



## Synapse Wireless, Inc. Terms and Conditions of Purchase – US

**1. ENTIRE AGREEMENT:** Synapse Wireless, Inc. (“Buyer”) may agree from time to time to purchase Goods and/or Services from Seller. These Terms and Conditions of Purchase, any applicable order for Goods and/or Services from Buyer (“Order”) and any other of Buyer’s specifications constitute the entire agreement between the parties with respect to Goods and Services (collectively the “Agreement”). No other terms of Seller, no modification, amendment or waiver to this Agreement and no cancellation, change or return of any Order will be binding on Buyer until agreed in writing by Buyer’s authorized representative. Seller may not rely on any representation, promise or term not set forth in this Agreement and Buyer expressly objects to and rejects any terms not contained in this Agreement. Buyer’s acceptance of any Order, whether oral or written, is based on the express condition that Seller agrees to all terms and conditions of this Agreement, including these Terms and Conditions of Purchase. Seller acknowledges that these Terms and Conditions are subject to change from time to time and the parties agree that each Order will be governed by the version of these Terms and Conditions available online at the time of such Order. Seller’s acknowledgment of this Agreement, the delivery of Goods or performance of Services referenced herein or presentation of an invoice by Seller will constitute Seller’s acceptance of this Agreement.

**2. COVERAGE OF AGREEMENT:** This Agreement will govern and control all Goods and Services provided by Seller to Buyer, now or in the future, regardless of whether performed under written Orders issued by Buyer, other written agreement(s) executed by the parties, and/or verbal requests issued by Buyer and will remain in effect until either party gives sixty (60) days’ advance written notice of termination to the other party. Each party agrees that this Agreement will also govern all sales of Goods and provision of Services to any subsidiary, affiliate or division of Synapse Wireless, Inc., in which case such subsidiary, affiliate or division will be the “Buyer” under this Agreement (unless otherwise agreed in writing by such subsidiary, affiliate or division). The term “Buyer” also includes Buyer’s employees, agents, officers, directors, successors and assigns. The term “Seller” refers to the vendor providing Goods and Services to Buyer, its employees, agents, subcontractors, suppliers and all other persons performing Services or supplying Goods on Seller’s behalf. The terms “Goods” or “Services” whether used together or separately and wherever appearing in this Agreement mean (i) all products, supplies, materials, processes and/or equipment and/or (ii) all services, work or labor of any kind furnished or performed by Seller under this Agreement and any subsequent amendments, changes or modifications hereof.

**3. PRICE; PAYMENT; TAXES:** The cost of Goods and Services performed by Seller and payment terms will be specifically stated in the applicable Order, except that Buyer will receive the benefit of any price declines to actual time of shipment. Seller agrees that the prices stated in the Order are complete and no additional charges of any type, including but not limited to shipping, packaging, labeling, custom duties, tariffs, taxes, storage, insurance, handling and crating, will be due by Buyer unless and except to the extent Buyer expressly assumes responsibility for such additional charges in the Order or a change order issued under the Order. Seller represents and warrants that the prices for Goods and Services sold to Buyer under this Agreement are no less favorable than those currently extended by Seller to any other customer for the same or similar Services or Goods in similar quantities or under similar terms and conditions. If Seller reduces its price for such items before Seller completes performance of the Order, Seller agrees to reduce



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the prices under the Order correspondingly. Seller will pay all contributions, taxes and premiums payable under federal, state and local laws measured on the payroll of employees engaged in performance of Services under this Agreement, including FICA and unemployment compensation premiums and all excise, transportation, occupational and other taxes applicable to receipts under this Agreement and on all Goods or Services furnished.

