



1. GENERAL:

a. In these Terms and Conditions (“Terms and Conditions”), “Seller” means Owl Cyber Defense Solutions, LLC; “Customer” means the person, firm, company or corporation by whom the order is given; and “Goods” means the goods, equipment, tooling, parts, supplies and services supplied by Seller to Customer as described in the order but excluding, however, the software that is subject to the Software End User License Agreement.

b. All orders must be in writing and are accepted subject to these Terms and Conditions. No terms or conditions put forward by Customer’s purchase order or otherwise shall be binding on Seller. These Terms and Conditions are effective upon Customer’s signature below (the “Effective Date”). No amendment to these Terms and Conditions shall be valid unless agreed to in writing by Seller and Customer. ACCEPTANCE OF ANY ORDER IS EXPRESSLY LIMITED TO THE TERMS OF THIS AGREEMENT AND, TO THE EXTENT NOT INCONSISTENT WITH THE TERMS OF THIS AGREEMENT, THE ORDER, AND ANY ADDITIONAL OR DIFFERENT TERMS ARE OBJECTED TO WITHOUT FURTHER NOTIFICATION BY SELLER.

c. Incorporation by Reference. The Owl Technical Services policy (“TSC Policy”) is hereby incorporated herein by reference, and a copy of the document is available upon request. The applicable Owl Cyber Defense Solutions, LLC Software End User License (the “Software License”) is attached and contains other terms and conditions of the sale which are incorporated herein by reference.

d. Hardware-as-a-Service. Each item of the Goods consisting of tangible property (“Hardware”) is sold to Customer and paid by Customer in full as stated in each applicable Seller invoice. If Customer is eligible for, and elects to pay for Hardware pursuant to a payment plan as part of Seller’s Hardware-as-a-Service offering, then

Customer agrees that the additional terms set forth in the Subscription Agreement attached hereto, and which are hereby incorporated by reference into these Terms and Conditions, will apply to Customer.

2. ORDERS:

a. Each purchase order (each, an “order”) for the purchase and sale of Goods shall be entered into hereunder by Customer’s issuance to Seller of a purchase order (in forms agreed to by Seller from time to time for such purpose).

b. Unless otherwise agreed to by Seller in writing, each order shall contain the following: (A) Quantity, Product Numbers, Price and Seller Quote Number; (B) Total Price (Resale certificate, if applicable); (C) Ship to: Name, Address, Phone Number; (D) Bill to: Name, Address, Phone Number; (E) Technical Point-of-Contact: Name, Address, Phone Number; (F) Purchasing and/or Procurement Contact: Name, Address, Phone Number; (G) Requested method of payment; (H) Requested Delivery Date; and (I) US Government contract number (required for commercial customers to receive US Government Direct Price).

3. DELIVERY; SHIPPING:

a. All periods stated for delivery or completion are to be treated as estimates only not involving any contractual obligations unless otherwise expressly agreed to in writing.

b. If delivery is delayed due to any act or omission of Customer, or if having been notified that the goods are ready for dispatch, Customer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the goods into suitable storage at Customer's expense. Upon placing the goods into storage, delivery shall be deemed to be complete, risk in the goods shall pass to Customer and Customer shall pay Seller accordingly.

c. Force Majeure of any kind, unforeseeable production, traffic or shipping disturbances, war, acts of terrorism, fire, floods, unforeseeable

shortages of labor, utilities or raw materials and supplies, strikes, lockouts, acts of government, and any other hindrances beyond the control of the party obliged to perform which diminish, delay or prevent production, shipment, acceptance or use of the goods, or make it an unreasonable proposition, shall relieve the party from its obligation to supply or take delivery, as the case may be, as long as and to the extent that the hindrance prevails. If, as a result of the hindrance, supply and/or acceptance is delayed by more than eight weeks, either party shall have the right to cancel the contract. Should the Seller’s suppliers fail to provide supplies in whole or in part, the Seller shall not be under obligation to purchase from other sources.

d. Shipping is arranged using two to three day express delivery. For domestic shipments, shipping is F.O.B. destination and for international shipments, shipping is F.O.B. origin. Return shipping is Customer’s responsibility.

4. FINANCIAL TERMS:

a. Payment shall be made: in full without set-off, counterclaim or withholding of any kind (save where and to the extent that this cannot by law be excluded) and in U.S. dollars with such other payment terms as set forth in Seller’s quote.

b. Goods will be invoiced at any time after their readiness for dispatch has been notified to Customer.

c. Without prejudice to Seller's other rights, Seller reserves the right to: charge interest on any overdue sums at 1.5% during the period of delay; suspend performance of the Software License (including withholding shipment) in the event that Customer fails or, in Seller’s reasonable opinion, it appears that Customer is likely to fail to make payment when due; and at any time require such security for payment as Seller may deem reasonable.

d. Unless otherwise stated, prices do not include applicable quotation fees, taxes, excises, duties or other



governmental impositions which Seller may be required to pay or collect. Any such applicable taxes, etc. will be paid by Customer.

e. Manufacturer warranties for third-party provided equipment are transferred to Customer to the extent permitted. Products may only be returned within ninety (90) days of delivery and will only be accepted with the tamper proof seal intact; returns will result in a 10% re-stocking charge.

