MASTER SERVICES AGREEMENT

This Master Services Agreement (this “**Agreement**”) is between ODL, Incorporated, a Michigan corporation (“**ODL**”), and [Insert Name of Supplier], a [\_\_\_\_\_\_\_\_\_\_\_] (“**Supplier**”). ODL and Supplier are each individually referred to herein as a “party” and collectively as the “parties.”

A. Supplier is in the business of providing [INSERT DESCRIPTION OF SERVICES] and other services and Supplier has agreed to provide such services to ODL on the terms set out in this Agreement.

B. Unless otherwise agreed in writing, the terms and conditions set forth in this Agreement will apply when ODL purchases such services from Supplier.

NOW THEREFORE, in consideration of the promises and of the mutual covenants and conditions hereinafter set forth, the parties hereto hereby covenant and agree as follows:

# GENERAL PURCHASE PROVISIONS

## Purchase Documents.

### ODL may enter into one or more agreements for the benefit of itself to purchase from Supplier certain services (the “**Services**”) and deliverables (the “**Deliverables**”), which agreement may include (i) a statement of work (each, a “**SOW**”), or (ii) a purchase order issued by ODL to Supplier, or (iii) other form of written request from ODL (each such purchase order, SOW or other form of written request, a “**Purchase Document**”).

### Each Purchase Document shall be a separate document, sequentially numbered and named, and shall incorporate by reference, and be governed by, the terms and conditions of this Agreement, and may include exhibits, schedules, appendices and other documents. A Purchase Document may also contain additional or differing terms and conditions, in which case the order of precedence between such terms and conditions and the terms and conditions of this Agreement will be determined in accordance with Section 1.4.

## No Exclusive Arrangement or Minimum Purchase Requirements

. No Purchase Document is intended to create an exclusive arrangement between ODL and Supplier. Unless a Purchase Document expressly states otherwise, ODL has no minimum purchase requirements under this Agreement or any Purchase Document, and no Purchase Document will be deemed to be a requirements contract.

## Time of Essence

. Time is of the essence with respect to the performance by Supplier of its obligations under this Agreement and any Purchase Document.

## Order of Precedence

. The provisions of this Agreement and any Purchase Document will, to the extent possible, be interpreted so as to supplement each other and avoid any conflict between them. If provisions in this Agreement or a Purchase Document conflict, the provision most closely describing the type of transaction giving rise to the issue will prevail. If a provision in a Purchase Document directly conflicts with a provision of this Agreement, the provision in this Agreement will prevail unless and to the extent a Purchase Document expressly states that the provision in that Purchase Document will prevail, in which case, any such modification to the provision of this Agreement will be applicable only to that Purchase Document.

# SERVICE PROVISIONS

## Purchase Document Requirements

. Each Purchase Document for Services must include: (a) a description of the Services and Deliverables to be purchased from Supplier, (b) the term, including any renewal rights, (c) the Charges (as defined in Section 6.1), (d) the schedule for performance of the Services and delivery of the Deliverables, and (e) any other transaction-specific terms and matters for the Services and the Deliverables to be provided under that Purchase Document.

## Performance of Services

. Supplier shall provide the Services and Deliverables described in each Purchase Document in accordance with this Agreement and the Purchase Document and in compliance with all ODL policies, procedures and rules applicable to the provision of the Services of which Supplier has been notified or should reasonably be aware. If a Purchase Document describes the Services or Deliverables in a general or non-specific manner, the Services and Deliverables will include not only those services, functions and responsibilities or deliverables specifically described in the Purchase Document, but also those that are an inherent, necessary or a customary part of the Services or required for proper performance of the Services or provision of the Deliverables. Except as provided in a Purchase Document, Supplier is responsible for all materials, facilities, equipment, hardware, software and other resources required or used by Supplier to provide the Services and Deliverables.

## Changes to Services

. Either party may request a change to the Services and Deliverables provided under any Purchase Document (each, a “**Change**”). If requested by ODL, Supplier shall, at no additional cost to ODL, prepare a written analysis of the Change, including, but not limited to: (a) a description of the nature and extent of the Change, (b) the impact the Change will have on the Services and Deliverables and the schedule for the performance thereof, (c) any additional Charges that may be payable by ODL and the payment terms therefor if different from those set forth in this Agreement or the Purchase Document, and (d) any other Change-specific terms and matters. Following the parties’ mutual agreement on a Change, Supplier shall, at no additional cost to ODL, document each Change in writing (each, a “**Change Order**”). A Change Order is not valid and binding, and no requested Change will take effect until the Change Order is signed by authorized representatives of the parties.

## Supplier Personnel.

In performing Services under this Agreement and any Purchase Document, Supplier shall ensure that, while visiting or accessing any ODL facilities, Supplier’s and its affiliates’ and subcontractors’ employees, agents, consultants, auditors, advisors or other third parties acting on behalf of Supplier or its Affiliates or subcontractors (such individuals and third parties being referred to collectively as “**Supplier Personnel**”) shall: (a) comply with ODL’s then current policies, procedures and rules applicable to those facilities of which Supplier has been notified or should reasonably be aware, including those relating to safety, parking, building access, identification badges and security, (b) comply with ODL’s reasonable requests, rules, policies and procedures of which Supplier has been notified or should reasonably be aware relating to access and use of software, network resources, computer systems, data, databases or materials owned, operated or controlled by ODL, (c) comply with all reasonable requests of ODL personnel pertaining to personal and professional conduct, and (d) otherwise conduct themselves in a professional, business-like and lawful manner. If ODL determines for any lawful reason that the continued assignment to ODL of any Supplier Personnel is not in the best interests of ODL, Supplier shall remove that individual from providing Services and replace that individual with Supplier Personnel of suitable ability and qualifications. For purposes of this Agreement, “**Affiliates**” refers collectively to any entities that are either controlling, controlled by or under common control with, directly or indirectly, the referenced party. For this purpose, one entity “controls” another entity if it has the power to direct the management and policies of the another entity (for example, through the ownership of voting securities or other equity interest, representation on its board of directors or other governing body, or by contract).

## Service Levels.

In performing the Services under this Agreement and any Purchase Document, Supplier shall do so in a manner that meets or exceeds the service level metrics set forth in the Purchase Document (“**Service Levels**”). The Service Levels applicable to each Purchase Document are intended to measure whether Supplier is meeting certain agreed upon, measurable criteria for the Services. Supplier shall measure, monitor, record and report its performance during the Purchase Document term with respect to all applicable Service Levels in the manner set forth in the Purchase Document. Supplier is responsible for, and shall have in place, all tools necessary for measuring, monitoring, recording and reporting its performance against the Service Levels set forth in the Purchase Document. Supplier shall promptly investigate and, where applicable, use all reasonable efforts to remediate and minimize recurrences of all performance-related failures associated with Service Levels for which it is responsible.

## Service Level Credits.

### If Supplier fails to meet any Service Levels set forth in any Purchase Document, ODL has the right to receive, and Supplier agrees to pay or credit to ODL, all applicable service level credits set forth in the Purchase Document (“**Service Level Credits**”). Service Level Credits will be calculated and payable in the manner set forth in the Purchase Document. The Service Level Credits represent the diminution in the value of the Services and Deliverables and are not liquidated damages. ODL’s right to receive Service Level Credits is in addition to, and not in lieu of, any other rights or remedies available to it under this Agreement or the Purchase Document.

