

SKORPIOS TECHNOLOGIES INC.  
TERMS AND CONDITIONS OF PURCHASE

**1. SCOPE**

1.1 The following Skorprios Technologies Inc. (Skorprios) Terms and Conditions of Purchase (“Terms and Conditions”), together with the Skorprios purchase order referencing these Terms and Conditions, and any SOWs (as defined herein), attachments and exhibits, specifications, notes, instructions and other materials, whether physically attached by Skorprios or incorporated by reference by Skorprios (collectively the “Purchase Order”), constitutes the entire agreement between Skorprios Technologies, Inc. (“Skorprios”) and the supplier (the “Supplier”) identified in the Purchase Order concerning the subject matter of the Purchase Order (“Agreement”) and may be modified only by a mutual written agreement by both parties. This Purchase Order, together with any documents incorporated therein by reference, constitutes the sole and entire agreement of the parties with respect to the Purchase Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Purchase Order. The Purchase Order expressly limits Seller's acceptance to the terms of the Purchase Order. These Terms and Conditions prevail over any terms or conditions contained in any other documentation and expressly exclude any of Supplier's general terms and conditions of sale or any other document issued by Supplier in connection with this Purchase Order. Skorprios is not obligated to any minimum purchase or future purchase obligations under this Purchase Order. This Purchase Order is not binding on Skorprios until Supplier accepts the Purchase Order in writing. If Supplier does not accept the Purchase Order in writing within 3 days of Supplier's receipt of the Purchase Order, this Purchase Order will lapse. Skorprios may withdraw the Purchase Order at any time before it is accepted by Supplier.

**2. DELIVERY**

2.1 Time is of the Essence. Time is of the essence in Supplier's performance of its obligations under the Purchase Order. Supplier shall immediately notify Skorprios if Supplier's timely performance under the Purchase Order is delayed or is likely to be delayed. Skorprios' acceptance of Supplier's notice will not constitute Skorprios' waiver of any of Supplier's obligations.

2.2 Late Delivery. If Supplier delivers Supplier Work after the Delivery Date, Skorprios may reject such Supplier Work.

2.3 Rejected Supplier Work. Skorprios will hold any Supplier Work rejected under the Purchase Order at Supplier's risk and expense Supplier shall bear all return shipping charges, including without limitation, insurance charges Skorprios incurs

on Supplier's behalf. Skorprios may, in its sole discretion, destroy or sell at a public or private sale any rejected Supplier Work for which Skorprios does not receive return shipping instructions within a reasonable time, and apply the proceeds, if any, first toward any storage charges.

2.4 Packaging. Unless otherwise specified by Skorprios, Supplier shall package all Products and Deliverables: (i) in accordance with good commercial practice; (ii) in a manner acceptable to common carriers for shipment at the lowest rate for the particular goods; (iii) in accordance with applicable law; and (iv) in a manner adequate to insure safe arrival of the Products at the destination specified in the Skorprios order. Electrostatic discharge sensitive materials must be packaged in proper ESD protective packing, identified with the proper ESD labels and receiving paperwork must not be placed inside the ESD bags with the item. Class 0A components are to be marked as such. Packing peanuts are not allowed in the facility and Skorprios' requests their Suppliers to discontinue use for the shipment. Supplier shall mark all containers for the Products with necessary lifting, handling and shipping information and with purchase order numbers and date of shipment. An itemized packing list must accompany each shipment, and such packing list must include (x) the purchase order number; and (y) the description, part number, revision level, and quantity of the Products being shipped.

2.5 Delivery Location. Unless Skorprios expressly instructs otherwise, Supplier shall deliver all Supplier Work to the address set forth in the Purchase Order. Seller assumes responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance. Risk of loss for the Deliverables and Products does not pass to Skorprios until Skorprios' acceptance of such Deliverables or Products.

**3. PRICES AND PAYMENT**

3.1 Prices. Unless otherwise specified in the Purchase Order, the price for the Supplier Work includes all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges. Supplier shall use its best efforts to achieve all feasible cost savings on materials and processes, including taxes, and to reflect such savings in a reduction of the price of the Supplier Work. In addition, Supplier shall institute any reasonable cost reduction proposals suggested by Skorprios, in which case Supplier shall reduce the applicable price to reflect such cost reductions.

3.2 Taxes. Supplier shall be responsible for any sales, service, value added, use, excise, consumption, and any other

taxes and duties on the goods or services it purchases, consumes, or uses in providing the Supplier Work, including taxes imposed on Supplier's acquisition or use of such goods or services. Supplier's personnel shall not be considered employees of Skorprios by reason of their provision of Services under this Agreement, and Supplier shall bear sole responsibility for all payroll and employment taxes relating to Supplier's personnel. Skorprios may deduct withholding taxes, if any, from payments to Supplier where required under applicable law. Skorprios shall, at Supplier's written request, provide Supplier with receipts for any such withheld taxes.