#### 5. CONFIDENTIALITY:

a. Seller and Customer will not advertise or publish the fact that they have entered into a purchase order, or contract without the prior written consent of the other.

b. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Customer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

c. Customer agrees not to disassemble, decompile or otherwise reverse engineer the Goods.

#### 6. WARRANTIES; DISCLAIMERS; LIMITATION OF LIABILITY:

a. The Goods shall be warranted to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to Customer (the "Warranty Period"). Seller's entire liability to Customer and Customer's exclusive remedy shall be the replacement of defective Goods, or at the election of Seller, a refund of the purchase price of the defective Goods. Notwithstanding the above warranty, if Customer (i) modifies the Goods in any way, (ii) fails to use all enhancements, updates and releases, (iii) fails to use the Goods with software and hardware approved for use with the Goods as specified in the user's manual, or (iv) otherwise fails to use the Goods in accordance with terms of these Terms and Conditions, all warranties including the above warranty are null and void.

b. Seller will provide Customer with hardware warranty and software technical services (including hot-line services and support) pursuant to the TSC Policy during the Warranty Period.

c. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE GOODS, INCLUDING ANY PORTION THEREOF, SHALL BE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING WARRANTIES FOR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, NOR FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE.

d. Supplier's maximum aggregate liability for any and all losses, liabilities, expenses (including legal expenses), damages, claims or actions incurred under or in connection with these Terms and Conditions and any goods supplied hereunder, issued, arising in or by virtue of breach of

contract, tort (including negligence), misrepresentation, breach of statutory duty, strict liability, infringement of intellectual property rights or otherwise, shall in no circumstances exceed a sum equal to the total price of the goods in question.

e. In the event that Customer is subject to any liability due to a finding or determination that an Seller product designated in a purchase order, or contract, as a commercial item is not a commercial item as defined in FAR 2.101, then Seller agrees to indemnify and hold Customer harmless to the full extent of any such liability resulting from such finding or determination. Seller's defense of any such finding or determination shall be by counsel of Seller's choice; and Seller shall have the sole right and authority to settle or compromise such finding or determination on any terms it sees fit. Customer's rights under this provision are conditional upon (1) Customer providing Seller with prompt notice of any such finding or determination or the threat thereof; and (2) Customer fully cooperating with Seller in Seller's defense thereof, including without limitation by providing documents, testimony (by trial or deposition) or other evidence or information as requested by Seller or its counsel. Notwithstanding the foregoing, Seller's indemnification obligation shall be limited to a full repayment to Customer of all monies paid by Customer to Seller under a purchase order, or contract.

7. COMPLIANCE WITH LAWS: Customer agrees that all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union and the jurisdictions in which Seller and Customer are established or from which items may be supplied, and the requirements of any licenses, authorizations, general licenses or license exceptions relating thereto will



apply to its receipt and use of goods. In no event shall Customer use, transfer, release, export or re-export any such goods in violation of such applicable laws, regulations, orders or requirements or the requirements of any licenses, authorizations or license exceptions relating thereto. Customer agrees furthermore that it shall not engage in any activity that would expose the Seller to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any customer or supplier. Customer agrees to comply with all appropriate legal, ethical and compliance requirements.

**8. MISCELLANEOUS:**

**a. GOVERNING LAW; FORUM:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of laws provision or rule that would cause the application of the laws of any jurisdiction other than the State of New York. The parties hereby agree to (i) submit to the exclusive jurisdiction of the federal and state courts located in New York, New York, (ii) waive the right to make any objection based on jurisdiction or venue and (iii) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the above New York courts. Notwithstanding the foregoing, Seller may bring an action for equitable relief in any court of competent jurisdiction.

**b. PRECEDENCE:** Any conflict or ambiguity between these Terms and Conditions and any other document shall be resolved by giving precedence to these Terms and Conditions, except that the terms of the Owl Cyber Defense Solutions, LLC Subscription Agreement shall be given precedence .

**c. SEVERABILITY:** If any provision of these Terms and Conditions shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**d. ASSIGNMENT:** Seller and Customer shall not assign their respective obligations under the purchase order, or contract, without the written permission of the other party. Except as otherwise expressly provided in writing, these Terms and Conditions are not assignable to any other party, except that either Seller or Customer may assign it to any corporation, controlling, controlled by or under common control with, the assigning party or to any successor to substantially all the business and assets of Seller or Customer and, in that event, either Seller or Customer will give the other written notice of the effective date of such assignment. Any such assignment shall not affect the obligations of the assignor or those responsible for its obligations. Any other assignment of these Terms and Conditions by one party hereto requires the express prior written consent of the other party hereto. Upon any such authorized assignment, Customer shall mean such new assignee.

**e. ENTIRE AGREEMENT; MODIFICATIONS:** These Terms and Conditions contain the complete and entire statement of the terms between Supplier and Customer with respect to the matters contained herein, and supersede and merge any prior or contemporaneous agreements, commitments, proposals, or communications with respect to the transactions contemplated hereby. This agreement may not be modified except by a writing signed by both parties.

Customer hereby accepts and agrees to be bound by these Terms and Conditions:

Customer:

\_\_\_\_\_

By: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_