

## VOLKSWAGEN GROUP OF AMERICA, INC.

### STANDARD TERMS AND CONDITIONS FOR SOFTWARE AS A SERVICE

These Volkswagen Group of America, Inc. Standard Terms and Conditions for Software as a Service ("Standard Terms") shall govern the purchase of externally hosted "software as a service" by Volkswagen Group of America, Inc., for itself and for the benefit and use of its Affiliates (collectively, "VWGoA"), from the supplier of said service ("Supplier"), as VWGoA and Supplier (each individually a "Party" and collectively the "Parties" hereto) may from time to time agree under separately executed Orders (defined below) in the Agreement (defined below).

**1.0** Defined Terms. In addition to the defined terms as otherwise contained in this document and associated Orders, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms herein shall include in the singular number, the plural, and in the plural, the singular.

**1.1** "Affiliate" shall mean, with respect to a Party, any Person directly or indirectly controlling (including, but not limited to, all employees, directors and officers of such Person), controlled, or under direct or indirect common control with such Party. A Person shall be deemed to control an entity if such Person possesses, directly or indirectly, the power to direct or cause direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

**1.2** "Agreement" shall have the meaning set forth in Section 2.2.

**1.3** "Availability Deficit" shall have the meaning set forth in Section 4.5.

**1.4** "Availability Requirement" shall have the meaning set forth in Section 4.1.

**1.5** "Available" and "Availability" shall have the meanings set forth in Section 4.1.

**1.6** "Business Day" shall mean any day on which VWGoA is open for business. Unless otherwise stated, any references to a number of other "days" shall mean calendar days.

**1.7** "Business Manager" shall mean that Person who either Party may designate in an Order who bears ultimate responsibility for the project as defined in the Order and who has authority to direct the project, agree to and sign Change Orders, and is the main point of contact for each Party. In the absence of a specific designation, the Person who signs the Order shall be the Business Manager.

**1.8** "Change" shall mean a material change to any Order, including without limitation any material change to the description of Software, Services, fees, or schedules therein.

**1.9** "Change of Control Event" shall mean a merger of a Party, or any consolidation, share exchange, combination, reorganization, or like transaction with respect to a Party.

**1.10** "Change Order" shall mean a document memorializing a Change, as prepared by the Parties in accordance with the process and specifications set forth in Section 2.1.

**1.11** "Charge" shall have the meaning set forth in Section 6.0.

**1.12** "Documentation" shall mean any operator and user manuals, training materials, technical materials and other materials provided by Supplier.

**1.13** "Effective Date" shall mean the date that this Agreement is last executed, unless otherwise specified.

**1.14** "Enhancement" shall mean a generally released revision to or version of the Software that impacts

functionality and/or features of the Software and is not in the nature of Updates, including without limitation any release upgrades, but not including any Software revision or version that: (a) is priced and offered separately by Supplier as optional modules for the Software; and (b) is not made generally available to Supplier's similarly situated clients without separate Charges, unless specifically agreed to by the Parties in an applicable Order.

**1.15** "Error" shall mean any failure of the Software to conform to the Documentation in any material fashion.

**1.16** "Exception" shall have the meaning set forth in Section 4.2.

**1.17** "Intellectual Property" shall mean all copyrights, trade secrets, trademarks, trademark rights, service marks, trade names, industrial designs, discoveries, inventions (whether patented or not), developments or other intellectual proprietary rights registered or recognized by the Laws of any country or state.

**1.18** "Intellectual Property Claim" shall have the meaning set forth in Section 10.1.

**1.19** "Laws" shall mean all federal, state and local laws, statutes, rules, codes, directives, regulations and ordinances, and the orders of any courts or other government bodies of competent jurisdiction.

**1.20** "License" shall mean the nonexclusive license granted to VWGoA by Supplier during the Term to access and use the Software and Documentation on the terms and conditions set forth in this Agreement and the applicable Order, as further described in Section 3.0. For the sake of clarification, any License granted pursuant to an Order under this Agreement shall be granted to VWGoA and all of VWGoA's Affiliates and internal organizational units shall have the right to access and use the Software and Documentation on the terms and conditions set forth in this Agreement and the applicable Order.

**1.21** "Losses" shall mean all losses, liabilities, damages, and claims, and all costs and expenses relating to such losses, liabilities, damages and claims (including, without limitation, costs of investigation, litigation, settlement, judgment, interest and reasonable attorney's fees).

**1.22** "Order(s)" shall mean any written (electronic or otherwise) order(s) entered into between the Parties, including, but not limited to, orders entered by use of VWGoA's e-commerce website located at [www.vwgroupsupply.com](http://www.vwgroupsupply.com) and which shall set forth in detail the unique purchase requirements applicable to the Services, without limitation, the specifications, schedule, and associated Charges. An Order may also contain Service Level terms and other terms and conditions.

**1.23** "Person" shall mean any individual or joint venture, partnership, corporation or other business or legal entity.

**1.24** "Personnel" shall mean the officers, directors, agents and employees of any Party.

**1.25** "Professional Services" shall mean those services which VWGoA contracts Supplier to perform as set forth on an applicable Order, Statement of Requirement or Request for Quote and specifically includes Implementation Services and Training Services, if applicable, but does not include Support Services.

**1.26** "Proprietary Materials" shall mean all copyrightable works of original authorship (including but not limited to computer programs, technical specifications, manuals, and business plans), ideas, inventions (whether patentable or not), know-how, processes, compilations of information, trademarks and other Intellectual Property.

