

# NIGHTWING

**NIGHTWING**

**STANDARD TERMS AND CONDITIONS OF PURCHASE**

**SERVICES**

**APRIL 2024 VERSION**

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## 1. DEFINITIONS

- 1.1. “Affiliate” means, with respect to any entity, any other entity that directly or indirectly controls, is owned by, controlled by or under common ownership or control with such entity.
- 1.2. “Agreement” means any agreement that references these Terms and Conditions, including but not limited to, a long term or master agreement, or an Order.
- 1.3. “Buyer” means Nightwing or Affiliate thereof that issues an Order referencing the Agreement and/or these Terms and Conditions.
- 1.4. “Buyer Personal Information” means any information or data provided (directly or indirectly) or made accessible to Supplier or its agents, representatives, or subcontractors in connection with an Agreement or any Order that relate to any identified or identifiable natural person, or, to the extent of a conflict with applicable law, that is subject to any Data Privacy Laws.
- 1.5. “Data Privacy Laws” means applicable national, federal, state, and provincial laws relating to data privacy, the protection of personal information or data, and the cross-border transfer of personal information or data.
- 1.6. “Delivery Date” means the date of delivery for Services as specified in an Order.
- 1.7. “GTC Laws” mean the customs, export control, sanctions and U.S. anti-boycott laws, regulations, and orders applicable at the time of the import, export, re-export, transfer, disclosure, or provision of Technical Data or Services including, without limitation, the (i) Export Administration Regulations (“EAR”), 15 Code of Federal Regulations (C.F.R.) Parts 730-774; (ii) International Traffic in Arms Regulations (“ITAR”), 22 C.F.R. Parts 120-130; (iii) Foreign Assets Control Regulations, 31 C.F.R. Parts 500-598; (iv) Internal Revenue Code, 26 U.S.C. § 999; (v) regulations administered by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) found in 27 CFR Chapter II; (vi) Customs regulations, 19 United States Code (U.S.C.) and Title 19 C.F.R.; and (vii) applicable customs and export laws and regulations of other countries, except to the extent they are inconsistent with the U.S. laws.
- 1.8. “Intellectual Property” means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.
- 1.9. “Order” means a paper or electronic document, sent by Buyer to Supplier, to initiate the ordering of Services, such as a purchase order, a scheduling agreement, a statement of work or other authorization, including Changes, supplements, or modifications thereto. The phrase “in connection with the Order” includes performance of the Order, performance in anticipation of the Order, and preparation of a bid or proposal for the Order. Where the context permits, the term Order includes an Agreement.

- 1.10. "Party" or "Parties" means Buyer and/or Supplier, individually or collectively, as the context requires.
- 1.11. "Process" means with respect to Nightwing Information, to use, access, manipulate, modify, disclose, store (including backup), transmit, transfer, retain and dispose of such Nightwing Information.
- 1.12. "Nightwing" encompasses all Nightwing legal entities, including Nightwing Group, LLC, Nightwing Intelligence Solutions, LLC, Nightwing Technologies, LLC, and Nightwing Security, Inc.
- 1.13. "Nightwing Information" means any (i) Proprietary Information; (ii) Buyer Personal Information; and (iii) other data, materials, or information owned or managed by Buyer or Buyer's Affiliates or which Buyer or Buyer's Affiliates are obligated to manage and/or protect on behalf of others: (a) provided to Supplier by Buyer or Buyer's Affiliate; (b) that Supplier or Supplier Personnel collects, Processes, or generates for or on behalf of, or at the direction of Buyer or Buyer's Affiliate in providing the Services, including in each case metadata from Buyer's or Buyer's Affiliates' use of the Services and derivatives of any of the foregoing (e.g., aggregations of Nightwing Information, profiles of users of the Services, or analysis of the content of Buyer or Buyer's Affiliate data records or how Buyer or Buyer's Affiliate uses the Services).
- 1.14. "Nightwing Supplier Site" is available upon request, and such URL may change from time to time. Any such change shall not affect the applicability of the material referenced therein.
- 1.15. "Services" means services described in Orders.
- 1.16. "Supplier" means the legal entity providing Services or otherwise performing work pursuant to an Order or Agreement.
- 1.17. "Supplier Personnel" means Supplier's employees, agents, representatives, subcontractors, subcontractor employees, or any person used by Supplier in the performance under an Order or Agreement.
- 1.18. "Technical Data" means information that is necessary for the design, development, production, operation, modification, or maintenance of Services as set forth in applicable GTC Laws. Technical Data includes derived Technical Data that is of non-U.S. origin, but subject to U.S. jurisdiction, which may include, but is not limited to, drawings, specifications, or operation sheets containing U.S. origin data or that were developed using U.S. origin data.
- 1.19. "Terms and Conditions" means these Nightwing Standard Terms and Conditions of Purchase - Services.

## **2. ORDER ACCEPTANCE**

Supplier's (i) full or partial performance under, or indication thereof; or (ii) acknowledgement of the Order, is acceptance of the Order and all terms and conditions

contained in the Order and incorporated into the Order, including these Terms and Conditions. Any terms and conditions proposed in Supplier's offer, acceptance, acknowledgment, invoice, or other Supplier communication that add to, vary from, or conflict with the terms herein are hereby rejected.

### **3. DELIVERY**

- 3.1. Time is of the essence in Supplier's performance of an Order, and Supplier shall perform Services by the Delivery Date.
- 3.2. Buyer may from time-to-time adjust its delivery schedules, and unless otherwise agreed in writing, such changes in schedule shall not affect the prices of the Services ordered. Buyer may defer payment for any Services delivered in advance of the scheduled Delivery Date or in excess of the quantity specified for such items.

### **4. WARRANTY**

- 4.1. Supplier warrants to Buyer and Buyer's successors and assigns that all Services provided under or in connection with the Order: (i) have been, if applicable, and will be performed in a professional and workmanlike manner and in accordance with current, sound, and highest generally accepted industry standards and practices by appropriately licensed, trained, and supervised personnel who are experienced in the appropriate fields; and (ii) do, if applicable, and will conform to and be in compliance with all applicable specifications, performance requirements and other requirements contained in the Order (the "Warranty"). Supplier agrees that should any of the Services be defectively performed by Supplier, Supplier, at Buyer's option, will (i) re-perform or correct such defective Services at no additional charge, (ii) or refund amounts paid for such defective Services. In the event of failure by Supplier to correct defects in or replace nonconforming Services promptly, Buyer, after reasonable notice to Supplier, may make such correction or replace such Services and charge Supplier for the cost incurred thereby. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from the Services not conforming to the Warranty.
- 4.2. Supplier warrants to Buyer that all documentation and certifications by Supplier or Supplier's subcontractors or business partners related to the Services and Order, as applicable, are current, complete, truthful, and accurate and have been signed or stamped, as applicable, by individuals authorized and qualified to sign or stamp such documentation and certifications.
- 4.3. Except for permits and licenses required by statute or regulation to be obtained by Buyer, Supplier agrees to obtain and maintain, at its own expense, all permits, licenses, and other forms of documentation required in order for Supplier to comply with all existing national, state, provincial, or local laws, ordinances, and regulations, or of other governmental agencies, which may be applicable to Supplier's performance of work hereunder. Buyer reserves the right to review and approve all applications, permits, and licenses prior to the commencement of any work hereunder.

## **5. INDEMNIFICATION**

- 5.1. Supplier shall indemnify and hold harmless Buyer, Buyer's insurers, Affiliates and their employees, agents, officers, and directors from and against all suits, claims, judgments, awards, losses, damages, costs, or expenses (including attorneys' fees) relating to, arising out of, or caused by (i) Supplier's performance hereunder, (ii) any act or omission of Supplier, or (iii) any Services (a "Claim"). Supplier's indemnification obligation hereunder covers, without limitation, injuries, sickness, diseases (including occupational disease whenever occurring), or death of Supplier employees.
- 5.2. Supplier shall, upon written notice from Buyer, promptly assume and diligently conduct the entire defense of a Claim at its own expense. Insofar as Buyer's interests are affected, Buyer shall have the right, at its own expense and without releasing any obligation of Supplier, to participate and intervene in a Claim. Buyer shall have the right to reasonably reject counsel selected by Supplier. Supplier shall not enter into any settlement without Buyer's prior written consent, which shall not be unreasonably withheld.
- 5.3. Buyer may supersede Supplier in the defense of any Claim and assume and conduct the defense at Buyer's sole discretion. In such an event, Supplier shall be released from any obligation to pay for attorneys' fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Supplier's complete cooperation with Buyer in Buyer's defense of such Claim at Buyer's expense. Buyer shall not enter into any settlement without Supplier's prior written consent, which shall not be unreasonably withheld.

## **6. TAXES**

- 6.1. Unless otherwise stated in the Order, all payments or prices are exclusive of any transactional taxes, including sales and use, value-added, goods and services, or any other taxes, fees or duties ("Taxes") levied in regard to any of the transactions covered by the Order. Buyer is not responsible for any tax based on Supplier's income, payroll, or gross receipts. Any Taxes that Supplier is required to collect from Buyer shall be separately stated on the invoice and Supplier shall be responsible to remit any such Taxes to the relevant tax authority.
- 6.2. Solely to the extent Buyer is required by law to withhold an amount on account of taxes for which Supplier is responsible, Buyer shall deduct any such withholding from payment to Supplier and provide sufficient supporting documentation to Supplier.
- 6.3. Supplier shall, upon receipt from any tax authority of any levy, notice, assessment, or withholding of any Taxes for which Buyer may be obligated, notify Buyer in writing at its stipulated address, directed to: Director, Indirect Tax. The Parties shall cooperate in the resolution of disputes pertaining to any Taxes. If Buyer may directly contest any Taxes, then it may do so and, to the extent permitted by law, withhold payment during contest pendency. If Buyer is not so permitted, Supplier shall contest the Taxes as requested by the Buyer.

