

VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC

STANDARD TERMS AND CONDITIONS FOR SOFTWARE, HARDWARE AND SERVICES

These terms and conditions (this "Agreement") shall govern the purchase or license of software programs and/or purchase or lease hardware, support services, and professional services by Volkswagen Group of America, Inc., for itself and for the benefit and use of its Affiliates (collectively, "VWGoA") from Supplier, as VWGoA and Supplier (individually, a "Party" and collectively, the "Parties") may from time to time agree under separately executed Orders.

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 any entity, including without limitation, a corporation, limited liability company, partnership or individual (a "Person"), any other 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 Person. 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. The foregoing notwithstanding, a Subcontractor of Supplier is considered an Affiliate and shall be subject to all of the obligations of Supplier stated herein.

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

1.3 "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.

1.4 "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.

1.5 "Consumer Price Index" shall mean the "Consumer Price Index for All Items for All Urban Consumers (CPI-U): U.S. City Average (1982-1984=100)" as published monthly by the Bureau of Labor Statistics of the United States Department of Labor.

1.6 "Customizations" shall mean the software program(s) being acquired by VWGoA as defined in an applicable Order, including any customizations to the Licensed Software and Updates, Enhancements and Error corrections of such program(s) that may be provided under this Agreement, excluding the Licensed Software base programs and any third party software.

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

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

1.9 "Enhancement" shall mean a generally released revision to or version of the Software that impacts functionality and/or features of the Software or Hardware and is not in the nature of Updates. The term "Enhancement" shall include release upgrades and shall not include any software revision or version that (a) is priced and offered separately by Supplier as optional modules for the Software; and (b) are not made generally available to Supplier's similarly situated clients without separate charges, unless specifically agreed to by the parties in an applicable Order.

1.10 “Error” shall mean any failure of the Software or Hardware to conform to the Documentation in any material fashion.

1.11 “Facility” shall mean any building or facility to the extent owned, leased or otherwise controlled by a Party where any obligation under an Order is to be performed.

1.12 “Hardware” shall mean the equipment listed on an applicable Order or Statement of Requirement and to be purchased or leased by VWGoA through Supplier.

1.13 “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.

1.14 “Laws” shall mean all federal, state and local laws, statutes, rules, codes, directives, regulations and ordinances.

1.15 “License” shall mean the transferable, nonexclusive, perpetual license granted to VWGoA by Supplier to use the Licensed Software and Documentation on the terms and conditions set forth in this Agreement and the applicable Order. As used in this definition, transferable means VWGoA’s right to transfer this Agreement in accordance with the terms of this Agreement. 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 use the License Software and Documentation on the terms and conditions set forth in this Agreement and the applicable Order.

1.16 “Licensed Software” shall mean the software program(s) being licensed by VWGoA as identified on an applicable Order or Statement of Requirement and includes Updates, Enhancements and Error corrections of such program(s) that may be provided under this Agreement, excluding any third party software that is subject to a separate license agreement between VWGoA and a third party.

1.17 “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 fees).

1.18 "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 and which shall set forth in detail the unique purchase requirements applicable to the Software, Hardware and/or Services, without limitation, the specifications, delivery dates and associated charges. An Order may also contain service level agreements and other terms and conditions.

1.19 “Personnel” shall mean the officers, directors, agents and employees of any Party.

1.20 “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.

1.21 “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.

1.22 “Service Levels” shall mean those metrics related to operational performance of the Software, Hardware and/or Services that Supplier agrees to meet as set forth in an applicable Order.

1.23 "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.

- 1.24 “Software” shall mean Licensed Software and Customizations.
- 1.25 “Support Services” shall mean those services Supplier will perform as described in Section 6 and as may be further set forth in an applicable Order.
- 1.26 “Term” shall mean the Initial Term and any renewal terms.
- 1.27 “Third Person” shall mean a Person, including its employees, contractors or agents, that is not a Party to an Order.
- 1.28 “Training Services” shall mean those services Supplier will perform in connection with training VWGoA representatives on the Software as described in an applicable Order.
- 1.29 “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.
- 1.30 “Virus” shall mean any harmful, hidden program or data incorporated in a 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 or Trojan horses.
- 2.0 Orders. Supplier shall provide Software, Hardware and/or perform Services as designated in a document executed by the Parties and referred to as an Order to this Agreement. Unless otherwise set forth in an Order, Software, Hardware and/or Services, as the case may be, shall be deemed accepted by VWGoA upon VWGoA’s written notice of such acceptance to Supplier.
- 2.1 This Agreement includes the terms and conditions of this Agreement; all Addenda, Orders, exhibits and Change Orders entered into by the parties; and all Documentation. The provisions of the various Agreement documents shall, to the extent possible, be interpreted so as 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) exhibits; (d) Addenda; (e) the other terms and conditions of this Agreement; (f) the Documentation.
- 2.2 This Agreement is not an exclusive arrangement. VWGoA shall have no minimum purchase, License or lease requirements hereunder, and shall be entitled, in its sole discretion, to purchase, License and/or lease Hardware, Software and/or Services from any third party.
- 2.3 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.
- 3.0 License Grant. Supplier grants to VWGoA the License to use the Licensed Software and Documentation solely on the terms and conditions set forth in this Agreement and an applicable Order.
- 3.1 VWGoA may:
- (a) Install, use and execute the Licensed Software. No additional fees shall be due to Supplier in the event that VWGoA installs, uses or executes the Licensed Software outside of the United States.
 - (b) Make copies of the Licensed Software for backup and archival purposes only, provided that Supplier’s copyright and other proprietary legends are reproduced on each copy. VWGoA shall keep appropriate records of the number and location of all copies and make such records available to Supplier upon reasonable request. All copies that are made by VWGoA shall be the property of Supplier. Notwithstanding the

foregoing, during the testing of VWGoA's disaster recovery system at reasonable intervals, VWGoA may make necessary copies of the Licensed Software and run the Licensed Software in connection with such tests, concurrently with using the Licensed Software in production.