**1.27** "Scheduled Downtime" shall have the meaning set forth in Section 4.3.

**1.28** "SDN" shall have the meaning set forth in Section 9.6.

- 1.29** "Service Credit" shall have the meaning set forth in Section 4.5.
- 1.30** "Service Levels" shall mean those metrics related to operational performance of the Software and/or Services that Supplier agrees to meet as set forth in an applicable Order.
- 1.31** "Service Period" shall have the meaning set forth in Section 4.1.
- 1.32** "Services" shall mean collectively or individually, the services and tasks which Supplier will provide or render for or on behalf of VWGoA under an applicable Order, including without limitation its provision of access to the Software and any Professional Services, Training Services, or Support Services.
- 1.33** "Services Warranty" shall have the meaning set forth in Section 9.5.
- 1.34** "Software" shall mean the software program(s) identified on an applicable Order or Statement of Requirement, including any Updates, Enhancements and Error corrections of such program(s) that may be provided under this Agreement, that Supplier provides remote access to and use of as part of the Services.
- 1.35** "Subcontractors" shall have the meaning set forth in Section 5.2.
- 1.36** "Support Services" shall mean those Services Supplier will perform as described in Section 5 and as may be further set forth in an applicable Order.
- 1.37** "Taxes" shall have the meaning set forth in Section 6.2.
- 1.38** "Term" shall mean the period of time set forth in an Order during which Supplier shall perform the Services, including without limitation the period of time in which the Software will be made Available to VWGoA.
- 1.39** "Third Person" shall mean a Person, including its employees, contractors, or agents, that is not a Party to an Order.
- 1.40** "Training Services" shall mean those Services Supplier will perform in connection with training VWGoA representatives on the Software as described in an applicable Order.
- 1.41** "Update" shall mean a generally released revision to or version of the Software that includes patches, fixes, minor enhancements, modifications and Error corrections to the Software.
- 1.42** "Virus" shall mean any harmful, hidden program or data incorporated in any software program or chip that destroys or impairs the program and/or data from processing its normal business operations or destroys or impairs other data and/or programs used by VWGoA and includes without limitation any back doors, rootkits or Trojan horses.
- 2.0** Orders. Supplier shall provide access to Software and/or perform Services as designated in Orders. Unless otherwise set forth in an Order, Services shall be deemed accepted by VWGoA upon VWGoA's written notice of such acceptance to Supplier.
- 2.1** Change Orders. Any Change shall be made through the Change Order process described in this Section 2.1. The Parties agree that: (i) no Change which is reasonably expected to affect the function or performance of any Software or other Services will be implemented without prior written agreement between the Parties; and (ii) all approved Changes will be formalized in a Change Order executed by both Parties in accordance with this Section.
- (a)** All requests for Changes by a Party will be communicated in writing by that Party's Business Manager to the other Party's Business Manager. Any request for Changes will include a

detailed description of the Change requested, the projected schedule and timing for the Change and the priority of the Change.

- (b)** For Changes requested by VWGoA, within five (5) Business Days after receiving such request from VWGoA, Supplier will prepare and provide to VWGoA a document summarizing the effect, if any, of the proposed Change on: (i) the scope of the Services; (ii) Supplier's and VWGoA's obligations under the Order; and (iii) the budget or price for the Change. In addition, Supplier will inform VWGoA in such document regarding any other business impact Supplier believes to be relevant to VWGoA's evaluation of the proposed Change. Within ten (10) Business Days after receiving such information, VWGoA will confirm or withdraw the request for the Change.
- (c)** For Changes requested by Supplier, Supplier shall submit to VWGoA along with its request the information set forth in clauses 2.1(b) (i), (ii) and (iii) above. VWGoA shall have ten (10) Business Days after receipt of said request for Change to approve or reject the request. Any request not accepted by VWGoA after such ten (10) Business Days shall be deemed rejected.
- (d)** Upon approval by VWGoA of the Change as summarized above, Supplier shall prepare and execute a Change Order describing said approved Change, and deliver said Change Order to VWGoA. Upon execution of such Change Order by both Parties, the Change Order shall become effective as a part of the Agreement.

**2.2** Agreement. This "Agreement" includes these Standard Terms; Orders, including any attachments, exhibits, addenda, or Change Orders thereto; and all Documentation. The provisions of the various Agreement documents shall, to the extent possible, be interpreted so as to supplement each other and avoid any conflict between them. However, in the event of a conflict among the Agreement documents, the Agreement documents will have the following order of precedence, unless and only to the extent expressly provided to the contrary elsewhere: (a) Change Orders; (b) Orders; (c) attachments, exhibits, or addenda to Orders; (d) the Standard Terms; (e) the Documentation.

**2.3** No Exclusivity. This Agreement is not an exclusive arrangement. VWGoA shall have no minimum purchase, minimum License, or minimum lease requirements hereunder, and shall be entitled, in its sole discretion, to purchase, license and/or lease similar software and/or services from any Third Person.

**2.4** Cooperation. Each Party will reasonably cooperate with the other Party in connection with its obligations under an Order. Such cooperation will include informing the other Party of all management decisions that the Party reasonably expects to have a material effect on the obligations required to be performed by that Party under the Order.

**2.5** Time of the Essence. Supplier acknowledges and agrees that time is of the essence with respect to its obligations under this Agreement and that prompt and timely performance of all such obligations, including without limitation all Professional Services, Training Services, Support Services, maintenance obligations, and other requirements of this Agreement, is strictly required.

**3.0** License Grant. Supplier grants to VWGoA the License to:

- (a)** access and use the Software and Documentation, including in conjunction with other software, hardware, systems, networks, and services, under the terms and conditions set forth in this Agreement;
- (b)** generate, print, copy, upload, download, store and otherwise process all GUI, audio, visual, digital and other output, displays, or other content as may result from any access to or use of the Software;
- (c)** prepare, reproduce, print, download and use copies of the Documentation for any permitted use of the Software or receipt of other Services under this Agreement; and

- (d) access and use the Software for all such non-production uses and applications as may be necessary or useful for the effective use of the Software pursuant to the terms and conditions hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will be without Charge and not included for any purpose in any calculation of VWGoA's use of the Software, including without limitation for purposes of assessing any Charges or other consideration payable to Supplier.

3.1 In addition to other restrictions set forth in this Agreement, VWGoA may not:

- (a) reverse assemble or decompile the Software, or otherwise examine the Software for purposes of reverse engineering; or
- (b) remove the labels or any proprietary legends from the Software or Documentation.

3.2 Supplier reserves all rights in the Software and Documentation not expressly granted herein. VWGoA understands that the License granted herein transfers neither title nor proprietary rights to VWGoA with respect to the Software.

