

MRE TECHNOLOGY SERVICES, LLC ("MRETS")

STANDARD TERMS AND CONDITIONS OF SALE

FOR TECHNOLOGY PRODUCTS AND SERVICES

1. Offer and Acceptance: MRETS offers to sell and deliver products and services (referred to herein as "products") in accordance with the terms and conditions set forth herein. Acceptance of this offer is expressly limited to such terms. MRETS hereby objects to and rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, unless MRETS expressly agrees to such terms in writing.

2. Prices and Releases: MRETS's price in effect on the actual ship date for the quantity actually shipped shall apply.

3. Title and Delivery: If products are shipped from MRETS facilities, shipments inside the U.S. shall be delivered F.O.B. MRETS's offices in Houston, Texas. Shipments outside the U.S. shall be delivered FCA (Incoterms 2000) Buyer's designated carrier. Title and liability for loss or damage shall pass to Buyer upon MRETS's delivery to Buyer's designated carrier. Any subsequent loss or damage shall not relieve Buyer from its obligations. Buyer shall reimburse MRETS for insurance and transportation costs on international shipments and shall be responsible for all import duties, taxes and any other expenses incurred or licenses or clearances required. MRETS may deliver products in installments. Delivery dates are estimates. MRETS shall not be liable for any damage, losses or expenses incurred by Buyer if MRETS fails to meet the estimated delivery dates. If shipment of products is made directly from a distributor or manufacturer to Buyer, the shipping rules and conditions stated in their policies shall apply.

4. Payment Terms: If MRETS extends credit to Buyer, payment terms shall be net thirty (30) days after MRETS's invoice. MRETS may change or withdraw credit amounts or payment terms at any time for any reason. If the products are delivered in installments, Buyer shall pay for each installment in accordance with the above payment terms. If Buyer fails to make any payment when due, MRETS may suspend or cancel performance under any agreements in which MRETS has extended credit to Buyer. MRETS's suspension of performance may result in rescheduling delays. If, in MRETS's judgment, Buyer's financial condition does not justify the payment terms specified herein, then MRETS may terminate this contract unless Buyer immediately pays for all products that have been delivered and pays in advance for all products to be delivered. Termination in accordance with this clause shall not affect MRETS's right to pursue any other available remedies.

5. Taxes: Prices do not include applicable taxes or duties. Buyer is solely responsible for paying all applicable taxes and duties. MRETS will add sales taxes to the sales price where required by applicable law, and Buyer will pay such taxes unless Buyer provides MRETS with a duly executed sales tax exemption certificate. If Buyer is required by law to withhold any amount of tax from its payment to MRETS, Buyer shall promptly pay such amount to the appropriate tax authority and take all reasonable steps to minimize

such withholding tax.

6. Contingencies: MRETS shall not be in breach of this contract and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a force majeure event or other circumstances beyond MRETS's reasonable control, including but not limited to shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any government act, law or regulation, including any judicial order or decree, any communication or power failure, labor dispute, natural disaster, fire, flood, earthquake, explosion, terrorist act or Act of God.

7. Warranties and Related Remedies:

7.1 Products not manufactured by MRETS shall carry only the warranty offered by the original manufacturer, unless specified otherwise in the offering or agreed upon by MRETS. Services shall be good and workmanlike. MRETS's warranty shall not apply to products that have been improperly installed, installed in an improper application, damaged by accident or abuse, or if Buyer alters them or fails to maintain them in accordance with the manufacturer's specifications or good practice. All labor costs and transportation costs are the responsibility and the expense of Buyer or as stated in the warranty of the original manufacturer. Buyer agrees to follow all applicable return policies of the manufacturer or the manufacturer's representative with respect to refund or repair procedures. MRETS shall not be liable for any defects that result from Buyer's design, specifications or instructions for such components.

7.2 EXCEPT AS SET FORTH ABOVE, PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING PRODUCTS AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.3 Buyer agrees that prior to using or distributing any systems that include MRETS products, Buyer will thoroughly test such systems and the functionality of such MRETS products as used in such systems. MRETS may provide technical, applications or design advice, quality characterization, reliability data or other services. Buyer agrees that providing these services shall not expand or otherwise alter MRETS's warranties, as set forth above, and no additional obligations or liabilities shall arise from MRETS providing such services.

7.4 No MRETS products are authorized for use in FDA Class III (or similar life-critical medical equipment) unless authorized officers of the parties have executed a special agreement specifically governing such use. Only those MRETS components which MRETS has specifically designated as military grade are designed and intended for use in military/aerospace applications or environments. Buyer acknowledges and agrees that any military or aerospace use of MRETS products which have not been so designated is solely at the Buyer's risk, and that Buyer is solely responsible for compliance with all legal and regulatory requirements in connection with such use.

7.5 Notwithstanding anything to the contrary, SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." MRETS DISCLAIMS ALL

WARRANTIES, EXPRESS OR IMPLIED, REGARDING SUCH SOFTWARE PRODUCTS AND EXPERIMENTAL AND DEVELOPMENT PRODUCTS, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Intellectual Property Indemnification:

8.1 **MRETS will not pay any damages, liabilities or costs and will not defend, indemnify or hold harmless Buyer against any claim, suit or proceeding brought against Buyer, insofar as such claim, suit or proceeding is based on an allegation that products supplied by MRETS to Buyer directly infringe any patent, copyright, or trade secret.**

THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING INTELLECTUAL PROPERTY INDEMNIFICATION TERMS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT, AND THAT IN THE ABSENCE OF SUCH TERMS, THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9. Limitations and Damages Disclaimer:

9.1 General Limitations. IN NO EVENT SHALL MRETS BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT OR THE USE OF THE PRODUCTS PROVIDED HEREUNDER, REGARDLESS OF WHETHER MRETS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, ANCILLARY COSTS TO THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, RE-TESTING, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST MRETS MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED.

9.2 Specific Limitations. IN NO EVENT SHALL MRETS'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY USE OF ANY MRETS PRODUCT PROVIDED HEREUNDER, EXCEED THE TOTAL AMOUNT PAID TO MRETS FOR THE PARTICULAR UNITS SOLD OR SERVICES RENDERED UNDER THIS CONTRACT WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM AROSE, WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR UNITS OR SERVICES SOLD TO BUYER UNDER THIS CONTRACT SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

9.3 BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

9.4 ATTORNEYS' FEE WAIVER. If there is any dispute concerning these terms and conditions or the performance of either party pursuant to these terms and conditions, and either party retains counsel for the purpose of enforcing any of these terms and conditions or asserting these terms and conditions in defense of suit filed against it, each party will be solely responsible for its own costs and attorneys' fees incurred in connection with the dispute irrespective of whether or not a lawsuit is actually commenced or prosecuted to conclusion, and regardless of whether applicable law provides for attorneys' fees as a recoverable cost or element of damage in such a claim or suit.

10. Cancellations and Rescheduling. No cancellation or rescheduling of orders by Buyer within fifteen (15) days of MRETS's estimated shipping date for the component will be accepted.

11. Non-waiver of Default: In the event of any default by Buyer, MRETS may decline to make further shipments. If MRETS elects to continue to make shipments, MRETS's action shall not constitute a waiver of any such default or affect MRETS's legal remedies for any such default.

12. Governing Law: This contract shall be governed by and interpreted in accordance with the laws of the State of Texas, without reference to conflict-of-laws principles. If for any reason a court of competent jurisdiction finds any provision of this contract to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of this contract will continue in full force and effect. This contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, or by the Uniform Computer Information Transactions Act (UCITA). Buyer agrees that non-exclusive jurisdiction for any dispute arising out of or relating to this contract lies within courts located in the State of Texas and consents to venue in Harris County, Texas. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and MRETS may seek injunctive relief in any United States or foreign court.

13. Export Control:

13.1 Buyer agrees that unless prior authorization is obtained from the U.S. Department of Commerce, neither Buyer nor its subsidiaries shall export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from MRETS, or export, re-export, or release, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or direct product is prohibited by the EAR. Buyer furnishes the assurances provided herein to MRETS in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.

13.2 Buyer further agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any product, technical data, software or software source code acquired from MRETS under this contract or any direct product of such technical data, software or software source code. Accordingly, Buyer shall not sell, export, re-export, transfer, divert or otherwise

dispose of any such product, technical data, software or software source code directly or indirectly to any person, firm, entity, country or countries prohibited by US or applicable non-US laws. Further, Buyer shall give notice of the need to comply with such laws and regulations to any person, firm or entity which it has reason to believe is obtaining any such product, technical data, software or software source code from Buyer with the intention of exportation. Each party shall secure, at its own expense, such licenses and export and import documents as are necessary for each respective party to fulfill its obligations under this contract. If government approvals cannot be obtained, MRETS may terminate, cancel or otherwise be excused from performing any obligations it may have under this contract.

13.3 Any product export classification made by MRETS shall be for MRETS's internal use only and shall not be construed as a representation or warranty regarding the proper export classification for such product or whether an export license or other documentation is required for the exportation of such product. This Section 13 shall survive termination of this contract.

14. Assignment: This contract shall not be assignable by Buyer without MRETS's prior written consent. Any unauthorized assignment shall be null and void.

15. Entire Agreement: This contract and the manufacturer's and distributor's instructions, warranties, warranty disclaimers and policies incorporated herein by reference or otherwise constitute the entire agreement between the parties relating to the sale of the products and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No prior representations or statements relating to the sale of the products made by any MRETS representative, which are not stated herein, shall be binding on MRETS. No addition to or modification of any provision of this contract shall be binding upon MRETS unless made in writing and signed by a duly authorized MRETS representative. No course of dealing or trade usage or course of performance shall be relevant to explain or supplement any term in this contract. These terms and conditions shall prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any purchase order or other writing not expressly incorporated herein, including but not limited to data sheets, application notes and purchase order acknowledgements. The section headings contained in this contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this contract. The distributor's terms and conditions for use, warranties and disclaimers, limitations of liability and remedies and other terms which are incorporated into this contract are attached hereto as Exhibit A.

## EXHIBIT A TO MRETS TERMS AND CONDITIONS (INGRAM MICRO IAAS MIGRATION SERVICES)

MRETS is bound to the following terms with respect to Ingram Micro IaaS Migration Services access and use, and all such terms are incorporated into the Terms and Conditions as “flow downs” with Buyer as if MRETS was Ingram Micro and Buyer was Reseller. Amendments to these policies shall be effective on posting to the website by Ingram Micro. The Terms of Service can be found at the following link:

<https://us.cloud.im/legal/im-iaas-migration-tos.aspx/>

[Supplemental terms for cloud products and services | Xvantage \(ingrammicro.com\)](#)

Additional Terms and Conditions for Ingram Micro IaaS Migration Service Subscriptions are as follows:

### Additional Terms and Conditions for Ingram Micro IaaS Migration Service Subscriptions

The following additional terms and conditions apply to Your order of Ingram Micro (“**Vendor**”) IaaS Migration Services (“**Services**”) subscriptions.

#### 1. Term and Termination

Services start once provisioned through the marketplace. You may cancel the Services through the marketplace so long as no Service commitments are active hereunder (i.e. one or more of Your customers are employing any active Services). You may only terminate the Service if there are no existing term commitments for Services. If You or Your customer terminates its use of a Service prior to the expiration of the term commitment for the selected service, You will remain responsible to Ingram Micro for all remaining and accrued charges for such Service pursuant to the selected term commitment.

Services are available for minimum commitment periods as outlines in the order process and that appear on the Site. Services will not automatically renew.

#### 2. Fees

You agree to pay the fees and charges for the Services as outlined in the order process and that appear on the Site, as may be amended from time to time. If You or Your customer exceeds the usage limits applicable to the Service subscription, You agree to pay for the fees and charges for such over usage. For any extension of a subscription term or the provisioning of a Service upgrade, the then-current price will apply, unless otherwise mutually agreed in writing by You and Ingram Micro. Ingram Micro, may, from time to time in its sole discretion, change the fees it charges for the Service. Any increase in the fees will take effect at the beginning of the new subscription term. Ingram Micro will notify You of any such changes by updating the Site or sending notice by e-mail or regular mail.

#### 3. Territory Restriction

You may only resell and/or market the Services in the United States.

#### 4. Terms of Sale & Terms of Use

All purchases are subject to the sales terms set forth at <https://us.cloud.im/legal> and service setup information, including but not limited to pricing, (where applicable) set forth in the marketplace. For the avoidance of doubt, notwithstanding the presence or acceptance by Ingram Micro of Your order, such shall be for administrative purposes only and the parties agree that the governing terms and conditions shall be those set forth at <https://us.cloud.im/legal> unless otherwise agreed to in writing by Ingram Micro and You. The Services are provided by the Ingram Micro. Ingram Micro's terms of service available at <https://us.cloud.im/legal/im-iaas-migration-tos.aspx/> will apply to Your customers' use of the Services ("Terms of Service"). You covenant, represent and warrant that You will present the Terms of Service to each of Your customers and obtain their enforceable agreement to the Terms of Service before permitting them to order, access or use the Service. You covenant, represent and warrant that no subscription for the Services will be activated for or used by Your customers before the customer agrees to the Terms of Service. You will track and record acceptance by Your customers of the Terms of Service and will provide such information to Ingram Micro upon request.

Ingram Micro may at any time modify these terms and conditions. You and Your customers must regularly monitor the Site for any such modifications. The modified terms and conditions will be effective immediately after it is posted on the Site. Your purchase and resale of the Services and You and Your customers' use of the Services after any such modification will be deemed acceptance of such modification.

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Please confirm your acceptance and acknowledgment of these terms and the Ingram Micro Iaas Migration Services Terms of Service and Additional Terms and Conditions for Ingram Micro Iaas Migration Service Subscriptions by providing the following information that has been requested by and will be provided to Ingram Micro:

**Required Information from individual in your organization reviewing and accepting these terms:**

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Job Title:** \_\_\_\_\_

**Email address:** \_\_\_\_\_

**Phone number:** \_\_\_\_\_

MRE TECHNOLOGY SERVICES, LLC ("MRETS")

STANDARD TERMS AND CONDITIONS OF SALE

FOR TECHNOLOGY PRODUCTS AND SERVICES

ADDENDUM NO. 1

This Addendum No. 1 supplements the MRETS Standard Terms and Conditions in effect between Buyer and MRETS.

1. Discounts, rebates, commissions: MRETS may receive additional compensation in the form of rebates, commissions or discounts from the manufacturer(s) of hardware, software or other products purchased by Buyer from or through MRETS, depending on a variety of factors. Buyer has no rights or interest in any such rebates, payments or discounts. If there are any such, the prices to Buyer per MRETS invoice are not affected.

AGREED:

Signature: \_\_\_\_\_

Name (printed or typed): \_\_\_\_\_

Company (Buyer): \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_