

**Axellio, Inc.**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Axellio, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## Axellio Software End User License Agreement

1. **AGREEMENT.** This Axellio Software End User License Agreement ("EULA" or "Agreement") is a legal agreement between the Ordering Activity under GSA Schedule contracts identified in the Purchase Order ("you" or "Licensee") and Axellio Inc. ("AXELLIO") that describes the terms and conditions of your use of AXELLIO software (other than embedded firmware in AXELLIO hardware) provided to you by AXELLIO ("Software") as specified in the associated quotation, order acknowledgement, or invoice from AXELLIO ("Order"). By executing a written purchase order for the Software accompanying this EULA, you indicate that you have read, understood and agree to be bound by all of the terms and conditions set forth herein. Axellio may include software supplied by third-parties in the Axellio Software. Axellio is providing such third-party software to you by permission of the respective licensors and/or copyright holders on the license terms provided by such parties. Nothing herein shall bind the Licensee to any third-party terms unless the terms are provided for review and agreed to in writing by all parties.

2. **LICENSE AND RESTRICTIONS.** Subject to the terms and conditions of this Agreement, AXELLIO grants to you a nonexclusive, nontransferable, nonsublicensable, limited license to install and use, without modification, the Software in object code form only for your internal business purposes. You are not licensed to and shall not (i) copy or reproduce the Software, other than to maintain for your own backup purposes; (ii) republish, upload, post, transmit, resell or distribute in any way the Software; (iii) permit any third party to benefit from the use or functionality of the Software via a rental, lease, timesharing, service bureau, or other arrangement; (iv) sublicense, assign, or otherwise transfer any of the rights granted to you under this Agreement; (v) decompile, disassemble, or otherwise reverse engineer the Software; or (vi) otherwise use the Software except as expressly allowed under this Section 2.

3. **RELATED DOCUMENTATION.** You agree to use the operating manuals, charts, tables, written descriptions and handbooks in any medium related to the Software ("Related Documentation") only in conjunction with your use of the Software. Related Documentation may not be reproduced or redistributed without the written consent of AXELLIO.

4. **RESERVATION OF RIGHTS AND OWNERSHIP.** The Software is licensed not sold, and AXELLIO reserves all rights not expressly granted to you in this Agreement. The Software and Related Documentation are protected by copyright, trade secret and other intellectual property laws. AXELLIO and/or its licensors, as applicable, own the title, copyright, and other worldwide intellectual property rights in the Software and all copies of the Software. This Agreement does not grant you any rights to trademarks or service marks of AXELLIO. The Software and this Agreement are AXELLIO's confidential information and you must keep them confidential, not share them with or otherwise allow access to them to third parties, and you shall use at least reasonable care to maintain the confidentiality of the Software and this Agreement.

5. **WARRANTY AND LIMITATIONS.** Except for Software that is branded by a third party, AXELLIO warrants that the Software will perform substantially in accordance with the Related Documentation for a period of ninety (90) calendar days from the date of delivery of the Software ("Limited Warranty"). EXCEPT AS EXPRESSLY PROVIDED HEREIN, AXELLIO DISCLAIMS ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SOFTWARE AND RELATED DOCUMENTATION, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, AND NON-INFRINGEMENT. AXELLIO does not warrant that Software is free from bugs, viruses, interruption or errors, or that the Software will meet your requirements. Any third party branded Software delivered by AXELLIO is supplied "AS IS," and you agree in such case to look solely to the warranties and remedies, if any, and such additional terms and conditions provided by the applicable third party Software licensor.

In the event that Software fails to comply with the Limited Warranty, your sole and exclusive remedy and AXELLIO's sole obligation shall be, at AXELLIO's discretion, the repair or replacement of Software or reimbursement of the license fee paid by you. This Limited Warranty is void if failure of Software has resulted from accident, misuse, abuse, neglect, unauthorized repair or maintenance, or failure to follow supplied user instructions.

6. **LIMITATION OF LIABILITY.** AXELLIO'S TOTAL LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE LICENSE TO THE SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AXELLIO, ITS SUPPLIERS, AND SERVICE PROVIDERS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS OF BUSINESS, TELECOMMUNICATION FAILURES, LOSS, CORRUPTION OR THEFT OF DATA, LOSS OF PROFITS OR INVESTMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF AXELLIO OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

7. **TERMINATION.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, AXELLIO shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination you must immediately cease using the Software. Any termination of this Agreement shall not affect AXELLIO's rights hereunder.

8. **EXPORT.** You acknowledge 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. You agree not to export or re-export the Software or any related technical documentation in any form in violation of the export or import laws of the United States or any foreign jurisdiction.

9. **LAW AND VENUE.** This Agreement will be governed by the Federal laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

10. **GENERAL.** This Agreement together with any associated Orders constitute the entire understanding and agreement between the parties regarding the subject matter hereof and supersede all prior or contemporaneous understandings, written or oral. In the event the terms of an Order contain additional or different terms than those herein, the terms of the Order will control. This Agreement may only be amended in a writing signed by both parties. No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of any other right. Neither this Agreement nor any rights hereunder shall be assigned or otherwise transferred by you (by operation of law or otherwise) without the prior written consent of AXELLIO and any unauthorized transfer or assignment shall be void. In the event that any of the terms of this Agreement are held to be illegal by any court of competent jurisdiction, all remaining terms of the Agreement shall remain in full force and effect.

## Axellio Terms and Conditions of Sales

1. **AGREEMENT.** All sales by Axellio Inc. ("AXELLIO") of any non-software products ("Products") to the purchaser ("Customer"), and/or the sale or provision by AXELLIO to the Customer of any services ("Services") as specified in the associated quotation, order acknowledgement, or invoice from AXELLIO ("Order") shall be governed exclusively by these terms and conditions ("Terms"). EXCEPT FOR THE UNDERLYING GSA SCHEDULE CONTRACT, AND SCHEDULE PRICELIST, AXELLIO OBJECTS TO AND HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY CUSTOMER, INCLUDING THOSE CONTAINED ON ANY PURCHASE ORDER OR OTHER DOCUMENTATION PROVIDED BY CUSTOMER. Customer's right to the Products and/or Services is contingent upon Customer's acceptance of these Terms. Any changes to the Terms must specifically agreed to in writing executed by AXELLIO and Customer before becoming binding on either party. To the extent a conflict or inconsistency exists between these Terms and any document submitted to AXELLIO by Customer, these Terms will control.

2. **WARRANTY FOR PRODUCTS.** If Customer has purchased Products, then this Section 2 shall apply. Unless otherwise provided on the associated Order or otherwise agreed to in writing by authorized AXELLIO personnel, AXELLIO warrants that AXELLIO branded Products sold by AXELLIO will be free from defects in material and workmanship for 3 years from the date AXELLIO ships the Product; provided, however, that with regard to third party branded Products sold by AXELLIO to Customer, AXELLIO shall pass through to Customer the original manufacturer's warranty to the extent permissible. AXELLIO's warranty shall not apply to any Products that are not installed or operated in conformity with AXELLIO's published instructions, or to any Products which have been subject to misuse, negligence, or accident, or altered or repaired by anyone other than AXELLIO or AXELLIO's duly authorized agent. In all cases, AXELLIO has sole responsibility and discretion for determining the cause and nature of a Product defect, and AXELLIO's determination with regard thereto shall be final. Customer must notify AXELLIO of any breach of warranty within the applicable warranty period. The exclusive remedy for any breach of warranty shall be, at AXELLIO's option, the repair of the Product or replacement of such Product with a Product of the same type, or the refund of a pro-rata amount of the purchase price for such Product based on a 3 year life. When notifying AXELLIO of or returning any Products that fail to meet an applicable warranty, Customer shall comply with AXELLIO's then-current Return Material Authorization procedure. Customer hereby assigns to AXELLIO ownership of, any part, component, or item removed from a Product by AXELLIO under these Terms for any reason. CUSTOMER ACKNOWLEDGES THAT IN THE EVENT PRODUCTS ARE SPECIFIED AS USED OR RECONDITIONED, THE WARRANTIES OFFERED BY AXELLIO MAY BE LESS PROTECTIVE THAN THE WARRANTIES OFFERED FOR NEW PRODUCTS OF THE SAME KIND.

3. **WARRANTY FOR SERVICES.** If Customer has purchased Services, then this Section 3 shall apply. AXELLIO warrants that the Services will be performed in a workmanlike manner. Customer's exclusive remedy for a breach of this warranty is for AXELLIO to re-perform the Service at no extra charge. Customer must notify AXELLIO of any breach of this warranty within 30 days of the date of the provision of the non-compliant Services. Installation services do not include data migration services. AXELLIO will maintain industry standard commercial general liability insurance and will defend, indemnify and hold harmless Customer from any suit, claim or action and related costs and expenses arising from personal injury or property damage to the extent caused by AXELLIO in connection with performance of Services.

4. **DISCLAIMER OF WARRANTY.** THE EXPRESS WARRANTIES IN SECTIONS 2 AND 3 ABOVE ARE MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. AXELLIO DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL WARRANTIES AND CONDITIONS INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 2, NO WARRANTIES ARE MADE BY ANY OF AXELLIO'S LICENSORS OR SUPPLIERS. No agent, representative or employee of AXELLIO has any authority to make any representations or warranties on behalf of AXELLIO.

5. **LIMITATION OF LIABILITY.** AXELLIO'S TOTAL LIABILITY ARISING FROM THE PRODUCTS AND/OR SERVICES, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, OR OTHERWISE, IS LIMITED TO THE AMOUNT CUSTOMER PAID FOR THE PRODUCTS AND/OR SERVICES FOR WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT SHALL AXELLIO BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, OR LOST PROFITS, ARISING OUT OF OR RELATED TO THE PRODUCTS AND/OR SERVICES, REGARDLESS OF WHETHER AXELLIO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER ARISING OUT OF DESIGN OR MANUFACTURING DEFECT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, DEFAULT, INDEMNITY OR ANY OTHER REASON OR LEGAL THEORY ARISING OUT OF THE USE OR HANDLING OF ITS PRODUCTS OR ITS PERFORMANCE UNDER THESE TERMS. NO ACTION RELATING TO THE PRODUCTS AND/OR SERVICES MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER DELIVERY OF THE PRODUCTS OR COMPLETION OF THE SERVICES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

6. **DELIVERY OF PRODUCTS; TITLE.** Accepted orders for AXELLIO branded Products are non- cancellable except in accordance with the FAR and GSA Schedule Contract. Delivery and completion dates are estimates; AXELLIO will use commercially reasonable efforts to meet desired delivery and completion dates, but will not be liable to Customer in any way for any late shipment or completion. Delivery requests not conforming to AXELLIO's lead times are subject to expedite fees subject to the Anti-Deficiency Act. Excusable delays shall be governed by FAR 552.212-4(f). Where applicable, Customer will accept and pay for partial shipments of Products or performance of Services. Unless otherwise provided on the Order, the Products shall be delivered for domestic shipments in the continental U.S.A. FOB Destination and international shipments will be EXW shipping point (Incoterms 2010) and title to Products shall pass to Customer in accordance therewith.

7. **USE OF PRODUCTS.** Customer shall use Products only for its own business purpose and not for resale or distribution.

8. **PURCHASE PRICE; PAYMENT TERMS.** Quoted prices for Products or Services are binding on AXELLIO only if in writing submitted by AXELLIO. All Products are invoiced upon delivery and all Services are invoiced upon completion. Terms of payment are net 30 days from the date of invoice, unless otherwise expressly provided for and confirmed in writing by AXELLIO. Overdue payments shall be subject to finance charges computed at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. AXELLIO or its authorized reseller as applicable shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k).

9. **PURCHASE MONEY SECURITY INTEREST.** If Customer has purchased Products, then this Section 9 shall apply. AXELLIO hereby reserves, and Customer hereby grants to AXELLIO, a purchase



money security interest ("PMSI") in the Products sold hereunder and all the proceeds thereof, including but not limited to, insurance proceeds, to secure performance of all of Customer's obligations hereunder. Customer's failure to pay any amount when due shall give AXELLIO the right to repossess and remove the Products in accordance with the Federal Law of the United States.