## ODL Delays

. Supplier’s failure to perform its responsibilities under this Agreement or a Purchase Document will be excused if and only to the extent such Supplier non-performance is directly caused by (a) Force Majeure Event (as defined in Section 10.1), (b) the actions or omissions of ODL, or (c) the failure of ODL to perform (either directly or through a third party engaged by ODL to do so) ODL’s expressly specified obligations under this Agreement or the Purchase Document. Supplier shall promptly (i) notify ODL of such action or failure to perform and its inability to perform under such circumstances, (ii) provide ODL with a reasonable opportunity to correct such actions or omissions or failure to perform and thereby avoid such Supplier non-performance, (iii) if applicable, identify and pursue all reasonable means to avoid or mitigate the impact of such action or failure to perform, and (iv) use all reasonable efforts to perform notwithstanding such action or failure to perform.

## Acceptance of Deliverables.

### Application of Testing, Correction and Acceptance Provisions. If Supplier provides a Deliverable in connection with the Services provided under a Purchase Document, then the provisions set forth in this Section 2.8 will apply.

### Testing. Before Supplier delivers any Deliverable, Supplier shall verify that the Deliverable is in full compliance with all applicable requirements and specifications, including any functional, performance and operational characteristics, set forth in this Agreement and the Purchase Document. Upon ODL’s request, Supplier shall permit ODL or its designees to observe that verification and obtain a report of all results. After a Deliverable has been delivered, installed and configured, as applicable, and is ready for use in its intended environment, ODL will have forty-five (45) days or such other period of time as set forth in the Purchase Document (“**Acceptance Testing Period**”) to verify that the Deliverable is in compliance with the requirements and specifications set forth in this Agreement and the Purchase Document. Supplier shall provide all reasonable assistance to ODL in connection with this testing.

### Correction. If, during the Acceptance Testing Period, ODL finds that a Deliverable is not in compliance with the requirements and specifications set forth in this Agreement or the Purchase Document, ODL shall describe the non-compliance to Supplier in reasonable detail. Within five (5) days, or such other period of time as set forth in the Purchase Document, after receipt of that description, Supplier shall, without charge to ODL, render the Deliverable in compliance with the requirements and specifications of this Agreement and the Purchase Document. If Supplier fails to do so within that period, ODL may, at its option, (i) extend the correction period, or (ii) terminate the Purchase Document immediately, in whole or in part, for material breach by written notice to Supplier and obtain from Supplier a full refund of all amounts paid by ODL in connection with the portion of the Purchase Document so terminated.

### Acceptance. If ODL determines that a Deliverable is in compliance with the requirements and specifications of this Agreement and the Purchase Document, ODL shall notify Supplier that ODL has accepted the Deliverable. Acceptance will be implied if (i) Supplier gives ODL written notice after the Acceptance Testing Period asking ODL to notify Supplier of whether ODL accepts or rejects the Deliverable, and (ii) ODL fails to respond within ten (10) days. Acceptance will not be implied from any other event. Acceptance will not waive any of ODL’s rights to Supplier’s warranty with respect to Deliverables under Section 7.2 even if ODL knows and has informed Supplier of any problems or deficiencies before ODL accepts any Deliverable.

# CONFIDENTIALITY

## Definition

. As used in this Agreement, “**Confidential Information**” means any and all information, data and materials of a party or its Affiliates that are disclosed by or at the direction of a party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) prior to, on or after the date of this Agreement or a Purchase Document, whether orally, in writing, by demonstration, electronically or other form of media, which, in each case, ought to reasonably be considered confidential or proprietary, whether or not marked or otherwise designated as “proprietary” or “confidential.” Confidential Information includes, without limitation: (a) all information concerning the past, present and future business affairs of the Disclosing Party or its Affiliates and of their respective customers, suppliers and other third parties, including, without limitation, products and services, technology design, computer programs, software, software documentation, processes, and techniques, technical and business information, research and development plans and information, potential products and services, business plans and models, data analyses and interpretations, forecasts and projections, supplier lists and information, customer lists and information, financial information, employee information, costing and pricing data, potential profit margin data, contracts, records, policies and procedures containing or otherwise reflecting proprietary information, (b) unpatented inventions, formulas, designs, processes, devices, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications and other confidential intellectual property, (c) designs, architectures, structures, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, process maps and other visual depictions, in whole or in part, of any of the foregoing, (d) third-party confidential information included with, or incorporated in, any information provided, and (e) notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials prepared by or for the Receiving Party or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing (collectively, “**Notes**”), as well as the provisions of this Agreement.

## Existing NDA Governs

. If a confidentiality agreement or non-disclosure agreement (“**NDA**”) exists between ODL and Supplier covering the Services, this Agreement, or the relationship between ODL and Supplier, the term of such NDA shall be and is hereby extended to be co-terminus with this Agreement, and such NDA is incorporated herein by reference and shall govern the use and disclosure of any confidential or proprietary information exchanged between ODL and Supplier.

## No NDA

. If there is no NDA between ODL and Supplier covering this Agreement, the following terms apply:

### Non-Disclosure Covenant

. The Receiving Party shall, following its receipt of Confidential Information from the Disclosing Party: (i) use the same care and discretion to avoid disclosure, publication or dissemination of any Confidential Information received from the Disclosing Party as it uses with its own similar information that it does not wish to disclose, publish or disseminate, but in no event less than the reasonable degree of care; and (ii) use the Confidential Information received from the Disclosing Party for the sole purpose of meeting its obligations or exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information received from the Disclosing Party to its Affiliates and its and its Affiliates’ respective directors, officers, employees, attorneys, accountants, advisors, consultants, agents, subcontractors and other individuals acting on their behalf, including in the case of Supplier, Supplier Personnel (such Affiliates and such individuals being referred to collectively in this ARTICLE 3 as “**Representatives**”) only on a “need to know” basis, and only if such Representatives (other than officers and employees of ODL) have agreed in writing to abide by terms substantially similar to those set forth in this ARTICLE 3 prior to such Confidential Information being disclosed. The Receiving Party will be liable to the Disclosing Party for any unauthorized disclosure or use by any of its Representatives of the Confidential Information received from the Disclosing Party and shall promptly report to the Disclosing Party any breaches in security involving the Confidential Information received from the Disclosing Party that may materially affect the Disclosing Party or its Affiliates and specify the corrective action to be taken. Supplier shall not comingle ODL Confidential Information with the confidential information of any other person or entity.

### Exceptions to Confidential Treatment

. Except as required by Applicable Law (as defined in Section 7.3), the obligations set forth in Section 3.4(a) do not apply to any Confidential Information that the Receiving Party can demonstrate: (i) it possessed prior to disclosure by the Disclosing Party, without an obligation of confidentiality, (ii) at the time of disclosure is or thereafter becomes publicly available except if arising by or through a breach of this Agreement or violation of a duty of confidentiality owed by the Receiving Party or its Representatives, or a misappropriation of such Confidential Information by any third party, (iii) is or was independently developed by or on behalf of the Receiving Party without the reference to, or use of any of Confidential Information received from the Disclosing Party, or (iv) is or was received by it from a third party that, to the best of its knowledge, does not have an obligation of confidentiality to the Disclosing Party or its Affiliates.

### Legally Required Disclosure

. If the Receiving Party is legally required to disclose any Confidential Information received from the Disclosing Party in connection with any legal or regulatory proceeding, it shall, if lawfully permitted to do so, endeavor to notify the Disclosing Party within a reasonable time prior to disclosure in order to allow the Disclosing Party or its Affiliates a reasonable opportunity to seek appropriate protective measures or other remedies prior to disclosure or waive compliance with the terms of this ARTICLE 3. If these protective measures or other remedies are not obtained, or the Disclosing Party or its Affiliates waive compliance with the terms of this ARTICLE 3, the Receiving Party may disclose only that portion of that Confidential Information that it is, according to the opinion of legal counsel, legally required to disclose and shall exercise all reasonable efforts to obtain assurance that confidential treatment will be accorded to that Confidential Information.