(c) Make copies of the Licensed Software's Documentation for VWGoA's use in accordance with this Agreement, provided that Supplier's copyright and other proprietary legends are reproduced on each copy.

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

(a) Reverse assemble or decompile the Licensed Software or otherwise examine the Licensed Software for purposes of reverse engineering; or

(b) Remove the labels or any proprietary legends from the Licensed Software or its Documentation.

3.3 Supplier reserves all rights in the Licensed Software not expressly granted. VWGoA understands that the license granted herein transfers neither title nor proprietary rights to VWGoA with respect to the Licensed Software.

3.4 Supplier, within fifteen (15) days following the effective date of the applicable Order, and within fifteen (15) days following the issuance of any Update, Enhancement and/or Error correction, as the case may be, will deposit with Supplier's source code escrow agent a complete, functional copy of the source code for such Licensed Software. The source code will be readable and useable in its then current form and, if any portion is encrypted, the necessary decryption tools and keys to read such code will be contemporaneously provided. Supplier's source code escrow agent must be a third party which is not an Affiliate of Supplier and which provides source code escrow agent services to the general public. VWGoA shall be made a specific beneficiary of the source code escrow by a written document executed by Supplier and the escrow agent ("Source Code Escrow"), which document shall be delivered to VWGoA within the same fifteen (15) day period for deposit of the source code into escrow. Supplier will bear all expenses for implementation and maintenance of the Source Code Escrow. Supplier's escrow agent shall release the source code to VWGoA upon written demand of VWGoA if (i) Supplier fails to provide Support Services in the time and manner required under this Agreement to VWGoA for a continuous period of twenty (20) days, except to the extent due to Force Majeure; (ii) Supplier ceases supporting Licensed Software for which VWGoA is entitled to maintenance and Support Services under this Agreement, and Supplier fails to either provide an alternative means of support reasonably acceptable to VWGoA, or successor software product or other migration path reasonably acceptable to VWGoA; (iii) Supplier ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization. VWGoA shall have the right to use the source code to support the Licensed Software as necessary to conduct VWGoA's business and VWGoA shall have the right to solicit Supplier's technical staff (without the application of penalties as set forth in Section 15.5) in the event of a release condition.

4.0 Customizations. In consideration for the fees set forth on an applicable Order, Supplier shall provide VWGoA with Customizations in both object and source code formats. All rights, title and interest in and to the Customizations shall vest exclusively in VWGoA.

4.1 Supplier agrees that all Customizations and Proprietary Materials created in connection with this Agreement are "works made for hire" as that term is used in connection with the U.S. Copyright Act. To the extent that, by operation of law, Supplier owns any Intellectual Property rights in such Customizations and/or Proprietary Materials, Supplier hereby irrevocably assigns and transfers to VWGoA all rights, title and interest in such Customizations and/or Proprietary Materials. To the extent that, by operation of Law, any Supplier Personnel owns any Intellectual Property rights in such Customizations and/or Proprietary Materials, Supplier shall obtain all such rights and, immediately upon obtaining them, hereby irrevocably assigns and transfers to VWGoA all rights, title and interest in such Customizations and/or Proprietary Materials. Supplier agrees to cooperate with VWGoA in the protection of Customizations and Proprietary Materials and the securing of VWGoA's rights in the Customizations and Proprietary Materials, including

the execution of any documents necessary to secure such rights, whether during or after the term of this business relationship with VWGoA.

4.2 Preexisting Supplier Proprietary Materials. Supplier will have and retain all rights, including Intellectual Property rights, subject to Section 4.1 above, in Supplier's pre-existing Proprietary Materials. VWGoA acknowledges that it does not own Supplier's pre-existing Proprietary Materials and will acquire no right, title or interest in Supplier's pre-existing Proprietary Materials, except for such rights pursuant to a license, purchase or lease as may be expressly granted to VWGoA under this Agreement.

4.3 VWGoA will have and retain all rights, including Intellectual Property rights, in VWGoA's Proprietary Materials. Supplier acknowledges that it does not own VWGoA's Proprietary Materials and will acquire no right, title, or interest in VWGoA's Proprietary Materials furnished to or used by Supplier.

4.4 In providing the Software, Hardware and/or Services, Supplier may use third party materials, provided that Supplier shall disclose in writing to VWGoA any third party materials that are incorporated or embedded into any of the Proprietary Materials. Supplier warrants that it has all rights needed to use the third party materials for purposes of providing the Software, Hardware and/or Services under this Agreement. VWGoA acknowledges that it does not own the third party materials and will acquire no right, title or interest in such third party materials, except for such rights pursuant to a license, purchase or lease as may be granted to VWGoA under this Agreement. Supplier warrants that VWGoA have a perpetual, worldwide, royalty-free license to use such third party materials as part of such Proprietary Materials.