- 6.4. Except as otherwise set forth in an Order, Supplier shall deliver electronically by way of the Internet all software of any type, including manuals. Supplier shall separately itemize the prices of electronically delivered software, licenses, fees, and Services on invoices. Invoices shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via the Internet."

## **7. INSPECTION AND AUDIT RIGHTS**

- 7.1. Supplier (which, for the purposes of this Section, includes Supplier and its suppliers, subcontractors and business partners) shall at any time, and after reasonable notice by Buyer, grant to Buyer, Buyer's authorized representatives, and any competent regulatory authority (i) unrestricted access to (or if requested by Buyer, provide to Buyer copies of) Supplier's books, records, and documentation related to this Agreement, wherever such books and records may be located; and (ii) access to Supplier's premises, or such parts of its premises as may be engaged in the performance of the Order, in each case for Buyer to assess and verify Supplier's compliance with the requirements set forth in the Order.
- 7.2. Supplier shall maintain such complete books, records, and documentation for all Services, which shall be available to Buyer during performance of an Order and until the later of: (i) 4 years after final payment, (ii) final resolution of any dispute involving the Services performed hereunder, (iii) the latest time required by an Order, (iv) the latest time required by applicable laws and regulations, or (v) as otherwise directed by Buyer.

## **8. CHANGES**

- 8.1. Buyer may unilaterally make changes within the general scope of the Order, including changes in whole or part to: (i) any designs, specifications, and drawings, (ii) the statement of work, (iii) the method or manner of performance, and/or (iv) quality requirements (collectively "Change(s)"). Supplier shall perform any Changes ordered by Buyer. Any Order terms that incorporate flexibility for variations or modifications shall not be considered Changes within the meaning of this Section.
- 8.2. If any Changes cause an increase or decrease in the cost, time required for the performance, or otherwise affect any other provision of the Order, an equitable adjustment shall be made, and the Order shall be modified in writing accordingly. Supplier's claims for adjustment under this Section shall be deemed waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within 15 days from the date Supplier receives the Change order.

## **9. INSURANCE**

- 9.1. Without limiting Supplier's duty to hold harmless and indemnify hereunder, Supplier agrees to secure, maintain, and require its subcontractors to maintain, as a minimum the insurance noted in the Order or, if none are specified, the following minimum insurance coverages and limits:
- 9.1.1. Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion



of the work is performed and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence; and

- 9.1.2. Commercial General Liability Insurance and Umbrella Liability Insurance, including Premises Liability and Contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of \$5,000,000 for any one occurrence.
- 9.2. In addition to the minimum insurance requirements set forth above, Supplier also agrees to secure, maintain, and require its subcontractors to maintain, the additional insurance coverages and limits relevant to Supplier's performance of the Order, as specified in Attachment A hereto (the "Additional Insurance Coverage Requirements").
- 9.3. All such insurance shall be issued by companies authorized or permitted to do business under the laws of the State or jurisdiction in which all or part of the Services are to be performed and must have an AM Best financial rating of A- or better or an equivalent rating as produced by another rating agency acceptable to Buyer.
- 9.4. The insurance coverages described in these Terms and Conditions and in an Order, shall be in a form satisfactory to Buyer, and shall contain a provision prohibiting cancellation or material change except upon at least 30 days' prior notice to Buyer. All such insurance policies or self-insurance will be primary in the event of a loss arising out of Supplier's performance of work and shall provide that where there is more than one insured the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured and shall operate without right of contribution from any other insurance carried by Buyer. Certificates evidencing such insurance and endorsements naming Nightwing and Buyer as an additional insured under the Commercial General Liability and Umbrella Liability insurance or, in the case of All Risk Property Insurance, naming Nightwing and Buyer as a loss payee, shall be filed with Buyer upon execution of an Agreement or any Order and before commencement of any work hereunder, and within 30 days after any renewals or changes to such policies are issued. To the extent permitted by law, Supplier and its insurer(s) agree that subrogation rights against Nightwing and Buyer are hereby waived under the Commercial General Liability, Umbrella Liability, Auto Liability and Workers Compensation insurance; such waiver shall be reflected on the insurance policies. Supplier shall, if requested by Buyer, advise Buyer of the amount of available policy limits and the amounts of any self-insured retention. The certificate of insurance shall identify the contract number or work to be performed and shall acknowledge that such coverage applies to liabilities incurred by Supplier, its employees, invitees or agents under an Agreement or any Order and that such insurance shall not be invalidated by any act or neglect of Supplier whether or not such act or neglect is a breach or violation of any warranty, declaration, or condition of the policies.
- 9.5. Buyer's failure to monitor compliance or unsatisfactory compliance with the terms of these insurance requirements does not modify or waive Supplier's obligations hereunder.
- 9.6. Any self-insurance, self-retained layer, deductibles, and exclusions in coverage in the insurance policies described above or in the applicable Additional Insurance Coverage Requirements, will be assumed by, for the account of, and at the sole risk of Supplier. In no event will the Supplier's liability be limited to the extent of the minimum limits of insurance required herein.

## **10. TERMINATION FOR CONVENIENCE**

- 10.1. Buyer may, at any time, terminate all or part of an Order or Agreement for its convenience upon written notice to Supplier.
- 10.2. Upon termination, in accordance with Buyer's written direction, Supplier will immediately:  
(i) cease work and place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Order; (ii) prepare and submit to Buyer an itemization of all completed and partially completed Services; (iii) if requested by Buyer, deliver to Buyer any and all Services completed up to the date of termination at the pre-termination Order price; and (iv) if requested by Buyer, deliver any work-in-process.
- 10.3. In the event Buyer terminates an Order or Agreement for its convenience after performance has commenced, Buyer will compensate Supplier only for the actual and reasonable work-in-process costs incurred by Supplier on Services required to be performed within the reasonable average time required to perform the Services. Supplier shall use reasonable efforts to mitigate its own and Buyer's liability under this Section. In order to receive compensation, Supplier must submit its termination claim, by means of a form and process directed by Buyer, within 90 days from the effective date of the termination.
- 10.4. Buyer shall not be liable to Supplier for costs or damages other than as described above, and in no event for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the price allocated to the portion of the Order terminated.

## **11. TERMINATION FOR DEFAULT**

- 11.1. Buyer may, by written notice, terminate an Order or Agreement, or any portion thereof, for default without any liability or obligation whatsoever to Supplier for the portion terminated, in the following circumstances: (i) Supplier fails to perform any obligation hereunder (other than a delivery obligation) and fails to cure such obligation within 10 days (or as otherwise mutually agreed) (the "Cure Period"); (ii) Supplier fails to perform any delivery obligation hereunder; (iii) when Buyer has reasonable grounds for insecurity, and Supplier fails to provide adequate assurances of performance in writing within 10 days following Buyer's demand or, (iv) should Supplier (a) become insolvent, (b) become unable to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) have a receiver appointed for the whole or any substantial part of its assets, or (e) become in any way the subject of a bankruptcy petition (each in Subsection (iv), a "Supplier Insolvency"). Notwithstanding the foregoing, if a cure is not possible within such Cure Period, Supplier shall submit to Buyer, within a period of 10 days after receipt of notice from Buyer specifying such failure, a detailed plan to cure such failure (including related time period) acceptable to Buyer in its sole discretion, provided, however, that if such a cure plan is approved by Buyer, Supplier's subsequent failure to comply with such cure plan shall be deemed a default hereunder, and Buyer may terminate immediately without additional cure periods.

- 11.2. Buyer shall have no liability in relation to those Services terminated for Supplier's default. Supplier shall be liable to Buyer for any and all expenses, costs, and damages including increased re-procurement costs and other non-recurring costs, except in the circumstance of any failure or delay constituting a "Force Majeure Event" as set forth in the Section herein entitled "Force Majeure".
- 11.3. If the Order or Agreement is entirely or partially terminated under this Section other than pursuant to a Supplier Insolvency, Buyer, in addition to any other rights Buyer may have, may require Supplier, at no charge to Buyer, to: (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary information, utilized by Supplier in performing the Order; and (ii) provide to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license, with the right to grant sublicenses, to Supplier's information, data, know-how, and other Intellectual Property, including proprietary information, to the extent necessary, to enable Buyer to use and license and/or perform, or have performed, the Services.
- 11.4. In addition to and not in lieu of other rights to Intellectual Property otherwise set forth in the Order and these Terms and Conditions, Supplier hereby grants to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license ("Additional License"), with the right to grant sublicenses, to Supplier's information, data, know-how, tooling, test equipment and other Intellectual Property, including without limitation proprietary and manufacturing information to enable Buyer to use and/or perform, or have performed, the Services, subject to Buyer's agreement not to exercise such rights under this Additional License except in the event of a Supplier Insolvency, whether or not the Order is terminated. As part of such Additional License, Supplier shall upon Buyer's written request and at no charge to Buyer, promptly (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary information, utilized by Supplier in performing the Order, and (ii) provide technical and transition assistance in order to ensure Buyer's continuing requirements for Services including continuing to provide access to Nightwing Information stored by Supplier until delivered to Buyer or Buyer's designee.
- 11.5. If, after notice of termination under this Section, it is determined that Supplier was not in default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the Section herein entitled "Termination for Convenience". In such case, Supplier shall not be entitled to any remedy other than as provided for in the Section herein entitled "Termination for Convenience".

## **12. TRANSITION SERVICES**

In addition to and not in lieu of any other Buyer rights, at Buyer's request, upon termination or expiration of the Order or Agreement, or any portion thereof, Supplier will provide technical and transition assistance services ("Transition Services") pursuant to these Terms and Conditions to ensure an orderly and timely transfer to Buyer or a third party at no increased rate charges to Buyer. As part of such Transition Services, Supplier will use commercially reasonable efforts to perform assistance as reasonably requested by Buyer to: (i) facilitate an orderly transition, including assisting with preparing and planning for transition, timely execution of the transition plans and post-transition support and assistance; (ii) continue to provide the Services in accordance with any Order; and (iii) perform such other transition assistance required to minimize disruption in Buyer's operations. Supplier shall continue to provide access to Nightwing Information (as

defined herein) stored by Supplier until delivered to Buyer or Buyer's designee, and, in compliance with applicable laws, shall thereafter delete and/or destroy all copies thereof in accordance with these Terms and Conditions.

### **13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1. "Background Intellectual Property" shall mean all Intellectual Property other than Foreground Intellectual Property.
- 13.2. "Foreground Intellectual Property" shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the Order.
- 13.3. Each Party retains its existing rights in Background Intellectual Property.
- 13.4. Buyer shall own all Foreground Intellectual Property. Supplier shall disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Supplier shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Supplier hereby irrevocably assigns and promises to assign to Buyer all right, title and interest to all Foreground Intellectual Property. Supplier agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Supplier to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property shall be considered Buyer's Proprietary Information (defined hereinafter). Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of the Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire." For any works of authorship that do not come under such categories, Supplier, warranting that it has the right to do so, hereby assigns and promises to assign all right, title, and interest to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.
- 13.5. Supplier represents and warrants that Supplier has sufficient rights in all Services, Intellectual Property, and other items that Supplier uses or transfers to Buyer in connection with the Order to allow Supplier to lawfully comply with the Order.
- 13.6. Supplier hereby grants and promises to grant to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, perform and have performed Services; and (ii) to enable Buyer to practice the Foreground Intellectual Property.
- 13.7. Supplier hereby irrevocably waives and promises to waive all moral rights to the extent permissible by law, all rights of privacy and publicity, and the like, in all Services provided to Buyer and in all activities in connection with the Order.

- 13.8. Supplier represents and warrants that Supplier shall not provide, in the performance of the Order, any software, including without limitation source code, compiled code, embedded software, firmware, free software, open source software, freeware, general public license-governed software, or any electronic hardware, including without limitation free hardware designs, or open source hardware designs, in any form that is subject to any obligations or conditions that may provide a legal right to any third party to access such software, and/or electronic hardware, or that could otherwise impose any limitation or condition on Buyer's use, reproduction, modification, distribution, publication, or conveyance of such software or electronic hardware.
- 13.9. Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Supplier a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.

#### **14. INTELLECTUAL PROPERTY INDEMNIFICATION**

- 14.1. Supplier shall indemnify and hold harmless Buyer, Buyer's Affiliates, and subsidiaries, their agents, directors, officers, and employees, and each subsequent purchaser or user, from any losses, costs, damages, and liabilities, including, without limitation, any attorney's fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging infringement or violation of any Intellectual Property rights or license, related to the use or other exploitation of any Services performed in connection with the Order ("IP Claim").
- 14.2. Supplier shall not be liable for any IP Claim based on Supplier's compliance with any Specification created by Buyer, unless: (i) Supplier could have complied with Buyer's Specification using a solution that was non-infringing; (ii) the relevant portion of the Specification was provided by Supplier; or (iii) Supplier knew or should have known of an IP Claim or potential IP Claim and did not promptly notify Buyer in writing.
- 14.3. Supplier shall, upon written notice from Buyer of an IP Claim, promptly assume and diligently conduct the entire defense of an IP Claim at its own expense. Insofar as Buyer's interests are affected, Buyer shall have the right, at its own expense and without releasing any obligation of Supplier, to participate and intervene in an IP Claim. Buyer shall have the right to reasonably reject counsel selected by Supplier. Supplier shall not enter into any settlement without Buyer's prior written consent, which shall not be unreasonably withheld.
- 14.4. Buyer may supersede Supplier in the defense of any IP Claim and assume and conduct the defense at Buyer's sole discretion. In such an event, Supplier shall be released from any obligation to pay for attorneys' fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Supplier's complete cooperation with Buyer in Buyer's defense of such IP Claim at Buyer's expense. Buyer shall not enter into any settlement without Supplier's prior written consent, which shall not be unreasonably withheld.
- 14.5. If the use or other exploitation of any Services is enjoined by a court, if delivery is precluded by a government entity, or should Supplier refuse to provide any Services to avoid a potential IP Claim, Supplier shall avoid any disruption to Buyer and shall (i) secure

for Buyer the right to use such Services; (ii) modify or replace such Services with equivalent non-infringing Services; or (iii) provide such other solution acceptable to Buyer. Supplier shall reimburse Buyer for Buyer's costs incurred in obtaining all internal and external approvals, qualifications, certifications, and the like, necessary for using alternate non-infringing Services. Supplier shall refund to Buyer the purchase price of any such Services that Buyer is prohibited from using or otherwise exploiting.

## **15. PROPRIETARY INFORMATION**

- 15.1. "Proprietary Information" shall mean all information, knowledge, or data (including without limitation financial, business, and product strategy information; product specifications; product designs; procedures; studies; tests; and reports) in written, electronic, tangible, oral, visual, or other form, (i) disclosed by, or obtained from, Buyer, or (ii) conceived, created, acquired, or first reduced to practice in connection with an Order. If Buyer furnishes sample products, equipment, or other objects or material to Supplier, the items so received shall be used and the information obtained from said items shall be treated as if they were Proprietary Information disclosed in connection with an Order.
- 15.2. Unless Supplier has received Buyer's express written consent to the contrary, Supplier shall (i) use the Proprietary Information solely for the purposes of an Order, and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing equipment for entities other than Buyer; providing services to entities other than Buyer; or obtaining any government or third party approvals to do any of the foregoing); (ii) safeguard the Proprietary Information to prevent its disclosure to or use by third parties; (iii) not disclose the Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Proprietary Information.
- 15.3. Supplier may disclose the Proprietary Information to officers, directors, employees, contract workers, consultants, agents, affiliates, or subcontractors of Supplier who have a need to know such Proprietary Information for the purposes of performing the Order and who have executed a written agreement with Supplier obligating such entity or person to treat such information in a manner consistent with the terms of this Section.
- 15.4. No Order shall restrict Supplier from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of Supplier or a third party; (ii) is received by Supplier without restriction as to disclosure by Supplier from a third party having a right to disclose it; (iii) was known to Supplier on a non-confidential basis prior to the disclosure by Buyer; or (iv) was independently developed by employees of Supplier who did not have access to any of Buyer's Proprietary Information.
- 15.5. If Proprietary Information is required to be disclosed pursuant to judicial process, Supplier shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Proprietary Information shall not be deemed a breach of an Order provided that the obligations of this Section are fulfilled by Supplier.

- 15.6. Buyer shall have the right to audit all pertinent documentation of Supplier, and to make reasonable inspection of Supplier's premises, in order to verify compliance with this Section.
- 15.7. Obligations in this Section regarding Proprietary Information shall continue until such time as all Proprietary Information is publicly known and generally available through no improper act or omission of Supplier or any third party.
- 15.8. Unless required otherwise by law or an Order, Supplier shall promptly return, or otherwise dispose of Proprietary Information as Buyer may direct. Absent contrary instructions, Supplier shall destroy all Proprietary Information 1 year after termination or completion of the Order and provide written acknowledgement to Buyer of such destruction.
- 15.9. Notwithstanding any proprietary or confidential labels or markings, all information of Supplier disclosed to Buyer relating to an Order will be deemed non-confidential and the content of the Order may be disclosed by Buyer to any of Buyer's Affiliates, and/or to Buyer's subcontractors and potential subcontractors provided that Buyer's subcontractors have a need to access or know such information.
- 15.10. For Proprietary Information exchanged in connection with the Order, the terms of this Section shall supersede any provisions regarding the protection of proprietary information in any other agreements between the Parties.

## **16. SECURITY FOR Nightwing INFORMATION**

The following provisions are applicable whenever the Supplier will Process Nightwing Information.

- 16.1. In addition to capitalized terms used herein but defined elsewhere in these Terms and Conditions, an Agreement, and/or Order, the following term shall have the following meaning:

“Security Incident” means (i) any circumstance that involves, or which a Party reasonably believes may involve the actual or potential (a) accidental or unauthorized access, use, disclosure, modification, storage, destruction, or loss of Nightwing Information in Supplier's or Supplier Personnel's possession, custody, or control; or (b) interference with system operation in an information system or in any medium or format, including paper (hard) copy documents, that subjects Nightwing Information to risk of unauthorized access, use, disclosure, modification, storage, destruction, or loss; (ii) any other similar incident as may be so defined by any Data Privacy Law and by any laws and regulations (national, federal, state, and provincial) relating to the protection of Nightwing Information; or (iii) any breach of Supplier's representations or covenants in these Terms and Conditions, an Agreement and/or an Order regarding safeguarding of Nightwing Information.
- 16.2. Supplier agrees to (i) develop, implement, maintain, monitor, and update a reasonable, written security program incorporating administrative, technical, organizational, and physical safeguards, security measures, and security awareness, and (ii) install and implement security hardware and software, in each case, designed to (a) protect the

security, availability, and integrity of Supplier's network, systems and operations, the Services, and the Nightwing Information from unauthorized access and use; (b) guard against Security Incidents; and (c) demonstrate compliance to a generally accepted cybersecurity framework, such as ISO/IEC 27001 or NIST 800-53, to establish a resilient control environment or equivalent level of security protection appropriate for the information involved and the then current state of security solutions. As between the Parties, all Nightwing Information will at all times remain the sole property of Buyer, and Supplier will not have or obtain any rights therein.