**4. DELIVERY; INSPECTION:** Unless otherwise stated in the applicable Order, Goods will be shipped DDP (Delivered Duty Paid) (per Incoterms® 2010). No charges for unauthorized transportation are allowed. Supplier must fully prepay any unauthorized shipment that will result in excess transportation charges. Buyer is not responsible for any packaging, labeling or boxing not separately itemized in the Order. Title will pass to Buyer upon delivery to Buyer's specified end destination on Buyer's shipping date AND acceptance by Buyer. Seller will inspect and test all Goods prior to shipment. Seller is responsible to suitably pack and label all Goods for shipping. Seller will be liable to Buyer for any loss or damage resulting from Seller's failure to provide adequate protection during shipment. The Order number must appear on all shipping documents, invoices, quality certificates, if any, and packing slips. All shipments will include a packing slip on the master container or load. The packing slip and shipping label must include the Order number and a unique packing slip number. Notwithstanding any other inspection or testing or prior payment, all Goods and Services will be subject to inspection and approval by Buyer within a reasonable time after delivery or completion to ensure compliance with plans and specifications, but such approval will not relieve Seller of its duty to ensure proper performance of Services, for which it is solely responsible. Buyer's right to perform inspections will not constitute a reservation by Buyer of the right to control Seller's work. Buyer reserves the right to reject and refuse any Goods and Services that do not comply with the terms of this Agreement or Buyer's specifications.

**5. SELLER'S RESPONSIBILITIES: TIME IS OF THE ESSENCE IN THIS AGREEMENT.** Seller will: (a) perform Services diligently and complete Services and deliver Goods in accordance with the provisions of this Agreement; (b) maintain the jobsite free of waste material and rubbish and clear the jobsite on completion of contracted Services; (c) provide all necessary safeguards for protection and maintenance of Services performed; and (d) repair and restore or replace (at Buyer's option) any real or personal property belonging to Buyer which Seller may damage or destroy while performing Services; and (e) provide all accessories or parts required for Buyer's use of any Goods at no additional charge. Seller performs Services at its OWN RISK. The safety of all persons employed by Seller, and/or any other person who enters Buyer's premises for reasons relating to Services, will be solely Seller's responsibility. Seller will enforce strict discipline and maintain good order among its employees and will not employ any unfit person or anyone not skilled in Services assigned to him/her. Seller will take all reasonable measures and precautions for the safety of its employees and subcontractors to prevent injuries to any person who enters Buyer's premises and will comply with all applicable provisions of federal, state and local safety laws. Such measures and precautions include, but are not limited to, utilizing all safeguards and warnings necessary to protect against any conditions on Buyer's premises. Seller will confine all equipment and its personnel to that area of Buyer's premises where Services are to be performed and to any other area

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which Buyer may permit Seller to use. Pursuant to the provisions of the Occupational Safety and Health Act of 1970 (“OSHA”), Seller will furnish its employees a place of employment free from recognized hazards that cause or may cause death or serious physical harm to its employees and will comply with all pertinent standards issued under OSHA. Seller specifically understands that these duties are Seller’s exclusive responsibility; Buyer will have no responsibility to ensure that Seller provides a safe working environment and/or complies with occupational safety and health rules. Buyer will maintain Safety Data Sheets to the extent required by OSHA and will have them available in its engineering and/or personnel office for inspection and copying by Seller. Seller is responsible for inspecting and complying with Safety Data Sheets requirements and for making all other necessary inquiries or investigations to ensure a safe workplace. Seller will inform its employees of, and require their compliance with, Buyer’s emergency response plan.

**6. CHANGES AND EXTRAS:** Buyer reserves the right to make changes to Services or Goods by written request to Seller. Before proceeding with any Services involving possible claims for extra compensation, Seller will submit in writing to Buyer a detailed proposal related to the projected increase or decrease occasioned by such contemplated change. If the parties cannot promptly agree on the change in price and/or that the matters under discussion constitute a change in Services, Buyer may, at its sole discretion, order Seller to proceed under protest in accordance with Buyer’s interpretation of the matter in dispute. The parties will then continue to negotiate an agreement. Seller will not make any changes in Goods or Services (regardless of net cost effect) without Buyer’s prior written consent. If, within twelve (12) months following completion of the last Order for Goods or Services under this Agreement, Seller makes any distinguishable change to the design, specifications and/or material of the Goods, including but not limited to a change in (a) safety standards; (b) design, specifications or materials that affects the form, fit, function, safety and/or reliability of the Goods; (c) source of a subcomponent or raw material; and (d) any other change that may affect the quality of the Goods or Services sold to Buyer under this Agreement, Seller will immediately notify Buyer of such changes in writing.