### Ownership of Confidential Information

. Subject to the provisions of ARTICLE 5, the Receiving Party acknowledges and agrees that the Confidential Information received from the Disclosing Party, including all Intellectual Property Rights (as defined in Section 5.1) arising from or related to it, is the sole and exclusive property of the Disclosing Party, and that the Disclosing Party and its Affiliates hereby retain their entire respective right, title and interest, including all Intellectual Property Rights, in and to all of their respective Confidential Information. Any disclosure of any such Confidential Information under this Agreement or a Purchase Document to the Receiving Party will not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to the Receiving Party or its Representatives. Nothing contained in this ARTICLE 3 will be construed as obligating a party to disclose its Confidential Information to the other party or as conferring or granting to the Receiving Party any right or license, express or implied, with respect to the Confidential Information received from the Disclosing Party, except as may specifically be provided by other provisions of this Agreement or a Purchase Document. The Receiving Party agrees to maintain all of the Confidential Information received from the Disclosing Party free from any legal or equitable claim of title or other encumbrance by it or any third party.

### Survival of Confidentiality Obligations

. The Receiving Party’s obligations to maintain the confidentiality, restrictions on use, disclosure, duplication, protection and security of the Confidential Information received from the Disclosing Party as described in this ARTICLE 3 will survive the termination or expiration of this Agreement or a Purchase Document perpetually for trade secrets and for a period of five (5) years from the date of disclosure for all other Confidential Information received from the Disclosing Party.

### Immediate Injunctive Relief

. The Receiving Party acknowledges that the Disclosing Party and its Affiliates may be irreparably harmed if the Receiving Party or its Representatives breaches (or attempts or threatens to breach) their respective obligations under this ARTICLE 3 and that the Disclosing Party or its Affiliates may seek and obtain an appropriate order compelling the performance of and restraining the Receiving Party and its Representatives from any further breaches (or attempted or threatened breaches). If a court of competent jurisdiction finds that the Receiving Party or its Representatives has breached (or attempted or threatened to breach) any of those obligations, the Receiving Party agrees that, without any additional findings of irreparable injury or other conditions to injunctive relief, it shall not oppose, and it shall cause its Representatives not to oppose, the entry of such an order compelling the performance of and restraining its or its Representatives from any further breaches (or attempted or threatened breaches), and the Receiving Party on its and its Representatives behalf hereby waives any requirements for the posting of any bond or other security by the Disclosing Party and its Affiliates in connection with such remedy.

### Return or Destruction

. The Receiving Party shall return or destroy, and cause its Representatives to return or destroy, all copies, whether in written, electronic or other form of media, of the Confidential Information received from the Disclosing Party, including any Notes created by it or its Representatives, in its or its Representatives’ possession or under their control pertaining to this Agreement or any Purchase Document, within thirty (30) days after its receipt of a request from the Disclosing Party. Upon request, the Receiving Party shall provide, and shall cause each applicable Representative to provide, the Disclosing Party with written confirmation that all such Confidential Information has been returned or destroyed. In addition, the Receiving Party shall also destroy, and cause its Representatives to destroy, the original and all copies of any Notes created by it or its Representatives and shall provide, and cause each applicable Representative to provide, the Disclosing Party with written confirmation that all such Notes have been destroyed. Notwithstanding the foregoing, the Receiving Party may retain one (1) copy of the Confidential Information received from the Disclosing Party for archival purposes only. Notwithstanding the return or destruction of the Confidential Information received from the Disclosing Party, the Receiving Party and its Representatives will continue to be bound by their obligations of confidentiality under this ARTICLE 3 and other obligations under this Agreement and a Purchase Document.

### Notification of Unauthorized Disclosure or Use

. The Receiving Party shall promptly notify the Disclosing Party in writing, as soon as reasonably practicable, of any unauthorized disclosure or use of the Confidential Information received from the Disclosing Party, which notice will specify the remediation or corrective action to be taken by the Receiving Party to prevent or mitigate any such unauthorized disclosure or use. The Receiving Party shall, at its expense, cooperate fully, and shall, at its expense, cause its Representatives to cooperate fully, with the Disclosing Party or its Affiliates to investigate any such unauthorized disclosure or use.

# ODL DATA

## Definition

. “**ODL Data**” means all information, data, materials, works, expressions or other content in written, electronic or other form or media, including, but not limited to, all information and data about the customers (current, former or prospective) and employees (current, former or prospective) of ODL or its Affiliates, or its or its Affiliates customers’ customers (current, former or prospective) or employees (current, former or prospective), and all Intellectual Property Rights in that information and data created, generated, provided or submitted by, or on behalf of, ODL or its Affiliates in connection with the Services. ODL Confidential Information will be deemed to include all ODL Data.

## Provision of ODL Data and ODL Materials to Supplier Personnel

. Supplier shall not provide any ODL Data or ODL Materials (as defined in Section 5.3(a)) to any Supplier Personnel without the prior written approval of ODL and then only if Supplier is in compliance with the terms and conditions of this ARTICLE 4 and all other applicable terms and conditions of this Agreement with respect to the Services provided by such Supplier Personnel under this Agreement and a Purchase Document.

# PROPRIETARY RIGHTS

## Work Product.

Except as set forth in Section 5.2, ODL is, and will remain, the sole and exclusive owner of all right, title and interest in and to all documents, work product and other materials, deliverables, concepts, inventions, including, without limitation, all notes, reports, documentation, software or computer programs in object or source code and fully-commented source code form, or other literary works, all graphical works; all inventions, formulae, designs, processes, devices and any derivatives, modifications, enhancements or improvements thereof, whether interim copies or works, works-in-progress or final versions of any such items, developed by Supplier or its Affiliates or subcontractors or any Supplier Personnel in performing the Services, including any items identified as such in a Purchase Document (collectively, the “**Work Product**”), and all present and future, intellectual property or other proprietary rights (including, without limitation, copyrights, patents rights, trade secret right, rights of reproduction, trademark rights, service mark rights, rights of publicity, design rights, industrial rights, and the right to secure registrations, renewals, reissues, and extensions thereof) (collectively “**Intellectual Property Rights**”) therein or otherwise arising from the performance of Services under this Agreement or any Purchase Document. The Work Product will be considered a Deliverable for purposes of this Agreement. Supplier agrees, and shall cause all Supplier Personnel to agree, that with respect to any Work Product that may qualify as “work made for hire” as defined in 17 U.S.C. §101, such Work Product is hereby deemed a “work made for hire” for ODL. To the extent that any Work Product does not constitute a “work made for hire,” Supplier hereby irrevocably assigns, and shall cause all Supplier Personnel to irrevocably assign, to ODL, in each case without additional consideration, all right, title and interest throughout the world in and to the Work Product, including all Intellectual Property Rights therein. Supplier shall cause all Supplier Personnel to irrevocably waive, to the extent permitted by Applicable Laws, any and all claims such Supplier Personnel may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of droit moral with respect to the Work Product. Supplier agrees, and shall cause all Supplier Personnel, to execute such further documents and to do such further acts, at ODL’s expense, as may be necessary to perfect, register or enforce ODL’s ownership of such rights, in whole or in part. If any Supplier Personnel fail or refuse to execute any such documents, Supplier hereby appoints, and shall cause all Supplier Personnel to appoint, ODL as such Supplier Personnel’s attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on such Supplier Personnel’s behalf and to execute such documents. To the extent applicable, Supplier shall promptly deliver to ODL all source code associated with the Work Product.

## Pre-Existing Materials.

Supplier and its licensors are, and will remain, the sole and exclusive owners of all right, title and interest in and to the pre-existing materials that are provided by or used by any Supplier Personnel in connection with performing the Services under a Purchase Document, in each case developed or acquired by Supplier or its Affiliates or subcontractors or any Supplier Personnel prior to the commencement or independently of this Agreement and such Purchase Document (the “**Pre-Existing Materials**”), including all Intellectual Property Rights therein. Supplier hereby grants ODL and its Affiliates an irrevocable, perpetual, fully paid-up, royalty-free, transferable, sublicenseable, worldwide right and license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell and otherwise exploit any Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use of any Services or Work Product.