5.0 Hardware and Software. Supplier shall coordinate delivery of the Hardware and Software to VWGoA. Except as otherwise stated in an Order, VWGoA requires that Supplier ship Hardware and Software delivered within the NAFTA region FOB destination point, and Goods delivered outside the NAFTA region via Delivery Duty Paid (DDP) VWGoA's designated facility at Supplier's final production location. Carriage shall be arranged by Supplier. Except as otherwise stated in the Order, Incoterms 2000 shall apply to all shipments.

5.1 In the event that VWGoA finances with Supplier its purchase of Hardware, until paid in full, Supplier retains a security interest in the Hardware to secure payment of the price of the Hardware. At Supplier's request, VWGoA shall sign and deliver to Supplier a financing statement evidencing this security interest. Upon VWGoA's payment in full, Supplier shall promptly take all steps necessary to release its security interest.

5.2 If Supplier recommends that VWGoA runs Software on specified Hardware or equipment, Supplier shall be responsible if the Software does not function on such Hardware or equipment.

6.0 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.

6.1 Supplier shall provide Support Services set forth in Sections 6.2 through 6.4 and as agreed upon by the Parties in an applicable Order, provided that VWGoA has paid the applicable support fees.

6.2 Supplier shall provide VWGoA with Updates and Enhancements to the Software free of charge.

6.3 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 obligations, if any, as may be more fully set forth in an applicable Order, within 14 days. To the extent that any third party materials are incorporated into the Software, or works in conjunction with the Software, Supplier shall be responsible for any performance related Errors under the terms of this Agreement.

6.4 Supplier shall use all commercially reasonable efforts to respond to reported Errors and provide the Support Services contracted by VWGoA to meet or exceed acceptable industry standards and practices. Supplier will exercise its best efforts to expeditiously and efficiently provide information and Support Services reasonably requested by VWGoA.

6.5 While at a VWGoA Facility, Supplier and its employees, agents, Subcontractors (as defined below) and Affiliates will conduct themselves (including attire) in a business-like and professional manner and will comply with VWGoA's reasonable requests, rules and regulations regarding personal conduct, including all safety, including the wearing of protective clothing or gear if applicable, parking, building access, identification badges, and security rules and regulations of which Supplier has been notified or of which Supplier should reasonably be aware. VWGoA may, upon giving written notice to Supplier, require Supplier to reassign, replace or remove any individual or Subcontractor performing services under an Order when VWGoA determines that the performance of such individual or Subcontractor is such that it has an adverse impact on VWGoA. Supplier will, on receipt of such written notice, begin diligent efforts to address VWGoA's concerns. If Supplier has not, in VWGoA's reasonable determination, addressed VWGoA's concerns within five (5) working days from date of notice by resolving the issue or providing an action plan with respect thereto, Supplier will reassign, replace or remove such individual or Subcontractor and complete such reassignment, replacement or removal as soon as practicable at no cost to VWGoA. In addition, VWGoA may, on giving written notice to Supplier, and at no cost to VWGoA, require the immediate removal of any Supplier Personnel who has violated any safety or security rules or regulations, or any other policies or procedures, of which VWGoA has made Supplier aware, or violated any laws or regulations in the course of performing services under an Order or breached any of the provisions of an Order and/or these Terms. Supplier represents that it aware of and will abide by VWGoA drug and alcohol testing requirements and that it is in full compliance therewith. Supplier agrees to maintain the highest standards of moral, legal and ethical conduct and to safeguard and promote the reputation of VWGoA and its products. Supplier shall refrain, and shall ensure that its Personnel and Affiliates refrain, from making any negative comments about VWGoA or its products throughout the term of the relevant Order and for a period of no less than twelve months after the expiration of the Order.

6.6 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 work and activities of its Subcontractors. Supplier represents and warrants that any Subcontractor shall be subject to all of Supplier's obligations, responsibilities and warranties under the relevant Order, and that Supplier will ensure the compliance of all Subcontractors with the terms of the Order for which the Supplier has engaged such Subcontractor (including ensuring that Subcontractors comply with the insurance requirements set forth in these Terms). Prior to engaging a Subcontractor, Supplier will inform VWGoA and provide to VWGoA any information that it may reasonably request regarding such Subcontractor. At VWGoA's request, the Parties will 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, any work performed by a Subcontractor.

7.0 Charges. VWGoA shall pay Supplier the applicable license fees, hardware fees, support fees, and service fees (collectively, the "Charges") in the amounts as set forth in the applicable Orders. VWGoA may set off and recoup against its accounts payable to Supplier any amounts for which VWGoA determines in good faith Supplier or Supplier's Affiliates is liable to VWGoA under any other Order with Supplier or Supplier's Affiliates. VWGoA shall not be required to pay for the Software, Hardware and/or Services at prices higher than those specified in the Order. VWGoA will not accept any charges for extras or for transportation, storage, drayage, insurance, boxing, packing, crating or carting unless specified in the Order or otherwise agreed by VWGoA in writing.

7.1 Travel Expenses. All travel undertaken by Supplier, its Personnel or Subcontractors pursuant to an Order shall be at Supplier's expense.

7.2 Taxes. VWGoA shall not be liable for any Federal, state, local or foreign 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 imposed by any federal, state, local or foreign government which directly arise from the sale of the Goods or the rendering of the Services and 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, employment taxes, income taxes 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 or foreign tax credit. 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 tax authorities.