**7. INDEMNITY:** Seller will be responsible to the fullest extent permitted by applicable law to indemnify, defend and hold Buyer harmless from and against all claims, losses, suits, damages, liabilities, settlements, expenses and costs (including but not limited to reasonable attorneys’ fees and other costs of litigation) that directly or indirectly arise from or relate to (a) breach or violation of any term of this Agreement, including any warranty or guarantee; (b) sickness, disease, death or injury (“Injuries”) to any person, including but not limited to those Injuries that result concurrently from Buyer’s negligence; and (c) injury to property (including loss of use) of Buyer or others arising out of or connected with Goods or performance of Services, including but not limited to those that result concurrently from Buyer’s negligence; provided, however, that Seller will have no obligation to indemnify Buyer for claims or losses described in clause (b) and/or (c) above that arise solely from Buyer’s negligence or intentional misconduct. Seller warrants that any Goods and processes purchased under this Agreement, and the sale and/or use thereof, will not infringe any third party intellectual property right. Seller agrees to defend and indemnify Buyer from and against all claims, damages, actions or causes of action at law or in equity, including but not limited to all expenses and reasonable attorneys’ fees, incident to any infringement or



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claimed infringement of any intellectual property rights arising from use or sale of Goods. If Seller provides any Goods or process to be used by Buyer after Seller's completion of Services, Seller will, at no expense to Buyer, provide to Buyer on final payment a paid-up, irrevocable, royalty-free, nonexclusive license to operate said Goods and/or perform said processes. If Seller is unable to secure such license, Seller will, at no expense to Buyer, modify the Goods to render them non-infringing or remove the Goods and replace them with Goods which will not infringe any licenses or patents, provided they continue to meet the specifications of this Agreement.

**8. INSURANCE:** Seller will maintain and require its subcontractors to maintain in effect through the entire term of this Agreement insurance coverage (in an "occurrence" policy form) with insurance companies and in amounts satisfactory to Buyer in its sole discretion insuring: (a) Seller's indemnity obligations under this Agreement; (b) workers' compensation for occupational diseases and Injuries sustained by Seller's employees or employees of its subcontractors as required by law; and (c) Seller's and/or Buyer's liability for property damage, Injuries sustained by any person, including Seller's employees, which was in any manner caused by, arising from or related to Goods or Services performed by Seller and/or the condition of Buyer's land, buildings, equipment or vehicles, regardless of whether the alleged Injury or damage was caused or alleged to be caused in whole or in part by Buyer's conduct. Before performing any Services, Seller will furnish certificates of insurance in the standard ACORD form showing "Synapse Wireless, Inc., its divisions and subsidiaries" as certificate holder and including: (i) a statement that notice of cancellation will be provided in accordance with policy provisions; (ii) a statement that the certificate holder is additional insured on the policies for occurrences arising from or related to the Goods or Services; and (iii) a waiver of any and all rights of subrogation against the certificate holder. Policies maintained under this Section will be primary, not excess or contributory, to any other applicable policies Buyer might have. The insurance required by this Section will not limit Seller's liability to Buyer under this Agreement or limit the rights or remedies available to Buyer at law or in equity.

**9. WARRANTIES AND GUARANTEES:** Seller warrants to Buyer, its customers and the ultimate end user, if any, that it has clear title to all Goods furnished and that they are free of all liens, encumbrances and security interests. In addition to all warranties prescribed by law or given by Seller, all Goods and Services (including any approved samples) will: (a) be authentic and new; (b) be of good quality; (c) conform to the requirements of this Agreement and Buyer's specifications, descriptions and drawings; (d) be merchantable and fit for Buyer's intended use; and (e) be free from defects in design, material and workmanship. All Services provided by Seller will be performed by qualified and competent personnel in a professional manner using the highest standards of quality and workmanship. Seller also warrants that the performance of Services and delivery of Goods are in compliance with all applicable laws, regulations, standards and requirements. Goods purchased by Buyer for incorporation into a Buyer product or for resale as a Buyer product ("Resale Materials") will comply with applicable Environmental Regulations and Seller will provide Buyer with supporting documents evidencing such compliance on Buyer's request. For purposes of this Section, "Environmental Regulations" means (i) EU Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (including