## ODL Materials.

### ODL Ownership. ODL, its Affiliates and their respective licensors are, and will remain, the sole and exclusive owner of all right, title and interest in and to (i) all documents, data, know-how, methodologies, software, manuals, guidelines, business processes, methodologies, database rights, inventions, designs, drawings, computer programs, reports, specifications and other materials provided by ODL to Supplier or its Affiliates or subcontractors or any Supplier Personnel in connection with the Services or Work Product (and any derivatives, modifications, enhancements or improvements thereof); and (ii) any intellectual property: (x) owned, obtained, developed, acquired or licensed by ODL, its Affiliates or their respective third party service providers and vendors (other than Supplier) before the effective date of this Agreement or any Purchase Document, or (y) owned, obtained, developed, acquired or licensed by ODL, its Affiliates or their respective third party service providers and vendors (other than Supplier) independently of the Services or Work Product (including any derivatives, modifications, enhancements or improvements thereof) after the effective date of this Agreement or any Purchase Document (the “**ODL Materials**”), including all Intellectual Property Rights therein. Subject to the licenses granted to Supplier pursuant to Section 5.2, as between ODL and Supplier, all ODL Materials and all Intellectual Property Rights to ODL Materials are and will remain the property of ODL. ODL Confidential Information will be deemed to include all ODL Materials.

### License to Supplier. ODL grants to Supplier and its Affiliates and subcontractors, solely during a Purchase Document term, a limited, fully paid-up, royalty-free, non-exclusive and non-transferable right to use ODL Materials, subject to any restrictions on such use set forth in this Agreement or a Purchase Document, solely in connection with and for performing the Services pursuant to the terms and conditions of this Agreement and a Purchase Document for the benefit of ODL, its Affiliates and subcontractors. To the extent that Supplier creates a derivative work of any ODL Materials, Supplier hereby irrevocably assigns, and agrees to assign, and shall cause its Affiliates, subcontractors and Supplier Personnel to assign, and agree to assign, to ODL, without further consideration, all of its and their right, title and interest in and to such derivative work. Unless specifically authorized otherwise in a Purchase Document, Supplier or its Affiliates or subcontractors or any Supplier Personnel shall use the ODL Materials only in the form provided by ODL, without modification. In addition, Supplier shall maintain and use, and shall cause its Affiliates, subcontractors and Supplier Personnel to maintain and use, the ODL Materials in accordance with any written instructions or specifications provided by ODL. Supplier and its Affiliates and subcontractors and any Supplier Personnel shall not (i) use any ODL Materials for the benefit of any person other than ODL and its Affiliates, (ii) separate or uncouple any portions of ODL Materials, in whole or in part, from any other portions thereof, or (iii) reverse assemble, reverse engineer, translate, disassemble, decompile or otherwise attempt to create or discover any source or human readable code, underlying algorithms, ideas, file formats or programming interfaces of ODL Materials by any means whatsoever, without the prior written approval of ODL. ODL may terminate the foregoing license at any time, without cause, on written notice to Supplier. Except as otherwise requested or approved in writing by ODL, Supplier and its Affiliates and subcontractors and any Supplier Personnel shall cease all use of ODL Materials upon the expiration or termination of this Agreement or a Purchase Document term, and, upon request by ODL, shall certify such cessation to ODL in a notice signed by an officer of Supplier and of each applicable Affiliate and subcontractor. With respect to any ODL Materials, the licenses granted herein are subject to the ability of ODL to obtain all necessary consents. Nothing contained herein will be construed as granting Supplier or its Affiliates or subcontractors or any Supplier Personnel any right, title, or interest in or to any of the ODL Materials. All other rights in and to the ODL Materials are expressly reserved by ODL. THE ODL MATERIALS ARE PROVIDED BY ODL TO SUPPLIER AND ITS AFFILIATES AND SUBCONTRACTORS AND SUPPLIER PERSONNEL ON AN “AS-IS, WHERE-IS” BASIS. ODL EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO SUCH ODL MATERIALS, OR THE CONDITION OR SUITABILITY OF SUCH MATERIALS FOR USE BY SUPPLIER OR ITS AFFILIATES OR SUBCONTRACTORS OR ANY SUPPLIER PERSONNEL TO PROVIDE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

### Return. Promptly after the termination or expiration of this Agreement and each Purchase Document, Supplier shall return, and shall cause its Affiliates and subcontractors and all Supplier Personnel to return, all ODL Materials to ODL. Supplier shall not permit any Affiliates or subcontractors or Supplier Personnel to withhold any ODL Materials as a means of resolving a dispute under this Agreement or any Purchase Document.

## General Rights.

### Copyright Legends. Each party agrees to reproduce copyright legends which appear on any portion of Pre-Existing Materials or ODL Materials (collectively, “**Materials**”), as applicable, which may be owned by the other party or third parties. Each party agrees to not remove, cover or alter any copyright notices or any trade names, trademarks, service names or service marks of the other party or third parties included in the other party’s Materials, Confidential Information, or web site or web page used to access the other party’s networks or computer systems.

### Enforcement of Intellectual Property Rights. Each party agrees to reasonably cooperate with and reasonably assist the other party in connection with the investigation or pursuit by a party in enforcing or investigating violations of the Intellectual Property Rights of such party with regard to Materials and software that are owned or licensed by such party.

### Responsibilities of the Parties. Subject to each party’s respective rights, a party may make such filings and registrations as it deems advisable to obtain patent, copyright or other intellectual property right protections. Each party will provide such assurances, take such action, and execute such further documents and instruments as the other party may reasonably request (at no additional cost to the requesting party) in order to carry out the purposes of this ARTICLE 5 and, in particular, to register or otherwise secure patent, copyright, trademark, service mark, trade secret or other intellectual property protection for a party’s intellectual property.

### No Implied Rights. Except as expressly specified in this Agreement or a Purchase Document, nothing in this Agreement will be deemed to grant to a party, by implication, estoppel or otherwise, license rights, ownership rights or any other Intellectual Property Rights in any Materials and software owned or licensed by the other party.

# COMPENSATION

## Charges

. The prices or rates for the Services and Deliverables provided by Supplier under a Purchase Document, together with any reimbursable expenses and other charges to be paid by ODL in connection with such Services and Deliverables (collectively, “**Charges**”), shall be as set forth in a Purchase Document. Supplier shall not (a) increase the prices or rates in a Purchase Document unless the possibility of an increase, and the basis therefor, is clearly set out in a Purchase Document, or (b) increase, for the renewal term of a Purchase Document, the prices or the rates used to calculate the prices or rates, unless the possibility of such increase and the basis therefor is clearly set out in a Purchase Document. Unless a Purchase Document expressly states otherwise, all reimbursable expenses and other charges will be without any markup or administrative fee.

## Invoices

. Supplier shall invoice ODL for the Charges, if any, due and owing under a Purchase Document in accordance with this Agreement and the Purchase Document. Unless a Purchase Document expressly states otherwise, Supplier shall invoice ODL monthly following the provision of the Services and Deliverables provided by Supplier under a Purchase Document. Supplier shall ensure each invoice: (a) is in a form reasonably acceptable to ODL, including, if applicable, electronic formats; (b) provides enough detailed information, including the identification of any Charges that are subject to taxation as a separate line item, to allow ODL to verify all Charges and to satisfy ODL’s internal accounting requirements made known to Supplier by ODL; and (c) complies with all Applicable Laws of all applicable taxing jurisdictions. Unless otherwise specified by ODL, Supplier shall send all invoices to the address specified in a Purchase Document.

