

PowerInsight Terms of Service

These PowerInsight Terms of Services (“**Terms**”) together with any Order, forms the Agreement between you as a Customer and AE as a service provider for AE’s PowerInsight Offerings. These Terms become legally binding on Customer upon acceptance of the Order or by accessing or using any of the Offerings.

1. **DEFINITIONS.** Any capitalized terms in these Terms will have the meanings attributed to them below, in the terms below, in other attachments or incorporated documents, or in the Order:
 - 1.1 “**AE**” means Advanced Energy Industries, Inc.
 - 1.2 “**Agreement**” means these Terms, together with the Order into which they are incorporated.
 - 1.3 “**Customer**” means the entity identified on the Order.
 - 1.4 “**Documentation**” means the user manuals and technical materials, provided by AE to Customer in connection with Customer’s use of the Offerings, that describe the features, functionality or operation of the applicable Offering.
 - 1.5 “**Hardware**” means the hardware included in any Offering (e.g., computer server), as described in the Order.
 - 1.6 “**Offering**” means an AE offering identified on the Order that Customer agrees to purchase pursuant to this Agreement, which may include a hardware license, Software, SaaS Service, professional services, maintenance and support, or other offerings specified in the Order.
 - 1.7 “**Order**” means the order confirmation document provided by AE, or, if no order confirmation is provided by AE, the AE-provided quote, invoice, or statement of work. The Order excludes any terms on any document provided by Customer (such as a purchase order) that are not the same as the terms included on any document provided by AE. The Order will identify (a) the Subscription Term for the Offerings in the Order (e.g. annual, monthly, etc.); (b) the applicable Offerings covered by the Order; and (c) other details reasonably specified by AE.
 - 1.8 “**Professional Services**” means any services (including any professional or engineering services, but excluding SaaS Service) designated in the Order.
 - 1.9 “**SaaS Service**” means the online, hosted service provided by AE in connection with the Software, for monitoring and analysis of data collected by the Software.
 - 1.10 “**Service Data**” means all data, information, and other content imported to the SaaS Service or otherwise provided to AE or its contractors by or for Customer in connection with Customer’s use of the SaaS Service, and all data and information in all reports provided by the SaaS Service to Customer.
 - 1.11 “**Software**” means any software or application programming interfaces described in the Order, described in the Documentation, or provided to Customer to enable Devices or Customer systems to interface with or access the Service, including any modifications, implementations, improvements, extensions, or other updates thereto.
 - 1.12 “**Subscription Term**” means the term for the subscription to Offering(s) as set forth in the Order.
 - 1.13 “**Terms**” means this set of terms and conditions.

2. FEES AND PAYMENT.

- 2.1 Fees.** The fees for each of the Offerings will be described in each Order (“Fees”) and may include Fees that are invoiced: a single time as a fixed Fee, prior to the beginning of each year or month (for, e.g., license Fees, subscription Fees, or support Fees), or based on a level of usage and invoiced at the end of each month (for, e.g., hourly professional services or usage Fees (to the extent applicable)).
- 2.2 Payments.** Customer will pay the Fees described in each valid invoice issued by AE with respect to that Order. All month-based Fees apply to any full or partial month. All payments must be made in U.S. dollars, unless otherwise expressly provided in the Order. Any payment due or portion thereof not received by AE within thirty (30) days after the date of invoice will bear an additional charge of one and one-half percent (1.5%) per month (including any partial month) from the date due until actually received.
- 2.3 Taxes.** All payments under this Agreement are exclusive of taxes and duties, and Customer agrees to bear and be responsible for the payment of all taxes and duties including, but not limited to, all sales, use, rental, receipt, personal property and other taxes (but excluding taxes based upon AE’s income), which may be levied or assessed in connection with this Agreement. If Customer is required to withhold and remit any taxes on behalf of AE, Customer will provide AE with official receipts issued by the appropriate taxing authority.

