traceability of the parts/components to the applicable OEM/OCM. Purchase of parts/components from Non-Franchised Sources is not authorized unless first approved in writing by Phoenix Mirage . Supplier must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. PHOENIX MIRAGE approval of Supplier request(s) does not relieve Supplier's responsibility to comply with all Contract requirements, including the representations and warranties in this Section of Terms and Conditions of Purchase.

- Supplier shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and PHOENIX MIRAGE approval before

parts/components are procured from sources other than OEMs/OCMs or the OEM's/OCM's authorized dealers. Supplier shall provide copies of such documentation for its system for PHOENIX MIRAGE inspection upon PHOENIX MIRAGE request.

- Supplier must maintain a counterfeit detection process that complies with SAE standard AS5553, Counterfeit Electronic Parts, Avoidance, Detection, Mitigation, and Disposition.
- If it is determined that counterfeit parts or suspect counterfeit parts were delivered to PHOENIX MIRAGE by Supplier, the suspect counterfeit parts will not be returned to the Supplier. PHOENIX MIRAGE reserves the right to quarantine any and all suspect counterfeit parts it receives and to notify the End Customer Industry Data Exchange Program (ECIDEP) and other relevant government agencies. Supplier shall promptly reimburse PHOENIX MIRAGE for the full cost of the suspect counterfeit parts and Supplier assumes responsibility and liability for all costs associated with the delivery of suspect counterfeit parts, including, but not limited to, costs for identification, testing, and any corrective action required to remove and replace the suspect counterfeit parts. The remedies in this Section shall apply regardless of whether the warranty period or guarantee period has ended, and are in addition to any remedies available at law or in equity.
- Supplier shall flow the requirements of this Section 18 ("COUNTERFEIT PARTS PREVENTION") to its subcontractors and suppliers at any tier for the performance of this Contract. The warranties provided by Supplier under this Section shall survive any termination or expiration of this PO

(19) CHANGES

PHOENIX MIRAGE may, at any time, in writing, make changes to this PO. If any such change causes an increase or decrease in the cost or time required for provision of the Supplies, Supplier shall promptly notify PHOENIX MIRAGE and the price and/or delivery schedule shall be equitably adjusted and this PO so modified. Supplier shall commence any such change pending such modification. None of the terms and conditions contained in this PO may be added to, modified, or superseded, or otherwise altered without PHOENIX MIRAGE prior written approval.

(20) QUANTITIES, CONTENT AND QUALITY

It is Supplier's responsibility to furnish the proper quantities, labor categories, equipment, and other items called for by this PO. Upon PHOENIX MIRAGE approval of Supplier's drawings, designs, specifications, etc., no variation in the quantity or affecting form, fit, or function specified.

- PHOENIX MIRAGE reserves the right to reject in whole or in part any varied quantities, equipment type or other elements of items in this PO.
 - PHOENIX MIRAGE reserves the right to revoke acceptance if made without actual knowledge of any varied quantities, equipment type or other elements or items in this PO.
 - Any approvals by PHOENIX MIRAGE shall not relieve Supplier of responsibility for any error or deficiencies that may exist, or for performing the work and furnishing the supplies/services in strict accordance with the PO requirements.
- Any variation in equipment includes without limitation equipment conforming to any

specifications(including without limitation information on functional performance, material content, size, appearance, response times, etc.) referenced in this PO, or, if none are referenced, those current as of the date of this PO and available to the general public.

(21) INSPECTION AND TEST

At no additional cost to Phoenix Mirage , rejected supplies shall be corrected or replaced, and rejected services shall be reperformed in an acceptable manner. If inspection and test are made on Supplier's premises, Supplier shall, without additional charge, provide reasonable facilities and assistance for the safety and convenience of the inspectors performing these duties. Inspections and tests shall be performed in such a manner as not to unduly delay work in progress. Unless otherwise agreed in writing, all supplies furnished under this PO are subject to Phoenix Mirage 's inspection and acceptance or rejection at destination, notwithstanding any previous PHOENIX MIRAGE or its customer's source inspection or test. Inspection/test at source or at destination shall not relieve Supplier of its responsibility to furnish the supplies/services in strict conformance with this PO requirements. Supplier shall maintain an inspection and quality control system acceptable to Phoenix Mirage . Supplier shall furnish PHOENIX MIRAGE the records of inspection/test for supplies and services furnished hereunder at any time, during performance and any applicable warranty period, upon Phoenix Mirage 's request.