3.3 Payment. Skorprios shall pay Supplier the price in accordance with the payment terms set forth in the Purchase Order following the later of: (i) the Delivery Date; (ii) the date of Skorprios' acceptance of all of the Supplier Work; or (iii) Skorprios' receipt of a properly prepared invoice. A properly prepared invoice must include the Purchase Order number and, if required in the Purchase Order, Supplier's certification of conformance of the Supplier Work to the requirements. All payments will be made in United States Dollars. If the price set forth in the Purchase Order is not in United States Dollars, then Skorprios will determine the United States Dollar equivalent of the price as of date of payment. Skorprios may, at any time, set-off any amounts Supplier owes Skorprios against any amounts Skorprios owes to Supplier or any of its affiliated companies.

3.4 Payment Terms. If the Purchase Order does not set forth any Payment terms, the following terms will apply: Supplier shall invoice Skorprios for the Supplier Work provided hereunder upon or after delivery of the applicable Deliverables or Products or after performance of the Services. All payments must be in U.S. dollars. Skorprios shall pay all properly invoiced amounts no later than 60 days after receipt of invoice. Skorprios may deduct 2% from the amount due if Skorprios pays such amount no later than 10 days after receipt of invoice.

#### 4. IP OWNERSHIP

4.1 Ownership. Unless otherwise specified in a SOW and except as provided in Section 4.2, Skorprios is the sole and exclusive owner of all Deliverables and Supplier hereby irrevocably assigns and transfers to Skorprios all of its worldwide right and title to, and interest in, the Deliverables, including all associated Intellectual Property Rights.

4.2 Pre-existing IP. Unless otherwise specified in a SOW, each party owns all right, title, and interest in and to any of its Pre-existing IP. Supplier shall inform Skorprios in writing before incorporating any Pre-existing IP in the Deliverables. Supplier hereby grants Skorprios a perpetual, irrevocable, worldwide, transferable, royalty-free, nonexclusive license, with the right to sublicense and authorize the granting of sublicenses, to use and reproduce Supplier's Pre-existing IP in the Deliverables to the extent necessary for Skorprios' exercise and exploitation of its rights in the Deliverables.

4.3 Third Party Intellectual Property. Supplier shall inform Skorprios in writing before incorporating any Third Party Intellectual Property in the Supplier Work. Supplier shall not incorporate any Third Party Intellectual Property in the Supplier

work without Skorprios' prior written approval. Unless otherwise specified in an SOW, Supplier shall obtain and assign to Skorprios a nonexclusive, royalty-free, worldwide, perpetual, irrevocable, transferable, sub-licensable license to use all Third Party Intellectual Property incorporated into, required to use, or delivered with the Supplier Work. Supplier shall deliver copies of the above releases and licenses to Skorprios upon Skorprios' request.

4.4 Feedback. Supplier may have the opportunity to present to Skorprios recommendations or feedback for new features, functionality, or improvements to the Skorprios products ("Feedback"). Both parties agree that all Feedback is and shall be given voluntarily. Feedback, even if designated as confidential by Supplier, shall not create any confidentiality obligation for Skorprios. Skorprios shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of Intellectual Property Rights or otherwise.

#### 5. QUALITY SYSTEM, INSPECTION AND ACCEPTANCE

5.1 Quality System. Seller shall maintain a Quality System that is certified and/or compliant to ISO-9001 which will ensure all goods and services conform to contract requirements whether manufactured or processed by Seller or procured from Seller's subcontractors. Seller is responsible for performing or ensuring all inspections, tests and calibration necessary to substantiate that the goods or services furnished conform to purchase order requirements. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability of the quality system.

5.2 Electrostatic Discharge. All ESD safety precautions should be used to ensure that no ESD damage occurs during handling, processing, inspection and testing sensitive components/devices. Skorprios products are rated as Class 0A. Any voltage over 125 Volts could potentially damage the products. Suppliers are required to have an ESD Control Program. Recommended guidelines per ANSI/ESD S20.20.

5.3 RoHS and Lead (Pb) Free Compliance. Seller must warrant and agree that all goods and services sold to Buyer under this Order comply with RoHS 3 (2015/863). If requested, Seller shall promptly provide Buyer with access to all necessary information and records evidencing the goods' RoHS 3 compliance.

5.4 Conflict Minerals Compliance. The Seller must ensure compliance with the public policy relating to the enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten and gold (the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries ("DRC countries"). In particular, the Supplier commits to have in place a supply chain policy and processes to undertake (1) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into products it provides Buyer; (2) due diligence of its supply chain, as necessary, to determine if Conflict Minerals

sourced from the DRC countries directly or indirectly support unlawful conflict there, and (3) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures. The Supplier agrees to timely respond to information requests and declarations from Buyer regarding the uses and sources of Conflict Minerals in its products including information about Conflict Minerals that are recycled or scrap. The Supplier shall take all other measures as are necessary to comply with the Act and its implementing regulations, as they may be amended over time.