3. DELIVERY.

- 3.1 Software and Documentation.** Unless otherwise agreed by the parties, AE may make the Software and Documentation available for Customer to download. Delivery of the Software will be deemed complete upon receipt by Customer of Hardware including the Software or of electronic files in which the Software and Documentation are digitally stored. To the extent agreed between the parties in writing (e.g., if the Order provides for configuration services), AE will assist Customer with (a) downloading and installing the Software (if the Software is not delivered on the Hardware), and (b) configuring the Software for Customer. If AE does provide such services, they will be provided subject to the Professional Terms Section below.
- 3.2 Hardware.** AE will use commercially reasonable efforts to meet desired delivery dates, but will not be liable to Customer in any way for any late delivery. Delivery requests not conforming to AE’s lead times are subject to expedited fees. Unless otherwise provided on the Order, the Hardware shall be delivered EXW (Incoterms 2010) AE’s designated manufacturing facility, service facility, or other named place of origin. Identification of the Hardware in the Offerings shall occur when placed in the hands of the carrier for shipment to Customer. The Hardware shall be placed in suitably protected containers, the nature of which shall be determined by AE. The Hardware is deemed accepted upon receipt by Customer.

4. HARDWARE TERMS.

- 4.1 License.** The Hardware is licensed for use by Customer. It is not sold or leased. Subject to the terms and conditions of this Agreement (including Customer’s obligation to pay the Fees), AE hereby grants to Customer, during the Subscription Term, a non-sublicenseable, non-transferable, non-exclusive license to use the Hardware solely to the extent necessary to host and run the Software and use the other Offerings.
- 4.2 Ownership.** AE retains ownership of the Hardware. The Hardware is, and shall at all times be and remain, the sole and exclusive property of AE. Customer will have no right, title or interest therein or thereto except as expressly set forth in these Terms. No Title to Hardware passes to Customer at any time.
- 4.3 Care.** Customer will use the Hardware in a careful and proper manner and ensure there is no damages to the Hardware. Customer hereby assumes and shall bear the entire risk of loss and damage to the Hardware from any and every cause whatsoever. No loss or damage to the Hardware or any part thereof

shall impair any obligation of Customer under this Agreement which shall continue in full force and effect through the Subscription Term.

5. SOFTWARE TERMS.

5.1 License Grant. Subject to the terms and conditions of this Agreement (including Customer's obligation to pay the Fees), AE hereby grants to Customer, during the Subscription Term, a non-sublicenseable, non-transferable, non-exclusive license to reproduce, install, and execute the Software on the Hardware solely to the extent necessary to use the Offerings. Customer may only use the Software on the Hardware, and in the manner specified in the Documentation. Customer has no right to receive any source code or design documentation relating to the Software.

5.2 Documentation License. Subject to the terms and conditions of this Agreement, AE hereby grants to Customer a non-exclusive, non-transferable, non-sublicenseable license during the Subscription Term to make copies of the Documentation provided by AE, solely for use by Customer in connection with the exercise of rights granted with respect to the Offerings.

5.3 Open Source Software. Certain items of independent, third-party code may be included in the Software that are subject to open source licenses ("**Open Source Software**"). Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for such Open Source Software.

6. SaaS Terms. This Section applies only if the SaaS Service is purchased by Customer, as provided in the Order. If SaaS Service access has not been purchased by Customer, Customer has no right to access any SaaS Services made available by AE.

6.1 Subscription to the SaaS Service. Subject to the terms and conditions of this Agreement (including Customer's obligation to pay the Fees), AE will provide Customer, during the Subscription Term, with non-sublicensable, non-transferable, non-exclusive access to and use of the SaaS Services identified in each Order. Customer may access the SaaS Services solely through the interfaces designated by AE and from the Customer facilities identified in the Order.

6.2 Access. On or as soon as commercially practicable after the date the Order is last executed, AE will provide to Customer the setup materials necessary to establish passwords, security protocols and policies, network connections, and access protocols to allow Customer to access the applicable SaaS Service. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the SaaS Service, and notify AE promptly of any such unauthorized use known to Customer.

7. API Terms. This Section applies only if API access is purchased by Customer, as provided in the Order. If API access has not been purchased by Customer, Customer has no right to access any APIs made available by AE.

7.1 License Grant. Subject to the terms and conditions of this Agreement (including Customer's obligation to pay the Fees), AE hereby grants Customer, during the Subscription Term, a limited, non-exclusive, non-transferable license to internally use and access the API(s) solely: (a) as necessary for Customer to access the resources identified in the Order, (b) through the interfaces designated by AE, (c) from the Customer facilities identified in the Order, and (d) as specified in the Order and Documentation.

7.2 Usage Limitations. AE may limit: (a) the number of API calls that Customer may make; and (b) any other aspect of Customer's use of the API, in AE's discretion. AE may utilize technical measures to prevent over-usage and stop usage of the API by Customer after any usage limitations are exceeded or suspend Customer's access to the API, in the event Customer exceeds any limitations or restrictions.

