

# STATEMENT OF WORK

SOW: SFID XXXX-XXXXX

Customer Information		Contact Information	
Customer Name:	[Customer Name]	Customer Contact Name:	
End Customer Name (if different from above):		End Customer Contact Name (if applicable):	
Work Site Address:		Customer Contact Email: Phone Number: Fax Number:	
Bill-to Address and e-mail:		TD Contact Name: TD Contact Email: Phone Number: Fax Number:	

Project Name: [Customer] Virtual SDN Environment Update - Cloud DR Implementation

Effective Dates: April 2018

Project Contact:

This Statement of Work ("SOW") incorporates and includes the Terms and Conditions of Sale for Services attached. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Terms and Conditions for Sale of Services. "Services" in this SOW has the same meaning as "TS Services" in the Terms and Conditions of Sale for Services. This SOW is between AVT Technology Solutions LLC, its affiliates, subsidiaries, and assigns ("Service Provider") and [Customer LLC] ("Customer") for the benefit of their end customer, [End Customer] ("End Customer"). The purpose of this document is to outline the services that Service Provider will provide in assisting Customer in providing VMware and AWS services.

## 1. Project Overview:

Provide services to update VMware infrastructure to latest release, deploy virtual network with NSX, deploy an AWS Storage Gateway Virtual Tape Library (VTL) for HPE Data Protector backups to AWS, and develop automation to store AMI images for up to five VMs in AWS for DR purposes. An overview of tasks involved are:

- A. Assess. Gap identification between current environment and preferred end state
  - B. Design. Solution design through workshops and consultation
- Deploy. Working with customer to perform the following activities:
- Upgrade the VMware ESXi hosts and infrastructure in preparation for NSX deployment including:
    - i. Upgrading ESXi Hosts to latest release
    - ii. Upgrading vCenter deployment to latest VCSA release
  - Install and configure NSX 6.3 including:
    - i. Configure L2 logical connectivity between virtual machines on same VMware ESXi™ host or spread across multiple hosts using VXLANs.
    - ii. L3 connectivity between two virtual machines on different logical switches or application tiers utilizing the distributed router functionality.
    - iii. L3 connectivity between overlay networks and external networks using VMware NSX Edge™ routing functionality (static or dynamic).
    - iv. High availability with equal cost multipath (ECMP) on distributed logical router (DLR) and NSX Edge services gateway.
  - Install and configure AWS Storage Gateway VTL for HPE Data Protector including:
    - i. Installation of the AWS Storage Gateway VTL appliance in VMware environment
    - ii. Configuration of the Storage Gateway VTL as medium changer for tape drives for the Data Protector software
    - iii. Creating up to 10 virtual tapes for AWS Storage Gateway VTL
    - iv. Configuring HPE Data Connector to use AWS Storage Gateway VTL
  - Create automation to store AWS AMI images of up to five critical VMware VMs in AWS for DR purposes and

create AWS VPC environment for DR use.

- C. Validate. Validation of the implemented services
- D. Knowledge Transfer. Knowledge transfer of the design, deployment and operation procedures

## 2. Sample Information Matrix for Delivery Methodology

Area of Focus (SME)	Questions / Information Needed
Infrastructure	Current Infrastructure Diagram or access to network engineers that understand the infrastructure between existing infrastructure and data repositories.
Infrastructure	Any documented network, system or application limitations. Any internal SLAs defined in regards to service availability and needs
Infrastructure / VMware	Any documentation in regards to existing virtual environment and staff capabilities.
HPE Data Protector	Current versions of deployed software and access to SMEs to describe data requirements in regards to volume, locations, accessibility.
HPE Data Protector	Access to software, documentation and lab capabilities to understand software requirements and hybrid cloud support.

## 3. Project Assumptions

- On-site interviews with the end-customer subject matter experts with knowledge of and access to their on-premise virtual infrastructure environment, networks, network limitations, storage volumes and related technologies need to complete the work
- Tech Data will have access to virtual infrastructure and software, documentation, personnel and local subject matter experts to implement the scope of work

## 4. Approach and Deliverables:

The Services for this project are organized into the following workstreams. The sections below for each workstream describe the tasks and associated Deliverables for each workstream.