4.0 Service Availability. Except to the extent the Order expressly sets forth a different Availability Requirement or other Service Level guarantee, the Availability Requirement and related procedures of this Section 4 shall apply to Supplier's provision of access to all Software hereunder.

4.1 Availability Requirement. Supplier shall make the Software Available for 99.99% of each month during the Term (the "Service Period") without interruption, excluding only the time the Software is not Available solely as a result of one or more Exceptions (defined below), unless otherwise specified in said Order (the "Availability Requirement"). "Available" means the Software is available and operable for access and use by VWGoA over the Internet in full conformance with the applicable Order, including without limitation any Service Level guarantees set forth therein. "Availability" has a correlative meaning. The Software is not considered Available in the event of any performance degradation or inoperability of the Software, in whole or in part.

4.2 Exceptions. No period of Software degradation, downtime, or inoperability will be included in calculating Availability to the extent that such degradation, downtime, or inoperability is due to any of the following ("Exceptions"):

- (a) VWGoA's misuse of the Software in violation of the terms of the Agreement;
- (b) failures of VWGoA's internet connectivity;
- (c) internet or other network traffic problems other than problems arising in or from networks actually or required to be provided or controlled by Supplier or its Subcontractor, if applicable;
- (d) VWGoA's failure to meet any minimum hardware or software requirements set forth in the Order or Documentation; or
- (e) Scheduled Downtime as set forth in the following Section 4.3.

4.3 Scheduled Downtime. Supplier shall notify VWGoA at least seventy-two (72) hours in advance of all scheduled outages of the Software in whole or in part ("Scheduled Downtime"). All such scheduled outages shall: (a) last no longer than one hour; and (b) occur no more frequently than once per week; provided that Supplier may request for VWGoA's approval for extensions of Scheduled Downtime above one hour, such approval not to be unreasonably withheld or delayed.

4.4 Service Availability Reports. Promptly upon VWGoA's written request at any time during the Term, Supplier shall provide to VWGoA a report describing the Availability of the Software during that Service

Period and the year-to-date as compared to the Availability Requirement. The report shall be in electronic or such other form as VWGoA may approve in writing and shall include, at a minimum: (a) the actual Availability of the Software relative to the Availability Requirement; and (b) if Availability has failed in any respect to meet or exceed the Availability Requirement or other specifications set forth in the applicable Order during the reporting period, a description in sufficient detail to inform VWGoA of the cause of such failure and the corrective actions the Supplier has taken and will take to ensure that the Availability Requirement and any other specifications are fully met. The reporting requirements set forth in this Section shall be in addition to and without limitation of any audit right available to VWGoA under Section 7.

**4.5 Service Credits.** If the actual Availability of the Software is less than the Availability Requirement during any one month of the Service Period (such difference between the Availability Requirement and the actual period of Availability, the "Availability Deficit"), Supplier shall provide to VWGoA a service credit equal to the portion of any Charges applicable to the day(s) of the Service Period in which said Availability Deficit occurred ("Service Credit"). Such Service Credit shall be assessed against the total Charges applied to VWGoA's access to the Software during the Service Period under the relevant Order.

**4.6 Breach and Refund.** If the Software is subject to an Availability Deficit for any two consecutive months during the Service Period, such Availability Deficit shall constitute a material breach of the Agreement by Supplier. In event of such material breach, VWGoA may terminate this Agreement immediately upon written notice to Supplier, notwithstanding the termination for cause provisions set forth in Section 13.1. Upon receipt of said notice, Supplier shall promptly provide a refund to VWGoA of any Charges applicable to the day(s) of the Service Period in which Availability Deficit occurred. VWGoA's remedies for Supplier's material breach of the Availability Requirement hereunder shall be in addition to and without prejudice to any other remedies available to VWGoA under this Agreement.

**5.0 Professional Services; Training Services.** Supplier shall provide Professional Services as agreed upon by the Parties in an applicable Order. Supplier shall provide Training Services as agreed upon by the Parties in an applicable Order.

**5.1 Support Services.** Except to the extent otherwise expressly agreed upon in an applicable Order, Supplier shall provide Support Services as set forth in this Section 5.1. VWGoA shall notify Supplier promptly of any Error. Supplier shall use commercially reasonable efforts to expeditiously provide modifications, bug fixes, and other changes to the Software to correct Errors and shall comply with such additional support obligations, if any, as may be more fully set forth in an applicable Order. To the extent that any Proprietary Materials owned by Third Persons are incorporated into the Software, or are otherwise provided by Supplier as a part of the Services, Supplier shall be responsible for any Errors involving such Proprietary Materials under this Section 5.1.

**5.2 Subcontractors.** With VWGoA's prior written consent, Supplier may engage independent Third Persons to perform the Services associated with an Order or other obligations to be performed by Supplier under an Order ("Subcontractors"), provided that Supplier will remain fully responsible for the acts and omissions of its Subcontractors under this Agreement, including without limitation the compliance of such Subcontractors with all terms and conditions of this Agreement applicable to the Services subcontracted thereto. Prior to engaging a Subcontractor, Supplier will inform VWGoA of its intention to engage such Subcontractor and provide to VWGoA any information that it may reasonably request regarding such Subcontractor. Thereafter, at any time upon VWGoA's request, the Parties shall review the performance of any Subcontractor that has been engaged by Supplier to perform any Services under an Order. Matters discussed at such reviews may include, but will not be limited to, said Subcontractor's performance of the Services.

**5.3 Removal.** VWGoA may, upon giving written notice to Supplier, request the reassignment, replacement, or removal of any Supplier Personnel or Subcontractor performing Services under an Order, if VWGoA determines in good faith that the performance of such Supplier Personnel or Subcontractor has been incompetent, negligent, or otherwise unprofessional. Upon receipt of such written notice, Supplier shall promptly exercise best efforts to fully address VWGoA's concerns at no additional Charge or other

expense to VWGoA. In addition, VWGoA may, by giving written notice to Supplier and at no additional Charge or other expense to VWGoA, require the immediate removal of any Supplier Personnel, if VWGoA has determined upon good faith inquiry that such Supplier Personnel has: (i) violated any safety or security rules or policies of which VWGoA has previously made Supplier aware; (ii) violated any applicable Laws in the course of performing Services; or (iii) has otherwise breached any of the terms or conditions of this Agreement.