10. **PROPRIETARY INFORMATION; IP.** AXELLIO may provide confidential or proprietary information to Customer in connection with the Products or Services ("CI"). Customer agrees that CI shall include all information which Customer knows or reasonably may know is confidential. CI shall remain the exclusive property of AXELLIO and Customer must not disclose CI to any third-party and will preserve and protect the confidentiality of CI by using at least reasonable care and Customer will take all other acts reasonably requested by AXELLIO with respect to CI. Upon AXELLIO's request, Customer will return to AXELLIO all documents containing AXELLIO's proprietary information. Customer agrees that its obligation to protect AXELLIO's proprietary information shall be ongoing and shall not cease upon completion or termination of these Terms. Nothing in this Agreement grants to Customer any right, title, or interest in any of AXELLIO's intellectual property including without limitation patents, trademarks, trade names, logos, inventions, copyrights, know-how, or trade secrets in any way relating to the design, manufacture, operation, use or service of the Products. AXELLIO recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

11. **INDEMNIFICATION.** AXELLIO will have the right to intervene to defend, indemnify and hold harmless Customer from any third-party claim made against Customer for infringement of any United States patent, copyright, or trademark by the Products, provided that Customer (i) promptly notifies AXELLIO of any such claim; and (ii) gives AXELLIO all information, authority and assistance reasonably necessary to settle and/or defend any such claim. AXELLIO will have control of any such claim, including, in its sole discretion and at its own expense, the right to settle the claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. AXELLIO has no liability for any claim arising or alleged to arise from use of a Product as part of any equipment, software, assembly, combination, method or process not supplied by AXELLIO, or for any claim, suit or proceeding arising or alleged to arise from: (i) any marking or branding applied to a Product at the request of Customer or by a party other than AXELLIO; or (ii) modification or servicing of all or part of a Product at Customer's request or by any party other than AXELLIO (except as expressly authorized by AXELLIO in writing). This Section 11 states the entire liability and obligations of AXELLIO, and the exclusive remedy of Customer, with respect to any actual or alleged infringement of any United States patent, copyright, trademark and/or other intellectual property right by the Products, Services or any part thereof.

12. **ADVICE; ENGINEERING CHANGE ORDERS.** AXELLIO may provide Customer technical advice regarding the Products and Services, but AXELLIO does not warrant or guarantee such advice. AXELLIO reserves the right to make additional engineering changes as necessary, and to charge Customer for costs and expenses

incurred by AXELLIO associated with any servicing or repair of a Product or component for which there is no problem observed (NPO), regardless of whether the Product is returned to AXELLIO for repair or AXELLIO deploys resources to make the repair.

13. **SPECIAL ORDERS.** Customer acknowledges that if this purchase is a special order for custom goods, the provisions of this paragraph supersede any conflicting general terms of these Terms. Customer agrees to defend, protect, and hold harmless AXELLIO against all suits at law or in equity and from any and all damages, claims, and demands for personal injury or actual or alleged infringement of any United States or foreign intellectual property right and to defend any suit or actions which may be brought against AXELLIO for such injury and/or any alleged infringement because of the manufacture and/or sale of the custom good.

14. **EXPORT; 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 Products 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 these Terms, either directly or indirectly, to any country subject to a U.S. trade embargo 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. Customer and its personnel, agents and representatives 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) regarding payments or gifts to governments or related persons for the purpose of obtaining or retaining business. Customer will defend, indemnify, and hold harmless AXELLIO from and against any violation of such laws or regulations by Customer or its agents, officers, directors, or employees.

15. **LAW; VENUE.** These Terms will be governed by the Federal laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.

16. **GENERAL.** No waiver of rights under these Terms by either party shall constitute a subsequent waiver of this or any other right under these Terms, and all waivers must be in writing to be effective. Neither these Terms nor any rights under these Terms shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of AXELLIO and any unauthorized transfer or assignment shall be void. These Terms shall bind and inure to the benefit of the successors and permitted assigns of the parties hereto. In the event that any of the terms of these Terms are held to be illegal by any court of competent jurisdiction, all remaining terms of these Terms shall remain in full force and effect. These Terms together with AXELLIO's associated Orders (if applicable) constitute the entire understanding and agreement between the parties regarding the subject matter hereof and supersede all prior or contemporaneous understandings, written or oral. In the event the terms of an Order contain additional or different terms than these Terms, the terms of the Order will govern and control. These Terms may only be amended by a written document signed by both parties.