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restrictions on use of Deca-BDE) and any implementing regulations, as amended or supplemented (“RoHS2 Directive”); (ii) the halogen-free standard for Joint Industry Guide for Material Composition Declaration for Electronic Products, as amended or supplemented, and standardized using IEC/JEDEC procedures; (iii) EU Regulation No. 1907/2006 about Registration, Evaluation and Authorization of Chemicals and any implementing regulations, as amended or supplemented (“REACH”); and (iv) such other product environmental requirements applicable to the Goods as communicated in writing to Seller. If Seller encounters unknown or latent conditions which could impair the performance or quality of Goods or Services, Seller will give immediate notice of the nature of such condition to Buyer. Seller will obtain from subcontractors and vendors, for Buyer’s benefit, all available warranties and guarantees with respect to design, materials, workmanship, equipment and supplies furnished. If a subcontractor or vendor seeks to defend on grounds that Seller committed error, Buyer may enforce this warranty against Seller and Seller will resolve all such issues with the subcontractor/vendor. This warranty will survive Buyer’s acceptance of Goods or Services.

**10. INTELLECTUAL PROPERTY.** Seller represents and warrants that the Goods and Services supplied hereunder, including any use thereof, will be free of any allegations, claims, demands, suits, actions or other proceedings (“Claims”) of infringement of any patent, trademark or other intellectual property rights or misappropriation of third party trade secrets, and agrees to indemnify and hold harmless Buyer and each of its affiliates, and their respective shareholders, officers, directors, employees, agents, customers, successors and assigns, and any other third party to whom Buyer may owe a similar obligation by contract or by operation of law (each an “Indemnified Person”), from any Injuries resulting from or arising out of any Claim of such infringement or misappropriation; provided that Seller makes no representations or warranties and will have no indemnification obligation with respect to Claims to the extent arising from Services performed or Goods designed or manufactured in accordance with custom designs or specifications supplied by Buyer if the alleged infringement or misappropriation would not have occurred but for Seller’s compliance with Buyer’s custom designs or specifications. At Buyer’s request, Seller will, at Seller’s sole expense, take over the defense of any such Claim or related litigation against an Indemnified Person; provided, however, that Buyer and any other Indemnified Person may retain its own counsel and participate in any such litigation for further protection of Buyer’s or such other Indemnified Person’s interests.

**11. DEFAULT; REMEDIES; CORRECTIVE ACTION REQUEST:** Each of the following will constitute an event of “Default” by Seller: (a) failure to complete Services or deliver Goods within the time or with the quality specified or guaranteed in this Agreement; (b) failure to comply with any provisions of this Agreement including breach of any warranty or guarantee; or (c) adjudication of Seller as bankrupt or Seller’s making a general assignment for benefit of creditors or appointment of a receiver on account of Seller’s insolvency. Upon Seller’s Default, Buyer may immediately, in addition to any other right or remedy it may have at law or in equity: (1) terminate the relationship and/or any pending Orders with Seller and obtain a return of all money already paid to Seller for Goods and Services not yet provided, or, at its sole option and without liability to Seller, suspend Services or delivery of Goods and/or exclude Seller from Buyer’s premises until