5.5 Certification of Compliance. Seller shall provide a signed and dated Certification of Compliance (C of C) with each shipment to Skorprios, to attest that the items identified by the purchase order were produced, processed and inspected to established requirements. The C of C will include, as a minimum, the Seller's name and address; Skorprios' purchase order number and line item; part number and revision; part description, quantity shipped; RoHS / lead-free compliance, Conflict Mineral Free compliance (where applicable) and signature/date and title of Seller's authorized representative.

5.6 Physical/Mechanical Test Report - Raw Material: If applicable, a test report must accompany each shipment. The report must indicate the actual physical and/or mechanical properties of the raw materials. The report must specifically identify the material by indication of the number to the melt, heat, batch, lot, or other designators, as well as the applicable material and/or process specification and revision.

5.7 Age-Controlled / Shelf Life Items. Seller shall include on shipping documentation and/or the labeling, the following information: date of the manufacture or cure date; Shelf life (period of time material maintains characteristics if stored properly); Storage temperature if applicable. The items shipped under this purchase order must arrive at Skorprios' facility with at least 80% of the specified shelf life remaining.

5.8 Material Safety Data Sheets (MSDS). MSDS shall be included in each shipment of materials or chemicals that contain hazardous materials or require special attention for safe handling.

5.9 Material Substitution Prohibition. Unauthorized material substitutions are not permitted on Buyer's purchase order. Unauthorized material substitution includes any deviation from the engineering definition of a raw material. Engineering definition includes Buyer design drawing and applicable specifications, product specification, form, size, shape, chemistry, melt method, origin, temper/condition, product testing or surface finish. Alternate materials specified in the engineering definition (and often described as approved material substitutions therein) do not constitute unauthorized material substitution. Contact Skorprios' Authorized Procurement Representative for details regarding deviations to authorized materials. Seller agrees and understands that such deviations only apply to this purchase contract, and only as indicated in the Buyer's authorized document.

5.10 Material Review Board. Seller does not have Material Review Board (MRB) authority. Buyer's engineering technical and other personnel may from time to time render assistance or

give technical advice to or exchange information with Seller's personnel concerning this Order of the articles or services to be furnished hereunder. However, such assistance, advice, statements or exchange of information shall not constitute a waiver with respect to any of Seller's obligations or Buyer's rights hereunder. Any such waiver or change to be valid and binding upon Buyer must be in writing and signed by an authorized representative of Buyer's Purchasing Department. In case of any doubt, Seller should promptly consult Buyer's Purchasing Department for further instructions.

5.11 Nonconforming Material Control and Disposition. Seller shall maintain a system that clearly identifies, documents, controls and segregates nonconforming material. Seller must submit nonconformities that require "Use-As-Is" or "Repair" disposition to Skorprios for MRB disposition. Shipment of goods containing nonconformities is not permitted until all MRB actions have been properly completed.

5.12 Inspection. All materials and workmanship entering into the performance of this Order may be inspected and tested at all times and places either during or after manufacture by inspectors designated by the Buyer. The exercise of this right shall in no way relieve the Supplier of its obligation to furnish all articles or materials in strict accordance with the terms and provisions of this order. In the event that any of the articles or materials are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this order, Skorprios shall have the right to reject and require the deficiency to be corrected or that the articles be replaced promptly with satisfactory materials or workmanship. If Skorprios rejects the goods and the Supplier fails to proceed promptly with the replacement or correction, Skorprios may either terminate this purchase order for default or replace/correct the goods and charge the Supplier with the costs and damages incurred. Items furnished in lots are subject to rejection on the basis of sample inspection per ASQ/ANSI-Z1.4.

5.13 Rejection. Skorprios may reject any or all of the Supplier Work which does not conform to the applicable requirements within 10 business days of Supplier's delivery of the Supplier Work.

5.14 Non-conforming Supplier Work. At Skorprios' option, Skorprios may (i) return the non-conforming Supplier Work to Supplier for a refund or credit; (ii) require Supplier to replace the non-conforming Supplier Work; or (iii) repair the non-conforming Supplier Work so that it meets the requirements. As an alternative to (i) through (iii), Skorprios may accept the non-conforming Supplier Work conditioned on Supplier providing a refund or credit in an amount Skorprios reasonably determines to represent the diminished value of the non-conforming Supplier Work. Skorprios' payment to Supplier for Supplier Work prior to Skorprios' timely rejection of such Supplier Work as nonconforming will not be deemed as acceptance by Skorprios.

5.15 Non-conforming Material Response. Supplier shall review and provide initial feedback/acknowledgement within twenty-four (24) hours after receiving failure notice from Skorprios. A Supplier Corrective Action Request (SCAR) will be issued and the Supplier's documented root cause analysis and

corrective action plan will be due within five business day. The timeline of the implementation of the corrective action must be agreed upon between the Supplier and Skorpios.

5.16 Record Retention. Supplier shall maintain, for a period of seven (7) years, purchase order files for supplies, equipment, material, or services pertaining to an Skorpios purchase order. Product acceptance records, including incoming/in-process and final inspection records, material certifications and all test records shall also be retained. All records must be made available to Skorpios upon request.

5.17 Right of Access: Must allow Skorpios, their customers, and regulatory authorities, the right of access to the applicable areas of all supplier facilities and to all applicable records including key characteristic where required, at any level of the supply chain involved in the purchase order.

5.18 Change Notification: Supplier must notify Skorpios at least 90 days in advance of any proposed quality / manufacturing /facility changes to the products including, but not limited to

- (a) Raw material changes
- (b) Change of suppliers, sub-tier supplier or CM
- (c) Significant process changes
- (d) Intent to produce on alternative lines
- (e) Intent to produce at alternative plants
- (f) Maintenance / PM programs
- (g) ISO certification
- (h) Key Operations personnel changes.

## 6.CHANGES

6.1 Specifications. Supplier shall supply Supplier Work according to the specifications provided by Skorpios, whether in the Purchase Order, the SOW or both. Supplier shall not make any changes in the form, fit, function, design, performance or appearance of any Supplier Work, without Skorpios' prior written consent.

6.2 Engineering Change Approval. Supplier shall not make any changes to any manufacturing source, production process, or the controlled process parameters or sources, types or grade classifications of materials used, with respect to any Supplier Work without Skorpios' prior written consent to an engineering change. Skorpios shall use reasonable efforts to respond to any request for an engineering change within 10 business days.

6.3 Costs of Engineering Changes. Supplier shall bear all costs for any engineering changes resulting from defects or nonconformities in Supplier Work, unless the defect or nonconformity is the fault of Skorpios in providing defective specifications.

## 7. REPRESENTATIONS AND WARRANTIES

7.1 Supplier Representations and Warranties. Supplier represents and warrants that:

(a) it has the full power to enter into the Agreement and to perform its obligations under the Agreement;

(b) the Services will be performed in a professional and workmanlike manner, using personnel possessing the appropriate level of skill and experience. The supplier shall have objective evidence that the personnel performing process operations, quality inspections or test functions have been trained and properly qualified to perform their tasks;

(c) it has the right and unrestricted ability to assign the Supplier Work to Skorpios including the right to assign any Supplier Work performed by Supplier Personnel, including, for the avoidance of doubt, Supplier's subcontractors;

(d) use, operation, and distribution of the Supplier Work is in full compliance with all open source licenses (including copyright licenses) applicable thereto, including, without limitation, all copyright notice and attribution requirements.

(e) the Supplier Work, and Skorpios' use of the Supplier Work, do not and will not infringe upon any third party's Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law;

(f) Supplier will not disclose to Skorpios, bring onto Skorpios' premises, or induce Skorpios to use any confidential or proprietary information that belongs to anyone other than Skorpios or Supplier;

(g) Software supplied by Supplier does not contain any Harmful Code;

(h) the Supplier Work conforms to Skorpios' specifications, Supplier's quotation or proposal, and Supplier's brochures or catalogs, and if none of the foregoing is applicable, then such Supplier Work is suitable for the intended use and is in compliance with applicable law;

(i) the Supplier warrants all materials or services delivered to be free from defective materials or workmanship, and to conform strictly to the specifications or drawings furnished. This warranty shall survive any inspection, delivery or acceptance of the materials or services, and payment shall not be deemed to be exclusive.

7.2 Skorpios Representation and Warranties. Skorpios represents and warrants to Supplier that it has the full power to enter into the Agreement and to perform its obligations under the Agreement.

7.3 No Other Warranties. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NO OTHER WARRANTIES ARE MADE, EITHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, AND THE PARTIES SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

## 8. INSURANCE

8.1 Coverage Requirements. Supplier shall secure and maintain insurance coverage during the term of this Agreement and shall provide to Skorpios certificates of insurance evidencing such coverage. At a minimum, the insurance coverage shall include the following:

(a) Employer's Liability Insurance and Worker's Compensation Insurance, including coverage for occupational injury, illness and disease, and other similar social insurance in accordance with the laws of the country, state, province or territory exercising jurisdiction over the employee with minimum limits per employee and per event of \$1,000,000.00 and a minimum aggregate limit of \$1,000,000.00 or the minimum limits required by law, whichever limits are greater.

