

HEXARMOR® XACT FIT™
TERMS AND CONDITIONS FOR
THE SALE OF GOODS AND SERVICES

1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms that govern the sale of the goods, including the HexArmor® xact Fit™ product ("**Goods**") and associated data storage and processing services ("**Services**") by Performance Fabrics, Inc. d/b/a Hexarmor ("**Seller**" or "**HexArmor®**") to the buyer named on the accompanying Sales Confirmation ("**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying invoice (the "**Sales Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

(c) Notwithstanding anything to the contrary contained in this Agreement, Seller may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.

2. Delivery of Goods and Performance of Services.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order. Seller shall not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Buyer's specified location (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within five days of Seller's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point, and will unload and release all transportation equipment promptly so Seller incurs no demurrage or other expense.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage, and insurance).

(e) Seller shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only.

(f) With respect to the Services, Buyer shall (i) cooperate with Seller in all matters relating to the Services as may reasonably be requested by Seller, for the purposes of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Seller may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. Non-Delivery.

(a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within five days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in this Section 3 are Buyer's exclusive remedies for any non-delivery of Goods.

4. Quantity. If Seller delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. Shipping Terms. Seller shall make delivery in accordance with the terms on the face of the Sales Confirmation.

6. Title and Risk of Loss. Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the

Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Michigan Uniform Commercial Code.

7. Buyer's Acts or Omissions. If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

8. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods upon receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at 640 Leffingwell AVE NE, Grand Rapids, Michigan 49505, United States. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

9. HexArmor® xact Fit™ Services; Details of Service and Related Obligations.

(a) Access and Use. Subject to and conditioned on Buyer's and its Authorized Users' compliance with the terms and conditions of this Agreement, Seller hereby grants Buyer a non-exclusive, non-transferable right to access and use the Services during the period during which this Agreement remains in effect (the "**Term**"), solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Buyer's internal use. Seller shall provide to Buyer the Access Credentials within a reasonable time following the Buyer's acceptance of the Goods.

(b) Documentation License. Seller hereby grants to Buyer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Buyer's internal business purposes in connection with its use of the Services.

(c) Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

(i) Seller has and will retain sole control over the operation, provision, maintenance, and management of the Seller Materials; and

(ii) Buyer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Buyer Systems, and sole responsibility for all access to and use of the Seller Materials by any Person by or through the Buyer Systems or any other means controlled by Buyer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or Seller; (ii) results obtained from any use of the Services or Seller Materials; and (iii) conclusions, decisions, or actions based on such use.

(d) Reservation of Rights. Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to the Services, Seller Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Seller Materials, and the Third-Party Materials are and will remain with Seller and the respective rights holders in the Third-Party Materials.

(e) Changes. Seller reserves the right, in its sole discretion, to make any changes to the Services and Seller Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Seller's services to its Buyers; (ii) the competitive strength of or market for Seller's services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes in good faith. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.

(f) Subcontractors. Seller may from time to time in its discretion engage third parties to perform Services (each, a "**Subcontractor**").

(g) Suspension or Termination of Services. Seller may, directly or indirectly, and by use of a Seller Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Buyer's, any Authorized User's, or any other Person's access to or use of all or any part of the Services or Seller Materials, without incurring any resulting obligation or liability, if: (a) Seller receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Seller to do so; or (b) Seller believes, in its discretion, that: (i) Buyer or any Authorized User has failed to comply with any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Documentation; (ii) Buyer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iii) this

Agreement expires or is terminated. This Section 9 does not limit any of Seller's other rights or remedies, whether at law, in equity, or under this Agreement.

