

Published: February 1, 2019

## QUALCOMM TERMS AND CONDITIONS OF PURCHASE

UNLESS EXPRESSLY SUPERSEDED IN WRITING, THESE TERMS APPLY TO ALL PURCHASE ORDERS  
ISSUED BY THE QUALCOMM ENTITY NAMED ON THE PURCHASE ORDER

**1. AGREEMENT.** These Qualcomm Terms and Conditions of Purchase (these “Terms and Conditions”) apply to any purchase order referencing these Terms and Conditions (each a “P.O.”) issued by QUALCOMM Incorporated or by any of its affiliates to purchase goods (“Goods”) and/or services (“Services”) from the seller, vendor, contractor or supplier identified as the named selling entity on the P.O. (“Seller”). For the purposes of these Terms and Conditions, “Buyer” refers to the specific purchasing entity issuing the P.O. Buyer and Seller are hereinafter referred to severally as a “Party” and jointly as the “Parties”.

If the Parties have executed a separate written agreement signed by both Parties governing Seller’s provision of such Goods and Services to Buyer (the “Existing Agreement”), the Existing Agreement will govern Seller’s provision of such Goods and Services to Buyer and these Terms and Conditions shall only be applicable when referenced or otherwise incorporated into such Existing Agreement.

No Services are to be performed or Goods provided hereunder until Seller receives and accepts a P.O. from Buyer applicable to such Goods and Services. Seller’s acknowledgement of the P.O., or Seller’s performance in response to the P.O., shall constitute Seller’s acceptance of Buyer’s offer to purchase pursuant to the terms of the P.O. and shall create a binding contract between the Parties subject to and in accordance with the P.O. and these Terms and Conditions (collectively, the “Agreement”). In the event of any conflict between these Terms and Conditions and a P.O., these Terms and Conditions shall control.

Buyer’s offer is expressly limited to the terms of the Agreement and, except with respect to an Existing Agreement, no terms other than the Agreement will apply to Seller’s provision or Buyer’s use of the Goods or Services. Thus, any other additional or different terms or conditions that Seller seeks to impose or incorporate, including in any click-through, wrappers, quotations, order acknowledgments, invoices, delivery notes, online terms, or other communications or documents, or which are implied by law, trade, custom, practice or course of dealing, are expressly rejected by Buyer and of no force and effect. For clarity, such Seller terms will be considered material alterations to the Agreement and are void.

THE AGREEMENT DOES NOT CONSTITUTE A STANDARD FORM CONTRACT UNDER APPLICABLE LAWS AND WAS OPEN TO NEGOTIATION BY THE PARTIES. EACH PARTY AGREES THAT THE AGREEMENT SHALL BE DEEMED THE JOINT WORK OF THE PARTIES AND THAT ANY PRESUMPTION OR RULE REQUIRING THE CONSTRUCTION OR INTERPRETATION OF THE AGREEMENT AGAINST THE PARTY DRAFTING THE AGREEMENT SHALL NOT APPLY.

**2. DELIVERY; TITLE AND RISK OF LOSS.** Delivery of the Goods and performance of the Services shall be in accordance with the dates set forth in the P.O. (“Delivery Date”). For domestic deliveries, title to the Goods shall transfer to Buyer upon delivery, notwithstanding the acceptance period set forth below in Section 3 (Acceptance). Unless stated otherwise in P.O., all international shipments shall be delivered on a DDP (Delivered Duty Paid) (Incoterms® 2010) to the delivery destination stated in the P.O. Acceptance or acknowledgement of any delivery receipt, document or note shall not be deemed a variation of the Agreement or acceptance of any other terms and conditions which may be included with the delivery receipt, document or note or any other documentation.

Buyer will not pay Seller any fees for Goods or Services other than the explicitly agreed upon fees set forth in the P.O. In particular, Buyer shall not be liable for any costs caused by or related to production, installation, assembly, commissioning or any other work related to Goods or Services prior to delivery, except as explicitly agreed to by Buyer. Unless otherwise specified in the P.O, when the price in a P.O. is based on the weight of ordered Goods, such price covers net weight of material ordered only. Seller shall pack, mark and ship the Goods in a manner consistent with good industry practice and which prevents damage during transport and which facilitates unloading, handling and storage. Any charges for boxing, crating, handling, storage or other packing requirements shall be included in

the fees specified on the P.O. and stated separately on Seller's invoice. Seller shall mark all containers with necessary lifting, handling and shipping information and also P.O. numbers, release numbers, dates of shipment, and the names of the consignee and consignor. An itemized packaging sheet must accompany each shipment.

If it appears that Seller will not meet the Delivery Date, Seller will (i) immediately notify Buyer and (ii) if Goods, ship by air freight or other expedited routing, at Seller's expense, if and in the manner requested by Buyer. If it becomes apparent that shipment of the Goods cannot be made to meet the Delivery Date and no adequate reschedule date or resolution plan has been offered by Seller to Buyer, Buyer will be entitled, in addition to its other rights and remedies, to terminate, without liability, the Agreement as to Goods not yet shipped or Services not performed, by written notice effective upon receipt by Seller. In this instance, Buyer may purchase substitute Goods or Services elsewhere and charge Seller for any loss incurred and/or any loss or damages that may result from Seller's non-performance. If only a portion of the Goods are available for shipment to meet the Delivery Date, Seller will notify Buyer and ship the available Goods unless otherwise directed by Buyer. No partial or complete shipment shall be made prior to the date or dates shown unless Buyer has given prior written consent. Buyer may return any unauthorized under-shipment or any over-shipment at Seller's risk and expense.

For all software, including without limitation device drivers, firmware and any necessary software for the proper operation and support of the Goods (collectively "Software") that is not Work Product (as defined below), Buyer and its affiliates are granted a perpetual, non-exclusive, transferable, irrevocable, royalty-free, worldwide right and license to use, reproduce, prepare derivative works of and distribute the Software in connection with Buyer's distribution and support of the Goods including without limitation distribution in electronic form (e.g. via Buyer's website) irrespective of whether or not Buyer exercises its rights to such license hereunder. Seller understands and agrees that any terms contained in any click-through, click-wrap, EULA, online terms, or other purported agreement delivered or made available (whether electronically or otherwise) with the Software (including any updates, upgrades, bug fixes, or other related deliveries) licensed under the Agreement shall not apply, regardless of any electronic or deemed acceptance by Buyer. Seller agrees to provide all updates and modifications to the Software to Buyer during the term of the Agreement without additional charges. Any license fees for Software shall be included in the purchase price or any other amounts payable under the Agreement.

**3. ACCEPTANCE.** Unless otherwise stipulated in the P.O., acceptance of the Goods and/or Services shall be thirty (30) calendar days from date of receipt of Goods or completion of Services unless Buyer notifies Seller that the Goods and/or Services fail to meet the specifications in the Agreement. Acceptance shall not limit Buyer's remedies under Section 6 (Warranties; Representations) in the event that Goods and/or Services are found to be nonconforming after acceptance.

Payment of invoices or use by Buyer during acceptance testing shall not constitute acceptance of Goods or Services and shall be subject to adjustment for errors, shortage, defects in Goods and Services or other failure of Seller to meet the requirements of the Agreement.

**4. PRICE/INVOICE/PAYMENT/OFFSET/DISCOUNTS.** Seller warrants that the price for Goods or Services will not be less favorable than prices applicable to sales by Seller to any other customer purchasing like quantities of substantially comparable Goods or Services.

All invoices must reference the P.O. number and, unless otherwise states in the P.O., shall be sent to the attention of Buyer's Accounts Payable Department via [apinvoicesubmit@qualcomm.com](mailto:apinvoicesubmit@qualcomm.com). Buyer shall pay for the Goods and/or Services within the time frame specified in in the P.O. following both Buyer's acceptance of the Goods and/or Services and receipt of Seller's properly submitted, undisputed invoice, whichever is later. If the P.O. does not contain a payment time frame, unless prohibited by applicable law, the payment time frame is seventy-five (75) calendar days following both Buyer's acceptance of the Goods and/or Services and receipt of Seller's properly submitted, undisputed invoice, whichever is later. In the event applicable law mandates a shorter payment time frame, the payment time frame shall be the longest enforceable time period prescribed by applicable law. All payments will be made electronically (i.e., EFT, ACH or Wire).