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Seller furnishes satisfactory evidence that such Default has been cured; (2) take possession of any of Buyer's samples and materials held by Seller; (3) finish Services or correct any non-conformity at Seller's expense by whatever method Buyer deems expedient; (4) reject, repair or replace non-conforming Goods or Services or procure same or similar Goods or Services from another source, in which case Seller will be liable to Buyer for any additional costs or expenses incurred by Buyer; (5) require Seller to correct or cure any non-conformity at Seller's expense; or (6) return any or all defective Goods to Seller for replacement with conforming Goods or for a full credit or refund of the purchase price paid by Buyer and charge Seller for the cost of any incurred inbound and outbound freight and a handling, storage and inspection charge of ten percent (10%) of the invoice price for any defective or nonconforming Goods returned to Seller by Buyer. In addition to and without limiting the foregoing, Seller agrees that, if there is a failure rate greater than one percent (1%) in any one lot or shipment of Goods, Buyer in its sole discretion may require Seller to accept the return of all Goods in that lot or shipment without having to demonstrate that all of the items are defective or have failed and, at Buyer's option, to either replace the returned Goods with conforming Goods or issue a full credit or refund of the purchase price paid by Buyer for the returned Goods. In addition to charging Seller for freight and handling charges as described above, if the failure rate exceeds one percent (1%) in any one lot or shipment, Buyer may charge Seller for all costs and expenses incurred by Buyer to remove and replace Goods from such lot or shipment that have been put into productive use. Any Goods rejected by Buyer and subsequently reworked or repaired by Seller and resubmitted to Buyer for acceptance will include the following on Seller's certificate of conformance (or other shipping document if Buyer does not require a certificate of conformance): (i) a statement that the Goods have been reworked or repaired by Seller and resubmitted to Buyer for acceptance, (ii) the applicable Order number and (iii) any Buyer rejection document number associated with the Goods. If Buyer issues a supplier corrective action request ("CAR") for defective or non-conforming Goods or Services, Seller will promptly respond as follows: (A) each response will be in the format specified in the CAR; (B) Seller will provide its initial response, including containment actions, within forty-eight (48) hours of receipt of the CAR; and (C) Seller will provide its final report to Buyer within seven (7) calendar days of receipt of the CAR. If any Goods or components thereof are subject to a recall due to Seller's negligence or fault, Seller will indemnify Buyer as provided in this Agreement. Buyer will have the right to control the recall process and Seller will fully cooperate with Buyer in connection with the recall. Seller agrees to cooperate with Buyer in any way reasonably required to complete Services or purchase replacement Goods. In such case, Buyer will pay for that portion of Services previously completed by Seller, subject to the terms and provisions above. In addition to its other remedies, Buyer will have a right of set-off and may withhold from time to time out of monies due Seller, amounts sufficient to fully compensate Buyer for any loss or damage resulting from any Default or breach by Seller. As an alternative, Buyer may, in its sole discretion, extend the delivery or completion schedule or waive any deficiencies in performance; provided, however, that no such waivers or extensions will be binding unless in writing and signed by Buyer's authorized representative. Buyer will have the right at any time to require adequate assurances of Seller's performance. In any action or proceeding between the parties, the prevailing party will be entitled to recover all its reasonable attorneys' fees, expenses and other costs of litigation.

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**12. QUALITY ASSURANCE; COUNTERFEIT COMPONENTS; LIMITED SHELF-LIFE GOODS:** Seller will maintain qualified personnel and a quality assurance system adequate to detect and prevent shipment of nonconforming Goods, including verification of the effectiveness of the quality assurance system of any subcontractor or vendor used by Seller in connection with the manufacture or production of the Goods. Seller will comply with any Buyer supplier quality assurance requirements provided to Seller. On request, Seller will provide Buyer with product test specimens (i.e., production method, number, storage conditions, etc.) and reasonable quantities of product samples required for design approval, inspection, qualification, verification, investigation, audit or any other purpose deemed reasonably necessary by Buyer. If Goods are Resale Materials, Seller's quality assurance system must meet the requirements for certification under ISO 9001 or higher standards. Seller will only purchase electronic components to be provided as or incorporated into Goods directly from the original component manufacturer ("OCM") or original equipment manufacturer ("OEM") or through an OCM/OEM authorized distribution chain. Seller may not purchase electronic components from independent distributors or brokers without Buyer's prior written consent. Seller will immediately notify Buyer and provide all relevant details if Seller becomes aware of suspects that it has delivered Goods that include counterfeit electronic components. When requested by Buyer, Seller will provide documentation tracing the authenticity of the electronic components to the OCM/OEM. Buyer, its customers and authorities that regulate Buyer's business will have the right to review Seller's quality assurance system and, with prior notice and at reasonable times, to conduct an on-site inspection of the facility or facilities where the Goods are manufactured or produced. Seller will provide any technical and/or testing reports requested by Buyer regarding the quality, authenticity, safety and reliability of Goods. Seller will identify all Goods, including any parts or materials incorporated therein, that have characteristics vulnerable to quality degradation over time or under certain environments. Seller will make such identification by affixing a legend detailing the relevant quality degradation information directly on the Goods or on the Goods container, including: (a) start date of useful life; (b) end date of useful life; (c) storage conditions that result in quality degradation, including temperature, humidity and any other known factors; and (d) Seller-recommended storage conditions or stock rotation recommendations for preserving the quality of the Goods or parts or materials thereof. Notwithstanding the foregoing, unless otherwise agreed by Buyer in writing, all Goods will have a minimum of ninety percent (90%) shelf-life remaining from the date of delivery to Buyer. Any Goods not meeting the foregoing shelf-life minimum will be subject to rejection and return to Seller, at Seller's sole cost, in addition to any other remedy available to Buyer under the Agreement.