## Payments

. Unless otherwise provided in a Purchase Document, ODL shall pay all undisputed amounts on each invoice within sixty (60) days of its receipt of an accurate invoice from Supplier. ODL may withhold payment of any invoice or part thereof that it in good faith disputes as due or owing. In such case, ODL shall pay any undisputed amounts within the timeframe set forth in this Section 6.3 or a Purchase Document and provide Supplier with a written explanation of the basis for the disputed amounts. The failure of ODL to pay a disputed invoice or a part thereof will not constitute a breach of this Agreement by ODL. All of Supplier’s obligations under this Agreement and a Purchase Document will continue unabated during the pendency of any disputed invoice or a part thereof. ODL shall have no obligation to pay any Charges that Supplier fails to invoice to ODL within six (6) months after the Charges should have been properly invoiced by Supplier. ODL shall make all payments in United States dollars unless otherwise set forth in a Purchase Document. Except as required by Applicable Laws, ODL shall not be required to pay any late charge, interest, finance charge or similar charge.

## Taxes

. ODL shall reimburse Supplier for all applicable sales, use, excise, value-added, products, consumption and other similar taxes or duties that Supplier is permitted or required to collect from ODL under the Applicable Laws of the jurisdiction where the Services or Deliverables are received by ODL. ODL shall not be responsible for any taxes based on Supplier’s income or its business operations, including, but not limited to, employment taxes, income taxes or license taxes, which Supplier shall pay. Supplier shall remit applicable taxes on a timely basis and shall, upon request by ODL, provide ODL with written proof of such compliance. If ODL should pay any tax to Supplier and if it is later held that such tax was not due, Supplier shall refund the amount paid to Supplier by ODL, together with all related interest.

## Credits

. Supplier shall apply any credits due to ODL under a Purchase Document on the next or subsequent invoices for that Purchase Document against amounts then due and owing under that Purchase Document. If any credit is due to ODL under a Purchase Document after the termination or expiration of that Purchase Document, Supplier shall pay the amount of the credit to ODL within thirty (30) days after the credit accrues.

## Right to Set Off

. ODL will have the right to set off amounts owed by Supplier or any of Supplier’s Affiliates to ODL or any of ODL’s Affiliates against amounts payable under this Agreement.

# REPRESENTATIONS AND WARRANTIES

## Authority

. Each party represents and warrants that it is a corporation or other entity duly incorporated or organized, validly existing, and in good standing under the laws of the state of its incorporation or organization. Each party represents and warrants that it has: (a) all requisite legal and corporate power to execute and deliver this Agreement and each Purchase Document, (b) taken all corporate action necessary for the authorization, execution and delivery of this Agreement and each Purchase Document, (c) no agreement or understanding with any third party that interferes with or will interfere with its performance of its obligations under this Agreement and each Purchase Document, (d) obtained and shall maintain all rights, approvals and consents necessary to perform its obligations and grant all rights and licenses granted under this Agreement and each Purchase Document, and (e) taken all action required to make this Agreement and each Purchase Document a legal, valid and binding obligation of it, enforceable against it in accordance with its terms.

## General Services and Deliverables Warranty

. Supplier represents and warrants that it shall perform all Services and provide all Deliverables: (a) in a good, timely, efficient, professional and workmanlike manner, (b) using sufficient numbers of Supplier Personnel who are fully familiar with the technology, processes and procedures to be used to deliver the Services and have suitable competence, ability, education, training and other qualifications for any assigned roles, (c) with at least the degrees of accuracy, quality, efficiency, completeness, timeliness and responsiveness as are equal to or higher than the accepted industry standards applicable to the performance of the same or similar services, (d) such that ODL will receive good and valid title to all Deliverables, free and clear of any and all encumbrances and liens of any kind; and (e) in compliance and in accordance with the provisions of this Agreement and a Purchase Document and all Applicable Laws. If Supplier breaches this warranty, Supplier shall, within ten (10) days, or such other period of time as is set forth in a Purchase Document, correct or cause the correction of the problems or deficiencies giving rise to the breach, at Supplier’s sole cost and expense. If Supplier fails to do so within that period, ODL may, at its option, (i) extend the correction period, or (ii) obtain from Supplier a full refund of all amounts paid by ODL for the affected Services and Deliverables under a Purchase Document. Supplier shall ensure that Supplier Personnel shall comply with the terms of this Agreement and any Purchase Document.

## Compliance with Applicable Laws

. Supplier represents and warrants that it shall perform all of its obligations under this Agreement and each Purchase Document in compliance with all Applicable Laws, including, but not limited to, all laws relating to environmental matters, hiring, wages, hours and conditions of employment, prohibitions on child labor, subcontractor selection, discrimination, including sexual harassment, occupational health or safety and motor vehicle safety. For purposes of this Agreement, “**Applicable Laws**” means any applicable federal, state and local laws, statutes, ordinances, rules, codes, regulations, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by any governmental body or regulatory authority, governing or affecting this Agreement, or the subject matter hereof or of any Purchase Document, or any duty, act or responsibility of a party hereunder or thereunder, or any matters or transactions, in whole or in part, contemplated hereunder or thereunder.

## Non-Infringement

. Supplier represents and warrants that the Services, Deliverables and Pre-Existing Materials provided by Supplier under this Agreement and each Purchase Document and ODL’s use of those Services, Deliverables and Pre-Existing Materials do not and will not infringe, violate or misappropriate any Intellectual Property Rights of any third party.

# INDEMNITY

## General Indemnity

.  Supplier agrees to indemnify, defend and hold harmless ODL, its Affiliates and their respective directors, officers, employees, agents, subcontractors, successors and assigns (each, a “**ODL Indemnified Party**” and collectively, the “**ODL Indemnified Parties**”) from any and all Losses, and threatened Losses, and any and all Claims due to, arising from or relating to: (a) any actual or alleged breach of any material provisions of this Agreement or any Purchase Document by Supplier or its Affiliates or subcontractors and any Supplier Personnel, (b) the negligent, willful or reckless acts or omissions of or by Supplier or its Affiliates or subcontractors and any Supplier Personnel, (c) any contract or commitment entered into by Supplier or its Affiliates, or subcontractors or any Supplier Personnel with any third party that provides goods, materials or services to Supplier or its Affiliates or subcontractors or any Supplier Personnel, or (d) the failure of Supplier or its Affiliates or subcontractors to pay any withholding or other employment related taxes or other financial or other obligations with respect to any Supplier Personnel.

## Infringement Indemnity. Supplier agrees to indemnify, defend and hold harmless the ODL Indemnified Parties from any and all Losses, and threatened Losses, and any and all Claims due to, arising from or relating to any actual or alleged infringement, violation or misappropriation of the Intellectual Property Rights of any third party (each, an “**Infringement Claim**”) by Supplier or its Affiliates or subcontractors and any Supplier Personnel, including Claims based upon the Services, Deliverables or Pre-Existing Materials or the use thereof as permitted under this Agreement or a Purchase Document (collectively, “**Infringing Materials**”), except and to the extent the Infringement Claim is (a) based on written information provided by ODL or its Affiliates, or (b) caused by the combination of any the Services, Deliverables or Pre-Existing Materials with any other software, hardware or written materials not provided or recommended in writing by Supplier. Supplier shall give ODL, and ODL shall give Supplier, as appropriate, prompt written notice of any written threat, warning or notice of any Infringement Claim against Supplier or its Affiliates or subcontractors and any Supplier Personnel or ODL, as the case may be, or any other user or any supplier of components of the Infringing Materials, which could be reasonably expected to have a material adverse impact on ODL’s use of the Infringing Materials. In the event that any portion of any Infringing Materials is held or is likely to be held to constitute an infringement, violation or misappropriation of the Intellectual Property Rights of any third party, Supplier shall, at its sole option and expense, take one or more of the following actions at no additional cost to ODL: (i) procure the right to continue the use of the Infringing Materials without material interruption, (ii) replace the Infringing Materials with non-infringing Infringing Materials with substantially similar features and functionality, (iii) modify the Infringing Materials so as to be non-infringing, or (iv) if options (i) – (iii) are not commercially practicable under the circumstances, take back the Infringing Materials, deactivate or terminate the part of any Services or Deliverable under a Purchase Document involving the Infringing Materials, equitably adjust any continuing and prepaid Charges under the Purchase Document to reflect such deactivation or termination and issue a credit or reimburse ODL, as the case may be, for any prepaid Charges to reflect any such equitable adjustment. In the event of such a partial deactivation or termination, ODL may elect to terminate all affected Purchase Documents.

## Indemnification Procedures

. With respect to Claims, including Infringement Claims, that are subject to indemnification under this ARTICLE 8, the following procedures will apply:

### Notice of Election. Promptly after receipt by any ODL Indemnified Party (individually, an “**Indemnified Party**” and collectively, “**Indemnified Parties**”) under this Agreement of notice of the commencement or threatened commencement of any Claim in respect of which such an Indemnified Party is entitled to seek indemnification under this Agreement, the Indemnified Party shall notify the other party (“**Indemnifying Party**”) of such Claim. No delay or failure to so notify the Indemnifying Party shall relieve the Indemnifying Party of its obligations under this Agreement except to the extent that the Indemnifying Party has suffered actual prejudice by such delay or failure. Within fifteen (15) days following receipt of notice from the Indemnified Party relating to any Claim, but no later than five (5) days before the date on which any response to a complaint or summons is due, the Indemnifying Party shall notify the Indemnified Party that the Indemnifying Party elects to assume control of the defense and compromise or settlement of that Claim (a “**Notice of Election**”).

### Assumption of Control over Defense. If the Indemnifying Party delivers a Notice of Election within the required notice period, it shall (i) assume sole control over the defense and settlement of the Claim, provided, however, that it hires and utilizes counsel reasonably satisfactory to the Indemnified Party, (ii) keep the Indemnified Party fully apprised at all times as to the status of the defense, and (iii) obtain the prior written approval of the Indemnified Party before entering into any compromise or settlement of such Claim admitting any liability against the Indemnified Party or imposing any financial obligations or other restrictions on the Indemnified Party or ceasing to defend against such Claim. The Indemnified Party may employ counsel at its own expense to participate in the handling of the Claim, except that the Indemnifying Party shall pay the fees and expenses associated with such counsel if the Indemnifying Party has requested the assistance of the Indemnified Party in the defense of the Claim or the Indemnifying Party has failed to defend the Claim diligently and the Indemnified Party is prejudiced or likely to be prejudiced by such failure.

### Failure to Deliver Notice of Election or to Defend. If the Indemnifying Party does not deliver a Notice of Election relating to any Claim within the required notice period, or fails to defend the Indemnified Party as provided in this Section 8.4, the Indemnified Party is entitled to defend the Claim in such manner as it may deem appropriate, and the Indemnifying Party is bound (i) to indemnify and promptly reimburse the Indemnified Party for all Losses incurred by the Indemnified Party, in its sole discretion, to defend, compromise or settle the Claim, and (ii) by the determination of facts common to an action and subsequent action to enforce the Indemnified Party’s reimbursement rights.

# LIMITATIONS OF LIABILITY

## Limitation of Damages

. SUBJECT TO THE EXCLUSIONS SET FORTH IN THIS ARTICLE 9, UNDER NO CIRCUMSTANCES WILL A PARTY OR ITS AFFILIATES HAVE ANY LIABILITY TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY WILL BE LIABLE FOR ANY THIRD PARTY CLAIMS, DEMANDS, ACTIONS OR THREATS OF ACTION (WHETHER IN LAW, EQUITY OR IN AN ALTERNATIVE PROCEEDING) AGAINST THE OTHER PARTY OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

## Exclusions

. Notwithstanding anything to the contrary in this Agreement or any Purchase Document, the limitations of liability and exclusions of certain types of damages contained in this ARTICLE 9 do not apply to Claims and Losses caused by or arising in connection with: (a) Supplier’s repudiation of this Agreement (including any Purchase Document), or willful abandonment of any significant portion of the Services, (b) Claims, including Infringement Claims, subject to, and amounts payable pursuant to, the indemnification obligations of a party under ARTICLE 8, (c) the breach by either party or its Affiliates, and in the case of Supplier, its subcontractors or Supplier Personnel, of the confidentiality obligations under ARTICLE 3, (d) the gross negligence or willful or reckless acts or omissions of either party or its Affiliates, and in the case of Supplier, its subcontractors or Supplier Personnel, and (e) Claims for damage, loss (including theft) or destruction of any real or tangible personal property, or bodily injury or death, caused by the negligent, willful or reckless acts or omissions of or by either party or its Affiliates and, in the case of Supplier, its subcontractors or Supplier Personnel.

# FORCE MAJEURE

## Definition

. Neither party will be liable for any non-performance or delay in the performance of its obligations under this Agreement or any Purchase Document (other than its payment obligations) to the extent such non-performance or delay: (a) is caused, without fault of the non-performing party, by fire, flood, earthquake, elements of nature or other acts of God; acts of war, riots, civil disorders, rebellions or revolutions; quarantines, embargoes, and other similar governmental action, or any other cause beyond the reasonable control of such party, and (b) could not have been prevented by reasonable precautions or cannot be reasonably circumvented by the non-performing party through the use of alternate sources, work-around plans or other means (each, a “**Force Majeure Event**”).

## Excused Delay

. Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from its non-performance or delay in the performance of the affected obligations for as long as such circumstances prevail, provided, however, such party (a) promptly notifies the other party, as soon as reasonably practicable, by telephone or by the most timely means otherwise available (and confirms the same in writing within two (2) business days of the inception of such non-performance or delay), (b) provides the other party a reasonably detailed description of the circumstances causing and the probable duration of such non-performance or delay, and (c) uses all reasonable efforts to recommence performance whenever and to whatever extent possible despite such Force Majeure Event. Following its receipt of any such notice, ODL is entitled to (i) acquire all or part of the Services, Deliverables or similar services or software from others on such terms and in such manner as ODL may deem appropriate, without liability to Supplier, for so long as Supplier is unable to satisfy its obligations to ODL under this Agreement or a Purchase Document, (ii) terminate this Agreement or a Purchase Document if the non-performance or delay continues for a period of thirty (30) days or more by giving Supplier written notice of termination, or (iii) require Supplier to perform the Services or provide the Deliverables in accordance with a revised schedule mutually agreed upon by the parties in writing. For purposes of this ARTICLE 10, a party’s employees, facilities, equipment and other resources are considered to be within its reasonable control unless expressly provided otherwise by Applicable Law.

# TERM AND TERMINATION

## Term

. The term of this Agreement will commence on the date this Agreement is signed by the last party and will continue until terminated in accordance with this ARTICLE 11.

## Termination for Convenience

. ODL may terminate this Agreement for convenience, in whole or in part, at any time, without penalty and liability, and without the payment of any termination fee, by giving Supplier at least thirty (30) days’ prior written notice of the termination date. ODL may terminate a Purchase Document for convenience, in whole or in part, at any time, without penalty and liability, and without the payment of any termination fee, by giving Supplier at least thirty (30) days’ prior written notice of the termination date. The termination of this Agreement by ODL will not affect any existing and outstanding Purchase Documents between the parties, and Supplier shall perform all Services and provide all Deliverables described in such Purchase Documents in accordance with the terms of such Purchase Documents.