16.3. Supplier further agrees to:

- 16.3.1. Only allow authorized third parties to Process Nightwing Information, in the performance of its obligations under an Agreement and/or Order or to comply with legal obligations. Supplier will not make any secondary or other use (e.g., for the purpose of data mining) of Nightwing Information except (i) as expressly authorized in writing by Buyer in connection with Buyer's purchase of Services hereunder, or (ii) as required by law.
- 16.3.2. Maintain and implement information security policies which address, at a minimum the domains or categories set forth in a generally accepted cybersecurity framework, such as ISO/IEC 27001 or NIST 800-53, and provide Buyer, upon request, with a SOC 2 (or equivalent) report demonstrating that such domains are addressed in a manner consistent with this Section. Upon Buyer's request, Supplier shall provide Buyer with an updated index or summary of its policies.
- 16.3.3. Implement measures to restrict anyone other than its authorized employees and Buyer and its agents from accessing the Nightwing Information, and use best efforts to segregate (physically or logically) all Nightwing Information into a separate database only accessible by Buyer and its agents and those employees and agents of Supplier who require access in order to perform the Services or to maintain the equipment and the program on which it runs, unless otherwise agreed by Buyer.
- 16.3.4. Unless otherwise specified by Buyer in writing or in an Order (i) Process Nightwing Information (including for back-up purposes) only on servers located in the United States or other countries specified in the Order by Buyer; and (ii) not transfer (and will not authorize Supplier Personnel to transfer) Nightwing Information to, or permit or enable Processing of Nightwing Information in, any country other than the United States or those specified in the Order by Buyer.
- 16.3.5. Implement reasonable measures to ensure backups of information are conducted, maintained, and tested in accordance with a generally accepted cybersecurity framework, such as CIS CSC 10; ISO/IEC 27001:2013 (A.12.3.1, A.17.1.2, A.17.1.3, and A.18.1.3); or NIST SP 800-53 Rev 4. (CP-4, CP-6 and CP-9). Supplier's disaster recovery plan (as may be otherwise required herein) shall incorporate such requirements. All such back-up services are part of the Services and are subject to these Terms and Conditions, including the privacy compliance and data security requirements.



- 16.3.6. Use, and will cause Supplier Personnel to use, industry standard encryption methods or other secure technologies in connection with the Processing of Nightwing Information, as authorized or permitted under the Agreement and/or Order. Notwithstanding any provision to the contrary herein, unencrypted Buyer Personal Information shall not be stored on any Supplier mobile computing devices (e.g., laptop computers, mobile phones, personal digital assistants, and the like). Supplier will align to a generally accepted cybersecurity framework, such as CIS CSC (13 and 14); ISO/IEC 27001:2013 (A.8.2.3, A.13.1.1, A.13.2.1, A.13.2.3, A.14.1.2, and A.14.3); or NIST SP 800-53 Rev. 4 (SC-8, SC-11 and SC-12), covering Data-at-rest and Data-in-transit protections.
- 16.3.7. Support integration with the Nightwing single sign-on (SSO) Federation solution for Nightwing user authentication or authorization using one of the following industry standard protocols SAML 2.0, WS-Fed, OAuth, OpenID Connect. The SSO Federation solution uses common unique identifiers defined by Nightwing, such as user employee numbers.
- 16.3.8. Provide Buyer, prior to any termination or expiration of the Agreement and/or Order, with a termination plan that addresses how Nightwing Information will be returned to Buyer, or destroyed as Buyer may direct, at the end of the Agreement and/or Order and how all Nightwing Information will be removed from Supplier's equipment and facilities; provided however, that Supplier may retain information stored in routine backups maintained in the ordinary course until such backups are overwritten. This plan should include supplying the data to Buyer in an industry recognized format.
- 16.3.9. Provide information to and reasonably cooperate with Buyer in response to any subpoena or investigation seeking Nightwing Information in the possession of Supplier. Supplier shall promptly notify Buyer upon the receipt of any request requiring that Nightwing Information be supplied to a third party.
- 16.3.10. Not provide Nightwing Information to any third party without the prior written approval of Buyer. A request for Buyer approval shall include agreement by Supplier and such third party that all of the requirements of this provision are applicable to their performance.
- 16.3.11. Provide prompt written notice to Buyer of a Security Incident, but no later than 72 hours after its discovery, by sending an email to your Nightwing Contact. Except as may be required by applicable law, Supplier agrees that it will not inform any third party (excluding law enforcement) of any Security Incident without first obtaining Buyer's prior written consent.
- 16.3.12. (i) Use commercially reasonable efforts to investigate, contain, and remediate the Security Incident; (ii) cooperate with Buyer in the investigation, containment, and remediation; and (iii) preserve all information and evidence related to the Security Incident (including, without limitation, by suspending routine overwriting or deletion of data or log files). Supplier shall provide Buyer with a report of the investigation that summarizes in reasonable detail the impact on Buyer, its agents, and employees affected by such Security Incident and the corrective action and remediation efforts taken or proposed to be taken by Supplier.

## **17. SUPPLIER PERSONNEL**

- 17.1. Supplier shall establish key Supplier Personnel for each project in the applicable Order. Supplier shall use commercially reasonable efforts to retain Supplier Personnel who are reasonably considered by Buyer to be critical to the performance of the Services under an Order. Upon termination or resignation of any key Supplier Personnel, Supplier shall provide notice to Buyer of such termination or resignation and promptly identify a suitable replacement with no disruption to performance hereunder.
- 17.2. Supplier will be responsible and liable for the acts and omissions of Supplier Personnel in connection with the provision of the Services as if such acts or omissions were Supplier's acts or omissions. Supplier will ensure that all Supplier Personnel are trained regarding, advised of, and comply with the provisions of any Order.
- 17.3. Supplier is responsible for any and all discipline of its Supplier Personnel. Buyer may require Supplier to replace any Supplier Personnel who are not in compliance or performing to Buyer's reasonable satisfaction, at any time.

## **18. ACCESS TO FACILITIES, SYSTEMS OR NIGHTWING INFORMATION**

These provisions apply whenever Supplier Personnel will be granted access to Buyer's (i) facilities and/or (ii) computer systems, databases, and/or Nightwing Information ("Access").

- 18.1. Supplier shall perform identity screenings, work authorization verifications, and background checks on any and all Supplier Personnel seeking Access in order to identify persons or entities ineligible for such Access. In furtherance of this obligation, Supplier shall, in advance of any request or grant of such Access:
  - 18.1.1. Verify the identity and requisite work authorization of Supplier Personnel requiring Access. Buyer or its Affiliates may further direct Supplier to use a designated service provider to verify authorization to work, U.S. person and/or citizenship status, at Supplier's sole cost and expense.
  - 18.1.2. Except to the extent not permissible by applicable law, perform a background screen on Supplier Personnel using a company approved by Buyer evidencing that (i) Supplier Personnel do not have any criminal convictions, as reported in the result of a background screen, or (ii) if they do have criminal convictions, Supplier Personnel were hired only after an individualized assessment was conducted in accordance with all applicable laws and taking into consideration the nature and severity of the underlying offenses, the nature and scope of the Access to be granted, the specific jobs at issue, and the length of time since the convictions.
  - 18.1.3. Supplier shall not seek Access for any Supplier Personnel ineligible for such Access based on the failure to meet the above criteria, and will notify Buyer

immediately, in writing, if any of Supplier's Personnel with Access is no longer eligible.

- 18.2. Supplier agrees that Buyer shall have sole discretion as to whether Supplier is granted Access and agrees that any Access privileges granted to Supplier will be defined by Buyer. Buyer reserves the right to impose additional requirements before granting Supplier Personnel Access, including, without limitation, with respect to export compliance, privacy, protection of Nightwing Information, security clearance, applicable training, drug screening, credit check, technology control plans, intellectual property agreements and compliance with other site-specific policies and procedures.
- 18.3. Supplier is responsible for ensuring that any Supplier Personnel requiring Access meet such Access requirements and that Access privileges are limited to approved Supplier Personnel. Supplier shall immediately notify Buyer if, at any time during the performance of the Order, (i) any information related to Supplier Personnel is altered or rendered inaccurate for any reason, or (ii) the need for Access ceases for any of such Supplier Personnel having Access. The need to Access shall automatically cease for any Supplier employees who are terminated, transferred, or otherwise no longer employed by Supplier.
- 18.4. Supplier or Supplier Personnel's refusal or failure to meet Buyer's Access requirements at any time during the performance of the Order may result in Buyer's refusal to grant Supplier Personnel Access.
- 18.5. If Supplier is an individual, Supplier acknowledges that he/she is not an employee of Buyer or Buyer Affiliate and is not entitled to the rights and benefits of a Buyer or Buyer Affiliate employee including, but not limited to, participation in pension, savings, health care, and other employee benefit plans and arrangements. If Supplier is a company or other entity, it acknowledges that Supplier Personnel are not Buyer or Buyer Affiliate employees and are not entitled to the rights and benefits of a Buyer or Buyer Affiliate employee including, but not limited to, participation in pension, savings, health care, and other employee benefit plans and arrangements. Buyer's refusal to grant Supplier Personnel Access does not constitute an employment action by Buyer.
- 18.6. Supplier acknowledges and agrees that any breach of this Section may result in a violation of law for which Buyer, Supplier, and/or Supplier Personnel may be liable. At Buyer's request, in advance of any request or grant of Access and at any other time, Supplier will provide Buyer (i) written certification, in a form provided by Buyer, that the Access requirements have been met, and/or (ii) documentation to verify the methodology, process, and results relied upon by Supplier to comply with the Access requirements. The current certification form is available upon request.

## **19. DATA PRIVACY**

### **19.1. Supplier shall:**

- 19.1.1. comply with all applicable Data Privacy Laws and promptly notify Buyer in writing if Supplier believes that collecting or Processing Buyer Personal Information pursuant to this Section infringes Data Privacy Laws;

- 19.1.2. only collect, access, use, or share Buyer Personal Information, or transfer Buyer Personal Information to authorized third parties, in performance of its obligations under the Agreement and/or Order(s) issued thereunder, in conformance with Buyer's instructions, or to comply with legal obligations. Supplier will not make any secondary or other use (e.g., for the purpose of data mining) of Buyer Personal Information except (i) as expressly authorized in writing by Buyer, or (ii) as required by law;
- 19.1.3. not allow any third party to Process Buyer Personal Information except to provide services under the Agreement and/or Order or as required by law. If Supplier does allow a third party to Process Buyer Personal Information, Supplier shall:
  - 19.1.3.1. be responsible for the acts and omissions of any subcontractor or other such third party, that processes (within the meaning of the applicable Data Privacy Laws) Buyer Personal Information on Supplier's behalf in the same manner and to the same extent as it is responsible for its own acts and omissions with respect to such Buyer Personal Information;
  - 19.1.3.2. ensure such third party is bound by a written agreement that contains the same or equivalent obligations and protections as those set forth in this Section; and
  - 19.1.3.3. only share, transfer, disclose, or provide access to a third party to the extent that such conduct is compliant with applicable Data Privacy Laws;
- 19.1.4. take commercially reasonable steps to ensure: (i) the reliability of Supplier Personnel who have access to the Buyer Personal Information; (ii) that access to Buyer Personal Information by Supplier Personnel is on a need-to-know basis; and (iii) that Supplier Personnel are obligated to maintain the confidentiality of Buyer Personal Information, such as through a confidentiality agreement or by application of relevant law or regulation;
- 19.1.5. provide such information, assistance, and cooperation as Buyer may reasonably require from time to time to establish Supplier's compliance with Data Privacy Laws;
- 19.1.6. upon Buyer's request, permit Buyer to hire third party external auditors to verify Supplier and third party compliance with their obligations under the Agreement and/or Order. Additionally, upon request, Supplier shall provide Buyer with any audit reports issued under ISO 27001, ISO 29100, SSAE 16 (or SAS 70), SSAE 18, SOC 2, OR ISAE 3402 that covers Buyer Personal Information;
- 19.1.7. maintain reasonable and appropriate technical, physical, and administrative safeguards intended to protect Buyer Personal Information. These measures will include reasonable restrictions upon physical access to any locations containing Buyer Personal Information, such as the storage of such records in locked facilities, storage areas, or containers. Supplier must periodically re-evaluate the measures adopted to ensure that they remain reasonable and appropriate;

- 19.1.8. provide Buyer with commercially reasonable assistance in: (i) deleting Buyer Personal Information in response to a request by an individual or legal representative; (ii) where relevant, enabling individuals to opt-out; and (iii) when Supplier is providing an electronic tool or software, distributing a privacy notice;
  - 19.1.9. provide a privacy notice to individuals with whom the Supplier has direct contact unless Supplier and Buyer agree in writing that the privacy notice obligation is solely Buyer's responsibility;
  - 19.1.10. pursuant to Buyer's written instructions, provide Buyer with the ability to purge Buyer Personal Information older than 1 year or such other time period agreed in writing upon in writing by the Parties, unless otherwise required to retain the data by applicable law; and
  - 19.1.11. immediately advise Buyer in writing if it receives or learns of any: (i) complaint or allegation indicating a violation of Data Privacy Laws regarding Buyer Personal Information; (ii) request from one or more individuals seeking to access, correct, or delete Buyer Personal Information; (iii) inquiry or complaint from one or more individuals relating to the collection or Processing of Buyer Personal Information; and (iv) regulatory request for, subpoena, search warrant, or other legal, regulatory, administrative, or governmental process seeking Buyer Personal Information (collectively, "Data Privacy Matters"). If Supplier learns of any Data Privacy Matters, Supplier shall provide assistance to Buyer, fully cooperate with Buyer in investigating the matter, including but not limited to, providing the relevant information to Buyer, preparing a response, implementing a remedy, and/or cooperating in the conduct of and defending against any claim, court or regulatory proceedings. Buyer shall be responsible for communicating with individuals regarding their Buyer Personal Information in connection with such Data Privacy Matters unless Buyer authorizes Supplier to do so on its behalf. Supplier shall use commercially and legally reasonable efforts to limit the nature and scope of the required disclosure to the minimum amount of Buyer Personal Information required to comply with applicable law. Unless prevented by applicable law, Supplier shall provide Buyer with advance written notice of any such Data Privacy Matters sufficient to allow Buyer to contest legal, regulatory, administrative, or other governmental processes.
- 19.2. Supplier shall provide written notice to Buyer as soon as possible and, whenever possible, within 48 hours of any actual or reasonably suspected incident of accidental or unlawful destruction or accidental loss, alteration, unauthorized or accidental disclosure of or access to Buyer Personal Information of which it becomes aware (a "Security Breach"). Supplier shall send such notice via encrypted email to your Nightwing Contact containing details of the Security Breach using industry standard encryption methods. If Supplier is unable to provide notice within 48 hours, Supplier shall provide Buyer with an explanation for the delay that Buyer will be entitled to share with regulators. Supplier shall take all reasonable measures to contain and remedy the Security Breach, wherever possible; provide Buyer with information regarding the investigation and remediation of the Security Breach, unless restricted by law; not make any notification, announcement or publish or otherwise authorize any broadcast of any notice or information about a Security Breach (a "Security Breach Notice") without the prior written consent of and prior written approval by Buyer of the content, media and timing of the Security Breach Notice (if any), unless

required to do so by law or court order; and even where required to do so by law or court order, make all reasonable efforts to coordinate with Buyer prior to providing any Security Breach Notice. Where the Security Breach (i) involves data on the Supplier's networks or systems or (ii) is the fault of the Supplier, then Supplier will, at the request of Buyer, pay for the costs of remediation, notification (including, where reasonably necessary, a call center), and, if the Security Breach involves data elements that could lead to identity theft, provide the affected individuals with credit monitoring or other commercially-reasonable identity theft mitigation service for one year or such longer period as required by law or a government regulator.

- 19.3. In the event Supplier shall provide personal information to Buyer that is protected by Data Privacy Laws, Supplier shall ensure that such personal information is provided consistent with applicable law, including, where required, obtaining consent or providing notice.
- 19.4. All Buyer Personal Information acquired by Supplier shall be returned or destroyed (at Buyer's option), unless and to the extent that: (i) such Buyer Personal Information is required by Supplier to discharge its obligations hereunder or under applicable law; or (ii) return or destruction is prohibited by applicable law. Absent contrary instructions and except as prohibited by law, Supplier shall immediately destroy all Buyer Personal Information after termination or completion of the Order after waiting 30 days to allow Buyer to request return of Buyer Personal Information.
- 19.5. If the Agreement and/or Order involves collection or Processing of Buyer Personal Information from individuals in California, then the Parties agree that Supplier is a "Service Provider", as such term is defined in the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100 et. seq. and implementing regulations (the "CCPA"), and will neither sell, nor exchange for anything of value, Buyer Personal Information.
- 19.6. If the Agreement and/or Order involves the provision of Services where either Party will transfer Buyer Personal Information from any country in the European Economic Area, the United Kingdom, or Switzerland (collectively, "EEA/UK/CH") to outside the EEA/UK/CH that do not have an adequacy decision, then the Buyer and Supplier agree that the Standard Contractual Clauses adopted by the European Commission in Decision 2021/914/EU (hereinafter the "SCCs") are incorporated by reference as if set forth herein. In addition, transfers from the UK to locations outside the UK that do not have an adequacy decision shall also be governed by the Mandatory Clauses of the Approved Addendum, being the template Addendum B.1.0 issued by the Information Commissioner's Office and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18 of those Mandatory Clauses, which are incorporated by reference as if set forth herein (hereinafter "UK Mandatory Clauses"). In furtherance of the foregoing, Buyer and Supplier agree that:
  - 19.6.1. The Supplier will act as a processor, and Module Two applies.
  - 19.6.2. For Clause 9(a), Option 2 applies, and notice shall be provided no less than 30 days in advance. However, where Supplier is using a sub-processor that goes out of business or there is some other emergency situation, Supplier shall: (i) provide as much notice as possible; (ii) take commercially reasonable efforts to ensure that the sub-processor is not a competitor of Buyer; and (iii) thereafter provide Buyer with 30 days to object and, if Buyer objects, identify an alternative

sub-processor. Buyer agrees to make any objections in good faith. Supplier may provide notice by posting a list on a website that is communicated to Buyer in writing, by sending a written list to Buyer, or as otherwise agreed to in writing by the Parties.

- 19.6.3. For Clause 17, Option 2 applies and the data exporter at issue shall be the relevant one. Except for transfers from the UK, which shall be governed by the law of England and Wales, the law of Belgium shall be the governing law if the applicable EU Member State does not allow for third-party beneficiary rights.
- 19.6.4. For Clause 18, disputes shall be resolved in the courts of the EU Member State for the relevant data exporter. If there are multiple relevant data exporters, the Parties agree to jurisdiction and forum of the courts of Belgium, except for disputes arising solely out of a transfer from the UK, for which the Parties agree to the jurisdiction and forum of the courts of England and Wales.
- 19.6.5. The security terms contained in the Sections of the Agreement entitled “Security for Nightwing Information”, “Supplier Personnel”, and “Access to Facilities, Systems, or Nightwing Information” shall constitute Annex II.
- 19.6.6. Annex I is attached hereto as Attachment B.
- 19.6.7. If there is any conflict between the SCCs (as modified by the UK Mandatory Clauses where applicable) and the Agreement or any statement of work or Order thereunder, the SCCs shall prevail.

## **20. COMPLIANCE WITH LAWS**

- 20.1. Supplier warrants that it shall comply with all national, federal, state, provincial, and local laws, ordinances, rules, and regulations applicable to the performance of the Order, except to the extent inconsistent with U.S. anti-boycott laws, including (i) the provision of Services, and (ii) the configuration or content of Services for the use intended by Buyer (collectively, “Laws”). Supplier agrees to cooperate with and support Buyer’s efforts to comply with all Laws, and utilize the tools and systems provided by Buyer to ensure such compliance.
- 20.2. Supplier shall, at the earliest practicable time, notify Buyer in writing if Supplier is subject to any federal, state, or foreign government criminal proceeding alleging fraud or corrupt practices, once initiated by the filing of a formal charging document in a court of law; and further notify Buyer of any subsequent felony convictions or deferred prosecution agreement(s) related to the foregoing.
- 20.3. Supplier agrees to comply with Buyer’s environmental, health and safety standards, requirements, and restrictions during Supplier’s performance hereunder and when at Buyer’s jobsites, including, without limitation, adhering to Buyer’s safety instructions, notifying Buyer prior to the commencement of work, and providing Buyer with any test reports or results related to Services, as applicable.

- 20.4. Supplier shall provide to Buyer, upon Buyer's reasonable request, the identity of its subcontractors and/or the location of the provision of Services, as applicable, to confirm compliance with legal and regulatory requirements, the Agreement and/or Order.

## **21. PROHIBITED TELECOMMUNICATIONS EQUIPMENT & SERVICES**

- 21.1. Supplier recognizes that Nightwing, Buyer, and their respective Affiliates are subject to Section 889 of the National Defense Authorization Act for Fiscal Year 2019 ("Section 889"), which prohibits prime contractors to the U.S. government from using (regardless of end use) "covered telecommunications equipment or services", as such term is defined in Section 889 ("Prohibited Telecom").
- 21.2. Supplier represents that it shall not furnish to Buyer any Services that use or contain Prohibited Telecom.
- 21.3. Supplier commits to (i) have in place processes to determine whether it furnishes, or has furnished, to Buyer Services that use or contain Prohibited Telecom; (ii) notify Buyer, within 1 business day of Supplier's identification, of the use or existence of Prohibited Telecom in the Services it furnishes, or has furnished, to Buyer (a "Prohibited Telecom Use Notice"), which shall include a detailed description of such Services; and (iii) within 10 business days of Supplier's submission of a Prohibited Telecom Use Notice, provide Buyer with such further available information as Buyer may request about such Supplier's use of Prohibited Telecom in the Services it furnishes, or has furnished, to Buyer, and the efforts Supplier has taken, and will take, to prevent the use of Prohibited Telecom in the Services it furnishes to Buyer.
- 21.4. Supplier shall require its subcontractors to satisfy the requirements of this Section.

## **22. COMPLIANCE COVENANTS**

- 22.1. Supplier has not offered or given and shall not offer or give anything of value (in the form of entertainment, gifts, gratuities, or otherwise) to Buyer's employees or representatives for the purpose of obtaining any Order or favorable treatment under any Order. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Supplier.
- 22.2. Supplier represents and warrants that it has not made, nor will it make, or offer to make any political contributions, or pay, or offer to pay any fees or commissions in connection with any Order.
- 22.3. If Supplier engages directly or indirectly in representing, lobbying, marketing, or advocating on behalf of Buyer in connection with U.S. or foreign (non-U.S.) Government contract or procurement activities, Supplier shall conduct affirmative screening of Supplier Personnel proposed for engagement in such activities to ensure that any such activities will not result in a violation of U.S. or foreign (non-U.S.) post-government employment (e.g., "Revolving Door") laws and regulations.



- 22.4. Supplier shall ensure that Supplier Personnel assigned to perform Buyer work avoid conflicts of interest (“COIs”) and any actual or potential COIs are properly identified and mitigated by Supplier.

## **23. SUPPLIER CODE OF CONDUCT**

- 23.1. Supplier shall adopt and comply with a code of conduct or policy statement regarding business conduct, ethics and compliance that satisfies, at a minimum, the principles and expectations set forth in the Nightwing Corporation Supplier Code of Conduct available upon request (“Supplier Code of Conduct”). Supplier acknowledges and agrees that failure to satisfy the requirements of this Section shall constitute a material breach of the Order.
- 23.2. Supplier shall have management systems, tools and processes in place that (i) ensure compliance with applicable laws and regulations and the requirements set forth in the Supplier Code of Conduct; (ii) promote an awareness of and commitment to ethical business practices, including, without limitation, the expectations set forth in the Supplier Code of Conduct; (iii) facilitate the timely discovery, investigation (including cooperation with any Buyer initiated investigation involving Supplier), disclosure (to Buyer and others as appropriate), and implementation of corrective actions for violations of law, regulations, an Agreement, Order, or the expectations set forth in the Supplier Code of Conduct; and (iv) provide training to its employees on compliance requirements, including the expectations set forth in the Supplier Code of Conduct.

## **24. GLOBAL TRADE COMPLIANCE**

- 24.1. Compliance with GTC Laws. Supplier hereby certifies that, in connection with the performance of the Agreement and/or Order, it will comply with all applicable GTC Laws. Supplier agrees that no hardware, software, Technical Data, and/or services (collectively referred to as “items”) controlled under any U.S. or other applicable non-U.S. export and import laws and regulations and provided by Buyer in connection with the Order shall be provided to any person or entity, including non-U.S. person employees, subsidiaries, or affiliates, unless the transfer is expressly permitted by a U.S. or non-U.S. Government license or other authorization, or is otherwise in accordance with applicable laws and regulations.
- 24.2. Denied Party Screening. Supplier shall not engage any Supplier Personnel who is ineligible to perform hereunder because of any embargo, sanction, debarment, or designation as a Specially Designated National or a denied party, as maintained by the U.S. government or any applicable non-U.S. government or union of states (e.g., European Union). Supplier shall perform denied party screenings on Supplier Personnel and promptly notify Buyer in writing if any such Supplier Personnel has been identified as ineligible because of the reasons listed above.
- 24.3. Export Licensing. If any Order requires either Party to obtain government-approved export authorization to facilitate activities and obligations set forth under such Order, the Parties shall mutually exercise reasonable efforts to support the preparation and management of the authorization in full compliance with applicable GTC Laws. Each Party, as applicable,

shall be individually responsible for obtaining required documentation or other information from any third party required by such Party to perform its obligations under an Order. Upon request, and when permissible under applicable laws and regulations, the Parties shall exchange copies, redacted as appropriate, of all government export authorizations related to the Technical Data or Services, and all provisions, conditions, limitations, or information relating to the authorization. Each Party shall ensure all required authorizations remain valid for the duration of the Order. Each Party, as applicable, shall be individually responsible for compliance with all government export authorizations, including without limitation ensuring that all export-related documentation is properly completed and timely filed.

- 24.4. Export and Import Classification; Registration. Where known, or where Supplier is the design authority for the Technical Data or Services that are subject to the Agreement and/or Order, Supplier shall provide Buyer with (i) the applicable Harmonized Tariff Schedule Number; (ii) the applicable U.S. export jurisdiction and classification; and (iii) any analogous classification under any other applicable law. Supplier shall timely notify Buyer in writing of any changes to the export or import classification on the Technical Data or Services subject to the Order. If, under any Order, Supplier will engage in any manufacturing or exporting of items on the U.S. Munitions List or engage in the provision of defense services (as defined in 22 C.F.R. § 120.9), Supplier shall maintain registration with the Directorate of Defense Trade Controls (“DDTC”) as may be required by Part 122 of the ITAR. Upon request, Supplier shall provide Buyer annually with its DDTC registration expiration date.
- 24.5. GTC Law Compliance – Subcontracting. If Buyer authorizes Supplier to engage in subcontracting for procurements related to the Order, Supplier shall incorporate into its subcontracts the provisions of this Section requiring compliance with U.S. and other applicable non-U.S. export and import control laws and regulations.
- 24.6. Certifications. If the Order forms the whole or a part of a sale by Buyer of defense articles or defense services being sold in support of a Foreign Military Sale or commercially to or for the use of the armed forces of a foreign country or international organization, Supplier shall upon acceptance of the Order, or within 10 days of being requested by Buyer to do so, with respect to all Orders received by the Supplier’s legal entity to date in relation to the Buyer Customer Contract or Solicitation Number related to the Order, provide information, in the format specified by Buyer, in furtherance of the requirements stipulated in Part 130 of the ITAR, 22 CFR §§130.9 and 130.10.
- 24.7. Brokering. Supplier acknowledges that it shall not engage in “brokering activity” as that term is defined in 22 C.F.R. § 129.2 in conjunction with activity authorized pursuant to the Order.
- 24.8. Technical Data Transfer. Supplier shall not export, re-export, transfer, disclose, or otherwise provide physical or electronic access to Technical Data to any person not authorized to receive Technical Data under existing GTC Laws and/or government export authorization (including unauthorized third-party information technology service providers), or modify or divert such Technical Data to any military application or other end-use prohibited by applicable GTC Laws. Supplier shall develop and implement information technology security procedures which ensure that Technical Data is accessible only by authorized persons.

- 24.9. Destruction of Technical Data. Upon completion of performance under an Order, and expiration of recordkeeping obligations under the Agreement and/or Order, Supplier and subcontractors shall destroy or return to Buyer all Technical Data as instructed by Buyer. Destruction of the foregoing items in physical and electronic form must render such items useless beyond repair, rehabilitation, restoration, and recognition of unique characteristics or identifiers, Supplier must provide a written certification of the method of destruction and its completion to Buyer.
- 24.10. Technology Control Plan. When the terms of the Agreement and/or Order require access to or possession of Technical Data controlled under the ITAR or at an Anti-Terrorism level or higher under the EAR, or the equivalent level of controls under applicable and governing non-U.S. GTC Laws, Supplier shall create and follow a Technology Control Plan ("TCP") that, at a minimum, incorporates the following elements: (i) facility security; (ii) global trade compliance training program; (iii) information technology security; (iv) record keeping requirements; (v) denied party screening as defined above in this Section; and (vi) personnel oversight (including oversight of Supplier Personnel who are non-U.S. persons and/or dual/third country nationals, and visitor management). Supplier shall make a signed copy of the TCP available to Buyer within 30 days of request.
- 24.11. Required Notices. Supplier shall promptly notify Buyer if Supplier becomes aware of any failure by Supplier or its subcontractors to comply with this Section and shall cooperate fully with Buyer in any investigation of such failure to comply. Supplier shall also promptly notify Buyer of any name change, change in DDTC registration status, address change, or change in ownership or control of Supplier. If the change in ownership or control of Supplier involves a country designated under ITAR Section 126.1 or EAR Part 740, Supp. No. 1, Country Group D:5, E:1, or E:2, Supplier shall notify Buyer at least 60 days prior to the change.

## **25. ASSIGNMENT AND CHANGE IN CONTROL**

- 25.1. Neither the Agreement, nor Order, nor any interest therein shall be assignable by or otherwise transferred by either Party in whole or in part to a third party, by way of contract, operation of law, change in control of such Party or otherwise unless such assignment or transfer is mutually agreed to in writing by the Parties hereto; provided, however, that Buyer may assign the Agreement and/or Order to any Buyer Affiliate and to any corporation with which Buyer may merge or consolidate or to which Buyer may assign substantially all of its assets or that portion of its business to which the Agreement and/or Order pertains or to any third party provider of "integrated services" that will purchase the Services for Buyer's benefit without obtaining the agreement of Supplier.
- 25.2. Notwithstanding the foregoing, claims for money due or to become due to Supplier from Buyer arising out of the Agreement and/or Order may not be assigned, unless such assignment is made to one assignee only and covers all amounts payable under the Agreement and/or Order and not already paid. Buyer shall be under no obligation to pay such assignee unless and until Buyer has received written notice of the assignment from Supplier, a certified copy of the instrument of assignment, and suitable documentary evidence of Supplier's authority to so assign. However, any payments made to a third party subsequent to Buyer's receipt of notice that any claims for money due or to become due hereunder have been assigned or should be paid thereto shall fulfill Buyer's requirements to make any such payments hereunder.

## **26. SUBCONTRACTING**

- 26.1. Supplier may not assign, delegate, or subcontract all or substantially all of its rights, responsibilities or obligations due or to become due under the Order without the prior written consent of the Buyer.
- 26.2. Any such assignment, delegation or subcontracting by Supplier of its rights, responsibilities, or obligations hereunder, without Buyer's prior written consent, shall be wholly void, invalid, and totally ineffective for all purposes. In the case of any approved assignment, delegation, or subcontracting of any of its rights, responsibilities, or obligations hereunder, Supplier shall perform all supply management activities that are necessary for the on-time delivery of Services conforming to the requirements set forth herein. Supplier shall be solely and fully responsible for monitoring said suppliers under all provisions of the applicable subcontracts, and for ensuring that each of its suppliers complies with the requirements set forth herein. Supplier shall remain fully liable to Buyer for, and shall be Buyer's sole point of contact for, all aspects of proper performance of the Order, regardless of (i) any assignment, delegation, or subcontracting; (ii) Buyer approval of the subcontractors; or (iii) Supplier's failure to ensure the relevant subcontracts contain provisions that comply in substance with the requirements set forth herein.

## **27. FORCE MAJEURE**

- 27.1. Supplier shall be liable for any failure or delay in performance in connection with an Order, except where such failure or delay results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of its control and without its fault or negligence, provided Supplier gives Buyer, within 3 days of Supplier's learning of such cause, written notice to the effect that a failure or delay by Supplier will occur or has occurred (a "Force Majeure Event"). If a failure or delay in performance is caused by an event affecting any of Supplier's suppliers, such failure or delay shall not be excusable unless such event is a Force Majeure Event as defined above and the good or service to be provided by such supplier is not obtainable by Supplier from other sources in time for timely delivery of the Services to Buyer. Buyer may cancel any Order without liability to Supplier for its purchase of any Services affected by Supplier's failure or delay in performance.
- 27.2. Buyer shall be excused for any failure or delay in performance due to any cause beyond its reasonable control.

## **28. DUTY TO PROCEED**

Supplier shall proceed diligently with the performance of the Order. Except as expressly authorized in writing by Buyer, no failure of Supplier and Buyer to reach any agreement regarding a dispute related to any Agreement or Order shall excuse Supplier from proceeding.

## **29. ASSURANCE OF PERFORMANCE**

At any time, if Buyer, in its reasonable discretion, believes that Supplier may not have the ability, for any reason, to continue performing any Agreement or Order, including, without limitation, any material change to Supplier's financial condition, balance sheet, or its credit or similar rating, Buyer may request, and Supplier shall provide, written adequate assurances from Supplier of its ability, desire and intent to continue performing. Further, Supplier will immediately notify Buyer in the event Supplier believes it may be unable to pay its debts when due or there is a material change in Supplier's financial position, balance sheet or its credit or similar rating. In the event either or both Parties have concern about Supplier's ability to continue its performance, the Parties will coordinate to ensure that Buyer receives Services without interruption in accordance with the Order. In particular, Supplier will assist and compensate Buyer for the costs associated with transitioning to another supplier, Buyer assuming the performance of the Services itself, and taking other reasonable steps to ensure the Services are performed without interruption according to Buyer's Specifications.

### **30. SETOFF**

Buyer and Buyer's Affiliates may withhold, deduct and/or set off all money due, or which may become due to Supplier arising out of Supplier's performance under any Order or any other transaction with Buyer or Buyer's Affiliates.

### **31. GOVERNING LAW AND FORUM**

- 31.1. The Agreement and any Order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State of New York, USA without regard to conflicts of law principles, except that the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980, as amended to date, will not apply. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of an Order in the appropriate court in Connecticut, and Supplier hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process. If Supplier or any of its property is entitled to immunity from legal action on the grounds of sovereignty or otherwise, Supplier hereby waives and agrees not to plead such immunity in any legal action arising out of the Agreement and/or Order.
- 31.2. Any action or claim by Supplier with respect hereto shall also be brought in Connecticut, if Buyer so elects. Accordingly, Supplier shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within 30 days from receipt thereof, makes its election as aforesaid. If Buyer and Supplier mutually agree to participate in alternative dispute resolution, Supplier agrees that all alternative dispute resolution proceedings shall take place in Connecticut.

### **32. DISPUTE RESOLUTION**

- 32.1. Except as provided below, prior to a Party initiating a formal legal proceeding relating to a dispute under the Order, such Party must provide the other with a written request for dispute resolution. Each Party shall, within 5 calendar days after such written request is

received, designate a representative who will be responsible for negotiating, in good faith, a resolution of the dispute. Should the representatives fail to reach agreement within 30 calendar days of receipt of the request, executives of each Party shall attempt to resolve the issue within 60 calendar days of receipt of such written request.

- 32.2. Either Party may (i) resort to a formal legal proceeding for equitable relief at any time and (ii) institute litigation in order to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors.
- 32.3. The dispute resolution procedures set forth herein do not supersede, delay or otherwise affect any rights of termination that are expressly set forth herein.

### **33. SUPPLIER DIVERSITY**

For work performed in the United States under Orders placed by U.S. Buyers, Supplier shall exercise reasonable commercial efforts to use Diverse Business Enterprises (“DBEs”), as such term is more particularly defined at Supplier’s request. The overall target (i.e., dollar value, percentage of purchases, etc.) for purchases made from DBEs may be set forth in the Order.

### **34. NEWS RELEASES, PUBLICITY AND OTHER DISCLOSURES**

Supplier shall not make or authorize any news release, advertisement, or other disclosure that relates to the Agreement or Order or the relationship between Buyer and Supplier, deny or confirm the existence of the Agreement or Order, or make use of Buyer’s name or logo without the prior written consent of Buyer.

### **35. DELAYS**

Whenever there is an actual delay or threat to delay the timely performance of the Order, Supplier shall immediately notify Buyer in writing of the probable length of any anticipated delay and take, and pay for, all activity to mitigate the potential impact of any such delay.

### **36. REMEDIES**

Supplier shall be liable for any costs, expenses and damages incurred by Buyer related to or arising from Supplier’s acts or omissions under the Agreement and/or Order. Except as expressly provided herein, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity.

### **37. PARTIAL INVALIDITY**

If in any instance any provision of the Agreement or Order shall be determined to be invalid or unenforceable under any applicable law by any competent court or arbitration tribunal, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms unless the purposes of the Agreement or Order can no longer be preserved by doing so. The provision declared invalid or unenforceable shall be deemed to be restated to reflect as

nearly as possible the meaning and essence of such provision without rendering such amended provision invalid or unenforceable, to the extent permissible by applicable law.

### **38. SURVIVAL**

All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of the Agreement or Order, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of Intellectual Property and Proprietary Information), and product support obligations shall survive the expiration or termination of the Agreement or any Order.

### **39. NO WAIVER**

No failure of any Party to exercise any right under, or to require compliance with, the Agreement or Order, or knowledge of past performance at variance with the Agreement or Order, shall constitute a waiver by such Party of its rights hereunder. No concession, latitude, or waiver allowed by either Party to the other at any time shall be deemed a concession, latitude, or waiver with respect to any rights unless and only to the extent expressly stated in writing, nor shall it prevent such Party from enforcing any rights in the future under similar circumstances.

### **40. RELATIONSHIP OF THE PARTIES**

The relationship between Supplier and Buyer will be that of independent contractors and not that of principal and agent, nor that of legal partners. Neither Party will represent itself as the agent or legal partner of the other Party nor perform any action that might result in other persons believing that it has any authority to bind or enter into commitments on behalf of the other.

### **41. CAPTIONS**

The captions, headings, section numbers, and table of contents appearing in the Agreement and Order have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of the Agreement or Order, or any provision thereof.

### **42. INTERPRETATION**

These Terms and Conditions and any Agreement and/or Order shall be construed as if drafted jointly by the Parties and no provision in these Terms and Conditions, any Agreement and/or the Order shall be interpreted for or against any Party because that Party or that Party's legal representative drafted the provision.

### **43. ORDER OF PRECEDENCE**

43.1. The order of precedence provision in an Agreement, if any, shall prevail over this Section.

- 43.2. In the event of any conflict or inconsistency between the provisions applicable to the Order and these Terms and Conditions, such conflict or inconsistency shall be resolved by giving precedence to the provision in the following order of priority:
- 43.2.1. any written, non-preprinted express terms contained in any Order;
  - 43.2.2. any Buyer-issued specifications and work statements incorporated by Buyer in any Order;
  - 43.2.3. these Terms and Conditions; and
  - 43.2.4. pre-printed terms and conditions on Buyer's Orders and terms incorporated in the Order not described in the Subsections above.
- 43.3. Supplier shall promptly and duly execute and deliver to Buyer such further documents and take such further actions as Buyer may from time-to-time reasonably request in order to effectively carry out the intent and purpose of the Agreement and/or Order.



## **ATTACHMENT A**

### **Additional Insurance Coverage Requirements**

In addition to the insurance requirements set forth in the Section of these Terms and Conditions entitled "Insurance", Supplier shall secure, maintain and require its subcontractors to maintain, the following additional insurance coverages and limits relevant to Supplier's performance of the Order:

#### **General Liability Coverage and Limits:**

If Supplier is providing asbestos abatement/removal, armed security services, demolition work, fire/sprinkler installation, general construction, excavation work, plumbing work (new installation, re-work, building wide systems) electrical work (new installation, rework, building wide systems), supplier must maintain Commercial General Liability insurance in the minimum amount of \$10,000,000.

#### **Automobile Liability Coverage and Limits:**

If Supplier is operating motor vehicles in performance of the Order, Supplier must maintain the following coverage and limits:

Private Passenger Vehicles: \$1,000,000 per accident covering all owned, non-owned, and hired vehicles.

Commercial<sup>i</sup> Vehicles: \$5,000,000 per accident covering all owned, non-owned, and hired vehicles.

#### **Professional Liability Coverage and Limits:**

If Supplier is providing any computer software (other than standard, off the shelf, non-customized software), computer coding or algorithms, or information technology services and/or non-commercial communications products and services or technology products and services, Supplier must maintain Technology Errors & Omissions Liability Insurance in the minimum amount of \$10,000,000.

If Supplier will process or store Nightwing Information, including Buyer Personal Information, in its possession through an arrangement to externally host data, or Supplier is responsible for managing or having access to Buyer's network, Supplier must maintain Network Security and Privacy Liability Insurance, as part of a Professional Liability (E&O) Insurance policy or as stand-alone "Cyber Coverage", in the minimum amount of \$10,000,000.

If the Supplier is providing architect and engineering services, including, but not limited, to designs and/or structural calculations, the Supplier must maintain Architects & Engineers Professional Liability Insurance in the minimum amount of \$5,000,000.

If the Supplier is providing consulting services, media services and/or other professional services, Supplier must maintain Professional Liability (Errors and Omissions) Insurance in the minimum amount of \$1,000,000.

For a claims-made-policy, the retroactive coverage date shall be no later than the effective date of the Agreement and coverage shall be maintained for a period of 3 years after expiration or termination of the Agreement and any Order.

**All Risk Property Insurance / Builder's Risk Coverage and Limits:**

If Supplier will have custody and control (via a bailment agreement or similar agreement) over any Buyer owned equipment or materials, for which it has risk of loss, Supplier must maintain All Risk Property Insurance, including extended coverage for flood and earthquake, for all equipment and materials in Supplier's custody and control used in performance of the Order against loss or damage resulting from any insurable causes. The policy must include business interruption and terrorism coverage, with replacement cost value at 100%. In the case of third-party storage facilities or warehouses, the limit of insurance shall be in the minimum amount of \$5,000,000. Notwithstanding the foregoing, minimum All Risk Property Insurance limits for third party logistics services shall be set forth in the applicable Order.

If the Order requires Supplier to insure the property while the buildings or structures are being constructed, Supplier must maintain All Risk Builder's Risk Property Insurance, upon the entire project, including work and materials, for the full replacement cost at the time of loss. This insurance shall include as "named insureds," the owner of the property and Buyer, and as "additional insureds," the engineer and suppliers at any tier. The policy shall provide All Risk coverage to insure against direct risk of physical loss or damage including, but not limited to: terrorism; flood or other water damage; earthquake or other earth movement; property in transit; off-site temporary storage; damage resulting from defective design, faulty workmanship, or materials; or delay in start-up (soft cost), business interruption; boiler and machinery; delay in opening; and testing (both hot & cold).

**Crane and Riggers Legal Liability or Installation Floater Coverage and Limits:**

If, in performance of the Order, Supplier is operating a crane, or using rigging materials or equipment to lift, move and set in place property of Buyer, Supplier must maintain Crane / Riggers Liability Insurance (via an inland marine policy or by attaching a riggers liability endorsement to the Commercial General Liability policy that modifies or deletes the "care, custody or control" exclusion) for 100% replacement cost value of the asset / equipment being lifted at any one time in the minimum amount of \$1,000,000.

If, in performance of the Order, Supplier will be installing, fabricating, or erecting project materials for Buyer, an Installation Floater is required (via an inland marine or property insurance policy) for 100% replacement cost value of the property (materials, supplies, machinery, fixtures and equipment) during the transport and until the installation work is completed and is accepted by Buyer.

Note: The Installation Floater may be used to satisfy the Crane / Riggers Liability Insurance requirement should such Installation Floater be broad enough to cover both rigging and installation risks.

### **Contractors Pollution Liability or Environmental Impairment Liability Coverage and Limits:**

If Supplier is producing hazardous waste emissions during manufacturing, performing environmental services, waste depository services and/or performing construction related services, including but not limited to excavation, demolition/site work, concrete contracting services, drilling (or any subsurface work), interior/exterior renovation projects and/or asbestos abatement contractors, Supplier must maintain Contractors Pollution Liability coverage or an Environmental Impairment Liability insurance coverage in the minimum amount of \$5,000,000.

For a claims-made-policy, the retroactive coverage date shall be no later than the effective date of the Agreement or Order and coverage shall be maintained for a period of 3 years after expiration or termination of the Agreement and any Order.

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<sup>i</sup> Commercial means all vehicles, other than passenger vehicles (e.g., box trucks, food trucks, work vans, and service utility trucks).

## **ATTACHMENT B**

### **Annex I to the Standard Contractual Clauses**

For purposes of this Annex I, “personal data” shall include Buyer Personal Information.

#### **A. LIST OF PARTIES**

##### **A-1. Module Selection**

Check which option(s) applies	
	<b>MODULE ONE: Transfer controller to controller</b>
X	<b>MODULE TWO: Transfer controller to processor</b>
	<b>MODULE THREE: Transfer processor to processor</b>
	<b>MODULE FOUR: Transfer processor to controller</b>

##### **A-2. Data exporter(s):**

Company Name	Nightwing Corporation and its subsidiaries and affiliates located in the European Economic Area and Switzerland (and the United Kingdom if no longer a part of the European Economic Area) for whom Nightwing Corporation has the authority, via a power of attorney or other legal means, to contract. Nightwing Corporation and these affiliates and subsidiaries shall be collectively referred to herein as “Nightwing” or “Buyer”.
Company Address	10 Farm Springs Road, Farmington, CT USA
Company Role (Controller or Processor or Both)	Controller
Contact Person Name	See below
Contact Person Position/Title	Chief Privacy Officer
Contact Person Email and/or Telephone Number	Supplier’s Nightwing Contact

Description of the activities relevant to the data transferred by this company	Buyer is procuring Services from the data importers and, in the course of receiving the Services, Buyer will need to share personal data as set forth in Section B.
Name of person signing (does not need to be the contact)	Name of person shown as the Buyer Approver on the face of the Order, or where there is an Agreement between the Parties applicable hereto, the Buyer signatory to the Agreement
Signature	Incorporated by reference into the Order
Signature date	The Order "Approved By" date or, where there is an Agreement between the Parties applicable hereto, the effective date of the Agreement

**A-3. Data importer(s):** *[Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]*

Company Name	Company name from the Order or, where there is an Agreement between the Parties applicable hereto, from the Agreement
Company Address	Company address from the Order or, where there is an Agreement between the Parties applicable hereto, from the Agreement
Company Role (Controller or Processor or Both)	Processor
Contact Person Name	To be supplied upon request
Contact Person Position/Title	To be supplied upon request
Contact Person Email and/or Telephone Number	To be supplied upon request
Description of the activities relevant to the data transferred by this company	Providing the Services as covered in the Order
Name of person signing (does not need to be the contact)	To be supplied upon request
Title of person signing	To be supplied upon request

Signature	Incorporated by reference into the Order or, where there is an Agreement between the Parties applicable hereto, into the Agreement
Signature date	Date of Supplier's acceptance of the Order as set forth therein or, where there is an Agreement between the Parties applicable hereto, the effective date of the Agreement

## B. DESCRIPTION OF TRANSFER

### B-1. Categories of data subjects whose personal data is transferred

The personal data transferred concern the following categories of data subjects:

- Buyer employees, contractors, customers, end users, job applicants, and investors
- Personnel of Buyer's business partners, such as vendors, suppliers, and customers
- Third parties whose personal data Buyer may have for legal reasons, such as parties in litigation

### B-2. Categories of personal data transferred

The personal data transferred concern the following categories of data:

Any personal data required to allow data importer to perform the Services as set forth in the Order.

**B-3. Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.**

The personal data transferred concern the following special categories of data:

None, except where required by law to perform the Services set forth in the Order.

**B-4. The frequency of the transfer (e.g., whether the data is transferred on a one-off or continuous basis).**

The frequency will be on an as-needed basis to support the work under the Order.

### B-5. Nature of the processing

The nature of the Services being provided are set forth in the Order. The data importer will only process personal data for the purpose of providing those Services.

**B-6. Purpose(s) of the data transfer and further processing**

The data importers are service providers for Buyer. They will Process the data only to provide the Services under the Order.

**B-7. The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period**

Personal data shall be retained only so long as required to perform the Services under the Order.

**B-8. For transfers to (sub-) processors, also specify subject matter, nature, and duration of the processing**

Any transfers to sub-processors will be consistent with the terms of the Standard Contractual Clauses, the Section of the Terms and Conditions entitled “Data Privacy”, and this Annex I.

**C. COMPETENT SUPERVISORY AUTHORITY**

*Identify the competent supervisory authority/ies in accordance with Clause 13:*

Member State in which the relevant data exporter is established, which for the purposes of the Order will be considered the law of establishment of the relevant data controller.