



STANDARD TERMS AND CONDITIONS OF PURCHASE- Page 1 of 5

1. **PURCHASE ORDER; PRICES; PAYMENT.** Toshiba International Corporation ("Buyer") desires to purchase goods or services under this purchase order ("Order") from a vendor ("Seller"). Except as otherwise agreed to in writing by Buyer, the following standard terms and conditions ("Terms") will apply to this Order, which constitutes Buyer's offer to purchase the goods and services described on the Order (respectively, "Goods" and "Services") from Seller. Seller will issue a written acceptance or rejection of this Order within five (5) business days of its receipt. If Buyer does not receive a rejection of the Order within such time period, then the Order is deemed accepted. Buyer may change the Order at any time prior to Seller's acceptance of such Order. Acceptance of this Order is expressly limited to these Terms only. Any additional or contrary terms in Seller's acceptance constitutes a material alteration that Buyer objects to and rejects. Trade custom and/or usage are superseded by these Terms and shall not be applicable to broaden or narrow these Terms or used otherwise in its interpretation. Prices for the Goods or Services will be as agreed upon in an accepted Order. Buyer does not agree to any extra or different charges of any kind unless specifically accepted in writing by Buyer in advance of delivery of the Goods. The prices stated on the Order include all taxes, except state or local sales or use taxes which Seller is required by law to collect from Buyer. Such taxes, if any, shall be separately stated in Seller's invoice and paid by Buyer unless an exemption is available. Each of Seller and Buyer is responsible for its own respective income taxes, including any taxes based on gross revenues or gross receipts, as well as its own payroll taxes. Buyer will be entitled in its sole discretion to withhold from any payments due to Seller hereunder any or all amounts, whether matured or unmatured, owing at any time from Seller to Buyer. Payment terms will be as indicated on the face of the Order, and, if not indicated, will be net 60 days from date of receipt of a correct invoice.

2. **DOCUMENTATION.** On the date of shipment of the Goods, Seller will promptly forward to Buyer the following duly executed documents: (1) Seller's invoice, (2) a full set of clean shipping documents (original bills of lading, express or carriers receipts), (3) certifications of quality and/or quantity, (4) packing list, and (5) any other documents, including but not limited to Safety Data Sheets, or additional copies of documents Seller is required to provide per the Order or that Buyer may reasonably request. All invoices and packages must show Buyer's Order number indicated on the face hereof.

3. **PACKAGING:** Unless indicated otherwise on the face of the Order, Seller will mark, pack, package, crate, transport, ship and store the Goods to ensure: (1) delivery of the Goods to the ultimate destination in safe condition; (2) compliance with all requirements of the carrier and destination authorities; (3) compliance with any special instructions of Buyer; and (4) compliance with any Applicable Laws (defined below).

4. **TIME AND DELIVERY SCHEDULE.** TIME IS OF THE ESSENCE. Unless otherwise agreed in writing, Seller will not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet the delivery schedule specified in the Order ("Schedule") and Seller is not authorized to anticipate any future requirement of Buyer. Delivery of Goods will be made in quantities and at times and locations specified in the Schedule. Goods shipped to Buyer in advance of the Schedule may be returned to Seller, at Buyer's option and at Seller's sole risk and expense. If there is an anticipated or actual delay in delivery, Seller will notify Buyer immediately of the delay and the actions Seller is taking to rectify such delay. Buyer may consider failure to meet the Schedule as a material breach of these Terms and terminate the Order without liability to Seller. If Buyer terminates the Order, Seller will refund any prepaid amounts or deposits that Buyer may have made. Any delay in delivery of Goods due to an event of force majeure will not excuse Seller's full and timely performance if alternate sources of supply of materials, goods or services are available. An event of force majeure will give Buyer, at its option, the right to: (1) terminate all or part of this Order with no liability of Buyer to Seller; or (2) extend Seller's performance period for such time as Buyer may elect.

5. **CHANGES.** Buyer reserves the right to change any delivery dates, delivery locations, quantities and/or other items covered by an accepted Order; provided that, if such change materially affects the price or delivery date and Seller has notified Buyer in writing of any claim for adjustment within three (3) business days from the date of Buyer's notice, an equitable adjustment may be made to the price or delivery date to reflect the effect of such change. If no claim for adjustment has been made within three (3) Business days of Seller's receipt of Buyer's notice, such change will be deemed accepted by Seller without claim for additional compensation or extension of time required for performance.

6. **SPECIFICATIONS, QUALITY ASSURANCE AND INSTRUCTIONS.** Buyer has bargained for the specific Goods and Services. Commercially equivalent goods or services are not acceptable without Buyer's prior written approval. Goods shipped or delivered to Buyer and Services performed by Seller will strictly conform to all Buyer-provided specifications, labels, models, drawings, plans, patterns, designs, samples and other descriptions or instructions (collectively, "Specifications") described in the Order or incorporated by reference therein. Goods and Services may be subject to final testing, inspection, approval, rejection and/or revocation of acceptance, as applicable, by Buyer or its designees prior to or after shipment of the Goods or performance of the Services. Payment for the Goods by Buyer will not constitute acceptance of any Goods and will not be deemed to waive any applicable Buyer rights or remedies. Buyer will have a reasonable period of time after receipt of the Goods to accept or reject the Goods. In addition to and without waiving or constituting an election or limitation of any of Buyer's rights or remedies provided by law or specified in this Order, Buyer may reject all or any portion of any shipment of Goods or performance of Services that does not conform to any Specifications or is otherwise determined to be nonconforming or defective by Buyer. Any Goods rejected by Buyer will be returned to Seller or held for Buyer's disposition, all at Seller's risk and expense and, in either case, for full refund of any amounts that Buyer may have already made. Any inspection, testing, approval, or issuance of an acceptance of Goods will not constitute a waiver of any of Buyer's rights and remedies available to Buyer under this Order or at law or in equity. Seller will give Buyer at least five (5) days' written notice of when and where all final testing and inspections will take place. Upon reasonable written notice to Seller, Buyer and/or its designees or customers may also (1) audit and/or review Seller's quality assurance and quality control records, (2) inspect Seller's and its suppliers' plant(s) engaged in providing Goods and/or Services, and/or (3) review Seller's accounting records and other Seller documents relating to Goods and/or Services. Any such testing, inspection, audit and/or review conducted by Buyer will not relieve Seller of any of its performance obligations under the Order. Seller will reperform any rejected Services at Buyer's request. Upon Buyer's request, Seller will pay or reimburse Buyer for any charges incurred by Buyer (1) in holding such Goods for disposition or returning the Goods to Seller, or (2) that relate to Seller's re-performance of non-conforming Services. Any delay in inspecting Goods, giving notice of rejection to Seller, or returning rejected Goods to Seller will not be deemed to be either acceptance of such Goods by Buyer or a waiver of Buyer's rights to inspect, to make any claim regarding, or to elect to return, such Goods, or to exercise any other of Buyer's rights or remedies provided by law or specified in this Order.

7. **INDEMNIFICATION.** Seller will indemnify and hold Buyer and Buyer's employees, agents, affiliates, subcontractors, and customers ("Indemnitees") harmless from and against all claims, demands, suits, causes of action and other legal proceedings and all obligations, liabilities, damages, costs, and expenses (including, without limitation, claims for personal injury, wrongful death, property damage, costs of litigation and attorneys' fees), whether or not resulting from any Indemnitees' actual or



alleged sole, joint, concurrent, comparative, contributory, active or passive actions, activities and/or negligence arising directly or indirectly, in whole or in part, out of or relating to: (1) any alleged or actual infringement of any patent, copyright, or trademark relating to the Goods or any violation or breach of any trade secret relating to the Goods or Services; (2) Goods and Services; (3) the performance, non-performance, acts or omissions by Seller, including the negligence, gross negligence, intentional misconduct and strict liability of Seller; (4) any inaccuracy in or breach of any of the representations, warranties, covenants or agreements of Seller; and (5) any violations by Seller of Applicable Laws (defined below). If Indemnitees choose not to defend themselves in any suit or legal proceedings described above ("Proceeding"), upon Indemnitees' request and at Seller's expense, Seller will defend Indemnitees in any such Proceeding. In the event Indemnitees, at their option, retain counsel of their own choosing and participate in such Proceeding for their own protection, all costs, expenses, and attorneys' fees incurred by Indemnitees will be paid by Seller. With respect to indemnification obligations related to subsection (1) above, in the event the Goods or any part thereof are finally determined in any Proceeding to infringe any patent or Seller is enjoined from selling the Goods, Seller will, at its expense and option, either (1) procure for Indemnitees the right to continue using said Goods or (2) accept the return of said Goods and refund Buyer's purchase price together with all damages, losses, and expenses incurred by Indemnitees as a result of such infringement. Seller will also pay to Buyer all costs for Buyer's qualification of the new or modified Good or its functional equivalent. Such obligation will survive the acceptance of the Goods and payment therefore by Buyer.

8. EXPORTATION. If Buyer purchases Goods for export from the U.S., unless otherwise specified on the Order, Seller will, at its expense: (1) pack the Goods for export shipment, (2) comply with all federal, state and local laws, rules and regulations relating to and/or governing the exportation of the Goods, and (3) procure and deliver to Buyer all documents required by law or by Buyer in connection with such exportation.

9. TRANSPORTATION. Unless otherwise specified in an Order, Seller is responsible for all costs for transportation, insurance, duties and other charges, as applicable, relating to Buyer's purchase of the Goods. Buyer does not agree to any air freight charges unless accepted in advance in writing by Buyer or specified in the Order. Unless specified otherwise in the Order, (1) Goods shipped from within the United States will be delivered DAP, Buyer's designated location (INCOTERMS® 2020), and (2) Goods shipped from a location outside of the United States will be delivered DDP, Buyer's designated location (INCOTERMS® 2020). Title to and risk of loss for the Goods will pass to Buyer upon delivery of Goods in accordance with the applicable INCOTERMS®. Seller assumes all risk and liability of the Goods arising prior to such delivery to Buyer. Buyer is not liable to Seller or others for any loss or damage to persons, property or the environment arising out or related to any Goods prior to delivery to Buyer.

10. BUYER'S PROPERTY. Unless otherwise agreed in writing, all tools, molds, equipment or materials Buyer furnishes to Seller or specifically pays for ("Buyer Property"), and any all replacements of any Buyer Property, including, without limitation, all affixed or attached materials such as stands for molds, will at all times be and remain Buyer's sole property. Seller will plainly mark or otherwise adequately identify Buyer Property, including when practical, each individual item thereof as Buyer Property. Seller will safely and securely store Buyer Property separately apart from Seller's own property. Seller will take any and all additional actions as may be necessary or requested by Buyer to preserve and protect Buyer's ownership interest in Buyer Property from third party claims, including, without limitation, Seller's creditors' claims. Seller will maintain an accurate updated inventory of Buyer Property and will provide Buyer with a list of such inventory upon Buyer's request. Seller will not substitute any property for any Buyer Property and will not use Buyer Property except in performing Orders. While in Seller's possession, custody, or control, and unless otherwise agreed to in a writing signed by Buyer and Seller, Buyer Property will be held at Seller's risk and kept insured by Seller at Seller's expense in an amount at least equal to its replacement cost. Such insurance will require that proceeds of such insurance payable due to loss of any Buyer Property will be payable directly to Buyer. Seller will ensure that, as a loss payee, Buyer will receive from Seller's insurance company timely certificates of insurance identifying coverage and loss payee on Buyer Property. All Buyer Property will be subject to removal and shipment pursuant to Buyer's written request and instructions. Upon receiving any such request from Buyer, Seller will immediately prepare such Buyer Property for shipment, and will ship such items, pursuant to Buyer's written instructions. Returned Buyer Property will be returned to Buyer in the same condition as when originally received by Seller, reasonable wear and tear expected. Seller expressly waives and disclaims all rights of offset, set-off, security interests and any and all other claims and rights to hold any Buyer Property as a result of any claim or debt between Buyer and Seller. Seller agrees that Buyer would be irreparably harmed in the event Buyer Property is not returned on Buyer's request and that Buyer is entitled to injunctive relief to enforce its rights to immediate recovery and possession of such property.

11. ASSIGNMENT. Seller will not assign this Order, or any contract based upon this Order, in whole or in part, or subcontract the performance of any of its obligations under the Order without Buyer's prior written consent. Subject to the foregoing, this Order, when accepted by Seller, will be binding upon and inure to the benefit of the successors, assigns and legal representatives of Buyer and Seller.

12. COMPLIANCE WITH LAWS. Seller will comply with all federal, provincial, state and local laws, rules and regulations applicable to the performance of its obligations under this Order ("Applicable Laws"), including 48 CFR 52.222-50 (Combating Trafficking in Persons), FAR 52.204-23 (Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities)¹, FAR 52.204-25 (Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment)² and the U.S. Toxic Substances Control Act ("TSCA"). Seller will include any required provisions of Applicable Laws in its agreements with its subcontractors, if any. The Goods and Services will, at the time of delivery or performance, as applicable, satisfy requirements of all Applicable Laws. Seller represents and warrants that any Goods supplied under an Order do not contain any chemicals that are restricted or otherwise banned by TSCA or other Applicable Laws. Upon request, Seller will provide evidence of compliance to Buyer or its designated third party on a timely basis using industry standardized formats and will provide Buyer with safety data sheets, the chemical composition, including proportions, of any substance, preparation, mixture, alloy or Goods supplied under this Order and any other relevant information or data. Seller agrees to respond to any requests for feedback or notification of errors in a timely manner.

13. CONFIDENTIALITY. Seller agrees that all plans, specifications, drawings, samples, materials, documents or other information disclosed by Buyer to Seller that (1) are marked as confidential or proprietary or (2) by its nature, would reasonably be considered confidential or proprietary under the circumstances regardless of being marked confidential or not, and regardless of whether received by Seller pursuant to this Order or otherwise ("Information"), will at all times and for all purposes be held by Seller in a confidential capacity solely for Buyer's benefit. All Information will at all times be and remain the sole property of Buyer. Seller will divulge the Information only to its employees on a need-to-know basis and will not divulge the Information to any third party without Buyer's prior written consent. Seller will not use the Information except in performing this Order without Buyer's prior written consent. Upon Buyer's request, all Information will be returned to Buyer or destroyed by Seller

¹ If Seller identifies a Kaspersky Lab covered article provided during performance of an Order or Seller is notified of such by any subcontractor or other source, Seller is subject to reporting requirements set forth in FAR 52.204-23.

² "Covered telecommunications equipment or services" has the definition set forth in FAR 52.204-25. If Seller identifies such equipment or services as a substantial or essential component of any system or as critical technology as part of any system during performance of an Order or Seller is notified of such by any subcontractor or other source, Seller is subject to reporting requirements set forth in FAR 52.204-25.



at Seller's expense. If destroyed, Seller will certify the destruction of the Information by providing Buyer with written notice of the destruction signed by an officer or other authorized personnel. Any knowledge or information that the Seller will have disclosed or may hereafter disclose to Buyer in connection with the Goods or Services will not, unless otherwise specifically agreed to in writing by Buyer, be considered Seller's confidential or proprietary information and will be acquired by Buyer pursuant to this Order, free from any restrictions of any kind.

14. PUBLICITY. Seller will not issue, or permit any agent of Seller to issue, any press releases or public statements with respect to these Terms or the Order without Buyer's prior written approval. Unless it obtains the prior written consent of Buyer, Seller will not: (1) use any name, trade name, logo, trademark or service mark owned or used by Buyer, including in any promotional material, advertising literature or press release of Seller; or (2) represent, directly or indirectly, that any product or service offered by Seller has been used, approved or endorsed by Buyer.

15. INSURANCE. If Seller's work pursuant to this Order involves operations by Seller on the premises of Buyer or Buyer's customers, Seller will take all necessary precautions to prevent occurrence of any injury or damage to persons or property during such work. Seller will comply with all conduct policies of Buyer and/or its customers while on such premises. Seller will at all times maintain such insurance, including public liability, completed operations and product liability, auto liability, property damage, employer liability and worker's compensation insurance, as may be required by Applicable Laws and as may be reasonably required by Buyer. Upon Buyer's request, Seller will add Buyer and/or its customers as additional insureds to Seller's insurance policies.

16. EQUAL EMPLOYMENT OPPORTUNITY. In addition to Seller's obligations under Section 12 (Compliance with Laws) herein, Seller will at all times in the performance of this Order comply with all applicable requirements of federal and state law regarding equal employment opportunity and the utilization of minority and women business enterprises, including without limitation and to the extent applicable, (1) the requirements of Executive Order 11246, as amended; (2) the requirements of Executive Order No. 11625, as amended; (3) the requirements of Executive Order No. 12138, as amended; (4) the requirements of Executive Order No. 13170, as amended; (5) the requirements of Executive Order No. 13496, as amended; (6) the requirements of Chapter 60 of CFR Title 41, including as applicable and without limitation the Equal Opportunity Clause in 41 CFR Section 60-1.4; (7) the requirements of 29 U.S.C. Section 793, and (8) the provisions of 38 U.S.C. Section 4212; (9) the requirements of 29 CFR Part 471, Appendix A, Subpart A; and (10) the requirements of all applicable implementing rules, regulations, and related requirements, including without limitation and to the extent applicable FAR 52.222-21, FAR 52.222-26, FAR 52.222-35, FAR 52.222-36, FAR 52.222-37, FAR 52.222-50, and FAR 52.222-54. All of the above are herein incorporated by reference, to the extent applicable.

To the extent applicable, Seller shall abide by the requirements of (1) 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5, which prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin, require affirmative action by covered prime contractors and subcontractors to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities; (2) 29 CFR Part 471, Appendix A to Subpart A, and (3) E-Verify.

The requirements described in this paragraph shall be incorporated in all subcontracts executed by Seller for the performance of any of the work or services described in this Order.

If Seller is required by federal regulations to file Employer Information Report EEO-1 (Standard Form 100) or Federal Contractor Veterans' Employment Report VETS-4212, Seller certifies that it has done so or will file such reports in accordance with applicable instructions and will continue to file such report unless or until no longer required by law or regulation.

17. INTERNATIONAL TRADE COMPLIANCE.

a) **Customs Trade Partnership Against Terrorism.** With respect to Sellers not located in the United States, Seller agrees to develop and implement, within a framework consistent with the Customs Trade Partnership Against Terrorism ("CTPAT") recommendations/guidelines, a verifiable, documented program to enhance security procedures throughout its supply chain process. Where Seller does not exercise control of a production facility, transportation or distribution entity, or process in the supply chain, Seller agrees to communicate the CTPAT recommendations/guidelines to its suppliers and transportation/distribution service providers and, where practical, condition its relationships to those entities on the acceptance and implementation of the CTPAT recommendations/guidelines. More information regarding CTPAT requirements can be found at www.customs.gov.

b) **Country of Origin, Commodity Code and Export Control Classification Number.** For each product supplied to Buyer pursuant to this Order, Seller will provide the country of origin, the commodity or harmonized tariff code and Export Control Classification Number on all documentation required by Section 2 herein of this Order.

c) **Certification of U.S. Origin of Goods.** Upon Buyer's request, Seller will certify the percentage of U.S. content in products supplied to Buyer covered by this Order. Seller will also provide a certificate of origin for applicable free trade agreements, if any. If Seller is unable or unwilling to make such certification, Buyer is not required to purchase from Seller and will have the right to terminate any outstanding Orders for which Seller cannot provide such certification and be entitled to a refund of any amounts paid thereunder by Buyer.

d) **Importer Security Filing – 10+2 Program.** For all ocean shipments destined for U.S. ports, Seller must provide Importer Security Filing data elements, bill of lading at the lowest level reported to the Automated Manifest system and commercial invoice, all of which must be submitted to TIC-ISF@toshiba.com at least seventy-two (72) hours prior to vessel loading. Any fines, penalties, liquidated damages or other costs resulting from failure of Seller or its designated agent to provide accurate and timely information will be the sole responsibility of Seller, and Seller agrees to reimburse Buyer for any amounts Buyer may incur as a result of such failure.

18. TERMINATION AND REMEDIES. Buyer may terminate any Order or part thereof, including any obligations of Buyer thereunder, by providing Seller with written notice of termination at any time on or before the date that is thirty (30) days prior to the applicable times set forth in the Schedule without any liability in connection therewith. If Buyer terminates any Order or part thereof less than thirty (30) days prior to such times, Buyer will reimburse Seller for any actual and direct costs Seller incurred in connection with such termination that Seller is unable to mitigate in connection therewith; provided, however, Buyer will not be obligated to reimburse Seller for any costs and expenses in excess of 10% of the aggregate price of the Order or if Seller has not taken affirmative action towards mitigating such costs. In addition,



Buyer will be responsible for payment of any Goods that are custom to Buyer but will not be responsible for any items that Seller may reuse or resell in the ordinary course of its business.

In addition to all other Buyer rights and remedies provided by law or specified in this Order, Buyer may terminate any Order or part thereof at any time (such termination to be immediately effective upon Buyer's delivery of written notice of such termination to Seller) upon the occurrence of any of the following: (1) Seller's breach, or failure by Seller to perform any, of the Order's terms; (2) Seller's failure to provide timely adequate assurance of due performance upon Buyer's written request; (3) if any Buyer competitor acquires, directly or indirectly, control of Seller; (4) upon any sale, transfer or relinquishment (voluntary or involuntary, by operation of law or otherwise) of any interest, whether or not controlling, in Seller's direct or indirect ownership or upon any other change in Seller's ownership or control; (5) Seller becomes insolvent, enters into or files a petition or proceeding seeking an order for relief under applicable bankruptcy laws, enters into a receivership of any of its assets or enters into a dissolution or liquidation of its assets or an assignment for the benefit of its creditors.

In the event of a breach by Seller of any obligations under the Terms or this Order, or failure by Seller to perform any of the Terms or any obligation of this Order, or Buyer rejects any Goods or Services pursuant to Section 6, and, in addition to all other Buyer rights and remedies provided by law or specified in this Order, Seller will pay all direct, indirect, incidental, special and consequential costs, losses and damages Buyer incurs or sustains as a result of such breach, failure or rejection, including, without limitation, lost profits, cost of replacement Goods or Services in excess of the price specified in the Order, all debt, freight expenses and demurrage costs, and attorneys' fees and other costs of litigation incurred by Buyer to secure the performance of any contract based upon this Order or to collect costs, losses and damages due pursuant to this Section 18. Buyer may, at its option, cancel any contract based upon this Order or part thereof and such other contracts as may exist between Buyer and Seller, and Buyer may defer, delay and/or offset payment owed under any such contract until such breach, failure or a rejection is cured or settled. No waiver by Buyer of any such failure or breach will be deemed to be a waiver of any other prior or subsequent failure or breach. Upon Buyer's request after termination, Seller will deliver to Buyer any work in progress, Information and any amount due for such delivered work in progress shall be subject to set-off against Buyer's damages associated with Seller's failure or breach.

19. **ENTIRE AGREEMENT; AMENDMENT.** These Terms constitute the entire agreement between Buyer and Seller with respect to the Order and supersede all prior and contemporaneous agreements and understandings, oral or written between Seller and Buyer with respect thereto. This Order, including these Terms, may be amended only by a written agreement that has been executed by authorized representatives of Buyer and Seller and expressly identified as an amendment or modification thereto.

20. **WARRANTY.**

a) **Goods.** Seller represents and warrants that the Goods will (1) conform to requirements of the Order and any other specifications included or referred therein; (2) be of merchantable quality and free from defects in design, material or workmanship; (3) conform to any statements or representations made to Buyer or appearing in Seller's literature or advertisements; (4) be safe and appropriate for the purpose for which products of that kind are normally used; (5) be delivered with good and marketable title to the Goods, free of liens or encumbrances; and (6) will not infringe any intellectual property rights of a third party. This warranty shall be valid for a period of eighteen (18) months from the date of shipment or twelve (12) months after such goods, materials and workmanship are first placed in operation, whichever period shall first expire. The foregoing representations and warranties will run to Buyer, its successors, assigns, customers, and users of the Goods.

b) **Software.** Seller represents and warrants that any software contained in the Goods or used to provide Services ("**Software**"): (1) is an original work of Seller or that Seller has properly licensed such Software for use by Buyer, (2) does not infringe any intellectual property right of a third party, (3) any systems Seller uses to provide Services do not and will not contain any computer code that is designed to disrupt, disable, harm, modify, delete or otherwise impede the operation of the Goods or any of Buyer's software, computer systems or networks; (4) does not and will not contain any viruses or other harmful computer code, or computer code designed to disrupt, disable, harm or otherwise impede in any manner, (5) is free from defects in materials and workmanship under normal use, (6) will work according to any Specifications published by Seller, and (7) does not contain any open-source license requirements that would require Buyer to publish any changes Buyer may make to the Software. Seller will continually improve the software and provide maintenance, support and updates or upgrades for the Software to Buyer free of charge.

c) **Services.** Seller represents and warrants that (1) the Services will be free from defects in workmanship; (2) not infringe any intellectual property rights; (3) be performed in a workmanlike and professional manner in accordance with the highest professional standards in the industry; and (4) in accordance with any specifications, drawings and descriptions provided by Buyer to Seller. Seller further represents and warrants that all Seller-furnished materials and equipment, if any, incorporated into the Services will be free from defects in design (except Buyer-provided design), workmanship, and material.

d) **Seller's Warranties.** Seller represents and warrants that it has not infringed upon or misappropriated, and that it will not infringe upon or misappropriate any intellectual property rights covering the Goods or the manufacture, use or sale thereof, or any method embodied in or resulting from the Goods. Seller further represents and warrants that none of the Goods, Software or Services infringe Intellectual Property Rights of a third party. Seller also represents and warrants that the manufacture, sale and use of the Goods does not violate the intellectual property rights of any third party.

21. **INDEPENDENT CONTRACTOR.** Seller shall act as an independent contractor, is not an agent or employee of Buyer, and has no authority to bind Buyer to any agreement, contract or other undertaking.

22. **DISPUTE RESOLUTION.** If Seller's principal place of business is in the U.S., then venue for all disputes arising out of the Order shall be in Harris County, Texas (or in the Southern District of Texas if such proceeding is in a U.S. District Court). If Seller's principal place of business is located outside of the U.S., any controversy or claim arising out of or relating to the Order will be settled by arbitration administered by the International Centre for Dispute Resolution ("**ICDR**") in Houston, Texas in accordance with the latest International Dispute Resolution Rules and Procedures of ICDR ("**ICDR Rules**"). Judgment upon the award rendered by the arbitrator(s) may be entered in any court or forum having jurisdiction thereof. The arbitrator(s) will provide Seller and Buyer with a written explanation of the reasoning behind the decision and award. The arbitrators will not have the authority to appoint a tribunal expert. Seller and Buyer further agree to first mediate any controversy or claim in accordance with the ICDR Rules in a good faith attempt to resolve it prior to initiating arbitration. The prevailing party in any arbitration proceeding will be entitled to recover its reasonable attorneys' fees and costs of arbitration from the other party.

23. **GENERAL.** This Order may only be accepted in Harris County, Texas, and any contract based upon it is performable, in whole or in part, in Harris County, Texas and will in all respects be governed, construed, and enforced in accordance with the laws of the State of Texas, U.S.A (without giving effect to its conflict of laws



principles). The United Nations Convention for the International Sale of Goods shall not apply to any contract arising from this Order or any contract that Seller may have with its suppliers. These Terms will be the only terms and conditions applicable to the purchase of Goods and Services and will supersede any prior oral or written communications. If any provision of these Terms are adjudged, by any court or competent jurisdiction to be invalid, illegal or unenforceable in any respect, such adjudication will not affect or modify any other provision or the balance of the provision so affected, all of which will remain in full force and effect as if such invalid, illegal or unenforceable provision were not part hereof.

24. **LIMITATIONS ON BUYER'S LIABILITY; STATUTE OF LIMITATIONS.** In no event will Buyer be liable for Seller's lost profits or for special, indirect, incidental, punitive or consequential damages of any kind whatsoever. Buyer's liability on any claim of any kind for any loss or damage arising out of, connected with or resulting from this Order or from the performance or breach hereof will in no event exceed the pro-rata purchase price allocable to the Goods or Services which gives rise to Seller's claim. Any claim or action resulting from any alleged breach by Buyer of any of the terms and conditions of this purchase order must be commenced, if at all, within one year after the cause of action has accrued.

25. **BUSINESS PARTNER CODE OF CONDUCT.** Delivery of any Goods, Software or Services under this Order constitutes Seller's representation, warranty and certification that Seller, and its suppliers, if applicable, comply with the Toshiba America Group Business Partner Code of Conduct, which is located at https://www.toshiba.com/tic/cms_files/Business_Partner_Code_of_Conduct.pdf.

26. **SUPPLIER STANDARDS MANUAL.** Delivery of any Goods, Software or Services under this Order constitutes Seller's representation, warranty and certification that Seller, and its suppliers, if applicable, comply with Seller's Supplier Standards Manual, which is located at https://www.toshiba.com/tic/datafiles/manuals/TIC_Supplier_Standards_Manual.pdf.

27. **OWNERSHIP.** Each party retains ownership of its respective intellectual property rights, including, for Seller, any inventions, materials, documentation, manuals, training materials, or developments made by Seller prior to the date of this Order and that are incorporated into any Seller goods, software or services ("Pre-Existing Work"), created before the date of this Order or independently from this Order or any Goods or Services provided to Buyer hereunder.

Buyer and Seller agree that all work product, inventions, information, ideas, concepts, processes, discoveries, developments, formulae, information, materials, improvements, designs, artwork, content, software programs, other copyrightable works, playbooks, workflows, solutions, products, documents, and any other work product or other materials created and developed by Seller after the date of this Order, in connection with the performance of any Services or provision of Goods or Seller technology under this Order and any resulting intellectual property rights (collectively, the "Work Product") are the sole and exclusive property of Buyer. Buyer and Seller acknowledge that the Work Product shall, to the extent permitted by law, be considered a "work made for hire" within the definition of Section 101 of the Copyright Act of 1976, as amended, (the "Copyright Act") and that Buyer is deemed to be the author and is the owner of all copyright and all other rights therein. If the Work Product is not deemed to be a "work made for hire" under the Copyright Act, then Seller hereby assigns to Buyer all of Seller's rights, title and interest in and to the Work Product, including but not limited to all copyrights, publishing rights and rights to use, reproduce and otherwise exploit the Work Product in any and all formats, media, or all channels, whether now known or hereafter created. As requested by Buyer, and only with respect to Work Product, Seller will take all steps reasonably necessary to assist Buyer, at Buyer's expense, in obtaining and enforcing in its own name rights to any such Work Product. Seller's obligation to assist Buyer, at Buyer's expense, will continue beyond the termination of Seller's relationship with Buyer.

To the extent Pre-Existing Work is provided to Buyer under the Order, Seller hereby grants Buyer a non-exclusive, worldwide, perpetual, irrevocable, fully paid up license to (1) use, perform, display, distribute, and import such Pre-Existing Work, (2) adapt, modify, and create derivative works of such Pre-Existing Work, and (3) share the foregoing rights with Buyer affiliates.

Seller represents and warrants that: (1) the Work Product was developed through its sole and original efforts and does not infringe the intellectual property or privacy rights of any person; and (2) Seller has no other arrangements that would interfere with assigning to Buyer all of its interest in the Work Product.

28. **CYBERSECURITY.** Seller will operate and maintain an information and cybersecurity program, including administrative, physical and technical safeguards, designed to protect against and prevent any breach of confidentiality, data integrity or a security compromise of a network or server resulting in the unauthorized access, use, transfer or acquisition of Information or any personal data related to Seller's personnel ("Security Incident"). Seller will immediately notify Buyer of any perceived, potential or actual Security Incident ("Breach"), and provide a full description of the Breach, the impact and mitigation efforts. Seller will then promptly (a) investigate, remediate, and mitigate the effects of such Breach; and (b) provide Buyer with assurances reasonably satisfactory to Buyer that such Breach will not recur. If Buyer determines that notices or other remedial measures are warranted, Seller will, at Buyer's request and at Seller's cost, undertake such remedial actions.