



## E4D TECHNOLOGIES

### TERMS AND CONDITIONS

These terms and conditions are incorporated into the sales acknowledgement (by whatever name it may be called) between D4D Technologies, LLC (d/b/a E4D Technologies) (“E4D”) and its customer (“Customer”), as an essential part of the agreement between the parties. In the event of a conflict between a term herein and a term in a Supplier Agreement, MSA, statement of work, sales acknowledgement signed by E4D (any of which are an “Order”), the term in the Order shall prevail. **By agreeing to an Order, or beginning work with E4D, the Customer is expressly accepting these terms and conditions. No change to these terms and conditions, or any substitute terms, will be accepted or binding on the parties unless agreed to in writing signed by both parties.**

#### SECTION 1: SERVICES AND PAYMENT

1.1 Deliverables; Acceptance of Deliverables. Customer and E4D have or will enter into Orders detailing the specific deliverables to be produced and/or provided to Customer, and details of the production and delivery thereof. The Order, and any and all subsequent Orders, will describe the deliverables that E4D is obligated to furnish to the Customer thereunder (collectively, the “Deliverables”) and the acceptance criteria for each of the Deliverables (the “Acceptance Criteria”). Customer shall review, evaluate and/or test, as the case may be, each of the Deliverables within the applicable and reasonable time period set forth in an Order, or if no such time period is specified, within ten (10) business days after delivery (with respect to each Deliverable, the “Acceptance Period”), to determine whether or not such Deliverable satisfies the applicable Acceptance Criteria in all material respects. If any Deliverable fails to satisfy its Acceptance Criteria in any material respect, then Customer will notify E4D thereof, in writing, specifying the nonconformity (a “Rejection Notice”). Thereafter, E4D shall use its diligent commercially reasonable efforts to modify, repair or replace (in the sole discretion of E4D) a defective Deliverable to so conform, and the reformed Deliverable will be resubmitted for acceptance by Customer; provided that upon resubmission, Customer will limit its review, evaluation and/or test to determining whether the identified defect(s) have been corrected and to the effects which those modifications have on other portions of the Deliverable(s). If E4D is unable to remedy each non-conforming portion of any Deliverable after a reasonable period of time for correction, then Customer’s remedies and E4D’s entire liability as a result thereof will be subject to the limitations set forth in this agreement. If Customer does not furnish a Rejection Notice to E4D prior to the end of the Acceptance Period for any Deliverable, then Customer will be deemed to have accepted such Deliverable, and shall be conclusive proof that the Deliverable conforms to the Acceptance Criteria.

1.2 Project Fees and Reimbursable Items. Customer shall pay to E4D the fees and other compensation set forth in the Order. Customer will also reimburse E4D for any reasonable out-of-pocket travel, living and other ancillary expenses paid or incurred by E4D personnel while away from their place(s) of business in connection with rendering services to Customer at Customer’s request, and any other reimbursable items set forth in each Order. E4D will have no obligation to perform any services, or produce or deliver any Deliverables, when any amount required to be paid by Customer is past due. Any suspension of services by E4D as a result of Customer’s failure to make payment as required will extend the due dates of Deliverables and other services to the extent impacted by such suspension or delay. If E4D or any E4D personnel are required to provide services in relation to the Deliverables or this agreement that are not expressly covered by an Order (such as responding in any court proceeding to which E4D is not a party), Customer shall reimburse E4D for such efforts in the amount of \$250 per day or partial day involved, plus expenses (including any and all reasonable and necessary legal fees).

1.3 Invoices; Payments. Unless expressly stated otherwise in the Order, and subject to a credit check, E4D will invoice Customer for all costs, fees, and expenses automatically upon shipment. The invoiced amount is due in full within fifteen (15) calendar days of the invoice date. Customer will pay interest, at a rate equal to the lesser of 1.5% per month or the



## E4D TECHNOLOGIES

maximum legal rate permitted, on invoiced amounts past due more than 30 days. Payment may be made by ACH, check, or as may be otherwise agreed in the Order.

### SECTION 2: CUSTOMER RESPONSIBILITIES

2.1 The Deliverables are being delivered Ex Works, with responsibility for transportation belonging to the Customer, and Customer agrees to have the Deliverables promptly picked up after notice that they are available. E4D reserves the right to charge a reasonable daily rate for any Deliverables that are not picked up in a timely manner.

2.2 Any Deliverables for which a Rejection Notice has been sent shall be kept safe and intact, in the same condition as when it was received, with all packaging kept with it. E4D will arrange for shipment of any such Deliverables.

### SECTION 3: CONFIDENTIALITY OBLIGATIONS

3.1 Confidential Information. The term “Confidential Information” shall mean any and all information or proprietary materials (in every form and media) not generally known in the relevant trade or industry and which has been or is hereafter disclosed or made available by either party (the “disclosing party”) to the other (the “receiving party”) in connection with the efforts contemplated hereunder, including (i) all trade secrets, (ii) existing or contemplated products, services, designs, technology, processes, technical data, engineering, techniques, methodologies and concepts and any information related thereto, (iii) information relating to business plans, sales or marketing methods or merchandising techniques, plans or information, and actual or potential customer lists or requirements, (iv) financial information or materials, (v) cost data, (vi) user lists and information, (vii) actual or potential vendor lists and information, (viii) procurement requirements, (ix) purchasing information, (x) manufacturing or development information, (xi) pricing, (xii) information about employees, consultants, independent contractors, interns, officers, directors, shareholders, investors, lenders, accountants, attorneys, and any other agents of either party, (xiii) information about actual, under development, or what might reasonably be anticipated to be or become business and contractual relationships, (xiv) actual or potential lender, investor or “partner” lists and information, and (xv) other proprietary business information of either Party. “Information” as it relates to people or entities includes all contact information, including name, title, position, address, phone numbers, and email addresses. Further, “Confidential Information” includes any and all technical and non-technical information or material in which either party has rights, opportunities, or obligations, whether or not owned or developed by such party (or people or entities such party may have disclosed to or received from pursuant to non-disclosure agreements).

3.2 Nondisclosure of Confidential Information. E4D and Customer shall each (i) hold the Confidential Information of the other in trust and confidence and avoid the disclosure or release thereof to any other person or entity by using the same degree of care as it uses to avoid unauthorized use, disclosure, or dissemination of its own Confidential Information of a similar nature, but not less than reasonable care, and (ii) not use the Confidential Information of the other party for any purpose whatsoever except as expressly contemplated under this agreement or any Order. Each party shall disclose the Confidential Information of the other only to those of its employees, independent contractors, permitted subcontractors (including their employees and independent contractors) having a need to know such Confidential Information in furtherance of this agreement or any Order, provided that such persons and entities have signed a non-disclosure agreement containing provisions no less restrictive than those contained in this section.

3.3 Confidentiality Obligations Not Applicable. The obligations of either party under this section will not apply to information or materials that the receiving party can demonstrate (i) was in its possession at the time of disclosure and



## E4D TECHNOLOGIES

without restriction as to confidentiality, (ii) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act by the receiving party, (iii) has been received from a third party without restriction on disclosure and without breach of agreement or other wrongful act by the receiving party, (iv) is independently developed by the receiving party without reference to the Confidential Information of the other party, or (v) is required to be disclosed by law or order of a court of competent jurisdiction or regulatory authority, provided that the receiving party shall furnish prompt written notice of such required disclosure and reasonably cooperate with the disclosing party, at the disclosing party's cost and expense, in any effort made by the disclosing party to seek a protective order or other appropriate protection of its Confidential Information and any disclosure under this clause (v) is limited to the extent of the legal requirement.

### SECTION 4: INTELLECTUAL PROPERTY AND LICENSE

4.1 E4D Intellectual Property. The inventions, software, documentation, reports, designs, specifications, processes, works of authorship, ideas, data or modifications and enhancements to software or documentation (the "Intellectual Property") that are used, made, conceived, developed or reduced to practice, alone or jointly with others, by E4D personnel for Customer in the course of producing the Deliverables are and shall remain the exclusive property of E4D.

4.2 Exclusions and License. Notwithstanding the above, to the extent that any of E4D's Intellectual Property is used as part of the Deliverables, E4D grants the Customer a non-exclusive, worldwide, limited license to use such Intellectual Property as part of the Deliverable. Customer covenants and agrees that it will not reverse-engineer or alter the Intellectual Property in any way, or to use it in any manner except as part of the Deliverable, or attempt to do so. E4D retains all rights in the Intellectual Property not expressly granted in this agreement.

4.3 Customer Intellectual Property. Any and all Intellectual Property supplied to E4D by the Customer (whether owned by the Customer or otherwise) in connection with the performance of the Order (the "Customer Intellectual Property") shall not become the property of E4D.

### SECTION 5: LIMITED WARRANTY AND LIMITATIONS OF LIABILITY

5.1 Applicability and Warranty. E4D provides this limited warranty for the Deliverables when used by the Customer as intended: The Deliverables shall have been produced by qualified technicians and shall be free of material defects in workmanship for a period of 90 days. In its sole discretion, E4D may elect to repair or replace any warranty items. Consumable products do not have any warranty. E4D, in its sole discretion, may elect to repair or replace any Deliverable subject to a warranty claim. If Customer has any warranty claim, it must contact E4D before shipping the Deliverable. During the pendency of any warranty claim, Customer shall keep the subject Deliverable safe from any damage. E4D will be pay for shipment of any warranty item back to E4D.

5.2 No Other Warranty; LIMITATION OF WARRANTY.

ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED AND EXCLUDED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW. FAILURE OF CUSTOMER TO STRICTLY ADHERE TO THE WARRANTY PROCEDURES DESCRIBED HEREIN SHALL VOID ANY WARRANTY.

5.3 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, UNDER NO CIRCUMSTANCES WILL E4D, OR ANY OF ITS AFFILIATED COMPANIES, OFFICERS, AGENTS, OR OWNERS BE LIABLE FOR ANY OF THE



## E4D TECHNOLOGIES

FOLLOWING: (1) THIRD-PARTY CLAIMS AGAINST THE CUSTOMER FOR DAMAGES; (2) LOSS OF, OR DAMAGE TO, CUSTOMER RECORDS OR DATA; OR (3) SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF REVENUE, PROFITS OR SAVINGS), CAUSED BY OR RELATED TO THE DELIVERABLES, OR ANY INSTALLATION WORK, OR ARISING FROM THE FAILURE OF THE DELIVERABLES TO PERFORM OR ANY SOFTWARE UPDATE OR UPGRADE, AND WHETHER DUE TO ALLEGED DEFECTS IN THE DESIGN OR MANUFACTURE OF THE COMPONENTS, SOFTWARE OR ANY OTHER SERVICES PROVIDED BY E4D. UNDER NO CIRCUMSTANCES SHALL E4D'S LIABILITY BE GREATER THAN THE TOTAL COMPENSATION RECEIVED BY E4D UNDER THE ORDER.

### SECTION 6: TERM AND TERMINATION

6.1 Term. The term of this agreement will commence on the date indicated in the Order and will remain in effect until completion of the Order, unless terminated in accordance with this agreement.

6.2 Termination. Customer may terminate this agreement at any time prior to the time that E4D has begun work on the order. This agreement will automatically terminate upon completion of the Deliverables.

6.3 Effect of Termination. Upon notice of termination to E4D, E4D will cease work immediately, unless the parties agree otherwise. If E4D has purchased unique materials for the order prior to notice of termination, Customer will be responsible for reimbursing E4D for all such costs. Termination of this agreement does not affect the Customer's responsibility to pay for work performed prior to the termination date, nor does it affect the confidentiality provisions above, or other provisions herein that logically should survive termination.

### SECTION 7: REPRESENTATIONS, WARRANTIES, AND INDEMNITIES

#### 7.1 Representations and Warranties.

(a) Each person signing this agreement warrants and represents that he/she has full authority to enter into this agreement and bind the party for which he/she signs, and that all warranties and representations in this agreement, are true and correct. Each party hereto represents and warrants that: (a) it is duly constituted and lawfully authorized to conduct business and enter into this agreement; (b) it will perform under this agreement in accordance with all applicable federal, state, and local laws and regulations; (c) entering into and performing under this agreement will not constitute the breach of any agreement, the violation of property rights of any person, or violation of any order; and (d) it will not, directly or indirectly circumvent (or attempt to circumvent) the purposes of this agreement. E4D represents and warrants that it owns, or has license rights to, its Intellectual Property. Customer represents and warrants that it owns, or has license rights to, the Customer Intellectual Property.

(b) Without limiting the generality of the foregoing, Customer expressly represents, warrants, and covenants the following:

(i) Customer is aware of and will comply with all U.S. export controls and sanctions laws, including (without limitation) US Department of Commerce sanctions, directives and regulations promulgated by the US Department of Treasury Office of Foreign Assets Control with respect to the Deliverables.

(ii) Customer is not a party sanctioned by the United States ("Sanctioned Party"), an agent of a Sanctioned Party, or owned or controlled by a Sanctioned Party.

(iii) Customer will not directly or indirectly use funds from or the services of a bank or other financial institution that has been sanctioned by the United States.

(iv) Customer will not provide any Company produced or prepared items, including (without limitation) the Deliverables, to any non-US military end user or for any non-US military end-use, to include military hospitals or medical services used by the military.



## E4D TECHNOLOGIES

(v) Neither the Deliverables nor any portion thereof, or technology associated therewith, shall be provided to or sold to any end-user, broker, intermediate consignee, or ultimate consignee which is prohibited by United States law from receiving the Deliverables or portions thereof.

(vi) Customer will use commercially reasonable methods to ensure that the representations made herein remain true and accurate for any transferee of the Deliverables from the Customer.

7.2 **Indemnities.** In the event of a breach of any representation, warranty or covenant in this agreement, the breaching party will indemnify, defend and hold harmless the non-breaching party from and against any and all claims, causes of action, liabilities, losses, damages, costs, disbursements and expenses, including court costs and reasonable attorneys' fees and expenses arising out of or relating to any such claim. Without limiting the foregoing:

(a) E4D expressly agrees to indemnify and hold harmless the Customer from any and all claims, causes of action, liabilities, losses, damages, costs, disbursements and expenses, including court costs and reasonable attorneys' fees and expenses arising out of or relating to third-party claims against Customer concerning ownership or use of E4D's Intellectual Property; and

(b) Customer expressly agrees to indemnify and hold harmless E4D from any and all claims, causes of action, liabilities, losses, damages, costs, disbursements and expenses, including court costs and reasonable attorneys' fees and expenses arising out of or relating to third-party claims against E4D concerning ownership or use of the Customer Intellectual Property, or from any misuse of the Deliverables.

## SECTION 8: GENERAL

8.1 **General.** The parties agree that this agreement is solely for the benefit of the parties hereto, their successors and permitted assigns, and no provision of this agreement shall be deemed to confer upon any other person or entity any remedy, claim, liability, reimbursement, cause of action or other right whatsoever.

8.2 **Notices.** Any notice required hereunder may be effectively given by letter delivered either by hand delivery, US certified mail (return receipt requested), delivered by overnight delivery service, or by other electronic means so long as the recipient has acknowledged receipt (for purposes of this section an automatically generated receipt confirmation does not qualify as acknowledgement of receipt), addressed to the recipient at the address indicated in the Order.

8.3 **Waiver.** A waiver by any party of any provision of this agreement in any instance shall not be deemed to waive it for the future. A party's failure to insist on strict compliance with any of the terms of this agreement on one or more occasions is not a waiver of any rights or obligations under this agreement.

8.4 **Severability.** Each of the provisions of this agreement (and each part of each such provision) is severable from every other provision hereof (and every other part thereof). In the event that any provision (or part thereof) contained in this agreement or the application thereof to any circumstance shall be invalid, illegal or unenforceable, in whole or in part, and to any extent: (i) the validity, legality or enforceability of such provision (or such part thereof) in any other jurisdiction and of the remaining provisions contained in this agreement (or the remaining parts of such provision, as the case may be) shall not in any way be affected or impaired thereby; (ii) the application of such provision (or such part thereof) to circumstances other than those as to which it is held invalid, illegal or unenforceable shall not in any way be affected or impaired thereby; (iii) if possible, such provision (or such part thereof) shall be construed or re-written as closely as possible to conform to the intent of the parties, in which instance parole or extrinsic evidence may be considered to do so; (iv) if not susceptible to such construction, such provision (or such part thereof) shall be severed from this agreement and ineffective to the extent of such invalidity, illegality or unenforceability in such jurisdiction and in such circumstances; and (v) the

**E4D TECHNOLOGIES**

remaining provisions of this agreement (or the remaining parts of such provision, as the case may be) shall nevertheless remain in full force and effect.

8.5 **Governing Law.** This agreement shall be governed by and construed in all respects in accordance with laws of the State of Texas (without regard to conflict of law provisions).

8.6 **Venue and Jurisdiction; Injunctive Relief.** The parties agree that this agreement is performable in substantial part in Collin County, Texas, USA. The venue for any action or claim at law or in equity hereunder shall be exclusively in the state or federal courts in Collin County, Texas, and the parties hereto consent to the exclusive jurisdiction of those courts. Notwithstanding anything to the contrary herein, any party may seek a temporary restraining order, preliminary injunction or permanent injunction arising out of or related to this agreement in any appropriate jurisdiction.

8.7 **Attorneys' Fees.** In the event of a dispute relating to the subject matter of this agreement, the prevailing party shall have the right to collect from the other party its reasonable costs and attorneys' fees incurred in enforcing this agreement.

8.8 **Entire agreement.** This agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.

8.9 **Counterparts.** This Order may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement.

8.10 **Amendments.** No modification, revision, supplementation, abrogation, termination, extension, waiver, or amendment to or of this agreement may be made unless it is in writing and executed by duly authorized representatives of the Parties.

8.11 **Assignment.** The obligations and rights hereunder, and this agreement, may not be assigned by either party without the express prior written consent of the other party.

8.12 **Force Majeure.** E4D shall not be liable for its failure to perform hereunder or for any delay or default if caused by conditions beyond its control including, but not limited to Acts of God, failure of distributors, failure of suppliers, subcontractors, carriers, riots, pandemics, floods, or any other cause beyond reasonable control of E4D.

8.13 **Headings.** All headings used in this agreement are for convenience only and are not to be interpreted to limit or restrict the substance of any part of this agreement.