**6.0** Charges. VWGoA shall pay Supplier the applicable License fees, support fees, and service fees (each a "Charge" and collectively, the "Charges") in the amounts set forth in the applicable Order. VWGoA shall not be required to pay for access to the Software and/or receipt of Services at prices higher than those specified in the Order, except in accordance with a Change Order or other mutual written agreement of the Parties.

**6.1** Travel Expenses. As between the Parties, all travel undertaken by Supplier, Supplier's Personnel, or Subcontractors pursuant to an Order shall be at Supplier's expense.

**6.2** Taxes. VWGoA shall not be liable for any federal, state, local or foreign taxes (collectively, "Taxes") unless separately stated in the Order or related document and billed as a separate line item. Unless VWGoA has furnished Supplier with an applicable exemption certificate, VWGoA shall pay Supplier any applicable sales, excise or use Taxes or other Taxes which directly arise from Supplier's provision of access to Software or the rendering of other Services which Supplier is responsible by Law to collect from VWGoA. VWGoA shall not be responsible for any Taxes based on Supplier's income or its business operations, including without limitation any employment, income, or license Taxes. Supplier agrees to provide VWGoA with documents that may be required to obtain any applicable exemption, credit, rebate, remission, refund, reduction or other relief from Taxes. VWGoA is authorized to deduct or withhold from each payment to Supplier all Taxes which VWGoA is required by Law to deduct or withhold, and to pay the amount withheld or deducted to the relevant government authorities. Supplier shall comply in a timely manner with all requirements imposed on Supplier by all applicable Laws, including requirements in respect of registration, payment, collection, and remittance of Taxes and provision to government authorities such deposits, guarantees or other forms of security as may be required by Law or the administration thereof, and shall provide VWGoA with written proof of such compliance upon VWGoA's request. Supplier failure to so comply with such Laws shall constitute a material breach of this Agreement.

**6.3** Invoices. Supplier shall send itemized invoices to VWGoA setting forth the Charges applicable to the Services according to the schedule or timetable set forth in the applicable Order. Except as otherwise stated in such Order, VWGoA shall pay the Charges set forth in a non-disputed invoice within sixty (60) days of VWGoA's receipt of said invoice. In the event of any delay in receiving an invoice, or any deficiencies, inaccuracies, or omissions in any invoice, VWGoA may withhold payment for the Charges set forth therein until its receipt of a subsequent invoice from Supplier correcting such delay, deficiencies, inaccuracies, or omissions. Except as otherwise stated in an Order, all payments will be in U.S. Dollars (USD). VWGoA shall notify Supplier of any disputed Charges within ninety (90) days of receipt of the invoice setting forth such Charges from Supplier.

## **7.0** Audits by VWGoA.

**7.1** Financial Audits. At VWGoA's prior written request, Supplier will allow VWGoA or its designated representatives to audit its accounting books and records to the extent necessary to verify Supplier's Charges to VWGoA under an Order. Supplier will cooperate with and comply with all reasonable requests from VWGoA or its designated representatives in connection with such audit. Upon completion of any such audit, the Parties will review the audit report together and work in good faith to agree upon: (1) any adjustment of Charges to VWGoA (including without limitation any reimbursement of any overpayment by VWGoA or reimbursement to Supplier for any underpayment by VWGoA); and (2) any appropriate adjustments to Supplier's billing and invoicing practices. If any such audit discloses overpayments by VWGoA that in the aggregate equal one percent (1%) or more of the amounts that were actually due to Supplier, then Supplier will reimburse VWGoA for the costs of the audit.

**7.2 Operational Audits.** Upon prior written request to Supplier at any time during the Term, VWGoA may monitor Supplier's performance of its obligations under an Order, including without limitation its compliance with any Availability Requirement or any representation or warranty set forth in this Agreement.

**7.3 Security Audits.** Upon prior written request to Supplier at any time during the Term, VWGoA may monitor Supplier's compliance with the information security and data privacy obligations set forth in Section 8.6, including without limitation Supplier's compliance with any instructions or restrictions set forth in the Order or a vendor security assessment form, if applicable.

**8.0 Confidential Information.** "Confidential Information" shall mean any information typically regarded as confidential and proprietary that has been or may hereafter be disclosed or discovered in any form, whether in writing, orally, electronically, visually or otherwise, by either Party or its respective Personnel (collectively, a "Disclosing Party") to the other Party or its respective Personnel (collectively, a "Receiving Party"), including without limitation all information relating generally or specifically to the Disclosing Party's business, such as patents, copyrights, inventions, designs, discoveries, improvements, formulae, product data, specifications and processes, trade secrets, customer lists and contacts, information on customer quantity and technical requirements, product pricing, pricing information, geographic and sales data, technical or commercial information, and financial information, information related to mergers or acquisitions, software, software documentation, and information concerning business plans or business strategy that is supplied to or obtained by the Receiving Party pursuant to or as a result of an Order and that is not generally known in the trade or industry. Confidential Information does not include information that is generally known or available to the public, or that is not treated as confidential by the Party claiming information to be confidential.

**8.1 Restrictions on Use of Confidential Information.** The Receiving Party may use Confidential Information of the Disclosing Party solely in connection with performance of its obligations under the Agreement, and may not copy, reproduce, or modify Confidential Information or disclose Confidential Information to any Third Person without the Disclosing Party's express prior written consent in each instance. The Receiving Party will exercise at least the same degree of care, but in any event no less than a reasonable degree of care, to prevent unauthorized disclosure or use of Confidential Information as it employs with respect to its own information of a like nature. The Receiving Party may disclose Confidential Information only to its Personnel, consultants, and professional advisors who have a demonstrable need to know such Confidential Information in furtherance of the Receiving Party's obligations under this Agreement, and who have agreed to be bound by confidentiality obligations at least as strict as those set forth herein, provided that in any event the Receiving Party shall be responsible for any unauthorized use or disclosure of Confidential Information by such Personnel, consultants, and professional advisors.