10. Use Restrictions; Service Usage and Data Storage.

(a) Use Restrictions. Buyer shall not, and shall not permit any other Person to, access or use the Services or Seller Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, any applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Buyer shall not, except as this Agreement expressly permits:

(i) copy, modify, or create derivative works or improvements of the Services or Seller Materials;

(ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Seller Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

(iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Seller Materials, in whole or in part;

(iv) bypass or breach any security device or protection used by the Services or Seller Materials or access or use the Services or Seller Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;

(v) input, upload, transmit, or otherwise provide to or through the Services or Seller Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;

(vi) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Seller Systems, or Seller's provision of services to any third party, in whole or in part;

(vii) remove, delete, alter, or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services or Seller Materials, including any copy thereof;

(viii) access or use the Services or Seller Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Buyer), or that violates any applicable Law;

(ix) access or use the Services or Seller Materials for purposes of competitive analysis of the Services or Seller Materials, the development, provision, or use of a competing software service or product or any other purpose that is to the Seller's detriment or commercial disadvantage; or

(x) otherwise access or use the Services or Seller Materials beyond the scope of the authorization granted under this Section 10.

11. Buyer Obligations.

(a) Buyer Systems and Cooperation. Buyer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Documentation all Buyer Systems on or through which the Services are accessed or used; (b) provide Seller Personnel with such access to Buyer's premises and Buyer Systems as is necessary for Seller to perform the Services; and (c) provide all cooperation and assistance as Seller may reasonably request to enable Seller to exercise its rights and perform its obligations under and in connection with this Agreement.

(b) Effect of Buyer Failure or Delay. Seller is not responsible or liable for any delay or failure of performance caused in whole or in part by Buyer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Buyer Failure**").

(c) Corrective Action and Notice. If Buyer becomes aware of any actual or threatened activity prohibited by Section 10, Buyer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Seller Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Seller of any such actual or threatened activity.

12. Intellectual Property Rights.

(a) Seller Materials. All right, title, and interest in and to the Seller Materials, including all Intellectual Property Rights therein, are and will remain with Seller and, with respect to Third-Party Materials, the applicable third-party sellers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Buyer has no right, license, or authorization with respect to any of the Seller Materials except as expressly set forth in Section 9(a), Section 9(b), or the applicable third-party license, in each case subject to Section 10. All other rights in and to the Seller Materials are expressly reserved by Seller. In furtherance of the foregoing, Buyer hereby unconditionally and irrevocably grants to Seller an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

(b) Buyer Data. As between Buyer and Seller, Buyer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Buyer Data, including all Intellectual Property Rights relating thereto.

(c) Consent to Use Buyer Data. Buyer hereby irrevocably grants all such rights and permissions in or relating to Buyer Data as are necessary or useful to Seller, its Subcontractors, and the Seller Personnel to enforce this Agreement and exercise Seller's, its Subcontractors', and the Seller Personnel's rights and perform Seller's, its Subcontractors', and the Seller Personnel's obligations hereunder.

13. Data Backup. The Services do not replace the need for Buyer to maintain regular data backups or redundant data archives. **SELLER HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF BUYER DATA.**

14. Security.

(a) Information Security. Seller will employ commercially reasonable security measures with respect to the Services.

(b) Buyer Control and Responsibility. Buyer has and will retain sole responsibility for: (a) all Buyer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Buyer or any Authorized User in connection with the Services; (c) Buyer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Buyer or through the use of third-party services ("**Buyer Systems**"); (d) the security and use of Buyer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Seller Materials directly or indirectly by or through the Buyer Systems or its or its Authorized Users' Access Credentials, with or without Buyer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

(c) Access and Security. Buyer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Buyer Data, including the uploading or other provision of Buyer Data for Processing by the Services.

15. Price.

(a) Buyer shall purchase the Goods and Services from Seller at the price (the "**Price**") set forth in the Sales Confirmation. In the event the Sales Confirmation is silent as to the price of sale, Buyer shall purchase the Goods and Services from Seller at the price set forth in Seller's published price list in force as of the date that Seller accepts Buyer's purchase order.

(b) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets.

16. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller on receipt of Seller's invoice. Buyer shall make all payments hereunder by wire transfer, ACH, check, or cash and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods or performance of any Services and stop Goods in transit if Buyer fails to pay any amounts when due hereunder.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

17. Limited Warranty.

HexArmor® warrants our xact Fit™ instruments to be free from defects in materials and workmanship for one (1) year under normal conditions of use and service. HexArmor® will replace or repair (at our option) defective instruments at no charge, excluding batteries, abuse, misuse, alterations, physical damage, or instruments previously repaired by a party other than HexArmor®.

THIS WARRANTY STATES HEXARMOR®'S TOTAL OBLIGATION IN PLACE OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED. HEXARMOR® MAKES NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY DOES NOT INCLUDE ANY LIABILITY OR OBLIGATION DIRECTLY RESULTING FROM ANY DEFECTIVE INSTRUMENT OR PRODUCT OR ANY ASSOCIATED DAMAGES, INJURIES, OR PROPERTY LOSS, INCLUDING LOSS OF USE OR MEASUREMENT DATA.

18. Limitation of Liability.

(a) IN NO EVENT SHALL HEXARMOR® BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY

CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL OR EQUITABLE THEORY, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL HEXARMOR®'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO HEXARMOR® FOR THE GOODS AND SERVICES SOLD HEREUNDER.

(c) HexArmor® takes no responsibility and shall bear no liability for use or misuse of Personal Information. All responsibility for such data resides with the Buyer and/or employer using the Goods and Services.

(d) The limitation of liability set forth in Section 18(b) shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

19. Compliance with Law

(a) Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

20. Buyer's Warranties; Data Privacy and Security.

(a) Buyer represents, warrants, and covenants to Seller that Buyer owns or otherwise has and will have the necessary rights and consents in and relating to the Buyer Data so that, as received by Seller and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

(b) Buyer is responsible for complying with all privacy and security-related Laws and regulations applicable to the collection, storage, use, import and export of all Buyer Data (Personal Information or otherwise) generated by the Goods and Services, including, but not limited to, the HexArmor® xact Fit™ product and associated Services. Buyer will implement all necessary administrative, physical and technical safeguards it determines are necessary to ensure the integrity, confidentiality and security of such data

against both internal (e.g., access by unauthorized personnel, misuse of data) and external threats (e.g., "hacking").

(c) Buyer represents and warrants that it will not transfer any Personal Information to Seller in the course of using the Goods or Services, including, without limitation, Personal Information associated with any end users of the Goods. Notwithstanding the foregoing, Buyer and Seller acknowledge that Buyer may give Seller access to Personal Information if necessary to facilitate Seller's customer service efforts with respect to the Services. Buyer and Seller agree that any such access to Personal Information shall be solely for the purpose of furthering such customer service efforts and, once such customer service efforts have ended, Buyer shall change the associated Access Credentials and take any other necessary action to revoke Seller's access to such Personal Information.

21. Termination; Return or Destruction of Data. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. Buyer shall have the right to obtain a copy of the Buyer Data upon written request within 60 days of the termination of this Agreement or the termination of Buyer's use of the Services. Following 60 days after of the termination of this Agreement or the termination of Buyer's use of the Services, Seller shall have the right to destroy all Buyer Data in Seller's possession or custody, including, without limitation, in accordance with Seller's document retention policies and practices. For the avoidance of doubt, if Buyer fails to timely exercise such right to request the return of Buyer Data within the 60 day period established above, Seller shall have no liability for destroying such Buyer Data after the applicable 60 day period has expired.

22. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

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

time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

24. Force Majeure. No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency. The Impacted Party shall give notice to the other Party, within five days of the Force Majeure Event, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 consecutive days following written notice given by it under this Section, the other Party may thereafter terminate this Agreement upon 30 days' written notice.

25. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

26. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

27. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

28. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Michigan.

29. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Michigan in each case located in the City of Grand Rapids and County of Kent, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

30. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

31. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

32. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.

33. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.

34. Definitions.

(a) "**Access Credentials**" means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual's identity and authorization to access and use the Services.

(b) "**Agreement**" has the meaning set forth in Section 1(b).