All invoices must comply with applicable laws and include the following in order to ensure proper tax treatment and avoid unnecessary processing delays:

- (a) Buyer's applicable P.O. number
- (b) A unique invoice number
- (c) Seller's contact information (including phone and email address)
- (d) Description of Goods and/or Services, project name and/or items purchased. Descriptions must match the P.O. line item as closely as possible including, as appropriate size, unit price, quality, and extended totals. For the avoidance of doubt, if a P.O. contains multiple lines, all invoices must indicate the appropriate line Seller is billing against.
- (e) When Value Added Tax, goods and services tax or other equivalent local tax (VAT) is applicable, all VAT amounts must be broken out and clearly identified.
- (f) Invoice date (preferably in U.S. format mm/dd/yyyy or written out (e.g., May 4, 2017))
- (g) If applicable, shipping date and ship to location(s)
- (h) If Seller is a non-California entity, Seller must indicate in the invoice where the Services were performed (i.e. California, another state, another country)
- (i) Appropriate payment information (EFT, ACH, Wire).
- (j) If billing for Services and pre-approved expenses on the same invoice, segregate amounts for Services and amounts for expenses on different invoice line items.

Buyer's payment of any invoice shall not be deemed a variation of the Agreement or an acceptance of any terms and conditions which may be included in the invoice or any other Seller documentation.

Buyer reserves the right to claim compensation for damages in the event a VAT deduction is denied or VAT refund is rejected due to Seller's failure to issue a valid invoice in compliance with the instruction above.

In connection with any discount offered based on timing of payment, the calculation of the time period triggering the discount will begin on the later of: (i) the scheduled Delivery Date, (ii) the date of actual delivery, or (iii) the date an acceptable invoice is received by Buyer's Accounts Payable Department. Payment is deemed to be made for purpose of earning a discount on the date of electronic transfer of Buyer's payment.

Buyer shall have the right to apply any amount which Seller may owe to Buyer against open invoices as directed solely by Buyer, until the full amount has been credited to Buyer.

## **5. TAXES.**

"Taxes" or "Tax" include all forms of taxation including but not limited to, withholdings, income tax, capital gains tax, duties, imposts, contributions (including social security contributions), rates and levies, sales tax, services tax, business tax, goods and services tax and any other form of value-added tax imposed by any governmental authority, whenever imposed and whether chargeable directly, indirectly or primarily against or attributable directly, indirectly or primarily to such company or any other person and all penalties, charges, fines, costs and interest relating thereto.

All prices are exclusive of sales tax, use tax, withholding tax, value added tax, duties, and any other taxes or similar levies imposed by any government authority. All amounts due to Seller shall be paid without deduction for any levies or charges of any nature which may be imposed. In the event that any sales, use, consumption, value-added, gross receipts, excise, or similar taxes or surcharges ("Transactional Tax(es)") are applicable to any of the transactions contemplated by the Agreement, Buyer will be solely financially responsible for any and all applicable Taxes, excluding Seller's income taxes and any applicable Taxes under the Agreement that may be imposed on Seller by any governmental authority under any tax law, which shall be Seller's sole and exclusive responsibility to pay. At the request of Buyer, Seller will provide documentation reasonably satisfactory to Buyer evidencing payment of such Taxes by Seller to the applicable taxing authority. To the extent that any Transactional Taxes are required by law to be collected by Seller, Buyer shall be responsible for payment of such Taxes whether concurrently invoiced with the original invoiced amount or subsequently invoiced based on a review of the facts affecting Buyer's tax status or a

determination that the laws of the applicable jurisdiction(s) require assessment and collection of such Tax. If Taxes are concurrently invoiced with the original invoiced amount Taxes shall be separately itemized on the invoices to which they apply. To the extent Buyer is held liable by any governmental authority for Seller's Taxes, Seller shall promptly reimburse Buyer for any such Taxes and other ancillary costs (including but not limited to legal costs) that may be imposed on or incurred by Buyer.

Notwithstanding the foregoing, if Buyer is required by applicable law to withhold income taxes from any payment due Seller, then the amount due to Seller in respect to such payment shall be reduced by the amount of such income tax withholding; then Buyer will deliver to Seller an income tax withholding certificate or similar documentation reasonably satisfactory to Seller evidencing payment of any such income tax withholding. Upon receipt by Seller of the income tax withholding certificate or other evidence of payment, the portion of the invoice represented by the income tax withholding certificate will be deemed fully paid.

If a double taxation agreement or other income tax treaty is applicable to Seller based upon country of residence or incorporation of Seller, Seller shall provide to Buyer all documentation (including, without limitation, the necessary income tax withholding application, form, or residency certificate) required for the application of such double taxation agreement or other income tax treaty. If all required documentation is submitted to Buyer, the reduced rate shall be applicable, otherwise, the domestic statutory rate shall be applicable. All documentation to be provided to Buyer under this Section shall be delivered promptly after Buyer's request and it shall be true, correct and complete as of the date of the delivery. If valid documentation is not provided, Buyer reserves the right to apply applicable withholding rates under the relevant tax law instead of the rate provided by the applicable double taxation agreement.

## **6. WARRANTIES; REPRESENTATIONS.**

Seller shall perform all Services under the Agreement in a timely manner and in accordance with the highest level of professionalism in Seller's industry according to good sound design and engineering practices and in conformance with the Agreement. For the maximum period allowed by applicable law, or unless otherwise stated in the P.O., Seller warrants that all Goods delivered and Services provided under the Agreement shall be free from defects in workmanship and material and be fit for the purposes for which such Goods or Services are intended. Further, all Goods delivered and Services performed shall contain all new materials, shall strictly conform to the requirements stated in the Agreement and all other specifications furnished by Buyer, and shall conform to Seller's specifications to the extent such specifications are consistent with those provided by Buyer. Seller warrants that it has clear title to all Goods contemplated in the Agreement and upon delivery, Buyer will have acquired marketable title to all Goods and Services, free and clear of liens.

In addition to the warranties set forth above, Seller warrants that it has the authority necessary, including license rights, to provide Buyer with all Goods delivered and all Services and Software provided and such Goods and Services shall be free of any claim that such Goods or Services infringe any United States or foreign patent, copyright, trade secret, or other intellectual property right of any third party. The foregoing warranties are in addition to and not in lieu of any other warranties, implied or express.

Where the Agreement provides for installation, commissioning or any other work to be carried out by Seller such work shall be executed with good workmanship and using proper materials. As a minimum requirement, such Goods shall comply with all applicable quality and certification standards.

As a remedy for breach of any of the foregoing warranties with respect to Goods, Buyer may at its election, whether or not any part of the Goods have been accepted by Buyer: (i) require Seller to promptly correct, at no cost to Buyer, any defective or nonconforming Goods or component thereof by repair or replacement, at a location as specified by Buyer; (ii) reject the Goods (in whole or in part) and return such defective or nonconforming Goods at Seller's expense and Seller shall promptly refund to Buyer all amounts paid by Buyer for such Goods (including any amounts paid for related Services and Software and any non-refundable or non-reclaimable customs or other duties paid by Buyer upon receipt of such non-conforming Goods); and (iii) carry out, at Seller's expense, any work necessary to

make the Goods comply with the Agreement. If Buyer elects to reject non-conforming Goods, Seller shall authorize a return for all non-conforming Goods within twenty-four (24) hours after Buyer's request, and such non-conforming Goods shall then, where title had passed to Buyer, be the property of Seller. If Buyer elects to modify or adapt non-conforming Goods, Buyer may offset all costs incurred in performing any such modifications and adaptations against any and all amounts otherwise due to Seller or, at Buyer's option, may bill Seller directly for such costs. Any such modification or adaptation will not void or limit Seller's warranty or other obligations with respect to such Goods. The foregoing remedies are in addition to all other remedies at law or in equity or under the Agreement for damages, or otherwise and shall not be deemed exclusive.

As a remedy for breach of any of the foregoing warranties with respect to Services, Buyer may at its election, whether or not any part of the Services have been accepted by Buyer: (i) give Seller the opportunity, at Seller's expense, to re-perform the nonconforming Services; (ii) reject the Services (in whole or in part) and Seller shall promptly refund to Buyer all amounts paid by Buyer for such rejected Services; and (iii) carry out, at Seller's expense, any work necessary to make the Services comply with the Agreement. If Buyer elects to carry-out work necessary to make the Services conforming, Buyer may offset all costs incurred in performing any such work against any and all amounts otherwise due to Seller or, at Buyer's option, may bill Seller directly for such costs. The foregoing remedies are in addition to all other remedies at law or in equity or under the Agreement for damages, or otherwise and shall not be deemed exclusive.