Supplier shall comply in a timely manner with all requirements imposed on Supplier by all applicable taxing statutes, including requirements in respect of registration, payment, collection, and remittance of taxes and provision to the taxing authorities of such deposits, guarantees or other forms of security as may be required by law or the administration thereof, and shall upon request provide VWGoA with written proof of such compliance. Supplier shall indemnify VWGoA for any amounts assessed against VWGoA arising from Supplier's failure to so comply.

7.3 Supplier shall invoice VWGoA for the Software, Hardware and Services, and, except as otherwise stated in an Order, VWGoA shall pay the Charges set forth in non-disputed invoices based on a Net 60 day payment term. In the event of any delay in receiving an invoice, or any error or omissions in any invoice, VWGoA may withhold payment without losing its rights to applicable cash discounts. Except as otherwise stated in an Order, all payments will be in U.S. Dollars, unless otherwise stated on the Order. Within 90 days of receipt of an invoice, VWGoA shall notify Supplier of any disputed charges.

7.4 Support fees shall be based on VWGoA's actual cost of the Licensed Software (as opposed to any list price).

8.0 Audits by VWGoA.

8.1 Financial Audits. At VWGoA's request, Supplier will allow VWGoA or its designated representatives to audit its or its Subcontractors' accounting books and records to the extent necessary to verify Supplier's Charges to VWGoA for completed and current projects. 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 Fees to VWGoA (including 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 practices. If any such audit discloses overpayments that in the aggregate equal one percent (1%) or more of the amounts that were actually due, as shown by the audit, then Supplier will reimburse VWGoA for the costs of the audit.

8.2 Operational Audits. VWGoA may monitor Supplier's performance of its duties under an Order at any time, and upon prior written or verbal notice to Supplier.

8.3 Compliance Audit. At Supplier's request, VWGoA will allow Supplier to conduct a reasonable audit for the sole purpose of confirming VWGoA's compliance with the terms of the License. Such audit shall occur at a mutually agreed upon date and time and take place no more than once annually.

9.0 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 Personnel or advisors (each a "Representative")(collectively, a "Disclosing Party") to the other Party or its Representative (collectively, a "Receiving Party") including all information relating generally or specifically to a Party's business, including without limitation, 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 other Party pursuant to or as a result of an Order and that is not generally known in the trade or industry. Each Party may use Confidential Information of the other Party only in connection with performance of its duties under an Order. Neither Party shall copy Confidential Information or disclose Confidential Information of the other Party to persons who do not need Confidential Information in order to perform its duties under the Order. Confidential Information will be returned to the Disclosing Party seeking to protect such information upon request of the Disclosing Party. 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. 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. The provisions of this Section 9 will survive the termination of the relevant Order for the longer of five (5) years from the disclosure of the Confidential Information or three (3) years from the date of disclosure of the Confidential Information. 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.

9.1 Restrictions on Use of Confidential Information. The Receiving Party will use at least the same degree of care, but no less than a reasonable degree of care, to avoid unauthorized disclosure or use of the Disclosing Party's Confidential Information as it employs with respect to its own Confidential Information. The Receiving Party may disclose Confidential Information only to its own Personnel and to its consultants, subcontractors and advisors who reasonably need to know it in order to meet the contractual obligations as contemplated by the Order. The Receiving Party will be responsible to the Disclosing Party for any violation of the Order by its Personnel, consultants, Affiliates, Subcontractors or advisors.

9.2 The Receiving Party may not print or copy, in whole or in part, any documents or other media containing the Disclosing Party's Confidential Information, other than copies for its Personnel, consultants or advisors who are working on the matter, without the prior consent of the Disclosing Party.

9.3 The Receiving Party may not use the Disclosing Party's Confidential Information for competing with the Disclosing Party, for its own benefit, or for any purpose not in furtherance of the Order.

9.4 As promptly as practicable (and in any event within ten (10) days) after the earlier of the completion of the Receiving Party's obligations under, or the termination of, the Order, the Receiving Party will return or, with the consent of the Disclosing Party, destroy all of the Disclosing Party's Confidential Information, except for business records required by law to be retained by the Receiving Party, and upon request of the Disclosing Party shall deliver an affidavit signed by an officer of the Receiving Party attesting to the destruction of the Confidential Information.

9.5 If the Receiving Party is requested, as part of an administrative or judicial proceeding, to disclose any of the Disclosing Party's Confidential Information, the Receiving Party will, to the extent permitted by applicable law, notify the Disclosing Party of such request as promptly as practicable (and in any event within five (5) Business Days after receiving the request) and cooperate with the Disclosing Party, at the Disclosing Party's expense, in seeking a protective order or similar confidential treatment for such Confidential Information.

10. Warranties. The warranties set forth below are in addition to any warranties set forth in an applicable Order or elsewhere in this Agreement:

10.1 Each Party 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; (c) the execution, delivery and performance of this Agreement has been duly authorized by such Party; and (d) no approval, authorization or consent of any court or any government or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement.

10.2 Unless a longer period is specified in an applicable Order, Supplier warrants that the Software and Hardware will operate in substantial conformance with its Documentation for a period of twelve (12) months after the Software or Hardware, as the case may be, is accepted by VWGoA in accordance with an applicable Order. If a particular Software or Hardware product is being licensed or purchased for multiple sites, the warranty period for the Software or Hardware at the sites or business units shall expire twelve (12) months after the Software or Hardware product is accepted by VWGoA for each particular site or business unit. Supplier agrees to correct any Error of which it receives notice during the warranty period. VWGoA shall provide Supplier with written notice that an Error exists, and Supplier shall have a reasonable period of time, based on the severity of the Error, at Supplier's sole cost and expense, to correct the Software.

