

PURCHASE ORDER TERMS AND CONDITIONS ("PO TERMS")

1. APPLICABILITY.

1. This purchase order is an offer by Canary LLC ("Canary") for the purchase of the goods or products ("Products") and services ("Services") provided by supplier specified on the face of this purchase order (the "Supplier") from the party to whom the purchase order is addressed ("Canary") in accordance with and subject to these terms and conditions (the "PO Terms"; together with the terms and conditions on the face of the purchase order, the "Order").
2. This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Supplier's acceptance to the terms of the Order. These PO Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Supplier's general terms and conditions of sale or any other document issued by Supplier in connection with this Order.
3. Canary is not obligated to any minimum purchase or future purchase obligations under this Order.

2. ACCEPTANCE.

1. This Order is not binding on Canary until Supplier accepts the Order in writing or starts to perform in accordance with the Order. Canary may withdraw the Order at any time before it is accepted by Supplier.

3. SHIPMENT AND DELIVERY

1. **Product Shipping.** Supplier shall give written notice of shipment to Canary when the Products are delivered to a carrier for transportation. All Products shall be delivered to the address specified in the Purchase Order (the "Delivery Location") during Canary's normal business hours or as otherwise instructed by Canary.
2. **Delivery Date.** Supplier shall deliver the Products in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the "Delivery Date"). Timely delivery of the Products is of the essence. If Supplier fails to deliver the Products in full on the Delivery Date, Canary may terminate these PO Terms immediately by providing written notice to Supplier and Supplier shall indemnify Canary against any losses, claims, damages, and reasonable costs and expenses directly attributable to Supplier's failure to deliver the Products on the Delivery Date.
3. **Quantity.** Supplier shall deliver the quantities of the Products specified in each Purchase Order. If Supplier delivers more than 3% or less than the quantity of Products specified in Purchase Order, Canary may reject all or any excess Products. If Canary does not reject the Products and instead accepts the delivery of Products at the increased or reduced quantity, the Price for the Products shall be adjusted on a pro-rata basis.
4. **Product Packaging.** Supplier shall properly pack, mark, and ship Products as instructed by Canary and otherwise in accordance with applicable law and industry standards. If there are no shipping instructions provided by Canary, Supplier shall pack Products in a manner sufficient to ensure that the Products are delivered in undamaged condition.

4. INSPECTION AND REJECTION OF NONCONFORMING OR DEFECTIVE PRODUCTS.

1. **Inspection and Rejection of Nonconforming or Defective Products.** Canary has the right to inspect the Products on or after the Delivery Date. Canary, at its sole option, may inspect all or a sample of the Products, and may reject all or any portion of the Products if it determines the Products are Nonconforming or Defective.
2. **Rejected Product.** If Canary rejects any portion of the Products, Canary has the right, effective upon written

notice to Supplier, to: (a) rescind the Purchase Order or these PO Terms in its entirety; (b) accept the Products at a reasonably reduced price; or (c) reject the Products and require replacement of the rejected Products. If Canary requires replacement of the Products, Supplier shall, at its expense, promptly replace the nonconforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Products and the delivery of replacement Products. If Supplier fails to timely deliver replacement Products, Canary may replace them with Products from a third party and charge Supplier the cost thereof and terminate these PO Terms for cause pursuant to Section 17 (Termination). Any inspection or other action by Canary under this Section shall not reduce or otherwise affect Supplier's obligations under these PO Terms, and Canary shall have the right to conduct further inspections after Supplier has carried out its remedial actions.

5. TITLE AND RISK OF LOSS.

1. **Title.** Title passes to Canary upon delivery of the Products to the Delivery Location. Title will transfer to Canary even if Supplier has not been paid for such Products, provided that Canary will not be relieved of its obligation to pay for Products in accordance with the terms hereof.
2. **Risk of Loss.** Supplier bears all risk of loss or damage to the Products until delivery of the Products to the Delivery Location.

6. PRICE AND PAYMENT.

1. **Price.** Canary shall purchase the Products from Supplier at the prices set forth in the Purchase Order (the "Price"). Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees. No increase in the Price is effective, whether due to increased material, labor, or transportation costs or otherwise, without the prior written consent of Canary.
2. **Invoices.** Supplier shall issue an invoice to Canary by emailing AP@canarymarketing.com within thirty (30) days after the completion of delivery of the Products. Each invoice for Products must set forth in reasonable detail the amounts payable by Canary under these PO Terms and contain the following information, as applicable: a reference to these PO Terms; Purchase Order number, amendment number, and line-item number; Supplier's name; Supplier's identification number; carrier name; ship-to address; weight of shipment; quantity of Products shipped; number of cartons or containers in shipment; bill of lading number; country of origin and any other information necessary for identification and control of the Products. Canary reserves the right to return and withhold payment for any invoices or related documents that are inaccurate or incorrectly submitted to Canary.
3. **Invoice Disputes.** In the event of a payment dispute, Canary shall deliver a written statement to Supplier prior to the date payment is due on the disputed invoice listing all disputed items. The parties shall seek to resolve all such disputes expeditiously and in good faith. Supplier shall continue performing its obligations under these PO Terms notwithstanding any such dispute.
4. **Payment Terms.** Canary shall pay all properly invoiced amounts due to Supplier within thirty (30) days after Canary's receipt of such invoice, except for any amounts disputed by Canary in good faith. Payment of invoices will not be deemed acceptance of the Products or waive Canary's right to inspect, but rather such Products will be subject to acceptance under Section 4.
5. **Setoff.** Without prejudice to any other right or remedy it may have, Canary reserves the right to set off at any time any amount owing to it by Supplier against any amount payable by Canary to Supplier.

7. PRODUCT LICENCE GRANT.

- 1. For those portions of a Product that are custom work product that Supplier creates for Canary ("Deliverables"), Section 8 (Ownership of Intellectual Property and Materials) will apply.
 2. For those portions of a Product that are not Deliverables, Supplier grants Canary, a perpetual,

irrevocable, non-exclusive, worldwide, fully paid-up, royalty-free license to use, modify, sell and offer for sale, import, and otherwise dispose of the Product.

8. OWNERSHIP OF INTELLECTUAL PROPERTY AND MATERIALS

1. **Ownership of Developed IP.** Subject to Section 8.2 below (Retained Rights): (a) title to Deliverables shall transfer to Canary upon delivery, (b) Canary owns anything protectable by an Intellectual Property Right (“IP”) other than IP owned, created, or discovered by a party before Supplier performs Services (“**Background IP**”) created or discovered by Supplier in connection with the Services (“**Developed IP**”), (c) the Developed IP is a “work made for hire” to the extent permitted by applicable law, and Canary retains all copyrights, trademark rights, rights in trade secrets, patent rights, moral rights, and any other intellectual property rights (registered or unregistered) throughout the world (“**Intellectual Property Rights**”) in the Developed IP.
2. **Retained Rights.** To the extent Supplier, or any of Supplier’s employees, subcontractors, or agents retain any rights (including moral rights) in or to the Developed IP as a matter of law (“**Retained Rights**”), Supplier shall assign (or shall procure the assignment of) all rights (including Intellectual Property Rights) to Canary. If Retained Rights may not be assigned for any reason, Supplier shall and hereby does waive the enforcement of such Retained Rights, and Supplier shall and hereby does grant Canary an exclusive, irrevocable, sublicensable, assignable, perpetual, worldwide, royalty-free license to use, reproduce, distribute, perform, display, modify, rent, and otherwise exploit the Work Product and the Retained Right(s).
3. **Background IP and Third Party Materials.** Supplier shall not incorporate into the Deliverables any Background IP or any information or materials owned or created by any third party or in which any third party has an interest (“**Third-Party Materials**”) without obtaining Canary’s prior written consent to such incorporation. If Supplier includes any Supplier Background IP in any Deliverables, Supplier shall describe such Background IP in writing and shall grant and hereby does grant to Canary, or Supplier shall obtain for Canary, at no additional cost to Canary, a non-exclusive, royalty-free, perpetual, irrevocable, sublicensable, assignable, worldwide license to use, reproduce, distribute, perform, display, modify, rent, and otherwise exploit the Background IP and/or the Third-Party Materials.
4. **Canary-Supplied Materials.** To the extent Canary provides to Supplier any IP or materials in connection with these PO Terms (“**Canary-Supplied Materials**”) Canary grants Provider a non-exclusive, non-sublicensable, non-assignable, fully revocable, license during the term of the applicable Purchase Order to use the Canary-Supplied Materials for the sole purpose of providing the Services. Other than as set out in this Section 8.4 (Canary-Supplied Materials), Supplier shall acquire no right, title, or interest in the Company-Supplied Materials or any other IP or materials and all such interest shall inure to the sole benefit of Canary.

9. REPRESENTATIONS AND WARRANTIES.

1. Supplier represents and warrants to Canary that:
 1. **Products and Specifications.** For a period of twelve (12) months from the Delivery Date, all Products shall: (a) be free from any defects in workmanship, material, and design; (b) conform to applicable specifications, drawings, designs, samples, and other requirements specified by Canary; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests, or other encumbrances; and (f) not infringe or misappropriate any third party’s patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance, or payment of or for the Products by Canary.
 2. **Claims.** Supplier has no knowledge of unresolved claims, demands, or pending litigation alleging that the Services infringe or misappropriate any patent rights, copyrights, trademark rights, rights in trade secrets, database rights, moral rights, and any other intellectual rights (registered or unregistered) throughout the world (the “**Intellectual Property Rights**”) of any third party.
 3. **Quality.** To the extent Supplier provides Services to Canary, Supplier shall perform the Services

using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under these PO Terms.

4. **OFAC.** Neither Supplier nor any direct or indirect owner or shareholder of Supplier is identified on the list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Assets Control (“OFAC”) as in effect on the date hereof, or any similar list issued by OFAC or any other department or agency of the United States of America (collectively, the “OFAC Lists”), or are included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons referred to or described in the OFAC Lists. Supplier will not procure any materials, components, goods or services used in connection with the Services from any person or entity that appears on the OFAC Lists or is located in a country subject to economic sanctions administered by OFAC.
 5. **Compliance With Law.** In connection with this Order, Supplier shall be in compliance with and shall comply with all applicable laws, regulations, directives, and ordinances, including but not limited to, Anti-Bribery Laws (defined below), conflict mineral laws, employment laws, import and export laws, and Data Protection Laws (defined below). Supplier has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under these PO Terms.
 6. **Anti-Bribery.** In conformity with the United States Foreign Corrupt Practices Act and any applicable anti-bribery or anti-corruption laws (the “**Anti-Bribery Laws**”) Supplier shall not directly or indirectly (a) make any offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any government (including a decision not to act) or any other person, or inducing such official or person to use their influence to affect any such act or decision in order to assist Canary or supplier in obtaining, retaining, or directing any business or (b) take any other action that causes a violation of Anti-Bribery Laws.
 7. **Compliance With Code of Conduct.** Supplier shall comply with Canary’s Supplier Code of Conduct at <https://www.canarymarketing.com/supplier-code-of-conduct/> (or such other URL as Canary may specify).
 8. **Security.** Supplier shall, at its expense, implement and maintain appropriate technical and organizational measures to protect Canary-Supplied Materials, including Personal Information, and any other Canary Confidential Information against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Canary-Supplied Materials, including Personal Information, or any other Canary Confidential Information, transmitted, stored, or otherwise processed.
 9. **Confidentiality, Privacy and Data Protection Obligations.** Supplier shall comply with Supplier’s confidentiality, privacy and data protection obligations under these PO Terms, including Section 15 (Confidentiality) and Section 16 (Privacy and Data Protection).
2. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Canary's discovery of the noncompliance of the Products or Services with the foregoing warranties.

10. RELATIONSHIP OF THE PARTIES; NO AGENCY

1. **Independent Contractor.** It is understood and acknowledged that in providing the Products and Services, Supplier acts in the capacity of an independent contractor and not as an employee or agent of the Canary.

Supplier has no authority to commit, act for or on behalf of Canary, or to bind Canary to any obligation or liability. Supplier shall not be eligible for and shall not receive any employee benefits from Canary.

11. INDEMNIFICATION.

1. Supplier shall indemnify, defend, and hold harmless Canary, Canary's clients, and the respective officers, directors, employees, and agents of the foregoing (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under these PO Terms and the cost of pursuing any insurance Suppliers, (collectively, "**Losses**"), relating to any claim of a third party or Canary arising out of or occurring in connection with: (a) the Products purchased from Supplier; (b) Supplier's negligence, willful misconduct, fraud, misrepresentation, or violation of law; (c) Supplier's breach of these PO Terms; (d) any property damage, bodily injury, or death related to Supplier's performance under these PO Terms or use of a Product or Service; or (e) any claim that Canary's or Indemnified Party's use, possession, or sale of the Products or use of the Services violates, infringes, or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Canary will have the right to approve any counsel retained to defend against any claim in which Canary is named a defendant, and will not unreasonably withhold such approval. Additionally, Canary will have the right to participate in the defense of any such claim concerning matters that relate to Canary. In no event shall Supplier enter into any settlement without Canary's or Indemnified Party's prior written consent.

12. LIMITATION OF LIABILITY.

1. **No Liability for Consequential or Indirect Damages.** IN NO EVENT SHALL CANARY BE LIABLE TO SUPPLIER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CANARY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
2. Nothing in these PO Terms will exclude or limit Supplier's liability under the following Sections: 9 (Representations and Warranties), 11 (Indemnification), 15 (Confidentiality), and 16 (Privacy and Data Protection) hereof. Nothing in these PO Terms will exclude or limit Supplier's liability under Supplier's liability for fraud, personal injury or death caused by its negligence or willful misconduct

13. INSURANCE.

1. **Minimum Coverages.** Without limiting Supplier's indemnification obligations under these PO Terms, during the Term and for or a period of one (1) year thereafter, Supplier shall, at its own expense, maintain and carry insurance in full force and effect that includes, but is not limited to, at least the following types and amounts of insurance coverage, subject to the requirements set forth in Section 16.1: (a) commercial general liability (including contractual and product liability) with limits no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; (b) workers compensation insurance as required by law in the state where the Services will be provided, including employer's liability coverage for injury, disease and death, with coverage limits of not less than \$1,000,000 per occurrence; (c) umbrella (excess) liability with limits no less than \$5,000,000 per occurrence and in the aggregate; and (d) automobile liability insurance coverage for all owned, non-owned and hired vehicles with coverage limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.
2. **Network Security and Privacy Liability.** If Supplier will collect, store, process or otherwise access any Personal Information related to Canary, its customers, or its employees, then Supplier will additionally maintain network security and privacy liability insurance with coverage limits of not less than US \$2,000,000 per claim, that includes coverage for: (a) Supplier's unauthorized disclosure of, or failure to properly handle,

personal or other confidential data; and (b) financial loss, including any related defense expense, resulting from Supplier's wrongful acts in rendering Services.

3. **Evidence of Insurance.** Upon Canary's request, Supplier shall provide Canary with copies of the certificates of insurance for all insurance coverage required by these PO Terms, and shall not do anything to invalidate such insurance. The certificate of insurance shall name Canary as an additional insured. Supplier will provide Canary with thirty (30) days' advance written notice in the event of a cancellation or material change in Supplier's insurance policy.

14. TERMINATION; SURVIVAL.

1. **Termination for Convenience.** Canary may terminate this Order, in whole or in part, at any time with or without cause upon ten (10) days' prior written notice to Supplier.
2. **Termination for Cause.** In addition to any remedies that may be provided under these PO Terms, Canary may terminate this Order with immediate effect upon written notice to Supplier, either before or after the acceptance of the Products or Services, if Supplier has not performed or complied with any of these PO Terms, in whole or in part. If Supplier becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors, then Canary may terminate this Order upon written notice to Supplier.
3. **Effects of Expiration or Termination.**
 1. Upon expiration or termination of this Order for any reason, Supplier shall promptly: (a) deliver to Canary all documents, work product, and other materials, whether or not complete, prepared by or on behalf of Supplier in the course of performing the Services for which Canary has paid; (b) return to Canary all Canary-owned property, equipment, or materials in its possession or control; (c) deliver to Canary, all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Canary's Confidential Information; (e) on a pro rata basis, repay all fees and expenses paid in advance for any Products and Services which have not been provided; (g) permanently erase all of Canary's Confidential Information from its computer systems; and (h) certify in writing to Canary that Supplier has complied with the requirements of this Section 14.3.1 (Effects of Expiration or Termination).
 2. If Canary terminates these PO Terms for any reason, Supplier's sole and exclusive remedy is payment for the Products and Services received and accepted by Canary prior to the termination.
4. **Survival.** Provisions of these PO Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of these PO Terms including, but not limited to, the following sections: 9 (Representations and Warranties), 11 (Indemnification), 13 (Insurance), 15 (Confidentiality), 16 (Privacy and Data Protection), 17.7 (Governing Law; Choice of Forum), and 14.4 (Survival).

15. CONFIDENTIALITY

1. **NDA; Non-use and Non-Disclosure.** If the parties have entered into a standard Canary Non-Disclosure Agreement ("NDA"), the terms of such agreement will apply to and be incorporated in these PO Terms. If the parties have not entered into an NDA, then Supplier shall use the Confidential Information solely to fulfill obligations under these PO Terms and, subject to Section 15.4 (Required Disclosure), shall keep the Confidential Information strictly confidential and shall not disclose or permit access to Confidential Information other than to its employees who have a legitimate need to know such Confidential Information for the Purpose, and are bound by written confidentiality agreements no less protective of the Confidential Information than the terms contained herein. Supplier shall safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its most sensitive information and no less than a reasonable degree of care. Supplier shall promptly notify Canary of any unauthorized use or disclosure of Confidential Information and use its best efforts to prevent further use or

disclosure. Supplier shall be responsible for any breach of these PO Terms caused by its employees.

2. **Scope of Confidential Information** All non-public or proprietary information of Canary, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Canary to Supplier, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," is confidential, solely for the use of performing these PO Terms and may not be disclosed or copied unless authorized by Canary in writing.
3. **Exclusions**. Confidential Information shall not apply to information that is: (a) in the public domain; (b) known to the Supplier at the time of disclosure; or (c) rightfully obtained by the Supplier on a non-confidential basis from a third party.
4. **Required Disclosure**. If Supplier is required by a valid legal order to disclose any Confidential Information, Supplier shall, before such disclosure, notify Canary of such requirements so that Canary may seek a protective order or other remedy, and Service Supplier shall reasonably assist Canary therewith. If Supplier remains legally compelled to make such disclosure, it shall: (i) only disclose that portion of the Confidential Information that, in the written opinion of its legal counsel, Supplier required to disclose; and (ii) use reasonable efforts to ensure that such Confidential Information is afforded confidential treatment.

16. PRIVACY AND DATA PROTECTION.

1. **Applicability of this Section**. This Section 16 (Privacy and Data Protection; Security) shall apply only if Supplier has access to any Personal Information (defined below) in connection with the Services.
2. **Definitions**.
 1. **"Data Protection Law"** means all applicable federal, state, and foreign laws, directives, and regulations relating to the processing, protection, security, or privacy of Personal Information, including where applicable, the guidance and codes of practice issued by regulatory bodies in any relevant jurisdiction. This includes, but is not limited to, the EU General Data Protection Regulation (Regulation (EU) 2016/679) (**GDPR**) and the California Consumer Privacy Act (**CCPA**) (Cal. Civ. Code §§1798.100 to 1789.199).
 2. **"Personal Information"** means any information Supplier processes for Canary that (a) identifies or relates to an individual who can be identified directly or indirectly from that data alone or in combination with other information in Supplier's possession or control or that Supplier is likely to have access to, or (b) the relevant Data Protection Law otherwise defines as protected Personal Information. Personal Information includes, but is not limited to, names, email addresses, postal addresses, telephone numbers, payment card information, online identifiers (including IP addresses and cookie identifiers), and any information that constitutes "personal data" within the meaning of the GDPR or "personal information" within the meaning of the CCPA.
3. **Data Processing**. If Supplier receives, or has access to, uses or stores Personal Information in connection with these PO Terms, then Supplier shall: (a) process such Personal Information in accordance with Canary's instructions only and not process the Personal Information for any other use or for any purpose that would be considered a "sale" of Personal Information as defined by the CCPA ("**Secondary Use**"); (b) comply with Data Protection Laws and with the Data Processing Addendum set forth at <https://www.canarymarketing.com/data-processing-addendum/> (or such other URL as Canary may specify) ("**DPA**") in addition to Section 14 (Confidentiality); and (c) destroy Personal Information upon the conclusion of these PO Terms or when the Personal Information is no longer needed to perform the Services, whichever is sooner.
4. **Information Security and Incident Response**. Supplier shall, at all times, implement and maintain

administrative, physical, technical, and organizational security measures (“Safeguards”) in order to: (a) protect the confidentiality and integrity of Personal Information; and (b) prevent unauthorized access to or unlawful processing of Personal Information (“Security Incident”). Such safeguards shall be consistent with all applicable laws and regulations and meet or exceed all relevant industry standards. If Supplier becomes aware of any Security Incident, Supplier shall immediately, and without undue delay: (a) stop the unauthorized access; (b) secure the Personal Information; (c) notify Canary (in no event more than 24 hours after the discovery of the Security Incident) by sending email to security@canarymarketing.com; (d) assist Canary in investigating and remedying any Security Incident and any related inquiry or claim; and (e) provide Canary with assurance that Supplier has corrected all circumstances under Supplier’s control that led to the Security Incident.

17. GENERAL

1. **Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “Notice”) will be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices will be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
2. **Severability.** If any term or provision of these PO Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these PO Terms or invalidate or render unenforceable such term or provision in any other jurisdiction .
3. **Amendment and Modification.** No change to these PO Terms is binding upon Canary unless it is in writing, specifically states that it amends these PO Terms and is signed by an authorized representative of Canary .
4. **Waiver.** No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
5. **Cumulative Remedies.** All rights and remedies provided in this Order are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding the foregoing, the Parties intend that, if Canary terminates the Order in accordance with Section 14 (Termination), Supplier’s sole and exclusive remedy is the right to payment for the Products and Services received and accepted.
6. **Assignment.** Supplier shall not assign, transfer, delegate, or subcontract any of its rights or obligations under the Order without the prior written consent of Canary. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Supplier of any of its obligations hereunder. Canary may at any time assign, transfer, or subcontract any or all of its rights or obligations under these PO Terms without Supplier’s prior written consent.
 1. **No Third-Party Beneficiaries.**
 2. Subject to Section 17.6.1.2 (below) these PO Terms benefits solely the Parties to these PO Terms and their respective permitted successors and assigns and nothing in these PO Terms, express, or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these PO Terms.

3. The Parties hereby designate Indemnified Parties and End Users as third-party beneficiaries with the right to enforce Section 14 (Indemnification) and Section 9 (Warranties), respectively, together with any related provision of these PO Terms.
7. **Governing Law; Choice of Forum.**
 1. ALL CLAIMS ARISING OUT OF OR RELATING TO THESE PO TERMS WILL BE GOVERNED BY CALIFORNIA LAW, EXCLUDING CALIFORNIA'S CONFLICT OF LAWS RULES, AND WILL BE LITIGATED EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF CONTRA COSTA COUNTY, CALIFORNIA, USA. EACH PARTY IRROVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION, OR PROCEEDING.
 2. If the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are otherwise applicable, the parties expressly exclude them from applicability under the Terms.
8. **Counterparts.** These PO Terms may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.
9. **Force Majeure.** Neither party will be liable to the other for any delay or failure in performing its obligations under these PO Terms to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event(s)**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Supplier's economic hardship or changes in market conditions are not considered Force Majeure Events. Supplier will use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Supplier from carrying out its obligations under the Order for a continuous period of more than ten (10) business days, Canary may terminate these PO Terms or any Purchase Order immediately by giving written notice to Supplier.