(22) REMEDIES FOR DEFECTS

If any of the supplies are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this PO, PHOENIX MIRAGE(in addition to any other rights which it may have under warranties or otherwise) may at its option (1) accept all or part of the supplies with an equitable price reduction; or (2) reject and return such supplies at Suppliers expense, and require Supplier, at Supplier's expense, to make all repairs, modifications or replacements necessary to bring the supplies into compliance with the requirements of this PO. If Supplier fails promptly to remove such supplies that are required to be removed, or promptly, to replace or correct such supplies, PHOENIX MIRAGE may either (1) by PO or otherwise replace or correct such supplies and charge to Supplier the cost occasioned by PHOENIX MIRAGE thereby, or (2) may terminate this PO for default, and in either event may charge Supplier the cost of damages occasioned by PHOENIX MIRAGE thereby. Supplier shall not re-tender rejected supplies without disclosing the corrective action taken.

(23) PERMITS, FEES, AND LICENSES

Except as may be otherwise provided in this PO, Supplier shall obtain and pay for all permits, fees, and licenses required for the work at no additional charge to Phoenix Mirage .

(24) RETURN OF UNUSED SUPPLIES

If, in the PHOENIX MIRAGE professional judgment, the delivered Supplies are no longer required by Phoenix Mirage , PHOENIX MIRAGE may return to Supplier at PHOENIX MIRAGE expenses any or all unused Supplies for a full refund of their purchase price (or a downward reasonable adjustment in price if the Supplies are of such a nature that individual prices per unit are not determinable from this PO). Supplier will not assess PHOENIX MIRAGE any restocking fee unless such fee is specifically noted on the face of this PO.

(25) MAINTENANCE OF SUPPLIES

Supplier agrees to permit PHOENIX MIRAGE to purchase maintenance (including without limitation repairs and updates) of the supplies listed in this PO at any time. Should Supplier at any time and for any reason, including without limitation bankruptcy, insolvency, or business decisions, cease to maintain the supplies (if maintenance is ordered) or cease to make the purchase of such maintenance available to PHOENIX MIRAGE at a reasonable price, Supplier shall, within ten days of a written request by Phoenix Mirage , provide to PHOENIX MIRAGE the following:

(i) if the supplies ordered are partially or totally hardware, Supplier shall provide the necessary designs, specifications, and assembly instructions to permit PHOENIX MIRAGE to maintain and, if desired, build as new the supplies; and

(ii) if the supplies ordered are partially or totally software or firmware, Supplier shall provide the necessary designs, specifications, assembly instructions, and source code to permit PHOENIX MIRAGE to maintain and, if desired, build as new the supplies. If any materials provided by Supplier under this clause are protected as intellectual property under any law or regulations (including without limitation patents, copyrights, and trade secrets), Supplier hereby grants to PHOENIX MIRAGE a fully paid up, transferable worldwide license to use and copy the materials provided and to manufacture and distribute the hardware, software, and/or firmware as well as products derived therefrom. Should Supplier require payment for the rights granted in this clause such payment shall be set forth on the face of this PO as a separate item and shall only be due and payable if PHOENIX MIRAGE invokes this clause.

(26) SUPPLIER CONTACTS WITH OTHER VENDORS

Unless specifically authorized in writing by Phoenix Mirage , Supplier shall not discuss this PO with third parties. PHOENIX MIRAGE shall be primarily responsible for all liaisons and communications with PHOENIX MIRAGE other vendors, End Users, End User Representatives, or any other third party tied to this order. Supplier shall in no way interfere with such liaison efforts or communications. Under PHOENIX MIRAGE explicit direction, however, Supplier shall take all reasonable steps to coordinate its work with PHOENIX MIRAGE other vendors.