**8.2 Compelled Disclosure.** If the Receiving Party is ordered, as part of an administrative or judicial proceeding of competent jurisdiction, to disclose any of the Disclosing Party's Confidential Information, the Receiving Party will, to the extent permitted by applicable Laws: (i) notify the Disclosing Party of such request as promptly as practicable (and in any event within five (5) Business Days after receiving the request); (ii) cooperate with the Disclosing Party, at the Disclosing Party's expense, in seeking a protective order or similar confidential treatment for such Confidential Information; and (iii) disclose only those portions of Confidential Information strictly required for compliance with said order.

**8.3 Return of Confidential Information.** As promptly as practicable (and in any event within ten (10) Business Days) after the termination or expiration of the applicable Order, or otherwise upon the written request of the Disclosing Party at any time, the Receiving Party shall, at the Disclosing Party's option, either: (i) return all Confidential Information in its possession in any tangible or intangible medium, including any copies or reproductions thereof, to the Disclosing Party, or (ii) destroy all Confidential Information in its possession in any tangible or intangible medium, including any copies or reproductions thereof, and deliver a written certification of such destruction to the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may retain electronic copies of Confidential Information in accordance with



its corporate document retention program or automated data backup procedures, provided that such retained copies shall remain subject to the confidentiality obligations of this Agreement at all times, and further provided that such copies shall be used solely for nonpublic, noncommercial, internal, archival purposes and for no other purpose.

**8.4 Injunctive Relief.** Because the breach of either Party's confidentiality obligations may cause the other Party to suffer irreparable harm in an amount not easily ascertained, any such breach, whether threatened or actual, will give the non-breaching Party the right to obtain equitable relief to enjoin or restrain the disclosure or use of such Confidential Information.

**8.5 Survival.** The provisions of this Section 8 will survive the termination of the relevant Order for the longer of five (5) years from the date of disclosure of the Confidential Information or three (3) years from the effective date of the applicable Order's termination or expiration, except in the case of trade secrets, which shall be subject to the confidentiality obligations set forth herein for as long as they remain trade secrets under applicable Laws. Notwithstanding anything to the contrary in this Agreement, any confidentiality or non-disclosure agreement between the Parties that predates this Agreement will remain in effect except as expressly modified by this Agreement, and to the extent of a conflict between the express terms of such an agreement and this Section, the terms of that agreement will control.

**8.6 Data Security and Privacy.** Without limiting any of Supplier's confidentiality obligations hereunder, with regard to any and all data provided by VWGoA in any format or medium to Supplier under an Order, including without limitation any Confidential Information, Supplier shall employ the appropriate technical, physical, and organizational security measures in compliance with applicable Laws and in accordance with no less than industry standards regarding Supplier's use, processing, handling, security, storage, transmission, and disclosure of such data, which standards at a minimum would constitute the safeguards and security specifications set forth in any VWGoA-approved vendor assessment form accompanying the Order. As between the Parties, VWGoA retains all right, title, and interest to any such data, and nothing herein shall constitute or be construed as a sale, assignment, or other transfer of any proprietary interest thereto. VWGoA may impose further requirements or restrictions on Supplier's receipt, handling, or use of such data in light of regulatory developments, changes in industry best practices, or other issues concerning privacy, security, or consumer protection. Supplier shall strictly comply with all such collection, handling, or usage instructions for such data now or hereafter imposed by VWGoA in accordance with the foregoing, including without limitation any such instructions set forth in an Order or an accompanying vendor assessment form.

**9.0 Representations and Warranties.** The representations and warranties set forth below are in addition to any warranties set forth in an applicable Order or elsewhere in this Agreement:

**9.1** Supplier represents and warrants that: (a) it is a corporation or other entity duly incorporated or organized, validly existing, and in good standing under the Laws of the state of incorporation or organization; (b) it has all requisite power and authority to execute, deliver and perform its obligations under this Agreement; and (c) the execution, delivery and performance of this Agreement has been duly authorized by Supplier.

**9.2** Supplier warrants that the Software will operate, and all Services will be performed, in substantial conformance with their respective Documentation and the Order throughout the longer of: (i) the warranty period specified in the applicable Order; or (ii) the Term. Supplier agrees to correct any Error or other nonconformity of which it receives notice from VWGoA in accordance with the procedures set forth in Section 5.1.

**9.3** Supplier warrants that the Software will be free from any Virus at the time of VWGoA's use and access thereof, and has undergone a commercially reasonable quality assurance procedure to ensure that there are no Viruses and contains no embedded devices or codes that will obstruct or prevent VWGoA's use and access thereof.

**9.4** Supplier warrants that the Software, the Documentation, and all other Proprietary Materials

provided to VWGoA under this Agreement are either: (i) Supplier's original work, (ii) public domain materials, or (iii) owned by a Third Person from whom Supplier has acquired all necessary permissions to grant the rights set forth in this Agreement. Furthermore, Supplier warrants that neither its provision of the Services, including without limitation its provision of access to the Software, nor its provision of any other Proprietary Materials will infringe, misappropriate, or otherwise violate the proprietary rights of any Third Person, including without limitation any Intellectual Property right.

**9.5** Supplier represents and warrants that: (a) the Services will be performed and provided in a prompt, professional, and workmanlike manner, in accordance with industry standards; and (b) Supplier possesses the expertise and resources necessary to undertake and complete the Services in accordance with the requirements, specifications, and timeframes set forth in the Order, including without limitation any Service Level guarantees ((a) and (b) collectively, the "Services Warranty"). Promptly after VWGoA provides written notice to Supplier of any nonconformance of the Services to the Services Warranty, Supplier shall, at VWGoA's option, and without any additional Charge or other expense to VWGoA, either: (i) re-perform any Services; or (ii) refund the Charges applicable to any such Services.