## 7. INDEMNIFICATION.

- (a) **Obligations.** Seller shall defend, indemnify and hold Buyer, its affiliates and each of their respective officers, directors, employees, affiliates, agents, and customers (each an "Indemnified Party") harmless from and against any and all proceedings, suits, actions, claims, losses, liabilities, damages, awards, settlements, costs, fees and expenses (including reasonable legal and other professional charges and expenses) relating to any allegation or third-party legal proceeding (including action by a government authority) arising from:
- i. a breach or alleged breach of the Agreement by Seller or any of its employees, agents, representatives, affiliates or subcontractors (collectively, "Personnel"), including, without limitation, any representations and warranties made by Seller;
  - ii. any negligence, recklessness, willful misconduct, fraud, misrepresentation or violation of law by Seller or any of its Personnel;
  - iii. any allegation: (1) that any Personnel are entitled to employee compensation, benefits, or other rights from Buyer or its affiliates; or (2) by Personnel or a third party under applicable labor or employment laws (including allegations related to engagement, employment, or termination of Personnel), except to the extent caused by Buyer's unlawful acts or omission;
  - iv. any death or injury to any person or damage to any property related to Seller's or its Personnel's performance under the Agreement or use of a Good or Service, except to the extent caused by Buyer's negligence or intentional misconduct;
  - v. an allegation that use, possession, or sale of the Goods or Services violates or infringe a third party's rights, including intellectual property rights; or
  - vi. notwithstanding Section 11(g)(i), any Seller Personnel asserting that any regulation implementing the Transfer of Undertakings Directive 2001/23/EC (e.g., the Transfer of Undertakings (Protection of Employment) Regulations) (the "TUPE Regulations") apply, including, without limitation, results of the application of the TUPE Regulations.

Seller shall also fully indemnify Buyer and its affiliates and keep Buyer and its affiliates indemnified against each and every claim and/or damages, losses, liabilities, costs, expenses (including legal and other

professional charges and expenses) whether arising under statute, contract, in equity or at common law or in connection with judgements, proceedings, internal costs or demands (including statutory redundancy payments) arising out of or in connection with a dismissal by Buyer of any person whose employment transfers to Buyer (or is alleged to so transfer) as a consequence of the TUPE Regulations applying or otherwise upon the termination, variation, amendment or other alteration of the Agreement for Goods or Services howsoever or whenever arising.

- (b) **Defense & Settlement.** If any third party asserts or initiates any claim or action against any Indemnified Party for which Seller is responsible for indemnification under this Section 7, Buyer will promptly notify Seller of such claim or action after it becomes aware, provided however Buyer's failure to provide such notice thereof in a prompt manner to Seller shall not relieve Seller from any obligations owed hereunder, except to the extent that Seller has been materially prejudiced by Buyer's failure in giving such prompt notice. Buyer shall have the right to participate at its own expense in the defense of such claim or action, including any related settlement negotiations. Any settlement or compromise of any such claim or action requiring Buyer to admit liability, pay money, or take (or refrain from taking) any action, will require Buyer's prior written consent, which consent may be withheld or conditioned by Buyer at its sole discretion (including Buyer conditioning consent on the execution of a full and complete release of all claims and actions made against the Indemnified Parties by each Party bringing any such claims or actions).
- (c) **Remedies.** If an injunction preventing continued use of any Goods or Services is threatened or granted, Seller will promptly do the following at its sole expense:
- i. procure the right to continue providing the Goods or Services in compliance with the Agreement; or
  - ii. modify the Goods or Services to make them non-infringing without materially reducing their functionality; or
  - iii. replace the Goods or Services with a non-infringing, functionally-equivalent alternative.

If none of the options above are feasible, Buyer may elect to terminate the Agreement at Buyer's sole discretion and will be entitled to a refund of any amounts prepaid on a prorated basis.

- (d) **Security.** Buyer shall have the right to withhold from any payments due to Seller the amount of Buyer's actual and projected costs of defending or settling any such claim or action, plus any other reasonable additional amounts, as security for the performance by Seller of its obligations under this Section 7.

## 8. DISCLAIMER AND LIMITATION OF LIABILITY.

- (a) **LIMITATION ON TYPES OF DAMAGE.** SUBJECT TO SECTION 8(C), BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL LOSS OR DAMAGE, ARISING OUT OF THE AGREEMENT OR ANY RESULTING OBLIGATIONS, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR OR ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR ANY OTHER THEORY OR CAUSE OF ACTION, REGARDLESS OF WHETHER THE LOSS OR DAMAGE WAS FORESEEABLE AND REGARDLESS OF WHETHER BUYER WAS ADVISED OF OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- (b) **GENERAL CAP ON LIABILITY.** SUBJECT TO SECTION 8(C), THE ENTIRE LIABILITY OF BUYER TO SELLER (OR ANY THIRD PARTY CLAIMING THROUGH SELLER), AND THE SOLE AND EXCLUSIVE REMEDY OF SELLER, FOR ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE AGREEMENT OR ANY RESULTING OBLIGATION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE) SHALL NOT EXCEED THE PURCHASE PRICE SPECIFIED IN THE P.O. (LESS ANY PAYMENTS MADE BY BUYER AGAINST SAID P.O.) FOR THE GOODS OR SERVICES WHICH ARE THE SUBJECT OF SUCH CLAIM OR CAUSE OF ACTION.

- (c) **APPLICABILITY AND ALLOCATION OF RISK.** NOTHING IN THE AGREEMENT EXCLUDES OR LIMITS EITHER PARTY'S LIABILITY FOR PERSONAL INJURY OR DEATH TO THE EXTENT CAUSED BY SUCH PARTY'S NEGLIGENCE OR INTENTIONAL MISCONDUCT, FOR FRAUD OR FRAUDULENT MISREPRESENTATIONS, OR MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. LIMITATIONS SET FORTH ABOVE IN THIS SECTION 8 (DISCLAIMER AND LIMITATION OF LIABILITY) SHALL BE DEEMED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDIES SET FORTH IN THE AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY HAVE FULLY CONSIDERED THE FOREGOING ALLOCATION OF RISK SET FORTH IN THIS SECTION 8 AND FIND IT REASONABLE, AND THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

## 9. BUYER PROPERTY.

- (a) **Buyer Materials.** Buyer (or a third party authorized by Buyer) may, at its discretion and from time to time, provide to Seller certain materials, equipment, fixtures, machinery, gauges, special test equipment, drawings, specifications and other technical documentation, hardware, firmware, software or other items, which may or may not contain Information (collectively, the "Buyer Materials") to aid Seller in its performance under the Agreement.
- (b) **Limited Copyright and Trade Secret License.** Subject to the terms and conditions in the Agreement, Buyer hereby grants to Seller a limited, immediately revocable, non-transferable, non-assignable, non-sublicensable, license (i) under Buyer's copyrights in the Buyer Materials to reproduce the Buyer Materials in limited quantities solely for Seller's own non-commercial internal use to enable Seller to provide the Goods or perform the Services for Buyer that are expressly described in a P.O. within Buyer's or Seller's authorized facilities, as Buyer may direct; and (ii) under Buyer's trade secret rights in Buyer Materials, to use Buyer Materials solely for Seller's own internal reference purposes to enable Seller to provide the Goods or perform the Services for Buyer that are expressly described in a P.O. within Buyer's or Seller's authorized facilities, as Buyer may direct. Seller shall not use Buyer Materials for any other purpose or use.
- (c) **No Other Rights Granted.** Except for the copyright and trade secret licenses to use Buyer Materials that are expressly and specifically set forth in Section 9(b) above, no rights in or to any intellectual property rights are granted by Buyer under or by virtue of the Agreement. Seller hereby acknowledges and agrees that the grant by Buyer of the copyright and trade secret licenses to use Buyer Materials shall neither grant nor be construed to grant to Seller (whether expressly, by implication or by way of estoppel or otherwise) any license or other rights under (i) any intellectual property rights of Buyer or any of its current or future affiliates covering or relating to any other product or invention or any combination of Buyer Materials with any other product or invention or (ii) any patents, patent applications, or patentable inventions or discoveries. Seller further agrees that it shall not make use of any trademarks, service marks, trade names, service names or logos of Buyer or any of its current or future affiliates without Buyer's express prior written consent. Except as expressly and specifically required by Buyer in a P.O., Seller shall not, and shall not authorize any third party to, copy, disclose, alter, modify, or adapt any Buyer Materials, or create any derivative works based thereon, for any purpose. Seller shall not, and shall not authorize any third party to sublicense, transfer, distribute, reverse translate, disassemble, decompile, or reverse engineer any Buyer Materials for any purpose.
- (d) **Disclaimers.** ALL BUYER MATERIALS ARE PROVIDED "AS IS" AND WITHOUT THE MAKING OF ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, BUYER HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR ANY WARRANTY THAT ANY SUCH ITEM IS FREE FROM THE RIGHTFUL CLAIM OF ANY THIRD PARTY. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BUYER, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE AGENTS OR REPRESENTATIVES SHALL CREATE OR

EXTEND ANY REPRESENTATION OR WARRANTY SO DISCLAIMED.

- (e) **Further Development of Buyer Materials.** Notwithstanding anything to the contrary in the Agreement, Seller hereby acknowledges and agrees that Buyer shall own all right, title and interest in and to (i) all modifications, customizations, enhancements and derivative works created from or made to Buyer Materials, together with all intellectual property rights therein or related thereto, that are created by Seller or Buyer and arise or result from the performance of the Services; and (ii) any Buyer Materials provided to Seller under the Agreement.