(27) RIGHT TO USE/TITLE

If applicable, Supplier shall provide to PHOENIX MIRAGE unencumbered right to use any software products and unencumbered title for any other products, property or service delivered by Supplier under this PO. Supplier shall disclose to PHOENIX MIRAGE in writing any Free, Libre and Open Source Software (FLOSS) that will be used or delivered in connection with this PO and obtain PHOENIX MIRAGE written consent before using or delivering such FLOSS in connection with this PO. Supplier agrees to fully indemnify and hold PHOENIX MIRAGE harmless from and against all claims made against PHOENIX MIRAGE resulting from or related or incidental to encumbrances of right to use or unencumbered title or other rights claimed by third parties upon items provided by Supplier

(28) ASSIGNMENT/SUBCONTRACTING

Supplier shall not assign this PO, or any rights, interest or payments, or the performance of any of its duties hereunder without the prior written consent of Phoenix Mirage . Supplier shall not subcontract the completion/delivery of the Supplies/Services or any substantial portion thereof without the prior written consent of Phoenix Mirage . Any attempted or purported assignment/subcontracting by Supplier without PHOENIX MIRAGE prior written consent shall be void and not binding upon Phoenix Mirage .

- Amounts assigned shall be subject to setoff or recoupment for any present or future claims of PHOENIX MIRAGE against the Supplier. PHOENIX MIRAGE will have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.
- Prior to potential change in control of Supplier and at least ninety (90) days prior to the proposed effectiveness of any such change in control, Supplier will promptly notify PHOENIX MIRAGE in writing and provide the identity and information on the potential new controlling party and the transaction as PHOENIX MIRAGE may require, consistent with applicable law and confidentiality restrictions.

PHOENIX MIRAGE may assign this PO, in whole or in part, to its parent or any of its subsidiaries or affiliates without the consent of Supplier. In such event, PHOENIX MIRAGE shall notify Supplier in writing of such assignment.

(29) PUBLIC RELEASE OF INFORMATION & ADVERTISING

Suppliers shall not issue any media releases, public announcements or public disclosures, denial or confirmation of this PO or the subject matter hereof, and shall not release any promotional or marketing material bearing PHOENIX MIRAGE name or logo, or supplier disclosures required by legal, accounting or regulatory requirements shall be made without PHOENIX MIRAGE prior written approval.

(30) TITLE AND RISK OF LOSS

Unless otherwise provided in this PO, the FOB point shall be the delivery destination indicated in this PO, and title to the supplies and risk of loss or damage shall pass to PHOENIX MIRAGE upon PHOENIX MIRAGE acceptance of the supplies regardless of where PHOENIX MIRAGE takes physical possession.

(31) DISCONTINUANCE OF MANUFACTURE

Should Supplier decide to discontinue manufacture of the items purchased by PHOENIX MIRAGE under this PO, Supplier (1) shall provide written notice to PHOENIX MIRAGE of the intended supply discontinuance; and (2) shall provide PHOENIX MIRAGE a minimum of twelve (12) months from the written notification date to PHOENIX MIRAGE to place final "lifetime buy" purchase orders for the items at a unit price to be negotiated, but in no event higher than the unit price provided in this PO. In the event one or more "lifetime buy" POs are made during such twelve (12) month period, Supplier shall deliver the purchased items to PHOENIX MIRAGE no later than six (6) months after the end of the "lifetime buy" period. Supplier's obligations under this clause shall extend for two (2) years beyond the effective date of this PO, irrespective of whether the PO is completed/terminated within the two (2) year period.

(32) INSOLVENCY

If Supplier ceases to conduct normal business operations (including inability to meet its obligations), or if any proceeding under bankruptcy or insolvency laws is brought by or against Supplier, or a receiver for Supplier is appointed or applied for, or Supplier makes an assignment for the benefit of creditors, PHOENIX MIRAGE may terminate this PO without liability except for deliveries previously made and for Supplies covered by this PO and then completed and subsequently delivered in accordance with the terms of this PO. In the event of Supplier's insolvency, PHOENIX MIRAGE shall have the right to procure the balance of the Supplies on this PO from others without liability. Supplier shall give PHOENIX MIRAGE at least ninety (90) days advance written notification of such discontinuance and, during this time agrees to accept PHOENIX MIRAGE orders for such items. Should this PO be terminated pursuant to this clause, Supplier grants to PHOENIX MIRAGE a fully paid-up license to copy any delivered copyrighted material (other than computer software) for any legitimate business purpose. This clause's provisions are in addition to those contained elsewhere in this PO

(33) DISPUTES

Any disputes arising under this PO that is not settled by agreement between the Parties may be settled by appropriate legal proceedings. Any legal action shall be brought in a state court located in Phoenix, AZ. Pending any such litigation or decision, judgment, or appeal thereon Supplier shall proceed diligently with the performance of this PO in accordance with instructions of Phoenix

Mirage . Each party shall bear its respective legal costs.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING OUT OF THIS PO.

(34) STOP-WORK ORDER

PHOENIX MIRAGE may, at any time, by written notice to Supplier, stop all or any part of the work hereunder for up to ninety (90) days. Upon receiving such notice, Supplier shall immediately comply with its terms and take all reasonable steps to avoid incurring any additional cost allocable to such work. Within ninety (90) days after the effective date of the stop-work order, PHOENIX MIRAGE shall either cancel the stop-work order or terminate this PO in whole or in part as permitted by this PO. If a stop-work order is issued, PHOENIX MIRAGE shall modify the delivery schedule and/or price in this PO as PHOENIX MIRAGE deems equitable under the circumstances, provide Supplier requests such change within fifteen (15) days of the end of the stop-work order.

(35) TERMINATION

- Termination for Convenience. PHOENIX MIRAGE reserves the right, at any time, in its own best interest, and without liability, to terminate this PO in whole or in part, by written notice of termination for convenience to Supplier. If this PO is so terminated, then, within thirty (30) days following Supplier's receipt of the termination notice, Supplier may submit a claim for equitable adjustment. If the terminated PO is solely for services, PHOENIX MIRAGE shall be obligated to pay only for supplies or services performed before the effective date of the termination.
- Termination for Default. PHOENIX MIRAGE may, without liability, and in addition to any other rights or remedies provided herein or by law, terminate this PO in whole or in part by written notice of default if Supplier:
 - (a) fails to deliver the supplies or perform the services within the specified requirements of the PO;
 - (b) fails to make sufficient progress with the work, thereby endangering completion of performance within the time specified; or
 - (c) fails to comply with any of the other instructions, terms, or conditions, including any applicable requirement of law. In the case of terminations under (b) or (c) of the preceding sentence, PHOENIX MIRAGE rights to terminate for default may be exercised if Supplier does not cure the failure within ten (10) days after receiving PHOENIX MIRAGE notice of such failure. If PHOENIX MIRAGE terminates this PO in whole or in part, PHOENIX MIRAGE may repurchase similar supplies or services from others and Supplier shall be liable for any additional costs for the terminated supplies/services, and for any other damages caused PHOENIX MIRAGE by the Supplier's default. In the event of a partial termination, Supplier shall continue the work not terminated. Supplier shall not be liable for any additional costs if failure to perform arises from causes beyond Supplier's or Supplier's subcontractor's control and without fault or negligence of either of them; provided, however, that the supplies/services to be furnished by Supplier's subcontractor (at any tier) were not

obtainable from others in time for the Supplier to meet this PO delivery requirements. PHOENIX MIRAGE shall pay Supplier this PO price for any completed supplies/services delivered and accepted. PHOENIX MIRAGE may withhold from any payments due Supplier, any sum necessary to protect PHOENIX MIRAGE against any liability or expenses due to Supplier's poor performance or default.