(b) Commercial General Liability Insurance (with coverages consistent with ISO CG 0001(10/98), including blanket products, completed operations, premises operations, bodily injury, personal and advertising injury, contractual and broad form property damage liability coverages, on an occurrence basis, with a minimum combined single limit \$1,000,000.00 per occurrence and per project or per location aggregate. This coverage shall be endorsed to name Skorpios, its officers, directors, employees, agents, representatives, affiliates, subsidiaries, successors, and assigns as additional insureds using ISO CG 2026 (11/85).

(c) Automobile Liability Insurance covering use of all owned, non-owned and hired automobiles for bodily injury, property damage, uninsured motorist and underinsured motorist liability with a minimum combined single limit per accident of \$1,000,000.00 or the minimum limit required by law, whichever limit is greater. This coverage shall be endorsed to name Skorpios as an additional insured.

(d) Professional Liability/Errors and Omissions Insurance covering liability due to errors or omissions in the Supplier's performance under this Agreement, with limits of not less than \$1,000,000.00 per claim and \$1,000,000.00 aggregate.

(e) Commercial Crime Insurance, including blanket coverage for employee dishonesty and computer fraud for loss or damage arising out of or in connection with any fraudulent or dishonest acts committed by the employees of Supplier, acting alone or in collusion with others, with a minimum limit per event of \$1,000,000.00.

(f) Excess or Umbrella Liability Insurance with a combined single limit of not less than \$4,000,000.00 per occurrence and per project or per location aggregate. These limits apply in excess of each of the policies described in Subsections (a), (b) and (c).

8.2 Insurance Conditions.

(a) The insurance in Sections 8.1(a) through 8.1(f) above shall be primary and noncontributing with respect to any insurance or self-insurance that may be maintained by either

Party and shall waive all rights of subrogation against Skorpios and its affiliates. Completed operations coverage, where applicable, will be maintained for not less than three years after the termination of this Agreement. The limits required above may be shown as a combination of primary and excess umbrella limits. All coverage required by Section 8.1(b) shall contain standard cross liability provisions.

(b) The insurance and the insurance policies required by this Section 8.2(b) shall provide that no less than 30 days' written notice shall be given to Skorpios prior to any modification, cancellation, change or non-renewal of the policies or any reduction in coverage below the limits specified in Sections 8.1(a) through 8.1(f) above. Prior to commencing performance under the Purchase Order annually during the term of this Agreement, Supplier shall promptly provide certificates of insurance evidencing that Supplier is maintaining the required coverage set forth above. Prior to the commencement of any Services and at Skorpios' request at any time thereafter, Supplier shall promptly provide certificates of insurance evidencing that Supplier is maintaining the required coverage set forth above. The insurers selected by Supplier shall be reasonably acceptable to Skorpios and each have rating in the Best's Key Rating Insurance Guide (latest edition in effect on the latest date stated in the certificates of insurance referred to in the immediately preceding sentence) of A-XII or better, or be otherwise acceptable to Skorpios. Supplier shall require that its subcontractors, if any, maintain and, upon request, provide evidence of, insurance coverages as specified in this Section 8 naming Supplier and Skorpios, Skorpios' affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns, as an additional insured or loss payee where relevant.

(c) In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage specified in this Section 8, Supplier shall be solely responsible to take such action. Skorpios shall notify Supplier, as soon as practicable, of any loss or damage or other event requiring notice or other action of which Skorpios becomes aware, provided that the failure of Skorpios to do so will not relieve Supplier of its obligations under this Section 8.2(c). Supplier shall provide Skorpios with contemporaneous notice and with such other information as Skorpios may request regarding the event.

(d) Failure of Supplier to provide insurance as herein required or failure of Skorpios to require evidence of insurance or to notify Supplier of any breach by Supplier of the requirements of this Section 8 shall not be deemed to be a waiver by Skorpios of any of the terms of this Agreement, including the obligation of Supplier to defend, indemnify, and hold harmless Skorpios as required herein. Commencement of Services without the required certificates of insurance shall not constitute a waiver by Skorpios of any rights under this Agreement or any remedy, at law or in equity. The obligation to procure and maintain any insurance required herein is a separate responsibility of Supplier and independent of the duty to furnish a copy or certificate of such insurance policies.

(e) In the event of any failure by Supplier to comply with the insurance requirements in this Section 8, Skorprios may, without in any way compromising or waiving any right or remedy, at law or in equity, upon five days' written notice to Supplier, purchase such insurance, at Supplier's expense, provided that Skorprios shall have no obligation to do so and if Skorprios shall do so, Supplier shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. And such reasonable costs incurred by Skorprios shall be promptly reimbursed by Supplier and/or may be withheld from any payment due Supplier.

(f) None of the requirements contained herein as to types, limits or Skorprios' approval of insurance coverage to be maintained by Supplier are intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Supplier under this Agreement, any other agreement with Skorprios, or otherwise provided by law.

