

SOW Terms of Service

1. Agreement; Interpretation. These SOW Terms of Service apply to the Services and Deliverables set forth in the SOW. In the event of a conflict between these SOW Terms of Service and the SOW, these SOW Terms of Service will prevail. Capitalized terms have the meanings assigned in this SOW Terms of Service or in the SOW.

2. Fees; Taxes; Schedule. Customer agrees to pay to Goliath, without offset or withholding, all amounts owing under this SOW, including, without limitation, all fees set forth in the SOW in accordance with the GSA Schedule Pricelist ("**Fees**") and pre-approved Travel Expenses in accordance with FAR 31.205-46 and the Federal Travel Regulation (FTR); (ii) except as expressly provided otherwise in this SOW, all amounts owing by Customer are payable in U.S. dollars; (iii) all amounts not paid when due will incur a late charge of the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid; and (iv) Reserved. Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).

3. Access. Customer will provide Goliath with sufficient, free and safe access to Customer's computer systems and networks to enable performance of the Services.

4. Goliath Warranty; Disclaimer. Goliath warrants that it will perform the Services in a professional manner, consistent with relevant industry standards. If Customer notifies Goliath (in writing and in sufficient detail) of a breach of warranty within 30 days after provision of the non-conforming Services, Goliath, at its option, will (a) re-perform the Services at no additional cost to Customer, or (b) refund or credit to Customer's account the fees associated with the non-conforming Services. This is Customer's sole and exclusive remedy, and Seller's sole and exclusive liability, with respect to any breach of warranty relating to the Services. GOLIATH DOES NOT REPRESENT OR WARRANT, WHETHER OR NOT CONTRACTED TO DO SO, THAT IT WILL DISCOVER ANY OR ALL OF CUSTOMER'S SYSTEM OR OTHER VULNERABILITIES AND CUSTOMER WILL NOT HOLD GOLIATH RESPONSIBLE FOR ANY UNDISCOVERED VULNERABILITIES. GOLIATH IS NOT RESPONSIBLE FOR COSTS OR LOSSES INCURRED IN CONNECTION WITH DISRUPTIONS OF OR DAMAGE TO ANY CUSTOMER OR THIRD-PARTY INFORMATION SYSTEMS OR THEIR INFORMATION AND DATA. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4, THE SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS;" AND GOLIATH MAKES NO REPRESENTATIONS OR WARRANTIES, AND DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

5. Confidentiality. If the parties have previously entered into a mutual confidentiality agreement, it remains in effect between the parties, except with respect to specific information and disclosures made in connection with this SOW. In connection with this SOW, each party may receive or have access to confidential information and materials of the other party. As used herein, "**Confidential Information**" means information that (a) is designated as "confidential" or by similar words by the disclosing party at the time of disclosure and, if oral or visual, is confirmed as confidential by the disclosing party in writing within 15 days of disclosure; or (b) the receiving party should reasonably have considered to be confidential under the circumstances surrounding disclosure, except that Confidential Information does not include any information that (i) was previously known to the receiving party, (ii) is received from a third party without similar restriction, (iii) is or becomes publicly available other than through unauthorized disclosure, or (iv) is independently developed by the receiving party without the use of the other party's Confidential Information. Each party will take reasonable precautions (at least as great as the precautions it takes to protect its own confidential information) to prevent unauthorized disclosure of the other party's Confidential Information in its possession to any third party. Neither party will disclose any Confidential Information of the other party to any third party for a period of 5 years following the

date of disclosure, nor may either party use such Confidential Information except in the performance of its obligations or exercise of its rights under this SOW, except that a party may disclose Confidential Information of the other party (1) to its affiliates, contractors, and representatives on a need-to-know basis under terms of confidentiality, and (2) as required by law. Goliath recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

6. Proprietary Rights. Goliath acknowledges Customer's and its licensors' proprietary rights in preexisting works of authorship provided by Customer to Goliath pursuant to this SOW ("**Customer IP**"). Except for any Customer IP, Goliath or its affiliates exclusively own the Deliverables and any and all intellectual property, discoveries, ideas, works of authorship, information, and other materials and items, including, without limitation, object code, source code, and documentation, developed hereunder, as well as any materials and items developed or owned by Goliath or its affiliates outside of this SOW, whether pre-existing or otherwise (collectively, the "**Goliath Materials**"). All applicable patents, copyrights, trademarks, trade secrets and other rights and interests in the Goliath Materials are and will remain vested entirely in Goliath or its affiliates. Upon payment of the fees for Services, Customer is granted a perpetual, non-transferable, non-exclusive license to use the Deliverables and any Goliath Materials embedded or included in the Deliverables ("**Embedded Goliath Materials**") solely for its internal business purposes. Goliath has no right to any Customer IP, except as necessary for the performance of the Services.

7. Intellectual Property Indemnity.

7.1 Goliath Indemnity. Goliath will indemnify and have the right to intervene to defend, Customer against claims asserted against Customer in a suit or action if: (i) the claim is for direct patent infringement or direct copyright infringement, or for Goliath's trade secret misappropriation and (ii) the claim is (a) asserted against the Services, Deliverables, Goliath Materials, or Embedded Goliath Materials (collectively, "**Indemnifiable Items**"), alone and not in combination with anything or (b) a combination of the Indemnifiable Items. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

7.2 Exclusions. Notwithstanding anything else in this Agreement, Goliath will not indemnify or defend Customer for claims asserted, in whole or part, against: (i) technology or designs Customer gave to Goliath, (ii) modifications or programming to Indemnifiable Items that were made by anyone other than Goliath, or (iii) the Indemnifiable Item's alleged implementation of some or all of a Standard. "**Standard**" means a technology specification created by a government sponsored group, an industry sponsored group, or any similar group or entity that creates technology specifications to be used by others. Examples of Standards include GSM, LTE, 5G, Wi-Fi, CDMA, MPEG, and HTML. Examples of groups that create Standards include IEEE, ITU, 3GPP, and ETSI.

7.3 Conditions. As a condition of Goliath's obligations under this Section 7, Customer must provide to Goliath: (i) prompt written notice of the claim and its agreement to give Goliath sole control over the defense and settlement of the claim; and (ii) Customer's full and timely cooperation.

7.4 Goliath's Consent. Goliath will not be responsible for any cost, expense, or compromise that Customer makes or incurs without Goliath's prior written consent.

7.5 Remedies. Goliath may, at its sole discretion and at its expense: (a) procure for Customer the right to continue using the Indemnifiable Item; (b) replace the affected Indemnifiable Item with a non-infringing Indemnifiable Item; (c) modify the affected Indemnifiable Item so that it becomes non-infringing; or (d) upon Goliath's receipt of Customer's written representation and promise that it has removed all instances of the affected Indemnifiable Item and will not use the affected Indemnifiable Item, as applicable, refund to Customer the Fees for the affected Indemnifiable Item, pro-rated on a three (3) year, straight-line basis.

7.6 Personal Indemnity. The foregoing indemnity is personal to Customer. Customer may not transfer to anyone, including Customer's customers.

7.7 Exclusive Remedy. This indemnity states Goliath's entire obligation and Customer's exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, made in whole or part against any Indemnifiable Item.

8. Limitation of Liability. GOLIATH'S AGGREGATE LIABILITY FOR ALL CLAIMS AND CAUSES OF

ACTION WHATSOEVER RELATING TO THIS SOW OR ITS SUBJECT MATTER WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER UNDER THIS SOW FOR THE APPLICABLE SERVICES. UNDER NO CIRCUMSTANCES WILL GOLIATH BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND OR LOSS OF PROFITS OR LOSS OF DATA RELATING TO THE SOW OR ITS SUBJECT MATTER, EVEN IF GOLIATH IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. These limitations do not exclude or limit any liability of Goliath for death or bodily injury caused by Goliath's gross negligence or willful misconduct AND GOLIATH'S OBLIGATIONS UNDER SECTION 5 (CONFIDENTIALITY) AND SECTION 7 (INTELLECTUAL PROPERTY INDEMNITY).

9. Insurance. In connection with the Services, Goliath will maintain insurance coverage consistent with industry standards for businesses providing similar services.

10. Expiration; Termination. The term of this Agreement will commence upon the Effective Date and, unless earlier terminated as described below, may be renewed at the end of contract by executing a written order for the renewal term. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Goliath shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

11. Notice. Any notice under the SOW must be given in writing to a party at the address provided in the Statement of Work document.

12. Assignment. Customer may not assign this SOW, or any interest or rights granted under this SOW, including by way of merger, sale of assets or stock, or change of control, without the prior written consent of Goliath, which will not be unreasonably withheld.

13. Governing Law. All disputes arising out of or relating to this SOW or its subject matter will be governed by and construed in accordance with the Federal laws of the United States. The application of the U.N. Convention on the International Sale of Goods is expressly excluded from this SOW.

14. Export. Customer agrees to comply with all applicable export and import laws and regulations in the use of any Deliverables and Goliath Materials. The Services and Deliverables may not be used for the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, demilitarization, destruction, processing, use, configuration, adaption or modification of any defense, military, intelligence, nuclear, or space article or activity, including, without limitation, those items enumerated on (a) Wassenaar Arrangement's Sensitive List, Very Sensitive List and/or Munitions List; (b) International Traffic in Arms Regulations United States Munitions List (22 C.F.R. pt. 121); or (c) Common Military List of the European Union. Imports, exports and other transfers of technical data or software stored, used or processed using the Services or related infrastructure are Customer's sole responsibility and Customer will obtain any authorizations that may be required. Customer will not discuss, disclose, or otherwise release to Goliath any Customer Confidential Information or Customer IP directly related to any defense, military, intelligence, nuclear, or space article or activity. The Services provided to Customer and all related technical information or materials may not be exported or re-exported (i) into any U.S. embargoed countries, or (ii) to any person or entity listed on a denial order published by the U.S. government or any other applicable government.

15. Complete Agreement. This SOW (including these SOW Terms of Service) sets out the entire understanding of the parties, superseding all prior agreements and understandings as to the subject matter hereof, notwithstanding any oral representations or statements to the contrary. This SOW may only be modified in writing, executed by both parties. A failure of either party to exercise any right provided for herein will not be deemed to be a waiver of any right hereunder. If any provision of this SOW is held to be invalid or unenforceable, the remaining provisions of this SOW will remain in full force and effect. Goliath may perform or delegate its obligations to its employees, affiliates, or subcontractor,

provided that Goliath shall remain liable for the actions and services provided by such employees, affiliates, or subcontractor at all times.

[End of SOW Terms of Service]