

## MASTER TERMS & CONDITIONS

These **MASTER TERMS & CONDITIONS** (the “**Terms**”) are effective as of [ ] and are an agreement between Navigator Networks LLC, a California limited liability company (“**Provider**”) and [ ], a [ ], a [ ] (“**Buyer**”). Capitalized terms that are not otherwise defined in context have the meanings given in Section 12.

**WHEREAS**, Provider is in the business of reselling computer hardware, software and third-party support services, as well as providing professional and technical consulting services in connection with the deployment, configuration and maintenance of such hardware and software; and

**WHEREAS**, Buyer desires to engage Provider to facilitate orders of third-party goods, software and services, and to provide certain related services, pursuant to these Terms.

**NOW, THEREFORE**, the parties agree as follows:

1. **Sale of Goods, Third-Party Software and Services.** Buyer may place Orders through Provider for hardware and related physical products (“**Goods**”), third-party software (“**Software**”), and third-party services (including manufacturers of Goods) related to such Goods (“**Third-Party Services**”). Unless otherwise expressly agreed by Provider in the applicable Order: (a) all Orders accepted by Provider are non-cancelable and nonrefundable once Goods are shipped (*i.e.*, “free on board” terms) or Provider has placed an order for Software or Third-Party Services that cannot be cancelled without penalty; (b) no Goods or Software may be resold or sub-licensed; (c) invoices are issued upon acceptance of the Order and are due within thirty (30) days; and (d) no additional or different terms on any Order shall be applicable and are hereby excluded and rejected by Provider.

(a) **Delivery of Goods.** Goods will be delivered within a reasonable time after they are ordered to the delivery point designated in the accepted Order. Provider shall not be liable for any delays, loss, or damage in transit. If Buyer fails to take delivery of any of the Goods because Buyer has not provided appropriate instructions, documents, licenses, or authorizations, then: (i) the Goods shall be deemed to have been delivered; and (ii) Provider, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

(b) **Quantity.** Provider may, without liability or penalty, make partial shipments of Goods. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the quantity purchased. If Provider delivers to Buyer a quantity of Goods less than the quantity set forth on the accepted Order, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the shortfall and shall pay for such Goods the Price adjusted pro rata.

(c) **Title and Risk of Loss.** Title and risk of loss for Goods passes to Buyer upon shipment (*i.e.*, “free on board” terms). As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Provider a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under Division 9 of the California Uniform Commercial Code.

(d) **Inspection and Rejection of Nonconforming Goods.** Buyer shall inspect the Goods within 14 days of receipt or such shorter period as is allowed by the manufacturer of the Goods (“**Inspection Period**”). Buyer will be deemed to have accepted the Goods unless it notifies Provider in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Provider.

(i) If Buyer timely notifies Provider of any Nonconforming Goods, Provider shall, in its sole discretion, (A) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the amount paid for such Nonconforming Goods.

(ii) Buyer acknowledges and agrees that the remedies set forth in this Section 1(d) are the exclusive remedies for the delivery of Nonconforming Goods, and except as provided thereunder, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods.

(e) **Price; Payment.** Buyer shall purchase the Goods, Software and Third-Party Services from Provider at the prices (the “**Price**”) set forth in the applicable Order. If the Price should be increased before the Order is placed by Provider with the third-party, then the Order may be cancelled. All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Provider’s income, revenues, gross receipts, personnel, or real or personal property, or other assets.

(f) **Payment Terms.** Unless other terms are set forth in the applicable Order: (i) Buyer shall pay all invoiced amounts due to Provider within thirty (30) days of Provider’s invoice; and (ii) Buyer shall make all payments hereunder by wire transfer, check or credit card (with a four percent surcharged), and in US dollars.

(g) **No Setoff.** Buyer shall not, and acknowledges that it will have no right to withhold, offset, recoup, or debit any amounts owed (or to become due and owing) to Provider or any of its affiliates, against any other amount owed (or to become due and owing) to it by Provider or its affiliates.