## Termination for Cause

. Either party may terminate this Agreement for cause as of the date specified in a notice of termination if the other party breaches any of its material obligations under this Agreement (whether in a single breach or a series of breaches that are collectively material) and does not cure that breach, at its expense, or is incapable of curing that breach, within thirty (30) days after receiving written notice thereof, or commences to cure, but fails to continuously and diligently seek to cure, such breach during and after such thirty (30)-day period. Either party may terminate any Purchase Document for cause, in whole or in part, as of the date specified in a notice of termination if the other party breaches any of its material obligations under this Agreement or a Purchase Document (whether in a single breach or a series of breaches that are collectively material) and does not cure that breach, at its expense, or is incapable of curing that breach, within thirty (30) days after receiving written notice thereof, or commences to cure, but fails to continuously and diligently seek to cure, such breach during and after such thirty (30)-day period. If a party chooses to terminate any Purchase Document for cause in part, then the Charges payable under that Purchase Document will be equitably adjusted to reflect such termination.

## Termination for Financial Insecurity

. Either party may terminate this Agreement or any Purchase Document, in whole or in part, for cause as of the date specified in a termination notice if the other party: (a) files for bankruptcy, (b) becomes or is declared insolvent, (c) is the subject of any proceedings (not dismissed within thirty (30) days) related to its liquidation, insolvency or the appointment of a receiver or similar officer, (d) makes an assignment for the benefit of all or substantially all of its creditors, (e) takes any corporate action for its winding-up, dissolution or administration, (f) enters into an agreement for the extension or readjustment of substantially all of its obligations, or (g) recklessly or intentionally makes any material misstatement as to financial condition. Supplier shall notify ODL promptly of any actual or threatened occurrence of any event described in this Section 11.4 or any other event that materially affects in an adverse manner, or that could reasonably be expected to materially affect in an adverse manner, Supplier’s ability to fully perform its obligations to ODL under this Agreement or any Purchase Document.

## [Termination for Multiple Service Level Defaults

. In the event Supplier fails to meet three (3) or more Service Levels with respect to any Services under a Purchase Document within any six (6)-month period during a Purchase Document term, ODL may, upon written notice to Supplier, terminate this Agreement or any Purchase Document, in whole or in part, as of the termination date specified in the notice, without penalty or liability [, and without the payment of any termination fee,] or any further obligation of any kind to Supplier.]

## [Termination for Change in Control

. In the event of a Change in Control of Supplier (that is not approved in advance and in writing by ODL), whether resulting from a single transaction or series of related transactions, ODL may terminate this Agreement or any Purchase Document, without penalty or liability [, and without the payment of any termination fee,] or any further obligation of any kind to Supplier, by providing Supplier with sixty (60) days’ prior written notice thereof. For purposes of this Section 11.6, “**Change in Control**” means (a) any change in the legal, beneficial, or equitable ownership, directly or indirectly, such that control of fifty percent (50%) or more of the voting or equity interests in Supplier or Supplier’s ultimate parent company no longer rests with the same individuals or entities as had such control immediately prior to such change in ownership, or (b) the transfer of all or any substantial portion of Supplier’s business and assets. Notwithstanding the foregoing, ODL may terminate this Agreement at any time should a Change in Control of Supplier pass to a direct competitor of ODL or any of its Affiliates.]

## Amounts Payable

. Upon any termination of this Agreement or a Purchase Document, ODL shall be liable for all undisputed Charges payable by ODL as of the effective date of termination for the Services or Deliverables provided prior to the effective date of termination, unless such payment is prohibited by Applicable Laws, and Supplier shall issue a credit or refund to ODL of all Charges paid in advance by ODL for the Services or Deliverables not yet provided by Supplier as of the effective date of termination.

## Survival

. After this Agreement terminates, the terms of this Agreement that expressly or by their nature contemplate performance or observance after it terminates will survive and continue in full force and effect with respect to any Purchase Document entered into before the termination, including, but not limited to, the provisions granting ownership rights, protecting Confidential Information, requiring indemnification and setting forth limitations of liability. However, no Purchase Document may be entered into under this Agreement after it terminates. After a Purchase Document terminates or expires, the terms of that Purchase Document (including those of this Agreement) that expressly or by their nature contemplate performance or observance after the Purchase Document terminates or expires will survive and continue in full force and effect.

# GENERAL

## Right to Conduct Audits

. Supplier shall permit ODL and its internal and external auditors and personnel (collectively, “**Auditors**”) to conduct assessments or audits of Supplier and any of its Affiliates or subcontractors providing Services under this Agreement or a Purchase Document relating to Supplier’s fulfillment of its obligations under this Agreement or such Purchase Document during normal business hours and upon reasonable advance written notice to Supplier (but in no event less than thirty (30) days except as may be required in the case of an emergency) (each, an “**Audit**” and collectively, the “**Audits**”). ODL and Supplier shall mutually agree upon an acceptable date(s) for an Audit, and, at least five (5) days prior to an Audit, mutually agree upon the scope of the Audit, it being understood and agreed by the parties that the scope of an Audit will not be duplicative of any third party assessment or audit conducted by Supplier pursuant to this Agreement or any Purchase Document for which ODL previously has been provided with such third party’s report of the findings of such assessment or report.

## Notices

. Except as otherwise provided under this Agreement or any Purchase Document, all notices, demands or requests or other communications required or permitted to be given or delivered under this Agreement and a Purchase Document are written and will be deemed to have been duly given when received by the designated recipient. Written notice may be delivered in person or sent by reputable air courier service or certified mail, postage prepaid, with a confirmable means of delivery, and addressed as set forth below:

If to ODL: ODL, Incorporated

215 East Roosevelt Ave.

Zeeland, MI 49464

Attention: [Insert Title of Person Receive Notice for ODL]

If to Supplier: [Insert Supplier’s Name and Address]

Attention: [Insert Title of Person to Receive

Notice for Supplier]

## Subcontractors

.

### No Right to Subcontract.

Except as specifically agreed to in a Purchase Document, Supplier shall not subcontract or delegate any of its rights, responsibilities or obligations under this Agreement or any Purchase Document to any Affiliate or subcontractor without (i) notifying ODL of the scope of the proposed subcontract, the identity and qualifications of the proposed Affiliate or subcontractor and the reasons for subcontracting the work in question, and (ii) obtaining ODL’s prior written approval of that Affiliate or subcontractor. ODL may revoke its approval of any Affiliate or subcontractor by giving Supplier written notice describing a reasonable basis for the revocation. Notwithstanding any approval by ODL, Supplier shall be and remain fully and solely responsible for all of its obligations under this Agreement and a Purchase Document and shall be liable for any Affiliate’s or subcontractor’s failure to perform or abide by such obligations.

## Export and Import Requirements

. Supplier shall prepare, maintain and, to the extent required under Applicable Laws, submit to the applicable customs authorities all necessary information and documentation to comply with the applicable customs and export and import requirements of each country from which the Services that ODL is purchasing under a Purchase Document will be exported and each country into which they will be imported.

## Insurance

. During the term of this Agreement, Supplier will, at its own expense, maintain and carry in full force and effect, subject to appropriate levels of self-insurance, commercial general liability insurance in a sum no less than $[AMOUNT] [ADD OTHER INSURANCE COVERAGES AND RESPECTIVE AMOUNTS, AS APPLICABLE] with financially sound and reputable insurers, and upon ODL’s reasonable request, will provide ODL with a certificate of insurance evidencing the insurance coverage specified in this Section. The certificate of insurance will name ODL as an additional insured. Supplier will provide ODL with sixty (60) days’ advance written notice in the event of a cancellation or material change in such insurance policy.