10.3 Supplier warrants that the Software, and the Hardware and the Services requiring programming or software products, do not contain any disabling devices that would allow Supplier to terminate operation of the Software or the Hardware. Supplier further warrants that the Software will be free from any Virus at the time of delivery and has undergone a commercially reasonable quality assurance procedure to ensure that there are no Viruses and contain no embedded devices or codes (e.g. time bombs) that will obstruct or prevent VWGoA's use of the Software or Hardware.

10.4 Supplier further warrants that the Services, the Software, the Hardware and all other Proprietary Materials provided to VWGoA under this Agreement are either Supplier's original work, are public domain materials or are owned by a third party from whom Supplier has acquired all necessary permissions to grant the rights under this Agreement. Furthermore, Supplier warrants that neither its provision of the Services, the Software, the Hardware or other Proprietary Materials nor VWGoA's receiving or use of the same as provided under this Agreement infringe the Intellectual Property rights (including copyrights, patents, trade secrets, trademarks and know-how) of any third party. Supplier may, in its sole discretion, but without limiting VWGoA's rights or remedies under this Agreement: (a) procure for VWGoA the right to continue using the infringing Service, the Software, or the Hardware; (b) provide a substitute, non-infringing Service, Software or Hardware, as the case may be (meeting all requirements and specifications of the infringing Service, Software or Hardware) at no cost to VWGoA; or only if Supplier has exhausted both (a) and (b), then (c) by notice to VWGoA terminate the applicable Order for the infringing Service, Software or Hardware, as the case may be, and promptly refund all fees and costs paid by VWGoA under this Agreement in connection with the purchase, license, development, installation, implementation, maintenance, use and training of, or related to, the infringing Service, Software or Hardware, including without limitation license fees, support fees and fees for Services and costs for related Hardware.

10.5 Supplier warrants that it has reviewed the specifications and requirements of the Services and it has the expertise and resources necessary to undertake and complete the Services in accordance therewith in the applicable timeframe, if any, specified in an Order. Supplier warrants that (a) the Services will be performed in a prompt, professional and workmanlike manner, in accordance with industry standards, and (b) Supplier has the expertise and resources necessary to undertake and complete the Services in accordance with the specifications and timeframes set forth in the Order and the applicable Service Levels (the "Services Warranty"). Promptly after notice of any defect is provided by VWGoA, Supplier shall, at VWGoA's option, either (i) re-perform any Services, or (ii) refund the service fees for any Services that do not conform to the Services Warranty. Supplier's warranty obligations under the Services Warranty will be fulfilled by Supplier without additional fees or charges of any kind to VWGoA.

10.6 Supplier represents and warrants to VWGoA: (a) Supplier, and any Services supplied by Supplier, will comply with all applicable Laws, including without limitation Laws relating to 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 and its Subcontractors' compliance with the foregoing. Neither Supplier nor any of its Subcontractors will 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.

10.7 Supplier warrants to VWGoA that it is an equal opportunity employer and hereby represents and warrants that it is in compliance with all applicable employment laws.

10.8 Supplier represents and warrants to VWGoA that, in performing its obligations under the Order, (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 an SDN.

10.9 Supplier's warranty obligations and other obligations under this Agreement with respect to the Software and Hardware are expressly conditioned upon VWGoA's proper use of the Software and Hardware and do not include support or correction of Errors or increases in service time that result from (a) accident, neglect, misuse or use other than ordinary use; (b) failure of electrical power, air conditioning, or humidity controls that cause a computer failure; and (c) modifications made to the Software or Hardware without the knowledge of Supplier or its Personnel.

11.0 Indemnification by Supplier. 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 its obligations or warranties to VWGoA under this Agreement or an Order;

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

(d) Claims by Supplier's employees or subcontractors that they are entitled to any benefits normally associated with employment at VWGoA, including insurance, pension, lease cars, compensation, tax withholdings, etc. Supplier hereby indemnifies, defends, holds harmless and releases and discharges VWGoA for any claim(s) of Supplier's Personnel that they may raise under Wage and Hour Act, the Fair Labor Standards Act, the Retaliatory Employment Discrimination Act, the Employment Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act as amended, the Americans With Disabilities Act, the Family and Medical Leave Act, and/or any claims for discrimination, wrongful discharge (actual or constructive), breach of express or implied contract, unpaid wages and/or vacation and/or sick leave pay, intentional and/or negligent infliction of emotional distress, defamation, and/or any other cause of action based on federal, state, local, common law, and/or otherwise.

11.1 Supplier will, at its expense, indemnify, defend and hold harmless the VWGoA Indemnitees from any Third Person claims made against VWGoA, any of its Affiliates and/or Personnel alleging that any Software, Hardware and/or Service infringes a Third Person's copyright, patent or trade secret ("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, or (ii) procure for VWGoA the right to use the alleged infringing Software, Hardware and/or Service, or (iii) replace or modify the alleged infringing Software, Hardware and/or Service in order to avoid the Intellectual Property Claim, or (iv) remove the alleged infringing Software, Hardware and/or Service and refund the Fees

(including transportation costs) paid by VWGoA to Supplier less a reasonable amount directly proportionate to VWGoA's actual usage of the infringing Software, Hardware and/or Service, or (v) litigate the Intellectual Property Claim; provided, however, 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 as to any alleged infringing Software, Hardware and/or Service. Regardless of Supplier's response to the Intellectual Property Claim or VWGoA's election to terminate this Agreement as to any alleged infringing Software, Hardware and/or Service, Supplier shall remain obligated to defend the Intellectual Property Claim and to pay any final judgments awarded against Supplier and/or VWGoA based upon the Intellectual Property Claim.