## 10. PROPRIETARY RIGHTS.

- (a) **Right to Information.** Seller acknowledges and agrees that all Information shall remain the property of Buyer, and, except for the copyright and trade secret licenses granted to Seller by Buyer in Section 9(b) (Limited Copyright and Trade Secret License) above for Buyer Materials, no license or any other rights, whether express, implied, or by virtue of estoppel or otherwise, to use any Information or other intellectual property is granted by Buyer under the Agreement.

(b) **Work Product.**

- i. *Definition of Work Product.* For the purpose of the Agreement, “**Work Product**” means (i) deliverables created by Seller, developed for or with Buyer, or provided by Seller to Buyer in connection with Seller’s performance of its obligations under the Agreement, (ii) any works of authorship, designs or logos, (iii) any discoveries or inventions (whether patentable or not), including, without limitation, any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvements or innovations thereof (as such terms are understood under 35 U.S.C. §101 et seq and any other similar statutes and laws), in all cases, arising from, conceived, created, developed or reduced to practice for or in connection with the performance of obligations under the Agreement (each item described in this clause (iii), an “**Invention**”), and (iv) any proposals, research, records, reports, recommendations, manuals, findings, evaluations, forms, reviews, information, data, websites, domain names, computer programs, software, or works in progress originated or prepared by or on behalf of Seller for or in the performance of the Agreement. The term “**Invention**” also includes, without limitation, all patent applications filed anywhere in the world that claim any Invention, any patents issuing on any such patent applications, and all rights of priority derived from any such patent applications or patents.
- ii. *Work Product Rights.* Seller agrees to promptly disclose to Buyer in writing a detailed complete description of any Work Product that is first conceived in connection with the performance of a Project by Seller. All rights, title and interests in and to the Work Product shall be vested in and owned by Buyer upon creation (including all intellectual property rights therein) on a worldwide, exclusive and perpetual basis. Seller acknowledges the commercial nature of the Work Product and the conditions under which it will be used. Except with respect to any Pre-Existing Intellectual Property retained by Seller pursuant to Section 10(d)(i) (Seller Pre-Existing Intellectual Property), all right, title and interest in and to the Work Product shall be vested in, and owned solely and exclusively by, Buyer upon the earlier of its conception or creation (including all intellectual property rights therein or relating thereto). Seller acknowledges the potential commercial use of the Work Product by Buyer or its current or future affiliates and agrees that such Work Product can be used by Buyer or its current or future affiliates without conditions upon which it may be used.
- iii. *Work Made for Hire.* Unless otherwise agreed expressly in the applicable P.O. and except with respect to Pre-Existing Intellectual Property retained by Seller pursuant to Section 10(d)(i) (Seller Pre-Existing Intellectual Property), any Work Product that is a work of authorship (including, but

not limited to, any computer program or software) is, to the maximum extent permitted under applicable law (including, but not limited to, 17 United States Code Section 101) deemed to be a “work made for hire” or work ordered or commissioned by Buyer. If the “work made for hire” concept does not exist or is contrary to public policy rules in an applicable jurisdiction where Work Product is conceived, created or otherwise developed, then the Parties shall apply the closest applicable legal concept available in such jurisdiction to provide Buyer the ownership rights to such Work Product and execute promptly, upon the request of Buyer, any other agreements that are necessary or appropriate to achieve such desired result.

**(c) Assignment and Further Assurances.**

- i. *Third Party Rights to Work Product.* To the extent not otherwise prohibited by applicable law, Seller shall procure a full and complete assignment from any relevant third party(ies) (including, but not limited to, all applicable Personnel) of all right, title, and interests of such third party(ies) in and to any Work Product conceived, created or developed by such third party(ies) for or on behalf of Seller (including, but not limited to, the rights set forth in Sections 10(b) (Work Product) and Section 10(d)(i) (Seller Pre-Existing Intellectual Property)) to secure for Buyer the unrestricted ownership and other rights in and to the Work Product as provided in the Agreement. Where not otherwise prohibited by applicable law, such assignment shall be procured at the start of any work under the Agreement. In the event applicable law does not permit the assignment of copyrights from such third party(ies), Seller shall take all reasonable steps to be granted an exclusive license to any such copyrights for the entire duration of the respective copyrights.
- ii. *Third Party Materials.* Notwithstanding Section 10(c)(i) (Third Party Rights to Work Product), should Seller, at any time during the term of the Agreement, use any third-party materials in the Work Product (that was not conceived, created or developed for or on behalf of Seller or Buyer), including, without limitation stock photography, video clips and/or music, Seller represents and warrants that it will secure all standard intellectual property rights, licenses, releases, and/or waivers necessary for Buyer’s unlimited, perpetual, irrevocable, fully transferable, assignable, sublicensable, royalty-free, right and license to use said third-party materials in connection with the Work Product. Seller shall identify to Buyer all Work Product incorporating any such third-party materials and shall provide signed copies of all relevant license agreements, releases and/or waivers, as applicable. If Buyer is not satisfied that it has been granted sufficient rights to use of such third-party materials, then Seller shall promptly replace such materials with properly licensed materials at no cost to Buyer.
- iii. *Assignment of Work Product from Seller.* Except with respect to Pre-Existing Intellectual Property retained by Seller pursuant to Section 10(d)(i) (Seller Pre-Existing Intellectual Property), in consideration for the fees required to be paid to Seller based upon or under an applicable P.O. forming a part of the Agreement that applies to a Project where such Work Product is conceived, created or otherwise developed, Seller hereby assigns to Buyer, all of Seller’s right, title and interests in and to all Work Product including, but not limited to, (i) the right to make modifications, adaptations, compilations, and derivative works thereto or thereof, (ii) the right to sell, assign, convey or otherwise transfer further all of such right, title and interests to one or more third parties, (iii) to the maximum extent not otherwise prohibited by applicable law, any and all moral rights Seller may have in and to the Work Product, and (iv) any and all other intellectual property rights, including, but not limited to, Inventions, know-how, copyrights, mask work rights, trademarks, and trade secret rights which relate to such Work Product, effective immediately upon conception, origination, creation, preparation or discovery thereof and (a) regardless of the medium of expression thereof, (b) in perpetuity, (c) on a worldwide basis and (d) whether Buyer has exercised its rights or not.
- iv. *Further Assurances.* Whenever requested, Seller shall (i) immediately execute a confirmatory

assignment or other ancillary agreement(s) for the benefit of Buyer with respect to Buyer's ownership and other rights in and to such Work Product, together with any and all intellectual property rights therein or relating thereto, in such form as may be reasonably satisfactory to Buyer, (ii) testify in all legal proceedings, (iii) sign all lawful papers, (iv) comply with any and all local formalities (including registration) required under applicable local law to validate the assignment or other ancillary agreement(s), and (v) at Buyer's expense, perform all acts necessary or appropriate to enable Buyer and its successors and assigns to obtain and enforce all available legal protections desired to be sought by Buyer for all such Work Product in any country throughout the world.

(d) **Licenses to Buyer.**

- i. *Seller Pre-Existing Intellectual Property.* Buyer acknowledges that Seller may own or acquire from any third party certain know-how, trade secrets, plans, designs and construction information, processes and flowcharts, formulas, manufacturing techniques, discoveries, inventions and ideas, product specifications, machinery, drawings, photographs, computer source codes, equipment, devices, tools and apparatus and any other engineering or other technical information that is in existence prior to the date of the Agreement, whether or not protected by law, subject to pending applications therefore or otherwise ("**Pre-Existing Intellectual Property**"). Notwithstanding anything to the contrary in the Agreement, to the extent that any such Pre-Existing Intellectual Property is (i) embedded into the Work Product and (ii) has expressly been designated by Seller in writing to Buyer as Pre-Existing Intellectual Property prior to the commencement of any Services to be performed by Seller under the Agreement, such Pre-Existing Intellectual Property shall remain the property of Seller or the applicable designated third party, as applicable. Seller hereby grants, and shall cause such third party to grant prior to inclusion of Pre-Existing Intellectual Property of such third party in the Work Product, to Buyer and its current and future affiliates an irrevocable, perpetual, worldwide, non-exclusive, transferable, fully paid-up, and royalty-free license, with the right to sublicense such license to contractors of Buyer and its current and future affiliates, to use, execute, reproduce, publicly display and publicly perform by all means now known or later developed, modify, customize, enhance, and prepare derivative works based upon such Pre-Existing Intellectual Property, and to distribute (whether directly or indirectly through multiple tiers) copies of such Pre-Existing Intellectual Property and any modifications, customizations, enhancements and derivative works thereof, in each case to use the Pre-Existing Intellectual Property and any modifications, customizations, enhancements and derivative works thereof for the purposes for which they were designed and intended, including Buyer's right to provide such Pre-Existing Intellectual Property as embedded in final deliverables to third parties.
- ii. *Waiver of Moral Rights.* To the extent not otherwise prohibited by applicable law, Seller hereby waives, and shall procure from Personnel (and any other applicable third parties) a waiver of, all moral rights in the Work Product, including, without limitation, the right to the integrity of the Work Product and the right to be associated by name with the Work Product. To the extent such a waiver is void or unenforceable by applicable law, Seller agrees not to enforce, and shall procure from Personnel (and any other applicable third parties) an agreement not to enforce, any such moral rights against Buyer or any of its current or future affiliates. To the extent such an agreement not to enforce any moral rights is void or unenforceable by applicable law, Seller grants on an irrevocable basis to Buyer and each of its current and future affiliates the right and license in perpetuity (on a worldwide, non-exclusive, transferable basis) to (i) use the Work Product without a requirement or obligation to credit or otherwise identify Buyer or any other party or person as the author; and (ii) make adaptations of the Work Product and to otherwise exploit the Work Product as provided in the Agreement.

