1. DEFINITIONS
"Buyer" means the company, firm, body or person so named in the Order;
"Conditions" means these terms and conditions;
"Contract" means the contract between the Buyer and the Seller consisting of the Order and these Conditions;
"Electronic Document(s)" means, without limitation, any online Order, online e-mail communication between the parties, e-signature, faxes, email, post or any other document transmitted by electronic means;
"Government Regulations" means any and all applicable regulations, including, without limitation, the U.S. Export Administration Regulations, the United Nations Security Council Resolution 743, the Generalized System of Preferences, the EU Export Control Regulations, and any other laws, rules, or regulations of any country or jurisdiction.
"Intellectual Property Rights" means the patents, inventions, registered designs, copyrights, database rights, trade secrets, trademarks, service marks, domain names, business names, trade names, moral rights, and all registrations or applications to register any of the aforesaid items in any country or jurisdiction.
"Order" means the contract issued by or on behalf of the Buyer for the purchase of the Products and/or the performance of the Services;
"Parties" means the Buyer and the Seller (each a "Party");
"Price" means the sum to be paid by the Buyer to the Seller for the purchase of the Products and/or the performance of the Services the subject matter of an Order;
"Regulations" means any and all applicable regulations, including, without limitation, the Transfer of Undertakings (Protection of Employment) Regulations 2006;
7.6 Procurement and/or IOR Services by a Seller subsidiary. Where Seller has a registered subsidiary, the Seller subsidiary may procure Product for Buyer and/or may provide IOR services for Buyer in that location pursuant to an executed Addendum to this MSA. Notwithstanding Clause 7.1 above, Products that are sourced outside the United States require an Addendum with a Seller subsidiary.

7.7 Returns. Returns are granted when in compliance with manufacturer return policies and accepted by manufacturer. Refunds will not be given, but credits will be applied.

7.8 Leasing. Products procured through leasing are subject to the following: (i) the terms of this Contract; and (ii) applicable agreements with third-party leasing entities, including multiparty assignment agreements between Buyer, Seller, Lessor, and Lessor’s assignee. Buyer shall supply any other documents that may be required by the Seller, the Leasing entity or the Leasing entity’s assignee that pertain to the Lease.

7.9 Any times for delivery are estimates only and although the Seller will use all reasonable efforts to deliver the Products in accordance with the times specified, time is not of the essence.

7.10 Unless otherwise agreed in writing, the Seller shall be entitled to make partial deliveries by instalments and these Conditions shall apply to each partial delivery.

7.11 Seller is not a warehouseman, and, in the event that Product remains at a Seller warehouse for longer than the time needed to perform PS due to delays caused solely by Buyer, Seller reserves the right to ship the Product to Buyer and/or charge a fee until Buyer takes delivery. If the Seller does store the Products, then Seller shall do so at the Buyer's risk and the Buyer shall reimburse the Seller without delay all reasonable costs (including insurance) of such storage incurred by the Seller until such time as the Buyer takes delivery of the Products. Any provision is without prejudice to any other rights which the Seller may have in respect of the Buyer's failure to take delivery of the Products or pay for them in accordance with the Contract.

7.12 Where the Buyer either: 7.12.1 fails to accept any delivery when due; or 7.12.2 defaults in making any payment when due, then the Seller may cancel any or all subsequent deliveries (including where applicable any subsequent deliveries and the Buyer shall compensate the Seller in full for any loss, cost or expense arising from such cancellation and, notwithstanding the Seller's duty to mitigate its loss, the Buyer shall compensate the Seller in full for the loss of the Price in respect of Products ordered but not delivered.

8. DAMAGE IN TRANSIT AND NON-CONFORMANCE

8.1 The Seller shall examine the Products upon delivery and shall notify the Seller and the carrier immediately in writing of any visible damage to or short delivery of the Products.

8.2 The Buyer shall further notify the Seller in writing within 3 working days of delivery in the event of any other damage to, short delivery of or other non-conformance of the Products.

8.3 Returns are granted in compliance with manufacturer return policies and accepted by manufacturer. Refunds will not be given, but credits will be applied. In the event that notification is not received by the Seller within the requisite time the delivery shall be deemed complete.

9. TRANSFER OF PROPERTY

9.1 The Seller warrants that it has good title in the Products and that (as to Products bought and sold in the UK, pursuant to s12(3) of the Sale of Goods Act 1979 or s2(3) of the Supply of Goods and Services Act 1982, whichever Act applies to the Contract) it will transfer such title as it may have in the Products to the Buyer pursuant to Condition 9.2.

9.2 Notwithstanding delivery to the Buyer and except in respect of software where title to the same shall remain at all times with the relevant licensor, title in the Products shall not pass to the Buyer until the Seller has received the Price in full.

9.3 Until such payment is made in accordance with Condition 9.2, the Buyer shall take all necessary measures to protect the Products including maintaining adequate insurance therefor; and not dispose of the Products whether by sale or otherwise nor allow any third party right to be created in respect of the same.

9.4 Any resale by the Buyer of Products in which title has not passed to the Buyer shall (as between the Seller and the Buyer only) be made by the Buyer as agent for the Seller.

9.5 So long as the title in the Products remains with the Seller, the Seller shall have the right, without prejudice to any obligation of the Buyer to the Seller, to re-take possession of all or any of the Products and for that purpose to go upon any premises (or authorize others to do so) occupied by the Buyer which the Buyer hereby authorize or permit to be occupied by the Buyer to deliver up to it all or any of the Products.

10. TERMINATION

10.1 If the Buyer becomes insolvent, it presented with a petition for bankruptcy and/or winding up, or in the reasonable opinion of the Seller is likely to go into bankruptcy, receivership or liquidation or commits a breach of the contract, the Seller may forthwith terminate the Contract without incurring any liability to the Buyer.

10.2 Termination shall affect the continuance in force of any provision hereof which is expressly or by implication to survive the Contract.

11. TUPE (UK applicable) 11.1 It is not anticipated that the employment of any person will transfer from the Buyer to the Seller pursuant to these Conditions or any Contract. 11.2 Where any individual is transferred from the Buyer to Seller by virtue of the Regulations, without limiting any other remedy available to Seller, the Buyer agrees to indemnify and hold Seller harmless against any liability howsoever arising prior to the date of said transfer.

12. WARRANTY

12.1 In respect of all Products, the Seller will ensure the Buyer receives the benefit of any guarantee or warranty that may have been given to the Seller by a third party manufacturer or supplier.

12.2 Seller will request supply to the Buyer (insofar as possible) details of the terms and conditions of any such guarantee or warranty, but the Buyer shall be responsible for instructing itself on the terms of the same and ensuring full compliance with the terms thereof.

12.3 The Buyer shall ensure that the Products are properly serviced, maintained and operated in accordance with the Seller's recommendations (and any guarantee or warranty of the manufacturer or supplier) and are not fitted or used with any parts, accessories or ancillary equipment other than those recommended by the Seller in writing or stated by the Seller in writing to be suitable.

12.4 During the period of any warranty referred to in Conditions 12.1 & 12.2, neither the Buyer nor any third party acting on behalf of or for the Buyer shall attempt to remedy any defect or to dismantle or otherwise tamper in any way with the Products except in accordance with specific written instructions, directions and/or requests of the Seller.

12.5 Except as expressly stated herein, all other conditions, warranties, stipulations or other statements whatsoever concerning the Products, whether express or implied, by statute, at common law or otherwise howsoever are hereby excluded.

12.6 The Seller shall perform the Services with reasonable skill and care.

12.7 Seller’s Services shall be provided in accordance with the applicable Product Warranty Disclaimers. EXCEPT FOR THE MANUFACTURER’S WARRANTY, IF ANY, AND, TO THE EXTENT PERMITTED BY LAW, THE PRODUCTS SOLD HEREUNDER ARE PROVIDED “AS IS” WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR ANY IMPLIED WARRANTY IN ANY FORM.

12.8 PS Warranty. Seller represents and warrants that: (i) the Services delivered to Buyer pursuant to the applicable SOW shall conform and perform in all material respects to the specifications described in the applicable SOW; (ii) Seller shall perform all Services hereunder consistent with and exceeding customary industry standards and in compliance with applicable law; and (iii) Seller’s Services shall not infringe the intellectual property rights of Buyer or any third party in its performance of Services. In order to receive warranty remedies under (i) and (ii), Buyer must report deficiencies in the Services in writing within thirty (30) days of completion of those Services. For any breach of the above warranties, Buyer’s exclusive remedy, and Seller’s entire liability, shall be the reperformance of the Services. If Seller is unable to perform the Services as warranted, Buyer shall be entitled to a credit for the fees paid to Seller for the deficient Services.

12.9 PS Warranty Disclaimers. EXCEPT AS EXPRESSLY SET FORTH HEREIN AND TO THE EXTENT PERMITTED BY LAW, SELLER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION FOR SERVICES PROVIDED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE.

13. CONFIDENTIALITY

13.1 Duty to Protect. By virtue of this Contract, the Parties may have access to information that is confidential or proprietary to the other Party (“Confidential Information”). Confidential Information shall be limited to (i) information provided to the other Party under this Agreement, which has been identified by the disclosing Party in writing, prior to or at the time of disclosure, as confidential, or proprietary (ii) information or materials which the receiving Party knows or would reasonably expect to contain confidential or proprietary information. The Parties agree not to make each other’s Confidential Information available in any form to any third party or to use each other’s Confidential Information for any purpose other than for the purposes specifically contemplated in this Contract or any applicable Sales Proposal or SOW. Each Party agrees to use the same standard of care as it uses to protect its own Confidential Information, but no less than a reasonable standard of care, to ensure that its employees, agents, consultants and other representatives do not disclose or make any unauthorized use of the other Party’s Confidential Information.

13.2 Exclusions. Confidential Information shall not include any information that: (i) has been disclosed in publicly available sources of information, (ii) is, through no fault of the receiving Party, subsequently disclosed in publicly available sources of information, (iii) was in the possession of the receiving Party without any obligation of confidentiality, or (iv) has been or is subsequently rightfully acquired from a third Party and the disclosure is authorized by the third party.

13.3 Remedies. Each Party acknowledges that any breach of the provisions of Clause 13.1 may result in serious and irreparable injury to the non-breaching Party for which monetary damages may not be an adequate remedy. Each Party agrees that, in addition to all other rights and remedies available to the non-breaching Party may have in law or equity, the non-breaching Party shall be entitled to seek specific performance of this paragraph by the breaching Party by way of an injunctive.

14. DATA PROTECTION

Each party shall comply with its obligations in respect of the EU General Data Protection Regulation (GDPR), Privacy Shield, and/or any corresponding or equivalent national laws or regulations, the Regulation of Investigatory Powers Act.
2000 (where applicable), and all applicable laws, regulations, and codes of practice relating to the processing of Personal Data and privacy as amended from time to time.

15. LIMITATION OF LIABILITY

15.1 Neither party excludes nor limits its liability for personal injury or death arising out of or in connection with its negligence, for fraudulent misrepresentation nor for any other form of loss or damage for which it is not prohibited by law.

15.2 Subject to Condition 15.1 and notwithstanding anything contained in these Conditions (other than Condition 15.1) the Seller's liability to the Buyer under the Contract shall not:

15.2.1 in respect of damage to tangible property exceed $1,000,000 in yearly aggregate (such period to commence on the date of delivery of the Products); or

15.2.2 in respect of any and all other direct loss caused by the gross negligence or of breach of any obligations hereunder of the Seller, its employees, servants and/or agents exceed the Price or $250,000 whichever is the greater.

15.3 Notwithstanding anything contained in these Conditions, the Seller shall not be liable for any indirect, special or consequential loss or damage incurred by the Buyer arising out of any breach of these Conditions and, for the purpose of these Conditions, indirect, special or consequential loss shall include, but not be limited to damage to or loss of data or other equipment or property, economic loss or damage, loss to or loss of profits, interest, business, goodwill, contracts, revenues or anticipated savings and the incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and/or punitive damages).

15.4 In the event that the Seller is asked to recommend Products to meet the Buyer's requirements, the Seller does not warrant, represent or undertake that any purchase of the Products will satisfy the Buyer's requirements. All recommendations of Products by the Seller are therefore recommendations only and the Seller accepts no responsibility if any Products sold fail to meet the Buyer's requirements or purpose or to achieve any particular level of performance.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 Where the Products include software, the Buyer's attention is drawn to the licence terms imposed by the individual software manufacturer's governing use of such software which shall apply to any use and/or misuse of such software to the exclusion of all other terms.

16.2 The Seller shall indemnify the Buyer against all unaffiliated third party claims arising from (i) its breach of Condition 13 (Confidentiality), or (ii) any infringement or alleged infringement of any Intellectual Property Rights of a third party arising out of or in connection with the purchase or use of any Products supplied by the Seller to the extent that the Seller is indemnified against such claim by its own suppliers and/or licensors.

16.3 The Buyer shall indemnify the Seller against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages arising from (i) its breach of Condition 13 (Confidentiality), (ii) any infringement or alleged infringement of any Intellectual Property Rights of a third party by reason of the Seller performing its obligations under the Contract in accordance with the Buyer's instructions, whether express or implied, including, without limitation, the loading of third party specifications, drawings or specifications given to the Seller at the Buyer's request, by the Buyer in respect of the Products and Services or the misuse by the Buyer of any third party's Intellectual Property Rights, or (iii) any violation of any applicable laws or regulations by it or any end user's use of the Products or Services.

16.4 Ownership. Unless otherwise provided in the SOW, all specifications, documentation, ideas, know-how, technique, processes, developments, inventions that are solely and specifically (i) created for the Services by Seller; and (ii) generally applicable to Services provided by Seller and not specific to Buyer; and (iii) do not contain any Buyer Confidential Information or intellectual property (the "Work Product") shall remain the property of Seller; however, Seller hereby grants Buyer a perpetual, irrevocable, worldwide royalty-free, non-exclusive, nontransferable right and license to use such intellectual property rights in support of Buyer’s use of the Work Product. The Seller’s rights granted in this Clause 16.4 are not extended to any parent, subsidiary, or affiliate of Buyer, other than those included as a party to this Contract. Buyer shall retain all right title and interest in and to its intellectual property and Confidential Information (“Buyer IP”). The “Work Product” and “Buyer IP” designations and assignments in this Clause 16.4 shall not apply to Pre-Existing Intellectual Property. The pre-existing intellectual property means any proprietary methodologies, tools, models, software, procedures, documentation, know-how, trademarks, processes, trade secrets, inventions, or works of authorship that have already been conceived or developed by a Party prior to the effective date of this Agreement. Pre-Existing Intellectual Property shall remain the property of the respective Party. Upon termination of this Contract for any reason or in any manner, or upon the request of Seller, Buyer agrees to deliver promptly to Seller all such documentation or other communication which have been provided to Buyer at any time under the Work Product and unless such documentation is ordered to be retained by the Buyer in accordance with this Agreement.

16.5 Restrictions. Seller retains full title to and ownership of all of its specifications, documentation, ideas, know-how, technique, processes, developments, and inventions other than those specifically granted in Clause 16.4. Without limiting the generality of the foregoing, Buyer will not (i) modify, create derivative works from, distribute, or sublicense the Work Product; (ii) use the Work Product in any way that allows third parties (other than its affiliates and end users) to use or benefit directly from the Work Product.

17. ANTI BRIEYCORR AND CORRUPTION

17.1 Each Party shall comply with all applicable laws, statutes, directives and/or regulations relating to anti-bribery and anti-corruption, including, without limitation, the U.S. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq. The Seller has implemented and will at all times maintain and comply with adequate procedures designed to prevent it or any person in its employment or who conducts work for or on its behalf from engaging in any activity which would constitute an offence under the UK Bribery Act 2010 or the U.S. Foreign Corrupt Practices Act, as applicable, or violate any applicable anti-bribery law. Each Party has implemented and will at all times maintain and comply with adequate procedures designed to prevent it or any person in its employment or who conducts work for or on its behalf from engaging in any activity which would constitute an offence under the UK Bribery Act 2010 or the U.S. Foreign Corrupt Practices Act, as applicable, or violate any applicable anti-bribery law.

17.2 Each Party shall promptly report to the other any request or demand which, if complied with, would amount to a breach of 17.1 (above).

17.3 Any breach of this Condition 17 shall be deemed a material breach incapable of remedy entitling the non-defaulting Party to terminate these Conditions and any Contract immediately.

18. PERSONNEL

18.1 The Buyer warrants that it shall not solicit whether directly or indirectly the Seller’s personnel for a minimum period of six months after such personnel leave the employment of the Seller except with the express prior written permission of the Seller. In the event that the Buyer engages any of the Seller’s personnel in breach of this clause, the Buyer shall pay an introduction fee of 13 weeks, or the equivalent, of the engaged person’s remuneration.

19. FORCE MAJEURE

19.1 The Seller shall not be under any liability for any delay or failure to perform any of its obligations under the Contract in the event of Force Majeure. Following notification by the Seller to the Buyer of such event, the Seller shall be allowed a reasonable extension of time for the performance of its obligations.

19.2 For the purposes of this Condition, “Force Majeure” means any act or circumstances beyond the Seller's reasonable control including, but not limited to, Act of God, riot, war, rebellion, riot, sabotage, fire, explosion, flood, drought, failure of power supply or other utilities, lock-out, strike, or other action taken by employees in contemplation or preparation of a work stoppage, or any change in legislation.

19.3 If an event of Force Majeure continues for a period of twenty-one (21) days from the date of notification by the Seller to the Buyer in accordance with Condition 19.1, then the Seller may terminate the Contract forthwith without prejudice to any of its other rights hereunder.

20. WAIVER

In the event that either Party does not insist upon strict performance of any of these Conditions, then this shall not be deemed a waiver of any rights or remedies nor of any subsequent default.

21. INVALIDITY

The invalidity, illegality or unenforceability, in whole or in part, of any provision of these Conditions shall not affect the validity of the remaining provisions.

22. ASSIGNMENT

22.1 The rights and obligations of the Buyer under the Contract may not be assigned or transferred, in whole or in part, without the prior written consent of the Seller. The Seller may, without obtaining the consent of, or giving notice to the Buyer, assign or sub-contract all or any of its rights and obligations under the Contract.

23. NOTICES

23.1 Subject to Clauses 23.3 and 23.4 below, any notice or document or other communication to be given under these Conditions must be in writing and shall be given by sending the same by registered post, delivery receipt recorded, to the address of the relevant Party set out in the Contract or to such other address as such Party may have notified to the other for the purposes hereof.

23.2 Any notice, document or other communication sent by post shall be deemed (in the absence of evidence of earlier receipt) served 2 working days after despatch if sent first-class (and 4 working days after despatch if sent second-class) and in proving despatch it shall be sufficient to show that the envelope containing such notice, document or other communication was properly addressed, stamped and posted.

23.3 Notwithstanding the provisions of Conditions 23.1 and 23.2, the Parties may implement and use such form of electronic invoicing and/or ordering (“EDI”) as may be required from time to time.

23.4 The Parties shall ensure that any EDI correspondence is issued by an authorized person and the recipient of any EDI correspondence shall be entitled to treat the same as a legally binding document capable of acceptance.

24. ENTIRE AGREEMENT

The Contract contains the entire understanding and agreement between the Seller and the Buyer in respect of the subject matter of the Contract and supersedes all prior oral or written communication, undertakings and any practice or course of dealing applying between the Seller and the Buyer. The Contract may not be amended except in writing signed by the authorized representatives of both the Seller and the Buyer.
25. **GOVERNING LAW**
This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts excluding any conflict of laws principles that would require the application of the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (“CISG”) shall not govern or apply to this MSA and the Parties hereby exclude application of the CISG.

26. **MODERN SLAVERY.**
In performing its obligations under this Contract, each Party will: i) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including but not limited to the Modern Slavery Act 2015; and ii) maintain throughout the term of this Contract its own policies and procedures to ensure such compliance.

Signed for and on behalf of:  
Customer: __________________________  
Signature: __________________________  
Print Name: __________________________  
Title: __________________________

Signed for and on behalf of:  
Computacenter Fusionstorm Inc.  
Signature: __________________________  
Print Name: __________________________  
Title: __________________________

Address for Notices:  
Attn. __________________________  
124 Grove Street, Suite 311  
Franklin, MA 02038  
Phone: + 1 (508) 520-5000  
Fax: + 1 (508) 590-6392