- Failure to Comply. If Supplier fails to comply with any of this PO requirements, PHOENIX MIRAGE may exercise its option to terminate this PO for default or invoke applicable warranties for non-conformance. In lieu of this, however, PHOENIX MIRAGE may waive the Supplier deficiency; any such waiver must be explicit and in writing. In return therefor, Supplier agrees to negotiate an equitable reduction in this PO price. If PHOENIX MIRAGE terminates this PO in whole or in part, PHOENIX MIRAGE may repurchase similar suppliers of services from others and Supplier shall be liable for any additional costs for the terminated suppliers/ services, and for any other damages caused PHOENIX MIRAGE by the Supplier's default. As an alternate remedy, and in lieu of termination by default, Phoenix Mirage , at its sole discretion, may elect (1) to extend this PO delivery schedule, and/or (2) to waive other deficiencies in Supplier's performance, in which case an equitable reduction in this PO price shall be negotiated.

In the event of a partial termination, Supplier shall continue the work not terminated.

Supplier shall not be liable for any additional costs if failure to perform arises from causes beyond Supplier's or Supplier's subcontractor's control and without fault or negligence of either of them; provided,

however, that the suppliers/services to be furnished by Supplier's subcontractor (at any tier) were not obtainable from others in time for the Supplier to meet this PO delivery requirements. PHOENIX MIRAGE shall pay Supplier this PO price for any completed suppliers/services delivered and accepted. PHOENIX MIRAGE may withhold from any payments due Supplier, any sum necessary to protect PHOENIX MIRAGE against any liability or expenses due to Supplier's poor performance or default.

(36) CONFIDENTIALITY AND DISCLOSED INFORMATION

Any information or knowledge Supplier discloses to PHOENIX MIRAGE regarding this PO shall not be deemed confidential or proprietary unless expressly agreed upon by authorized representatives of each party in writing, pursuant to a nondisclosure agreement or otherwise ("NDA"). Any such unpatented information or knowledge shall be acquired by PHOENIX MIRAGE free of any restrictions. "Confidential Information" has the meaning and shall be controlled by the terms of, in the following descending order of precedence: (1) the terms provided in any existing NDA, or (2) if there is no NDA, but there is an Agreement, the terms provided in such Agreement, or (3) if there is no NDA nor an Agreement, "Confidential Information" shall mean and be controlled by the terms herein as follows:

Supplier :

- shall maintain in confidence all of PHOENIX MIRAGE Confidential Information (as defined below in a. through c below),
- shall take all reasonable steps to prevent unauthorized use, disclosures, dissemination, or publication of PHOENIX MIRAGE Confidential Information,

- shall not disclose such Confidential Information, directly or indirectly, to any third party,
- shall not use such Confidential Information other than in connection with providing the Supplies / Services hereunder, and
- shall ensure that only personnel on a “need to know” basis be allowed access to the data.

Upon termination of this PO, or earlier as provided herein or requested by Phoenix Mirage , all Confidential Information, and all copies thereof, in Supplier’s possession will be promptly returned to Phoenix Mirage . In the event that Supplier becomes legally compelled to disclose any Confidential Information, Supplier will provide PHOENIX MIRAGE with thirty (30) days advance written notice of the required disclosure. Any other requests received by Supplier should be promptly notified to PHOENIX MIRAGE before any responses are provided. For the purposes of this PO, Confidential Information of PHOENIX MIRAGE (“Confidential Information”) is defined, inclusively, as the following:

- PHOENIX MIRAGE product and services sales or marketing information such as PHOENIX MIRAGE technical, management, or cost proposals; product or services plans, specifications, and associated software; price lists; current or potential client information including names, addresses, identifying information, special needs, purchasing practices, relationship history, contracts and sales agreements; competitive analyses including future market and product direction;
- Any and all PHOENIX MIRAGE information which is not generally known to the public or within the industry or trade in which PHOENIX MIRAGE competes and that gives PHOENIX MIRAGE any advantage over its competitors, and all physical embodiments of that information in any tangible form, whether written or machine-readable in nature; or
- PHOENIX MIRAGE customers’, vendors’, partners’, or other third-party non- public information, as well as derivative and residual forms of any of the above items 36.a. through 36.b. types of Confidential Information. Confidential Information does not include information which
 - (i) is available in the public without breach of this PO by Supplier,
 - (ii) known to Supplier prior to first receipt of the same information from PHOENIX MIRAGE or
 - (iii) independently developed by or for the Supplier, without reference to any Confidential Information, as evidenced by the Supplier’s own files and records or
 - (iv) received in good faith by the Supplier from a third party provided that
 - (1) the third party was lawfully in possession of information and
 - (2) the third party’s disclosure does not violate any obligation to Phoenix Mirage ; or
 - (v) was intentionally disclosed to third parties, including the End Customer, by PHOENIX MIRAGE on a non-confidential basis. Supplier agrees to take all actions necessary to comply with applicable Data Privacy Laws, which compliance will be deemed to expand and supplement any obligations set for in this Section. The obligations in this Section shall remain in full force and effect and survives termination or expiration of this PO and shall be enforceable against Supplier. If Supplier commits a breach, or threatens to commit a breach, of any of the provisions of this Section, PHOENIX MIRAGE shall have, in addition to any other rights and remedies at law or in equity, each of which shall be independent of the other and severally enforceable, the right to seek an injunction without the requirement of posting any bond and/or have the provisions of this PO specially enforced by any court of competent jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will

cause irreparable injury to PHOENIX MIRAGE and that money damages will not provide an adequate remedy to Phoenix Mirage

(37) SAFETY

In connection with the provisions of Goods and Services to be provided under this Order, Supplier agrees to comply with the federal Occupational Safety & Health Act ("OSHA") and all applicable OSHA regulations and standards, any applicable US state and local laws, rules and regulations, and all PHOENIX MIRAGE safety policies of which Supplier has notice.

(38) PROPERTY AND INFORMATION

- "PHOENIX MIRAGE Property" includes property and/or information, in any form, including without limitation drawings, specifications, data and the like, furnished to Supplier for performance of the work. Unless otherwise provided herein, any items, tools, materials, data, or other technical information developed or created by Supplier in the performance of this PO shall become and shall be identified by Supplier as the proprietary property of Phoenix Mirage .
- PHOENIX MIRAGE property shall remain the property of the Phoenix Mirage , shall be considered private and confidential PHOENIX MIRAGE information, and shall not be given to others not having a need-to-know or used by Supplier for its own purposes.
- When practical, all such PHOENIX MIRAGE property shall be marked as belonging to Phoenix Mirage , shall be held by Supplier on consignment at Supplier's risk, and shall be used exclusively to perform the work requirements of this PO. Upon written demand of Phoenix Mirage , Supplier shall deliver all such property to PHOENIX MIRAGE at Supplier's risk and expense.
- Supplier shall retain full risk of loss for any PHOENIX MIRAGE furnished property at all times. Upon this PO completion, Supplier shall return all PHOENIX MIRAGE Property to PHOENIX MIRAGE in the same condition in which it was received, allowing for reasonable wear and tear, except to the extent that the property has been incorporated into suppliers delivered or consumed in the performance of the work.
- Subject to the terms of any applicable agreement, any designs, drawings, dies, molds, tooling, technical data/information, materials, equipment, etc. that Supplier makes or buys from others for producing the suppliers/services and charged to PHOENIX MIRAGE account, shall become PHOENIX MIRAGE property immediately upon manufacture or procurement.

(39) INDEMNIFICATION

In addition to Supplier's obligations explicitly set forth elsewhere in this PO, Supplier shall indemnify Phoenix Mirage , its customer, and those for whom PHOENIX MIRAGE may act as agent, from and against any damages, costs or penalties and any payments incurred by PHOENIX MIRAGE as a result of the active or passive negligence or willful misconduct of the Supplier in

performing its obligations hereunder, or as a result of a breach by the Supplier of its obligations hereunder.

(40) PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

In addition to Supplier's obligations explicitly set forth elsewhere in this PO, Supplier shall indemnify Phoenix Mirage, its customer, and those for whom PHOENIX MIRAGE may act as agent, from and against any damages, costs or penalties and any payments incurred by PHOENIX MIRAGE as a result of the active or passive negligence or willful misconduct of the Supplier in performing its obligations hereunder, or as a result of a breach by the Supplier of its obligations hereunder.