2. **Provider Services.** Provider and Buyer may agree from time to time for certain services to be provided by Provider to Buyer (“**Direct Services**”), pursuant to a separate statement of work or similar written instrument signed by the parties (each, an “**SOW**”). If a SOW conflicts with these Terms, the SOW will control as to the work described in the SOW only. Unless otherwise expressly agreed by Provider in the applicable SOW, (a) services provided by Provider will be invoiced monthly in arrears, and (b) Buyer shall pay amounts invoiced within thirty (30) days of Buyer’s receipt of an invoice.

(a) **Travel and Expenses.** Should travel be required for Provider to deliver a service, the following shall apply:

(i) The Provider will follow the GSA Rates by location for lodging, meals, and incidentals: <https://www.gsa.gov/travel/plan-book/per-diem-rates>

(ii) If lodging expenses exceed GSA rates (e.g. due to a large event in the area), the Provider will seek Buyer approval for the excess cost

(iii) Travel expenses are billed as incurred with receipts provided for any expense of \$75 or greater

(iv) Provider can submit to Buyer the estimated travel expenses prior to booking, for the Buyer’s budgetary use

(b) **Project Delays and Work Cancellations.** A project’s SOW describes the project duration, including the planned completion date. If, through no fault of Provider’s, project work is delayed, or the project is put on hold, past the planned completion date, the Buyer will pay the incurred project amount on Net30 terms from the planned project completion date.

(i) A project delay that extends 30 days past the planned completion date will require a Change Order in order to reengage Provider; this Change Order is needed for Provider project rescoping and/or to reallocate and schedule resources to reengage the project work. Provider will make a good faith effort to apply the Buyer’s project payment to the reengagement.

(ii) In the event of a project delay, Provider may reassign resources to other Buyers, and therefore reserves the discretion to assign alternate resources for reengagements; alternate personnel will have the qualifications to perform reengaged project work.

(iii) Buyers cancelling or rescheduling a Provider resource that has been assigned and booked to perform work may incur a cancellation fee based on when Provider receives notification from the Buyer of the cancellation/reschedule (the number of business days before the scheduled work was to be performed), and a percentage of the resource billing (what Provider would have billed for the work):

i. If a Buyer provides 5 or more business days' notice of work cancellation or request for postponement, no fee will be incurred.

ii. If a Buyer provides less than 5 days' notice of work cancellation or request for postponement, Provider can charge up to 5 full days of allocated resources.

iii. For cancelled onsite visits, an additional fee may be charged for any non-recoverable expenses Provider has incurred for the canceled visit, such as travel and lodging rebooking or cancellation fees.

3. **Buyer Obligations.** Buyer understands that it may be required to perform certain acts in order to facilitate the performance of Direct Services and to fulfill Orders for Goods, Software, and Third-Party Services, including any obligations specified in an applicable Order or SOW, as well as timely provision of Buyer Materials and information, and access to facilities and accounts, all as reasonably necessary to facilitate the delivery of Goods, Software, Third-Party Services or Direct Services ("**Buyer Obligations**"). Buyer's repeated or unreasonable failure to perform such Buyer Obligations in a timely manner is grounds for Provider to terminate an Order or SOW, and invoice for any additional costs and damages incurred as a result of such failure.

4. **Termination.** Accepted Orders and SOWs may only be terminated as provided in this Section.

(a) **Termination of Orders for Goods, Software and Third-Party Services.** Unless otherwise expressly agreed in writing by Provider, once accepted by Provider, Buyer may not terminate Orders for Goods, Software or Third-Party Services. Accepted Orders may be terminated by Provider if the Goods are not available for timely shipment or if Buyer fails to pay the amounts due for such Goods.

(b) **Termination of Direct Services.** Buyer may terminate an SOW for the provision of Direct Services by Provider on written notice to Provider (i) if Provider fails to cure a material breach within 15 days of receiving written notice of the breach from Buyer; or (ii) for any other reason by paying all fees and expenses incurred prior to termination and the Early Termination Fee.

(c) **Termination by Provider.** Provider may terminate an Order or an SOW on written notice to Buyer if Buyer fails to cure a material breach within 15 days of receiving written notice of the breach from Provider. Upon such termination, Buyer shall pay all and expenses incurred through the date of termination.

5. **Confidential Information.** Each party (the "**Discloser**") may disclose Confidential Information to the other party (the "**Recipient**"). The Recipient agrees to (a) maintain the Confidential Information in confidence; (b) protect the Confidential Information with a reasonable degree of care, including employing industry standard security procedures to prevent unauthorized disclosure of Confidential Information; (c) not use the Confidential Information except in the performance of its obligations hereunder; and (d) disclose the Confidential Information only to those of its employees and agents who have a need to know the Confidential Information and who are bound by agreement or law to maintain the confidentiality of the information.

6. **Intellectual Property.** Subject to Provider's receipt of payment under the SOW, Provider assigns to Buyer all of Provider's rights in the Work Product (other than Provider Tools incorporated in the Work Product). Upon assignment, Provider grants Buyer a nonexclusive, royalty-free, worldwide license to use, modify, display, and otherwise take full lawful advantage of the Provider Tools in connection with the Work Product.

Buyer grants Provider a license to use the Buyer Materials as contemplated herein. Buyer will comply with all third-party licenses and terms (“**Third-Party Terms**”), including licenses and terms applicable to Software and Goods.

7. **Promotional Rights.** Subject to its obligations of Confidentiality herein, Provider may (a) publicize the fact that Buyer is Provider’s client; (b) describe the nature of its work for the Buyer; and (c) subject to any reasonable restrictions or requirements imposed by Buyer, utilize Buyer’s trade name(s) and trademark(s) in connection with its publicity.

8. **Warranties.**

(a) **Mutual Warranties.** Each party warrants that (i) it is authorized to enter into and perform its obligations under these Terms and each Order and SOW; (ii) doing so will not conflict with any other agreement to which the party is bound; and (iii) it will perform its obligations in accordance with applicable law.

(b) **Provider Warranties.** Provider warrants that (i) it will perform Direct Services in a professional manner and in accordance with industry standards; (ii) it will assign personnel who are reasonably experienced and qualified to perform the Direct Services; (iii) it will use due care in selecting third parties from which to purchase Goods, Software and Third-Party Services; and (iv) to its knowledge, the Work Product and Provider Tools will not, if used by Buyer as contemplated by the SOW and in accordance with any Third-Party Terms, infringe any third-party intellectual property rights.

(c) **Buyer Warranties.** Buyer warrants that, to its knowledge, the Buyer Materials will not, if used by Provider as contemplated by the SOW, infringe any third-party intellectual property rights.

(d) **Disclaimer.** **Except as provided in this Section, each party’s performance is provided “AS IS” and without other warranty, including without limitation any warranties arising from the course of performance, course of dealing, or usage of trade. Goods, Software and Third-Party Services are not warranted hereunder.**

9. **Indemnity & Limitations.**

(a) **Indemnity.** Subject to subsections 9(c) and 9(d), Provider shall indemnify and defend Buyer and its employees, officers, directors, shareholders, members, and managers (collectively, the “**Indemnitees**”) from any damages, expenses, fees, fines, penalties, expenses (including reasonable attorney’s fees) and costs incurred by the Indemnitees in connection with any third-party claim arising out of Provider’s breach of these Terms (a “**Claim**”). As a condition to Provider’s indemnification obligation, the Indemnitees shall give Provider prompt written notice of any Claim or potential Claim. In any defense, (i) Provider has the sole right to defend and settle the Claim using counsel of its choosing; and (ii) the Indemnitees shall reasonably cooperate with Provider in the defense and settlement of the Claim.

(b) **Exclusions.** Provider is not liable under Section 9(a) to the extent that Claims result from: (i) the negligent or willful acts of an Indemnitee; (ii) Provider’s compliance with the instructions of Buyer; or (iii) a claim that a Deliverable is infringing where the alleged infringement is due to modifications made by (or on behalf of) Buyer.

(c) **Excluded Damages.** **IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THESE TERMS, ANY SOW OR ORDER, REGARDLESS OF (I) WHETHER SUCH DAMAGES WERE FORESEEABLE, (II) WHETHER OR NOT PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (III) THE LEGAL OR**

EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (IV) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THIS LIMITATION DOES NOT APPLY TO DAMAGES ARISING FROM PROVIDER'S GROSS NEGLIGENCE OR INTENTIONAL WRONGDOING.

(d) **Limit on Liability.** IN NO EVENT SHALL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, ANY ORDER AND/OR ANY SOW, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO PROVIDER IN THE PRECEDING TWELVE MONTHS HEREUNDER OR THE AMOUNT OF AVAILABLE INSURANCE PROCEEDS AVAILABLE TO PROVIDER, WHICHEVER IS LESS.

(e) **Exclusions.** The limitations in Sections 9(c) and 9(d) shall not apply to the extent prohibited by applicable law.

10. **Non-Solicitation.** The parties shall not, while services are being performed by Provider and for one year after the last day on which services were provided, solicit, induce, or recruit, directly or indirectly, for itself or for any other party, the other party's employees. The parties agree that damages resulting from a breach of this Section would be difficult to quantify, but that a reasonable estimate of such damages is 50% of the employee's annualized compensation with Provider (the "**Conversion Fee**"). As liquidated damages for breach of this provision, the breaching party shall pay the Conversion Fee to the other party.

11. **Governing Law; Jurisdiction; Venue.** California law governs these Terms, each SOW and each Order, exclusive of its conflict of laws principles. The state and federal courts of the County of Alameda, California are the exclusive venue for resolving any disputes between the parties. The parties consent to the personal jurisdiction of such courts, and waive defenses concerning venue and convenience of forum.

1. **Definitions.** The following terms have the meanings given:

"**Provider Tools**" means Provider's intellectual property (including its designs, methods, software, and trade secrets) that either exist as of the Effective Date or are developed by Provider other than in providing Direct Services for Buyer. Provider Tools includes any improvements that are not uniquely applicable to the Work Product.

"**Buyer Materials**" means all documents, information, designs, data, specifications, graphics, logos, trademarks, written content, and other materials provided by or on behalf of Buyer to Provider.

"**Confidential Information**" means information that, either, is identified as confidential upon disclosure, or that the Recipient should understand to be confidential under the circumstances; *provided*, Confidential Information does not include information that: (i) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any act or omission by the Recipient; (ii) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, *provided*, such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by any contractual obligation; (iii) was known by or in the possession of the Recipient, as established by documentary evidence, prior to being disclosed by or on behalf of the Discloser; or (iv) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Discloser's Confidential Information.

"**Early Termination Fee**" means an amount equal to 25% of the fees that would otherwise have been charged for the canceled portion of the project.

“**Nonconforming Goods**” means only the following: (i) the product shipped is different than identified in the applicable Order; (ii) the product’s label or packaging incorrectly identifies its contents; or (iii) the Goods are damaged.

“**Order**” means a document (hard copy or electronic, including written correspondence, such as an email) pursuant to which Buyer requests Provider to purchase Products or Third-Party Services on Buyer’s behalf.

“**Specifications**” are functional or technical specifications for work described in an SOW or that have been otherwise agreed to in writing by Buyer and Provider.

“**Work Product**” means the materials first created by Provider for Buyer in the course of performing Direct Services pursuant to an SOW.

1. **Miscellaneous.**

(a) **Attorney’s Fees.** The prevailing party in any dispute arising out of or relating these Terms, any Order and/or any SOW is entitled to recover and shall be awarded its reasonable attorney’s fees, expert’s fees, and costs.

(b) **Interest.** Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.

(c) **Relationship of the Parties.** Provider is an independent contractor and not Buyer’s partner. The parties are not engaged in a joint venture. Provider’s employees are not to be considered Buyer’s employees for any purpose. Provider is solely responsible for the means and manner of performing the services.

(d) **Entire Agreement.** Each SOW and accepted Order shall be subject to and incorporates these Terms, which is the entire agreement of the parties with respect to its subject. All prior and contemporaneous agreements are superseded. These Terms may only be amended by a writing signed by both parties. These Terms and all SOWs may be signed in counterparts. Each counterpart constitutes an original and all together constitute a single agreement. If any term herein or in an SOW is determined to be unenforceable, the remainder of these Terms will not be affected. These Terms were negotiated by sophisticated parties and will not be construed in favor of or against either party.

IN WITNESS WHEREOF, the parties have executed these Terms as of the date first written above.

“**Provider**”

“**Buyer**”

**Navigator Networks LLC**

[ ]

By: 

By:

Name: Clifford Roberts

Name:

Title: Managing Partner

Title: