

## **ZEBRA EMEA ENTERPRISE ASSET INTELLIGENCE (“EAI”) STANDARD TERMS AND CONDITIONS OF SALE FOR PRODUCTS AND DELIVERY OF SERVICES**

The supply of Products and provision of Services referred to herein is governed by the agreement in force between Zebra Technologies Europe Limited (or one of its EMEA Affiliates) and the Customer governing the supply of such Products and / or Services (the “Underlying Agreement”), or in the absence of an Underlying Agreement, by the Zebra EMEA EAI Standard Terms and Conditions of Sale for Products and Delivery of Services set out in this document.

Zebra shall not be bound by any other terms and conditions, including those which may be included in Customer’s standard purchase order or which may have governed unrelated previous purchase and/or licence transactions between the Customer and Zebra.

### **SECTION 1: PRODUCTS**

All purchases of Products by the Customer from Zebra Technologies Europe Limited (registered in England and Wales with company number 2881068) or such of its EMEA Affiliates as is responsible for the delivery of the Products (as stated on the purchase order and confirmed on the corresponding order acknowledgment), collectively and individually referred to as “Zebra”, shall be governed by the Conditions, and if the Customer is a Reseller, by the Program Participation Terms and Conditions as well. Any purchase order placed by the Customer for Products, if and when accepted by Zebra, shall constitute a separate binding agreement entered into by Zebra and the Customer in accordance with and incorporating the Conditions, the Program Participation Terms (as applicable) and any other associated Program addenda (“Agreement”). Any reference to software shall indicate a licence not a sale. Where there is conflict between the incorporated documents, the Conditions shall prevail with regards to the subject matter covered herein.

#### **1.0 Formation of the Agreement**

1.1 In this document, the terms below shall have the meanings given:

“Affiliates” means any other entity directly or indirectly controlling or controlled by or under direct or indirect common control with one of the parties. For the purposes of this definition “control” (including with correlative meanings, “controlling”, “controlled by” and “under common control with”) means the power to direct or cause the direction of the management and policies of such entity, directly or indirectly, whether through the ownership of a majority of voting securities, by Agreement or otherwise; and it being understood and agreed that, with respect to a corporation, limited liability company or partnership, control shall include direct or indirect ownership of more than 50% of the voting stock, limited liability company interest, general partnership interest or voting interest in any such corporation, limited liability company or partnership.

“Bookable Order Criteria” means the Zebra requirements for a Customer placing a purchase order, and may include (without limitation) the requested delivery dates and locations, billing address, Product model numbers and descriptions, quantities and prices.

“Conditions” means the Zebra EMEA EAI Standard Terms and Conditions of Sale for Products set out in this document which for the avoidance of doubt include Sections 1 and 3.

“Change of Control” means a change in control of the Customer where “Control” means the acquisition by a third party of either:

- (a) the voting rights attaching to 25% or more of the voting shares in the Customer; or
- (b) the power to direct or cause the direction and management of the policies of the Customer in accordance with the acquirer’s wishes, whether as a result of the ownership of shares, control of the board of directors, contract or any powers conferred by the articles of association or other constitutional documents of the Customer.

“Confidential Information” means any confidential or proprietary data or information of either party, and which is disclosed in any form and on any media by the Discloser to the Recipient (as defined in Clause 10.6 herein), designated or marked as “confidential” “proprietary” at the time of disclosure or which by its very nature is confidential or proprietary, and shall include, but not be limited to: (i) Reseller’s compliant point of sale (“POS”) information; (ii) information which pertains to the Program and reference materials thereof; (iii) the content of the Agreement; (iv) Products and services and their respective pricing and discount information; (v) Product support data including, without limitation, Zebra’s issued engineering change notifications (ECNs); and (vi) Personal Data which is not otherwise published or publicly available.

“Customer” means the legal entity purchasing the Products as stated on the Purchase Order and confirmed on the corresponding order acknowledgement.

“Customer Data” means input data that is provided by the Customer’s ordinary use of a Product and/or Service that is not within the definition of Machine Data. For example, Customer Data is inputted into the Product by the Customer interacting with the Product, such as by scanning a barcode or RFID tag, inputting information into the Product to produce output data, by capturing an image with the Product, or by providing audio input into the Product, etc. Additionally, if the Product processes the input data and generates other data based on the output data, such as triggering the Customer’s inventory system, that data is also considered Customer Data.

“Custom Products” means Products manufactured, configured or purchased (including Products custom designed or modified) to the Customer’s specific requirements as set out in the relevant purchase order which meets the requirements of the Conditions.

“Documentation” means Product and Software documentation that specifies technical and performance features and capabilities, together with all materials, knowledge and source code (as applicable) related thereto and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided or derivative works of the foregoing).

“EEA” means the European Economic Area.

“EMEA” means Europe, Middle East and Africa.

“End User” means a customer who buys Products for its own use and not for resale, either directly from Zebra, from a Reseller, or an Open Reseller.

“Machine Data” means usage data collected by Software licenced or Products sold (or licenced) under the Agreement such as battery management (time to empty, standby current, average current), device system time, CPU processing load, application usage time, free RAM, number of running processes, network information (name, identifier), device identifier, firmware version, hardware version device type, audio volume, LED state, beeper volume, backlight level, key light, odometer count, reboot, reboot cause, total storage and memory availability, power cycle count, and device up time.

“Open Product(s)” means Products classified as such by Zebra under the Program, the purchaser of which does not require membership of the Program.

“Open Reseller” means a reselling company, which is not a member of the Program, and has access only to Zebra Open Products / Open Services directly or indirectly via Program members.

“Participation Terms and Conditions” means the Program Master Terms and Conditions; (ii) the Program Addendum / Addenda specific to the Program Community and Track for which a Reseller is approved; and (iii) the Program Addendum / Addenda specific to the Specialization for which a Reseller is approved (if applicable). All capitalised references as defined in the referenced documents.

“Product” means Zebra EAI hardware (including parts and accessories and Custom Products) and pre-loaded or installed Software provided by Zebra.

“Proprietary Rights” means Zebra’s intellectual property rights including without limitation: (a) patents, patent applications, inventions, copyrights, trade secrets, trade-marks, trade names, mask works, know-how, ideas and concepts, processes, methodologies, tools, techniques, utility models, moral rights, topography rights, database rights and rights of confidence and all embodiments thereof, whether tangible or intangible in all cases whether or not registered or registrable in any country, for the full terms (including any extension to or renewal of the terms) of those rights and including registrations and applications for registration of any of these and rights to apply for the same; and (b) all rights and forms of protection of a similar nature or having equivalent or similar effect to any of those set out in (a) anywhere in the world.

“Program” means the Zebra PartnerConnect™ channel program, as set out in the associated Program guides, including without limitation its requirements, benefits, terms, criteria and product / service classification, as amended from time to time by Zebra.

“Reseller” means a member of one of the Program’s then current reselling tracks in EMEA (which as of the date of the present document includes: Registered Reseller, Broadline Technology Reseller, (Premier) Business Partners and (Premier) Solution Partners).

“Restricted Products” means the Products designated as such in the Program.

“Software” means: (i) Zebra Technologies proprietary software in object code format, and adaptations, translations, decompilations,

disassemblies, emulations, or derivative works of such software; and (ii) any corrections, fixes, modifications, enhancements, new versions and new releases of the software provided by Zebra Technologies.

“Working Days” means any day (other than a Saturday or Sunday) on which banks are open for general business in London, United Kingdom, Brno, Czech Republic and Heerenveen, The Netherlands.

1.2 No waiver, variation or addition to the Conditions shall bind Zebra unless specifically agreed in writing by a director, secretary or other authorised senior employee of Zebra. Save as provided in this Clause 1.2, the Conditions shall supersede any other terms or conditions:

- (a) contained or referred to in either any written document of whatever nature (including without limitation the Customer’s purchase order form) or verbal communication provided by the Customer; or
- (b) implied by trade, custom, practice or course of dealing.

No conduct by Zebra shall be deemed to constitute acceptance of any terms under (a) or (b) above. By placing a purchase order, a Customer shall be deemed to have accepted the Conditions in full without variation or modification.

1.3 Any typographical, clerical, or other inadvertent error or omission in any written document (including without limitation sales literature, quotation, price list, acceptance of purchase order or invoice) or verbal communication issued by Zebra shall not bind Zebra and may be corrected by Zebra at any time without liability.

1.4 A quotation by Zebra does not constitute an offer and Zebra reserves the right to withdraw or revise any quotation at any time prior to Zebra’s acceptance of Customer’s purchase order and / or after the expiry of its validity period.

1.5 Purchase orders,

- (a) The Customer must submit to Zebra a purchase order in the currency agreed with Zebra and such purchase order is subject to Zebra’s acceptance. Such purchase orders shall be submitted to the appropriate purchase order entry location, in the form and medium, all as specified by Zebra, which may be physical or virtual.
- (b) An authorised representative of the Customer must raise a purchase order either via the Zebra designated electronic ordering tool or (in the absence of relevant instructions) by sending it by hand, by post, by facsimile, or by electronic mail. In any case a purchase order shall comply with the then current Zebra’s Bookable Order Criteria. At Zebra’s discretion, purchase orders received without this information may be rejected and the Customer will be asked to re-submit.
- (c) Unless Zebra acknowledges the receipt of purchase orders (which typically will take place within five (5) Working Days from the date the purchase order was received by Zebra), such purchase order will be deemed rejected. Zebra reserves the right to reject an order in its absolute discretion. Delivery dates acknowledged by Zebra are approximate only and Zebra will not be liable for any loss or damage due to its failure to meet acknowledged or scheduled delivery (ship) (“SSD”) dates.
- (d) Purchase orders submitted by the Customer must request a delivery date for Products, which is not later than one hundred and eighty (180) days from date of purchase order entry (booking window).
- (e) The Customer is responsible for ensuring the accuracy of its purchase order (including specifications and quantity) and for providing Zebra with all relevant information in sufficient time to enable Zebra to perform an Agreement. Zebra will use its reasonable endeavours to deliver the quantity of Products ordered but does not guarantee that a purchase order may be satisfied in full. In particular, all custom label orders are subject to a 5% over or under-run. Custom labels shall be supplied in full-length rolls and the Customer will be invoiced and required to pay accordingly.

## **2.0 Prices**

2.1 Unless otherwise notified in writing by Zebra to the Customer, the list prices for Products are published in the relevant online Product catalogue, referenced in the Program or as quoted in writing by Zebra. The Customer purchase prices are based on such list price and (where applicable) the Program discount structure set out in the official publication of the PartnerConnect pricing and discount structure framework.

2.2 The prices are exclusive of all costs of delivery, insurance, import and / or export duties and tariffs, all government value added, sales, use or other like taxes in force and any such taxes shall be assumed and paid for by the Customer in addition to its payment

for the Products. Any costs of carriage or insurance arising under Clause 3 below shall be charged separately in the relevant invoice for any accepted purchase order. In order to exempt a sale from sales or tax liability, the Customer will supply a Certificate of Exemption or similar document to Zebra at the time the purchase order is placed.

2.3 Zebra is entitled to adjust prices stated in an Agreement to take account of any factor which directly affects the cost to Zebra of supplying the Products including without limitation:

- (a) any delay or failure by the Customer to give adequate information to Zebra;
- (b) any changes in delivery dates, quantities and/or specification made at the Customer's request and agreed by Zebra; and
- (c) any alteration in the cost to Zebra of labour, materials, sub-contracted services or other costs of manufacture, changes in import or export duties or tariffs or transport costs, foreign exchange fluctuations or changes in currency or other applicable regulations.

2.4 Furthermore, Zebra list prices and discount structure are subject to change by Zebra at any time with prior written notice as follows:

- (a) Price increases (due to list price and / or discount structure change): Zebra will provide forty-five (45) days' notice except in the case of price increases determined by Zebra as a result of any adverse movements in currency exchange rates relative to the USD, in which case thirty (30) days' notice shall be given.
- (b) Price decreases (due to list price and / or discount structure change): Zebra will use commercially reasonable efforts to give forty-five (45) days advance written notice.

2.5 Price decrease:

- (a) Where price decreases apply, accepted purchase orders which are not shipped, or purchase orders received by Zebra subsequent to the commencement date of the price decrease, will be invoiced at the new reduced price.
- (b) Promotional prices shall not be considered to be price decreases and Customer shall not be entitled to benefit from price decreases where Customer has obtained Products at promotional prices.

2.6 Price increase:

Purchase orders accepted by Zebra which are not shipped, and purchase orders received by Zebra prior to the commencement date of the price increase will be invoiced at the original price, provided the requested delivery date is prior to the commencement date of the price increase. Unless otherwise agreed in writing, a price increase will apply to any unshipped purchase order with a requested delivery date on or after the commencement date of the price increase.

2.7 Unless otherwise agreed by Zebra, any quotations for prices provided to a Customer shall expire automatically thirty (30) days from the date of issue.

### **3.0 Title, Risk and Delivery**

3.1 The parties agree that except as stated below in Clause 3.1(b), unless otherwise decided by Zebra in its sole and absolute discretion on a per Purchase Order basis and confirmed on the associated order acknowledgement, the delivery terms are FCA Zebra facility INCOTERMS® 2010. For ship to addresses within the EEA and Switzerland, Zebra will manage the freight and select the carrier, and will charge the Customer separately in the relevant invoice for carriage and insurance in relation to each shipment, as stated above in Clause 2.2. Zebra will take out insurance on behalf of the Customer. For ship to addresses outside the EEA, the Customer shall be solely responsible for managing the freight. Where Customer's sell to address differs from Customer's ship to address, Zebra reserves the right to charge additional administration fees.

- (a) Where FCA Zebra facility INCOTERMS® 2010 apply:

Where delivery of Products originates from the EEA, for ship to addresses within the EEA or Switzerland, the parties agree that Zebra will select the carrier for shipment, but by doing so, will not thereby assume any liability other than what is set out in Clause 3.2 in connection with shipment and delivery nor shall the carrier in any way be construed to be an agent of Zebra. For ship to addresses outside the EEA or Switzerland, the Customer shall be responsible for selecting the carrier for shipment.

(b) Where DDP INCOTERMS® 2010 apply:

Where delivery of Products originates outside the EEA, with a ship to address within the EEA or Switzerland, the Parties agree that the delivery terms are DDP INCOTERMS® 2010, whereby the price, as stated above in Clause 2.2, includes all costs of delivery, insurance, import and / or export duties and tariffs. All government value added, sales, use or other like taxes in force and any such taxes shall be assumed and paid for by the Customer in addition to its payment for the Products and / or Services.

3.2 Zebra shall not be liable for any damages or penalty for any delay caused solely by transportation or failure to give notice of such delay. In the case of FCA INCOTERMS® 2010 applying, risk of loss or damage to Products and title shall pass from Zebra to the Customer upon delivery to the carrier or Customer's representative at the FCA shipping location. In the case of DDP INCOTERMS® 2010 applying, risk of loss or damage to Products and title shall pass with delivery per the applicable INCOTERMS® 2010. For the avoidance of doubt title in software shall never pass and shall remain vested with Zebra or its suppliers as appropriate and a licence to use shall be supplied. Notwithstanding the above, for shipments delivered to addresses within the EEA or Switzerland for which damages to Products and / or missing cartons of Products are noted at the time of receipt and notified to Zebra in accordance with Clause 3.3 below, Zebra will file a claim for the value of the damaged or missing Products to the carrier on the Customer's behalf. Zebra's obligation will be to provide the Customer with respective Product replacement and the parties agree that Zebra shall be entitled to keep any associated claim amount received by its insurance cover.

3.3 The Customer will check all delivery documentation and will inspect all Products received. Customer must notify Zebra in writing within twenty (20) days from receipt of the Products of any discrepancies from the purchase order. Any visible defects and damages to the Products received, and any missing quantity within a delivery lot will be notified in writing to Zebra within five (5) days following receipt of such Products.

3.4 In the event of the Customer wrongfully failing to so take delivery of or physically accept the Products in accordance with Clause 3.1, Zebra may, without prejudice to any other right or remedy available to it either:

- (a) deliver the Products to the Customer by carrier at the Customer's sole cost and expense including payment for carriage and insurance;
- (b) store the Products until successful delivery and charge the Customer for the reasonable costs of storage (including any insurance costs and / or re-delivery / shipment); or
- (c) reallocate the Products as it decides in its absolute discretion, but only if the Customer fails to take delivery of the Products in accordance with Clause 3.1 for whatever reason, within three (3) days of the time stated for delivery, and at all times, in the event of any such failure to accept the Products, all Products remaining Zebra's or a carrier's custody shall be at the Customer's risk.

3.5 Without prejudice to the foregoing, Zebra will use commercially reasonable efforts to deliver the Product(s) by the date indicated by Zebra in the order acknowledgement. Scheduled delivery (ship) dates (SSD) are approximate and time is not of the essence, Zebra will not be liable for any loss or damage due to its failure to meet scheduled delivery (ship) dates (SSD).

3.6 The delivery may be made by partial shipments. Products may be delivered by Zebra in advance of any prior quoted scheduled delivery (ship) date (SSD), but not before the current customer request date ("CRD").

#### **4.0 Forecasting, Rescheduling and Cancellation of Purchase Orders**

4.1 To assist Zebra with manufacturing planning, Customer (if a Reseller) shall furnish Zebra with a quarterly bookings forecast by revenue updated on an ongoing basis. Please contact your channel account manager for further details.

4.2 Subject to clause 4.4, cancellation and modification requests related to purchase orders for Products which Zebra has acknowledged must be submitted in writing to Zebra, via fax or email, these are subject to Zebra's approval in writing in its absolute discretion. Such modification requests must be received by Zebra at least thirty (30) days prior to the scheduled delivery (ship) date (SSD).

4.3 Without limitation to the foregoing, a purchase order cannot be changed by the Customer more than three (3) times for any reason. If a purchase order receives more than three (3) changes, such purchase order may be subject to cancellation by Zebra and may be rebooked when requirements are satisfied.

4.4 Purchase orders for Custom Product cannot be changed or cancelled.

## **5.0 Return of Products**

5.1 Dead on Arrival (“DOA”): The Customer will return Product that fails upon initial activation in accordance with the Zebra’s then- current policies and guidelines as provided to the Customer in writing. A DOA that meets Zebra’s criteria as per Zebra’s then-current policies and guidelines is eligible for replacement.

5.2 Custom or configured Product: Custom or configured Product is not returnable as it is a Product modified to meet a specific requirement requested by the Customer and not ordinarily sold by Zebra in the modified / customised form.

5.3 Warranty Returns: Customer undertakes to abide by the policies for the technical support, access to restricted software, and the return, repair and replacement of Products that fail during the applicable warranty period. The applicable Zebra Limited Warranty for Products and Software for each region is available for download [HERE](https://www.zebra.com/gb/en/partnerconnect-tc.html) (<https://www.zebra.com/gb/en/partnerconnect-tc.html>) and is subject to change at any time in Zebra’s sole and absolute discretion.

## **6.0 Force Majeure - Delays and Shortages**

6.1 Neither party shall be liable for any delay or default in its performance of any obligation under the Agreement caused directly or indirectly by an act or omission of civil or military authority of a state or nation, strike, lockout or other labour problem, inability to secure, delay in securing or shortage of labour, materials, supplies, transportation or energy, failures of subcontractors or suppliers, or by war, riot, embargo or civil disturbance, breakdown, or destruction of plant or equipment arising from any cause whatsoever, or any other cause or causes beyond such party’s reasonable control (a “Force Majeure Situation”). At such party’s option and following notice to the other party, that party’s obligations shall be deemed to be suspended for the continuance of the Force Majeure Situation and such party agrees to continue performance of such obligations whenever such Force Majeure Situation has been concluded. Furthermore, in case of a Force Majeure Situation lasting for longer than ninety (90) days, either party may terminate the whole or any part of the Agreement with at least thirty (30) days prior written notice, without further cause. Notwithstanding termination under this Clause 6.1, Zebra shall be entitled to payment for Products delivered and on a time and materials basis for Custom Products on which Zebra has commenced work.

6.2 If there is a shortage of Products which are subject to a Customer’s purchase order under an Agreement, Zebra shall be entitled, in its sole and absolute discretion, to allocate a proportion of such Products between its customers and the Customer. Such an allocation will be deemed a full and final discharge of Zebra’s obligations with respect to delivery of the Products under the Agreement.

## **7.0 Payment – No Set Off – Credit**

7.1 Amounts payable by the Customer under the Agreement are due and payable in full cleared funds without deduction set-off or counterclaim in the currency invoiced (pounds sterling, US dollars or euros) to a designated Zebra bank account, within the period stipulated by Zebra or if not expressly stated within 30 days of the invoice date. The Customer may only use bank transfer as method of payment. Time for payment is of the essence. All invoices shall be dated as of the date of shipment, when the Products leave Zebra’s premises.

Zebra reserves the right to change this Clause 7.1 at any time, subject to advance written notice to the Customer. Shipments that are lost or damaged in transit do not relieve Customer from the payment obligation in accordance with these terms set forth herein subject to the applicable INCOTERMS®.

7.2 Zebra reserves the right at any time to refuse or revoke any credit extended to the Customer if payment is in arrears or Customer’s credit rating, in Zebra’s sole opinion, does not warrant further extension of credit. Furthermore, Zebra may decline to make further shipments to the Customer if Customer is in breach of its undisputed payment obligations or is late in making undisputed payments to Zebra or is otherwise in breach of the Agreement. The Customer’s payment obligation is fulfilled when a payment due to Zebra is finally credited to Zebra’s account in full. Each shipment or part thereof shall be invoiced and paid for when due without regard to other scheduled deliveries. Payment is not conditioned upon the Products meeting any acceptance test procedures Customer may have.

7.3 Customer shall provide Zebra with written notice of any discrepancies related to the invoice within twenty (20) days of receipt of such invoice. Any positive changes to Customer’s trading account with Zebra as a result of the invoice discrepancy (- ies) will be credited to Customer’s same account. Both parties will use reasonable endeavours to settle discrepancies and Customer shall pay

promptly undisputed parts of invoices in accordance with this Clause 7.3 to avoid delays in payment and liability for interest.

7.4 Without prejudice to any other rights and remedies Zebra reserves the right to charge late payment interest to the Customer on undisputed invoices that have not been settled on or before the due date on the invoice. Late payment interest under the Agreement will be charged at the rate of six percentage points (6%) above the last reference rate announced by the Bank of England and calculated on a daily basis until payment is made in full.

7.5 If the Customer fails to pay an amount by the due date, Zebra is entitled to suspend deliveries or place the Customer on a “cash with order” basis without any liability to Zebra. Moreover, the full prices of the Products that have been delivered but not paid for will immediately become due and payable or at Zebra’s demand be returned to Zebra. The ownership of the returned Products will pass to Zebra at the time of receipt and acceptance of such Products at the Zebra designated location. In the event of the return of Products, Zebra may, at its sole discretion, charge a twenty per cent (20%) restocking fee. In addition, Zebra is entitled to suspend any further deliveries until all outstanding monies have been paid.

7.6 Any payment to be made by a party under the Agreement has to be made in full without any set-off, restriction, condition, deduction or withholding for or on account of any counterclaim. However, Zebra may, at its discretion, reduce the amount owed by the Customer at any particular time by any amount owed by Zebra to Customer pursuant to terms of the Agreement. Upon so doing, Zebra’s liability to the Customer shall, in an amount equal to the reduction, be extinguished. Notwithstanding the above, Zebra may withhold any payment of compensation due to the Customer in case of an investigation into the activities of the Customer by any legal or regulatory body.

7.7 Zebra may at its sole discretion apply a credit limit to the Customer and may require additional security such as a letter of credit from financial institutions acceptable to Zebra. The letter of credit shall comply with specific terms as required by Zebra and in accordance with industry standards and the Customer shall bear any costs associated with providing such letter of credit. The initial credit limit shall be that as notified by Zebra to Customer. Such credit limit may be varied by written notice to Customer. Without prejudice to the foregoing, deliveries shall at all times be subject to the approval by Zebra of Customer’s credit limit. Zebra reserves the right even after partial performance or partial payment of Customer’s debt to require from Customer satisfactory security. Refusal to furnish such security will entitle Zebra to defer any further deliveries until such security is furnished or to cancel Customer’s account or so much of it as remains unperformed without prejudice to any rights which Zebra may have against Customer in respect of breach of contract or otherwise and such event Customer will have no rights under Customer’s account or otherwise against Zebra.

## **8.0 Warranties**

8.1 Zebra provides the warranties to the End User set out in [www.zebra.com/warranty](http://www.zebra.com/warranty) as may be amended by Zebra from time to time in its absolute discretion. Notwithstanding the above, the Customer (if a Reseller) is the only party, during the term of this Agreement and after the termination hereof, entitled to claim warranty rights on behalf of an End User for Products and Software purchased under this Agreement.

8.2 Zebra hereby represents and warrants that Zebra has all rights, title, ownership, interest and marketing rights necessary to provide the Products to the Customer.

## **9.0 Liability**

9.1 Liability of the parties under the Agreement is governed exclusively by the following provisions:

9.2 Nothing in the Agreement will exclude or limit either party’s liability for

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any other act or omission, liability for which may not be limited under applicable law.

9.3 Subject to Clause 9.2, Zebra’s maximum aggregate liability to the Customer:

- (a) in connection with any and all claims, whether in contract, warranty, tort (including negligence, or breach of statutory duty), patent or any other intellectual property infringement or otherwise for Products supplied by Zebra to the Customer under the Agreement, is limited to the total net value of the respective purchase order giving rise to the liability;

(b) for physical damage caused to real property of the Customer is limited to one million US dollars (\$1,000,000) or local equivalent as at the date of claim per purchase order (depending on Customer's purchasing currency). Zebra's liability cap pursuant to this Clause 9.3(b) is subject to Zebra's ability (in accordance with local law) to maintain insurance covering the aforementioned liability in the jurisdiction in which the applicable liability arises.

9.4 Subject to Clause 9.2 and except for breach of Clauses 10.6-10.10 (Confidentiality) and Clause 13 (Compliance with Laws), neither party shall be liable under or in connection with the Agreement for any:

- (a) loss of profit whether direct or indirect, or
- (b) loss of revenues whether direct or indirect, or
- (c) loss of business, or increased cost of doing or retaining business, or contracts, or loss of business opportunity (in each case whether direct or indirect); or
- (d) loss of anticipated savings whether direct or indirect; or
- (e) any destruction or loss of data (in each case whether direct or indirect); or
- (f) any consequential, indirect or special loss or damage.

9.5 Notwithstanding Clause 9.2 herein, Zebra is also not liable for losses incurred due to the Customer's failure to take back up copies of software and data in accordance with best computing practice and the Customer acknowledges that it is its responsibility to take such back-up copies.

## **10.0 Intellectual Property and Confidentiality**

10.1 Zebra shall indemnify the Customer by defending, at its expense, any claim, and any lawsuit to the extent based thereon, that is brought against the Customer alleging that any Zebra-branded product (in this Clause 12 "Zebra Product"), as originally delivered by Zebra to the Customer under the Agreement, directly infringes a copyright or a registered patent in the country in which Zebra originally sold the Zebra Product to the Customer ("Infringement Claim"), so long as Zebra is notified in writing by the Customer as soon as reasonably practicable as to any such claim, but in no event after Zebra would be prejudiced by a lack of such notice, is given sole authority and control of the defence, and is provided by the Customer all requested information and assistance for resolving or defending the Infringement Claim. For non-Zebra Product supplied hereunder, including any third-party software, IP infringement claims shall be limited to any IP indemnities or defence commitments provided by such third-party supplier. In addition to Zebra's obligation to defend, and subject to the same conditions, Zebra shall pay all damages finally awarded against the Customer by a court of competent jurisdiction to the extent based upon such Infringement Claim, or agreed to in writing by Zebra in settlement of the Infringement Claim. If a Zebra Product is subject to an Infringement Claim or, if in Zebra's judgment, likely to become subject to an Infringement Claim, in addition to its obligation to defend and pay damages, Zebra, in its sole discretion, shall: (a) obtain a licence for the Customer to continue to use or to sell the Seller Product purchased from Zebra; (b) replace or modify the Zebra Product so as to be substantially functionally equivalent but non-infringing; or (c) require the return of the Zebra Product and credit the purchase price paid to Zebra by the Customer for such Zebra Product less a reasonable charge for depreciation calculated on a three (3) year straight line depreciation basis. Zebra shall have no liability to the Customer for any alleged or actual infringement, or otherwise, arising out of or in connection with the Customer's use or transfer of Zebra Products after Zebra's written notice to the Customer that the Customer shall cease use or transfer of such Zebra Products.

10.2 Zebra shall have no obligation to defend or indemnify the Customer under the Agreement for any damages based upon a per-use royalty or the Customer's revenues, or upon any damages theory other than a reasonable royalty applied to, or lost profits of the patent owner based on, the purchase price paid by the Customer to Zebra for the infringing Zebra Product. Zebra shall have no obligation to defend or indemnify the Customer under the Agreement for any alleged or actual infringement arising out of (a) use of the Zebra Products in connection or in combination with equipment, devices or software not provided by Zebra; (b) use of the Zebra Products in a manner for which they were not designed; (c) any modification of Zebra Products by anyone other than Zebra; (d) compliance with the Customer's designs, specifications, guidelines or instructions; (e) compliance with a standard issued by any public or private standards body; or (f) any assertion by a non-practicing entity which maintains no significant manufacturing capability ((a) – (d) defined as "Excluded Conduct"). The Customer shall indemnify Zebra against any claim of infringement that is brought against Zebra based upon or arising out of such Excluded Conduct or arising out of the Customer's continued use or transfer of Zebra Products after being noticed to cease such use or transfer. Zebra shall not be responsible for any compromise or settlement made by the Customer without Zebra's prior written consent.



10.3 This Clause 10 provides the Customer's sole and exclusive remedies and Zebra's entire liability in the event of an Infringement Claim. The Customer has no right to recover and Zebra has no obligation to provide any other or further remedies, whether under another provision of the Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Clause are subject to and further limited by the restrictions set forth in the general limitation of liability Clause of the Agreement (Clause 9). In no event shall Zebra be liable for any special, incidental, indirect, collateral, consequential or punitive damages or lost profits of the Customer in connection with any claims, losses, damages or injuries under this Clause. In no event shall Zebra's liability under this Clause exceed the total net value of the respective purchase order giving rise to the Infringement Claim.

10.4 Any trademarks, logos, trade names and identifying slogans remain the exclusive property of Zebra. The Customer may not alter, remove or conceal them. In the event of the termination of the Agreement, howsoever caused, the Customer's right to use the trademarks expires immediately. The Customer shall not remove, alter or modify the serial or identification numbers, labels, Zebra trademarks, or other trade-identifying Zebra technologies from Products supplied under the Agreement.

10.5 Zebra shall own all property in the design of any Products provided under an Agreement subject to any existing rights of any third party in any design or invention incorporated or used in the design of such Products. Neither the Customer nor any person authorised by it shall at any time make use of the whole or part of any design in the Products. In addition, the origination, including the materials used in the production of intermediates, films, plates, dies, electronic files, part number drawings and other such production processes, shall remain the exclusive property of Zebra.

10.6 Confidential Information: Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") of Confidential Information under the Agreement. During the term of the Agreement and for a period of three (3) years from the expiration or termination of the Agreement, a Recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees, agents or consultants of the Recipient who must be directly involved with the Confidential Information for the purposes of the Agreement and who are bound by confidentiality terms substantially similar to those in the Agreement; (iii) not reverse engineer, de-compile or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; and (v) promptly notify the Discloser upon discovery of any unauthorised use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorised actions or other breach of the Agreement. Notwithstanding the above, Zebra may disclose Confidential Information to any of its Affiliates.

10.7 The Discloser consents to the disclosure of the Confidential Information to the extent strictly necessary for informing any subcontractors or suppliers of the Recipient who need to know such limited information in order to perform any assignments or handle any purchase orders of the Recipient pursuant to the Agreement provided however that such subcontractors or suppliers will first have agreed with the Recipient to be bound by its confidentiality obligations hereunder or obligations which protect the Confidential Information to the extent protected hereunder in respect of such limited Confidential Information they will receive including appropriate obligations not to disclose the same to others and not to use it for other purposes as well as to return all such information to the Recipient upon completion of their assignment or other required performances.

10.8 The obligations of confidentiality will cease to apply to information which:

- (a) is at the date of the disclosure public knowledge through no fault of the Recipient; or can be shown by the Recipient to have been known to it before the information was disclosed by the Discloser;
- (b) is explicitly approved for release by written authorisation of the Discloser;
- (c) is lawfully obtained from a third party or parties without a duty of confidentiality;
- (d) is independently developed by a party without the use of any of the other party's confidential information or any breach of this Agreement; or
- (e) is required to be disclosed by any applicable law or regulation.

10.9 In the event that a party is required by law in any judicial or governmental proceeding or otherwise to disclose any Confidential Information belonging to the other party, the first party will give to the other party prompt written notice of such request so that the other party may seek a protective order or appropriate remedy. If, in the absence of a protective order, the first party determines, upon the advice of counsel, that it is required to disclose Confidential Information belonging to the other party, it may disclose such documentation only to the extent compelled to do so.

10.10 Confidential Information disclosed hereunder will remain the property of the Discloser and will not be copied or reproduced without the express written permission of the Discloser, except for such copies as may be absolutely necessary in order to perform its obligations under this Agreement. Upon expiration or termination of this Agreement, or within ten (10) days of receipt of a Discloser's written request, a Recipient will return all Confidential Information to the Discloser along with all copies and portions thereof or certify in writing that all such Confidential Information has been destroyed. However, the Recipient may retain one archival copy of the Confidential Information which it may use only in case of a dispute concerning the Agreement.

#### 10.11 Zebra Software

In accordance with the Agreement, Zebra may provide the Customer with Products that contain embedded, pre-loaded Zebra-branded software. The term "Software" for the purposes of this Clause 12.10, does not include any operating systems, non-Zebra branded software or any other third-party software provided under separate licence or any other software not licensable under the terms of this Agreement.

(a) Zebra hereby grants to the End User a personal, non-assignable, non-transferable, non-exclusive licence under Zebra's copyrights and confidential information embodied in the Software to use the Software, in object code form, and the Documentation in accordance with the terms set out in the End User Software Licence Agreement(s) (available for download at <https://www.zebra.com/gb/en/partnerconnect-tc.html>) ("EULA"). Where the Customer is not the End User, Zebra hereby grants to the Customer a personal, non-assignable, non-transferable, non-exclusive licence under Zebra's copyrights and confidential information embodied in the Software to use the Software, in object code form, and the Documentation for the sole and exclusive purpose of distributing such Software to resellers and the End Users, as limited herein. Any other use of the Software is strictly prohibited and will be deemed a breach of the Agreement.

(b) No Affiliate of the End User, or any person, business entity or organization other than the End User or the Customer is granted any rights hereunder.

(c) Prior to and as a condition of distributing any Software to its customers, the Customer (where different from the End User) will notify its customers of the specific requirements, rights, duties, and limitations contained in this Clause 10.11, and cause the End Users to accept the terms and conditions in the Zebra End-User Software Licence Agreement (for restricted and/or demo Software as the case may be) available for download at [HERE](https://www.zebra.com/gb/en/partnerconnect-tc.html) (<https://www.zebra.com/gb/en/partnerconnect-tc.html>) or bind such End User to substantially similar provisions. The End-User Licence Agreements are subject to change at any time in Zebra's sole and absolute discretion.

(d) Prior to and as a condition of distributing to its customers 3rd party software not covered by the Software definition in the Agreement, the Customer (where different from the End User) will notify its customers of the specific requirements, rights, duties, and limitations contained in this Clause 10.11(d), and cause the End User to accept the terms and conditions in the applicable 3rd party end user licence agreement ("3rd Party EULA") which Zebra will either include with the Product or provide at the time of the Product purchase. Any 3rd Party EULA is subject to change at any time in Zebra Technologies or the 3rd party's sole and absolute discretion.

(e) The Customer acknowledges and agrees that the Software and Documentation constitute valuable trade secrets and the confidential and proprietary property of Zebra. The Customer shall not disclose to any third party (including End Users), or permit access to any third party to the Software or the Documentation, or to any portion thereof, except to the extent such access is permitted under the applicable valid, enforceable and written third-party EULA or an entitlement by a valid Zebra warranty or a Zebra Service support agreement. The Customer shall not, nor will it permit a third party to, reverse engineer, translate, decompile, disassemble, decode or use any Software or Documentation except as may be permitted under the above agreements or as permitted under applicable law. Title to all Software and Documentation and all rights in patents, copyrights, trade secrets, and other intellectual property rights therein, are and shall remain vested in, Zebra, its licensors and suppliers. There is no grant to any rights in source code. The Customer shall not: (i) modify, merge, or incorporate any form or portion of the third-party software, Software or the Documentation with other program material or create derivative work therefrom; or (ii) keep any copies of the third-party software, Software or Documentation after they have been provided to the Customer's customer / End User. The Customer agrees to maintain Zebra's copyright notice on the Software and Documentation, and to include the same on any authorised copies it makes, in whole or in part. Should any government customer indicate to the Customer, formally or informally, that said customer believes it has greater rights in the third-party software, Software or Documentation than Zebra grants under an applicable 3rd Party EULA (defined above), the Customer will notify Zebra immediately. Except as provided herein, this Agreement shall not be deemed to grant to the Customer, its

resellers or the End Users either directly or by implication, estoppel, or otherwise, any licence or right under any patents, copyrights, trademarks or trade secrets of Zebra or any third party.

## **11.0 Product Model Changes**

11.1 Zebra reserves the right to improve or change the specification of Products or add any new Product to its catalogue at any time. Zebra shall use commercially reasonable efforts to provide written notice of any major changes to Products that affect form, fit or function.

11.2 Zebra may, from time to time, discontinue the manufacture and sale of any Product. Zebra Technologies shall use reasonable commercial efforts to provide Customer with sixty (60) days written notice of such discontinuance.

11.3 Acceptance of the Customer's purchase order with respect to a particular Product model will not obligate Zebra to continue to produce such model after completion of the accepted purchase order. Service for discontinued Product(s) will remain available until the end of service life of such discontinued Product as communicated by Zebra and at Zebra's sole and absolute discretion.

## **12.0 Change of Control and Termination**

12.1 The Customer shall inform Zebra in writing within thirty (30) days of the effective date thereof about any proposed or actual Change of Control of the Customer and of any changes in its registered address, organization or principals.

The Customer warrants that, unless so notified in writing to Zebra pursuant to Clause 12.1, neither its owners, nor officers or employees are agents, employees, officers, or representatives of any government, or any agency, or other instrumentality of a ny government. The Customer further agrees to inform Zebra in writing within thirty (30) days of any change in such status or representation.

12.2 Zebra may terminate the Agreement with immediate effect and no liability, and no remedy period, if the Customer:

- (a) infringes any export control laws or regulations; or
- (b) fails to pay for the Products in accordance with the Agreement; or
- (c) fails to comply with its obligations under the Program (not applicable to End Users purchasing directly from Zebra; or
- (d) fails to comply and / or violates any applicable law and/or its obligations under Clause 13 (Compliance with Laws) or
- (e) the Customer has provided Zebra with any false, inaccurate or misleading information for the purpose of joining or maintaining participation in the Program, and / or obtaining the Products; or
- (f) the Customer uses Proprietary Rights of Zebra (and/or its licensors) other than as authorised by the Agreement; or
- (g) assigns or transfers, either voluntarily or by operation of law, any or all of its rights or obligations under the Agreement without having obtained the prior written consent of Zebra; or
- (h) undergoes a Change of Control.

12.3 Consequences of Termination - Upon termination of the Agreement the Customer will (if Customer is a Reseller), with regard to the Products,

- (a) cease trading as a Reseller of Zebra Technologies and cease to use any reference to the terms "Zebra Technologies Authorised Reseller", or any other similar term;
- (b) discontinue to use any of Zebra Technologies' Proprietary Rights, in particular Zebra trademarks, trade names and logos.
- (c) return all the sales promotion material, standard literature and any documents or information of Zebra at its own expense unless the Customer had paid for it.

12.4 Termination of the Agreement does not relieve the parties of their respective obligations which have accrued or which accrue up to the date of such termination and the Customer will pay all amounts due and payable in consideration of the Products ordered

or provided.

12.5 Termination of the Agreement by Zebra under this Clause shall not limit or remove the right of either Party to pursue any other rights which it may have against the other whether arising as a result of the termination or otherwise.

### **13.0 Compliance with Laws**

13.1 Compliance with Laws. Customer agrees to comply with all relevant domestic and international laws, regulations and administrative requirements, including, without limitation, those governing trans-border sales, resales, shipments, transfers of products, export control, data privacy and data security. The foregoing expressly includes all applicable anti-bribery and corrupt practices laws of the United States and any other countries where Customer renders services under these Conditions.

13.2 Anti-bribery and Corruption. Customer acknowledges that Zebra is part of a group of companies headquartered in the United States and regional headquarters based in the United Kingdom. Customer will comply with all applicable laws and regulations regarding anti-bribery and anti-corruption, including: i) the United States Foreign Corrupt Practices Act of 1977, as amended; and ii) the UK Bribery Act 2010 and any amendments thereto. Customer will not offer, promise or give, directly or indirectly, any financial or other advantage to any government official, politician, political party, political official or candidate for political office ("Official") or any private person for the purposes of obtaining or retaining business or a business advantage. Customer covenants and warrants that neither it nor any of its owners, principles or employees is an Official in the territories in which it is incorporated or does business.

13.3 Export Control Laws. Customer acknowledges its understanding that any Products, Software and technology including technical data (collectively the "Supplied Items") Customer receives from Zebra, directly or indirectly and any use, export, re-export, re-sale, release or other transfer of any Supplied Item or of any product, software or technology manufactured outside of the United States that contains or is the product of any Supplied Item may be subject to the jurisdiction of the export controls and trade sanctions of the United States and that such export controls and trade sanctions may be extraterritorial. Customer represents, warrants and covenants that: (i) Customer is not located in, under the control of, or a national or resident of any territory subject to comprehensive sanctions under applicable laws and regulations, and it will not transfer, export, or re-export, directly or indirectly, any Supplied Items to such territories or to any nationals thereof; (ii) Customer will not use Supplied Items in any activity related to the development, production, use, maintenance, or proliferation of weapons of mass destruction, including, without limitation, uses related to nuclear, missile, and/or chemical/biological development and/or production, and Customer will not transfer, export, or re-export, directly or indirectly, Supplied Items, including any new products developed from or manufactured using Supplied Items, to any party engaged in any such activity; (iii) Customer will not transfer, export, or re-export any Supplied Items, including new products developed from or manufactured using Supplied Items, directly or indirectly, to any party identified on a restricted party list published by the U.S. government or any other government, or to any party otherwise prohibited under any applicable law from receiving Supplied Items; and Customer is not on any such restricted party list, nor under the control of an entity on any such list; (iv) Customer will not transfer, export, or re-export, directly or indirectly, any Supplied Items, including new products developed from or manufactured using Supplied Items, that are subject to the jurisdiction and regulations of a U.S. government or any other government, nuclear regulatory agency and/or defence regulatory agency, without the proper written government authorization, if applicable; and (v) Customer acknowledges that the use, development, production, transfer, export or re-export of certain Supplied Items may be subject to export and re-export licensing requirements of the U.S. or other nations and Customer acknowledges that it will comply with all applicable export and compliance laws and regulations whenever it transfers, exports, or re-exports Supplied Items, including new products developed from or manufactured using Supplied Items, and acknowledges that such controlling laws and regulations may be amended from time to time. With respect to the Customer's transfer, export or re-export sales of the Supplied Items, Zebra shall not be responsible obtaining any necessary export or re-export licences relating to the Supplied Items.

### **13.4 Books, Records and Audits**

(a) The Customer undertakes to keep at its principal place of business the serial numbers of Products sold, the dates of delivery thereof and (where applicable) the names and addresses of End Users to whom they were sold (the "Records") and the countries in which each End User is located, for the purposes of Product recall, safety changes, repairs under warranty, audit rights, and any other related lawful purposes. The Customer undertakes to make available the Records for inspection by Zebra or a Zebra representative upon request in writing and for that purpose shall allow access to its premises where they are held.

(b) During the term of the Agreement with Zebra and for one year thereafter, the Customer shall maintain records, and a complete audit trail, of all transactions, actions and activities resulting from or in connection with the Agreement, including

all original transaction records of all financial and non-financial transactions resulting from or arising in connection with the Agreement, in a form in accordance with generally accepted accounting principles, to substantiate (i) pricing related information and / or (ii) any other information related to benefits provided to the Customer under the Program (“Audit Information”). Upon prior written reasonable notice, Zebra representatives (which may include a Zebra internal auditor, and / or an independent certified public auditor selected by Zebra, and reasonably acceptable to the Customer), may, during the term of the Agreement, and for one year thereafter, have access at all reasonable times (a) to any facility or part of a facility at which either Customer is performing its obligations under the Agreement, (b) to Customer’s personnel, (c) to Customer’s systems, policies and procedures relevant to the Agreement, (d) to the data, Personal Data, records and books of the Customer relating to the Agreement for the purpose of performing audits and examinations of the Customer to examine, review, test and verify Customer’s compliance with the Agreement and (e) to Customer’s books and records pertaining to such invoices to substantiate the Audit Information provided in connection with the Agreement. Such audits shall occur no more than twice yearly per category of Audit Information as specified above, unless otherwise required by law, or necessary based on Zebra’s reasonable concern with probable cause showing the Customer’s non-compliance. The Customer shall preserve such books and records for this purpose for a period of six (6) years from the reporting date (irrespective of the term of the Agreement).

(c) In the event Zebra makes any claim with respect to an audit, upon the Customer’s written request, Zebra will make available to the Customer the records and reports pertaining to such audit prepared by the auditor.

13.5 Both parties shall comply with all applicable laws and regulations directly relating to the Products and specifically EU directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE) where the relevant party is deemed a “Producer”. The Customer shall at its cost comply with the WEEE Directive, if and where applicable, in connection with its obligations under the Agreement and in all matters relating hereto. The WEEE Directive means Directive 2012/19/EC effective 14 February 2014 on waste electrical and electronic equipment, subsequent amendments to this Directive, and any new legislation enacted by a Member State of the European Union to transpose the provisions of this Directive into the national laws of that Member State.

#### 13.6 Personal Data.

(a) In relation to individually identifiable information that either Zebra or Customer provides to the other about their respective personnel and other natural persons (“Personal Data”), the party receiving Personal Data may collect, process and disclose such Personal Data to its respective personnel and Affiliates in order to perform the Agreement, carry out related transactional and data processing activities, for other legitimate business purposes, and for purposes of legal compliance.

(b) Each party’s collection, access, use, storage, disposal and disclosure of Personal Data will comply with applicable data protection laws.

(c) Each party may engage third parties to provide storage, processing services and other business-related activities related to the Personal Data collected from or provided by the other party, however each party will secure such third parties’ written obligation to treat such Personal Data solely in accordance with the data controller’s instructions and applicable data protection laws before transferring or disclosing any Personal Data.

(d) Zebra may transfer Personal Data to its Affiliates and/or third party service providers located in the United States and in other jurisdictions which may not have data protection legislation that provides adequate or equivalent protection within the meaning of laws in Customer’s jurisdiction, although such transfers will be protected in accordance with Zebra’s Privacy Statement available at [http://www.zebra.com/id/zebra/na/en/index/about\\_zebra/our\\_company/compliance/privacy\\_statement.html](http://www.zebra.com/id/zebra/na/en/index/about_zebra/our_company/compliance/privacy_statement.html) or any equivalent thereof (“Privacy Statement”).

(e) Pursuant to applicable data protection laws, Zebra maintains reasonable technical and administrative procedures to protect data including Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, but Zebra cannot ensure or warrant the security of any data against any possible loss or unauthorised access.

(f) The Customer hereby agrees that Zebra is permitted to use Personal Data to communicate and perform direct marketing activities via email, telephone, text messaging, fax or postal mail, to the extent permitted by applicable laws. By entering into an Agreement, Customer, on its own behalf and on behalf of Customer personnel, hereby consents to receive direct marketing material from Zebra and its designees. If Customer personnel wish to opt out of receiving direct marketing

communications at any time, Customer acknowledges that they can contact Zebra as specified in Zebra's Privacy Statement. In addition, if the Customer or any individual wishes to request access to any Personal Data held about them; have any Personal Data held about them amended; or prevent any processing of Personal Data; the Customer acknowledges that Zebra can be contacted as specified in the Privacy Statement.

(g) Customer represents warrants and undertakes to Zebra that the Customer complies with any applicable data protection laws and has provided any and all necessary notices to and obtained any and all requisite consents from relevant individuals necessary to permit the activities referred to above.

(h) Customer acknowledges that Zebra is reliant on the Customer, its customers and / or the End User for direction as to the extent to which Zebra is entitled to use and process the Personal Data.

(i) Customer acknowledges that Zebra shall not be responsible for any corruption, loss, destruction, alteration or disclosure of Personal Data to the extent that it is caused by Customer, its customers and /or the End User or caused by Zebra acting in accordance with the instructions of Customer, its customers and/or the End User.

(j) The use of the term "personnel" in this clause 13.6 shall mean employees, officers, agents, contractors, sub-contractors, consultants and any other temporary staff that interact with the other party from time to time.

(k) The terms set out in the Data Privacy Addendum in Section 3 shall apply to the Agreement and are deemed incorporated by reference herein.

### 13.7 Product Quality and Handling

Customer shall fully cooperate and comply with Zebra's reasonable instructions regarding any Product recall event, necessary safety information dissemination effort or other voluntary or involuntary action in which Zebra participates to the extent related to the Products. Customer shall promptly inform Zebra if it obtains any information that could indicate a safety, quality, regulatory or other legal concern associated with any Product.

### 14.0 General

14.1 Except as otherwise provided in this Clause, neither party may assign, delegate or transfer the Agreement or any of its rights or obligations under the Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Zebra may perform any of its obligations or exercise any of its rights under the Agreement by itself or through any Affiliate and Zebra may assign the Agreement to any of its Affiliates and may assign its right to receive payment under the Agreement without the prior consent of the Customer. In addition, for any Zebra divestiture, sale or other similar transaction (whether by way of merger, asset sale, stock sale, spin-off or otherwise) of a Zebra business (each a "Sale"), Zebra may, without the prior written consent of the Customer and at no additional cost to Zebra or to the assignee entity(ies), assign its rights and obligations under the Agreement, in whole or in part, to the assignee entity(ies).

14.2 If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Agreement and the remainder of the provision in question shall not be affected.

14.3 Nothing in the Agreement is intended to or will operate to create a partnership, joint venture, employer / employee or agency relationship between the parties. Furthermore, neither party has the authority to make any representation or warranty or create any obligation of any kind, express or implied, on behalf of the other party. The relationship between the parties shall be limited to the express provisions of the Agreement.

14.4 A third party that is not a party to an Agreement has no right under any legislation in any country giving rights to third parties to enforce any term of an Agreement.

14.5 Save as otherwise provided in the Conditions, the Agreement constitutes the whole agreement between the parties and supersedes any prior agreements and arrangements between the parties in relation to its subject matter.

14.6 The Customer acknowledges and agrees that in entering into the Agreement it does not rely on, and will have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to the Agreement or not) other than as expressly set out in the Agreement. Nothing in this Clause 14 shall operate to limit or exclude any liability for fraudulent misrepresentation.

14.7 A failure by any party to exercise or delay in exercising any right or power conferred upon it in the Agreement shall not operate as a waiver of any such right or power.

#### 14.8 Notice

(a) Any notice or other communication required or permitted to be served under the Agreement shall be in writing and shall be deemed validly delivered if sent (i) by hand (in which case delivery will be deemed to have been effective immediately), or (ii) by registered or pre-recorded post or courier (in which case delivery shall be deemed to have been effected five (5) days from the date of posting), or (iii) by facsimile (in which case delivery shall be deemed to have occurred on the day the transmission was sent), or (iv) by electronic mail in which case delivery shall be deemed to have been effected on completion of transmission, provided however that notices and communications sent by electronic mail shall only be valid upon automatic confirmation of receipt by sender's system and provided they are sent in accordance with and in compliance with the security procedures (designed to verify the source of the communication) notified to Customer by Zebra in writing from time to time.

(b) Any such notice shall be sent: (i) at Zebra's option, either to Customer at the address to which Customer in writing requests Zebra to send invoices, or to the address of Customer's premises, or if Customer is a limited company, to its registered office, or in the case of a fax transmission to the fax number notified to Zebra by Customer in writing from time to time, or in the case of an electronic mail to the email address notified to Zebra by Customer in writing from time to time; (ii) to Zebra at the address of Zebra Technologies Europe Limited registered office or any alternative address notified to Customer by Zebra in writing from time to time, or in the case of a fax transmission to the fax number notified to Customer by Zebra in writing from time to time, or in the case of electronic mail to the following email address: [emea.channeloperations@zebra.com](mailto:emea.channeloperations@zebra.com) or [CE.EMEA@zebra.com](mailto:CE.EMEA@zebra.com) or such other address as notified to Customer by Zebra in writing from time to time.

14.9 The parties hereto confirm that it is their wish that the Agreement, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in the English language only.

#### 15.0 Data Ownership

**Ownership of Machine Data.** Notwithstanding anything else in the Agreement, all title and ownership rights in and to Machine Data are held by Zebra. In the event, and to the extent, Customer is deemed to have any ownership rights in Machine Data, Customer hereby grants Zebra a revocable, non-exclusive right and licence to use Machine Data.

**Ownership of Customer Data.** Notwithstanding anything else in the Agreement, all title and ownership rights in and to Customer Data are held by Customer. Customer hereby grants Zebra a revocable, non-exclusive right and licence to use Customer Data.

#### 16.0 Governing Law - Claims

16.1 The Conditions and each Agreement shall be subject to the governing laws and jurisdiction of England and Wales and, subject to Clauses 16.2 and 16.4, the parties submit to the exclusive jurisdiction of the courts of England and Wales.

16.2 Nothing in Clause 16.1 shall limit the right of Zebra to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

16.3 No claim arising out of the Agreement may be brought by the Customer more than two (2) years after the cause of action has arisen or been incurred.

16.4 Where Customer is located in Russia, Ukraine or a CIS country, any dispute arising out of the Agreement including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which rules are deemed to be incorporated by reference into this Clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language used in the arbitral proceedings shall be English.

## **ZEBRA EMEA ENTERPRISE ASSET INTELLIGENCE (“EAI”) STANDARD TERMS AND CONDITIONS OF SALE FOR PRODUCTS AND SERVICES**

The supply of Products and Services referred to herein is governed by the agreement in force between Zebra Technologies Europe Limited (or one of its EMEA Affiliates) and the Customer governing the supply of such Products and / or Services (the “Underlying Agreement”), or in the absence of an Underlying Agreement, by the Zebra EMEA EAI Standard Terms and Conditions of Sale for Products and Services set out in this document.

Zebra shall not be bound by any other terms and conditions, including those which may be included in Purchasing Party’s and / or Customer’s standard purchase order or which may have governed previous purchase and/or licence transactions between the Customer and Zebra.

### **SECTION 2: SERVICES**

The Zebra EMEA EAI Terms and Conditions of Sale, together with the Purchase Order /SOF accepted by Zebra Technologies Europe Limited (registered in England and Wales with company number 2881068) or such of its EMEA Affiliates as is responsible for the delivery of the Services (as stated on the Acceptance Notice of the Purchase Order / SOF), collectively and individually referred to as “Zebra”, Service Description Document (“SDD”) and/ or Service Proposal / Quote / Scope of Work, as applicable (collectively, the “Agreement” or as interchangeably referenced to in an SDD, Scope of Work or other similar document, the “Contract”), shall apply to and govern: (i) all sales of Services by Zebra to Customers; and (ii) all deliveries of Sell Through Services by Zebra to Customers through Authorised Partners (no price information on the Purchase Order will be made available to Customers by Zebra under Sell Through Services Agreement).

TERMS OR CONDITIONS THAT ARE DIFFERENT FROM OR IN ADDITION TO THOSE CONTAINED HEREIN ARE HEREBY REJECTED AND OF NO FORCE OR EFFECT. Any prior or contemporaneous representations, agreements, comments, covenants, or assertions that relate to the subject matter of the Agreement, whether written or oral, are not enforceable.

#### **1.0 Definitions**

“Acceptance Notice” means a Zebra communicated written notice of acceptance of a Purchase Order / SOF for Services placed by Authorised Partner or Customer.

“Affiliates” means any other entity directly or indirectly controlling or controlled by or under direct or indirect common control with one of the parties. For the purposes of this definition “control” (including with correlative meanings, “controlling”, “controlled by” and “under common control with”) means the power to direct or cause the direction of the management and policies of such entity, directly or indirectly, whether through the ownership of a majority of voting securities, by contract or otherwise; and it being understood and agreed that, with respect to a corporation, limited liability company or partnership, control shall include direct or indirect ownership of more than 50% of the voting stock, limited liability company interest, general partnership interest or voting interest in any such corporation, limited liability company or partnership.

“Authorised Partner” means a Distributor or Reseller with access to the Services for resale in accordance with the rules of the Program.

“Billing Period” means the relevant payment plan for the Service Period which must be taken from the list of available services in the Service Descriptions or in the relevant Service Proposal as applicable.

“Change of Control” means a change in control of the Customer where “Control” means the acquisition by a third party of either:

- (a) the voting rights attaching to 25% or more of the voting shares in the Customer; or
- (b) the power to direct or cause the direction and management of the policies of the Customer in accordance with the acquirer's wishes, whether as a result of the ownership of shares, control of the board of directors, contract or any powers conferred by the articles of association or other constitutional documents of the Customer.

“Confidential Information” means any confidential or proprietary data or information of either party, and which is disclosed in any form and on any media by the Discloser to the Recipient (as defined in Clause 24.1 herein), designated or marked as “confidential” “proprietary” at the time of disclosure or which by its very nature is confidential or proprietary, and shall include, but not be limited to: (i) Reseller’s compliant point of sale (“POS”) information; (ii) information which pertains to the Program and reference materials thereof; (iii) the content of the Agreement; (iv) products and Services and their respective pricing and discount information; (v)



Product support data including, without limitation, Zebra's issued engineering change notifications (ECNs); and (vi) Personal Data.

"Conditions" means the Zebra EMEA EAI Standard Terms and Conditions of sale for Services set out in this document which for the avoidance of doubt include Sections 2 and 3.

"Customer" means the party to whom Zebra delivers the Services (depending on the structure of the sale) and to which the Agreement shall apply (to the extent relevant).

(a) For direct sales of Services by Zebra to an End User and sales of Sell Through Services by Zebra to an End User through Authorised Partners / Open Resellers, the Customer is: the End User.

(b) For sales of Sell Through Services by Zebra to a Reseller / Open Reseller through an Authorised Partner / Open Reseller, the Customer is: the Reseller or Open Reseller as the case may be and who serves as Zebra's sole point of contact with respect to the delivery of the Services to the End User.

(c) For all other sales of Services by Zebra, the Customer is the same as the Purchasing Party.

"Customer Data" means input data that is provided by the Customer's ordinary use of a Product and/or Service that is not within the definition of Machine Data. For example, Customer Data is inputted into the Product by the Customer interacting with the Product, such as by scanning a barcode or RFID tag, inputting information into the Product to produce output data, by capturing an image with the Product, or by providing audio input into the Product, etc. Additionally, if the Product processes the input data and generates other data based on the output data, such as triggering the Customer's inventory system, that data is also considered Customer Data.

"Deliverables" means all work product prepared or provided by Zebra for the Customer in the performance of the Services (as defined below) and that are specifically identified as such in the applicable Service Description(s) or Scope of Work.

"Distributors" means Zebra authorised distributors listed on Zebra's website at <http://www.zebra.com> or any equivalent thereof and located in the Region where Services are purchased.

"Documentation" means Software documentation that specifies technical and performance features and capabilities, together with all materials, knowledge and source code (as applicable) related thereto and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided or derivative works of the foregoing).

"e-Contract" means Services purchased via Zebra electronic purchasing tool available to Authorised Partners.

"End User" means a customer who buys Services for its own use and not for resale, either directly from Zebra or from an Authorised Partner or an Open Reseller.

"EMEA" means Europe, Middle East and Africa.

"Equipment" means the Zebra hardware related to the Services set out in a specific Agreement and may include Zebra hardware to be repaired by Zebra or its subcontractors.

"Machine Data" means usage data collected by Software licenced or Products sold (or licenced) under the Agreement such as battery management (time to empty, standby current, average current), device system time, CPU processing load, application usage time, free RAM, number of running processes, network information (name, identifier), device identifier, firmware version, hardware version device type, audio volume, LED state, beeper volume, backlight level, key light, odometer count, reboot, reboot cause, total storage and physical memory availability, power cycle count, and device up time.

"Open Reseller" means a reselling company, who is not a member of the Program, and has access only to Zebra Open Products / Open Services via Authorised Partners.

"Open Products/Open Services" means Products and Services classified as such by Zebra under the Program, the purchaser of which does not require membership of the Program.

"Program" means the Zebra PartnerConnect™ channel program, as set out in the associated Program guides, including without limitation its requirements, benefits, terms, criteria and product / Service classification, as amended from time to time by Zebra.

"Proprietary Rights" means Zebra's intellectual property rights including without limitation: (a) patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, ideas and concepts, processes,

methodologies, tools, techniques, utility models, moral rights, topography rights, database rights and rights of confidence and all embodiments thereof, whether tangible or intangible in all cases whether or not registered or registrable in any country, for the full terms (including any extension to or renewal of the terms) of those rights and including registrations and applications for registration of any of these and rights to apply for the same; and (b) all rights and forms of protection of a similar nature or having equivalent or similar effect to any of those set out in (a) anywhere in the world.

“Purchase Order” means written or electronically submitted purchase order by the Purchasing Party to Zebra for the purchase of Services under the Agreement, also referred to as Service Order Form (“SOF”).

“Purchasing Party” means the entity purchasing the Services directly from Zebra (depending on the structure of the sale) and to which the Agreement shall apply (to the extent relevant).

(a) For sales of Sell Through Services by Zebra to a Reseller / Open Reseller or an End User through Authorised Partners / Open Resellers, the Purchasing Party is: the Authorised Partner purchasing directly from Zebra.

(b) For direct sales of Services by Zebra to an End User or to an Authorised Partner, the Purchasing Party is the same as the Customer.

“Region” means one of the four geographic divisions in which Zebra operates. The four regions are (i) North America (ii) Latin America (iii) Europe, Middle East and Africa; and (iv) Asia Pacific.

“Regulated Activities” means Services, other obligations of Zebra under this Agreement and licences granted under this Agreement (and the terms including the price) which may be:

(a) regulated by applicable legislation (binding on Zebra or its sub-contractors);

(b) subject to mandatory or published terms (including as to price); or

(c) subject to a non-discrimination obligation (or equivalent) so that the grant of particular terms to the End User would result in an obligation, imposed by applicable legislation on Zebra or its sub-contractors, to provide those terms to third parties.

“Reseller” means any member of one of the Program’s then current reselling tracks in EMEA (which as of the date of the present document includes: Registered Reseller, Broadline Technology Reseller, (Premier) Business Partners and (Premier) Solution Partners).

“Restricted Services” means the Services designated as such in the Program.

“Sell Through Services” means the Service(s) purchased by an Authorised Partner from Zebra, but delivered by Zebra directly to the Customer, the specific Service Description / Service Proposal / Scope of Work scope of which will be set out in the Agreement, and includes but is not limited to e-Contracts.

“Services” mean services made available by Zebra from time to time (including but not limited to maintenance support, advanced, professional and / or managed services) as identified by Zebra by a designated SKU number or other identifying factor established by Zebra and described in writing to the Purchasing Party, the scope of which may be set out in a Service Description Document, a Service Proposal/Quote/Scope of Work or such other relevant document issued by Zebra. Services include Sell Through Services.

“Service Description(s) or SDD(s)” mean the standard documents describing the scope of the Services available from Zebra and which Authorised Partners can find online at:

[https://partnerportal.zebra.com/PartnerPortal/product\\_services/services/Zebra\\_OneCare.aspx](https://partnerportal.zebra.com/PartnerPortal/product_services/services/Zebra_OneCare.aspx).

“Service Order Form” or “SOF” means the Purchase Order.

“Service Period” means the term of an Agreement as stated in the Purchase Order / SOF or as stated in a Scope of Work and confirmed by Zebra in an Acceptance Notice.

“Service Proposal / Quote / Scope of Work” means a bespoke proposal for Services made by Zebra to the Purchasing Party the scope of which is not covered in a Service Description.

“Software” means: (i) Zebra proprietary software in object code format, and adaptations, translations, decompilations, disassemblies,

emulations, or derivative works of such software; and (ii) any corrections, fixes, modifications, enhancements, new versions and new releases of the software provided by Zebra.

“Working Days” means any day (other than a Saturday or Sunday) on which banks are open for general business in London, United Kingdom, Brno, Czech Republic and Heerenveen, The Netherlands.

## **2.0 Nature of Agreement**

By the Purchasing Party’s signing and submitting of the Purchase Order / SOF to Zebra, the Purchasing Party orders and agrees to pay for those Services listed in the Purchase Order / SOF, and Zebra agrees to deliver such Services to the Customer (depending on the structure of the sale). Unless Zebra provides an Acceptance Notice within (five) 5 Working Days of receipt of the signed Purchase Order / SOF, Zebra shall be deemed to have rejected the Purchase Order / SOF for the Services described therein.

## **3.0 Term**

Subject to Zebra’s acceptance of the Purchase Order / SOF an Acceptance Notice and the Purchasing Party’s and Customer’s compliance with all of the terms and conditions of the Agreement, Services shall be supplied to Customer for the term defined in the applicable SDD or as otherwise agreed to in writing by Zebra in a Scope of Work.

## **4.0 Supported Equipment**

4.1. Zebra’s obligation to deliver the Services is subject to Zebra’s receipt of all required information regarding the Customer and the supported Equipment as Zebra shall request including that set out in clause 5. For e-Contract orders, the Purchasing Party must provide to Zebra a valid authorised Customer’s email address and company address. Purchasers of Services through Authorised Partners may change, add or delete product units to the Agreement only by submitting a written order via an Authorised Partner.

4.2 Zebra may require from the Customer a proof of purchase (but with pricing information deducted in case of Sell Through Services) of the particular unit of product and the Services for such product. The Services shall cover the particular units of Zebra products described in the Acceptance Notice issued by Zebra which will, among other things, identify the product number and associated serial number for each unit of product covered. During provision of the Services, if replacement parts or units of products are needed, such parts will be new or refurbished, and such units of products will be products equivalent to new in performance.

4.3 The Agreement covers the individual Equipment units of the Zebra products identified in the Acceptance Notice.

4.4 Zebra will use its reasonable endeavours to comply with any stated delivery date for Services which date the Purchasing Party acknowledges, on behalf of itself and on behalf of any End User with whom it contracts, is approximate only and that time for delivery will not be of the essence for any Agreement. Zebra accepts no liability whatsoever for any loss or damage resulting from a delay in delivery of Services.

## **5.0 Purchase Orders / SOFs**

5.1 The Purchasing Party must submit a Purchase Order / SOF to Zebra in respect of each request for the supply of Services. A Purchase Order / SOF must specify:

- (a) the Services to be supplied and respective product number (SKU), which must be taken from the relevant Service Descriptions or in the relevant Service Proposal (or Quote or Scope of Work) supplied by Zebra to the Purchasing Party as applicable;
- (b) the start date and period for the provision of the Services or delivery date as applicable (Service Period);
- (c) the relevant payment plan for the Service Period (Billing Period(s)) which must be taken from the list of available services in the Program or in the relevant Service Proposal as applicable;
- (d) the price and currency (as previously agreed with Zebra) for the Services which must be taken from the available prices for services listed in the Program or the online Service catalogue or from the Service Proposal, as applicable;
- (e) the full Purchasing Party and Customer address, and where different from the Purchasing / Customer the End User name and location;
- (f) a contact name, number and authorised email address for a person responsible for ordering the Services and a contact

name, number and authorised email address for any End User of the Services (if applicable);

(g) a list of the sites or delivery addresses, as applicable;

(h) the Purchase Order number and the Scope of Work reference number (if applicable);

(i) the address to which Zebra's invoice is to be sent for payment if different from the Purchasing Party's address;

(j) the address to which the repaired products are to be returned (ship to address) or the Services are to be provided as applicable; and

(k) the address of Zebra.

5.2 In addition to each request for the supply of Services, the Purchasing Party must supply a list of the serial numbers of the Zebra products to which the Services relate. Should a Purchase Order/SOF not comply with the conditions of 5.1, Zebra will require Purchasing Party to issue a revised Purchase Order/SOF.

5.3 Notwithstanding Clause 12 (Termination – non-cancellable Services), where the Purchasing Party has refused the quote for the Additional Services and the Services in Zebra's opinion either:

(a) cannot be provided without the Additional Services; and/or

(b) cannot be provided so as to ensure the Zebra's applicable quality standards as notified by the Zebra to the Contracting Party from time to time are met, then the Zebra shall have the right to refuse the provision of the Services.

Then Zebra's refusal to provide the Services in such circumstances shall not be considered a breach of the Agreement for the purposes of Clause 12.

5.4 To assist Zebra with manufacturing planning, Authorised Partner shall furnish Zebra with a quarterly bookings forecast by revenue updated on an ongoing basis. Please contact your channel account manager for further details.

## **6.0 Invoicing, Payment Terms and Price changes**

This section only applies between Zebra and the Purchasing Party with the respect to the price charged by Zebra to the Purchasing Party. Any pricing and / or payment terms agreed between Customer, Authorised Partners, Open Resellers and / or End User for Services (including Sell Through Services) are not affected by this section and remain strictly between the relevant parties.

6.1 For Services purchased directly from Zebra, invoices will be provided by Zebra to the Purchasing Party up to forty-five (45) days in advance of the applicable period during which Services will be performed unless agreed otherwise in the Service Proposal. Invoices for Services will be provided by Zebra and paid by the Purchasing Party in advance of the applicable Billing Period(s) indicated in the accepted Purchase Order(s), unless otherwise agreed by the parties in writing. Amounts payable by the Purchasing Party under the Agreement are due and payable in full cleared funds without deduction set-off or counterclaim in the currency invoiced (pounds sterling, US dollars or euros) to a designated Zebra bank account, within the period stipulated by Zebra or if not expressly stated within 30 days of the invoice date. The Purchasing Party may only use bank transfer as method of payment. Time for payment is of the essence and Zebra shall be entitled to recover all amounts due under an Agreement notwithstanding that delivery may not have occurred. Zebra reserves the right to change this Clause 6.1 at any time, subject to advance written notice to the Customer.

Unless otherwise notified in writing by Zebra to the Purchasing Party, the list prices for Services are published in the relevant online Product catalogue (and as referenced in the Program). Unless otherwise stated in the applicable SDD or Scope of Work, all prices are exclusive of all costs of delivery, insurance, import and / or export duties and tariffs, all government value added, sales, use or other like taxes in force and any such taxes shall be assumed and paid for by the Purchasing Party in addition to its payment for the Services. On payment of the price stated in the accepted Purchase Orders / SOFs and payment of the excluded items noted above, Zebra shall provide the Services. Notwithstanding the above, if the relevant Billing Period(s) for each Agreement are not identical to the Service Period for such Purchase Order / SOF, the Purchasing Party must pay Zebra for the entire Service Period.

6.2 Zebra reserves the right at any time to refuse or revoke any credit extended to the Purchasing Party if payment is in arrears or Purchasing Party's credit, in Zebra's sole opinion, does not warrant further extension of credit. Furthermore, Zebra may decline to make further shipments to the Purchasing Party if Purchasing Party is in breach of its undisputed payment obligations or is late in

making undisputed payments to Zebra or is otherwise in breach of the Agreement. The Purchasing Party's payment obligation is fulfilled when a payment due to Zebra is finally credited to Zebra's account in full. Unless otherwise stated in the applicable SDD or Scope of Work, payment is due in advance and is not conditional upon the serviced Equipment meeting any acceptance test procedures Purchasing Party may have.

6.3 Purchasing Party shall provide Zebra with written notice of any discrepancies related to the invoice within twenty (20) days of receipt of such invoice. Any positive changes to Purchasing Party's trading account with Zebra as a result of the invoice discrepancy(-ies) will be credited to Purchasing Party's same account. Both parties will use reasonable endeavours to settle discrepancies and Purchasing Party shall pay promptly undisputed parts of invoices in accordance with this Clause 6.3 to avoid delays in payment and liability for interest.

6.4 Without prejudice to any other rights and remedies Zebra reserves the right to charge late payment interest to the Purchasing Party on undisputed invoices that have not been settled on or before the due date on the invoice. Late payment interest under the Agreement will be charged at the rate of six percentage points (6%) above the last reference rate announced by the Bank of England and calculated on a daily basis until payment is made in full.

6.5 If the Purchasing Party fails to pay an amount by the due date, Zebra is entitled (where applicable) to suspend performance against the Agreement and / or any deliveries or place the Purchasing Party on a "cash with order" basis without any liability to Zebra. Moreover, the full prices of the Services that have been delivered but not paid for will immediately become due and payable or at Zebra's demand be returned to Zebra. In addition, Zebra is entitled to suspend any further deliveries until all outstanding monies have been paid.

6.6 Any payment to be made by a party under the Agreement has to be made in full without any set-off, restriction, condition, deduction or withholding for or on account of any counterclaim. However, Zebra may, at its discretion, reduce the amount owed by the Purchasing Party at any particular time by any amount owed by Zebra to Purchasing Party pursuant to terms of the Agreement. Upon so doing, Zebra's liability to the Purchasing Party shall, in an amount equal to the reduction, be extinguished. Notwithstanding the above, Zebra may withhold any payment of compensation due to the Purchasing Party in case of an investigation into the activities of the Purchasing Party by any legal or regulatory body.

6.7 Zebra may at its sole discretion apply a credit limit to the Purchasing Party and may require additional security such as a letter of credit from financial institutions acceptable to Zebra. The letter of credit shall comply with specific terms as required by Zebra and in accordance with Industry standards and the Purchasing Party shall bear any costs associated with providing such letter of credit. The initial credit limit shall be that as notified by Zebra to Customer. Such credit limit may be varied by written notice to Purchasing Party. Without prejudice to the foregoing, deliveries shall at all times be subject to the approval by Zebra of Purchasing Party's credit limit. Zebra reserves the right even after partial performance or partial payment of Purchasing Party's debt to require from Purchasing Party satisfactory security. Refusal to furnish such security will entitle Zebra to defer any further deliveries until such security is furnished or to cancel Purchasing Party's account or so much of it as remains unperformed without prejudice to any rights which Zebra may have against Purchasing Party in respect of breach of contract or otherwise and such event Purchasing Party will have no rights under Purchasing Party's account or otherwise against Zebra.

6.8 Zebra prices and discount structure are subject to change by Zebra at any time with prior written notice as follows:

- Price increases (due to list price and / or discount structure change): Zebra will provide forty-five (45) days' notice except in the case of price increases determined by Zebra as a result of any adverse movements in currency exchange rates relative to the USD, in which case thirty (30) days' notice shall be given.
- Price decreases (due to list price and / or discount structure change): Zebra will use commercially reasonable efforts to give forty-five (45) days advance written notice.

Notwithstanding the above, the price will remain as agreed by the Purchasing Party and Zebra for the Service Period of the Agreement in the currency applicable for the Purchasing Party.

6.9 Price decrease

- (a) Where price decreases apply, any Services not yet performed under an accepted Purchase Order, or Purchase Orders received by Zebra subsequent to the commencement date of the price decrease, will be invoiced at the new reduced price.
- (b) Promotional prices shall not be considered to be price decreases and Purchasing Party shall not be entitled to benefit

from price decreases where Purchasing Party has obtained Services at promotional prices.

#### 6.10 Price increase

Purchase Orders accepted by Zebra for Services which have not yet been performed prior to the commencement date of a price increase and Purchase Orders received by Zebra prior to the commencement date of the price increase will be invoiced at the original price, provided the requested delivery date is prior to the commencement date of the price increase. Unless otherwise agreed in writing, a price increase will apply to any unperformed Purchase Order with a requested delivery date or where Services are being provided on or after the commencement date of the price increase.

6.11 A quotation by Zebra does not constitute an offer and Zebra reserves the right to withdraw or revise any quotation at any time prior

to Zebra's acceptance of Purchasing Party's Purchase Order and / or after the expiry of its validity period.

### 7.0 Warranty - Limitations

7.1 Zebra warrants that (subject to the other terms of the Agreement) the Services will be performed with reasonable skill and care and will materially conform to their description as set out in the relevant Service Descriptions. The Purchasing Party and Customer acknowledge that the deliverables of certain Services may contain recommendations, suggestions and/or advice from Zebra to the Purchasing Party or Customer ("Recommendations"). Zebra makes no warranties concerning the Recommendations, and the Purchasing Party or Customer alone accepts responsibility for choosing whether and how to implement the Recommendations and for any results arising out of such implementation. Implementation of the Recommendations does not ensure or guarantee the security of the Customer's systems and operations evaluated in the Recommendations.

7.2 Any Software provided with the Services under this Agreement to the Customer is provided "as is". Zebra does not warrant that the Software will meet the Customer's requirements, or that the operation of the Software will be uninterrupted or error free, or that defects in the Software will be corrected. Zebra makes no warranty with respect to the correctness, accuracy, or reliability of the Software.

The term "Software" for the purposes of this Clause 7.2, does not include any third party software provided under separate licence or third party software not licensable under the terms of this Agreement.

(a) Zebra hereby grants to the End User a personal, non-assignable, non-transferable, non-exclusive licence under Zebra's copyrights and confidential information embodied in the Software to use the Software, in object code form, and the Documentation in accordance with the terms set out in the End -User Software Licence Agreement(s) (available for download at <https://www.zebra.com/gb/en/partnerconnect-tc.html>) ("EULA"). Where the Purchasing Party is not the End User, Zebra hereby grants to the Purchasing Party a personal, non-assignable, non-transferable, non-exclusive licence under Zebra's copyrights and confidential information embodied in the Software to use the Software, in object code form, and the Documentation for the sole and exclusive purpose of distributing such Software to resellers and the End User, as limited herein. Any other use of the Software is strictly prohibited and will be deemed a breach of the Agreement.

(b) No Affiliate of the End User, or any person, business entity or organization other than the Purchasing Party for Sell Through Services is granted any rights hereunder.

(c) Prior to and as a condition of distributing any Software to its customers, the Purchasing Party (where different from the End User) will notify its customers of the specific requirements, rights, duties, and limitations contained in this Clause 7.2, and cause the End Users to accept the terms and conditions in the Zebra End-User Software Licence Agreement (for restricted and / or demo Software as the case may be) available for download at HERE or bind such End User to substantially similar provisions. The End-User Licence Agreements are subject to change at any time in Zebra's sole and absolute discretion.

(d) Prior to and as a condition of distributing to its customers third-party software not covered by the Software definition in the Agreement, the Purchasing Party (where different from the End User) will notify its customers of the specific requirements, rights, duties, and limitations contained in this Clause 7.2(d), and cause the End User to accept the terms and conditions in the applicable 3rd party end user licence agreement ("3rd Party EULA") which Zebra will provide at the time of the Services purchase. Any 3rd Party EULA is subject to change at any time in Zebra Technologies or the third-party's sole and absolute discretion.

(e) The Customer acknowledges and agrees that the Software and Documentation constitute valuable trade secrets and the confidential and proprietary property of Zebra. The Customer shall not disclose to any third party (including End Users), or permit access to any third party to the Software or the Documentation, or to any portion thereof, except to the extent such access is permitted under the applicable valid, enforceable and written 3rd Party EULA and either under an entitlement by a valid Zebra warranty or a Zebra Service support agreement. The Customer shall not, nor will it permit a third party to, reverse engineer, translate, decompile, disassemble, decode or use any 3rd party software, Software or Documentation except as may be permitted under the above agreements or as permitted under applicable law. Title to all Software and Documentation and all rights in patents, copyrights, trade secrets, and other intellectual property rights therein, are and shall remain vested in, Zebra, its licensors and suppliers. There is no grant to any rights in source code. The Customer shall not: (i) modify, merge, or incorporate any form or portion of the Software or the Documentation with other program material or create derivative work therefrom; or (ii) keep any copies of the 3rd party software, Software or Documentation after they have been provided to the Customer's customer / End User. The Customer agrees to maintain Zebra's copyright notice on the Software and Documentation, and to include the same on any authorised copies it makes, in whole or in part. Should any government customer indicate to the Customer, formally or informally, that said customer believes it has greater rights in the 3rd party software, Software or Documentation than Zebra grants under an applicable 3rd Party EULA, the Customer will notify Zebra immediately. Except as provided herein, this Agreement shall not be deemed to grant to the Customer, its resellers or the End Users either directly or by implication, estoppel, or otherwise, any licence or right under any patents, copyrights, trademarks or trade secrets of Zebra or any third party.

7.3 The Customer acknowledges, understands and agrees that the equipment provided or used by Zebra to facilitate performance of the Services may impact or disrupt information systems. Except to the extent set out in this Clause 7, Zebra disclaims any responsibility for costs in connection with any such disruption of and/or damage to the Customer's or a third party's information systems, equipment, and the information and data, including, but not limited to, denial of access to a legitimate system user, automatic shutdown of information systems caused by intrusion detection software or hardware, or failure of the information system resulting from the provision or delivery of the Services.

7.4 Service coverage does not include physical damage, misuse, unauthorised alterations or attempts to repair, abnormal operating environments, manmade or natural disasters, direct lightning damage, or damage to consumable items such as tapes, diskettes, ribbons, paper, cables, print heads, batteries or chargers, and does not include any associated equipment or system except as affected by the particular covered product, unless also specifically covered in writing by Zebra. Products submitted for repair under these conditions will be subject to an additional fee to bring product up to Zebra's specifications.

The repair shall conform in all material respects to the applicable Zebra published specification for a period of thirty (30) days following completion of the repair or until the end of the original warranty period, whichever is longer.

7.5 Notwithstanding the above, nothing in this Agreement will oblige Zebra to provide Services or perform obligations (or operate as a grant of, or an obligation to grant, any licence) which are or are subject to Regulated Activities other than in accordance with applicable legislation or any mandatory or published terms. In such event Zebra will be entitled to suspend the provision of that Service or the performance of that obligation where, and to the extent that, Zebra is strictly required to do so in order to comply with applicable legislation or other mandatory or published terms. Furthermore, Zebra will use all reasonable endeavors to reinstate the provision of the Services or the performance of its suspended obligations as soon as possible.

## **8.0 Services outside of Scope of Zebra's Standard Service Offerings**

8.1 The Service Descriptions or the Service Proposal clearly states what is outside the scope of the Services (and/or how the Services are limited and restricted) and therefore any services performed by the Zebra which are outside the scope of the Services at the direction of the Purchasing Party will be considered to be additional services ("Additional Services") and shall incur an additional cost over and above the Price in accordance with the Zebra' standard time and material rates as published from time to time. Any agreement to perform Additional Services will be in writing. Prior to carrying out such Additional Services, Zebra shall issue a Service Proposal / Quote / Scope of Work to the Purchasing Party and Zebra will require a Purchase Order / SOF before being able to carry out any such Additional Services.

8.2 Notwithstanding Clause 12 (Termination – non-cancellable Services), where the Purchasing Party has refused the quote for the Additional Services and the Services in Zebra's opinion either:

- (a) cannot be provided without the Additional Services; and/or

(b) cannot be provided so as to ensure the Zebra's applicable quality standards as notified by the Zebra to the Customer from time to time are met, then the Zebra shall have the right to refuse the provision of the Services.

Zebra's refusal to provide the Services in such circumstances shall not be considered a breach of the Agreement for the purposes of Clause 12.

## **9.0 Right to Inspect**

9.1 Zebra reserves the right to inspect any unit of product that has not been covered by a Zebra service agreement or Zebra service warranty and, if necessary, make it operational before issuing an Acceptance Notice for the Services. The Purchasing Party will be responsible for an inspection fee as well as the cost of any repair work that may be necessary to make the product acceptable for coverage under the Agreement. Equipment which had been covered by an Agreement that has expired may also be subject to product inspection fees prior to renewal.

9.2 Zebra reserves the right to inspect any unit of Product returned for repair to verify it only utilizes entitled Software, and to charge Customer for any Software for which Customer does not have a valid, enforceable and written end user licence Agreement with Zebra and either entitlement under a valid Zebra warranty or a Zebra support agreement.

## **10.0 Customer Responsibilities**

10.1 Customer's responsibilities include, among other things: (a) immediately notifying Zebra if there is any change regarding the information provided as part of the Agreement or the Products (this may impact Zebra's ability to perform and require additional fees); (b) if a Product is registered with Google's Android™ Zero Touch Service, it is Customer's responsibility to deregister such Product from the Google Android Zero Touch Service portal prior to returning the Product to Zebra. Zebra hereby disclaims any and all liability resulting from a failure to safeguard End User confidential information as a result of Customer's failure to deregister a Product from the Google Zero Touch Service portal. Additionally, Zebra will not be responsible for any delay in Turnaround Time of the repair of such Product, if Customer fails to deregister the product prior to returning the Product to Zebra for repair; (c) making all reasonable efforts to cooperate with Zebra in resolving problems remotely, including without limitation executing self-tests or diagnostic programs; (d) paying all telecommunications charges associated with provision of telephone and remote Services; (e) ensuring compatibility of non-supported products, accessories and devices with the Product(s); (f) maintaining security of proprietary, confidential information and Personal Data, including without limitation by implementing a procedure for reconstruction of lost or altered files or data programs; and (g) fulfilling such other responsibilities that may be identified in or required by any associated SDD's.

10.2 To the extent that acts or omissions of the Purchasing Party and/or Customer and / or the End User prevent or impact upon Zebra's ability to provide the Services ("Relief Event"), then Zebra shall be relieved of any obligation to provide the Services and shall not be liable for failure to provide Services for the period in which such Relief Event continues.

## **11.0 Changes and Notices**

11.1 Zebra may change the serial number of product(s) covered by the Services when the original product is damaged beyond economic repair and a replacement product is provided or when the Services provides for an advance replacement product. Zebra will provide Customer with notification of the replacement unit serial number.

11.2 Where applicable, the Purchasing Party may request a change of the unit(s) of each product covered under the Agreement by forwarding those changes in writing to Zebra at: Zebra Technologies Czech Republic, Budova B4, Kolejní 2904/1, 612 00 Brno-Královo Pole, Czech Republic, Attn: Service Contract Administration. Additions to the Agreement may be accepted by Zebra in its absolute discretion, and if accepted, shall be effective thirty (30) days after receipt. Fees for such additional units of product shall be prorated for the remaining term under the then-current Agreement.

11.3 With the exception of 11.1 and 11.2, all other notices required to be given under this Agreement shall be in writing and delivered in any of the following ways: (i) hand; (ii) facsimile; (iii) email; or (iv) overnight courier to the appropriate party as follows:

(a) Notices to Customer or Authorised Partner shall be sent to their primary business address as indicated on the Purchase Order / SOF or in its profile or as further notified to Zebra in writing.

(b) Notices to Zebra shall be sent to the address shown below and as notified by Zebra from time to time:

Zebra Technologies Czech Republic s.r.o. Budova B4, Kolejní 2904/1,



## 12.0 Termination

12.1 All Agreements are non-cancellable (although a deletion of some limited number of units of product from an Agreement may be accepted by Zebra, at its sole and absolute discretion, thirty (30) days after receipt of such proposed request for a deletion of a unit for a pro-rata credit of the pre-paid fee for the service of such units).

12.2 Zebra may terminate any Agreement with immediate effect in the event of a breach of the provisions in Clause 19.

12.3 Zebra may terminate any Agreement with immediate effect by written notice to the Purchasing Party / Customer if:

- (a) the Purchasing Party / Customer commits an irremediable breach of any Agreement or any other agreement with Zebra and/or Zebra's Affiliates; or
- (b) the Purchasing Party / Customer is in breach of any obligation under any Agreement or any other agreement with Zebra and/or Zebra's Affiliates and (in the case of a breach capable of remedy) the Purchasing Party / Customer has failed to remedy the breach within thirty (30) days of a written notice served by Zebra requiring the Purchasing Party/Customer to do so; or
- (c) the Purchasing Party / Customer is in persistent breach of any obligation under any Agreement or any other agreement with Zebra and/or Zebra's Affiliates whether remedial or nor and whether remedied or not; or
- (d) the Purchasing Party / Customer becomes subject to insolvency proceedings, an administration order, sequestration proceedings or winding-up proceedings (except for the purposes of solvent amalgamation or reconstruction) or unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; makes any arrangement or composition with or assignment for the benefit of its creditors or has a receiver or administrative receiver is appointed over the whole or any part of its assets; or
- (e) the Purchasing Party / Customer ceases or threatens to cease trading or becomes insolvent; or
- (f) the continuation of any Agreement is, or is likely to be, detrimental to the reputation of Zebra; or
- (g) the Purchasing Party / Customer ceases to be under the control of its existing shareholders as at the commencement date of the Agreement within the meaning of section 416 of the Income and Corporation Taxes Act 1988; or
- (h) Zebra reasonably apprehends that any of the events mentioned in Clause 12.3 ((a) to ((g) is likely to occur; or
- (i) the Purchasing Party / Customer has provided Zebra with any false, inaccurate or misleading information for the purpose of obtaining the Services; or
- (j) the Purchasing Party / Customer uses Proprietary Rights of Zebra (and/or its licensors) in a different way or for a different purpose than that authorised by the Agreement.
- (k) undergoes a Change of Control.

12.4 The Purchasing Party / Customer may terminate any Agreement with immediate effect by written notice to Zebra if:

- (a) Zebra becomes subject to insolvency proceedings, an administration order, sequestration proceedings, winding up proceedings (except for the purposes of solvent amalgamation or reconstruction) or a receiver or administrative receiver is appointed over the whole or any part of its assets or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or makes an arrangement or composition with or assignment for the benefit of its creditor s; or
- (b) Zebra ceases or threatens to cease trading or becomes insolvent; or
- (c) subject to clause 5.3, Zebra fails to provide the Services and fails to remedy such failure within thirty (30) days of receipt of the Purchasing Party's / Customer's written demand to do so.

12.5 Termination of any Agreement does not relieve the parties of their respective obligations which have accrued, or which accrue

up to the date of such termination. Zebra will provide all Services due until the relevant termination date and the Purchasing Party will pay all amounts due and payable in consideration of the Services provided.

12.6 Termination of any Agreement by either party under this Clause shall not limit or remove the right of either party to pursue any other rights which it may have against the other whether arising as a result of the termination or otherwise.

### **13.0 Force Majeure.**

Neither party shall be liable for any delay or default in its performance of any obligation under the Agreement caused directly or indirectly by an act or omission of civil or military authority of a state or nation, strike, lockout or other labour problem, inability to secure, delay in securing or shortage of labour, materials, supplies, transportation or energy, failures of subcontractors or suppliers, or by war, riot, embargo or civil disturbance, breakdown, or destruction of plant or equipment arising from any cause whatsoever, or any other cause or causes beyond such party's reasonable control (a "Force Majeure Situation"). At such party's option and following notice to the other party, that party's obligations shall be deemed to be suspended for the continuance of the Force Majeure Situation and such party agrees to continue performance of such obligations whenever such Force Majeure Situation has been concluded. Furthermore, in case of a Force Majeure Situation lasting for longer than ninety (90) days, either party may terminate the whole or any part of the Agreement with at least thirty (30) days prior written notice, without further cause. Notwithstanding termination under this Clause 13, Zebra shall be entitled to payment for Services provided and on a time and materials basis for Services which Zebra has commenced.

### **14.0 Liability**

Liability of the parties is governed exclusively by the following provisions.

14.1 Nothing in this Agreement will exclude or limit Zebra's, the Purchasing Party's or the Customer's liability for

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any other act or omission, liability for which may not be limited under applicable law.

14.2 Subject to Clause 14.1, the Purchasing Party's or Customer's exclusive remedy is expressly limited to performance of the Services provided for by the Agreement or the fair market value thereof.

Zebra's maximum aggregate liability to the Purchasing Party / Customer or others for damages arising in connection with any and all claims, whether in contract, warranty, tort (including negligence, or breach of statutory duty), patent or any other intellectual property infringement or otherwise for Services supplied by Zebra to the Customer under this Agreement, is limited to the total net value of the respective Purchase Order / SOF giving rise to the liability.

14.3 Subject to Clause 14.1, neither Zebra nor the Purchasing Party nor the Customer shall be liable under or in connection with this Agreement for any:

- (a) loss of profit whether direct or indirect; or
- (b) loss of revenues whether direct or indirect; or
- (c) loss of business, or increased cost of doing or retaining business, or contracts, or loss of business opportunity (in each case whether direct or indirect); or
- (d) loss of anticipated savings whether direct or indirect; or
- (e) any destruction or loss of data (in each case, whether direct or indirect); or
- (f) any consequential, indirect or special loss or damage.

14.4 Notwithstanding Clause 14.1 herein, Zebra is also not liable for:

(a) damages, outages or degradation of the Services, which are based on incorrect or erroneous information from the Purchasing Party and / or Customer or reasons or problems which are based in the software or hardware of the Customer or third parties; or

(b) losses incurred due to the Customer's failure to take back up copies of software and data in accordance with best computing practice and the Customer acknowledges that it is its responsibility to take such backup copies.

### **15.0 Holidays**

Zebra will observe all local public holidays and no Services shall be provided on these days.

### **16.0 Entire Agreement**

No subsequent agreement, arrangement, relationship or understanding between the parties shall be valid, effective or enforceable and no obligation or liability shall be created on behalf of either party hereto unless and until it is contained in writing, signed by a duly authorised representative of each party. The Agreement constitutes the entire understanding between Zebra, Purchasing Party and Customer with respect to the subject matter hereof and supersedes and replaces all prior and contemporaneous agreements, whether written or oral, as to such subject matter. If a conflict exists between this Agreement and the SKU or any of SKU's related SDD's the Agreement shall prevail.

### **17.0 Assignment**

The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Purchasing Party and / or Customer may not transfer or assign its interests in the Agreement, in whole or in part, without the prior written consent of Zebra, which consent shall be in Zebra's sole and absolute discretion to grant. Notwithstanding any and all other rights Zebra has to assign and subcontract its interests in and obligations under the Agreement, Purchasing Party and Customer specifically acknowledge and agree that Zebra entity which invoices the Purchasing Party under this Agreement may transfer or assign its interests and obligations in the Services and the Agreement to a Zebra Affiliate, or to the purchaser of all or substantially all of the capital stock, assets or business of such Zebra entity (the "Assignee") without the consent of the Purchasing Party or the Customer. In the event of such assignment and if the Assignee separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, reorganization, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), the Assignee may, without prior consent of any other party, and at no additional cost to Zebra and to Assignee, sever the Agreement by assigning certain of its rights or obligations, such that it will continue to benefit both Assignee and the Separated Business and their respective affiliates following the Separation Event.

### **18.0 Governing Law**

18.1 The Conditions and each Agreement shall be subject to the governing laws and jurisdiction of England and Wales and, subject to Clauses 18.2 and 18.4, the parties submit to the exclusive jurisdiction of the courts of England and Wales.

18.2 Nothing in Clause 18.1 shall limit the right of Zebra to take proceedings against the Purchasing Party or Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

18.3 No claim arising out of the Agreement may be brought by the Purchasing Party or Customer more than two (2) years after the cause of action has arisen or been incurred.

18.4 Where Customer is located in Russia, Ukraine or a CIS country, any dispute arising out of the Agreement including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which rules are deemed to be incorporated by reference into this Clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language used in the arbitral proceedings shall be English.

### **19.0 Compliance with Laws**

19.1 Compliance with Laws. Purchasing Party and / or Customer each agree to comply with all relevant domestic and international laws, regulations and administrative requirements, including, without limitation, those governing trans -border sales, resales, shipments, transfers of products, export control, data privacy and data security. The foregoing expressly includes all applicable anti-bribery and corrupt practices laws of the United States and any other countries where Purchasing Party and / or Customer render services under the Conditions.

19.2 Anti-bribery and Corruption. Purchasing Party and / or Customer each acknowledge that Zebra is part of a group of companies headquartered in the United States and regional headquarters based in the United Kingdom. Purchasing Party and / or Customer will comply with all applicable laws and regulations regarding anti-bribery and anti-corruption, including: i) the United States Foreign

Corrupt Practices Act of 1977, as amended; and ii) the UK Bribery Act 2010 and any amendments thereto. Purchasing Party and / or Customer will not offer, promise or give, directly or indirectly, any financial or other advantage to any government official, politician, political party, political official or candidate for political office (" Official") or any private person for the purposes of obtaining or retaining business or a business advantage. Purchasing Party and / or Customer each covenant and warrant that neither they nor any of their owners, principles or employees is an Official in the territories in which it is incorporated or does business.

19.3 Purchasing Party and/or Customer each acknowledge their understanding that any products, services, and technology, including technical data (collectively the "Supplied Items") the Purchasing Party and/or Customer receives from Zebra, and any use, export, re-export, re-sale, release, or other transfer of any Supplied Item or of any product, software or technology manufactured outside of the United States that contains or is the product of any Supplied Item may be subject to the jurisdiction of the export controls and trade sanctions of the United States pursuant to United States Export Administration Act of 1979 and related laws, and these export controls and trade sanctions may be extraterritorial. Purchasing Party and/or Customer each individually represent and warrant that: (i) Purchasing Party and/or Customer is not located in, under the control of, or a national or resident of any territory subject to comprehensive sanctions under applicable laws and regulations, and it will not transfer, export, or re-export, directly or indirectly, any Supplied Items to such territories or to any nationals thereof; (ii) Purchasing Party and/or Customer will not use Supplied Items in any activity related to the development, production, use, maintenance, or proliferation of weapons of mass destruction, including, without limitation, uses related to nuclear, missile, and/or chemical/biological development and/or production, and Purchasing Party and/or Customer will not transfer, export, or re-export, directly or indirectly, Supplied Items, including any new products developed from or manufactured using Supplied Items, to any party engaged in any such activity; (ii i) Purchasing Party and/or Customer will not transfer, export, or re-export any Supplied Items, including new products developed from or manufactured using Supplied Items, directly or indirectly, to any party identified on a restricted party list published by the U.S. government or any other government, or to any party otherwise prohibited under any applicable law from receiving Supplied Items; and Purchasing Party and/or Customer is neither on any such restricted party list nor under the control of an entity on any such list; (iv) Purchasing Party and/or Customer will not transfer, export, or re-export, directly or indirectly, any Supplied Items, including new products developed from or manufactured using Supplied Items, that are subject to the jurisdiction and regulations of a U.S. government or any other government, nuclear regulatory agency and/or defence regulatory agency, without the proper written government authorization, if applicable; and (v) Purchasing Party and/or Customer acknowledges that the use, development, production, transfer, export or re-export of certain Supplied Items may be subject to export and re-export licensing requirements of the U.S. or other nations, and Purchasing Party and/or Customer acknowledges that it will comply with all applicable export and compliance laws and regulations whenever it transfers, exports, or re-exports Supplied Items, including new products developed from or manufactured using Supplied Items, and acknowledges that such controlling laws and regulations may be amended from time to time. With respect to Purchasing Party's and/or Customer's transfer, export or re-export sales of the Supplied Items, Zebra will not be responsible for obtaining any necessary export or re-export licences relating to the Supplied Items.

#### 19.4 Audits, Records and WEEE

(a) During the term of the Agreement with Zebra and for one year thereafter, the Purchasing Party shall maintain records, and a complete audit trail, of all transactions, actions and activities resulting from or in connection with the Agreement, including all original transaction records of all financial and non-financial transactions resulting from or arising in connection with the Agreement, in a form in accordance with generally accepted accounting principles, to substantiate (i) pricing related information and / or (ii) any other information related to benefits provided to the Purchasing Party (if an Authorised Partner) under the Program ("Audit Information"). Upon prior written reasonable notice, Zebra representatives (which may include a Zebra internal auditor, and / or an independent certified public auditor selected by Zebra, and reasonably acceptable to the Purchasing Party), may, during the term of the Agreement, and for one year thereafter, have access at all reasonable times (a) to any facility or part of a facility at which either Purchasing Party is performing its obligations under the Agreement, (b) to Purchasing Party's personnel, (c) to Purchasing Party's systems, policies and procedures relevant to the Agreement, (d) to the data, Personal Data, records and books of the Purchasing Party relating to the Agreement for the purpose of performing audits and examinations of the Purchasing Party to examine, review, test and verify Purchasing Party's compliance with the Agreement and (e) to Purchasing Party's books and records pertaining to such invoices to substantiate the Audit Information provided in connection with the Agreement. Such audits shall occur no more than twice yearly per category of Audit Information as specified above, unless otherwise required by law, or necessary based on Zebra's reasonable concern with probable cause showing the Purchasing Party's non-compliance. The Purchasing Party shall preserve such books and records for this purpose for a period of six (6) years from the reporting date (irrespective of the term of the Agreement).

(b) In the event Zebra makes any claim with respect to an audit, upon the Purchasing Party's written request, Zebra will make available to the Purchasing Party the records and reports pertaining to such audit prepared by the auditor.

(c) Zebra, the Purchasing Party and the Customer shall comply with all applicable laws and regulations directly relating to the Equipment and specifically EU directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE) where the relevant party is deemed a "Producer".

The Purchasing Party / Customer each shall, at their cost, comply with the WEEE Directive, if and where applicable, in connection with their individual obligations under the Agreement and in all matters relating hereto. The WEEE Directive means Directive 2012/19/EC effective 14 February 2014 on waste electrical and electronic equipment, subsequent amendments to this Directive, and any new legislation enacted by a Member State of the European Union to transpose the provisions of this Directive into the national laws of that Member State.

## **20.0 Third-Party Rights**

A third party that is not a party to an Agreement has no right under any legislation in any country giving rights to third parties to enforce any term of an Agreement.

## **21.0 Language**

The parties hereto confirm that it is their wish that the Agreement, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in the English language only.

## **22.0 Personal Data**

(a) In relation to individually identifiable information that either Zebra or Customer provides to the other about their respective personnel and other natural persons ("Personal Data"), the party receiving Personal Data may collect, process and disclose such Personal Data to its respective personnel and Affiliates in order to perform the Agreement, carry out related transactional and data processing activities, for other legitimate business purposes, and for purposes of legal compliance.

(b) Each party's collection, access, use, storage, disposal and disclosure of Personal Data will comply with applicable data protection laws.

(c) Each party may engage third parties to provide storage, processing services and other business-related activities related to the Personal Data collected from or provided by the other party, however each party will secure such third parties' written obligation to treat such Personal Data solely in accordance with the data controller's instructions and applicable data protection laws before transferring or disclosing any Personal Data.

(d) Zebra may transfer Personal Data to its Affiliates and/or third party service providers located in the United States and in other jurisdictions which may not have data protection legislation that provides adequate or equivalent protection within the meaning of laws in Customer's jurisdiction, although such transfers will be protected in accordance with Zebra's Privacy Statement available at [http://www.zebra.com/id/zebra/na/en/index/about\\_zebra/our\\_company/compliance/privacy\\_statement.html](http://www.zebra.com/id/zebra/na/en/index/about_zebra/our_company/compliance/privacy_statement.html) or any equivalent thereof ("Privacy Statement").

(e) Pursuant to applicable data protection laws, Zebra maintains reasonable technical and administrative procedures to protect data including Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, but Zebra cannot ensure or warrant the security of any data against any possible loss or unauthorised access.

(f) The Customer hereby agrees that Zebra is permitted to use Personal Data to communicate and perform direct marketing activities via email, telephone, text messaging, fax or postal mail, to the extent permitted by applicable laws. By entering into an Agreement, Customer, on its own behalf and on behalf of Customer personnel, hereby consents to receive direct marketing material from Zebra and its designees. If Customer personnel wish to opt out of receiving direct marketing communications at any time, Customer acknowledges that they can contact Zebra as specified in Zebra's Privacy Statement. In addition, if the Customer or any individual wishes to request access to any Personal Data held about them; have any Personal Data held about them amended; or prevent any processing of Personal Data; the Customer acknowledges that Zebra can be contacted as specified in the Privacy Statement.

(g) Customer represents warrants and undertakes to Zebra that the Customer complies with any applicable data protection laws and has provided any and all necessary notices to, and obtained any and all requisite consents from relevant individuals necessary to permit the activities referred to above.

(h) Customer acknowledges that Zebra is reliant on the Customer, its customers and / or the End User for direction as to the extent to which Zebra is entitled to use and process the Personal Data.

(i) Customer acknowledges that Zebra shall not be responsible for any corruption, loss, destruction, alteration or disclosure of Personal Data to the extent that it is caused by Customer, its customers and /or the End User or caused by Zebra acting in accordance with the instructions of Customer, its customers and/or the End User.

(j) The use of the term “personnel” in this clause 22.0 shall mean employees, officers, agents, contractors, sub-contractors consultants and any other temporary staff that interact with the other party from time to time.

(k) The terms set out in the Data Privacy Addendum in Section 3 shall apply to the Agreement and are deemed incorporated by reference herein.

### **23.0 Confidentiality**

23.1 Confidential Information: Each party are a disclosing party (“Discloser”) and a receiving party (“Recipient”) of Confidential Information under the Agreement. During the term of the Agreement and for a period of three (3) years from the expiration or termination of the Agreement, a Recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees, agents or consultants of the Recipient who must be directly involved with the Confidential Information for the purposes of the Agreement and who are bound by confidentiality terms substantially similar to those in the Agreement; (iii) not reverse engineer, de-compile or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; and (v) promptly notify the Discloser upon discovery of any unauthorised use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorised actions or other breach of the Agreement. Notwithstanding the above, Zebra may disclose Confidential Information to any of its Affiliates.

23.2 The Discloser consents to the disclosure of the Confidential Information to the extent strictly necessary for informing any subcontractors or suppliers of the Recipient who need to know such limited information in order to perform any assignments or handle any purchase orders of the Recipient pursuant to the Agreement provided however that such subcontractors or suppliers will first have agreed with the Recipient to be bound by its confidentiality obligations hereunder or obligations which protect the Confidential Information to the extent protected hereunder in respect of such limited Confidential Information they will receive including appropriate obligations not to disclose the same to others and not to use it for other purposes as well as to return all such information to the Recipient upon completion of their assignment or other required performances.

23.3 The obligations of confidentiality will cease to apply to information which:

- (a) Is at the date of the disclosure public knowledge through no fault of the Recipient; or can be shown by the Recipient to have been known to it before the information was disclosed by the Discloser; or
- (b) Is explicitly approved for release by written authorisation of the Discloser;
- (c) Is lawfully obtained from a third party or parties without a duty of confidentiality;
- (d) Is independently developed by a party without the use of any of the other party’s confidential information or any breach of this Agreement; or
- (e) Is required to be disclosed by any applicable law or regulation.

23.4 In the event that a party is required by law in any judicial or governmental proceeding or otherwise to disclose any Confidential Information belonging to the other party, the first party will give to the other party prompt written notice of such request so that the other party may seek a protective order or appropriate remedy. If, in the absence of a protective order, the first party determines, upon the advice of counsel, that it is required to disclose Confidential Information belonging to the other party, it may disclose such documentation only to the extent compelled to do so.

23.5 Confidential Information disclosed hereunder will remain the property of the Discloser and will not be copied or reproduced

without the express written permission of the Discloser, except for such copies as may be absolutely necessary in order to perform its obligations under this Agreement. Upon expiration or termination of this Agreement, or within ten (10) days of receipt of a Discloser's written request, a Recipient will return all Confidential Information to the Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, the Recipient may retain one archival copy of the Confidential Information which it may use only in case of a dispute concerning the Agreement.

## **24.0 Sell Through Services Process**

This section is relevant to the sales of Sell Through Services by Zebra through Authorised Partners, and as such only applies to the Purchasing Party who is an Authorised Partner and therefore different from the Customer.

24.1 The Purchasing Party, who is an Authorised Partner, acknowledges and agrees that:

(a) The Purchasing Party will offer the Sell Through Services to the Customer or Authorised Partners and / or Open Resellers for further resale to the Customer (as the case may be) only on the terms set out in this Agreement.

(b) In order confirmations issued by Purchasing Party to Authorised Partners / Open Resellers / Customers who purchase Sell Through Services through an Authorised Partner, Purchasing Party will include a notice that advises the purchaser that the purchase of such Sell Through Services is subject to the Agreement and that by receiving the benefit of Services from Zebra the Customer will be deemed to have accepted the Agreement. Purchasing Party will therefore make a copy of the Agreement available on Purchasing Party's website or in any other comparable way.

24.2 In the event Purchasing Party does not comply with the terms of Clause 24.1 (b) above, and a claim is asserted or brought by a Customer and / or an Authorised Partner and / or an Open Reseller against Zebra which arises out of or is in any way connected to:

(a) Customer or Authorised Partner's or Open Reseller's assertion that the Agreement does not regulate the supply of the Sell Through Services from Zebra to Customer; or

(b) Customer or Authorised Partner's or Open Reseller's exertion of its contractual rights against Zebra where Customer / Authorised Partner / Open Reseller has not entered into the Agreement and instead is relying upon different contractual terms (the "Services Claim"), Purchasing Party agrees to defend Zebra in the Services Claim (at Zebra's request) and to indemnify and hold Zebra harmless from and against: any costs, settlement, service credits or similar losses due and/or payable as a result of the Services Claim; and/or any judgment awarding damages or other remedy against Zebra in the Services Claim.

## **25.0 Data and Deliverables Ownership**

**Ownership of Machine Data.** Notwithstanding anything else in the Agreement, all title and ownership rights in and to Machine Data are held by Zebra. In the event, and to the extent, Customer is deemed to have any ownership rights in Machine Data, Customer hereby grants Zebra a revocable, non-exclusive right and licence to use Machine Data.

**Ownership of Customer Data.** Notwithstanding anything else in the Agreement, all title and ownership rights in and to Customer Data are held by Customer. Customer hereby grants Zebra a revocable, non-exclusive right and licence to use Customer Data.

**Ownership of Deliverables.** Unless otherwise expressly set forth in an applicable SDD or Scope of Work, Zebra (or its suppliers) are the sole and exclusive owner of all rights (including all Proprietary Rights), in and to the Deliverables provided by Zebra to Customer pursuant to this Agreement, whether created alone by Zebra or with any contribution from Customer or its personnel. Zebra hereby grants to Customer, subject to payment of the applicable price and fees and the terms and conditions of this Agreement (including without limitation any additional provisions set forth in an applicable SDD or Scope of Work), a non-exclusive, non-transferable licence to use the Deliverables solely for its internal business purposes. Unless otherwise expressly agreed in writing, Customer shall not modify or copy (or permit others to modify or copy) any part of the Deliverables, except for such copies made for archival or backup purposes. Customer shall not remove any copyright or other proprietary notices from the Deliverables. For the avoidance of doubt, unless otherwise expressly set forth in an applicable SDD or Scope of Work, any work product developed for or provided to Customer under this Agreement shall not be deemed to be a "work made for hire" under applicable copyright law. Any right to use 3rd party software and / or Software provided in connection with the Services is subject to the applicable terms and conditions associated with such Software unless alternative rights are specified in the SDD and / or Scope of Work. Unless otherwise expressly stated in an applicable SDD / Scope of Work, Zebra owns and retains all of its Proprietary Rights that existed on the Effective Date of the applicable SDD / Scope of Work or created during the delivery of the Services.

Notwithstanding any provision herein to the contrary, Zebra is, and shall remain at all times, the owner of all: (i) ideas, concepts, know-how or techniques discovered, produced, developed, reduced to practice or used at any time related to this Agreement or any applicable SDD / Scope of Work; and (ii) all code, software tools, templates and related materials developed at any time under this Agreement or any applicable SDD / Scope of Work.

#### **26.0 Restriction on Services**

FOR PRODUCT SKUS THAT ARE DESIGNATED NOT FOR SALE, SERVICE AND/OR USE OUTSIDE OF CHINA, THESE SKUS ARE ELIGIBLE FOR SERVICE COVERAGE ONLY IN MAINLAND CHINA FROM ZEBRA AND/OR ZEBRA AUTHORISED CENTERS.



### **SECTION 3: DATA PRIVACY ADDENDUM**

This Data Privacy Addendum applies in respect of any transaction from 25th May 2018 onwards between (i) Zebra Technologies Europe Limited, acting on its own behalf and as agent for Zebra Affiliates in the EEA (such entities being data processors and referred to herein as Zebra); and (ii) Zebra Technologies Corporation, LLC for itself and on behalf of any Zebra Affiliates located outside the EEA, (when appointed by Zebra as sub-processors); and (iii) the Customer, acting on its own behalf and as agent for each Customer Affiliate.

The parties agree to the terms as set out below in this Data Privacy Addendum to the limited extent applicable to data processing governed by Data Protection Legislation which occurs under an Agreement, and if the Customer is a Reseller, under its participation in the Program as well.

#### **1.0 Definitions**

1.1 The following definitions and rules of interpretation apply in this Data Privacy Addendum:

“Agreement” means an agreement as defined in Section 1 and Section 2 of the Conditions;

“Data Protection Legislation” means:

- (a) the EC Directive 1995/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data and all local laws or regulations giving effect to this Directive;
- (b) the EC Directive 2002/58/EC on Privacy and Electronic Communications and all local laws or regulations giving effect to this Directive;
- (c) the EC Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (when in force) (the “GDPR”);
- (d) all relevant laws or regulations implementing or supplementing the EU legislation mentioned in (a) - (c) above, including elements of the EC Regulation 2016/679 incorporated into or governed by national law relevant for the Data Processing Services; and
- (e) any related codes of conduct or guidance issued by the Regulator or other governmental entity; and
- (f) to the extent applicable, the data protection or privacy laws of any other country;

“Data Processing Services” means the data processing services provided in respect of Personal Data and described in Schedule 1 of this Data Privacy Addendum (as updated or amended from time to time in accordance with Clause 3.4 herein);

“EEA” means the European Economic Area;

“Effective Date” has the meaning given to it in Clause 2 of this Data Privacy Addendum;

“GDPR” has the meaning given to it in the definition of Data Protection Legislation; “GDPR Personal Data” means personal data supplied in connection with the sale of Products and Services that are subject to Data Protection Legislation, either provided to Zebra by or on behalf of the Customer (if Zebra is the data processor), or provided by Zebra to the Customer (if Zebra is a data controller);

“Model Clauses” means the standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC, which are set out in Commission Decision 2010/87 of 5 February 2010, or such replacement provisions as may be issued from time to time;

“Regulator” means any regulatory body with responsibility for ensuring compliance with Data Protection Legislation;

“Security Breach” means any personal data breach relating to GDPR Personal Data determined by Zebra to be sufficiently serious or substantial to justify notification to a Regulator in accordance with Data Protection Legislation;

“Term” has the meaning given to it in Clause 11 herein;

“Working Days” means any day (other than a Saturday or Sunday) on which banks are open for general business in London, United Kingdom, Brno, Czech Republic and Heerenveen, The Netherlands; and

“Zebra Systems” means any information technology system or systems on which the Data Processing Services are performed in accordance with this Data Privacy Addendum.

1.2 References in this Data Privacy Addendum to “controller”, “processor”, “processing” and “personal data” and “personal data breach” shall have the same meaning as defined in the GDPR.

1.3 With effect from the Effective Date, this Data Privacy Addendum shall form part of and be incorporated into the Conditions and shall amend and supersede the relevant provisions relating to the processing of Personal Data contained in the Conditions. For the avoidance of doubt, in the event of any inconsistency or conflict between the terms of this Data Privacy Addendum and the Conditions, the terms of this Data Privacy Addendum shall apply insofar as the conflict relates to the processing of GDPR Personal Data.

1.4 Save where defined below, the definitions under Section 1: Products and Section 2: Services shall continue to apply.

## **2.0 Effective Date of this Data Privacy Addendum**

2.1 This Data Privacy Addendum comes into effect on 25 May 2018 (“GDPR Go Live Date”) subject to the Customer having an Agreement in place with Zebra on such date, or alternatively, this Data Privacy Addendum will have the same effective date as an Agreement (the “Effective Date”).

## **3.0 Customer’s request and instructions to Zebra for the provision of Data Processing Services**

3.1 If the Customer is a Reseller, the Customer has been approved by Zebra to participate in the Program and the Customer has instructed Zebra to provide Data Processing Services required for the Customer’s participation (or application to participate) in the Program in accordance with the Participation Terms and Conditions.

3.2 If the Customer is purchasing Products and/or Services from Zebra, Zebra may use, disclose, transfer, and otherwise process data, including Personal Data, for three basic purposes: (1) to process transactions for the sale and support of Products and Services or deliver against its obligations under the Conditions, (2) to operate Zebra’s business, and to provide and support the Products and/or Services purchased (including improving and personalising), (3) to send certain communications, including Program-related and/or direct marketing communications related to the Products and/or Services (to the extent permitted by Data Protection Legislation).

3.3 The Customer hereby instructs Zebra to provide the Data Processing Services in accordance with the data processing activities particularised in Schedule 1 to this Data Privacy Addendum. The Customer and Zebra acknowledge that Zebra is the “processor” and the Customer is the “controller”.

3.4 The parties acknowledge that Zebra may change or modify its business, Products and Services from time to time and this may necessitate amendments to Schedule 1 to this Data Privacy Addendum. To the extent that such amendments are necessary:

(a) Zebra shall seek revised instructions from the Customer by providing the Customer with proposed amendments to Schedule 1; and

(b) the Customer shall, if it considers it appropriate to do so, provide Zebra with instructions to provide the Data Processing Services in accordance with Zebra’s proposal.

3.5 For the avoidance of doubt, where Zebra seeks revised instructions from the Customer under Clause 3.4 (a), Zebra shall not process Personal Data in a manner not previously instructed until it has received the Customer’s written instructions to do so. If the Customer fails to provide revised instructions within 5 Working Days, Zebra may on immediate written notice and at any time thereafter terminate the Agreement without liability, or otherwise continue to process Personal Data on the basis of previous instructions.

## **4.0 Customer Responsibilities**

4.1 In accordance with Clause 3, the Customer shall provide Zebra with instructions to process Personal Data.

4.2 The Customer is responsible for ensuring that any Personal Data is complete and accurate for the purposes set out in Schedule 1 and obtaining consents where required for use of Personal Data under this Data Privacy Addendum. Zebra is under no duty to investigate the completeness, accuracy or sufficiency of any instructions relating to the Personal Data.

4.3 The Customer shall comply with its obligations under the Data Protection Legislation in respect of the supply of Personal Data to Zebra under or in connection with a Purchase Order/SOF for Products and Services and shall in particular ensure that, as a condition of placing a Purchase Order/SOF, Zebra is lawfully permitted to process any Personal Data which is necessary for the purposes set out in Schedule 1 including, where applicable, obtaining consents from the individuals to which Personal Data supplied by the Customer relates.

4.4 Customer acknowledges that Zebra shall not be responsible for any corruption, loss, destruction, alteration or disclosure of Personal Data to the extent that it is caused by Customer or Customer's Affiliates, or caused by Zebra acting in accordance with the instructions of Customer or Customer's Affiliates.

## **5. Zebra Responsibilities**

5.1 Zebra shall:

(a) process Personal Data supplied by the Customer only to the extent, and in such a manner, as is necessary for the purposes of Zebra's Data Processing Services and in accordance with the Customer's written instructions from time to time and Zebra shall not process, nor permit the processing, of Personal Data supplied by the Customer for any other purpose unless such processing is required by Data Protection Legislation to which Zebra is subject in which case Zebra shall, unless prohibited by law, notify the Customer in advance of its intention to carry out such processing and allow the Customer the opportunity to object;

(b) having regard to the state of technological development and the cost of implementing any measures, take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to Personal Data, to ensure a level of security appropriate to:

(i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage of the Personal Data; and

(ii) the nature of the Personal Data to be protected,

(c) without prejudice to its other obligations in this Data Protection Addendum, take reasonable steps to ensure the reliability of all its employees and contractors who have access to the Personal Data and shall in particular ensure that any person authorised to process Personal Data in connection with the Agreement is subject to a duty of confidentiality.

5.2 If Zebra receives any complaint, notice or communication which relates directly to the processing of the Personal Data under this Data Privacy Addendum, it shall as soon as reasonably practicable notify the Customer and it shall, at the Customer's expense, provide the Customer with full co-operation and assistance in relation to any such complaint, notice or communication.

5.3 Zebra shall at the Customer's expense provide the Customer with full co-operation and assistance in relation to the Customer's obligations under Data Protection Legislation including providing the Customer and Regulators (as applicable) with all information and assistance necessary to comply with data subject requests, investigate security breaches or otherwise to demonstrate compliance by the parties with Data Protection Legislation.

5.4 If Zebra becomes aware of any unauthorised or unlawful processing of any Personal Data or a Security Breach, Zebra shall without undue delay notify the Customer and at the Customer's expense fully co-operate with the Customer to remedy the issue as soon as reasonably practicable.

5.5 Where Zebra believes that the Customer's instructions to Zebra under Clause 5.1(a) conflict or might conflict with the requirements of Data Protection Legislation or other applicable laws, Zebra shall notify the Customer and provide reasonable details in support.

## **6.0 Joint Responsibilities**

6.1 Where Zebra and Customer (either alone or jointly) determine the purposes for and manner in which any Personal Data are to be processed relating to this Agreement, the sale and purchase of Products and Services, such processing shall fall outside the scope of this Section 3 and Zebra and the Customer shall each be deemed to be Data Controllers in respect of such processing and shall be responsible for complying with Data Protection Legislation.

## **7.0 Sub-processing**

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7.1 On request, Zebra will inform Customer of the name, address and role of each third party (a “Sub-processor”) used to provide the Data Processing Services.

7.2 Zebra may engage further Sub-processors, including Zebra Affiliates, to process Personal Data (or otherwise sub-contract or outsource the processing of any data to a third party), provided that it:

(a) notifies the Customer of any new or replacement Sub-processors through posting on Zebra’s website or by email or other notice. If the Customer objects to the appointment of a new or replacement Sub-processor, the Customer shall notify Zebra within 5 Working Days. Customer shall be deemed to have accepted the Sub-processor if Zebra does not receive an objection with five Working Days. If the objection cannot be resolved by the parties within five Working Days of receipt by Zebra of the written objection, Zebra may on immediate written notice terminate the Customer’s Agreement without liability;

(b) enters into a written contract with the Sub-processor which, with respect to the Data Processing Services performed for the Customer:

(i) provides protections or guarantees that Sub-processor considers necessary to implement appropriate technical and organisation measures in compliance with the Data Protection Legislation; and

(ii) terminates automatically on termination or expiry of this Agreement for any reason; and

(c) remains liable for all acts or omissions of the Sub-processors as if they were acts or omissions of Zebra (except to the extent that such acts or omissions are caused or exacerbated by the Customer).

7.3 For the avoidance of doubt, once the Customer provides its consent or authorisation to the use of a certain Sub-processor in connection with the Data Processing Services, the Customer may not subsequently revoke its consent in respect of, or otherwise object to, the appointment of the relevant Sub-processor.

## **8.0 Records and Reports**

8.1 Zebra shall keep a record of any processing of the Personal Data carried out pursuant to the Data Processing Services and of its compliance with its obligations set out in this Data Privacy Addendum (“Records”) at its normal place of business.

8.2 No more than once per calendar year and upon Customer’s written request (by email to [zebraprivacy@zebra.com](mailto:zebraprivacy@zebra.com)) Zebra shall provide a copy of Zebra’s most recent written GDPR audit report (each a “Report”) to the Customer, its third-party representatives (who are not competitors of Zebra) or a Regulator for the sole purpose of auditing Zebra’s compliance with its obligations under this Data Privacy Addendum. This Report will provide a summary of Zebra’s policies and procedures to comply with this Addendum applicable to the Products and Services provided to Customer. If a Report does not provide, in Customer’s reasonable judgment, sufficient information to confirm Zebra’s compliance with the Data Privacy Addendum pertaining to the Products and Services provided to the Customer, then an accredited third-party auditing firm agreed to by Zebra may audit Zebra’s compliance with the GDPR regulations applicable to Products and Services provided to Customer during regular business hours, with reasonable advance notice to Zebra and subject to reasonable confidentiality procedures. To the full extent permitted by law, Customer is responsible for all costs and fees related to such audit, including all reasonable costs and fees for any and all time Zebra expends responding to any such audit in addition to the costs charged by Zebra to Customer for Products and Services. Before the commencement of any such audit, Customer and Zebra shall obtain Zebra’s agreement on the scope, timing, and duration of the audit. Customer shall promptly notify Zebra with information regarding any non-compliance discovered during the course of an audit. This provision does not in and of itself grant Customer or any third party, by implication, estoppel, or otherwise, any right to inspect or examine any of Zebra’s data, documents, instruments, financial statements, balance sheets, business records, software, systems, premises, or plants.

## **9.0 Transfers and processing of Personal Data overseas**

9.1 Except as set out in this Clause 9, Zebra may not transfer Personal Data outside of the EEA, the United Kingdom, and / or Switzerland without the Customer’s prior consent, such consent not to be unreasonably withheld or delayed. Customer acknowledges and agrees that Personal Data may be transferred to those locations set out in the Sub-processor Schedule (available on request), in accordance with the transfer mechanisms set out in the Sub-processor Schedule (“Transfer Mechanism”).

9.2 Zebra’s ultimate parent undertaking, Zebra Technologies Corporation, and its U.S. Affiliates has elected to self-certify to the EU-US Privacy Shield Framework and Swiss-U.S. Privacy Shield Framework (s) administered by the US Department of Commerce

("Privacy Shield") regarding the collection, use, and retention of Personal Data transferred from the European Union, the United Kingdom, and/or Switzerland, to the United States in reliance on Privacy Shield. Accordingly, the Customer acknowledges that Personal Data supplied by the Customer to Zebra in connection with the Agreement, sale and purchase of Products and Service, may be transferred to, and the Data Processing Services may be provided by, Zebra Affiliates in the United States of America.

9.3 Where Zebra is located in a territory which is outside of the EEA, the United Kingdom, and / or Switzerland or Zebra appoints a Sub-processor located in a territory which is outside of the EEA, the United Kingdom, and / or Switzerland and does not have a finding of adequacy with respect to the protection of Personal Data by the European Commission, or the United Kingdom's government, unless Zebra determines that another more appropriate mechanism exists to lawfully transfer the Personal Data outside of the EEA, the United Kingdom, and / or Switzerland, Zebra shall procure that the relevant Sub-processor (including any Zebra Affiliate appointed as Sub-processor) located outside the EEA, the United Kingdom, and / or Switzerland shall execute the Model Clauses.

9.4 The parties agree that if the relevant Transfer Mechanism ceases to exist or is no longer considered to be a lawful method of transferring Personal Data outside of the EEA, the United Kingdom, and / or Switzerland, the parties shall have a good faith discussion and agree an alternative lawful transfer mechanism and Zebra may cease or procure that the relevant third party ceases the processing of Personal Data until the parties have agreed an alternative transfer mechanism to enable the Personal Data to be transferred outside of the EEA, the United Kingdom, and / or Switzerland in a compliant manner. Zebra shall not be in breach of this Agreement to the extent that the parties do not promptly reach any such agreement.

## **10.0 Indemnity and Liability**

10.1 Subject to Clause 10.3, each party ("Indemnifying Party") shall indemnify the other ("Indemnified Party") on demand against all claims, liabilities, costs, expenses, damages and losses (including all interest, penalties and legal costs and all other professional costs and expenses) suffered or incurred by the Indemnified Party arising out of the Indemnifying Party's breach of its obligations in this Section 3 ("Claims"). Each party acknowledges that Claims include any claim or action brought by a data subject arising from the Indemnifying Party's breach of its obligations in this Data Privacy Addendum.

10.2 If any third party makes a Claim, or gives notice of an intention to make a Claim, the Indemnified Party shall:

- (a) give written notice of the Claim to the Indemnifying Party as soon as reasonably practicable;
- (b) not make any admission of liability in relation to the Claim without the prior written consent of the Indemnifying Party;
- (c) allow the Indemnifying Party to conduct the defence of the Claim; and
- (d) at the Indemnifying Party's expense, co-operate and assist to a reasonable extent with the defence of the Claim.

10.3 Subject to clause 10.1, Zebra's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement or any collateral contract shall in all circumstances be limited to the total net value of the respective Purchase Order/SOF giving rise to the liability.

## **11. Term and Termination**

11.1 This Data Privacy Addendum shall commence on (or be deemed to have commenced on, if applicable) the Effective Date and shall continue in force for the duration of the sale and purchase of the Products and Services (the "Term").

11.2 Upon termination of an Agreement, this Data Privacy Addendum shall also terminate (for such Agreement).

11.3 Any provision of this Data Privacy Addendum that expressly or by implication is intended to come into or continue in force on or after termination of this Data Privacy Addendum shall remain in full force and effect.

11.4 Termination of this Data Privacy Addendum, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

11.5 On any termination of this Data Privacy Addendum for any reason and subject at all times to Zebra's data retention policy:

- (a) Zebra shall as soon as reasonably practicable return or destroy (as directed in writing by the Customer) all Personal Data provided to it by or on behalf of the Customer in connection with this Data Privacy Addendum; and

(b) if the Customer elects for destruction rather than return of its Personal Data under clause 11.5(a), Zebra shall as soon as reasonably practicable ensure that the records of Personal Data are disposed of in a secure manner (unless storage of any Personal Data is required by applicable law and, if so, Zebra shall inform the Customer of such requirement).

## **12.0 Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Data Privacy Addendum or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **13.0 Assignment**

Without prejudice to Clause 6, this Data Privacy Addendum is personal to each party and neither party shall assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with any of its rights and obligations under this Data Privacy Addendum without the prior written consent of other party.

## **14.0 Rights and Remedies**

Except as expressly provided in this Data Privacy Addendum, the rights and remedies provided under this Data Privacy Addendum are in addition to, and not exclusive of, any rights or remedies provided by law.

## **15.0 Variation**

Except as expressly provided in this Data Privacy Addendum, no variation of this Data Privacy Addendum shall be effective unless it is in writing and signed by the parties.

## **16.0 No Partnership or Agency**

Nothing in this Data Privacy Addendum is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

## **17.0 Governing Law and Jurisdiction**

17.1 This Data Privacy Addendum and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

17.2 Subject to Clause 17.3 herein, each party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Section 3 or its subject matter or formation (including non-contractual disputes or claims).

17.3 Where Customer is located in Russia, Ukraine or a CIS country, any dispute arising out of this Data Privacy Addendum including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which rules are deemed to be incorporated by reference into this Clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language used in the arbitral proceedings shall be English.

## **Schedule 1**

### **Data Processing Services**

**Subject Matter:** If the Customer has purchased Products and/or Services from Zebra, Zebra may use, disclose, transfer, and otherwise process data, including Personal Data, for three basic purposes: (1) to process transactions for the sale and support of Products and Services or deliver against its obligations under the Conditions (2) to operate Zebra's business, and to provide and support the Products and/or Services purchased (including improving and personalising), (3) to send certain communications, including Program-related and/or direct marketing communications [related to the Products and/or Services (to the extent permitted by Data Protection Legislation)].

**Duration:** The Term of the Data Privacy Addendum to which this Schedule 1 is annexed.

#### **Type of Personal Data and categories of data subject:**

The personnel and executive contacts at the Customer (e.g. Executive, Sales, Marketing, Finance, Technical, Developer, Operations, Legal and Services) may provide the following:

- Names, addresses, contact numbers, email addresses, salutations, countries, titles, primary roles, secondary roles, fax numbers and preferred languages;
- The training and/or certification status of the Customer's personnel;
- Product support data (including Zebra's issued engineering change notifications (ECNs));
- Application for promotions, benefits and any changes to the Customer's engagement with Zebra;
- Provision of contact details as part of Zebra's tools and resources; and
- Maintenance of Customer profile and contact details.

The personnel and executive contacts at the end user customers (e.g. Executive, Sales, Marketing Finance, Technical, Developer, Operations, Legal and Services) may provide the following:

- Names, addresses, contact numbers and email addresses.

#### **Nature and purpose of the Data Processing Services:**

The Customer has instructed Zebra to undertake the following data processing activities:

- information and contact details provided by Customer in connection with the sale and purchase of Products and Services;
- Records, contracts storage, market research, audits, training (e.g. webinars) and certification, legal and compliance, dashboards and reports generated in connection with the sale and purchase of Products and Services;
- Subscription to promotional, sales and marketing programs and receiving authorization benefits and incentives;
- Electronic communications relating to the Products and Services (e.g. webinar invitations, surveys and Product launches), Product and Services operational news, updates to tools, pricing, benefits and incentives;
- Administration, transacting and facilitating the sales of Products, Services and/or payments (as applicable);
- Provision to the Customer and (as applicable) the End User of ongoing support in respect of such Products and Services (including but not limited to technical support, repair services, visibility services and dashboards);
- Administration and supply of demonstration and promotional Products to customers and / or the End User;
- Access to Zebra's systems (e.g. partner platform) and tools (e.g. Product and Services online catalogue);
- Subscription to online and written Product and Services forums;
- Provide information to the Customer customers and / or the End User as applicable on the Product repairs portal; and

- Provide information to Customer customers and / or the End User as applicable for the renewal of Services contracts; and
- Cross-border Product authorisation requests.