**13. INVENTIONS AND WORKS OF AUTHORSHIP.** Buyer will be the owner of, and Seller agrees to assign to Buyer all rights Seller may have in, any inventions conceived, reduced to practice or otherwise made by Seller and any works of authorship created by Seller, alone or jointly with others, and whether considered to be "works made for hire" or not, in the course of performing Services for Buyer under the Agreement. Seller agrees upon request to execute such documents as may be reasonably requested by Buyer to confirm such ownership.



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**14. LIENS:** Seller will pay, satisfy and discharge all mechanics', suppliers', materialmen's and other liens and all claims, obligations and liabilities which may be asserted against Buyer or its property by reason or as a result of Seller's acts or omissions relating to furnishing of Goods or performance of Services governed or controlled by this Agreement.

**15. LABOR RELATIONS:** Seller will promptly make all reasonable efforts to prevent or resolve any strikes or other labor disputes among its employees or employees of its subcontractors. If a labor dispute occurs, Seller will take all reasonable actions to minimize any disruption of performance of Services. Seller will immediately advise Buyer in writing of any possible labor dispute which may affect performance of Services.

**16. COMPLIANCE WITH LAWS:** In the performance of this Agreement, Seller will comply with all applicable federal, state and local laws, codes, regulations and ordinances, including but not limited to all applicable: (a) environmental laws; (b) international trade laws, including but not limited to laws and regulations regarding export controls, economic sanctions, trade embargoes, anti-boycott restrictions and anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act (as amended), the United Kingdom Bribery Act and the conflicts minerals provisions of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act; (c) laws and regulations addressing human trafficking and slavery; and (d) equal employment opportunity laws, regulations and requirements including those set forth in Executive Order 11246, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, and regulations issued thereunder and laws prohibiting discrimination against any person because of veteran status, disability, race, creed, color, national origin, religion, age or sex in any term or condition of employment, which are incorporated herein by this reference. **Specifically, Seller and its subcontractors and vendors will abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin and require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.** Seller will take reasonable measures to ensure that those who supply components or materials incorporated into Goods supplied to Buyer also comply with such laws and regulations. Seller will obtain, at its sole expense, all necessary permits and licenses before beginning Services and make copies of all such permits and licenses available to Buyer upon request. If Services involve or require Seller to transport or dispose of any material or waste, before beginning Services, Seller will provide Buyer with copies of all applicable or required permits and licenses and notify Buyer in writing of the final and any interim destination of material or waste, including in such notice verification that the place of disposal is validly authorized and permitted to accept the material or waste.

**17. CONTROLLING LAW; CONSENT TO VENUE; DISPUTE RESOLUTION:** This Agreement and all rights and obligations hereunder will be governed by and construed in accordance with the laws of the State of Alabama, without regard to its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. All disputes, claims or controversies ("Dispute") between the parties arising out of or relating to this Agreement, including but not limited to