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

11.4 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, written notice of such claim will be conveyed to Supplier. However, no failure so to notify Supplier will relieve that Party of its obligations under this Agreement.

11.5 Each 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 Article (notwithstanding that Supplier is bearing the cost of the defense for the Indemnitees). However, to the maximum extent possible permitted by the circumstances and ethical considerations, counsel for Supplier and counsel for the Indemnitees will work together to avoid duplication of effort or expense, in attorney fees or otherwise. In addition, Supplier and the Indemnitees will make good faith efforts to coordinate their activities so as to take consistent positions in the course of negotiations or litigation.

11.6 Supplier will obtain the prior approval, which approval will not be unreasonably delayed or withheld, from VWGoA in respect of any proposed settlement of any claims before entering into any settlement of such claims or ceasing to defend such claims. If Supplier does not participate in the defense of a claim covered by this Section 11, the 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 Indemnitees for all such costs and expenses, demand for which may be made periodically. Notwithstanding anything to the contrary in this Agreement, no limitations on damages or remedies set forth in this Agreement will apply to an Indemnifying Party's obligations to indemnify, defend and hold the Indemnitees harmless against Losses claimed under this Article. Indemnity obligations under this Article shall survive the termination, cancellation or non-renewal of this Agreement.

12.0 Liability Limitation; Force Majeure

12.1 Direct Damages Limitation. Supplier's aggregate liability to VWGoA for any direct damages, whether based upon contract, tort or any other legal theory resulting from or in any way connected with the performance by Supplier of its covenants and agreements under this Agreement, shall not exceed in the aggregate an amount equal to all Charges paid by VWGoA to Supplier under this Agreement; provided, however, that this direct damages limit of liability shall not apply to Supplier's (i) breach of its confidentiality obligations under this Agreement (ii) breach of its warranty obligations under this Agreement, or (iii) indemnification obligations under this Agreement.

12.2 Excluded Damages. Neither Party shall be liable to the other Party 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 any way connected with the performance by either Party of their respective covenants and agreements under this Agreement. Neither Party shall be liable to the other Party for the Excluded Damages, whether foreseeable or not, and even if the applicable Party has been advised of the possibility of the Excluded Damages. This Excluded Damages limitation shall not apply to (i) the Parties'

confidentiality obligations under this Agreement, (ii) the Parties' warranty obligations under this Agreement, or (iii) the Parties' indemnification obligations under this Agreement.

12.3 Force Majeure. Except for payment obligations, 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 and without its fault or negligence, such as: acts of God, restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority (whether valid or invalid); embargoes, fires, floods, earthquakes, explosions, natural disasters, riots, wars, sabotage, inability to obtain power, or court injunction or order. 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. The change in cost or availability of materials or components based on market conditions, supplier actions, or contract disputes or any labor strike or other labor disruption applicable to a Party or any of its Subcontractors or suppliers, will not excuse such Party's performance (under theories of force majeure, commercial impracticability or otherwise), and each Party assumes these risks. As soon as possible (but no more than one full business day) after the occurrence, the affected Party will provide written notice describing such delay and assuring the other Party of the anticipated duration of the delay and the time that the delay will be cured. During a delay or failure to perform by Supplier, VWGoA may at its option: (a) purchase Goods from other sources and reduce its schedules to Supplier by such quantities, without liability to Supplier; (b) require Supplier to deliver to VWGoA at VWGoA's expense all finished goods, work in process and parts and materials produced or acquired for work under the Order; or (c) have Supplier provide Services from other sources in quantities and at a time requested by VWGoA and at the price set forth in the Order. In addition, Supplier at its expense will take all necessary actions to ensure the supply of Services to VWGoA for a period of at least thirty (30) days during any anticipated labor disruption or resulting from the expiration of Supplier's labor contracts. If delay on the part of Supplier lasts longer than thirty (30) days, VWGoA may terminate the Order without liability and Supplier shall reimburse VWGoA for costs associated with the termination.

13.0 Insurance. At all times while this Agreement is in effect, Supplier will maintain in force, and cause its Subcontractors to maintain in force, at its each parties own expense, insurance of the type and in the amounts set forth below:

- (a) Property All Risk insurance to cover Software and Hardware in transit, in warehouse or in storage whether on vehicles or in Facility(s) controlled or operated by Supplier or its Subcontractor or any other Third Person: Minimum limit of \$5,000,000 to cover full replacement cost of Software or Hardware including additional storage, clean-up costs, salvage, security, expediting or additional transportation fees. VWGoA will be added as loss payee and additional insured with respect to its interest in Software and Hardware;
- (b) Statutory workers' compensation insurance in accordance with the legal requirements of each country, state, territory, or locality exercising jurisdiction over Supplier and Subcontractor Personnel performing Services in such country, state, territory, or locality;
- (c) 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;
- (d) 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. VWGoA and its Personnel shall be named as additional insureds as respects to their interest in Software and Hardware
- (e) Comprehensive automobile liability insurance for owned, hired or non-owned vehicles with a combined single limit in an amount not less than \$2,000,000 per accident for bodily injury and property damage liability. VWGoA and its Personnel shall be named as Additional Insured as respects to their interest in Goods.

(f) 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;

(g) Employee fidelity bond with Third Person liability endorsement or VWGoA added as loss payee in an amount not less than \$500,000; and

(h) Umbrella/excess liability in an amount not less than \$10,000,000 per occurrence. VWGoA and its Personnel shall be named as additional insureds.

13.1 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. Supplier and

13.2 Supplier, for itself and its Subcontractors, including their respective insurance carriers, agree to waive any right of subrogation and have no right of recovery from VWGoA, its Personnel or its insurers. Supplier, for itself and on behalf of its Subcontractor warrant that their 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 necessarily be adequate to respond to all exposures to Losses. The required limits of insurance shall not be deemed as a limitation or maximum liability as respects the indemnity obligations as set forth under this Agreement. Supplier agrees to be financially responsible for it and its Subcontractors' respective deductibles, retentions, self-insurance or co-insurance obligations, or claims or Losses in excess of the required insurance coverage limits.

13.3 Insurance Documentation. On or before the Effective Date of this Agreement, and annually thereafter upon expiration, Supplier and if applicable its Subcontractors 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 Article. 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. Supplier also will require by contract that each subcontractor furnish such certificates and other appropriate documentation to VWGoA and that the certificates or other appropriate documentation 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.

13.4 If eligible, and to the extent requested by VWGoA, Supplier agrees to enroll in any owner controlled insurance program applicable to this Agreement in order to provide all or part of the required insurance set forth in this Section 13.

14.1 Termination for Convenience. VWGoA may terminate this Agreement at any time after the Effective Date without cause upon 30 days' prior written notice to Supplier.

14.2 Termination for Cause. Either Party (the "Non-Defaulting Party") may terminate this Agreement if the other Party (the "Defaulting Party") breaches any of its material duties or material obligations under this Agreement or these Terms & Conditions by delivering to the Defaulting Party a written default notice (the "Default Notice"). The Default Notice shall specify (i) the default(s) in reasonable detail, (ii) the action necessary to cure the default(s), and (iii) the cure period within which the Defaulting Party must cure the default(s), which cure period shall not be less than thirty (30) days for a payment default, and ten (10) days for a performance default (the "Cure Period"). If the Defaulting Party cures the default(s) within the applicable Cure Period to the reasonable satisfaction of the Non-Defaulting Party, the Non-Defaulting Party will rescind the Default Notice. If the Defaulting Party does not cure the default(s) during the applicable Cure Period, this Agreement will terminate as of the close of business on the last day of the applicable Cure Period.

14.3 Termination for Insolvency. VWGoA may terminate this Agreement 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, insolvency or the appointment of a receiver or similar officer for it; (iv) makes an assignment for the benefit of all or substantially all of its creditors; (v) is unable to pay its debts generally as they come due; or (vi) enters into an agreement for the composition, extension or readjustment of substantially all of its obligations, by giving written notice to Supplier of its intention to terminate this Agreement as of a date specified in the written notice, which date will not be less than ten (10) days after the date of the written notice, during which time Supplier may cure such default by causing any such proceeding to be terminated or dismissed, or by providing VWGoA with verification of solvency or otherwise of its ability to perform its obligations hereunder. If Supplier fails to cause such proceeding to be terminated or dismissed or otherwise to provide VWGoA with the information set forth above, this Agreement will terminate on the date set forth in the written notice.

14.4 VWGoA may terminate this Agreement or any Order(s) within sixty (60) days after a Change of Control Event by delivering to Supplier during such sixty (60) day period a written notice of termination for change of control setting forth the date of termination, which date, unless otherwise agreed by VWGoA and Supplier, will be at least thirty (30) days after the date the written notice is delivered to Supplier. This Agreement or the applicable Order(s) will terminate automatically on the date set forth in the written notice unless the written notice is rescinded by VWGoA prior to the termination date.

14.5 Supplier may terminate this Agreement if VWGoA (i) files for bankruptcy; (ii) becomes or is declared insolvent or is the subject of any proceedings related to its liquidation, insolvency, or the appointment of a receiver or similar officer for it; (iii) makes an assignment for the benefit of all or substantially all of its creditors; (iv) is unable to pay its debts generally as they come due; or (v) enters into an agreement for the composition, extension or readjustment of substantially all of its obligations, by giving written notice to VWGoA of its intention to terminate this Agreement as of a date specified in the written notice, which date will not be less than ten (10) days after the date of the written notice, during which time VWGoA may cure such default by causing any such proceeding to be terminated or dismissed, or by providing Supplier with verification of solvency or otherwise of its ability to perform its obligations hereunder. If VWGoA fails to cause such proceeding to be terminated or dismissed or otherwise to provide Supplier with the information set forth above, this Agreement will terminate on the date set forth in the written notice.

14.6 Termination Assistance.

14.6.1 Upon expiration or termination of the Order for any reason, Supplier shall, at VWGoA's 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").

14.6.2 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 Goods and Services then being provided by Supplier to VWGoA or its designees, including the following:

14.6.2.1 Continuing to perform any or all of the Services then being furnished by Supplier at the rates set forth in the Order,

14.6.2.2 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

14.6.2.3 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.