(e) **No Additional Consideration.** Seller shall not be entitled to any monetary or other consideration in

connection with any work performed, services provided, or obligations undertaken by Seller under the Agreement, except as explicitly set forth in the applicable P.O. The consideration explicitly set forth in the applicable P.O. is in lieu of any rights for any compensation that may arise in connection with any activities undertaken in connection with the Work Product under applicable law, and Seller hereby waives, and shall procure from Personnel (and other applicable third parties) a waiver of, any right to claim royalties or other consideration with respect to any Work Product, including under any applicable law.

- (f) **No Patent License.** Notwithstanding anything to the contrary in the Agreement, nothing in the Agreement shall be deemed to grant any rights (whether express, or by way of implication, estoppel or otherwise) under any patents, patent applications, or inventions of Buyer or any of its current or future affiliates. Seller hereby acknowledges and agrees that it has no right by virtue of any rights granted by Buyer or any of its current or future affiliates under the Agreement to commercialize any product or service, or to make, have made, use, sell, offer to sell, import, or dispose of any product or service. Seller acknowledges and agrees that the foregoing exclusion of patent rights from the scope of any rights that are expressly granted to Seller in the Agreement is not in derogation of any such expressly granted rights, and that Seller has received the full benefit of its bargain notwithstanding such exclusion.

## 11. RELATIONSHIP OF THE PARTIES & PERSONNEL.

- (a) **Independent Contractor.** Seller is an independent contractor, not an agent, employee or partner of Buyer. Seller shall retain independent, professional status throughout the Agreement period and shall use its own discretion and control in performing the tasks assigned.
- (b) **Subcontractors.** Prior to the utilization of subcontractors, Seller shall first obtain prior written consent from Buyer and ensure that all subcontractors execute written agreements with Seller containing provisions necessary to comply with the terms of the Agreement.
- (c) **Responsibility.** Seller shall at all times be responsible for:
- (i) the acts and omissions of its Personnel (whether or not directly or indirectly employed by Seller) and the performance of all the Services, whether performed by Seller or its Personnel;
  - (ii) staffing, instructing, and managing Personnel performing the Services;
  - (iii) determining Personnel's compensation (i.e., any stated rates for Services provided are not wage rates) and any benefits entitled under relevant law;
  - (iv) any income tax withholding applicable to Personnel;
  - (v) all costs associated with terminating Personnel, including costs arising under applicable law, costs arising under an agreement between Seller and Personnel, and any costs incurred by Buyer as a result of such termination; and
  - (vi) compliance with all applicable employment and occupational health and safety laws and regulations, including those related to employment practices, wages, and worker classification.
- (d) **Compliance with Rules and Regulations.** In the event that and where applicable Seller's Personnel are required to work on-site at a Buyer location and/or with access to internal Buyer systems in connection with the provision of the Goods or Services, such Personnel will at all times comply with all Buyer's rules and security regulations in effect and shall be restricted to the work area and systems designated by Buyer. Seller agrees that all information, systems, equipment, ideas, processes or methods of operation observed at the Buyer facility is Information and should be handled in accordance with Section 12 (Confidentiality). In the event that Seller performs Services where Seller will have access to or work with Buyer goods, Seller will need prior authorization from Buyer to allow Seller such access to goods and Buyer may require Seller to comply with additional specific measures.
- (e) **Employment.**
- (i) The Agreement shall not give rise to any contractual relationship between Buyer and any Personnel of Seller or any of Seller's affiliates. The Agreement shall not give rise to any employment

- relationship between Buyer and Seller, any Personnel of Seller, or any of Seller's affiliates.
- (ii) Seller acknowledges it and its Personnel are not entitled to and are not eligible to receive, and expressly waives any and all rights or entitlement to Buyer-provided benefits, including, but not limited to, stock, options, retirement benefits, retirement savings plans (e.g., 401(K)), health and welfare benefits (e.g., medical and dental insurance), and any other benefits that may be applicable under the local laws of Seller's residence in connection with the terms of its independent contractor relationship. Further, Seller waives any entitlement to employee benefits if it is subsequently determined that eligibility does exist by any state, local, federal agency or other applicable jurisdiction, and promises never to claim eligibility or rights to such benefits.
- (f) **Seller's Fees.** Seller will report as income to the appropriate government agencies all fees received pursuant to the Agreement and will pay when due all applicable taxes, including income and estimated taxes, incurred as a result of the fees paid by Buyer to Seller for Goods and Services under the Agreement. Buyer will not make deductions from its fees to Seller for taxes, insurance, bonds or any other subscription of any kind. On request, Seller shall provide Buyer with proof of timely payment thereof.
- (g) **Transfer of Undertaking Regulations**
- (i) Buyer and Seller agree that it is not their intention that the TUPE Regulations should apply on the entry into, alterations, termination or expiry of the Agreement for Goods or Services.
- (ii) Without prejudice to the foregoing, where the TUPE Regulations apply, or are likely to apply, Buyer and Seller further agree to comply with their obligations under the TUPE Regulations subject to the following provisions:
- A. his/her employment or non-employment or engagement or non-engagement by Seller;
- B. any act or omission of Seller during the term of the Agreement for Goods or Services including, without limitation, a claim for breach of contract, wrongful dismissal, unfair dismissal, loss of office, redundancy, loss of earnings or otherwise; and
- C. any act or omission of Seller for which Buyer is or may be liable by reason of the operation of the TUPE Regulations following the termination or expiry of the Agreement for Goods or Services or any part thereof.
- (iii) Where the TUPE Regulations apply, or are likely to apply, Seller shall, if required by Buyer, provide Buyer with details of the identity (to the extent lawfully permitted and subject to the requirements of applicable data protection legislation) and terms of employment of all Personnel who are then employed in the provision of the Goods and/or Services.
- (iv) Without prejudice to the foregoing at any time during the term of the Agreement for Goods or Services, Buyer may request anonymized information of Personnel who are at that time engaged in the provision of the Services. The anonymized information shall include details as to those Personnel's length of service, professional qualifications, relevant work experience, applicable salary, other related employee benefits and the applicable terms and conditions of employment. The requested information shall be provided by Seller to Buyer no later than fourteen (14) calendar days after a request for same.
- (h) **Equal Opportunity Compliance.** Where applicable, Seller and its subcontractors shall abide by the requirements of US 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