## 9. ASSIGNMENT AND SUBCONTRACTING

9.1 No Assignment. Supplier shall not assign any of its rights or delegate any of its obligations under the Purchase Order without Skorprios' prior written consent. Skorprios may, at its option, void any attempted assignment or delegation undertaken without Skorprios' prior written consent. Skorprios may freely assign or delegate this Agreement or any of its licenses, rights or duties hereunder in Skorprios' sole discretion.

9.2 No Subcontracting. Supplier may not subcontract any of its rights or obligations under the Purchase Order without Skorprios' prior written consent. If Skorprios consents to the use of a subcontractor, Supplier shall: (i) guarantee and will remain liable for the performance of all subcontracted obligations; (ii) indemnify Skorprios for all damages and costs of any kind, subject to the limitations in Section 12 (Indemnification), incurred by Skorprios or any third party and caused by the acts and omissions of Supplier's subcontractors' and (iii) make all payments to its subcontractors. If Supplier fails to timely pay a subcontractor for Supplier Work performed, Skorprios will have the right, but not the obligation, to pay the subcontractor and offset any amount due to Supplier by any amount paid to the subcontractor. Supplier shall defend, indemnify and hold Skorprios harmless for all damages and costs of any kind, without limitation, incurred by Skorprios and caused by Supplier's failure to pay a subcontractor.

9.3 No Third Party Beneficiaries. To the extent allowed by applicable law, no person who is not a party to Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

## 10. TERM AND TERMINATION

10.1 Term. A Purchase Order will remain in effect with respect to any SOW already issued prior to expiration of the term of the Purchase Order until such SOW is either terminated or the Supplier Work is completed and accepted.

10.2 Termination for Convenience. Skorprios may terminate the Purchase Order, any SOW, or both at any time, for no reason or for any reason, upon 10 days' written notice to Supplier. Upon

receipt of notice of such termination, Supplier shall inform Skorprios of the extent to which it has completed performance as of the date of the notice, and Supplier shall collect and deliver to Skorprios whatever Supplier Work then exists. Skorprios shall pay Supplier for all Supplier Work performed and accepted through the effective date of the termination, provided that Skorprios will not be obligated to pay any more than the payment that would have become due had Supplier completed and Skorprios had accepted the Supplier Work. Skorprios will have no further payment obligation in connection with any termination.

10.3 Termination for Cause. This Agreement may be terminated by either party, upon written notice: (i) upon the institution by the other party of voluntary receivership or bankruptcy proceedings; (ii) upon the institution of involuntary receivership or bankruptcy proceedings against the other party, which are not dismissed or otherwise resolved in its favor within 60 days; (iii) upon the other party's making a general assignment for the benefit of creditors; or (iv) upon the other party's dissolution or ceasing to conduct business in the ordinary course.

10.4 Termination for Breach. If either party materially defaults in the performance of any of its material obligations hereunder and if any such default is not corrected within 30 days after notice in writing, then the non-defaulting party, at its option, may, in addition to any other remedies it may have, thereupon terminate this Agreement by giving written notice of termination to the defaulting party.

10.5 Survival. The parties' rights and obligations of Sections 1, 4, 7, 9, 10.2, 10.5 and 11-16 will survive any termination or expiration of this Agreement.

## 11. CONFIDENTIALITY

11.1 NDA. If Skorprios and Supplier have entered into a Non-Disclosure Agreement ("NDA") which covers disclosure of Confidential Information (as defined herein) under the Purchase Order, and if the term of the NDA expires before the expiration or termination of the Purchase Order then the following provisions will apply:

(a) the term of the NDA shall be automatically extended to match the term of the Purchase Order.

(b) The parties shall treat the terms, conditions, and existence of the Purchase Order as Confidential Information as defined in the NDA.

11.2 Confidential Information. "Confidential Information" means any non-public data, information and other materials regarding the products, services or business of a disclosing party (and/or, if a party is bound to protect the confidentiality of any third party's information, of a third party) provided to the other non-disclosing party where such information is marked or otherwise communicated as being "proprietary" or "confidential" or the like, or where such information should, by its nature, be reasonably considered to be confidential and/or proprietary. Without limiting the foregoing, the terms of this Agreement shall be deemed Confidential Information of both parties. Supplier's Confidential Information will not include any Feedback.

11.3 No NDA. If Skorprios and Supplier have not entered into an NDA which covers disclosure of Confidential Information under the Purchase Order, then the following provisions will apply:

(a) Non-use and Non-disclosure. Neither party shall use the other party's Confidential Information, except in connection with such party's performance hereunder, or disclose such Confidential Information to any third party, either during the term of this Agreement or thereafter, without the prior written consent of the other non-disclosing party. Both parties shall protect such Confidential Information with the same degree of care used to protect its own proprietary information of like importance, but in any case using no less than a reasonable degree of care.

