

## EXHIBIT A NUMERICA PURCHASE ORDER TERMS

- 1) **Acceptance of Purchase Order.** This Purchase Order is Numerica's offer to purchase the Work. "**Work**" means all services, labor, materials, articles, matters, acts (including tests to be performed) and things to be furnished and rights to be transferred in performance of this Purchase Order (including without limitation, Deliverables), all as further described in this Purchase Order. Seller's acknowledgment of this Purchase Order, commencement of performance, or acceptance of any payment shall constitute its unqualified acceptance of this Purchase Order. Seller's acceptance is strictly limited to the terms included in this Purchase Order. Unless specifically agreed to in writing by Numerica's authorized representative, Numerica objects to, and is not bound by, any term that differs from or adds to this Purchase Order. "**Seller**" refers to the Party identified on the face of the Purchase Order with whom Numerica is contracting. "**Purchase Order**" means the instrument of contracting together with these Numerica Purchase Order Terms and all other attachments incorporated by reference. Numerica and Seller are referred to individually as "**Party**" and collectively as "**Parties**." "**Deliverable**" means a specific deliverable, including without limitation, equipment, hardware, and their components to be provided by Seller under this Purchase Order.
- 2) **Acceptance and Rejection of Work.**
  - a) Numerica will accept the Work or provide notice of rejection within a reasonable time after the date of delivery at the Numerica-designated site. No acceptance or payment will release Seller from its obligations or liabilities under this Purchase Order.
  - b) If the Work does not comply with the terms of this Purchase Order, then Numerica may, at its option and at Seller's expense: (i) require Seller to promptly re-perform, correct or replace the Work; (ii) accept all or part of the Work and make an equitable price reduction or credit to reflect the reduced value; or (iii) reject the Work. Return and re-delivery of any noncompliant Work shall be at Seller's expense.
- 3) **Delivery; Notice of Delay.**
  - a) Time is of the essence. Seller's failure to deliver the Work in accordance with the timelines provided under this Purchase Order, if unexcused, shall be considered a material breach of this Purchase Order. Numerica's acceptance of late deliveries shall not constitute a waiver of this provision.
  - b) Seller shall notify Numerica in writing immediately of any actual or potential delay to the performance of this Purchase Order and propose a revised work schedule. Numerica's receipt and/or acceptance of such proposal shall not constitute a waiver to Numerica's rights and remedies hereunder.
  - c) Unless otherwise stated on the face of the Purchase Order, all shipments hereunder shall be FOB Destination (Numerica designated site).
- 4) **All Amounts Included.** All types of charges for which Seller is entitled to bill Numerica for providing the Work and fulfilling Seller's other responsibilities under the Purchase Order are expressly set forth on the face of this Purchase Order (or explicitly described elsewhere in the Purchase Order) (collectively, the "**Permitted Charges**"). Numerica will not be obligated to pay Seller any amounts other than the Permitted Charges for providing the Work and fulfilling Seller's other responsibilities under the Purchase Order. All costs and expenses that Seller (inclusive of any Numerica-approved subcontractors, if any) incurs in providing the Work (including without limitation, packing and shipping, insurance, travel and lodging, and import or export fees) are deemed to be included in the Permitted Charges, and Numerica is not obligated to reimburse Seller for such costs and expenses other than through payment of the Permitted Charges. Numerica shall not be required to pay Seller any amounts for the Work except as expressly set forth in this Purchase Order, and such amounts (excluding taxes and any authorized reimbursable expenses) shall not exceed the total purchase order amount stated on the face of the Purchase Order.
- 5) **Invoices.**
  - a) Unless otherwise provided in this Purchase Order, Seller shall submit invoices electronically to **finance@numERICA.us**: (i) by the fifth (5<sup>th</sup>) of each calendar month for any Work billed on a time and materials or labor hour basis; and (ii) within thirty (30) days after its satisfactory completion of any Work billed at a fixed price. Unless this Purchase Order specifies otherwise, Seller shall not invoice Numerica for the Work until after the Work that is the subject of such invoice has been performed and/or delivered to Numerica.
  - b) All invoices must include the following information:
    - i) Seller name, remittance address, phone number and email address.
    - ii) Invoice number and date.
    - iii) Purchase Order number.
    - iv) Description of Work performed and/or delivered. Descriptions must reference the applicable line item stated on the face of the Purchase Order.
    - v) Vendor written receipts for any reimbursable expenses authorized in this Purchase Order.
- 6) **Reimbursable Expenses.** If reimbursable expenses are authorized in this Purchase Order, such expenses shall be billed at actual cost, without mark-up and substantiated by a receipt. If value-added taxes (VAT) are reimbursable under the terms of this Purchase Order, then Seller shall provide a valid VAT invoice consistent with applicable laws and regulations. Numerica is under no obligation to pay Seller for any reimbursable expenses that are not substantiated by a receipt (or valid VAT invoice, as applicable).
- 7) **Taxes.**
  - a) Seller shall be responsible for any sales, use, excise, gross receipts, value-added, services, consumption, and other taxes and duties payable by Seller on any goods or services used or consumed by Seller in providing the Work where the tax is imposed on Seller's acquisition or use of such goods or services and the amount of tax is measured by Seller's costs in acquiring such goods or services
  - b) Except as set forth in Section 7(c), Numerica shall be responsible for any sales, use, excise, services, or consumption tax that is assessed on the provision of the Work as a whole or on any particular Service, and Seller will include all relevant sales taxes in each applicable

invoice to Numerica. Unless otherwise provided on the face of the Purchase Order, the prices set forth in the Purchase Order are deemed inclusive of any value-added tax (VAT) and such VAT is not separately chargeable to Numerica.

- c) In certain circumstances, Numerica may be exempt from sales tax. If Numerica is exempt from sales tax, it will notify Seller and provide evidence of such exemption upon Seller's request.
- 8) **W-9 Form.** Where applicable, Seller must submit a signed W-9 form to [finance@numerica.us](mailto:finance@numerica.us) prior to the start of any Work.
- 9) **Stale Invoices.** Seller shall be deemed to have waived all charges and reimbursable expenses that are not properly invoiced within ninety (90) days after the Work that is the subject of the invoice has been performed or delivered to Numerica.
- 10) **Supporting Records and Documentation.** Seller shall maintain complete and accurate records of and supporting documentation for the amounts billable to and payments made by Numerica hereunder, in accordance with generally accepted accounting principles applied on a consistent basis. Seller agrees to provide Numerica with documentation and other information with respect to each invoice as may be reasonably requested by Numerica to verify accuracy and compliance with the provisions of this Purchase Order.
- 11) **Payment.** Subject to the terms of this Purchase Order, Numerica will pay undisputed invoices within thirty (30) days of receipt of a proper invoice compliant with the terms of this Purchase Order, *provided however*, undisputed invoices received after the fifth (5<sup>th</sup>) of the calendar month will be paid within forty-five (45) days of receipt. Notwithstanding the foregoing, (a) Numerica may withhold payment of any invoiced charges that Numerica disputes in good faith; (b) Numerica's payment of any invoiced charges will not be deemed an approval of the charges or the associated Work; (c) Numerica's payment of charges will not relieve Seller of any of its warranty or other obligations under this Purchase Order; and (d) Numerica may set-off amounts Seller owes Numerica under this Purchase Order as credits against charges payable to Seller. If applicable, Numerica will give Seller written notice of any disputed charges withheld from payment and will work in good faith with Seller to resolve the disputed charges expeditiously. Any terms on Seller's invoice that are inconsistent with or supplemental to this Purchase Order are null and void. Payment will be tendered in the currency referenced on the face of the Purchase Order.
- 12) **Laws and Regulations.** Seller warrants that all Work performed or delivered will comply with all applicable Federal, State, local and municipal laws, including but not limited to, any statute, regulation, rule, ordinance, judgment, decree, order, license requirement or permit requirement applicable to Seller's performance under this Purchase Order.
- 13) **Independent Contractor.** Seller is performing the Work as an independent contractor. Nothing in this Purchase Order shall constitute a partnership between or joint venture by the Parties. Seller has the sole right and obligation to supervise, manage, direct and perform all work to be performed by its personnel under this Purchase Order. Persons who perform the Work are employees of Seller (or its subcontractors) and Seller will be solely responsible for payment of compensation to such persons, including without limitation employees' salaries, worker's compensation, employee benefits, and other employment-related charges and deductions. Seller shall be responsible for the acts and omissions of the employees and contract personnel of Seller and its subcontractors that perform the Work. Seller will assume full responsibility for payment of all federal, state and local taxes, withholding or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to such persons. Seller is not an agent of Numerica and has no authority to represent Numerica as to any matters.
- 14) **Subcontractors.** Seller shall remain fully responsible for the performance of this Purchase Order, including any obligations performed through its subcontractors or suppliers. Any action taken or failure to act by a subcontractor or supplier of Seller shall be deemed an action or failure to act by Seller.
- 15) **Insurance.** At no additional cost to Numerica, Seller shall maintain, and causes its subcontractors to maintain, at all times during the term of this Purchase Order, insurance with reputable insurance companies in such amounts and covering such risks as are usually carried by companies engaged in the same or similar business as Seller. Seller shall provide Numerica with certificates evidencing required insurance upon Numerica's request.
- 16) **Stop Work.** Numerica may, from time to time, require Seller to stop all or any portion of the Work for a period of up to one hundred twenty (120) days at each such time, or such longer period of time as may be required by Numerica's customers (each a "**Stop Work Period**"). Upon receipt of written notice detailing the length and scope of the Stop Work Period, Seller shall immediately comply with its terms at no charge. Within the Stop Work Period, Numerica may either: (a) cancel the stop work order and Seller shall resume the Work; or (b) terminate the Work covered by the stop work order, for default or convenience, as the context requires. If Numerica has not exercised its rights set forth in either (a) or (b) above prior to the expiration of the Stop Work Period, then at least thirty (30) days prior to said expiration, Seller shall notify Numerica of its intent to resume the Work and shall obtain Numerica's written consent prior to resuming the Work.
- 17) **Changes.** Any changes to the terms of this Purchase Order may only be made by written agreement of the Parties, provided that changes that do not increase or decrease the price or Numerica's total cost for the Work and are within the general scope of the Purchase Order pertaining to (i) drawings, designs or specifications; (ii) method of shipment or packing; (iii) place of acceptance or point of delivery; or (iv) delivery schedule may be made by express written authorization from either (i) the Numerica authorized representative (indicated on the face of the Purchase Order), (ii) a Numerica Program Manager, or (iii) Numerica Vice President or higher executive position. If the change triggers an increase or decrease in Numerica's cost, then Seller shall promptly notify Numerica and the Parties shall agree, via a written modification to this Purchase Order, upon an equitable adjustment in price prior to commencement of Work. Seller must submit a claim for any such equitable adjustment, along with supporting documentation substantiating any additional costs associated with the

change, within seven (7) days from receipt of notice of the change. Seller's failure to submit such claim within the seven (7) day period shall serve as a waiver by Seller of any equitable adjustment. Any work deviating from the Work specified in this Purchase Order, without express Numerica written authorization or a signed modification as set forth in this Section 17 (Changes) shall be at Seller's cost and risk.

**18) Indemnification.**

- a) "**Losses**" means all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).
- b) Each Party shall indemnify, defend, and hold harmless the other Party and their respective officers, directors, employees, agents, successors, and assigns, from any and all Losses and threatened Losses arising from or in connection with any of the following: (a) the death or bodily injury of any person caused by the tortious conduct of the indemnifying Party; (b) the damage, loss or destruction of any real or tangible personal property caused by the tortious conduct of the indemnifying Party; (c) any claim by any person arising out of his or her employment with the indemnifying Party, any application for such employment or the termination thereof; and (d) any claim by any person alleging that such person is jointly employed by the indemnified Party as a result of performing any services as an employee or independent contractor of the indemnifying Party.
- c) Seller shall indemnify, defend, and hold harmless Numerica and third party users (as applicable), and their respective officers, directors, employees, agents, successors, and assigns, from any and all Losses and threatened Losses arising from or in connection with any third party claim to the extent such claim is based on allegations which, if proven, would constitute a breach of any representation, warranty or covenant of Seller under Section 21(c) (Ownership and Non-Infringement). In addition, Seller shall promptly either: (a) obtain the rights necessary for Numerica to continue using any allegedly infringing item; or (b) modify or replace any allegedly infringing item with a functionally equivalent item that is not infringing.

**19) Rights in Intellectual Property.**

- a) "**Intellectual Property Rights**" means all copyrights, patents, patent applications, mask works, trade names, logos, trademarks, service marks, trade secrets, moral rights and other proprietary and intellectual property rights of whatever nature.
- b) "**Developed Material**" means Numerica-Owned Developed Material and Seller-Owned Developed Material (each defined below).
- c) "**Material**" means all equipment, hardware, components, systems, software, technology, documentation, reports, notes, tools, methods, methodologies, processes, procedures, workflows, inventions, forms, data, designs, drawings, plans, specifications, and other material created, conceived, reduced to practice, furnished or made available in connection with this Purchase Order.
- d) "**Use**" means to install, execute, load, operate, display, copy, support, maintain, configure, customize, modify, enhance, create derivative works of, grant sublicenses, make, have made, sell, offer to sell, import, distribute and otherwise use or exploit.
- e) **Numerica Material**. As between Numerica and Seller, Numerica shall own all Intellectual Property Rights in and to all Material that Numerica creates, furnishes or makes available in connection with this Purchase Order ("**Numerica Material**"). Subject to any limitations or restrictions set forth in agreements between Numerica and third party licensors, Numerica shall grant Seller a nonexclusive, non-transferable, no-charge license to operate, maintain, modify, enhance and prepare derivative works of, and otherwise use, in accordance with this Purchase Order and for the sole purpose of providing Work to Numerica, any Numerica Material furnished to Seller pursuant to this Purchase Order. Unless otherwise set forth in this Purchase Order, Seller's license to Numerica Material hereunder is expressly conditioned upon the appearance and reproduction of any trademarks, copyrights, or other proprietary notices as such appear on the Numerica Materials, in the exact form and incorporated into any Deliverables and Materials prepared for Numerica hereunder.
- f) **Developed Material**.
  - i) Numerica shall own all worldwide Intellectual Property Rights in, and shall have the exclusive right to Use worldwide, all Material that is created specifically for Numerica, whether created solely by Seller or jointly with others ("**Numerica-Owned Developed Material**"). All Deliverables created pursuant to this Purchase Order shall be deemed to be created specifically for Numerica unless otherwise expressly stated in this Purchase Order. All Numerica-Owned Developed Material shall be works made for hire under the U.S. copyright laws and all Intellectual Property Rights in and title to each Numerica-Owned Developed Material shall vest in Numerica on the date such Numerica-Owned Developed Material is created. If, under applicable law, all Intellectual Property Rights do not vest in Numerica, Seller (on its own behalf as well as on behalf of its current and future employees, agents, and subcontractors) hereby irrevocably transfers, conveys, and assigns in perpetuity to Numerica (including its successors and assigns) any and all present and future Intellectual Property Rights that such persons may have in or to any Numerica-Owned Developed Material. At the request of Numerica, Seller shall promptly execute separate written assignments to Numerica and do all things deemed necessary by Numerica to enable Numerica to secure patents, register copyrights, or obtain any other forms of protection for any Numerica-Owned Developed Material in the United States and in other countries worldwide.
  - ii) Developed Material must not include, and Seller may not incorporate, Seller's preexisting proprietary information or Seller-owned Materials (collectively, "**Seller Intellectual Property**") without Numerica's prior written approval. If (i) Seller Intellectual Property is made part of any Developed Material, or (ii) any Seller Intellectual Property is required to use the Developed Material or receive benefit from the Work, Seller grants to Numerica a nonexclusive, worldwide, royalty free, irrevocable, perpetual license to Use and authorize others to Use the Seller Intellectual Property in connection with Numerica's use of the Developed Material or Work.
  - iii) Seller shall own all Intellectual Property Rights in all Material created by Seller under this Purchase Order that is not created specifically for Numerica ("**Seller-Owned Developed Material**") excluding any Numerica Material or Numerica-Owned Developed Material incorporated therein. Seller hereby grants Numerica and its Affiliates a nonexclusive, perpetual, irrevocable, royalty-free, paid-up, transferable, enterprise-wide, worldwide license to Use all Seller-Owned Developed Material in connection with the Deliverables and this Purchase Order.
- g) **Third Party Material**. In performing its responsibilities under this Purchase Order, Seller shall not use or disclose any proprietary Material of any third party ("**Third Party Material**") unless it has a license to do so. Developed Material must not include, and Seller

may not incorporate, Third Party Material without Numerica's prior written approval. If Seller incorporates any Third Party Material into any Developed Material, Seller shall immediately secure for Numerica from the third party that owns the Third Party Material a nonexclusive, perpetual, irrevocable, royalty-free, paid-up, transferable, enterprise-wide, worldwide license to Use such Third Party Material in connection with the Developed Material (including derivatives thereof)

- h) **Title and Risk of Loss.** Transfer of title, free and clear of all liens and encumbrances of any kind, of each applicable Deliverable shall pass to Numerica upon delivery of such Deliverable at the Numerica-designated site or upon receipt of Numerica's payment for such item, whichever occurs earlier. Risk of loss or damage to each applicable Deliverable shall pass to Numerica upon acceptance of the Deliverable in accordance with this Purchase Order.

**20) Numerica Assets.** Seller shall use due care while using any assets of Numerica provided to Seller for Seller's use in performing the Work. If such assets are located at Seller's premises, Seller shall maintain adequate physical security measures to prevent unauthorized access to or theft of such assets. Seller shall be responsible for any loss or damage to such assets while in Seller's possession except for normal wear and tear. Seller shall immediately notify Numerica if any such assets are lost, damaged or destroyed. Assets provided by Numerica shall remain the absolute unencumbered property of Numerica. Under no circumstances may such assets be subject to any charge, lien or other interest of Seller. Upon Numerica's request, the termination or expiration of this Purchase Order for any reason (including termination for cause) or the date on which a particular asset is no longer required by Seller in order to render the Work hereunder, Seller shall promptly return such assets to Numerica.

**21) Warranty.**

- a) **Work.**
- i) Seller represents, warrants and covenants that:
- (1) all Work will be rendered promptly, diligently and efficiently, in a competent and workmanlike manner, in accordance with high professional standards; (b) Seller's employees who perform the Work shall be qualified to perform the tasks and functions that they are assigned; and (c) Seller shall provide sufficient resources to reasonably meet deadlines and timetables set forth in the Purchase Order;
  - (2) each Deliverable shall and continue to be for a period of twelve (12) months after Numerica's acceptance of the Deliverable, as applicable: (i) merchantable; (ii) fit for the purpose intended; (iii) new, not refurbished or re-manufactured; (iv) free from defects in material and workmanship; (v) free from defects in design if the design is not provided by Numerica; (vi) in strict compliance with all applicable specifications, performance requirements and other requirements applicable to the Work; and (vii) free from liens or encumbrances on title; and
  - (3) Any replacement part supplied by Seller in the performance of its warranty obligations hereunder shall be free from defects under normal use and conform to the requirements of this Purchase Order as if it were an original part.
- ii) The warranties under this Section 21(a) (Work) shall begin upon final acceptance of the Work and extend for a period of one (1) year. If any nonconforming Work is identified within the warranty period, then in addition to any other rights or remedies under law or equity, at Numerica's election, Seller shall (i) return the Work at Seller's expense and promptly repair or replace the Work or (ii) refund or credit Numerica the price paid for the returned Work. All warranties shall run to Numerica and its customer.
- b) **Documentation.** Seller represents, warrants and covenants that all Documentation provided by Seller will (a) accurately reflect the operations and capabilities of any corresponding Deliverables, and (b) be accurate, complete and written in a manner understandable by Numerica.
- c) **Ownership and Non-Infringement.** Seller represents, warrants, and covenants that none of the Work, any Deliverables, or any other Material provided by Seller or used in connection with the performance of this Purchase Order, nor the possession or use of any of the foregoing by Numerica or third party users (as applicable), as permitted under this Purchase Order, will infringe or misappropriate any Intellectual Property Right of any third party. The representations, warranties and covenants set forth herein shall not apply to the extent the infringement or misappropriation is caused by modifications of the affected item by Numerica or its contractors, agents or representatives (other than Seller or its affiliates or subcontractors), unless such modifications were recommended or authorized by Seller or its affiliates or subcontractors
- d) **Pass-Through Warranties.** Without limiting any other representation, warranty or covenant contained herein, Seller may from time to time provide certain Deliverables and other items for which Seller is entitled to warranties and indemnities from the manufacturers, lessors or licensors of such items. Seller shall pass through to Numerica the benefits of such warranties and indemnities to the extent that Seller is able pursuant to any agreements between Seller and such manufacturers, lessors or licensors, and enforce such warranties and indemnities as directed by Numerica. If Numerica seeks to enforce a claim based upon a manufacturer's warranty and such manufacturer fails to honor its warranty in whole or in part, Numerica shall be entitled to enforce the terms of such warranty against Seller.

**22) Calibration.** If the Seller is providing or using a measurement device in connection with the Work, the calibration of that device must be traceable to the U.S. National Institute of Standards and Technology (NIST).

**23) Term.** The Purchase Order shall expire on the date referenced as the "End Date" on the face of the Purchase Order. If no such date is specified, then the Purchase Order shall expire six (6) months from the date it is issued.

**24) Termination.** Numerica may terminate this Purchase Order, in whole or in part, for convenience at any time by providing the Supplier notice specifying the date of termination. Upon receipt of notice of termination, Seller shall immediately stop Work for that portion of the Work terminated and incur no further obligations for such terminated Work. Numerica shall pay for the Work rendered by Seller up to the date of termination, provided that the total amount paid for the Work not exceed the total purchase order amount stated on the

face of the Purchase Order. In the event of a termination in part, any fixed price charges shall be equitably adjusted. Upon termination, and at Numerica's request at any other times during the term of the Purchase Order, Seller shall deliver to Numerica copies of any and all Deliverables, schematics, reports and other work product created in connection with this Purchase Order.

**25) Export/Import.**

- a) Seller shall comply with all applicable import and export laws and regulations in any country in which the Work is performed or delivered (collectively, the "**Import and Export Control Laws**") including but not limited to, the International Traffic in Arms Regulations of the US Department of State, the Export Administration Regulations of the US Department of Commerce, and the Foreign Assets Control Regulations of the US Department of Treasury. Seller shall be solely responsible for filing all required documentation and obtaining all necessary permits, licenses or other governmental authorizations under the Import and Export Control Laws to perform or deliver the Work. Seller shall be solely responsible for payment of all charges attributable to the import or export of the Work. Seller shall indemnify Numerica for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by Numerica in connection with any violations of the Import and Export Control Laws by Seller.
- b) Seller shall immediately notify Numerica if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges denied, suspended or revoked.

**26) Numerica Proprietary Information.**

- a) **Numerica Proprietary Information.** "**Numerica Proprietary Information**" means nonpublic information disclosed by or on behalf of Numerica that, (i) if in written or tangible form (including machine readable form), is marked as "Proprietary," "Confidential," or other marking that provides Seller with reasonable notice that the information is proprietary or confidential in nature; or (ii) if not in written or tangible form (e.g., oral or visual), is identified to Seller as proprietary or confidential at the time of disclosure and subsequently confirmed as such in writing to Seller within twenty (20) days of initial disclosure. During this twenty (20) day period, such information identified as proprietary or confidential will be provided the same protection as Numerica Proprietary Information. Numerica Proprietary Information also includes any and all notes, analyses, compilations, studies, summaries and other material, however documented, contained or based, in whole or in part, on Numerica Proprietary Information. Developed Material is Numerica Proprietary Information.
- b) **Purpose.** Seller shall use Numerica Proprietary Information only for the purpose of performing and/or delivering to Numerica the Work (the "**Purpose**") and no other purpose. Seller shall not use Numerica Proprietary Information to compete with Numerica, or in any way directly or indirectly detrimental to Numerica.
- c) **Restrictions.** Seller shall not disclose to any third party, except as expressly permitted herein, and shall maintain the confidentiality of, Numerica Proprietary Information. Seller shall only disclose Numerica Proprietary Information to its employees who (i) have a need to know for the Purpose; (ii) are informed of the confidential nature of the Numerica Proprietary Information; and (iii) are under obligations to hold such information in confidence under terms at least as restrictive as the terms of this Section 25 (Numerica Proprietary Information). Seller shall mark any reproduction of the Numerica Proprietary Information with a legend substantially similar to the marking affixed to the Numerica Proprietary Information originally received. Seller shall not decompile, disassemble, reverse assemble, or reverse engineer any Numerica Proprietary Information or permit others to do so except as necessary to deliver or perform the Work.
- d) **Exceptions to Numerica Proprietary Information.** Numerica Proprietary Information shall not include information that Seller demonstrates: (i) is in the public domain at the time of disclosure, or subsequently enters the public domain without breach of this Purchase Order; (ii) is independently developed by Seller without use of or reference to the Numerica Proprietary Information and there is adequate documentation in Seller's files to demonstrate the same; (iii) is in the lawful possession of Seller prior to disclosure without any duty of confidentiality (contractual, legal, fiduciary or other) and there is adequate documentation in Seller's files to demonstrate the same; or (iv) was or becomes available to Seller on a nonconfidential basis prior to its disclosure by or on behalf of Numerica from a third party that is not bound by a similar duty of confidentiality (contractual, legal, fiduciary or other).
- e) **Unauthorized Use.** Seller shall provide prompt written notice to Numerica of any unauthorized use or disclosure of the Numerica Proprietary Information and shall assist Numerica in remedying each unauthorized use or disclosure. Any assistance or acceptance of assistance does not constitute a waiver of any breach of this Section 25 (Numerica Proprietary Information).
- f) **Compelled Disclosure.** Numerica Proprietary Information may be disclosed at such times and in such manner as is required by court order or other legal process provided that Seller: (i) gives Numerica prior written notice of such disclosure so as to permit Numerica to seek a protective order or other appropriate remedy, (ii) limits such disclosure to only that portion of Numerica Proprietary Information that is required, (iii) attempts to preserve the confidentiality of any such Numerica Proprietary Information disclosed, and (iv) agrees to provide commercially reasonable assistance if Numerica seeks a protective order or other appropriate remedy.
- g) **License, Ownership.** Nothing contained in this Section 25 (Numerica Proprietary Information) shall be construed as obligating Numerica to disclose the Numerica Proprietary Information, or as granting or conferring on Seller, expressly or impliedly, any rights or licenses to the Numerica Proprietary Information. Nothing contained in this Section 25 (Numerica Proprietary Information) shall be construed as limiting or diminishing in any respect the scope of any licenses granted under this Purchase Order.
- h) **Return or Destruction of Numerica Proprietary Information.** Upon termination of this Purchase Order and at any time upon Numerica's written request, Seller shall cease use of the Numerica Proprietary Information and either: (i) return to Numerica all Numerica Proprietary Information in its possession or control or (ii) destroy all Numerica Proprietary Information in its possession or control, provided that Numerica Proprietary Information stored on back-up media in accordance with general back-up policies that is not readily accessible to Seller personnel may be destroyed or overwritten in the ordinary course. If destroyed, Seller shall furnish the Numerica with written certification of destruction upon Numerica's request.
- i) **Defend Trade Secrets Act.** Pursuant to the Defend Trade Secrets Act of 2016, if Seller is an individual, Seller acknowledges that an individual shall not be held criminally or civilly liable under any Federal or State trade secret law for disclosure of a trade secret that:

(i) is made (A) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding if the individual (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.

- j) Injunctive Relief. Each Party acknowledges that Numerica will be irreparably harmed if Seller breaches or threatens to breach its obligations under this Purchase Order and that Numerica would not have an adequate remedy at law in the event of an actual or threatened violation by Seller of such obligations. Therefore, Numerica shall be entitled to seek an injunction or any appropriate decree of specific performance from the court for any actual or threatened violations of this Purchase Order.

## 27) Limitation of Liability.

- a) Liability Restrictions. EXCEPT AS PROVIDED IN SECTION 26(b) BELOW, NEITHER PARTY SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT), FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. Except as provided in Section 26(b) below, each Party's total liability to the other, whether in contract or in tort (including breach of warranty, negligence, and strict liability in tort) shall be limited to twice the total amount paid or payable to Seller under this Purchase Order.
- b) Exceptions. The limitations of liability set forth in Section 26(a) (Liability Restrictions) shall not apply with respect to: (i) damages attributable to intentional torts, unlawful conduct or gross negligence; (ii) damages attributable to a breach of a Party's confidentiality obligations under Section 25 (Numerica Proprietary Information); (iii) damages attributable to a breach of Section 21(c) (Ownership and Non-Infringement); (d) claims that are the subject of indemnification pursuant to this Purchase Order; or (iii) amounts recoverable as refunds or credits under this Purchase Order.
- c) Force Majeure.
- i) No Party shall be liable for any default or delay in the performance of its obligations under this Purchase Order (i) if and to the extent such default or delay is caused by fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism, pandemics or any other similar cause beyond the reasonable control of such Party and (ii) provided the non-performing Party is without fault in causing such default or delay, and such default or delay cannot reasonably be circumvented by such Party through the use of alternate sources, workarounds plans or other means. Notwithstanding the foregoing sentence, economic hardship, changes in market conditions, and subcontractor failures to perform (unless the subcontractor itself has experienced a force majeure event) shall not excuse a Party from its obligations hereunder.
- ii) The non-performing Party shall continue to use commercially reasonable efforts to commence performance whenever and to whatever extent possible without delay. When the non-performing Party is able to resume performance, it shall immediately give the performing Party written notice to that effect and shall resume performance under this Purchase Order no later than two (2) working days after the notice is delivered.

## 28) General Terms.

- a) Defined Terms. Capitalized terms defined in this Purchase Order shall have the same meaning throughout this Purchase Order.
- b) No Assignment. Seller may not assign any of its rights under this Purchase Order except with the prior written consent of Numerica. Seller may not delegate any performance under this Purchase Order. Any purported assignment of rights or delegation of performance in violation of this Section 27(b) (No Assignment) is void.
- c) Release of Information. Seller shall not make public reference to the existence or terms of this Purchase Order without prior approval of Numerica.
- d) Use of Names or Marks. Except with the express written permission of Numerica (which permission may be withdrawn at any time), Seller shall not publish, cause to have published, or use (i) any name, service mark or trademark of Numerica (including the use of the name of Numerica in reference lists or for advertising and other promotional purposes); or (ii) any information about Seller's relationship with Numerica. Seller shall not remove any copyright or proprietary rights notice attached to or included on any tangible material provided by Numerica. All such notices shall be reproduced on any copies of such tangible material.
- e) Waivers. The Parties may waive any provision of this Purchase Order only by a writing executed by the Party against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this Purchase Order, and no act, omission or course of dealing between the Parties operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person or entity.
- f) Remedies. Except as otherwise expressly provided in this Purchase Order, all remedies provided for in this Purchase Order shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.
- g) Order of Precedence. This Purchase Order shall be construed wherever possible to avoid conflict. Where a conflict between the documents comprising this Purchase Order cannot be avoided, the following order of precedence shall apply (1) terms on the face of the Purchase Order; (2) these Numerica Purchase Order Terms; (3) any other attachments incorporated by reference (except Seller's Proposal); and (4) as applicable, Seller's Proposal (defined on the face of the Purchase Order).
- h) Governing law and forum. The laws of the State of Colorado (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Purchase Order, including without limitation, its validity, interpretation, construction, performance and enforcement. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Purchase Order may bring the legal action or proceeding in the United States District Court for the Central District of Colorado or in any court of the State of

Colorado sitting in Larimer County. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

- i) Severability. If any provision of this Purchase Order is determined to be invalid, illegal or unenforceable, the remaining provisions of this Purchase Order shall remain in full force, if the essential terms of this Purchase Order for each Party remain valid, binding and enforceable.
- j) Notices. Except as otherwise permitted herein, any notice required under this Purchase Order shall be in writing and shall be given to the other Party upon receipt by (a) personal delivery, (b) certified mail, postage prepaid or a recognized overnight delivery service or; (c) by nationally recognized overnight courier.
- k) Survival. The terms in the sections entitled "Stale Invoices," "Laws and Regulations," "Indemnification," "Rights in Intellectual Property," "Numerica Assets," "Warranty," "Termination," "Export/Import," "Numerica Proprietary Information," "Limitation of Liability," and any other terms that by their nature are intended to survive shall survive the termination of this Purchase Order.
- l) Headings. The descriptive headings of the sections of this Purchase Order are for convenience only, do not constitute a part of this Purchase Order and do not affect this Purchase Order's construction or interpretation.
- m) Entire Agreement. This Purchase Order, together with all documents incorporated herein by reference, constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Purchase Order. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Purchase Order are expressly merged into and superseded by this Purchase Order.