## 12. CONFIDENTIALITY; PUBLICITY; DATA PROTECTION.

- (a) In the course of performing the services, Seller may receive, gain access to, or otherwise become exposed to certain confidential or proprietary information, including, but not limited to, trade secrets, customer information, business and/or technical information, business plans, products, services and/or intellectual property of Buyer, its affiliates or its customers (the “Information”). Seller shall treat all Information as confidential, whether or not such Information was identified or marked as confidential or proprietary at the time of the disclosure, and Seller shall not disclose, or permit the disclosure of, any Information to any person (including but not limited to any company affiliated with Seller and any subcontractor of Seller), without the prior written consent of Buyer. Seller shall limit the use, reproduction and disclosure of the Information within its organization to only those of Seller’s employees or Buyer-approved subcontractors with a strict need to know for the limited purpose of performing its obligations under the Agreement. Seller shall ensure that any of its Personnel to whom it gives access to the Information under the terms of the Agreement have executed a written agreement with Seller obligating such individuals to comply with the obligations of confidentiality set forth in this Section 12.
- (b) Seller may disclose Information to its Buyer-approved subcontractors in accordance with Section 11(b) (Subcontractors), provided that (i) Seller has requested and received written approval from Buyer permitting the disclosure of such Information to each individual subcontractor; and (ii) each Buyer-approved subcontractor is under a contractual duty of confidentiality with Seller to hold Information disclosed by Seller to them and any Work Product confidential, at least to the same extent as Seller is obligated to keep such Information confidential under the Agreement. Seller shall be responsible for any improper disclosure or use of Information made by its agents, representatives, affiliates or Buyer-approved subcontractors to the same extent as if Seller itself had made such improper disclosure or use. Furthermore, Seller agrees, at its sole cost and expense, to undertake all measures (including but not limited to the immediate initiation of any court proceedings) to restrain its employees, agents, representatives, affiliates and Buyer-approved subcontractors from any prohibited or unauthorized disclosure or use of the Information, both during the term of the Agreement and following the expiration or termination of the Agreement.
- (c) The terms and conditions of the Agreement, as well as the existence of the Agreement, are Information and Seller shall not disclose its terms and conditions without the prior written consent of Buyer.
- (d) In the event that Seller Processes Data under the Agreement, Seller agrees to comply with the Security Terms located at <https://sp.qualcomm.com/procurement/securityterms> as may be updated from time to time (the “Security Terms”) and such Security Terms are herein incorporated by reference. In addition, in the event that Seller Processes Data under the Agreement that is Personal Information, Seller agrees to comply with the Data Processing Terms located at <https://sp.qualcomm.com/procurement/dataprocessingterms> as may be updated from time to time (the “DP Terms”) and such DP Terms are herein incorporated by reference. The terms “Data”, “Personal Information” and “Processing” shall have the meaning set forth in the Security Terms and the DP Terms, as applicable.
- (e) Any violation of this Section 12 shall be deemed a material breach. Seller agrees that the remedies at law for a breach by it or its Personnel of the terms of this Section 12 may be inadequate and that monetary damages resulting from such breach may not be readily measured. Accordingly, in the event of a breach or threatened breach by Seller of the terms of this Section 12, Buyer shall be entitled to immediate injunctive relief without the requirement of posting a bond. Nothing herein shall prohibit Buyer from pursuing any other remedies that may be available to it for breach of this Section 12 or any incident related thereto and therefore Buyer shall have the right to an injunction or other equitable relief without prejudice to any other rights permitted by law.

- (f) Pursuant to the U.S. Defend Trade Secrets Act of 2016, if Seller is an individual, Seller acknowledges that he/she shall not have criminal or civil liability under any Federal or State trade secret law for the disclosure of a trade secret that is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, if Seller files a lawsuit for retaliation by Buyer for reporting a suspected violation of law, Seller may disclose the trade secret to Seller's attorney and may use the trade secret information in the court proceeding, if Seller files any document containing the trade secret under seal; and does not disclose the trade secret, except pursuant to court order.

**13. CHANGES.** From time to time during the term of the Agreement, Buyer may submit to Seller a written request for a change order (a "Change Order"). Seller expressly waives any fees for any change not authorized in writing by Buyer. A Change Order may suspend performance hereunder, increase or decrease the ordered quantities or make changes within the general scope of the Agreement in any one or more of the following ways: (a) applicable drawings, designs or specifications; (b) method of shipment or packing, and/or, (c) place of delivery and/or delivery schedule. If any such change causes an increase or decrease in the cost of, or the time required for performance of the Agreement, an equitable adjustment shall be made in the P.O. price or delivery schedule, or both and the P.O. shall be modified in writing accordingly. No claim by Seller for adjustment shall be valid unless asserted within twenty (20) calendar days from the date or receipt by Seller of the applicable Change Order; such assertion period, however, may be extended upon the written approval of Buyer.

**14. EXPORT CONTROLS.**

- (a) Seller acknowledges that all hardware, software, source code and technology (collectively, "Products") obtained from Buyer are subject to the US government export control and economic sanction laws, including the Export Administration Regulations ("EAR", 15 CFR 730 et seq.) administered by the Department of Commerce, Bureau of Industry and Security, and the Foreign Asset Control Regulations (31 CFR 500 et seq.) administered by the Department of Treasury, Office of Foreign Assets Control ("OFAC").
- (b) Seller assures that it, its subsidiaries and affiliates will not directly or indirectly export, re-export, transfer or release (collectively, "Export") any Products or direct product thereof to any destination, person, entity or end use prohibited or restricted under US law without prior US government authorization to the extent required by regulation. The US government currently maintains comprehensive embargoes and sanctions against Cuba, Iran, North Korea, Sudan (N), Syria and Crimea region of Ukraine, but any amendments to these controls shall apply. Seller agrees not to directly or indirectly employ any Product received from Buyer in missile technology, sensitive nuclear or chemical biological weapons activities, or prohibited military activity, or in any manner Export any Product to any party for any such end use, as defined in Part 744 of the EAR. Seller shall not Export any Product to any party listed on any of the denied parties' lists or specially designated nationals' lists maintained under said regulations without prior US government authorization to the extent required by regulation. Seller acknowledges that other countries may have trade laws pertaining to the Export, import, use, or distribution of Products, and that compliance with same is the responsibility of Seller.
- (c) Seller shall not deliver Products to Buyer that are subject to the International Traffic in Arms Regulations ("ITAR", 22 CFR 120 et seq., <http://pmdotc.state.gov/>), the Wassenaar International Munitions List ("IML", <http://www.wassenaar.org/>) or the 600 Series or 9x515 (the "x" representing any of the product groups A, B, C, D or E) of ECCNs on the EAR's Commerce Control List (<http://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>).
- (d) If Seller supplies personnel employed, hired, assigned or retained by Seller to work on-site at a Buyer location and/or with access to internal Buyer systems, Seller will first notify Buyer in writing via e-mail at [export.fn@qualcomm.com](mailto:export.fn@qualcomm.com) and obtain written consent prior to assigning Personnel to Buyer who are nationals or citizens from a country listed in Country Groups D:1 (restricted) and E:1/2\*

(embargoed/sanctioned) in Supplement 1 to part 740 of the EAR, Seller shall be solely responsible for determining the nationality of its employees and contractors. Seller may not subcontract work involving the Export of Buyer Products unless and until the terms in this section have been provided in writing to the subcontractor(s).

## **15. TERMINATION.**

- (a) Unless prohibited by applicable law, Buyer may terminate the Agreement or any portion thereof at any time prior to completion, with or without cause, effective immediately upon written notice to Seller. In the event that applicable law prohibits termination by Buyer upon notice, termination under this Section 15(a) shall be effective ten (10) calendar days following Seller's receipt of such notice (or such other period as prescribed by applicable law under the circumstances).
- (b) Either Party may terminate the Agreement upon written notice to the other Party if the other Party materially breaches any provisions of the Agreement and fails to remedy that breach within thirty (30) calendar days after written notice specifying the nature of the breach.
- (c) Upon receipt of a termination notice, for any reason, Seller shall mitigate its damages and stop incurring any additional costs and expenses. Within two (2) weeks of the termination or expiration of the Agreement, Seller shall: (i) return to Buyer all equipment and other properties owned by Buyer or its affiliates, and (ii) in Buyer's sole discretion, either return all documents and other materials containing any Buyer confidential information, all Work Product, and all copies thereof made by Seller or certify destruction of the same. Buyer's sole obligation shall be to pay Seller the fees due for Services completed and/or Goods delivered before such expiration or termination and shall also be entitled to a full refund of any and all pre-payments made to Seller prior to the date of termination or expiration.
- (d) Those provisions, which by their nature are intended to survive the termination or expiration of the Agreement, shall survive the termination or expiration of the Agreement, including, without limitation the following Sections: 1 (Agreement), 2 (Delivery; Title and Risk of Loss), 5 (Taxes), 7 (Indemnification), 8 (Disclaimer and Limitation of Liability), 9 (Buyer Property), 10 (Proprietary Rights), 11 (Relationship of the Parties & Personnel), 12 (Confidentiality; Publicity; Data Protection), 14 (Export Control), 15(c), 15(d), 18 (Governing Law and Dispute Resolution), 19 (Compliance), 21 (Compliance with Anti-Corruption Laws), 23 (Severability), 24 (Right to Audit), 27 (Notices), 28 (Language), 29 (Non-Waiver), and 30 (Entire Agreement; Modifications; Headings).

**16. ASSIGNMENT.** Neither the Agreement, nor any rights, obligations, and other interests of Seller may be assigned by Seller, in whole or in part, by operation or law, in connection with a change in control, or otherwise, without the prior written consent of Buyer, and any purported assignment of same shall be void. Notwithstanding the foregoing, Buyer may freely assign all or part of the Agreement, and its rights, obligations and interests under the Agreement without the prior written consent of Seller. The Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.

**17. INSURANCE.** Seller shall maintain at its sole expense during the term of the Agreement: (i) workers' compensation insurance as prescribed by applicable law; (ii) employer's liability insurance with limits of at least US\$1,000,000 for each occurrence; (iii) automobile liability insurance if the use of motor vehicles is required, with limits of at least US\$1,000,000 combined single limit for bodily injury and property damage per occurrence; (iv) Commercial General Liability or local jurisdiction equivalent ("CGL") insurance, including Blanket Contractual Liability (or local jurisdiction equivalent) and Broad Form Property Damage (or local jurisdiction equivalent), with limits of at least US\$1,000,000 combined single limit for bodily injury and property damage per occurrence; US\$2,000,000 in the annual aggregate; (v) in the event that Seller's employee(s) or subcontractor(s) are on Buyer's premises or have access to Buyer's property, a fidelity bond (or local jurisdiction equivalent) (which includes third party liability) insuring against the dishonest act(s) committed by its employees assigned to Buyer's premises under the Agreement. Seller shall maintain such fidelity bond (or local jurisdiction equivalent) in the amount of not less than US\$1,000,000;

and (vi) an umbrella insurance policy with a minimum limit of US\$5,000,000 for each occurrence. Seller shall have all CGL policies, and automobile liability and excess insurance policies if driving on Buyer's premises, endorsed to name Buyer as an additional insured. All insurance as listed above shall be primary with respect to Seller's activities and Buyer's insurance policies will be non-contributing. Such policies shall contain a provision waiving the insurer's right of subrogation against Buyer. To the extent permitted by law, Seller hereby waives such rights of subrogation. Prior to the commencement of any services, Seller will furnish Buyer with certificates of insurance which evidence the minimum levels of insurance set forth above. Seller shall send certificates directly to Buyer risk management at [treasriskmgmt@qualcomm.com](mailto:treasriskmgmt@qualcomm.com). Buyer shall be notified in writing at least thirty (30) calendar days prior to cancellation of or any material change in the policy. Insurance companies providing coverage under the Agreement must be rated by A-M Best with at least an A-VII rating or the substantive equivalent rating provided by Fitch, Standard & Poor's or Moody's.

**18. GOVERNING LAW AND DISPUTE RESOLUTION.** The Agreement shall be governed and interpreted in accordance with the laws of the State of California, U.S.A., without giving effect to any conflict of laws principles or provisions that would result in the application of the laws of a different state or country.

- (a) Except as set forth in Section 18(b) below, any dispute, controversy, claim, action, or proceeding arising out of, relating to or about the Agreement must be brought exclusively in the courts of San Diego County, California.
- (b) If Seller is an individual or entity whose official place of residency or formation is outside of the United States but is in a country that is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention"), all disputes, controversies, claims, actions or proceedings, arising out of, relating to or in connection with the Agreement (including the determination of the scope of the agreement to arbitrate) shall be finally settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, applicable at the time of submission of the dispute to arbitration (the "UNCITRAL Rules"), and the following shall apply:
  - (i) The arbitration case shall be administered by the American Arbitration Association (the "AAA") in accordance with the UNCITRAL Rules. The AAA shall be the appointing authority and shall appoint a single arbitrator. The place of arbitration shall be San Diego, California, and the exclusive language to be used for the arbitral proceedings shall be English.
  - (ii) Nothing herein will prevent either Party, prior to appointment of the arbitrator, from making application to any court of competent jurisdiction, for any provisional remedy available at law or in equity. Such application for relief shall not constitute a waiver of this agreement to arbitrate. Upon appointment, the arbitrator shall have exclusive authority to order provisional or interim relief, except that any relief ordered by the arbitrator may be immediately and specifically enforced by a court otherwise having jurisdiction. Each Party waives objection to venue and consents to the personal jurisdiction of the federal courts of San Diego, California, U.S.A. in any action to enforce this agreement to arbitrate or any order or award of the arbitrator, or for the provisional or interim remedies provided for herein.
  - (iii) Discovery shall be limited to written requests for the production of specific documents. The period for requesting documents shall be sixty (60) calendar days commencing upon the day that the answer is due under the UNCITRAL Rules. The responding Party shall have thirty (30) calendar days to produce the requested documents by sending copies to the requesting Party or its representative via a recognized international courier service. Each Party will also voluntarily produce all documents that they intend to use at the arbitration hearing and a list of intended witnesses before the close of discovery subject to supplementation for purposes of rebuttal or good cause shown. Each Party hereby waives any right to seek any discovery not provided for herein irrespective of whether the laws of any country provide for different or additional discovery in international arbitration. The arbitrator will hold a pre-hearing conference within three (3) calendar days of the close of discovery and will schedule and hold the final hearing within thirty

(30) calendar days of the close of discovery. EACH PARTY HEREBY AGREES THAT THE ARBITRATION PROCEDURE PROVIDED HEREIN WILL BE THE SOLE AND EXCLUSIVE METHOD OF RESOLVING ANY OF THE AFORESAID DISPUTES, CONTROVERSIES OR CLAIMS.

- (c) The Parties also agree that the prevailing Party in any legal proceeding shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith, in addition to any other relief it may be awarded from the other Party.
- (d) The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed and shall not apply to the purchase of Goods or Services by Buyer.

**19. COMPLIANCE.** Seller agrees that it will comply, and that all Goods delivered and Services performed hereunder will comply, with all applicable laws, regulations, and permit requirements including but not limited to labor, safety and environmental laws.

**20. OPEN SOURCE.** Seller hereby agrees, and shall cause its affiliates and subcontractors to agree, not to incorporate, link, distribute or use any third party software or code in conjunction with any Work Product, or deliverable provided to Buyer under the Agreement (if any) in such a way that: (i) creates, purports to create, or has the potential to create, obligations with respect to any Buyer software, including without limitation the distribution or disclosure of any source code; or (ii) grants, purports to grant, or has the potential to grant to any third party any rights to or immunities under any Buyer intellectual property or proprietary rights. Without limiting the generality of the foregoing, neither Seller nor any of its Personnel, affiliates or subcontractors shall incorporate, link, distribute or use, in conjunction with the Work Product, or any deliverable provided to Buyer, any code or software licensed under any open source license in any manner that could cause or could be interpreted or asserted to cause any Buyer software (or any modification thereto) to become subject to the terms of any such open source license including, but not limited to, the GNU General Public License ("GPL"), Lesser General Public License ("LGPL"), Affero GPL ("AGPL"), European Community Public License ("ECPL"), Mozilla, or any other open source license.

Without limiting the generality of the foregoing, neither Seller nor any of its Personnel, affiliates or subcontractors shall use any software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by Buyer or any of its affiliates (or for which Buyer or any of its affiliates has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if Buyer or any of its affiliates becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by Buyer or any of its affiliates that is undertaken under the Agreement shall be construed as being inconsistent with the intent to not cause any patents, copyrights or other intellectual property that are owned or controlled by Buyer or any of its affiliates (or for which Buyer or any of its affiliates has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.

Upon request, Seller shall provide information regarding its use of Open Source Software (as defined below). Seller represents and warrants that any list/declaration/information provided by Seller regarding the Open Source Software included in the Work Product is complete and accurate. "Open Source Software" means any software, libraries, or other code (including without limitation middleware and firmware) that is characterized as freeware, share, or open source software. Without limiting the generality of the foregoing, Open Source Software includes any software made available under an Open Source License.

**21. COMPLIANCE WITH ANTI-CORRUPTION LAWS.** Seller represents and warrants to Buyer that, in connection with the transactions contemplated by the Agreement or in connection with any other business transactions involving Buyer, Seller, and everyone acting on its behalf, will comply with and will not violate any applicable anti-corruption law, applicable international anti-corruption standards, or anti-tax evasion measures, including but not limited to the U.S. Foreign Corrupt Practices Act ("FCPA"), the UK Bribery Act, Part 3 of the UK Criminal Finance Act, and the

Brazil Clean Company Act, in connection with the supply of Goods or Services it has agreed to perform under the Agreement and shall have adequate procedures and policies as required by such measure. Seller represents and warrants to Buyer that Seller has not, and covenants and agrees that it will not, in connection with the transactions contemplated by the Agreement or in connection with any other business transactions involving Buyer, make, promise, or offer to make any payment or transfer anything of value, directly, or indirectly, to any individual to secure an improper advantage. It is the intent of the Parties that no payments or transfer of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining or retaining business.

Seller represents and warrants it is not and will not be, and all directors, officers and key employees of Seller and all members of their immediate families are not and will not be (i) a government official, (ii) an employee, agent or representative of a government entity, including any government owned or controlled entity, or (iii) a public or political official or a candidate for one. Seller also hereby represents and warrants to Buyer that no ownership interest, direct or indirect, in Seller or in the contractual relationship established by the Agreement, is held or controlled by or for the benefit of any foreign political party, governmental official or government entity, and that it will notify Buyer in the event of a change in the foregoing.

Seller represents and warrants that no payment, gift, travel or hospitality shall be provided to anyone for any reason on behalf of or for the benefit of Buyer which is not pre-approved in writing by Buyer. Seller represents and warrants that all expenses (payments, gifts, meals, entertainment, travel, hospitality etc.) incurred on behalf of or for the benefit of Buyer must be properly and accurately recorded in Seller's books and records, including date, all recipient names and titles, affiliation(s), amount, location, and business purpose, all of which shall be maintained with supporting documentation and must be submitted to Buyer on an invoice if reimbursement for such expense is requested by Seller.

Seller represents and warrants that it holds any required registrations under the laws in each country it does business and by Seller executing the Agreement it has any necessary and valid, licenses, approvals, consents, permissions and authorizations from appropriate authorities to perform the Goods or Services. Seller agrees and undertakes that it shall at all times keep any such licenses, approvals, consents, permissions and authorizations valid and subsisting and provide copies thereof at the request of Buyer.

Seller represents and warrants that Buyer shall have the right, from time to time, upon written notice to Seller, to conduct an investigation and audit of Seller's books, records and accounts to verify compliance with the provisions of the Agreement. Seller agrees to cooperate fully with such investigation, the scope, method, nature and duration of which shall be at the sole reasonable discretion of Buyer.

Seller agrees that should it learn or have reason to know of: (i) any payment, offer, or promise to make a payment or transfer of value to any individual for the purpose of obtaining or retaining business or securing any improper advantage for Buyer under the Agreement or otherwise, or (ii) any other development during the term of the Agreement that in any way makes inaccurate or incomplete the representations, warranties and certifications of Seller hereunder given or made as of the date hereof or at any time during the term of the Agreement, Seller will immediately advise Buyer's Office of General Counsel of such knowledge or suspicion and the basis therefore.

In the event that Buyer believes, in good faith, that Seller has acted in any way that may potentially subject Buyer to liability under the FCPA and/or other applicable anti-corruption laws and regulations, Buyer shall have the unilateral right, exercisable immediately upon written notice to Seller to terminate the Agreement.

In addition to other representations and warranties made in the Agreement, Seller represents and warrants that no other individual with any direct or indirect beneficial interest in Seller's payments under the Agreement is a foreign public official or entity and Seller has no personal affiliations with any government entities or agencies, including domestic and foreign, nor any affiliations with any publicly funded government organization or advisory board membership, including without limitation, standards organizations. Seller shall immediately notify Buyer by emailing [fcpa.help@qualcomm.com](mailto:fcpa.help@qualcomm.com) if it learns at any time during the term of the Agreement (i) that Seller becomes affiliated

with any government entities or agencies, publicly funded government organizations, universities or advisory organizations or (ii) if a government entity or organization acquires an interest, both legal or financial, in Seller's payments under the Agreement.

**22. DEBARMENT, SUSPENSION, AND INELIGIBILITY.** Seller certifies that it is not debarred, suspended, or proposed for debarment by (i) the United States Federal Government, (ii) the government of Seller's residence, (iii) the government of Buyer's residence, and/or (iv) the government of the area where the Services will be performed or the Goods will be delivered ("Applicable Government"). Seller agrees to notify Buyer immediately if at any time Seller becomes debarred, suspended, or proposed for debarment by any Applicable Government.

**23. SEVERABILITY.** To the extent any provision (or portion of a provision) of the Agreement is held by governing authority to be illegal, otherwise invalid, or incapable of being enforced, such provision (or such portion of such provision) shall be excluded to the extent of such invalidity or unenforceability; all other provisions (and the remaining portion of the applicable provision) of the Agreement shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable provision (or portion of such provision) shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable provision.

**24. RIGHT TO AUDIT.** Seller and its subcontractors shall keep accurate records and books of accounting showing all charges and related expenses incurred in performance of Services hereunder. Said records shall be maintained in conformance with generally accepted accounting principles and procedures. Buyer shall have the right to inspect such records including any books, ledgers, financial statements, correspondence, documents and other materials and perform audits for three (3) years from the completion of the Services or delivery of the Goods (whichever is later) on Seller's or subcontractor's premises during normal business hours, or assign said audits to outside parties. Seller agrees to fully reimburse any recoveries plus reasonable audit costs in the event financial irregularities are discovered resulting from an audit. Buyer shall maintain the right to extend payment terms until such time as corrections have been made. The substance of this paragraph shall appear in all of Seller's subcontracts.

**25. ENVIRONMENTAL AND SOCIAL RESPONSIBILITY.** Seller agrees to comply with Buyer's Supplier Code of Conduct available at <https://www.qualcomm.com/company/sustainability/priorities/sustainable-product-design/supply-chain-management> (as may be updated from time to time by notice to Seller).

If Seller is providing Goods, Buyer requires Seller's support for conflict-free sourcing of minerals. Buyer requires Seller source metals to be incorporated into Goods from smelters and refiners that are identified as conflict-free by internationally recognized audit programs (e.g., Responsible Minerals Assurance Process (RMAP)). Seller is required to provide Buyer the conflict minerals sourcing information upon request via the Conflict Minerals Reporting Template. Both the compliant smelter list under the Responsible Minerals Assurance Process (RMAP), and the Reporting Template can be found at <http://www.responsiblemineralsinitiative.org/>.

Seller must also comply with environmental regulations applicable to the Goods, including, but not limited to, the ozone depleting chemicals (ODC) provision of the U.S. Clean Air Act, Restriction of Hazardous Substances (RoHS), OSHA's hazard communication regulations set forth in 29 C.F.R. 1910.1200, the Toxic Substance Control Act (15 U.S.C.S. §2601, et. seq., Regulation (EC) No 1005/2009 on substances that deplete the ozone, Regulation (EC) 1272/2008 (European Union Registration, Evaluation, Authorization and Restriction of Chemical substances) on classification, labeling and packaging of substances and mixtures (CLP), each where applicable. Seller will electronically provide free of charge a safety data sheet for those chemicals purchased under the Agreement in accordance with this Section.

**26. SUPPLY CHAIN SECURITY.** Buyer as a multinational company participates in multiple supply chain security programs based on the World Customs Organization framework and administered by local customs authorities. Multiple Buyer entities are certified in programs such as Customs Trade Partnership Against Terrorism (C-TPAT), Secure Trade Program (STP), and Authorized Economic Operator (AEO) in various countries. It is expected that Sellers providing Goods shall therefore be actively involved in the governmental supply chain security programs, like CTPAT,

AEO, Air Security and/or similar governmental programs and/or shall have internal measures in place in order to ensure goods are produced, stored, prepared, packed, loaded and transported from safe business premises, protecting the supply chain against unauthorized intervention and/or access. Seller must immediately notify Buyer in all instances where an abnormal shipment is identified and at risk before receipt at Buyer's location so appropriate action can be taken.

**27. NOTICES.** All notices, consents, waivers, and other communications intended to have legal effect under the Agreement (each a "Notice") must be in writing and must be in English. Notices to Seller shall be sent to Seller represented on the P.O by email or to Seller's address on the P.O. Notices sent to Buyer shall be sent to the attention of "Legal Department" at Buyer's address on the P.O. with a copy to QUALCOMM Incorporated, 5775 Morehouse Drive, San Diego, California, 92121 and a copy by email to [QC.Notify@qualcomm.com](mailto:QC.Notify@qualcomm.com). Either Party may change its address for receipt of notices by giving notice of the new address to the other Party in accordance with this Section. Notices will be effective upon receipt or when delivery is refused.

**28. LANGUAGE.** The Agreement is entered into solely in the English language, and if for any reason any other language version is prepared by any Party, it shall be solely for convenience and shall have no force or effect and the English version shall govern and control in all respects. All proceedings related to the Agreement shall be conducted in the English language. If Seller or Buyer are located in the province of Quebec, Canada, the following applies: The Parties hereby confirm they have requested the Agreement and all related documents be prepared in English. Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.

**29. NON-WAIVER.** The failure or delay of either Party to enforce at any time any provision of the Agreement shall not constitute a waiver of such Party's right thereafter to enforce each and every provision of the Agreement.

**30. ENTIRE AGREEMENT; MODIFICATIONS; HEADINGS.** The Agreement states all the terms agreed between the Parties and supersedes all other agreements (oral or written) between the Parties relating to its subject matter (whether entered into prior to or after the date of the applicable P.O.). Except as expressly stated herein otherwise, any amendment or modification to the Agreement must be in writing, signed by both Parties, and expressly state that it is amending the Agreement. In entering into the Agreement, Seller has not relied on, and Seller will not have any right or remedy based on, any statement, representation, or warranty (whether made negligently or innocently), except those expressly stated in the Agreement. The section headings appearing in the Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect the Agreement.