## Assignment

. Neither party may assign any rights or delegate any obligations under this Agreement or any Purchase Document without the prior written consent of the other party, which the parties shall not condition, delay, or unreasonably withhold such consent; *provided*, however, ODL may assign this Agreement, any Purchase Document, or any of its rights hereunder or thereunder, in whole or in part, without Supplier’s consent to an Affiliate or a surviving entity in the case of a merger, acquisition, divestiture, consolidation or corporate reorganization (whether or not the contracting party is the surviving entity). Any assignment or attempted assignment by a party contrary to this Section 12.6 shall be a material breach of this Agreement and shall be null and void. This Agreement and each Purchase Document shall be binding upon the successors, legal representatives and permitted assigns of the parties.

## No Third Party Beneficiaries

. Supplier acknowledges and agrees that, to the extent identified in this Agreement or a Purchase Document, ODL Affiliates, customers, personnel and suppliers will be considered an intended third party beneficiary of this Agreement and will be entitled to rely upon all rights, representations, warranties and covenants made by Supplier in this Agreement and a Purchase Document to the same extent as if each of those third parties were ODL under this Agreement. Otherwise, no third party will be deemed to be an intended or unintended third party beneficiary of this Agreement or any Purchase Document.

## Publicity

. Supplier shall not, without the prior written consent of ODL: (a) use the trade names, trademarks, service names, service marks, logos or other identifying marks of ODL or any of its Affiliates in any sales, marketing or publicity activities or materials or for any other reason, or (b) issue any press release, interviews or other public statement regarding this Agreement or any Purchase Document or the parties’ relationship without the prior written consent of ODL and then only in accordance with any applicable policies of ODL provided to Supplier by ODL.

## Independent Contractors

. Supplier and ODL will at all times be independent contractors. Neither party will have any right, power or authority to enter into any agreement for or on behalf of, or to assume or incur any obligation or liabilities, express or implied, on behalf of or in the name of, the other party. This Agreement will not be interpreted or construed to create an association, joint venture or partnership between the parties or impose any partnership obligation or liability upon either party. Except as set forth in a Purchase Document, each party shall at all times maintain exclusive and direct control over all of its employees, methods, facilities and equipment.

## Rights and Remedies Cumulative

. Unless expressly stated otherwise in this Agreement or a Purchase Document, all rights and remedies provided for in this Agreement and a Purchase Document will be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity or otherwise. If a party has a choice of one action “or” another action, such party may take both of those actions.

## No Modification

. No supplement, alteration, amendment, modification or change of this Agreement or any Purchase Document is valid or binding unless in writing and signed by an authorized representative of the party to be bound. Any provisions and conditions on proposals, quotations, invoices, order acknowledgements, sales confirmations, delivery receipts, packing slips or other documents received by ODL from Supplier, in writing, electronically or otherwise, will not have any force or effect between the parties, even if ODL signs or accepts such documents. ODL’s payment of an invoice does not constitute an agreement to the content of the invoice.

## Severability

. If any provision of this Agreement conflicts with the law under which this Agreement or any Purchase Document is to be construed or if any provision of this Agreement or any Purchase Document is held invalid or unenforceable by a court of competent jurisdiction, that provision is restated to reflect as nearly as possible the original intentions of the parties in accordance with Applicable Laws. The remaining provisions of this Agreement and a Purchase Document and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable are not affected thereby, and each of those provisions remains valid and enforceable to the full extent permitted by Applicable Laws.

## Waivers

. The failure of either party to enforce strict performance by the other party of any provision of this Agreement or any Purchase Document or to exercise any right under this Agreement or any Purchase Document is not a waiver to any extent of that party’s right to assert or rely upon any provision of this Agreement or any Purchase Document or right in that or any other instance. A delay or omission by ODL or Supplier to exercise any right or power under this Agreement or any Purchase Document is not a waiver of that right or power. Waiving one breach does not waive any succeeding breach. All waivers must be in writing and signed by an authorized representative of the party waiving its rights.

## Governing Law and Jurisdiction

. This Agreement and any dispute arising under or related to this Agreement or any Purchase Document, the relationship of the parties or the interpretation and enforcement of the rights and duties of the parties shall be governed by and construed in accordance with the applicable laws of the State of Michigan and the United States, without giving effect to the principles of that state relating to conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the transactions contemplated by this Agreement or any Purchase Document. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement or any Purchase Document must be brought solely and exclusively in, and is subject to the service of process and other applicable procedural rules of, the state or Federal courts located within the jurisdiction of Federal District Court for the Western District of Michigan, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the state and Federal courts located within the jurisdiction of the Federal District Court for the Western District of Michigan, generally and unconditionally, with respect to any such action, suit or proceeding brought by it or against it by the other party. Notwithstanding the foregoing, claims for provisional or temporary injunctive or equitable relief may be brought by a party in any court with proper jurisdiction within the United States.

## Waiver of Jury Trial

. THE PARTIES AGREE TO WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN THE RESOLUTION OF ANY DISPUTE OR CLAIM, REGARDLESS OF THE THEORY OF RECOVERY, BETWEEN THE PARTIES OR ANY OF THEIR RESPECTIVE AFFILIATES ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THIS AGREEMENT OR ANY PURCHASE DOCUMENT.

## Approvals and Consents

. Except where expressly provided as being in the discretion of a party, where approval, consent or similar action by either party is required under this Agreement or any Purchase Document, the parties shall not unreasonably condition, delay or withhold such action. An approval or consent given by a party under this Agreement or any Purchase Document does not relieve the other party from responsibility for complying with the requirements of this Agreement or any Purchase Document, and it is not a waiver of any rights under this Agreement or any Purchase Document, except as and to the extent otherwise expressly provided in such approval or consent. Each party shall, at the request of the other party, perform those actions, including executing additional documents and instruments, reasonably necessary to give full effect to the terms of this Agreement or any Purchase Document.

## Interpretation

. Each party acknowledges that: (a) this Agreement has been, and every Purchase Document will be, the subject of active and complete negotiations, and (b) this Agreement and any Purchase Document shall not be considered in favor of or against it by reason of the extent to which it or its professional advisors participated in the preparation of this Agreement or any such Purchase Document. The headings in this Agreement and any Purchase Document are for convenience of reference only and shall not affect the interpretation of this Agreement or any Purchase Document.

## Counterparts

. This Agreement and any Purchase Document that requires the signature of the parties thereto under this Agreement may be executed in two or more counterparts (including by facsimile), each of which is an original and taken together is one agreement.

## Entire Agreement

. This Agreement, including the exhibits attached hereto (which are hereby incorporated into this Agreement by reference), and every Purchase Document issued by ODL or a ODL Affiliate or signed by the parties thereto pursuant to this Agreement, constitutes the entire agreement of the parties, superseding all prior agreements and understandings as to the subject matter hereof, notwithstanding any oral representations or statements to the contrary heretofore made.

## Electronic Communication

. Electronic communications will be (a) considered “written” or “in writing” for purposes of this Agreement provided the information transmitted is in an agreed upon format under an agreed upon protocol, and (b) treated as signed writings and original records, except where this Agreement or a Purchase Document expressly require a manual signature or a party’s written consent or agreement, in which case, the written consent or agreement must include a manual signature.

## Effectiveness; Date

. This Agreement, and every Purchase Document that requires the signature of the parties thereto under this Agreement, shall be effective when all parties have signed it. The effective date of this Agreement and, unless otherwise provided in a Purchase Document, the effective date of that Purchase Document, shall be the date this Agreement or the date that Purchase Document is signed by the last party to sign it (as indicated by the date associated with that party’s signature).

(Signature page to follow)

Each party is signing this Agreement on the date set forth following that party’s signature.

**ODL, INCORPORATED** **SUPPLIER**

[Insert Name of Supplier]

By: By:

Title: Title:

Date: Date: