

**1. DEFINITIONS.**

- 1.1. "Agreement" means the contract formed between WSU and Buyer as set forth herein.
- 1.2. "Buyer" or "Company" means the person, firm, organization, governmental entity, or company purchasing the Services and/or Goods.
- 1.3. "Company Intellectual Property" means intellectual property rights owned by or licensed to Company, including but not limited to patents, copyrights, trademarks, trade secrets, know-how, proprietary information, data, and other materials provided to or otherwise made available to WSU in connection with the Services and/or Goods.
- 1.4. "Confidential Information" means non-public, proprietary, or confidential information, excluding information that (i) is generally available to the public at the time of this Agreement; (ii) becomes part of the public domain or publicly known or available by publication or otherwise, not due to any unauthorized act or omission on the part of the Receiving Party; (iii) is disclosed to the Receiving Party by a third party without breaching any obligation of non-use or confidentiality; or (iv) has been independently developed by persons in the Receiving Party's employ or who otherwise has had no contact with the information.
- 1.5. "Deliverable" means any work product, report, data, materials, Goods, or other output that WSU is obligated to provide to Buyer pursuant to an Order.
- 1.6. "Deliverable Intellectual Property" means any intellectual property rights created or conceived by WSU during the Agreement that are explicitly included within and form an integral part of a Deliverable. Deliverable Intellectual Property may include, but is not limited to, data and test results. Notwithstanding the foregoing, Deliverable Intellectual Property shall exclude Incidental Intellectual Property.
- 1.7. "Force Majeure Event" means circumstances reasonably beyond WSU's control, including, but not limited to, labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, government restrictions, failure to furnish necessary information, sabotage, failures or substitutions of equipment, shortages of labor, shortages of fuel or raw materials or equipment, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, technical failures, mechanical breakdowns, floods, fire, earthquake, explosion, epidemic, pandemic, disease, war, invasion, hostilities, terrorist acts, riots, embargoes, industrial disturbances, or other such occurrences.
- 1.8. "Goods" means the goods, equipment, materials, or other articles to be purchased by Buyer.

- 1.9. "IDP" means WSU's Division of Industry and Defense Programs, which includes the National Institute for Aviation Research ("NIAR").
- 1.10. "Incidental Intellectual Property" means (i) methodologies, processes, and know-how used by WSU to create any Deliverable; and (ii) inventions, equipment improvements, tools, test fixtures, testing procedures, manufacturing methods, software tools, algorithms, and development frameworks created or conceived by WSU during the Agreement that can be used independently of the Deliverables.
- 1.11. "Order" means a purchase order or other written document provided by Buyer that references a Quote and specifies the Services, Goods, Deliverables and/or technology licenses to be provided by WSU.
- 1.12. "Quote" means the written quotation for Services and/or Goods provided to Buyer by WSU, including, where applicable, any Statement of Work ("SOW") issued by either Party and referenced in or forming the basis of such quotation.
- 1.13. "Receiving Party" means the Party receiving Confidential Information.
- 1.14. "Sensitive Data" means sensitive or classified information or data, which shall include personally identifiable information, controlled unclassified information, classified information, or protected health information.
- 1.15. "Services" means any and all services to be performed by WSU, which shall include the provision of any Goods incidental to or necessary for the performance of such services.
- 1.16. "Terms" means these Standard Terms and Conditions for the provision of IDP Services and Goods.
- 1.17. "WSU" means Wichita State University and any affiliates, subsidiaries, successors or assigns thereof.
- 1.18. "WSU Background Intellectual Property" means intellectual property rights that are (i) owned by or licensed to WSU prior to the commencement of any Services or delivery of any Goods or Deliverables identified in any specific Order, or (ii) developed by WSU independently of the Services. WSU Background Intellectual Property may include, but is not limited to, patents, copyrights, trademarks, trade secrets, know-how, methodologies, processes, and proprietary information.

**2. APPLICABILITY OF TERMS.**

- 2.1 These Terms govern when the Services and/or Goods purchased are being provided by IDP, including but not limited to research, manufacturing, and commercial testing.
- 2.2 These Terms only apply to transactions that are not subject to a separate written agreement, duly executed by both Buyer and WSU (referred to individually as "Party" and collectively as "Parties"). If there is such an agreement, then those terms shall be

the terms that govern the transaction between the Parties. In the absence of such a written agreement, then these Terms shall govern.

- 2.3 These Terms are available for download at [Doing Business with Us](#) (the "Website"). WSU may change these Terms at any time in its sole discretion. Such changes shall be effective upon posting of such updates on the Website. Buyer is responsible for periodically visiting the Website to review changes to these Terms.
- 2.4 The Website also contains supplemental terms that may be applicable based on the nature of the Services and/or Goods (if applicable, referred to herein as the "Supplemental Terms"). Such Supplemental Terms are applicable in addition to these Terms. WSU may change these Supplemental Terms at any time in its sole discretion. Such changes shall be effective upon posting of such updates on the Website. Seller is responsible for periodically visiting the Website to review changes to the Supplemental Terms. In the event of a conflict between such Supplemental Terms and these Terms, the Supplemental Terms shall control.
- 2.5 Buyer warrants it has fully reviewed, understands, and can fulfill its obligations under these Terms and agrees to be bound by these Terms and any further changes to them.

### **3. CONSENT AND FORMATION OF CONTRACT.**

- 3.1 These Terms, together with the Quote, embodies the entire Agreement between WSU and Company.
- 3.2 Company's offer to purchase Services and/or Goods from WSU (as described in the Quote) and/or offer to obtain certain technology licenses from WSU is conditioned upon Company's acceptance of these Terms. A separate binding Agreement shall be formed as to each Order upon Buyer's acceptance of this offer, which may be demonstrated by Buyer (i) issuing an Order or other written acceptance referencing the Quote, (ii) making payment for any Services and/or Goods, or (iii) accepting delivery of any Services and/or Goods.
- 3.3 These Terms prevail over any terms or conditions contained in Buyer's Order and expressly excludes any of Buyer's general terms and conditions. Any additional or different terms in Buyer's Order are hereby rejected and shall not be binding unless expressly agreed to in writing signed by WSU's duly authorized representative. These Terms may not be altered, supplemented, or amended by the use of any additional document(s). This includes, without limitation, any quality, inspection, testing, or certification provisions or references to external quality standards contained in Buyer's Order, which shall have no force or effect unless specifically agreed to in writing by WSU. In the event of a conflict between

these Terms and any terms identified on Buyer's Order, these Terms shall control.

### **4. ASSIGNMENT.**

Neither this Agreement nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by any party without the prior written consent of all other parties.

### **5. GOVERNING LAW.**

This Agreement is governed by the laws of the State of Kansas. Any legal action involving the subject matter of this Agreement shall be adjudicated in Kansas and is subject to, governed by, and construed according to the laws of the State of Kansas, excluding any conflict of law rules.

### **6. TERMINATION.**

This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. In any case, upon termination, WSU will be reimbursed for all costs actually incurred in the performance of the Agreement and all non-cancelable obligations.

### **7. FORCE MAJEURE.**

WSU will not be liable for any failure or delay in performing its obligations under this Agreement to the extent caused by a Force Majeure Event. WSU shall provide reasonable notice to Company of the occurrence of such Event and shall use reasonable efforts to mitigate its impact.

### **8. INDEPENDENT CONTRACTOR.**

WSU and Company are not (and nothing in this Agreement may be construed to constitute them as) partners, agents, representatives or employees of the other, nor is there any status or relationship between them other than that of independent contractors. Neither party has any responsibility nor liability for the actions of the other party except as specifically provided in this Agreement. Neither party has any right or authority to bind or obligate the other party in any manner or make any representation of warranty on behalf of the other party.

### **9. NOTICES.**

Any notice or other official communication given under this Agreement to WSU shall be in writing and shall be deemed delivered when received by certified first class mail, registered mail, overnight courier, by facsimile or electronic mail provided that a copy of such facsimile or electronic mail is promptly sent by certified first class mail, registered or overnight courier, addressed to:

Wichita State University  
Office of General Counsel  
1845 Fairmount Street  
Wichita, Kansas 67260-0205  
GC.Contracts@wichita.edu

**10. DISPUTES.**

Pending resolution of any dispute arising under this Agreement, excluding disputes regarding payment issues, WSU shall proceed with the performance of this Agreement, providing however that the parties proceed in good faith to resolve disputes between themselves. If the parties are unable to resolve the dispute after sixty (60) days WSU may issue a stop work order.

**11. INSURANCE/INDEMNITY.**

Company agrees to indemnify, defend, and hold WSU, its officers, agents and employees, harmless from any liability resulting from the use by Company of any Deliverables provided to Company by WSU under this Agreement. Company warrants that it maintains a policy or program of insurance or self-insurance at levels sufficient to support the indemnification obligations assumed herein. Company further understands that WSU and its officers and employees acting within the scope of their employment are subject to the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* WSU relies on the provisions of the Kansas Tort Claims Act and no further insurance is required to be maintained by WSU.

**12. FACILITY ACCESS.**

WSU's premises may be covered under certain regulations, including but not limited to the International Traffic in Arms Regulations (ITAR) or the Export Administration Regulations (EAR). While on WSU's premises, Buyer and its representatives and invitees will adhere to WSU's reasonable compliance, safety, and security policies and procedures, including any required citizenship verification, and will use commercially reasonable efforts not to interfere with WSU's regular operations. At all times, Buyer understands and agrees to be responsible for the safety of its employees, representatives or agents.

**13. DISCLAIMER OF WARRANTIES.**

WSU makes no warranties, express or implied, as to any matter whatsoever, including without limitation, the condition, originality or accuracy of the Services, Goods, and/or Deliverables provided under this Agreement and expressly disclaims warranties of merchantability, inadvertent infringement of third party intellectual property rights, or fitness for a particular purpose. All use of the Services, Goods, and/or Deliverables is at Company's sole risk and discretion. WSU is not responsible for meeting the requirements of any airworthiness or other regulatory authority, or adherence to any standards organization guidelines, unless those are specifically set forth on the Order.

**14. CONFIDENTIAL INFORMATION.**

To the extent the Parties have entered into a separate non-disclosure agreement ("NDA"), the terms of that NDA shall govern the treatment of Confidential Information, to the

extent applicable. In the absence of such an agreement, or where the NDA is silent, the following terms shall apply:

14.1 For a period of five (5) years after the disclosure of Confidential Information, and to the extent permitted by state and/or federal law, the Receiving Party agrees to maintain in confidence all Confidential Information disclosed in connection with this Agreement.

14.2 Should it be necessary for WSU personnel to receive Confidential Information from Company, Company agrees to state in writing at the time of delivery that such information is confidential, or if given orally, reduce such designation to writing, within thirty (30) days of the oral disclosure. WSU retains the right to refuse to accept any information that is not considered to be essential to the completion of the Order.

14.3 Notwithstanding the foregoing, WSU shall be free to use and disclose any information retained in the unaided memories of its employees who had rightful access to such information, provided that this right does not apply to information otherwise subject to patent, copyright, and trademark protection.

14.4 In the event that COMPANY furnishes equipment, product, materials or other similar tangible or physical items that it intend to be treated as Confidential Information pursuant to these Terms and that will be physically on the premises of WSU or within WSU's custody or control ("Confidential Items"), such Confidential Items must be identified as confidential prior to the time of first disclosure and suitably marked to identify them as Confidential Information. For the avoidance of doubt, "Confidential Items" does not include technical data or information. If there are additional costs associated with ensuring the confidentiality of such Confidential Items (e.g. cost for visual obstruction of such item), COMPANY agrees to negotiate in good faith with WSU regarding the payment of such costs; provided, however, that in no circumstances should COMPANY transfer the Confidential Item to WSU's premises, custody, or control prior to having an agreement regarding such costs.

**15. SENSITIVE DATA.**

15.1 Company will not provide any Sensitive Data to WSU without first identifying such data and the corresponding classification to WSU prior to disclosure. If, in its sole discretion, WSU determines that it cannot handle the Sensitive Data in accordance with any applicable requirements, WSU will notify Company not to disclose the Sensitive Data and Company shall not do so.

15.2 If Company receives any Sensitive Data from WSU, Company agrees to comply with all applicable laws and regulations governing such Sensitive Data.

**16. WAIVER.**

Any waiver of rights shall be in writing and provided to all Parties. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Party.

**17. SEVERABILITY.**

The illegality or invalidity of any provision of this Agreement shall not impair, affect, or invalidate the other provisions of this Agreement.

**18. EXPORT COMPLIANCE.**

18.1 Company certifies that to the best of its knowledge neither it nor any of its principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations §120.27, or otherwise declared ineligible for the award of contracts by any Federal agency. Company shall provide immediate written notice to WSU if at any time Company learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

18.2 Company further agrees to comply with all U.S. Laws relating to the transfer, export, or re-export of technical data (as defined in the Export Regulations defined herein) that is subject to export controls under the International Traffic in Arms Regulations (ITAR) 22 Code of Federal Regulations Parts 120-130 or the Export Administration Regulations (EAR) 15 Code of Federal Regulations Parts 730-774 without an export license to any employee or other person who is not a U.S. Citizen or permanent resident, as well as to corporations or to any other entity, organization, or group that is not incorporated or otherwise organized to do business in the United States.

18.3 Company shall notify WSU in writing prior to disclosure of any technical data or other items subject to EAR or ITAR to WSU. Company will reasonably cooperate with and support WSU in obtaining the correct Export Control Classification Number (ECCN), classification of United States Munitions List (USML) category, and any necessary licenses or authorizations required to complete the SOW.

**19. ARCHIVAL RECORDS.**

Company agrees that WSU may retain one archival copy of all documents resulting from the Order for the purposes of (a) proving what information it did or did not receive hereunder in the event of a future dispute, or (b) complying with governmental regulatory requirements.

**20. SCHEDULING.**

20.1 Tentative Scheduling: A tentative or estimated schedule may be provided with the Quote. This

schedule only represents a snapshot of opportunity at the time of the quote.

20.2 Priority Scheduling: Priority scheduling is available at the request of the customer for a premium cost ranging from 1.5 to 2.5 times the normal cost.

20.3 Project/Test Schedule: The project/test schedule will be agreed to by WSU and the Company. WSU is not responsible for schedule delays due to:

20.3.1 Late material, test panel, test article, or other test related delivery;

20.3.2 Test article failures during testing;

20.3.3 Changes to the scope of work;

20.3.4 Equipment failure;

20.3.5 Environmental conditioning; or

20.3.6 A Force Majeure Event.

If any of these events occur, WSU reserves the right to reschedule the project/test.

20.4 Postponement: If a Company must postpone a test, WSU reserves the right to charge the Company against the PO for any charges that may have been incurred and for lost revenue due to the reserved testing slot. These charges include but are not limited to staffing, materials purchases, equipment, rental fees, and storage.

20.5 Cancellation: If a Company must cancel a test, WSU reserves the right to charge the Company against the PO for any charges that may have been incurred, for charges related to material purchases that cannot be otherwise cancelled or repurposed by WSU, and for lost revenue, such as loss of revenue due to a reserved testing slot. These charges include but are not limited to staffing, materials purchases, equipment, rental fees, and storage.

20.6 Maintenance and Repairs: WSU reserves the right to adjust schedules to allow for maintenance and/or repairs that may be necessary.

20.7 Defense Priorities and Allocations System (DPAS) Rated Orders: The parties acknowledge that WSU may receive orders that are subject to the Defense Priorities and Allocations System ("DPAS"). In accordance with U.S. law, WSU is required to prioritize performance of DPAS-rated orders over non-rated work. Accordingly, WSU shall have the right to reschedule, delay, or modify performance under this Agreement to the extent necessary to comply with any DPAS-rated order, without liability for any resulting delay or impact. WSU will make reasonable efforts to notify Buyer if such a situation arises and will work in good faith to minimize disruption. Buyer agrees that all timelines and delivery commitments under this Agreement are subject to adjustment as required to comply with DPAS obligations.

**21. DATA/TEST RESULTS.**

21.1 Preliminary Data: Data that is provided to the Company during testing and before the formal report

is considered by WSU as preliminary and not final. If no formal report is requested, only preliminary data will be supplied. Preliminary data will be maintained electronically by WSU for 12 months after completion of testing.

- 21.2 Final Data: Final data will be provided to the Company per the project schedule in the formal report. A formal report will be generated if requested by the Company and identified in the Quote. (Cost of the report will be reflected in the Quote.) A copy of the formal report will be maintained electronically by WSU for twelve (12) months after completion of testing.
- 21.3 Storage: Unless other arrangements are made, tested articles will be returned to the Company at the Company's expense. Storage of tested articles will be at the Company's expense. WSU reserves the right to remove and store failed test articles at the Company's expense until articles are repaired and testing can be resumed.
- 21.4 Tools, Equipment, and Test Fixtures: WSU will retain all tools, equipment and test fixtures used in a test. The Company may request these items after a test if the Company paid for such items.
- 21.5 Test Results: WSU is responsible for providing test results per Company guidelines or other recognized testing standards. WSU will maintain calibration records for testing traceability. WSU is not responsible for test values below predicted values when WSU Quality Manual testing protocols have been followed.

## **22. PAYMENT.**

- 22.1 In consideration for the Services and/or Goods, Buyer will pay WSU in the amount set forth in the Quote. Company will be invoiced as set forth in the Quote (or, if no invoice schedule is identified, upon completion of Services or shipment of Goods). Company must dispute any invoice within thirty (30) days of receipt. Payment shall be due thirty (30) days following receipt of any undisputed invoice.
- 22.2 If, at any time, Company fails to make timely payment of an undisputed invoice amount, WSU may suspend Services with the right to recover work stoppage costs; withhold any or all Services, Goods and/or Deliverables until payments are brought current; or assess interest on past due amounts, at an annual interest rate at the greater of (i) fifteen percent (15%) or (ii) the maximum rate permitted by law.

## **23. DATA STORAGE.**

As a courtesy service to the Company, WSU will securely store data collected during the project and/or test for a period of one (1) year from the date of the test. After one (1) year WSU may destroy such data. Company will have the opportunity to either ask for this data to be sent to them or request immediate disposal of data. WSU is not responsible

for accidental data loss after the test is complete and results have been supplied to Company.

## **24. INTELLECTUAL PROPERTY.**

Unless expressly stated otherwise in a Quote, the following sections relating to intellectual property rights shall apply:

- 24.1 WSU retains all right, title, and interest in and to any WSU Background Intellectual Property. If WSU Background Intellectual Property is incorporated within the Deliverables, WSU hereby grants to Company a non-exclusive, non-transferable, royalty-free license to use such WSU Background Intellectual Property for Company's internal business purposes solely as embodied within the Deliverables. Any use of WSU Background Intellectual Property beyond what is inherently contained within the Deliverables shall be subject to additional licensing terms and fees, as may be specified in the Quote. Company may not extract or attempt to reverse engineer WSU Background Intellectual Property unless otherwise agreed to by the Parties in writing.
- 24.2 Company retains all right, title, and interest in and to all Company Intellectual Property. Company hereby grants to WSU a non-exclusive, non-transferable, royalty-free license to use Company Intellectual Property solely to the extent necessary for WSU to perform under the Order. WSU shall not use Company Intellectual Property for any other purpose without Company's prior written consent. Upon completion of the Services and/or delivery of the Goods or Deliverables, termination, or expiration of this Agreement, WSU's license to use Company Intellectual Property shall immediately cease.
- 24.3 Company shall own all right, title, and interest in and to any Deliverable Intellectual Property. WSU hereby assigns to Company all rights in Deliverable Intellectual Property and agrees to execute any documents reasonably necessary to evidence such assignment.
- 24.4 WSU shall retain all right, title, and interest in and to any Incidental Intellectual Property. WSU hereby grants to Company a non-exclusive, non-transferable, royalty-free license to use any Incidental Intellectual Property solely for Company's internal business purposes to the extent such license is necessary for Company to obtain the full use and benefit of the Services provided by WSU. Any use of Incidental Intellectual Property beyond the foregoing sentence shall be subject to additional licensing terms and fees, as may be specified in a separate written agreement.
- 24.5 Nothing in this Agreement shall be deemed to prevent WSU from future use of general knowledge acquired by its employees during the performance of the Services. For the avoidance of doubt, this section does not provide WSU the right to use Company's intellectual property that is otherwise subject to patent, copyright, and trademark protection.

**25. PUBLICATION RIGHTS.**

Under Kansas Board of Regents policy, WSU investigators shall be permitted to publish in journals, dissertations, theses and other scholarly and professional publications, and to present at symposia and professional meetings the methods and results of the projects. Company shall, at its request in writing, be furnished copies of any proposed publication or presentation at least sixty (60) days in advance of the submission of such proposed publication to a journal, editor or third party. During the 60 day review period, company may object to the proposed publication or presentation only on the basis that it contains patentable subject matter that needs protection and/or it contains confidential information belonging to Company. In the event of such an objection, the parties shall negotiate in good faith an acceptable version of the document.

**26. USE OF MARKS, LOGOS, AND MARKETING.**

Company shall not use the name, logos, insignias, or trademarks of WSU, any affiliates of WSU, or any employee, in any publicity, advertising, promotional materials, news release or websites except as set forth in this Agreement, or as authorized by WSU in each instance. Either Party may use the name of the other Party in a document required to be filed with, or provided to, any governmental authority or regulatory agency to comply with applicable legal or regulatory requirements. Either Party may also refer to the other Party by name in any report or summary report prepared by WSU as it relates to the Services provided by WSU to Company.

**27. LIMITED LIABILITY.**

In no event shall WSU be liable for incidental, indirect, special, or consequential or exemplary damages, whether foreseeable or not, which are in any way related to or arise out of the Services or this Agreement, or from the loss of goodwill, profits, diminution in value, or loss business, and/or from any other cause whatsoever.

**28. TERMS APPLICABLE TO SPECIFIC SERVICES.**

28.1 To the extent any flight test is necessary to provide the Services, WSU's ability to participate is subject to the following: the aircraft owner must retain operational control of such flight; provide its own flight test crew; and ensure that its Aircraft Owner Liability Insurance policy providers coverage for any flight and/or test crew, with both WSU and any flight and/or test crew being listed as an additional insured on any Aircraft Owner Liability Insurance coverage, as applicable.

28.2 To the extent that Services include the use of remote technology to conduct certain inspection and test witnessing activities ("Remote Test Witnessing"), the following additional terms apply:

28.2.1 Remote Testing Witnessing will be performed consistent with FAA guidance, as applicable.

28.2.2 Company will be solely responsible for identifying and establishing the proper remote technology to be used during the provision of the Remote Test Witnessing, determining who has access to the remote technology at the time any Remote Testing Witnessing is being provided, and for controlling and limiting access as necessary to allow WSU to provide the Remote Test Witnessing in a manner that does not allow for unauthorized access or use of Company's information or WSU's customer's information.

28.2.3 Company and its successors, assigns, heirs, and beneficiaries hereby fully and finally release, acquit, and forever discharge WSU and each of its present, former, and future officers, directors, shareholders, representatives, employees, partners, principles, agents, affiliates, subsidiaries, predecessors, successors, assigns, beneficiaries, heirs, executors, insurers, and attorneys (collectively, the "Released Parties") from any and all actions, debts, claims, counterclaims, demands, liabilities, damages, causes of action, costs, expenses, and compensation of every kind and nature whatsoever, past, present, and/or future, in law or in equity, whether known or unknown, which Company had, has, or may have had against the Released Parties or any of them, relating to Remote Test Witnessing, specifically including any claims related to unauthorized use or access of Company information or Company's customer's information during provision of Remote Test Witnessing.

28.2.4 Company and its successors, assigns, heirs, and beneficiaries further agree not to institute any litigation, lawsuit, claim, or action against WSU which arises from, or is alleged to arise from, or relates to, or is based on, or is in any way connected with, in whole or in part, the Remote Test Witnessing.

28.2.5 Company shall indemnify and hold harmless WSU against any and all suits, claims, judgments, losses, damages, costs, or expenses (including attorneys' fees) relating to or arising out of the Remote Test Witnessing provided by WSU.