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Disputes based on or arising from an alleged tort, will be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and Commercial Arbitration Rules of the American Arbitration Association (“AAA”). Disputes will be arbitrated in Birmingham, Alabama. Defenses based on statutes of limitation and similar doctrines will be applicable in any such proceeding, and commencement of an arbitration proceeding under this Agreement will be deemed commencement of an action for such purposes. The parties will select arbitrators in accordance with the Commercial Arbitration Rules of the AAA. The AAA will designate a panel of ten (10) potential arbitrators knowledgeable in the subject matter of the Dispute. Each party will designate, within thirty (30) days of the receipt of the list of potential arbitrators, one of the potential arbitrators to serve, and the two arbitrators so designated will select a third arbitrator from the eight remaining candidates. No Dispute will be arbitrated as a class action, representative or general public action, collective action, private attorney-general action, or otherwise be joined with claims of any other person (“Collective Proceedings”). Accordingly, AAA’s Supplementary Rules for Class Arbitrations will not be applicable. If this limitation on Collective Proceedings is held by a court of competent jurisdiction to be unenforceable or interpreted to not prevent a Collective Proceeding, then such action will proceed in a court of law as provided below and not arbitration. If any arbitrator renders a decision regarding the question of arbitrability of the above limitation or orders any form of Collective Proceeding, then the arbitrator has exceeded its powers under the Federal Arbitration Act. Notwithstanding the foregoing, Buyer reserves the right to resolve or bring any Dispute in a court of competent jurisdiction in the state and federal courts of Alabama, to which jurisdiction each party hereby irrevocably submits. Each party waives any objection or defense that it is not personally subject to the jurisdiction of the state and federal courts of Alabama; that venue of the action is improper; and that the action, suit or proceeding is brought in an inconvenient forum. In addition to any other mode of service of process authorized by law, each party consents to service of process by registered or certified mail.

### 18. MISCELLANEOUS

**(A) WAIVER:** No waiver of any provision, right or remedy contained in this Agreement, including the terms of this Section, is binding on, or effective against, a party unless expressly stated in writing and signed by each party’s authorized representative. Each party expressly agrees that no right or remedy provided for in this Agreement can be waived through course of dealing, course of performance or trade usage and that reliance on any waiver without the other party’s written consent is unreasonable. Waiver by a party of any breach will be limited to the specific breach so waived and will not be construed as a waiver of any subsequent breach. A party’s approval or consent to any action proposed by the other will not be considered an agreement to the propriety, fitness or usefulness of the proposed action, and will not affect the proposing party’s obligation to strictly comply with this Agreement and all related Orders.

**(B) SUBLETTING AND ASSIGNING:** Seller may not assign this Agreement or any Order issued under this Agreement or subcontract or delegate any part of Services to be performed on Buyer’s



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premises without Buyer's prior written consent. Consent will not relieve Seller from any of its obligations under this Agreement or any Order. Any transferee or subcontractor will be considered Seller's agent and, as between Buyer and Seller, Seller will remain liable as if no such transfer or subcontract had been made. Any attempted assignment, subcontract or delegation in violation of this Section is void; however, this Agreement and the terms and conditions contained herein are enforceable against Seller's successors and permitted assigns. Seller is responsible for the performance of any subcontractor or vendor used by Seller under this Agreement. Seller will remain Buyer's sole point of contact regarding Services and Goods.

- (C) CUMULATIVE NATURE OF REMEDIES:** Buyer's remedies under this Agreement are cumulative and in addition to any other remedies available to Buyer, whether at law, equity or otherwise.
  
- (D) SEVERABILITY:** If any provision or part of a provision contained in this Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Agreement will remain in full force and effect.
  
- (E) CONSTRUCTION:** No provision of this Agreement may be construed against either party as the drafting party.
  
- (F) RELATIONSHIP OF PARTIES:** Seller will at all times be an independent contractor with respect to Goods and Services and not an agent or employee of Buyer. Any services provided by Seller will be carried on by Seller according to its own methods subject only to specifications and agreements outlined in this Agreement or any applicable Order. Seller will have full and exclusive control of its employees engaged in performance of Services, manufacture and/or delivery of Goods.
  
- (G) FORCE MAJEURE:** Other than as set forth in this Agreement, neither party will be liable for delays in performance caused by acts of God, strikes or labor disturbances or other delays in performance due to any event beyond the party's control. If any such event occurs, the period for the party's performance affected by the event will be extended for such period as reasonably required under the circumstances.