(c) "**Authorized Users**" means Buyer's employees, consultants, contractors, and agents (a) who are authorized by Buyer to access and use the Services under the rights granted to Buyer pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

(d) "**Buyer**" has the meaning set forth in Section 1(a).

(e) "**Buyer Data**" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from Buyer or an Authorized User by or through the Services. For the avoidance of doubt, Buyer Data does not include Resultant Data or any other information reflecting the access or use of the Services by or on behalf of Buyer or any Authorized User.

(f) "**Buyer Failure**" has the meaning set forth in Section 11(b).

(g) "**Buyer Systems**" has the meaning set forth in Section 14(b).

- (h) **"Delivery Point"** has the meaning set forth in Section 2(b).
- (i) **"Documentation"** means any manuals, instructions, or other documents or materials that the Seller provides or makes available to Buyer in any form or medium and which describe the functionality, components, features, or requirements of the Services or Seller Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.
- (j) **"Force Majeure Event"** has the meaning set forth in **Error! Bookmark not defined.**²⁴.
- (k) **"Goods"** has the meaning set forth in Section 1(a).
- (l) **"Harmful Code"** means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Buyer or any Authorized User from accessing or using the Services or Seller Systems as intended by this Agreement. Harmful Code does not include any Seller Disabling Device.
- (m) **"HexArmor®"** has the meaning set forth in Section 1(a).
- (n) **"Impacted Party"** has the meaning set forth in Section 24.
- (o) **"Inspection Period"** has the meaning set forth in Section 14(a).
- (p) **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- (q) **"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.
- (r) **"Nonconforming Goods"** has the meaning set forth in Section 8(a).
- (s) **"Notice"** has the meaning set forth in Section 30.
- (t) **"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

(u) **"Personal Information"** means information that Buyer provides or for which Buyer provides access to Seller, or information which Seller creates or obtains on behalf of Buyer, in accordance with this Agreement that: (i) directly or indirectly identifies an individual (including, for example, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, genetic, health, or health insurance data, answers to security questions, and other personal identifiers), including, with respect to both subclauses (i) and (ii), Sensitive Personal Information as defined herein. Buyer's business contact information is not by itself Personal Information.

(v) **"Price"** has the meaning set forth in Section 15(a).

(w) **"Process"** means to take any action or perform any operation or set of operations that the SaaS Services are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. **"Processing"** and **"Processed"** have correlative meanings.

(x) **"Resultant Data"** means data and information related to Buyer's use of the Services that is used by Buyer in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

(y) **"Sales Confirmation"** has the meaning set forth in Section 1(b).

(z) **"Seller"** has the meaning set forth in Section 1(a).

(aa) **"Seller Disabling Device"** means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Seller or its designee to disable Buyer's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of Seller or its designee.

(bb) **"Seller Materials"** means the Services, Documentation, and Seller Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Seller or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Seller Systems. For the avoidance of doubt, Seller Materials include Resultant Data and any information,

data, or other content derived from Seller's monitoring of Buyer's access to or use of the Services, but do not include Buyer Data.

(cc) "**Seller Personnel**" means all individuals involved in the performance of Services as employees, agents, or independent contractors of Seller or any Subcontractor.

(dd) "**Seller Systems**" means the information technology infrastructure used by or on behalf of Seller in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Seller or through the use of third-party services.

(ee) "**Sensitive Personal Information**" means an individual's (i) government-issued identification number, including Social Security number, driver's license number, or state-issued identification number; (ii) financial account number, credit report information, or credit, debit, or other payment cardholder information, with or without any required security or access code, personal identification number, or password that permits access to the individual's financial account; or (iii) biometric, genetic, health, or health insurance data.

(ff) "**Services**" has the meaning set forth in Section 1(a).

(gg) "**Subcontractor**" has the meaning set forth in Section 9(f).

(hh) "**Term**" has the meaning set forth in **Error! Bookmark not defined.**9(a).

(ii) "**Terms**" has the meaning set forth Section 1(a).

(jj) "**Third-Party Materials**" means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Seller.