8. Professional Services Terms. This Section applies only if Professional Services are purchased by Customer, as provided in the Order.

- 8.1 Services.** Subject to the terms and conditions set forth in this Agreement, AE will perform the Professional Services, as described in the Order. AE will perform the Professional Services in a professional manner in accordance with industry standards.
- 8.2 Modifications.** Customer may at any time request a modification to the Professional Services to be performed pursuant to the Order by written request to AE specifying the desired modifications. AE will, within a reasonable time following receipt of such request, submit an estimate of the cost for such modifications and a revised estimate of the time for performance of the Professional Services pursuant to a newly prepared Order. If accepted in writing by Customer, such modifications in the Order will be performed under the terms of this Agreement. Modifications in any Order will become effective only when a written change request is executed by authorized representatives of both parties.
- 8.3 Customer Responsibilities.** Customer will make available in a timely manner at no charge to AE all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of Customer required by AE for the performance of the Professional Services as specified in the Order. Customer will be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer.
- 8.4 Feature Acceleration.** To the extent the Order specifies that the Professional Services include development of software (or other technology), such software will be included in the term “Software” or SaaS Service and licensed or made available as applicable hereunder.
- 9. RESTRICTIONS.** Customer acknowledges that the Software, Documentation, SaaS Service, API, and their structure, organization and source code constitute valuable trade secrets of AE and its suppliers (“**AE Technology**”). Accordingly, except as expressly permitted in this Agreement, Customer agrees not to (a) authorize or permit use of any AE Technology by persons other than its employees; (b) market or distribute any AE Technology; (c) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer’s rights under the licenses granted in this Agreement; (d) use any AE Technology to provide services or process data for the benefit of, or on behalf of, any third party; (e) modify any AE Technology, except with the prior written consent of AE; (f) combine or integrate any AE Technology with hardware, software or technology not provided to Customer by AE hereunder; (g) otherwise use or copy any AE Technology, except as expressly allowed under this Agreement; (h) remove, alter or obscure any proprietary notices of AE or its suppliers; (i) decompile, disassemble or reverse engineer any AE Technology or otherwise attempt to obtain or perceive the source code from which any component of the AE Technology is compiled or interpreted; (j) use any AE Technology in a product or service that competes with products or services offered by AE; or (k) use the API in a manner that, as determined by AE, in its sole discretion, exceeds reasonable request volume, constitutes excessive or abusive usage, or otherwise fails to comply or is inconsistent with any part of the Documentation. Customer hereby acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use such source code.
- 10. SUPPORT.**
- 10.1 Technical Support.** Subject to Customer’s payment of the applicable support Fees, beginning upon delivery of the Offerings and ending upon termination or expiration of the Agreement (or earlier if so set forth in the Order) (the “**Support Term**”), AE will provide AE’s standard technical support for the Offerings, through on-site and/or remote support, in response to Customer support requests through AE’s designated contacts.
- 10.2 Error Corrections.** AE will use commercially reasonable efforts to correct all Errors in the Software and the SaaS Service reported by Customer in writing to AE. “Error” means a reproducible failure of the Software or SaaS Service to substantially conform to the Documentation.
- 10.3 Integration.** AE may provide commercially reasonable engineering support to consult with Customer, answer questions, and provide information to assist with Customer’s understanding and implementation of the API, if Customer has purchased access to the API.

- 10.4 Exclusions.** AE will have no responsibility or liability of any kind, whether for breach of warranty or otherwise, arising or resulting from: (a) use of any version of the Software other than the then-current unmodified version provided to Customer; (b) any problems which are not Errors; (c) problems caused by failed Internet connections or other hardware, software or equipment which is not owned, controlled or operated by AE; (d) nonconformities resulting from misuse, abuse, negligence, or improper or unauthorized use of all or any part of any Offering; (e) problems or Errors caused by Customer's or other third party's products, services or equipment; or (f) modification, amendment, revision, or change to an Offering by any party other than AE.
- 10.5 Maintenance.** Subject to Customer's payment of the Fees, beginning upon delivery of the Software and Hardware and for the period of the Support Term: (a) AE will provide maintenance updates for the then-current generally available release of the Software as determined by AE in its sole discretion, and (b) AE will repair or replace Hardware that does not perform in accordance with its material specifications.
- 11. DATA TERMS.** This Section applies only if the SaaS Service is purchased by Customer, as provided in the Order.
- 11.1 Data Delivery.** Customer may transfer Service Data from the Software within its network, to the SaaS Service, at any time, according to specifications in the Documentation or communicated by AE. At Customer's request and subject to the Professional Services Terms Section above, AE will assist Customer in establishing any data transfer mechanism.
- 11.2 Data Security.** AE will implement and maintain appropriate administrative, physical, and technical safeguards designed to protect the security, confidentiality and integrity of all Service Data in the SaaS Service.
- 11.3 Data Use.** AE will use the Service Data to provide the SaaS Service to Customer and to provide Professional Services to Customer (e.g., services related to developing new types of analyses of the data). Customer acknowledges and agrees that, notwithstanding anything to the contrary, AE may internally use the Service Data to develop and improve any technology related to the Software and SaaS Service (e.g., new algorithms) and may disclose statistical information or general learnings developed in the use of Service Data, provided that it is aggregated and/or anonymized such that it does not include any identifying information of, or reasonably permit the identification of, Customer.
- 12. INTELLECTUAL PROPERTY.**
- 12.1 Limited License.** The Offerings are licensed, not sold. AE and its suppliers exclusively own and retain all rights, title, and interest in and to the Offerings, and all additions and modifications to the Offerings, including all intellectual property rights therein. Notwithstanding anything to the contrary in this Agreement, no license or right is granted in this Agreement except as specifically and expressly stated herein.
- 12.2 Service Data.** Customer exclusively owns and retains all rights, title and interest in and to the Service Data, except for pre-existing SaaS Service components contained in such Service Data (e.g., report templates). Customer hereby grants to AE and its authorized representatives and contractors a non-exclusive and non-transferable right and license to use, process, store, and transmit Service Data as described in this Agreement.
- 13. CONFIDENTIALITY.**
- 13.1 Confidential Information.** During the term of this Agreement, each party (the "**Disclosing Party**") may provide the other party (the "**Receiving Party**") with certain information regarding the Disclosing Party's business, technology, products, or services or other confidential or proprietary information (collectively, "**Confidential Information**"). The Disclosing Party will mark all Confidential Information in tangible form as "confidential" or "proprietary" or with a similar legend, and identify all Confidential Information disclosed orally as confidential at the time of disclosure and provide a written summary of such Confidential Information within thirty (30) days after such oral disclosure. Regardless

of whether so marked or identified, the AE Technology, all enhancements and improvements thereto, and the pricing and terms in this Agreement and all associated Orders will be considered Confidential Information of AE.

13.2 Protection of Confidential Information. The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will authorize access to the Confidential Information only by those personnel who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party will provide to the Disclosing Party a written affidavit certifying compliance with this sentence.

13.3 Exceptions. The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law, regulation or by the order of a court or similar judicial or administrative body, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

14. TERM AND TERMINATION.

14.1 Term and Renewal. This Agreement will commence on the date specified in the Order and remain in effect for Subscription Term specified on the Order. Unless earlier terminated as provided in this Agreement, this Agreement will automatically renew for consecutive one (1) year Subscription Terms unless either party notifies the other party, at least thirty (30) days prior to the end of the then-current Subscription Term, of its intent to not renew, and (b) if the Order starts with a month Subscription Term, the Order will automatically renew for consecutive one (1) month Subscription Terms unless either party notifies the other party at least thirty (30) days prior to the end of the then-current Subscription Term, of its intent to not renew.

14.2 Termination. Either party may terminate the Agreement upon written notice (a) if the other party breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof; or (b) immediately if the other party terminates or suspends its business, becomes subject to any bankruptcy or insolvency proceeding under federal or state or similar statute that is not dismissed within sixty (60) days, or becomes insolvent or subject to direct control by a trustee, receiver, or similar authority. If Customer has paid a set-up fee for the Offerings and all of the configuration Professional Services fees, Customer may terminate the Order for its convenience by giving thirty (30) days written notice.

14.3 Effects of Termination. Upon any termination or expiration of this Agreement or Order, (a) Customer (i) will immediately discontinue all use of the Offerings and any Documentation, as well as any use of AE's Confidential Information; (ii) will promptly pay to AE all amounts due and remaining payable hereunder, and (iii) return the Software, Documentation, and Hardware (in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted); and (b) each party (i) will delete any of the other party's Confidential Information from the party's computer storage or any other media, including, but not limited to, online and off-line libraries; (ii) will return to the other

party or, at the other party's option, destroy, all copies of other party's Confidential Information then in the party's possession.

14.4 Survival. The following sections of this Agreement will survive expiration or termination of this Agreement for any reason: 1 (Definitions), 2 (Fees and Payment), 9 (Restrictions), 11.3 (Data Use), 12 (Intellectual Property), 13 (Confidentiality), 14 (Term and Termination), 15 (Representations and Warranties; Disclaimer), 16 (Indemnification), 17 (Limitation of Liability), 18 (Compliance with Laws), and 19 (General Provisions).

15. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.

15.1 Warranties. Each party represents and warrants to the other party that (a) it has and will have full right and authority to enter into this Agreement and to grant the rights provided hereunder, (b) this Agreement will be enforceable against it, and (c) the entry into and performance of this Agreement by it do not contravene other agreements, laws, or orders to which it is subject.

15.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND EACH PARTY SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING THE FOREGOING, AE DOES NOT REPRESENT OR WARRANT THAT THE OFFERINGS WILL MEET ALL OF CUSTOMER'S REQUIREMENTS OR BE UNINTERRUPTED, SECURE, COMPLETE, ERROR-FREE, OR FREE OF VIRUSES, MALICIOUS CODE, OR OTHER HARMFUL COMPONENTS, OR THAT ALL DEFECTS WILL BE CORRECTED.

16. INDEMNIFICATION.

16.1 By AE. AE will indemnify, defend and hold Customer harmless from any third-party suit and any damages, losses, costs, and expenses awarded therein, to the extent such suit is based on any claim that the Software or SaaS Service infringes or misappropriates the intellectual property rights of such third party. If any portion of the Software or SaaS Service becomes, or in AE's opinion is likely to become, the subject of a claim of infringement, AE may, at AE's option: (a) procure for Customer the right to continue using the SaaS Service or Software; (b) replace the SaaS Service or Software with non-infringing software or services which do not materially impair the functionality of the SaaS Service or Software; (c) modify the SaaS Service or Software so that it becomes non-infringing; or (d) terminate this Agreement and refund any unused fees paid by Customer to AE with respect to the same for the remainder of the term then in effect, and upon such termination, Customer will immediately cease all use of the same. Notwithstanding the foregoing, AE will have no obligation under this section or otherwise with respect to any infringement claim based upon (x) any use of any SaaS Service or Software not in accordance with this Agreement or as specified in the Documentation; (y) any use of any SaaS Service or Software in combination with any other product, equipment, software or data not supplied by AE ("Other Product"), where such combination or Other Product is the basis for the infringement claim; or (z) any modification of any SaaS Service or Software by any person other than AE or its authorized agents, provided that the SaaS Service or Software would not be infringing had the SaaS Service or Software, as applicable, not been modified by such third person. This subsection states the sole and exclusive remedy of Customer and the entire liability of AE, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims, actions, and damages.

16.2 Procedure. The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party will promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party will have sole control of the defense or settlement of any claim or suit (provided that it will not settle such claim without the indemnified

party's approval (which will not be unreasonably withheld); and (c) the indemnified party will cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

17. LIMITATION OF LIABILITY.

17.1 AE WILL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, FINES OR PENALTIES, COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES OR TECHNOLOGY, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON THE BASIS OF WHICH ANY CLAIM FOR DAMAGES IS BROUGHT, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT OR STATUTE, EVEN IF AE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17.2 IN NO EVENT WILL AE'S LIABILITY TO CUSTOMER UNDER OR RELATING TO THIS AGREEMENT EXCEED THE EQUIVALENT OF TWELVE (12) MONTHS OF FEES PAID OR PAYABLE FOR THE OFFERINGS DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE LIABILITY.

17.3 THE LIMITATIONS IN THIS SECTION WILL NOT APPLY WITH RESPECT TO SECTION 13 (CONFIDENTIALITY).

18. COMPLIANCE WITH LAW. Customer acknowledges that the laws and regulations of the United States restrict the export and re-export of certain commodities and technical data of United States origin. Customer will not export or re-export the Offerings or any related technical documentation in any form in violation of the export or import laws of the United States or any foreign jurisdiction. Customer shall not, without U.S. government authorization, export, re-export, or transfer any goods, software, or technology subject to this Agreement, either directly or indirectly, to any country subject to a U.S. trade embargo (currently Cuba, Iran, North Korea, Sudan, and Syria) or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury. In addition, any software or any technology subject to this Agreement may not be exported, re-exported, or transferred to an end-user engaged in activities related to weapons of mass destruction. Further, Customer and its personnel, agents and representatives are aware of, and agree to abide by, the obligations imposed by the laws of the countries in which Customer does business (including, without limitation, the Foreign Corrupt Practices Act) dealing with payments or gifts to governments or related persons for the purpose of obtaining or retaining business for or with, or directing business to, any person. Accordingly, Customer agrees that no portion of monies paid or payable to Customer in connection with this Agreement, nor any other item of value, will, directly or indirectly, be paid, received, transferred, loaned, offered, promised or furnished to or for the use of any officer or employee of any government department, agency, instrumentality or corporation thereof, or any political party or any official of such party or candidate for office, or any person acting for or on behalf of any of the foregoing, for the purpose of obtaining or retaining business for or with, or directing business to, any person. Customer will comply with the applicable provisions of 42 USC § 1320a-7b prohibiting illegal remuneration (including kickback, bribe or rebate). Customer will defend, indemnify, and hold harmless AE from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors, or employees.

19. GENERAL PROVISIONS.

19.1 Independent Contractors. The parties are independent contractors, and no agency, partnership, franchise, joint venture, or employment relationship is intended or created by this Agreement.

19.2 Severability. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

- 19.3 Waiver.** Neither party will be deemed to have waived any provision hereof unless such waiver is in writing and executed by a duly authorized officer of both parties. Except as otherwise set forth in this Agreement, no failure to exercise or delay in exercising any rights arising from this Agreement will operate or be construed as a waiver thereof.
- 19.4 Force Majeure.** With the exception of any monetary obligations under this Agreement, neither party will be responsible for performance of its obligations hereunder where delayed or hindered by events beyond its reasonable control, including, without limitation, acts of God or any governmental body, war or national emergency, riots or insurrection, sabotage, embargo, fire, flood, accident, strike or other labor disturbance, or interruption of or delay in systems, power or telecommunications under third-party control (“**Force Majeure Events**”).
- 19.5 Notice.** To be effective, any notice required to be given under this Agreement will be given in writing, addressed to the applicable party (at the address in the signature block below) and hand delivered, which is effective upon delivery; sent by reputable overnight courier, which is effective on the business day following deposit with such courier; or sent by the United States mail, first class postage prepaid, which is effective on the third business day after deposit in the United States mail.
- 19.6 Governing Law and Venue.** This Agreement will be governed and construed in accordance with the laws of the State of Colorado without giving effect to any principles that may provide for the application of the law of any other jurisdiction. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Colorado, in each case located in the State of Colorado (except where such courts do not have jurisdiction), and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens. In the event of litigation arising out of this Agreement, the prevailing party will be entitled to its costs and reasonable attorneys’ fees. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- 19.7 Arbitration.** Customer agrees that AE shall have the right to have any dispute between the parties arising out of or in connection with this Agreement be settled by arbitration utilizing the dispute resolution procedures of the American Arbitration Association (AAA) in Denver, Colorado, by one arbitrator appointed in accordance with said rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, nothing in this Agreement shall limit either party’s right to seek immediate injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek such relief in a court of competent jurisdiction.
- 19.8 Assignment.** Neither party may assign this Agreement or any right, interest or benefit under this Agreement without the prior written consent of the other party; provided, however, either party may assign this Agreement to a successor who acquires substantially all of the assets or equity of such party through purchase, merger or other transaction without the other party’s consent. Any purported assignment in breach of the foregoing will be null and void. This Agreement will be fully binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, and nothing in this Agreement confers upon any other person or entity any legal or equitable right whatsoever to enforce any provision of this Agreement.
- 19.9 Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements and communications, whether oral or written, between the parties relating to the subject matter hereof, and all past courses of dealing or industry custom. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in a writing duly executed by authorized representatives of both parties. Any terms associated with a Customer purchase order or other Customer-provided document are hereby rejected and will be not binding on the parties and of no consequence whatsoever in interpreting the parties’ legal rights and responsibilities as they pertain to Services provided under this Agreement. Similarly, any terms required to be accepted electronically through any Customer

vendor enrollment, login, invoice submission, or other, process will not apply to this Agreement, are expressly rejected by the parties, and form no basis for any agreement between the parties; notwithstanding any indication of “agreement” to such terms, no such agreement is formed between the parties and the parties acknowledge that only authorized representatives of the parties may enter into agreements between the parties or amendments to this Agreement. If the parties have entered into a written and pen-signed agreement regarding the subject matter hereof, that agreement will supersede these Terms, except with respect to any features of any Offerings first made available after the date of such agreement.