(41) LIMITATION OF LIABILITY

PHOENIX MIRAGE liability shall not, under any circumstances, be greater than the total dollar amount of this PO indicated herein. In no event will PHOENIX MIRAGE be liable for consequential, incidental, indirect, punitive or special damages (including loss of profits, data, business or goodwill), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages.

(42) INSURANCE

- Prior to the commencement of Supplier's work hereunder, Supplier shall provide certificates of insurance to PHOENIX MIRAGE evidencing the insurance required under this Section these Terms and Conditions of Purchase.
- 1. Workers' Compensation Insurance as required by applicable Federal and State workers' compensation and occupational disease statutes and Employer's Liability Insurance with a limit no less than \$1M per employee/accident/disease.
- 2. To the extent that automobiles are used in the performance of Supplier's duties under this Agreement, Automobile Liability Insurance covering bodily injury and property damage arising out of the use of owned, non-owned and hired vehicles with a limit of no less than \$3M per accident.
- 3. Commercial General Liability Insurance covering bodily injury and property damage arising out of premises, operations, completed operations and products of the Supplier with a limit of no less than \$1M per occurrence / \$2M general aggregate. Coverage to include the following extensions: Contractual Liability, Independent Contractor's Liability, Premises Operations, Products/Completed Operations, Broad Form Property Damage.
- 4. Professional Liability in an amount no less than \$5M per claim.
- 5. Commercial Crime Insurance including coverage of Employee Dishonesty, Computer Fraud and loss of Third-Party Property with a limit no less than \$1M per loss/occurrence.

6. If applicable and for Agreements INVOLVING WORK OVERSEAS IN SUPPORT OF A US GOVERNMENT CONTRACT, Defense Base Act coverage shall apply subject to the Statutory limits and include Employers Liability at the following limits – no less than \$1M each accident/employee/disease. For all other Agreements involving work overseas, Foreign Voluntary Workers Compensation coverage shall apply subject to the statutory limits and include Employers Liability at the following limits – no less than \$1M each accident/employee/disease.
 7. Supplier is responsible for insuring all of its own property and/or property owned by PHOENIX MIRAGE while in Supplier's care, custody and control, for full replacement cost.
 8. Cyber Liability Insurance to provide coverage for privacy and network security liability, event management, professional liability and media content arising out of any act, error or omission that results in unauthorized access to the Supplier's computer systems, transmission or malicious code, or unauthorized disclosure, or misappropriation, of confidential information, Personally Identifiable Information (PII), Protected Health Information (PHI) or a third party's confidential and proprietary business information, with a per claim limit of no less than \$10,000,000.
- Cancellation or any material change in the policies adversely affecting the interest of the End Customer or PHOENIX MIRAGE shall not be effective until thirty (30) days after written notice has been given to Phoenix Mirage . Replacement insurance shall be procured without interruption of continuous coverage. If any of the Policies under 42a. above are written on a claims made basis, the Supplier warrants that continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two years beginning from the conclusion of the Supplier's performance under this Agreement.
 - PHOENIX MIRAGE and its , directors, officers and employees shall be named as additional insureds with respect to the Commercial General Liability, Automobile Liability, Professional Liability and Cyber Liability policies. Coverage available to the additional insured under 42a(ii), 42a(iii), 42a(iv) and 42a(viii) above shall apply on a primary and non-contributing basis as respects any other insurance, deductibles or self-insurance available to the additional insureds. A waiver of subrogation in favor of PHOENIX MIRAGE and its employees shall be included with regards to all policies required herein. Supplier shall include all of its lower tier Subcontractors or Suppliers as insured under Supplier's policies or require any lower tier Subcontractors or Suppliers to meet the requirements cited above
 - A certificate of each policy of insurance shall be furnished to the PO Administrator within eight (8) days after notice of award and at each subsequent policy renewal, certifying compliance with these insurance requirements. The failure of PHOENIX MIRAGE to receive or retain such certificate will not be construed as a waiver of Supplier's obligation to maintain the insurance required above. The insurance company(ies) providing the required insurance shall be of good standing, authorized to conduct business in the jurisdiction in which services are performed and have a rating of at least A-, VII by AM Best. If any of the required coverage is to be provided by self-insurance, the Supplier shall submit evidence of financial responsibility to PHOENIX MIRAGE and shall obtain PHOENIX MIRAGE written approval.
 - The Supplier shall indemnify PHOENIX MIRAGE for any costs and expenses incurred, including attorneys fees, judgements, settlements or penalties, as a result of any claim or liability resulting from the failure of Supplier (or of its lower tier Subcontractors or Suppliers) to maintain the insurance policies, including the Defense Base Act if applicable, required by this Section.

(43) WAIVER

Failure of either party to insist on performance of any provision of this PO shall not be construed as a waiver of that provision or a waiver of PHOENIX MIRAGE or Supplier's right to require compliance with such provision in any later instance. If any provision of this PO is found to be illegal or unenforceable under law, that provision shall be deleted; however, all other provisions of this PO shall not be affected thereby and shall remain in full force and effect.

(44) NOTICE

Any notices required or permitted to be given hereunder shall be in writing and shall be deemed to be duly given when received if sent by mail to each party's address as stated on this PO, or when delivered by hand or electronic submission with confirmation of receipt

(45) FORCE MAJEURE

- Neither Party shall be liable for any excess costs or other damages if the failure to perform arises out of causes beyond the reasonable control and without the fault or negligence of the party alleging an event of Force Majeure. Force Majeure causes may include, but are not limited to
 - (a) acts of God or of the public enemy,
 - (b) war (whether an actual declaration thereof or not),
 - (c) acts of terrorism or threats thereof,
 - (d) acts of the U.S. End Customer in either its sovereign or contractual capacity,
 - (e) sabotage,
 - (f) insurrection,
 - (g) riot or other act of civil disobedience,
 - (h) atmospheric disturbances,
 - (i) fires,
 - (j) floods,
 - (k) plagues or epidemics,
 - (l) quarantine restrictions,
 - (m) labor disputes or strikes,
 - (n) failure or delay in transportation due to transportation workers strike or freight embargoes,
 - (o) worldwide parts shortage(s) or rationing allocations,
 - (p) shortage of labor, fuel, raw material or machinery, or
 - (q) violent storms or unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the party. If the delay is caused by a delay of Supplier or Supplier's subcontractors and if such delay arises out of causes beyond the reasonable control of either, and without the fault or negligence of either, Supplier shall not be liable for any delay in performance, excess costs or other damages

unless the Product to be furnished by the Supplier or Supplier's subcontractors were obtainable from other sources in sufficient time to permit Supplier to meet the required delivery schedules. Supplier shall notify PHOENIX MIRAGE in writing within ten (10) calendar days after it becomes aware of any such cause. If the original delivery schedule is overcome by the Force Majeure event then the Parties agree to negotiate in good faith a revised delivery schedule.

- Should either Party be unable to fulfill a material part of its obligations under this PO for a period in excess of sixty (60) calendar days due to circumstances beyond its reasonable control as described above, the other Party may at its sole discretion terminate this PO by written notice. Upon either resolution of the Force Majeure event or termination as described, the Parties shall proceed in good faith to negotiate a termination settlement proposal covering the performance of this PO performed prior to the effective date of the termination.

(46) SEVERABILITY

In the event any provision or clause of this PO conflicts with governing law or if any arbitration panel or court of competent jurisdiction holds invalid any provision or clause of this PO, such provision or clause shall be deemed to be modified to reflect as nearly as possible the parties' intent. The remainder of this PO shall remain in full force and effect.

(47) ORDER OF PRECEDENCE

Except for Confidential Information as set forth in Section 40 hereof, the following descending order of precedence shall apply in the event of an ambiguity, discrepancy, or conflict in the terms and provisions of any documents comprising this PO and/or to which this PO may be appended:

1. Purchase Order
2. Statement of Work, when present
3. Technical specifications / Drawings, when present
4. Attachments
5. Any other documents referenced or appended to this PO

However, in the event of an ambiguity, discrepancy, or conflict in any of the technical requirements or drawings, Supplier shall immediately consult PHOENIX MIRAGE for a resolution.