

## PURCHASE ORDER TERMS AND CONDITIONS

- 1. Purchase Order Agreement:** This Purchase Order (including the terms and conditions, exhibits, documents, or other information, whether attached or incorporated by reference, collectively "**Purchase Order**") constitutes the entire agreement between the Vendor and TriStruX LLC and/or any of its subsidiaries ("**Company**") as identified in the Purchase Order for the goods (including software) to be provided by Vendor ("**Products**") or services to be performed by Vendor ("**Services**") (collectively "**Work**" unless otherwise specifically indicated) described in the Purchase Order. Company's issuance of this Purchase Order is conditioned on Vendor's agreement that any terms or conditions different from or in addition to the terms and conditions of this Purchase Order other than rights or warranties contained therein that are in favor of Company, whether communicated orally or in writing, such as by confirmation, acknowledgement, invoice, acceptance, "click-through", proposal, quotation, or other written communication, regardless of when submitted, shall not form part of this Purchase Order even if Vendor conditions acceptance of this Purchase Order on Company's agreement to such different terms and conditions, and any such different or additional terms are hereby expressly rejected by Company, except such rights or warranties that are in favor of Company. Vendor's indication of acceptance (electronic or otherwise), delivery of Products, acceptance of payment or commencement of performance shall constitute Vendor's acceptance of the terms and conditions set forth herein. In the event that a master agreement exists between Company and Vendor that, by its terms, governs the purchase of the Work that is the subject of this Purchase Order, this Purchase Order shall be interpreted to supplement the terms and conditions of the master agreement and, in the event of any inconsistent or conflicting terms or conditions, the terms or conditions of the master agreement shall prevail over the terms or conditions of this Purchase Order.
- 2. Price:** Unless otherwise separately stated, the price for Work subject to this Purchase Order includes shipping and delivery, including customs, duties, costs, taxes, and insurance. Federal, state, or local sales, use or similar taxes that are properly billed to Company must be stated separately and identified by tax jurisdiction. Vendor shall invoice Company for the Products or Services in a manner that will minimize taxes, including separately stating taxable from non-taxable Products or Services. All tax exemption certificates will be accepted by Vendor.
- 3. Payment of Invoices:** Vendor shall not render invoices until the day following the date of acceptance of the Product, and with respect to Services, only after all obligations of Vendor have been performed to Company's satisfaction and accepted. Payment for Product(s) or Service(s) shall be due ninety (90) days from date of receipt of an undisputed invoice. Vendor shall submit invoices in .pdf format via e-mail to payables@TriStruX.com, with copy to the project manager responsible for approval. Invoices must include (at minimum), the customer site number, site address, job number, Purchase Order number and corresponding line item description of services billed. In addition, Company may, at any time, set off against such invoices such amounts as may otherwise be owed by Company to Vendor.
- 4. Minimum Software Rights:** If this Purchase Order orders Vendor software, the following minimum license and support rights in favor of Company shall apply, and shall be in addition to any rights conferred to licensees by Vendor's standard software terms:

  - a. Vendor grants to Company a nonexclusive, irrevocable, perpetual, enterprise-wide license (unless a different period and/or license is set forth on this Purchase Order) to use (including via remote access), to install and to copy (for all purposes of use, archiving, and disaster recovery backup) the software Product ordered hereunder;
  - b. With each license of any software Product ordered hereunder, Vendor shall provide to Company all documentation provided by Vendor to any of its other customers for that Product, and, at a minimum, as is reasonably necessary to enable Company adequately to use such Product. Documentation shall comply with commonly accepted industry standards with respect to content, size and legibility. Company shall have the right to reproduce all documentation including all machine-readable documentation for the Product, provided that such reproduction is made solely for Company's use; and
  - c. At no additional charge (unless a separate maintenance charge is expressly indicated on the

front of this Purchase Order), Vendor shall provide: (a) error corrections, upgrades and modifications to keep the software Product in good working order, (b) all generally available maintenance releases for such software Product, and (c) reasonable contact information for trained, knowledgeable, technically qualified Vendor representatives to provide support to Company for such software Product.

5. **Packing and Shipping:** All Products must be suitably packed, marked, and shipped according to the requirements of common carriers in a manner to secure the lowest transportation costs unless otherwise specified. Each shipment shall contain a packing memorandum. When a shipment contains more than one package, the package containing the memorandum must be conspicuously identified. No packing or cartage charges are permitted. Actual transportation charges shall be listed separately on the invoice. Such charges must be substantiated with a copy of the freight bill. F.O.B. point and discount terms must be shown on all invoices.
6. **Quantities:** Shipments shall equal exact amounts ordered unless a modification is authorized by Company by a written change order. Over-shipments may be returned to Vendor at its sole risk and expense and Vendor will be debited for incoming freight charges.
7. **Delivery:** Time is of the essence with respect to performance of Vendor's obligations under this Purchase Order, including without limitation, the provision of quantities at times specified in this Purchase Order. Vendor shall immediately notify Company in writing if its timely performance is likely to be delayed. If Vendor fails to make scheduled deliveries, Company may, without limiting its other rights or remedies and without liability, either (a) direct expedited routing, and any excess costs incurred shall be paid by Vendor and subject to offset by Company or (b) cancel all or part of this Purchase Order. If Products are delivered or Services performed in advance of schedule, Company may, at its option and without liability, (i) return Products at Vendor's expense, for scheduled delivery; (ii) have payment withheld by Company until otherwise payable under the Purchase Order; or (iii) have Products placed in storage, for Vendor's account and at Vendor's expense, until the scheduled delivery date(s). Delivery in accordance with this Purchase Order does not constitute acceptance by Company.
8. **Title and Risk of Loss:** Regardless of which party designates the shipper or shippers to be used or the destination of delivery for Products, title and risk of loss for the Products shall pass to Company only when the Products have been delivered to and accepted by Company.
9. **Cancellation and Changes:** Company may cancel this Purchase Order at any time prior to 24 hours from scheduled Product delivery by reasonable notice to Vendor. Company may terminate Services at any time with 24 hours prior notification to Vendor, and in such event Vendor shall only be entitled to payment for Services fully performed prior to the date of such notification and otherwise qualifying for acceptance by Company hereunder. Company may, by written change order, make a change within the scope of this Purchase Order, including, without limitation, additions to or deletions from the quantities originally ordered; the specifications or drawings; or the time and place of delivery of any Work. If a change affects the cost or time for performance, an equitable adjustment shall be made, and this Purchase Order shall be amended. Any claim for such adjustment by Vendor must be asserted in writing by Vendor within 30 days from the date the change is ordered by Company. Pending negotiation of an equitable adjustment, Vendor will continue with Work as directed by Company.
10. **Inspection and Acceptance:** Company shall have a 30 day acceptance period to inspect, test and accept all Work unless a longer period has been agreed to by the parties. Company may reject Work that does not conform to each requirement of this Purchase Order within a reasonable time after arrival or performance at its designated location. In addition, Company may inspect (including test or witness testing) of Work at any time prior to arrival or completion of performance at its designated location. Work shall not be deemed accepted until after final inspection. In all events, Company's inspection or failure to inspect, payment for, or acceptance of Work shall not impair Company's right to reject nonconforming Work or to avail itself of any other remedies to which Company may be entitled, notwithstanding Company's knowledge of the nonconformity, its substantiality, or the ease of its discovery. Vendor shall provide Company with prompt written notice of any Work that, at any time (before or after acceptance), has been recalled or determined to be unsafe by any governmental

agency.

- 11. Representations and Warranties:** Vendor represents and warrants that (i) it has the authority to perform and deliver Work under this Purchase Order; (ii) Work shall conform to the requirements, including specifications, set forth or referenced herein, shall be free of defects in design, materials and workmanship, and comply with applicable federal, state, and local laws; (iii) warranties extended to Vendor by applicable manufacturers shall be extended to Company upon the effectiveness of this Purchase Order; (iv) Vendor has good title to Products supplied and Products are free of all liens and encumbrances, and Vendor has all rights necessary to license to Company any software ordered hereunder; (v) Work does not and will not infringe upon any patent, copyright, trademark, trade secret, right of publicity or privacy, or other proprietary interest, whether contractual, statutory or common law (collectively “**Intellectual Property Rights**”); (vi) Vendor will not disclose to Company, bring onto Company’s premises, or induce Company to use any confidential or proprietary information, regardless of the ownership thereof, not covered by a non-disclosure agreement between Company and Vendor; (vii) software or hardware furnished contains no routines, codes, or other components designed to disrupt, disable, erase or permit unauthorized access to Company data or systems, or that otherwise impedes the Work, whether based on lapse of time or other triggering event, nor does the software or hardware include or implements worms, Trojan horses, viruses or other harmful code; (viii) no Work contains, includes, or involves substances or materials that alone or in combination with other substances or materials are subject to a reporting requirement under Section 8(e) of the Toxic Substances Control Act, 15 U.S.C. Section 2607(e), or that are not in conformance with Section 18 of this Purchase Order. The foregoing warranties shall survive inspection, acceptance and payment.
- 12. Intellectual Property Rights:** Company is the sole and exclusive owner of all Deliverables, except for intellectual property that arose outside the scope of this Purchase Order and that is included in Deliverables or that is necessary for the use of the Deliverables. Vendor irrevocably assigns and transfers to Company all of its worldwide right and title to, and interest in, the Deliverables, including all associated Intellectual Property Rights. “**Deliverables**” means the Work specified in this Purchase Order to be delivered on or before the delivery date. Vendor grants to Company a nonexclusive, worldwide, royalty-free, irrevocable, perpetual, transferable, sublicensable license to any Intellectual Property Rights in the Deliverables that arose outside the scope of this Purchase Order to the extent necessary for Company to exercise its rights in the Work as reasonably contemplated by this Purchase Order. Vendor grants to Company all rights and licenses necessary to use, transfer, pass-through, or sell the Work set forth in this Purchase Order and to exercise the rights granted under this Purchase Order. Without limitation of other rights and remedies set forth in this Purchase Order or otherwise available at law or equity and Vendor’s obligation to indemnify Company as set forth in Section 16(iv), if a claim of infringement is made, Vendor will, at its own expense and Company’s option, exercise the following remedies: (i) obtain for Company the rights granted under this Purchase Order; (ii) modify the Products or Services so they are non-infringing and in compliance with this Purchase Order; (iii) replace the Products or Services with non-infringing ones that comply with this Purchase Order; or (iv) if none of the foregoing remedies are possible, accept the return of infringing Products and the cancellation of infringing Services and refund any amount paid.
- 13. Default:** Failure to perform or comply with any of the provisions of this Purchase Order shall constitute a breach. In the event of a breach, in addition to other rights or remedies it may have at law or equity, Company may terminate this Purchase Order on written notice to Vendor and purchase substitute Work from third parties at Vendor’s costs and expense, payable on Vendor’s receipt of an invoice therefor.
- 14. Force Majeure:** Company may delay delivery and/or acceptance occasioned by causes beyond its control. If Vendor experiences force majeure circumstances, it shall use best efforts to minimize the impact on Company, including arranging for comparable substitute Product and/or Services. Company may terminate this Purchase Order, in whole or in part, if force majeure circumstances occur.
- 15. Use of Designs, Data and Information:** Vendor agrees that it will keep confidential and will not disclose to any third party without Company’s prior written consent, or use for any purpose other than the completion of Work, any business plans, network architecture and equipment, designs, drawings,

engineering data or other technical, financial, planning or proprietary information that either: (a) is furnished by Company; or (b) is or shall become the property of Company under this Purchase Order. Upon the soonest of completion of Work, termination, or cancellation of this Purchase Order, or sooner if requested by Company, Vendor shall return all the foregoing to Company or make such other disposition thereof as directed by Company. There is no obligation on the part of Company to treat Vendor's information as other than public and non-proprietary.

- 16. Indemnity:** Vendor shall defend, indemnify, and save harmless Company and its end customer (including its and their affiliates and its and their respective directors, officers, employees, contractors, and agents) from and against any claims, demands, suits, damages, liabilities, expenses (including, but not limited to reasonable fees and disbursements of counsel and courts costs), judgments, settlements, and penalties of every kind ("**Claims**") that may be made by (i) by anyone for injuries (including death) to persons or damage or loss of property (including from theft) resulting in whole or in part from alleged acts or omissions of Vendor, including its subcontractors, employees and agents, (ii) by persons furnished by Vendor and its subcontractors under Worker's Compensation or similar acts, or claiming entitlement to any Company employee benefit; (iii) by anyone in connection with or based on the Work performed under this Purchase Order; and (iv) by any third party arising out of or related to any actual or alleged infringement, misappropriation, or violation of any Intellectual Property Right. The foregoing indemnification shall apply whether Vendor or any indemnified party defends such Claim and whether the Claim arises or is alleged to have arisen out of the sole acts or omissions of the Vendor (and/or any subcontractor of Vendor) or out of the concurrent acts or omissions of Vendor (and/or any subcontractor of Vendor) and any indemnified parties. Company will provide Vendor with prompt notice of any written Claim and will provide reasonable cooperation with Vendor in connection with Vendor's evaluation of such Claim. Vendor shall defend any indemnified party, at the indemnified party's request, from and against such Claim. Promptly after receipt of such request, Vendor shall assume the defense of such Claim with counsel reasonably satisfactory to the indemnified party. Vendor shall not settle or compromise such Claims or consent to entry of judgment without the prior written consent of each indemnified party and without an unconditional release of all Claims by each claimant or plaintiff in favor of each indemnified party.
- 17. Insurance:** At a minimum, Vendor shall secure and maintain at its expense during the term the following: (i) statutory worker's compensation insurance and employer's liability in an amount no less than \$1,000,000 per occurrence; (ii) commercial general liability insurance on an occurrence basis in an amount no less than \$2,000,000 per occurrence with a \$4,000,000 aggregate (if NY) and \$1,000,000 per occurrence with a \$2,000,000 aggregate (if NY) combined single limit for claims for damages because of bodily injury (including death) and/or property damage, caused by, or arising out of, its acts or omissions. Such insurance shall name Company as an additional insured for on-going and Products-Completed Operations and shall contain a primary non-contributing endorsement stating the insurer shall not seek contribution from any insurance on which Company is a named insured; (iii) automobile liability insurance in an amount no less than \$1,000,000 combined single limit for bodily injury and/or property damage; and (iv) Professional Liability (Errors and Omissions) with limits of not less than \$2,000,000 per occurrence; provided however, if Company's end customer has additional insurance requirements, then Vendor shall secure and maintain the insurance required by such end customer. All general and automobile liability policies and shall contain an endorsement stating that the insurance limits provided by these policies will not be reduced (except for payment of claims) or cancelled without thirty (30) days' prior written notice (except 10 days for non-payment of premium). Certificates of Insurance evidencing the foregoing insurance shall be submitted to Company prior to the commencement of the Work.
- 18. Hazardous Materials:** Except to the extent that Company has received a written notice that Company has expressly acknowledged, (1) no Product provided pursuant to this Purchase Order shall contain any materials or substances that result in the Products or any component of the Product (i) being classified at the end of its useful life as a hazardous waste under the Resource Conservation and Recovery Act or a waste that cannot be disposed of as general trash or in a drain under any other federal, state, or local law designed to protect the environment or human health; (ii) being required for inclusion in calculations performed to determine reporting or planning requirements pursuant to the Emergency Planning and Community Right-to-Know Act or any similar federal, state, or local law; or

(iii) requiring any warnings in accordance with the Occupational Safety and Health Act or other federal, state or local law; and (2) Vendor shall not bring any toxic, hazardous or otherwise regulated substance or material onto any Company work location except to the extent necessary to perform the Work and then Vendor may do so only to the extent that Vendor complies with all applicable federal, state, and local requirements, provides all appropriate warnings and notifications to Company and its employees and provides Company with all information necessary for Company to comply with any obligations that the existence of such substance or material (alone or together with other substances or materials) imposes upon Company.

**19. Compliance with Laws:** Vendor shall comply with all applicable permits and licenses and all applicable federal, state and local laws, including without limitation those governing the use, transportation, and disposal of Hazardous materials; laws that apply to the safeguarding, protection, and disposal of personally identifiable information and Customer Proprietary Network Information as defined in Title 47, U.S.C; and the Occupational Safety and Health Act of 1970 (OSHA), as amended, and any safety or health standards issued thereunder. Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, national origin, age, physical or mental disability, veteran status, or any other unlawful criterion, and it shall comply with all applicable laws against discrimination and all applicable rules, regulations and orders issued thereunder or in implementation thereof. Company or its end customer may be engaged by government agencies or a federal contractor. As a result, but only if applicable, the employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A are incorporated by reference herein. Additionally, but also only if applicable, **SUPPLIER SHALL ABIDE BY THE REQUIREMENTS OF 41 CFR 60-1.4(A), 60-300.5(A), AND 60-741.5(A). THESE REGULATIONS PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, OR NATIONAL ORIGIN. MOREOVER, THESE REGULATIONS REQUIRE THAT COVERED PRIME CONTRACTORS AND SUBCONTRACTORS TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT INDIVIDUALS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, NATIONAL ORIGIN, PROTECTED VETERAN STATUS OR DISABILITY.** Vendor shall notify Company of any violations, summons, notification or revocations with respect to any required permit or license. Vendor acknowledges that the proprietary data, know-how, software or other materials or information obtained from Company under this Purchase Order are commodities and/or technical data subject to the Export Administration Regulations (the “**EAR**”) of the United States Department of Commerce, and that any export or re-export thereof must be in compliance with the EAR. Vendor shall not export or re-export, directly or indirectly, either during the term of this Purchase Order or after its expiration, any commodities and/or technical data (or direct products thereof) provided under this Purchase Order in any form to destinations in Country Groups D:1 or E:2, as specified in Supplement No. 1 to Part 740 of the EAR, and as modified from time to time by the U.S. Department of Commerce, or to destinations that are otherwise controlled or embargoed under U.S. law. From time to time, Company may request Vendor to provide an ECCN for one or more products purchased or available for purchase under this Purchase Order. Vendor agrees to promptly comply with any such request, without additional cost to Company. Vendor shall defend, indemnify, and save Company harmless from all liability resulting from any failure of compliance required by this paragraph.

**20. Off-Shore Restrictions:** No Company confidential information shall be stored, transmitted or accessed, at, in or through a site located outside of the United States without the advance written consent of Company.

**21. Assignment and Subcontracting:** Any assignment or delegation, in whole or in part, of Vendor's obligations to perform, without Company's written consent, shall be void. Any Vendor assignment of its rights to payment hereunder shall be void to the extent they impose on Company obligations to assignee that are in addition to the payment of money due or that preclude Company from dealing directly with Vendor. Vendor shall not use subcontractors to perform any Work without the prior written consent of Company. Vendor shall reasonably cooperate and not interfere with work performed by other contractors, agents or employees of Company on the premises where Work is being performed.

Company has the right to transfer, assign, or otherwise dispose of, in whole or in part, its rights, duties and obligations under this PO or title to, license(s) for, or other use of the Product or Service, as well as associated rights or obligations, in any lawful manner.

- 22. Government Contracts:** Vendor understands that Work under this Purchase Order may be procured by Company or its end customers in support of or to satisfy Company's obligations under agreements with Federal, State, or local governmental entities ("**Government Contracts**"). Vendor acknowledges that certain terms under such Government Contracts may be applicable to this Purchase Order. To the extent that any such terms are applicable to this Purchase Order, Vendor agrees that such terms are hereby incorporated by reference and are made a part of this Purchase Order.
- 23. No License to Vendor:** No license, express or implied, under any Intellectual Property Right of Company is granted to Vendor by this Purchase Order. Vendor shall not advertise, market or otherwise disclose to others any information relating to the making of the Purchase Order, nor use the name, trademarks, service marks, decorative designs or Company or any of Company's end customers without Company's express writing consent.
- 24. Miscellaneous:** The construction, interpretation, and performance of this Purchase Order shall be governed by and construed in accordance with the domestic laws of the State of New Jersey without regard to choice of law or conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to nonpayment under this Purchase Order must be commenced no later than two (2) years from the date on which the cause of action arose. Company shall not be liable for any loss of profits, indirect, incidental, special, consequential, punitive, exemplary or tort damages. Company and its authorized representatives shall have a right to audit Vendor's records, in whatever form kept (at a minimum, 3 years of written records relating to performance and charges under this Purchase Order shall be maintained by Vendor), to verify compliance with this Purchase Order and the accuracy of Vendor's charges. Neither Vendor nor its subcontractors, nor the employees or agents of any of them, shall be deemed to be the employees or agents of Company, it being understood the Vendor and its subcontractors are independent contractors for all purposes and at all times, and Vendor shall be wholly responsible for withholding and payment of all federal, state and local income and other payroll taxes with respect to its employees, including contributions from them when and as required by law. If any provision of this Purchase Order is held to be unenforceable, the enforceability of the remaining provisions shall not be affected. No action or inaction by Company shall constitute a waiver by Company of any right or remedy in the absence of a written waiver signed by Company. Subject to the last sentence of Section 1, this Purchase Order, including any attachments hereto, embodies the entire agreement between the parties with respect to its subject matter and supersedes all prior or contemporaneous agreements and understandings, written or oral, relating to such subject matter. No agreement hereafter made shall be effective to modify or discharge this Purchase Order, in whole or in part, unless in writing and signed by the party against whom enforcement of the modification or discharge is sought. The respective obligations of the parties under this Purchase Order that by their nature would continue beyond the termination, cancellation or expiration, shall survive any termination, cancellation or expiration, including, but not limited to, obligations to indemnify, insure, and maintain confidentiality. If Vendor is providing Work for an end customer of Company, then Vendor shall be bound by the applicable terms and conditions set forth in Company's agreement with its end customer and such terms are incorporated herein by reference with the necessary adaptations.

**Last Updated: April 27, 2022**