**9.6** Supplier represents and warrants to VWGoA that: (a) Supplier, and any Services supplied by Supplier, will comply with all applicable Laws, including without limitation Laws relating to data privacy and security, environmental matters, hiring, wages, hours and conditions of employment, international prohibitions on child labor, Subcontractor selection, discrimination, occupational health or safety, and motor vehicle safety. The Order incorporates by reference all clauses required by these Laws. At VWGoA's request, Supplier shall certify Supplier's compliance with the foregoing. Supplier shall not utilize slave, child, prisoner or any other form of forced, involuntary or illegal labor, or engage in abusive worker treatment or corrupt business practices in fulfilling the obligations of this Agreement. Without limitation of the foregoing, Supplier further represents and warrants to VWGoA that, in performing its obligations under this Agreement: (i) it will not employ or subcontract with any Person who is a "Specially Designated National" ("SDN") as defined from time to time in regulations issued by the Office of Foreign Asset Control of the United States Department of the Treasury; and (ii) Supplier is not a SDN.

**9.7** To the extent that VWGoA has requested Supplier's completion of any vendor security assessment form, Supplier represents and warrants that its responses in such form are true and accurate, and that its current processes and procedures pertaining to data protection and information security are in full compliance therewith.

**9.8** Exceptions. Supplier's warranty obligations and other obligations under this Agreement with respect to the Software are expressly conditioned upon VWGoA's use of the Software in accordance with the terms and conditions of this Agreement, and do not include correction of Errors or delays in provision of Services that result from: (a) VWGoA's gross negligence, use of the Software in violation of applicable Laws, or use of the Software outside the terms and conditions of this Agreement; (b) VWGoA's failure of electrical power or air conditioning, or humidity controls that cause VWGoA's computer failure; and/or (c) modifications made to the Software, Documentation, or Services by VWGoA without the knowledge of Supplier or its Personnel.

**10.0** Indemnification by Supplier; General. Supplier will, at its expense, indemnify, defend and hold harmless VWGoA and its Affiliates, and their respective Personnel, successors, and assigns (each a "VWGoA Indemnitee"), from all Losses claimed by any Third Person in any claim, demand, suit or proceeding in connection with any of the following:

(a) the breach or misrepresentation by Supplier of any of its obligations, representations, or warranties under this Agreement, including without limitation those set forth in any Order;

(b) the death or bodily or personal injury of, or other legally enforceable damage incurred by, any agent, employee, customer, business invitee, visitor, or other Person caused by the breach of contract, breach of warranty, negligence, intentional or willful misconduct, or other acts or omissions of Supplier or its Personnel, agents, or Subcontractors;

(c) the damage, loss or destruction of any real or personal property caused by the breach of contract, breach of warranty, negligence or willful misconduct of Supplier or Supplier Personnel; and

(d) claims by Supplier's Personnel or Subcontractors that they are entitled to any benefits normally associated with employment at VWGoA, including without limitation any insurance, pension, lease cars, compensation, or tax withholdings.

**10.1 Indemnification by Supplier; Intellectual Property.** Supplier will, at its expense, indemnify, defend and hold harmless the VWGoA Indemnitees from all Losses claimed by any Third Person in any claim, demand, suit, or proceeding in connection with any allegation that the Software, the Documentation, Supplier's Proprietary Materials, and/or the Services infringe, misappropriate, or otherwise violate the proprietary right of any Third Person, including without limitation any Intellectual Property right (such claim, demand, suit, or proceeding, a "Intellectual Property Claim"). VWGoA shall notify Supplier promptly in writing and furnish Supplier with such information and assistance as Supplier may reasonably request to evaluate the Intellectual Property Claim. Supplier shall then, at its own expense and option, either: (i) settle the Intellectual Property Claim; (ii) procure for VWGoA the right to use the alleged infringing Software, Documentation, and/or Service; (iii) replace or modify the alleged infringing Software, Documentation, and/or Service in order to avoid the Intellectual Property Claim; (iv) remove the alleged infringing Software, Documentation, and/or Service and refund any Charges or other expenses paid by VWGoA to Supplier less the amounts directly applicable to VWGoA's actual usage of the infringing Software, Documentation, and/or Service; or (v) litigate the Intellectual Property Claim; provided, however, that prior to Supplier taking any of the foregoing responses, the Parties shall meet to discuss the action or actions which Supplier proposes to take in response to the Intellectual Property Claim. If the Parties are unable to agree upon the action or actions to take in response to the Intellectual Property Claim, VWGoA may, at its sole option, elect to terminate, for its convenience and without liability upon five (5) days prior written notice to Supplier, this Agreement and/or any Order incorporating the alleged infringing Software, Documentation, and/or Service. Notwithstanding the foregoing, Supplier shall be obligated to defend all Intellectual Property Claims, to pay any final judgments awarded against Supplier and/or VWGoA based upon such Intellectual Property Claims, and to comply with the indemnification procedures set forth in the following Section 10.2.

**10.2 Indemnification Procedures.** The following procedures will apply to all claims for indemnification under this Section:

(a) Promptly after receipt by VWGoA of written notice of the commencement or threatened commencement of any civil, criminal, administrative or investigative action or proceeding involving a claim for which a VWGoA may be entitled to indemnification, VWGoA shall convey written notice of such claim to Supplier. However, no failure by VWGoA to so notify Supplier will relieve Supplier of its indemnification obligations under this Agreement, except to the extent that Supplier is materially prejudiced by such failure.

(b) Each VWGoA Indemnitee will have the right to select its own legal counsel and experts and to control its own defense in any negotiations or litigation pertaining to a claim covered by this Section 10 (notwithstanding that Supplier shall bear the cost of the defense for the VWGoA Indemnitees). However, to the maximum extent permitted by applicable Laws and principles of legal ethics, counsel for Supplier and counsel for the VWGoA Indemnitees will work together to avoid duplication of effort or expense, in attorney's fees or otherwise. In addition, Supplier and the VWGoA Indemnitees will make good faith efforts to coordinate their activities so as to take consistent positions in the course of negotiations or litigation. If Supplier does not participate in the defense of a claim covered by this Section 10, the VWGoA Indemnitees will have the right to defend the claim in such manner as they may deem appropriate, at Supplier's cost and expense. Supplier will promptly reimburse the VWGoA Indemnitees for all such costs and expenses, demand for which may be made periodically.

(c) Supplier will obtain prior written approval from VWGoA in respect of any proposed settlement of

any indemnified claims hereunder before entering into any settlement of such claims or otherwise ceasing to defend such claims, such approval not to be unreasonably withheld. Supplier's indemnification obligations under this Section shall survive the termination, cancellation or non-renewal of this Agreement for any reason.

**11.0 Liability Limitation: Force Majeure.**

**11.1 Excluded Damages.** VWGoA SHALL NOT BE LIABLE TO SUPPLIER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (THE "EXCLUDED DAMAGES"), WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, RESULTING FROM OR IN CONNECTION WITH THE PERFORMANCE BY EITHER PARTY OF THEIR RESPECTIVE OBLIGATIONS UNDER THIS AGREEMENT, WHETHER FORESEEABLE OR NOT, AND EVEN IF VWGoA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH EXCLUDED DAMAGES.

**11.2 Force Majeure.** Any delay or failure of either Party to perform its obligations will be excused if and to the extent that the Party is unable to perform due to an event or occurrence beyond its reasonable control, including without limitation: acts of God, restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority, embargoes, fires, floods, earthquakes, explosions, natural disasters, riots, wars, sabotage, terrorism, inability to obtain power, or court injunction or order. As soon as practicable after the occurrence of such event, the affected Party shall provide written notice describing such delay to the other Party. Supplier's inability to perform as a result, or delays caused by, Supplier's insolvency or lack of financial resources is deemed to be within Supplier's control for purposes of this Section. The change in cost or availability of materials or components based on market conditions, contract disputes, or any labor strike or other labor disruption applicable to a Party or any of its Subcontractors or Third Person suppliers, will not excuse such Party's performance under this Section.

**12.0 Insurance.** Throughout the Term, Supplier will maintain, at its own expense, insurance policies of the type and in the amounts set forth below:

- (a)** Statutory workers' compensation insurance in accordance with the legal requirements of each country, state, territory, or locality exercising jurisdiction over Supplier and Supplier Personnel performing Services in such country, state, territory, or locality;
- (b)** Employer's liability insurance with a minimum limit in an amount not less than \$1,000,000 per accident, covering bodily injury by accident, and \$1,000,000 per policy covering bodily injury by disease, including death;
- (c)** Comprehensive commercial general liability insurance (written on an occurrence basis and including contractual liability and products and completed operations liability insurance) in an amount not less than \$5,000,000 per occurrence, general aggregate products and completed operations aggregate;
- (d)** Professional liability or errors and omissions liability insurance to cover financial Losses due to Supplier's errors or omissions in the performance or failure to perform its professional Service obligations or responsibilities under this Agreement, with a per claim limit in an amount not less than \$2,000,000 and \$2,000,000 in the annual aggregate;
- (e)** Insurance coverage with respect to information and data protection security, information security, and cyber liability in amounts not less than \$5,000,000;
- (f)** Employee fidelity bond with Third Person liability endorsement or VWGoA added as loss payee in an amount not less than \$500,000; and
- (g)** Umbrella/excess liability in an amount not less than \$10,000,000 per occurrence, with VWGoA and its Personnel to be named as additional insureds.

**12.1** All policies described above will be written by insurance companies rated at least A- by A.M. Best's rating service or equivalent. The required insurance will provide primary and non-contributory coverage to VWGoA for claims arising out of or in connection with this Agreement.

**12.2** Supplier, for itself and on behalf of its insurance carrier(s), agrees to waive any right of subrogation and have no right of recovery from VWGoA, its Personnel or its insurers. Supplier warrants that its respective insurance carriers grant them the right to agree to such advance waivers of subrogation. Supplier represents that required types and amounts of insurance will be adequate to respond to all exposure to Losses arising under this Agreement. The required limits of insurance shall not be deemed as a limitation of liability or any other cap on liability with respect to Supplier's indemnification obligations hereunder. As between the Parties, Supplier shall be solely responsible for its payments, deductibles, retentions, self-insurance, or co-insurance obligations under the foregoing policies.

**12.3** Insurance Documentation. On or before the Effective Date of this Agreement, or otherwise upon VWGoA's written request at any time during the Term, Supplier will furnish to VWGoA certificates of insurance or other appropriate documentation (including endorsements as required to bind the insurers) evidencing all coverage referenced in this Section. Such certificates or other documentation will include a provision under which the applicable insurer will give at least thirty (30) days' written notice to VWGoA before limits or scopes of coverage are materially altered or insurance is cancelled or non-renewed. In addition, Supplier will promptly advise VWGoA in writing if it becomes aware that required limits or scopes of coverage are materially altered or that required insurance is cancelled or non-renewed.

**13.0** Termination for Convenience. VWGoA may terminate this Agreement without cause, for any reason or for no reason, at any time during the Term upon thirty (30) days' written notice to Supplier.

**13.1** Termination for Material Breach. Either Party may terminate this Agreement immediately by written notice to the other Party if the other Party is in material breach of any of its respective representations, warranties, or obligations under this Agreement, provided that the non-breaching Party first gives written notice describing said breach to the other Party, and such breach remains uncured for thirty (30) days following the other Party's receipt of such notice.

**13.2** Termination for Insolvency. VWGoA may terminate this Agreement upon ten (10) days' written notice to Supplier, if Supplier: (i) provides VWGoA grounds for insecurity; (ii) files for bankruptcy; (iii) becomes or is declared insolvent or is the subject of any proceedings related to its liquidation or insolvency, or a receiver or similar officer has been appointed for Supplier in connection with such proceedings; (iv) makes an assignment for the benefit of all or substantially all of its creditors; or (v) enters into an agreement for the composition, extension or readjustment of substantially all of its obligations.

**13.3** Termination Assistance.

**(a)** Upon expiration or termination of an Order for any reason, Supplier shall, at VWGoA's written request, provide transition assistance Services as reasonably requested by VWGoA for a period of up to ninety (90) days after the Termination Date (the "Transition Assistance Period").

