

PURCHASE AGREEMENT

IMPORTANT: PLEASE READ THIS AGREEMENT CAREFULLY. BY CLICKING THE “BUY” BUTTON, YOU ARE AGREEING ON BEHALF OF THE COMPANY (“CUSTOMER”) IDENTIFIED BY THE ORDER (THE “ORDER”) TO A LEGALLY BINDING CONTRACT WITH HIGH POINT SOLUTIONS, INC. “HIGH POINT”). If Customer does not wish to agree to these terms, please click “DO NOT ACCEPT”.

NOTWITHSTANDING THE PRECEDING PARAGRAPH, IF HIGH POINT AND CUSTOMER HAVE EXECUTED A SEPARATE WRITTEN AGREEMENT GOVERNING CUSTOMER’S USE OF THE SOFTWARE, THAT AGREEMENT WILL GOVERN THE PARTIES’ RELATIONSHIP AND THIS AGREEMENT WILL BE OF NO FORCE OR EFFECT, EVEN IF YOU CLICK THE “BUY” BUTTON.

1. **DEFINITIONS.** The following terms have the meanings ascribed to them below for this Agreement:

“*Confidential Information*” will have the meaning set forth in Section 5 of this Agreement.

“*Equipment*” means hardware products and peripherals that may be furnished under this Agreement.

“*Product*” means any third party Equipment, Services and Software provided by High Point.

“*Product Description*” means the documents that describe the attributes of specific Products that are in effect when and where High Point accepts Customer’s purchase order and may be further defined in the Order. The Product Description includes functional and technical specifications for the Products, as well as user manuals and related materials sufficient to allow Customer to utilize fully the capacity and functionality of the Products (also known as Documentation or Specifications).

“*Service*” means Product maintenance services and/or Product extended warranty services offered by the manufacturer of Products or another third party.

“*Software*” means a license to use any computer program (including source code and object code), firmware, program interfaces and any tools or object libraries embedded in the Software and upgrades thereof, that may be furnished by High Point under this Agreement.

“*Third Party Agreement*” has the meaning given by Section 2.3.

2. **PROCESS FOR PLACING ORDERS.**

2.1. **Orders.** The Order will become effective when High Point notifies Customer by email that it has accepted the Order. High Point will make commercially reasonable efforts to accept or reject the Order within two (2) business days. High Point’s failure to accept or reject a purchase order within seven (7) days will be deemed a rejection of the Order.

2.2. **Changes; Cancellation.** High Point will make commercially reasonable efforts to accommodate Customer’s request to change or cancel Orders, provided, that Customer will reimburse High Point its out-of-pocket costs for shipping, handling, restocking fees and other fees and charges incurred as a result of the change or cancellation.

2.3. **Third Party Agreements.** Customer acknowledges that its use of Products may be governed by agreements between Customer and the third party licensor or third party provider of the applicable Product (“*Third Party Agreements*”).

2.4. **Order of Precedence.** If there is a conflict between any of the provisions of this Agreement and an Order, this Agreement will control.

3. **DELIVERY; INSPECTION.**

3.1. **Delivery.** High Point will make commercially reasonable efforts to deliver the Products specified by each Order at the time and in the manner specified by the Order. High Point will promptly notify Customer if it becomes aware of any circumstances that may reasonably be expected to jeopardize the timely and successful delivery of any Product.

3.2. **Shipping.** All shipments under this Agreement will be made FCA High Point’s facility or the facility of High Point’s supplier.

3.3. **Title; Risk of Loss.** Title to the Equipment will pass to Customer upon High Point’s receipt of payment therefor. Risk of loss or damage to the Products or any part thereof will pass to the Customer upon delivery to the carrier.

3.4. **Inspection; Remedies.**

3.4.1. Customer or its agent will inspect and accept all Products within ten (10) days following delivery. If any Product does not conform to the Order or its Product Description, Customer may notify High Point within the 10-day period.

3.4.2. High Point, on receiving Customer’s notice of nonconformity, will provide Customer with instructions for obtaining repair or replacement of the nonconforming Product and, if repair or replacement is to be performed by a third party

manufacturer or supplier, will make commercially reasonable efforts to assist Customer in obtaining the remedies provided by the applicable Third Party Agreement. Shipping costs to return nonconforming Product(s) will be paid by High Point or its supplier, provided, that if High Point determines that the returned Product conforms to the Order and Manufacturer Product Description, High Point will invoice Customer for the costs associated with the returned Product as contemplated by Section 3.4.3.

3.4.3. Returns. High Point will not be required to accept return of any Product properly delivered pursuant to any Order. In the event High Point, in its sole discretion, accepts return of any Product, and the Product is returned in its original condition, High Point will credit Customer for the purchase price (excluding shipping and related delivery charges) net of any out-of-pocket costs for shipping, handling, restocking fees and other fees and charges incurred as a result of the return.

4. FINANCIAL TERMS.

4.1. Invoice; Payment. Customer, in consideration for the Products provided under each Order, will pay High Point the prices and other amounts specified by the Order or this Agreement on the payment terms set forth, or in absence of such terms, within thirty (30) calendar days of High Point's invoice therefor.

4.2. Taxes. All amounts described herein or in any Order are exclusive of any sales taxes, use taxes and similar taxes and levies, excluding without limitation taxes based on High Point's net income, all of which will be the responsibility of Customer.

4.3. Late Payments. Any late payment by Customer under this section will be subject to High Point's costs of collection (including reasonable legal fees and costs) and will bear interest at 1½% per month or part thereof or at the maximum rate permitted by law.

5. CONFIDENTIALITY.

5.1. "Confidential Information," for this Agreement, will mean all information and know-how (whether or not patentable and whether or not copyrightable) owned, possessed or used by one party hereto ("Owner") that Owner discloses or has disclosed to the other party ("Recipient") or to which Recipient gains or has gained access as a result of the parties' relationship, in each case prior to or after the execution of this Agreement, including, without limitation, any invention, product, formula, method, technique, algorithm, project, development, plan, vendor or customer information, equipment, trade secret, process, research, reports, laboratory, financial or technical data, marketing or operational information, computer program, software, software documentation, hardware design, technology, marketing or business plan, forecast, unpublished financial statement, budget, license, price, cost and personnel data and human resources information, provided, that Confidential Information will not include information which: (a) is or becomes available to the public other than because of disclosure by Recipient or its employees in violation of this Agreement; (b) was known to Recipient prior to Recipient's receiving the same under this Agreement and not otherwise restricted by contract or law; or (c) becomes available to Recipient on a non-confidential basis from a third person or source not restricted by contract or law regarding such information.

5.2. Protection. Recipient agrees to safeguard Owner's Confidential Information and to prevent the unauthorized, negligent or inadvertent use, copying or disclosure thereof in a manner not less than that employed to protect each such party's own proprietary information and always with at least a reasonable care.

5.3. Non-Use; Nondisclosure. Recipient will use Owner's Confidential Information only in performing this Agreement and for no other purpose. Recipient may disclose Owner's Confidential Information only (a) to those of its employees, representatives, agents and contractors who need to know the same and who have executed a confidentiality agreement in favor of Recipient or otherwise owe Recipient a duty of confidentiality, and (b) as required by the order or requirement of a court, administrative agency, or other governmental body; provided, however, that Recipient as soon as reasonably practicable will provide notice thereof to Owner and, at Owner's reasonable request and expense, assist Owner in obtaining a protective order or otherwise prevent public disclosure of such information. Recipient as soon as reasonably practicable will notify Owner of any unauthorized use or disclosure of Owner's Confidential Information by Recipient or any Recipient employees, representatives, agents or contractors. Following the expiration or termination of Recipient's rights to use Owner's Confidential Information under this Agreement, Recipient at Owner's request will return to Owner all such Confidential Information delivered or disclosed, including with all copies thereof made by such party.

5.4. General Know-How. Notwithstanding anything to the contrary herein, High Point and its personnel will be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during any assignment, so long as High Point or its personnel acquire and apply such information without disclosure of any Confidential Information of Customer.

6. PASS-THROUGH OF WARRANTIES; LIABILITY LIMITATIONS.

6.1. Pass-Through of Warranties. High Point will make commercially reasonable efforts to pass through to Customer such warranties as its third party suppliers may grant with respect to the Products, and will make commercially reasonable efforts to assist Customer to enforce those warranties.

6.2. SECTION 6.1 SETS FORTH HIGH POINT'S SOLE WARRANTY OBLIGATIONS WITH RESPECT TO THE PRODUCTS, AND HIGH POINT MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT, WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, AND DISCLAIMS ANY LIABILITY IN CONNECTION WITH ANY SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, IMPLIED WARRANTY OF NON-INFRINGEMENT OR ANY WARRANTY EXPRESS OR IMPLIED THAT THE PRODUCTS WILL YIELD ANY PARTICULAR RESULTS OR BENEFITS FOR CUSTOMER. ALTHOUGH HIGH POINT'S PRODUCTS WILL REFLECT HIGH POINT'S BEST JUDGMENT, KNOWLEDGE AND EXPERTISE, HIGH POINT DISCLAIMS ANY REPRESENTATION, WARRANTY, PROMISE OR GUARANTEE AS TO THE OUTCOME OF ANY ACTION BY HIGH POINT OR CUSTOMER BASED ON THE RESULTS OF THE PRODUCTS OR OTHERWISE.

6.3. Limitation of Liability. IN NO EVENT WILL HIGH POINT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT HIGH POINT IS FOUND LIABLE FOR ANY REASON UNDER THIS AGREEMENT, IN NO CASE WILL HIGH POINT'S LIABILITY FOR ACTUAL DIRECT DAMAGES EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE UNITS OF PRODUCTS THAT ARE THE SUBJECT OF CUSTOMER'S CLAIM. THIS SECTION STATES CUSTOMER'S SOLE REMEDY AND HIGH POINT'S EXCLUSIVE LIABILITY FOR ALL DAMAGES WHATSOEVER, IN CONTRACT OR TORT OR OTHERWISE.

7. MISCELLANEOUS.

7.1. No Other Beneficiaries. This Agreement is being made and entered into solely for the benefit of the parties hereto, and no party intends to create any rights in favor of any other person as a third party beneficiary of this Agreement or otherwise.

7.2. Assignment. Neither party may assign this Agreement in whole or part without the prior consent of the other party, such consent not unreasonably to be withheld. Notwithstanding the foregoing, no consent will be required for either party to assign this Agreement in whole, but not in part, to a party: (a) controlling, controlled by or under common control with the assigning party, (b) purchasing substantially all of the assigning party's outstanding equity, or (c) purchasing substantially all of the assigning party's assets to which this Agreement relates, provided, that the assignee agrees in writing to be bound by the terms of this Agreement.

7.3. Force Majeure. Neither party will be liable for any failure or delay in performance due in whole or in part to any cause beyond the reasonable control of such party or its contractors, agents or suppliers, including but not limited to utility or transmission failures, failure of phone lines or phone equipment, power failure, strikes or other labor disturbances (including without limitation a strike or other labor disturbance arising regarding the work force of the party taking advantage of this Section 7.3), Acts of God, acts of war or terror, floods, sabotage, fire, natural or other disasters.

7.4. Relationship of Parties. In making and performing this Agreement, the parties act and will act as independent contractors, and nothing contained will be construed or implied to create an agency, association, partnership or joint venture between the parties. At no time will either party make commitments or incur any charges or expenses for or in the name of the other party. Neither High Point nor its employees and contractors will be entitled to any privileges or benefits that Customer may provide to its employees, and High Point will remain responsible for payment of all unemployment, social security, federal income (state and local income where applicable) and other payroll taxes or mandatory assessments imposed by any governmental body on employers regarding those of its employees engaged in performing of this Agreement.

7.5. Notices. All notices, demands and other communications will be in writing and will be hand-delivered, overnight couriered or mailed by certified mail, return receipt requested in an envelope conspicuously marked "Legal Notice," to the attention of the other party's Chief Executive Officer at the address for such party set forth in the preamble to this Agreement as modified periodically in writing. Notice will be deemed given upon receipt.

7.6. Informal Dispute Resolution. At the written request of either party, the parties will attempt to resolve any dispute arising under or relating to this Agreement through the informal means described in this Section 9.6. Each party will appoint a senior management representative who does not devote substantially all of his or her time to the performance of this Agreement. The representatives will furnish to each other all non-privileged information regarding the dispute that the parties believe to be appropriate and germane. The representatives will use commercially reasonable efforts to resolve the dispute

without the necessity of any formal proceeding. Formal proceedings for resolving the dispute may not be commenced until the earlier of: (a) the designated representatives conclude that resolution through continued negotiation does not appear likely; or (b) thirty (30) days have passed since the initial request to negotiate the dispute was made; provided, however, that a party may file earlier to avoid the expiration of any limitations period, to preserve a superior position regarding other creditors, or to apply for interim or equitable relief.

7.7. Governing Law and Jurisdiction. Except regarding that body of law relating to choice of law, this Agreement will be governed by and construed under the laws of the state of New Jersey. The parties agree to submit to jurisdiction and venue in the state and federal courts sitting in the New Jersey. Any award made by a court in conjunction with litigation between the parties regarding this Agreement will include an award of all reasonable attorneys' fees and legal costs incurred by the party in whose favor the final decision is rendered.

7.8. Complete Agreement. This Agreement constitutes the complete Agreement between the parties and supersedes all previous communications and representations or agreements, either oral or written, with respect to the subject matter hereof. This Agreement cannot be modified or changed in whole or in part in any manner other than by an Agreement in writing duly signed by both parties hereto.

7.9. Severability. If any provision of this Agreement or the application thereof to any person or circumstances will to any extent be invalid or unenforceable, the remainder of this Agreement, or the application thereof to any person or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each provision of this Agreement will be valid and enforced to the fullest extent of the law.

7.10. Waiver and Amendment. This Agreement may be amended, modified, superseded, canceled, renewed or extended, and the terms and conditions may be waived, only by a written instrument signed by the parties or, in the case of a waiver, by the party waiving compliance. The waiver by any party hereto of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach.

7.11. Specific Enforcement. If a breach occurs or threatened breach of the covenants in Section 5 of this Agreement, the non-breaching party may seek from any court of competent jurisdiction preliminary and permanent injunctive relief, which remedy will be cumulative and besides any other rights and remedies to which the non-breaching party may be entitled, without necessity of posting bond or other security. Each party acknowledges that its breach of any of the covenants in such sections would cause immediate and irreparable injury to the other party.

7.12. Interpretation. In this Agreement and each Order, (i) section headings are for convenience only and will not affect the construction or interpretation of this Agreement, (ii) the use of plural will include the singular and using the singular will include the plural, in each case where the context requires, and (iii) references to masculine, feminine or neuter genders will include every gender as the context requires.