(b) Required Disclosure. Nothing in this Agreement shall prohibit either party from disclosing Confidential Information of the other party if legally required to do so by judicial or governmental order or by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process in a judicial or governmental proceeding ("Required Disclosure"); provided that the disclosing party shall (i) give the other non-disclosing party prompt notice of such Required Disclosure prior to disclosure, (ii) cooperate with the other non-disclosing party in the event that the other non-disclosing party elects to contest such disclosure or seek a protective order with respect thereto, and (iii) in any event only disclose the exact Confidential Information, or portion thereof, specifically requested by the Required Disclosure.

(c) Exclusions. The obligations of Section 11.3(a) will not apply to Confidential Information that the receiving party can demonstrate: (i) was independently developed by the receiving party without any use of the disclosing party's Confidential Information; (ii) becomes known to the receiving party from a source other than the disclosing party without breach of any obligation to disclosing party with respect to such information; (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the receiving party; or (iv) was rightfully known to the receiving party at the time of disclosure.

(d) No Conveyance. All Confidential Information is and will remain the property of its respective party. Except as otherwise provided in this Agreement, no license under any Intellectual Property Right is granted or implied by the conveying of Confidential Information to either party.

(e) Return of Confidential Information. Upon expiration or termination of this Agreement for any reason, each party shall deliver to the other party all of the other party's Confidential Information that such party may have in its possession or control or shall destroy all such Confidential Information and certify such destruction in a writing signed by an authorized officer of such party.

## 12. INDEMNIFICATION

12.1 Indemnification. Supplier shall indemnify, defend, and hold Skorprios, its affiliates, and its and their directors, employees,

customers, and distributees harmless from and against all cost, loss, liability, damage, judgment, and expense (including reasonable attorneys' fees) arising out of or in connection with any third-party claim: (a) alleging facts, if true, would constitute a breach by Supplier of any representation, covenant, or warranty hereunder; (b) alleging that Skorprios' or its affiliates' manufacture, use, sale, import, reproduction, distribution, modification, performance, or display of the Supplier Work infringes, violates, or misappropriates any Intellectual Property Rights of a third party; provided, however, that in the event of a claim under this Section 12, Skorprios shall (i) give Supplier prompt written notice of any such claim; and (ii) give Supplier reasonable assistance and information in connection with any such claim; or (c) personal injury or property damage, including monetary damages, alleged or actually sustained by third-parties arising out of or in connection with the acts, errors, omissions, or negligence of Supplier. Skorprios shall have the right, exercisable in its sole discretion, to control the defence of such third-party claim and to select counsel of its own choosing.

12.2 Infringement. If, as a result of any binding settlement or a final determination by a court of competent jurisdiction, the Supplier Work is held to infringe, violate, or misappropriate any Intellectual Property Rights of a third party or if its use as contemplated hereunder is enjoined, Supplier shall, at Skorprios' option: (a) obtain for Skorprios and its affiliates, and its and their customers and sub-licensees the right to continue use and exploitation of the Supplier Work as herein licensed or assigned, or (b) replace or modify the Supplier Work, as applicable, so that it no longer infringes, violates, or misappropriates; provided, however, that such replaced or modified Supplier Work conforms to the representations and warranties set forth in this Agreement.

12.3 Exclusions. Notwithstanding the foregoing, Supplier shall have no liability under Section 12.1 to the extent such liability arises from (a) modifications of the Supplier Work not made by, or at the direction of, Supplier, or (b) the combination of the Supplier Work with other equipment or software not provided by Supplier, if such claim or action would have been avoided but for such modification or combination (except for equipment or software without which the Supplier Work will not operate in conformity with the documentation related thereto or with the intended use of the Supplier Work, or for any modification or combination of the Supplier Work with equipment or software reasonably necessary for Skorprios or its affiliates to exercise their rights granted hereunder).

## 13. LIMITATION OF LIABILITY

13.1 Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE IN THE AGREEMENT OR OTHERWISE, SKORPIOS WILL NOT BE LIABLE TO SUPPLIER WITH RESPECT TO THE SUBJECT MATTER OF THE AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS IN THE AMOUNT PAYABLE TO SUPPLIER IN THE TWELVE MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.

13.2 Exclusions of Damages. IN NO EVENT WILL SKORPIOS BE LIABLE TO SUPPLIER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR OTHER INDIRECT DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, OR OTHERWISE, AND WHETHER OR NOT SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS WILL SURVIVE AND APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. FOR THE AVOIDANCE OF DOUBT, SUPPLIER'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT SHALL BE DEEMED DIRECT DAMAGES AND SHALL NOT BE SUBJECT TO THE LIMITATION SET FORTH IN THIS SECTION 13.2.

#### 14. COMPLIANCE WITH LAWS

14.1 Compliance with Laws. Supplier shall comply with all applicable federal, state, local laws and ordinances now or hereafter enacted including, but not limited to OSHA, the Fair Labor Standards Act of 1938 (29 USC 201-219), the 8-Hour Law (40 USC 327-332), the Equal Opportunity and Affirmative Action Regulations, and laws restraining the use of convict labor. Supplier shall comply with all laws, regulations, statutes and ordinances of all governmental entities including local, state, federal or international, now or hereafter enacted, which regulate any material because it is radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act, the Clean Air Act, the Montreal Protocol, the Toxic Substances Control Act and similar laws, rules, statutes, treaties or orders and international understandings. In addition, Supplier shall secure and maintain adequate worker's compensation insurance in accordance with applicable law. Supplier shall not act in any fashion or take any action that will render Skorprios liable for a violation of any applicable anti-bribery legislation (including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010), which prohibits the offering, giving or promising to offer or give, or receiving, directly or indirectly, money or anything of value to any third party to assist it them or Skorprios in retaining or obtaining business or in performing the Supplier Work.

#### 15. GENERAL

15.1 Governing Law. The rights and obligations of the parties under this Agreement will not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods. Rather, this Agreement will be construed in accordance with, and all disputes will be governed by, the laws of the State of New Mexico, without regard to its conflict of laws rules. Supplier irrevocably consents to the personal jurisdiction of the state and federal courts in and for Bernalillo County, New Mexico, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.

15.2 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person; (b) sent by first class registered mail, or air mail, as appropriate; or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth in the preamble to this Agreement. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

15.3 Conflicts. If there is a conflict between or among the Purchase Order and any documents attached to and incorporated by reference, the conflict will be resolved as follows:

- (a) A conflict between the terms of the Purchase Order and those set forth in these Terms and Conditions, an exhibit or hyperlink will be resolved in favor of the Purchase Order.
- (b) A conflict between the terms of the Purchase Order and those set forth in an SOW will be resolved in favor of the SOW.
- (c) A conflict between the terms of these Terms and Conditions, an exhibit or hyperlink and those set forth in an SOW will be resolved in favor of the SOW.

15.4 Severability. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

15.5 No Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

15.6 Titles, Headings and Construction. As used in this Agreement, all terms used in the singular shall be deemed to include the plural, and vice versa, as the context requires. Descriptive headings are inserted for convenience only and shall not be utilized in interpreting this Agreement. As used in this Agreement, "including" means "including, but not limited to." No rule of construction resolving any ambiguity in favor of the non-drafting party shall be applied hereto.



## 16. DEFINITIONS

16.1 “Deliverables” means the deliverables specified in the Purchase Order (and any Statement of Work) to be delivered on or before the Delivery Date.

16.2 “Delivery Date” means the date or dates specified in the Purchase Order by which the Supplier is required to deliver the Supplier Work.

16.3 “Harmful Code” means any software intentionally designed to (i) disrupt, disable, harm, or impede operation, or (ii) impair operation based on the lapse of time, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices.

16.4 “Intellectual Property Rights” means all current and future worldwide common law and statutory rights, whether arising under the laws of the United States of America or any other state, country, jurisdiction, government, or public legal authority, in, to, or associated with (a) patents, patent applications, and invention disclosures; (b) copyrights, copyright registrations and applications therefor, moral rights, and mask work rights; (c) the protection of trade or industrial secrets or confidential information; (d) all other intellectual property rights and proprietary rights; (e) trademarks, service marks, and other designations of source or origin; (f) any analogous rights to those set forth above; (g) divisions, continuations, renewals, reissuances, and extensions of the foregoing (as applicable); and (h) rights to apply for, file for, certify, register, record, or perfect any of the foregoing.

16.5 “Pre-existing IP” means any Intellectual Property Rights of Supplier or Skorprios or the tangible embodiments of any Intellectual Property Rights of Supplier or Skorprios created before the date of the Purchase Order or outside the scope of the Purchase Order.

16.6 “Products” means tangible goods specified in the Purchase Order to be delivered on or before the Delivery Date.

16.7 “Services” means services that Supplier is to perform for Skorprios specified in the Purchase Order.

16.8 “Statement of Work” or “SOW” means the document specifying, without limitation, the scope, objective, and time frame of the Supplier Work that Supplier will perform for Skorprios.

16.9 “Supplier Personnel” means Supplier’s employees, consultants, agents, independent contractors and subcontractors.

16.10 “Third-Party Intellectual Property” means the Intellectual Property Rights of a third party or the tangible embodiments of any Intellectual Property Rights of a third party which Supplier uses or incorporates into the Supplier Work.

16.11 “Supplier Work” means the Deliverables, Products and Services specified in the Purchase Order, including any SOW.