**(b)** During the Transition Assistance Period, Supplier shall cooperate with VWGoA and its designees and provide the assistance reasonably requested by VWGoA or its designees to allow VWGoA's business operations to continue without material interruption or adverse effect and to facilitate the orderly transfer of responsibility for the Software or Services then being provided by Supplier to VWGoA or its designees, including the following:

**(i)** Continuing to perform any or all of the Services then being furnished by Supplier at the rates set forth in the Order;

**(ii)** Developing and implementing, with the assistance of VWGoA or its designees, a plan for the transition of the Services to VWGoA or its designees upon such terms and at such rates

as shall be mutually agreed upon between the Parties; and

(iii) Providing training for VWGoA Personnel or its designees in the performance of any Services then being performed by Supplier upon such terms and at such rates as shall be mutually agreed upon between the Parties.

**14.0 Miscellaneous.**

**14.1 Publicity; Non-Disparagement.** Neither Party will use the other Party's name, trademarks or service marks or refer to the other Party directly or indirectly in any media release, public announcement, promotional or marketing materials, customer list, business presentation, or other public disclosure relating to this Agreement or its subject matter without first obtaining prior written consent from the other Party in each instance, which consent may be withheld at said other Party's sole discretion. Supplier shall refrain, and shall ensure that its Personnel and Affiliates refrain, from making any negative or disparaging comments about VWGoA, its Affiliates, or their respective products and services throughout the Term and for a period of no less than one (1) year after the termination or expiration of this Agreement.

**14.2 Notices.** All consents, written notices, requests, demands, and other communications to be given or delivered under this Agreement will be in writing and will be deemed given: (i) when delivered personally; (ii) on the second Business Day when sent by a nationally recognized overnight courier; or (iii) on the third Business Day after being mailed by certified mail, return receipt requested. All notices to VWGoA shall be sent to: Volkswagen Group of America, Inc., 2200 Ferdinand Porsche Drive, Herndon, VA, 20171, to the attention of the named Business Manager, with a copy to the Office of the General Counsel at the same address. All notices to Supplier shall be sent to its address as set forth on the applicable Order. Either Party may, upon written notice to the other Party, change its notice address under this Agreement.

**14.3 Assignment.** Neither Party may assign or sublicense this Agreement or any portion thereof without the other Party's express prior written consent, except that VWGoA may assign or sublicense all or a portion of its rights and responsibilities under this Agreement to an Affiliate or to any entity that succeeds to or acquires all or substantially all of the business of VWGoA through a Change of Control Event. Any attempted assignment or sublicense without such consent will be void. Subject to the foregoing restrictions on assignment, the rights and duties of the Parties hereunder shall inure to the benefit of and be binding upon their respective successors and permitted assigns and sublicensees.

**14.4 Relationship of the Parties.** VWGoA and Supplier are independent contractors, and nothing contained in this Agreement shall constitute or be construed as creating any partnership, joint venture, agency relationship, or employment relationship between the Parties.

**14.5 Restriction on Hiring.** Each Party agrees not to hire or solicit for hire any Personnel of the other Party during the Term and for a period of one (1) year following the termination or expiration of this Agreement for any reason; provided, however, that the foregoing restriction shall not apply to the extent that such Personnel may answer a public advertisement for an open position.

**14.6 Approvals and Similar Actions.** Where agreement, approval, acceptance, consent or similar action by either Party is required by any provision of this Agreement, such action will not be unreasonably delayed or withheld. If regulatory or other governmental approval of the use of the Software and/or provision of Services in any state is required by any Law, Supplier, at its expense, will obtain such approval in sufficient time to permit the use of the Software and/or provision of Services in such state in accordance with the Order, and will furnish an authenticated copy of each such approval to VWGoA.

**14.7 Written Modification; No Waiver.** This Agreement may be modified only by a written instrument duly executed by the Parties. No delay or omission by either Party to exercise any right or power under this Agreement will impair such right or power or be construed to be a waiver of the delay or omission. A waiver by either Party of any of the obligations to be performed by the other Party or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other obligation contained

in this Agreement.

**14.8 No Third-Party Beneficiaries.** This Agreement for the benefit of the Parties and is not intended to confer any rights or benefits on any Third Person.

**14.9 Severability.** If any term or condition in this Agreement is invalid or unenforceable under any applicable Law, said term or condition will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with said applicable Law. The remaining provisions of the Order will remain in full force and effect.

**14.10 Governing Law; Venue.** The Order will be governed by the Laws of the Commonwealth of Virginia and the United States of America, without reference to its principles of conflict of Laws. The Parties hereby acknowledge and agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Parties agree that any claim, suit, dispute, or other legal proceeding arising under this Agreement shall be brought exclusively before the state and federal courts sitting in Fairfax County, Virginia, and the Parties hereby expressly and irrevocably submit to the jurisdiction thereof for the resolution of all such claims, suits, disputes, or proceedings.

**14.11 Entire Agreement.** Except as otherwise expressly provided in a writing signed by both Parties, this Agreement constitutes the final, entire, and exclusive agreement between the Parties with respect to the subject matter hereof. Without limiting the foregoing, the Parties agree that in the event of any inconsistency between any invoice or acceptance form sent by Supplier to VWGoA and these Standard Terms, these Standard Terms shall control.

**14.12 Jury Trial Waiver.** VWGoA AND SUPPLIER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED BY CONTRACT. EACH OF VWGoA AND SUPPLIER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY ORDER.

**14.13 Claims by Supplier.** Any legal action or arbitration proceeding by Supplier under any Order must be commenced no later than one (1) year after the earlier of: (i) the date that the breach or other event giving rise to Supplier's claim occurs; or (ii) the date that Supplier becomes aware of the facts and circumstances giving rise to the existence of such claim.

**14.14 Battle of the Forms Not Applicable.** The Parties have agreed and it is their intent that the battle of the forms described in Section 2-207 of the Uniform Commercial Code shall not apply to this Agreement or to any invoice or acceptance form of Supplier relating to this Agreement.

**14.15 Remedies Cumulative.** Each of the rights and remedies reserved to VWGoA in this Agreement shall be cumulative, and the assertion by VWGoA of any right or remedy shall not preclude the assertion by VWGoA of any other right or remedy.

**14.16 Headings.** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

***[End of document.]***