15.0 Miscellaneous

15.1 **Publicity.** 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 or public disclosure relating to this Agreement or its subject matter to the extent the materials in such media release, announcement or disclosure have not previously been made publicly available without obtaining specific written consent from the other Party for each such use or release, which consent may be withheld at the Party's sole discretion. This restriction includes, but is not limited to, any promotional or marketing materials, customer lists or business presentations (but not including any announcement intended solely for internal distribution by a Party or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of a Party).

15.2 **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; and (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. 3800 Hamlin Road, Auburn Hills, MI, 48326, to the attention of the named Business Manager, with a copy to the Office of the General Counsel at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171. All notices to Supplier shall be sent to its address as set forth on this Agreement. Either Party may, upon written notice to the other Party, change its notice address under this Agreement.

15.3 **Assignment.** Neither Party may assign or sublicense this Agreement without the other Party's prior express written consent. Any attempted assignment or sublicense without such consent will be void. However, 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. 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.

15.4 **Relationship of the Parties.** Supplier, in furnishing Goods and Services to VWGoA under this Agreement, is acting only as an independent contractor. Except as otherwise provided in this Agreement, Supplier does not undertake to perform any obligation of VWGoA, whether regulatory or contractual, or to assume any responsibility for VWGoA's business or operations, and Supplier has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Supplier. In no event will VWGoA be deemed to be an employer or co-employer of any Supplier Personnel and this Agreement may not otherwise be construed to create a partnership or joint venture relationship between the Parties.

15.5 **Restriction on Hiring.** Both Parties agrees not to hire or solicit for hire any employee or sub-contractor of the other during the term of this Agreement and for a period of one year after the termination or expiration of this Agreement, provided, however, that the foregoing restriction shall not apply to the extent that such employee may answer a public advertisement for an open position.

15.6 **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 governmental approval of the sale or use of the Software, Hardware and/or Services in any state is required by any law, court order or regulation, Supplier, at its expense, will obtain such approval in sufficient time to permit the sale or use of the Software, Hardware and/or Services in such state in accordance with VWGoA's schedule, and will furnish an authenticated copy of each such approval to VWGoA.

15.7 **Modification; 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.

15.8 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.

15.9 Severability. If any term of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of the Order will remain in full force and effect.

15.10 Governing Law. The Order will be governed by the laws of the State of Michigan and the United States of America. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any conflict-of-laws provisions that would require application of another choice of law, are excluded. The arbitration provisions of this Section will be governed by the United States Federal Arbitration Act. At VWGoA's option, exercised by written notice any time before or within 30 days following the service of process in a legal action, any dispute regarding the Goods, the Order, the validity of the Order or any of these Terms, or any other matter between the parties (other than requests for equitable or injunctive relief or specific performance) will be resolved by binding arbitration, conducted in the English language using a single arbitrator as follows: (a) the arbitration will be conducted under the commercial arbitration rules of the American Arbitration Association (AAA) in a location agreed by the parties; (b) if the parties cannot agree on a location within 30 days of either party's written request for arbitration, the arbitration will be conducted in Oakland County, Michigan, USA; and (c) the arbitrator will be selected from an AAA list using the AAA-recommended selection method. The arbitrator will issue written findings of fact and conclusions of law. Each party will bear equally the costs and expenses of AAA and of the arbitrator, and each party will bear its own costs and expenses; provided, however, (1) that the failure by one party to pay its share of arbitration fees constitutes a waiver of such party's claim or defense in the arbitration, and (2) that the arbitrator may award attorneys' fees and costs to the substantially prevailing party. In no event will any party be awarded punitive, consequential or exemplary damages or any other damages not measured by the prevailing party's actual damages. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction. The award of the arbitrator will be enforceable in any court of competent jurisdiction, provided that either party may appeal to the U.S. District Court for the Eastern District of Michigan, for correction of any clear error of fact or law by the arbitrator (provided that the appealing party must first post an appropriate bond and that the prevailing party in any such action will be entitled to its attorneys' fees and costs). In all other cases, including any request for equitable or injunctive relief, the parties agree and consent to the exclusive jurisdiction of the circuit courts of Oakland County, Michigan or the U.S. District Court for the Eastern District of Michigan, as applicable, provided that VWGoA may elect to bring an action against Supplier in any court having jurisdiction over Supplier.

15.11 Entire Agreement. Except as otherwise expressly provided in a writing signed by both Parties, the Order, together with the attachments, exhibits, supplements or other terms of VWGoA specifically referenced therein, and these Terms constitute the final, entire, and exclusive agreement between the Parties with respect to the subject matter hereof.

15.12 Jury Trial Waiver. VWGOA AND SUPPLIER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF VWGOA AND SUPPLIER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY ORDER OR OTHER DOCUMENT PERTAINING TO ANY ORDER.

15.13 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 breach or other event giving rise to Supplier's claim occurs, or Supplier becomes aware of the existence (or facts and circumstances giving rise to the existence) of such claim, whichever occurs first.

15.14 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 these Terms or to

any invoice or acceptance form of Supplier relating to these Terms. It is the parties' intent that these Terms shall exclusively control the relationship of the parties, and in the event of any inconsistency between any invoice or acceptance form sent by Supplier to \TWGoA and these Terms, these Terms shall control.

15.15 Remedies Cumulative. Each of the rights and remedies reserved to \TWGoA in these Terms shall be cumulative and the assertion of any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies.

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