### A. Technical Workstream:

The technical workstream is comprised of architecture, technical design, development/configuration, and infrastructure activities. Service Provider's provision of the Deliverables and performance of Service Provider obligations are contingent on both Assumptions being accurate and complete, and Customer fulfilling the Customer obligations. The technical workstream for this SOW consists of the following obligations and Deliverables:

Task Description	Deliverables and Service Provider Obligations	Deliverable Assumptions and Customer Obligations
Requirements Gathering - through interviews and communication with customer, gather additional details applicable to the design		On-site or conference call meetings. Requirements, information and data applicable to final design
Upgrade the VMware ESXi hosts and infrastructure in preparation for NSX deployment	Upgrade up to four (4) ESXi Hosts to latest release Upgrade up to one (1) vCenter deployment to latest VCSA release	Service provider access to virtual environment and resources
Install and configure NSX 6.3	Install and configure one (1) NSX Manager Configure L2 logical connectivity between virtual machines on same VMware ESXi™ host or spread across multiple hosts using VXLANs. Create up to four (4) logical subnets. Configure L3 connectivity between two virtual machines on different logical switches or application tiers utilizing the distributed router functionality. Create up to one (1)	Service provider access to virtual environment and resources

	Distributed Logical Router (DLR) Configure L3 connectivity between overlay networks and external networks using VMware NSX Edge™ routing functionality (static or dynamic). Create up to two (2) Edge Services Gateways Setup high availability with equal cost multipath (ECMP) on distributed logical router (DLR) and NSX Edge services gateway.	
Install and configure AWS Storage Gateway VTL for HPE Data Protector	Create AWS root account, up to five (5) users and configure IAM policies for security Configure AWS S3 and S3 security Install AWS Storage Gateway VTL appliance in VMware environment Configure the Storage Gateway VTL as medium changes for tape drives for the Data Protector software Create up to ten (10) virtual tapes for AWS Storage Gateway VTL Configure HPE Data Connector to use AWS Storage Gateway VTL	Service provider access to virtual environment and resources
Create automation to store AWS AMI images of up to five critical VMware VMs in AWS for DR purposes.	Create AWS CLI python scripts to periodically create AMI images of up to five (5) VMware VMs in AWS Create VPC with necessary subnet configuration, NACL and Security groups for use as DR environment Document process to start and run AMI images	Service provider access to virtual environment and resources
Design Document - create design documents of final delivered state of virtual network, AWS Storage Gateway VTL implementation and design and operation of automation to create AWS AMI images for DR	Design documents	Data compiled and documentation produced remote.

**B. Project Management Workstream:**

The project management workstream may include but is not limited to project initiating, planning, executing, tracking, and closing processes. The Service Provider Project Contact (listed above) is responsible for tracking and reporting project status and coordinating the activities of the project team. Service Provider's provision of the Deliverables and performance of Service Provider obligations are contingent on both Assumptions being accurate and complete, and Customer fulfilling the Customer obligations. The project management workstream for this SOW consists of the following obligations and Deliverables:

Task Description	Deliverables and Service Provider Obligations	Deliverable Assumptions and Customer Obligations
Status Reporting:	Deliverable: Due to the limited duration of this project, a daily verbal or short email summary will provide with details of the tasks completed, tasks planned, and issues, which is delivered by Service Provider to Customer.	

**5. Deliverable Guidelines:**

- A. Deliverables are listed in the Deliverable section of each workstream.
- B. Service Provider will deliver one (1) electronic copy of the Deliverable to the Customer Project Manager where applicable.
- C. If Customer requests changes to the Deliverable within two (2) business days of Service Provider's delivery, and if Service Provider agrees, then Service Provider will submit a Change Request (as defined below) to Customer for approval and signature.
- D. If Service Provider receives a Change Request, then Service Provider may either: (a) make the requested changes and provide a final electronic copy to Customer, or (b) provide a written response to Customer, and the Parties may work together to find a resolution. If Service Provider expends more actual hours to meet the customer's requirements, then Service Provider may bill those additional hours at either the rates provided below or as described in a Change Request; and the additional hours will be added to the total number of estimated hours provided herein.

**6. Timing:**

- A. The expected start date for this project is 05/01/2018 and the anticipated end date is 06/01/2018. If Customer has not accepted this SOW prior to that date, if the Customer is not ready to proceed, if any of the Assumptions are not true, or if the Service Provider Consultant(s) is/are not available; then Service Provider may adjust the start and end dates until these conditions are satisfied.
- B. Service Provider shall create a detailed timeline with input from any identified stakeholders during the first week of the project, aligning milestones and project dependencies. These milestones may be adjusted during the project based on actual work activity results and Customer's Deliverable review response time.

Virtual SDN Environment Update - Cloud DR Implementation	Scheduled Hours
Upgrade the VMware ESXI hosts	40
Install and configure NSX 6.3	40
Install and configure AWS Storage Gateway VTL for HPE Data Protector	20
Create automation to store AWS AMI images for DR	20
<b>Total</b>	<b>120</b>

**7. Fee Schedule:**

The Services will be performed on a fixed price basis not to exceed the amount in the table below unless agreed to by both Tech Data and Software Information Systems LLC. The estimated fees are exclusive of any travel and living expenses, connectivity charges, other reasonable expenses incurred in connection with the services, and any applicable taxes. Tech Data will invoice Customer in accordance with the Agreement. Cost estimates provided by Tech Data are not guaranteed and do not form the basis for a fixed price transaction. Tech Data will notify Customer as soon as it appears that the written estimates provided to Customer will be exceeded. The Fee breakdown by resource is provided below.

Task	Estimated Hours	Rate	Amount
Solution Architect / Delivery Engineer	120	N/A	
<b>Total</b>	<b>120</b>		

**8. Expense Policy:**

- A. Customer shall reimburse Service Provider for all reasonable travel and living expenses associated with the project according to Service Provider's expense policy, which Service Provider will provide upon Customer's request. Service Provider's expense policy includes both a single room for each individual, and meal expenses on a per-diem basis. The meal per-diem rates are based on applicable geographic US Government rates provided by the U.S. Internal Revenue Service. Service Provider shall provide receipts to Customer for all expenses above \$25, except for meals.

**9. SOW Assumptions:**

- A. The Scope of Services and fees for this SOW are based upon the following assumptions ("Assumptions"):
  1. Service Provider shall provide the Services under this SOW (except holidays) either: (a) during normal business hours, 9:00 AM to 5:00 PM, in the time zone where the Services are performed, Monday through Friday; or (b) through four 10 hour shifts Monday through Thursday, and if needed provide remote support on Fridays. Remote personnel may work hours other than those defined as normal business hours to accommodate their travel schedules and time zones.
  2. Some work will be performed remotely. It is understood that some installation / configuration could take place via

remote screen sharing applications like WebEx as well as data analysis and report generation will take place remotely. It is also understood that some installation / configuration and data collection could take place on-site with the anticipated interviews and overview discovery sessions.

3. At the start of the project and on an ongoing basis, the Service Provider Project Manager shall work with Customer to mutually determine any onsite requirements of non-local resources. The typical 40 hour work week of full time non-local resources consists of the resource traveling to Customer's work site location on Monday morning, returning to their home city Thursday evening, and performing project related activities remotely on Friday. During weeks with a national holiday or during periods when a resource is not required to be onsite full time, both parties will work together to define an alternate full time work schedule with the resource performing project related activities remotely.
4. Services pricing is based upon a contiguous series of project activities. If there is a break or delay in the scheduled work, which are caused by Customer, then Service Provider may invoice for additional service charges. A material delay is defined as a delay lasting longer than one business day.
5. All project documentation will be delivered electronically.

#### 10. Customer Responsibilities:

- A. Customer shall perform the following obligations, at no charge to Service Provider. Service Provider's obligations herein are conditioned upon the following responsibilities being fulfilled by Customer.
- B. Customer acknowledges that delays in performance of its responsibilities may result in additional cost and/or delay of the completion of the project.
- C. "Customer Project Sponsor" means a competent Customer employee who is appointed by Customer for the project.
- D. "Customer Decisions" means any management decisions and implementation decisions made on behalf of Customer, including but not limited to those identified or requested by Service Provider or by Customer Project Manager.
- E. The Customer Project Sponsor shall identify key Customer stakeholders as part of the project kick off documentation, coordinate with necessary stakeholders on the Customer side who need to be involved in the decision making process, shall schedule meetings with such stakeholders, and shall inform Service Provider and the Customer Project Manager of Customer Decisions.
- F. Customer authorizes Service Provider to accept on its behalf any end-user license agreement, or similar agreement, necessary to enable any solution, service, or Product regardless of where such solution, service or Product was purchased from or created by Service Provider. Customer shall secure on behalf of Service Provider this same authority from its customers and from end-users. These authorizations will not require Service Provider to accept any end-user license agreement, but Service Provider may in its sole discretion choose to exercise its authority. Customer acknowledges that any required license to use any Product purchased under this Agreement comes from the Product manufacturer or Software developer and not from Service Provider. Under no circumstances shall Service Provider be considered the licensor or ultimate end user of any Product.
- G. Customer shall:
  1. Designate the Customer Project Sponsor.
  2. Be responsible for all Customer Decisions communicated by Customer Project Sponsor.
  3. Ensure that its staff is available to provide such assistance as Service Provider requires completing the Services.
  4. Ensure that its staff has the appropriate skills and experience.
  5. Coordinate and secure all participants for meetings/workshops as required, ensuring that key stakeholders attend the meetings.
  6. Provide all information and materials reasonably requested by Service Provider, within one (1) business day of request from Service Provider.
  7. Ensure that all information disclosed to Service Provider is true, accurate, and not misleading in any material respect. Service Provider is not liable for any loss, damage or deficiencies in the Services arising from inaccurate, incomplete, or otherwise defective information disclosed by Customer.
  8. Properly supervise assigned Consultants in their performance of Services and be responsible for Customer's business operations, products, services, management of Customer's confidential information and intellectual property.
  9. Provide a safe work environment, appropriate information, and training specific to Customer's site, policies, and procedures for any Consultant working Customer's on-site.
  10. Supply on-site Service Provider personnel with suitable office space, desks, storage, furniture, and other normal office equipment support, including adequate computer resources, Internet and other network access, building access, telephone service, postage, copying machines, and general office supplies which may be necessary in connection with Service Provider's performance of the Services.
  11. Provide Consultant(s) with 24X7 secure remote access (VPN, etc.) to Customer's internal systems for the duration of the project on an as-needed basis, so that Service Provider resources are productive while working off site.

This includes remote access to in-scope project systems such as project email, team calendars, network files, project collaboration sites, source code repositories, and project technical environments supporting the development, test, quality assurance, and performance testing servers.

12. Provide all hardware and procure licenses for all software required for the successful execution of the Services detailed in this SOW, as specified by Service Provider.
13. Ensure that the software is properly licensed to run on the hardware utilized for this project.
14. Ensure it has appropriate agreements in place with third parties to enable Service Provider to perform the Services under this SOW, where Customer is using or providing Service Provider with third party information, support, or materials for a project including, but not limited to, employing other suppliers whose work may affect Service Provider's ability to provide the Services. Unless otherwise agreed in writing, Customer will be responsible for the management of the third parties and the quality of their input and work. Except to the extent specified otherwise in this SOW, Customer is solely responsible for any third party hardware, software, licenses, other communications, or the procurement of any equipment used in connection with the Services.
15. Ensure compliance with regulatory and legal standards applicable to Customer, with respect to this SOW. It is Customer's responsibility to obtain advice of competent legal counsel as to the identification and interpretation of any relevant laws that may affect Customer's business and any actions Customer may need to take to comply with such laws. Service Provider does not provide legal, accounting or data security advice or represent or warrant that its Services or products will ensure that Customer is in compliance with any law.
16. The Services, software, Deliverables, and solutions provided in this SOW may contain code that is subject to third party or open source software licenses. Customer is responsible for compliance with any third party or open source software licenses. ANY SUCH SOFTWARE IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTIES OR INDEMNITIES OF ANY KIND. Customer will not perform any actions causing the software, Deliverables, or any Service Provider technology to be considered subject to, licensable, transferable or distributable under any open source code license, including but not limited to the GNU General Public License.

#### 11. Project Change Request Procedure:

- A. When required, the Parties will use a change control procedure for change requests that impact the duration, cost, or resource requirements specified in this SOW. "Change Request" means the written document identifying the change in the Deliverable and/or Services.
- B. Changes to the Deliverables provided, the Services performed, and the applicable fees may occur based on changes to the final requirements and design specifications, redirection from Customer, delays caused by Customer resources, imprecise estimations of effort, and other project scope/schedule/resource alterations including changes in the staffing composition mix. The Change Request will be evaluated in accordance with the following process.
- C. The project Change Request procedure is as follows:
  1. The Party requesting the change shall describe the change, and the projected effect the change will have on the SOW, in the Change Request.
  2. The Party receiving the Change Request will review the Change Request and either (a) accept it, (b) recommend it for further investigation, or (c) reject it. If recommended for further investigation, then the receiving Party will determine the projected effect that the implementation of the Change Request will have on service fees, duration and other terms and conditions of this SOW.
  3. Until a change is authorized or rejected, both parties will continue to act in accordance with the latest agreed version of the SOW.
  4. The Party receiving the Change Request shall either authorize or reject the Change Request within ten (10) business days of the receipt of the written Change Request, or the Change Request will be deemed authorized.
  5. If the Change Request will cause a change in service fees or duration, then the Party receiving the Change Request will provide a revised Change Request in writing to the requesting Party. The Parties shall negotiate the terms of any Change Request in good faith.

#### 12. Term and Termination:

- A. This SOW shall remain in effect until the Services are completed or are earlier terminated as provided herein.
- B. Notwithstanding anything to the contrary herein, either Party upon giving the other Party at least thirty (30) calendar days' prior written notice may terminate this SOW at any time, without cause. Either Party may terminate this SOW immediately for cause by giving written notice to the other Party in the event that the other Party:
  1. becomes insolvent or unable to meet its obligations as they become due or files or has filed against it a petition under the bankruptcy laws;
  2. ceases to function as a going concern or to conduct its operations in the normal course of business;
  3. assigns or transfers, either voluntarily or by operation of law, any rights or obligations under this Agreement without consent of the Party seeking to terminate; or

- 4. fails to correct its breach of any material obligation under this SOW within thirty (30) days after written notice of such a breach.
- C. Upon termination of this SOW, Customer shall pay Service Provider for all Services completed up to and including the date of termination, and a pro rata portion of uncompleted Services based on the percentage of work completed whether such amount exceeds the amount of an initial or revised estimate or quote of costs, fees, and expenses.

Acceptance of Services:

We appreciate the opportunity to be of service to you and look forward to working with you. Please indicate your approval of these arrangements by signing and returning this SOW to Service Provider. By signing, you represent that you have the requisite authority to bind Customer to this SOW.

FOR SERVICE PROVIDER

FOR CUSTOMER

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Title (please print)

\_\_\_\_\_  
Title (please print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**TERMS AND CONDITIONS OF SALE FOR SERVICES**

AVT Technology Solutions LLC ("Service Provider") will provide services ("TS Services") and products associated with TS Services ("Products"). TS Services may (a) consist of a variety of services performed directly by Service Provider (or its subcontractor), such as performance of a task, assistance, support, access to resources that Service Provider makes available; or (b) creation of software or as otherwise defined on a Statement of Work ("SOW"). For avoidance of doubt, "TS Services" excludes third-party services ("Third Party Services"), which may include but shall not be limited to software and other offerings provided solely by a third party. "TS Services" as used in these terms and conditions does not include Third Party Services. Except for mutually agreed upon terms such as in an SOW or change order, Service Provider's provision of TS Services, Third Party Services and Products are subject to only these terms and conditions of sale for Services ("Agreement"), regardless of any other additional terms or conditions that conflict with or contradict this Agreement in any purchase order, document, or other communication ("Order"), including any preprinted terms and conditions on any document of customer ("Customer"). Service Provider's failure to object to such conflicting or additional terms will not change or add to the terms of this Agreement.

**1. ORDERS.**

Quotes from Service Provider are invitations to tender and are subject to change at any time without notice. All Customer Orders are subject to acceptance by Service Provider. Contracts between Customer and Service Provider are formed upon Service Provider's written acceptance or execution of SOW or Customer's Order, which shall be governed only by the terms and conditions of this Agreement and SOW, if any. In the event of conflicting terms between the terms and conditions of this Agreement and SOW, the terms and conditions of this Agreement will control.

**2. CUSTOMER RESPONSIBILITIES.**

Service Provider will rely on the specific instruction and information provided by Customer in the applicable SOW. The scope of the work to be performed will be tentative until confirmed in writing by both parties in the applicable SOW. Service Provider is not responsible for any default or delays caused by Customer's failure to confirm applicable SOW in a timely manner, to provide accurate and timely instructions, comprehensive information, or necessary access to facilities or application environment.

**3. PRICES.**

Except as otherwise agreed in applicable SOW, prices are estimates and are subject to change at any time. Service Provider will use reasonable commercial efforts to notify Customer if estimates provided to Customer in writing will be exceeded. In such an event, (i) Customer may terminate the Services and pay only for the work performed through the effective date of termination, even though such amount may be less than or in excess of the estimate, or (ii) if Customer makes no such termination request, Service Provider will continue to perform services according to the existing work authorization, including all fees and expenses which may exceed the initial or revised cost estimate. Prices are for Products, TS Services or Third Party Services only and do not include taxes, or other charges or fees, such as out of pocket expenses, permits, licenses, certificates, customs declarations and registration (collectively, "Additional Fees"). Customer is responsible for any Additional Fees as well as obtaining such licenses, permits or permissions on its own accord that may be needed for the performance of the TS Services.

**4. TERMS OF PAYMENT.**

Payment of the total invoice amount, without offset or deduction, is due 30 days from the invoice date or as otherwise indicated and approved in writing by the parties in the SOW. On any past due invoice, Service Provider may charge (i) interest from the payment due date to the date of payment at 18% per annum, plus reasonable attorneys' fees and collection costs; or (ii) the maximum amount that is allowed under the applicable law if Service Provider's interest rate is deemed invalid. At any time, Service Provider may change the terms of Customer's credit, require financial data from Customer for verification of Customer's creditworthiness, require a bank guarantee or other security, or suspend any outstanding Orders of Customer. Service Provider may apply payments to any of Customer's accounts. If Customer defaults on any payment under this Agreement, Service Provider will provide notice to Customer and give Customer a reasonable time to cure. If Customer fails to provide payment within the reasonable time to cure period, Service Provider may postpone or cancel any pending or current TS Services or Third Party Services to be performed, being performed or in any outstanding SOW, and declare all outstanding invoices due and payable immediately.

**5. OWNERSHIP OF DELIVERABLES AND DELIVERY.**

- A. If Service Provider is providing only Services and Deliverables: Upon payment in full, Service Provider will transfer ownership of tangible product as a result of the TS Services ("Deliverable") to the Customer.
- B. If Service Provider is providing Services, Deliverables and Products: All Products or Deliverables are EXW Origin (INCOTERMS 2010). Service Provider will transfer title of Product upon shipment. Service Provider will transfer ownership of Deliverables or TS Services to the Customer upon payment in full.



- C. Service Provider retains all rights, title and interest in any pre-existing materials and intellectual property that is owned by Service Provider. Service Provider will provide to the Customer a limited and revocable license to use the pre-existing intellectual property utilized in providing TS Services or provided in a Deliverable at a fee to be mutually agreed. TS Services and any Products, Deliverables, and Third Party Services, including software or other intellectual property, may be subject to any applicable rights of third parties, such as patents, copyrights or user licenses, and Customer will comply with such rights.

#### 6. SERVICE PROVIDER'S LIMITED WARRANTY.

Service Provider warrants that TS Services will be performed in a reasonable and workmanlike manner. **To the extent permitted by law, Service Provider makes no other warranty, express or implied, such as warranty of merchantability, fitness for purpose or non-infringement. In particular, Service Provider does not warrant that software provided as part of the TS Services is uninterrupted or error-free.** Customer's sole remedies for breach of this TS Services warranty are, at Service Provider's sole discretion, to: (i) re-perform the TS Services, or (ii) refund the portion of the fees paid by Customer that relate to the non-conforming TS Services. Service Provider will have no obligation with respect to any warranty claim if the claim is the result of (i) damage caused by unauthorized modification by Customer or any third party not performing under the direction of Service Provider, (ii) any abuse or misuse by Customer or any third party not performing under the direction of Service Provider, or (iii) damage caused by disaster such as fire, flood, wind or lightning. Service Provider will pass through to Customer any transferable Third Party Services warranties and remedies provided by the third party service provider.

#### 7. LIMITATION OF LIABILITY.

**To the extent permitted by law, neither Service Provider nor any of Service Provider's successors or assigns shall be liable for and Customer is not entitled to any indirect, special, incidental, consequential, punitive or exemplary damages of any nature including without limitation removal, reinstallation costs, reprocurement costs, costs of cover, loss of use, loss of profit or revenue, business interruption, loss of data, promotional or manufacturing expenses, overhead, injury to reputation or loss of customers even if Service Provider has been advised of the possibility of such damages. To the extent permitted by applicable law, Customer's total recovery from Service Provider for any direct damages will not exceed the total amount paid by Customer for TS Services or Third Party Services performed under the relevant SOW during the twelve month period immediately preceding the event giving rise to the liability. Service Provider will not be liable for any loss or damage arising out of significant changes to, or errors, omissions or inaccuracies in the information provided by Customer. Service Provider is also not liable for any claims based on Service Provider's compliance with Customer's designs, specifications, or instructions.**

#### 8. FORCES BEYOND SERVICE PROVIDER'S CONTROL.

Service Provider is not liable for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control (for example: acts of nature, acts or omissions of Customer, operational disruptions, man-made or natural disasters, epidemic medical crises, materials shortages, strikes, criminal acts, delays in delivery or transportation, or inability to obtain labor or materials through its regular sources).

#### 9. NON-SOLICITATION.

During the term of the SOW or Agreement and for one year from termination or expiration of this Agreement, Customer shall not, without the prior written consent of Service Provider, directly or indirectly offer employment or hire any current or former employee, subcontractor or consultant of Service Provider who was directly involved in the performance of this Agreement. This provision does not restrict the right of Customer to solicit or recruit generally in the media and does not prohibit Customer from hiring an employee of Service Provider who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by Customer or Customer's agents.

#### 10. EXPORT/IMPORT.

- A. Certain Products, TS Services, Third Party Services, Deliverables and related technology and documentation sold by Service Provider are subject to export control laws, regulations and orders of the United States, the European Union, or other countries ("Export Laws"). Customer shall comply with such Export Laws and obtain any license, permit or authorization required to transfer, sell, export, re-export or import the Products, TS Services, Third Party Services, Deliverables and related technology and documentation.
- B. Customer will not export or re-export the Products, TS Services, Third Party Services, or Deliverables and related technology and documentation to any country or entity to which such export or re-export is prohibited, including any country or entity under sanction or embargoes administered by the United Nations, U.S. Department of Treasury, U.S. Department of Commerce or U.S. Department of State. Customer will not use the Products, TS Services, Third Party Services, Deliverables, and related technology and documentation in relation to nuclear, biological or chemical weapons or missile systems capable of delivering same, or in the development of any weapons of mass destruction.

**11. GOVERNMENT CONTRACTS.**

Service Provider is a distributor of "Commercial Items" as defined in FAR 2.101 which includes installation services, maintenance services, repair services, training services and other services procured from Service Provider for support of a commercial item or services sold in the commercial marketplace. Therefore, Service Provider agrees only to the clauses in the Federal Acquisition Regulation ("FAR") and Defense Federal Acquisition Regulation ("DFAR") that are required to be inserted in subcontracts for commercial items as set forth in FAR 52.244-6(c)(1), FAR 52.212-5(e)(1), and DFAR 252.244-7000 if it is a subcontract under a Department of Defense prime contract. In accordance with FAR 12.211, Customer will receive only those rights in technical data customarily provided to Service Provider by the manufacturers or provided by Service Provider to other commercial customers. These rights will not be interpreted as providing to Customer unlimited rights in data, software, or intellectual property rights provided by the manufacturers or any other third party or for Service Provider's commercial software. Service Provider specifically rejects the flow down of any federal requirements which are inapplicable to services.

**12. ELECTRONIC ORDERS.**

In the event that any part of the provision of TS Services and Third Party Services utilizes electronic data interchange, Customer's internal portal or third party portal, or any other electronic means ("Electronic Purchase Order"), this Agreement will continue to apply to the provision of TS Services and Third Party Services between Customer and Service Provider. Customer's acceptance of Service Provider's acknowledgment request or Service Provider's specification of details with respect to Electronic Purchase Orders via writing, email or other electronic data interchange shall be binding on Customer.

**13. GENERAL.**

- A. This Agreement shall be governed, construed, and enforced in accordance with the laws of the country where the Service Provider entity that accepted Customer's Order ("Governing Country") is located. The courts of the Governing Country shall have jurisdiction and venue over all controversies arising out of, or relating to, this Agreement. If the Governing Country is the United States of America, the laws and courts of the State of Arizona will apply without reference to Arizona's conflict of laws principles. The United Nations Convention for the International Sale of Goods shall not apply.
- B. The prevailing party in any legal proceedings brought by or against the other party to enforce any provision or term of this Agreement shall be entitled to recover against the non-prevailing party the reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party. No person who is not a party to this Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act of 1999 (UK) or under any other similar applicable law, statute or regulation.
- C. The Customer warrants that it has obtained all necessary approvals for Service Provider to process personal data. In addition the Customer warrants that the content, use or processing of the data is not illegal and does not infringe any rights of third parties or any statutory or regulatory provisions. The Customer shall protect Service Provider and hold Service Provider harmless against any legal claim which may result from a breach of the above warranties.
- D. Customer may not assign this Agreement without the prior written consent of Service Provider, and Service Provider's affiliates may perform Service Provider's obligations under this Agreement. This Agreement is binding on successors and assigns.
- E. Service Provider reserves the right to subcontract provision of TS Services or Third Party Services to a third party organization to provide TS Services or Third Party Services to Customer. Any such subcontract shall not relieve Service Provider of any of its obligations under this Agreement.
- F. This Agreement can only be modified in writing signed by authorized representatives of both Service Provider and Customer.
- G. Service Provider and Customer are independent contractors and agree that this Agreement does not establish a joint venture, agency relationship, or partnership.
- H. Service Provider's failure to object to any document, communication, or act of Customer will not be deemed a waiver of any of these terms and conditions.
- I. The unenforceability of any of these terms or conditions will not affect the remainder of the terms or conditions.
- J. To the extent that electronic signatures are available, the parties agree to use electronic signatures and agree that any electronic signatures will be legally valid, effective, and enforceable.
- K. Service Provider and Customer will maintain in confidence and safeguard all Confidential Information. "Confidential Information" means any information that is marked or otherwise identified as confidential or proprietary at the time of disclosure, or any information, by its nature, that should be deemed confidential and does not include information that is in the public domain. Each party agrees to use any Confidential Information only for the purpose of conducting business with each other under this Agreement. Customer or Service Provider may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of each party's intellectual property or proprietary rights.

- L. Customer and Service Provider shall observe and comply with all applicable laws, rules and regulations applicable to the performance of their respective obligations under this Agreement including, but not limited to, anti-corruption laws (such as the U.S. Foreign Corrupt Practices Act and U.K. Bribery Act) and regulations in respect of import or export of Services.
- M. Service Provider may translate the Agreement into any language for ease of comprehension but, in the event of any conflict or inconsistency between the Agreement and the translated version, the English version shall prevail.