

Sales and Services Agreement

THIS SALES AND SERVICES AGREEMENT (“AGREEMENT”) WILL GOVERN YOUR PURCHASE OF EQUIPMENT, THE DISTRIBUTION OF SOFTWARE AND/OR THE PROVISION OF SERVICES FROM 2NDGEAR LLC (“2NDGEAR”) UNLESS YOU AS THE CUSTOMER HAVE ANOTHER VALID AGREEMENT WITH 2NDGEAR APPLICABLE TO THE TRANSACTION. 2ndGear may, at its sole option, revise this Agreement without notice by posting the revised Agreement on its website. The Agreement posted on 2ndGear’s website at the time 2ndGear accepts an order will govern that transaction.

- 1. Sales Price and Fees:** The sales price of the Equipment and the fees for Services and Software and the method of payment will be specified in a Schedule (which may be in the form of a Statement of Work, Schedule, Price Quotation or Proposal Letter). Customer shall make payment within 30 days of the issuance of 2ndGear’s invoice. If payment as specified is not received by 2ndGear when due, Customer shall, to the extent permitted by law, pay on demand as a late charge, interest in an amount equal to the lesser of 1.5% per month or the maximum rate permitted by law, of all past due amounts. If a deposit is required under a Schedule for Equipment, the deposit will be due within 24 hours of the earlier of the execution of the applicable Schedule or 2ndGear’s receipt of Customer’s purchase order. The deposit is non-refundable unless the Equipment has been returned in accordance with this Agreement.
- 2. Transportation and Risk of Loss:** Delivery terms will be FCA Origin unless otherwise provided in the Schedule. 2ndGear shall deliver the Equipment in accordance with the written shipping instructions of Customer. Customer shall bear the risk of damage, loss and destruction from every cause once the Equipment has been tendered to the carrier at the point of shipment. Customer shall pay for all shipping, handling and transit insurance charges for the Equipment to the delivery location. 2ndGear will not insure the shipment unless requested by Customer.
- 3. Inspection and Acceptance: (a) For Equipment:** Customer shall inspect the Equipment upon delivery and shall notify 2ndGear of any shortage within 5 days of the delivery of the Equipment. Customer’s failure to notify 2ndGear of any shortage within the specified time period will be deemed unconditional

acceptance and will release 2ndGear from any liability for damages. Any claim by Customer for damage occurring during shipment will be made directly with the carrier and will not relieve Customer of its duty to pay the sales price to 2ndGear. No return of the Equipment to 2ndGear is permitted without the prior written consent of 2ndGear. **(b) For Software:** Customer's acceptance of the Software will be pursuant to the Software owner's standard licensing terms.

4. **Installation:** Customer shall assume all applicable installation charges. Customer agrees to provide a suitable place of installation, any necessary electrical power outlets and heating, ventilation and air conditioning required for operating the Equipment as provided in the manufacturer's installation manual.
5. **Title and Security Interest:** Title to the Equipment will vest in Customer upon tender of the Equipment to the carrier. Customer hereby grants to 2ndGear and its successors and assigns a security interest in the Equipment and Software and all proceeds thereof to secure the prompt payment by Customer when due of all amounts payable to 2ndGear and all other obligations of Customer contained in this Agreement. Customer authorizes 2ndGear to file such financing statements as may be necessary to evidence 2ndGear's security interest.
6. **Taxes:** Customer shall assume all responsibility for taxes (payable at the time of sale or thereafter) related to the sale of the Equipment, the licensing of the Software or the performance of Services (except taxes based on the gross or net income of 2ndGear), or provide 2ndGear with a certificate of exemption acceptable to the taxing authorities within 5 business days from the date of the applicable Schedule.
7. **Default:** The occurrence of any one or more of the following Events of Default constitutes a default under a Schedule: (i) the failure of Customer to pay any amounts when due if that failure continues for 10 days after written notice; (ii) the failure of either party to perform any other material term or condition of this Agreement or a Schedule if that failure continues for 30 days after written notice; or (iii) an assignment by either party for the benefit of creditors, the failure by a party to pay its debts when due, the insolvency of a party, the filing by a party or the filing against a party of any petition under any bankruptcy or insolvency law or for the appointment of a trustee or other officer with similar powers, the adjudication of a party as insolvent, the liquidation of a party, or the taking of any action for the purpose of the foregoing. Upon the occurrence of any of the foregoing Events of Default, the non-defaulting party may terminate the

applicable Schedule. In addition to the right to terminate, the non-defaulting party will retain all remedies available to it at law or in equity.

8. **Force Majeure:** 2ndGear will not be liable for delays in delivery of the Equipment, Software or Services for any cause beyond 2ndGear's reasonable control including, but not limited to: (i) government action, including without limitation laws, orders, and regulations; (ii) war, riots, civil commotion, embargoes or martial laws; (iii) strikes or other labor difficulty; (iv) fire, flood or other casualty; or (v) other contingencies of manufacture or shipment. In the event of any delay in 2ndGear's performance due in whole or in part to such causes, 2ndGear will have such additional time for performance as may be reasonably necessary under the circumstances, but this Agreement and any Schedule will otherwise remain in full force and effect.

9. **Warranties and Disclaimers:** (a) **For Equipment:** 2ndGear warrants that it will be the owner of the Equipment when it is delivered, free and clear of any liens and encumbrances, with the full right to sell the Equipment to Customer. For new Equipment, to the extent permitted by applicable law and agreements, 2ndGear hereby assigns to Customer any applicable manufacturer's warranty, if any. For used Equipment, Customer agrees that its purchase of the Equipment is subject to 2ndGear's Limited Warranty, if purchased by Customer. Customer, recognizing that 2ndGear is not the manufacturer of the Equipment, agrees that its purchase of the Equipment is on an "as is, where is" basis and expressly waives any claim against 2ndGear based upon any infringement or alleged infringement of any patent, copyright or trademark with respect to the Equipment. (b) **For Services:** 2ndGear warrants that it: (i) will perform the Services in a professional manner using qualified personnel and in accordance with the highest standards of 2ndGear's industry; and (ii) has the expertise necessary to provide the Services. (c) **For Software:** 2ndGear warrants that it is an authorized distributor of the Software and that following payment of the license fees, Customer will have the right to use the Software pursuant to the Software owner's standard licensing terms. **THE FOREGOING WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND OF ANY OTHER OBLIGATION ON THE PART OF 2NDGEAR. CUSTOMER ACKNOWLEDGES THAT IT HAS**

MADE THE SELECTION OF THE EQUIPMENT, SOFTWARE AND SERVICES BASED ON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE UPON STATEMENTS MADE BY 2NDGEAR.

10. **Limitation of Liability:** IN NO EVENT WILL 2NDGEAR BE LIABLE FOR ANY LOSS OF REVENUE, PROFITS, SAVINGS, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS, OR LOST OR CORRUPTED DATA OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THE SALE OF EQUIPMENT, THE DISTRIBUTION OF SOFTWARE OR THE PROVISION OF SERVICES HEREUNDER. 2ndGear's liability from any cause whatsoever arising out of this Agreement will not in any event exceed in the aggregate the amount paid by Customer for the Equipment, Software or Services giving rise to the claim, as applicable. No action arising out of the transactions under this Agreement may be brought by Customer more than 1 year after the damage or loss occurred.
11. **Support:** Customer acknowledges that any manufacturer support applicable to the Equipment will be provided directly to Customer by the manufacturer pursuant to the manufacturer's support terms. Any such support terms will be separate and distinct from this Agreement and 2ndGear and its assigns will not have any rights or obligations thereunder or with respect to any such support.
12. **Software:** 2ndGear will distribute the Software as listed on any Schedule, which Customer will license from the Software owner pursuant to the Software owner's standard licensing terms. In addition, Customer acknowledges that the Equipment listed in a Schedule may include software in which 2ndGear has no ownership or other proprietary rights and no such title or rights will be transferred to Customer hereunder. If applicable, Customer agrees to enter into licensing terms directly with the software owner for the use of such software. Any licensing terms with respect to the Software acquired under a Schedule or software which is included in the Equipment will be separate and distinct from this Agreement and 2ndGear and its assigns will not have any rights or obligations thereunder or otherwise.
13. **Use of Equipment and Software:** Customer shall comply with the manufacturer and supplier specifications in connection with the Equipment and

Software. Certain Equipment and Software may not be authorized by the manufacturer or supplier for use in critical safety or other applications where a failure may reasonably be expected to result in personal injury, loss of life or other serious property damage. If Customer uses the Equipment or Software in any such applications or fails to comply with all Equipment and Software specifications, Customer acknowledges and agrees that such use or non-compliance will be at Customer's sole risk.

14. **Export Compliance:** If Customer exports, imports or otherwise transfers the Equipment, Software or Services, Customer shall comply with all applicable laws and regulations and shall obtain any required authorizations and licenses.
15. **Notices:** Any notice with regard to this Agreement will be in writing and sent by registered or certified mail, postage prepaid or receipted courier service. Notices will be effective the earlier of receipt or 3 days after being sent out.
16. **Customer Responsibilities:** Customer shall cooperate with 2ndGear in connection with the Services, including, without limitation, providing 2ndGear with information and data, access to Customer's premises and timely management decisions and approvals, as may be reasonably necessary in order for 2ndGear to perform the Services. In addition, 2ndGear may rely upon any instruction, document or signature reasonably believed by 2ndGear to be genuine and may assume that any of Customer's employees or agents, or any employees or agents of Customer's affiliates and subsidiaries, giving any notice, request or instruction has the authority to do so.
17. **Proprietary Rights:** 2ndGear will retain exclusive ownership in all materials created and/or delivered by 2ndGear to Customer under a Schedule for the provision of Services (the "Deliverables"), including any ideas, concepts, know-how, documentation, methodology and techniques. 2ndGear also retains all rights with respect to the processes, tools, software and materials used by 2ndGear to produce the Deliverables or otherwise used in performing the Services ("2ndGear Materials"). Subject to payment in full for the applicable Services, 2ndGear grants to Customer a non-exclusive, non-transferable, royalty-free right to use the Deliverables, and any 2ndGear Materials incorporated into the Deliverables, solely for Customer's internal use.
18. **Confidentiality:** Unless 2ndGear and Customer have executed a separate mutual nondisclosure agreement, the following nondisclosure provisions will apply. Confidential Information means any and all information either party

provides to the other party hereunder that is either: (i) marked or otherwise identified at the time of disclosure as confidential or proprietary; or (ii) by its nature or the circumstances surrounding its disclosure should reasonably be considered as confidential or proprietary. Confidential Information includes, but is not limited to, price quotations, sales proposals, documentation, specifications, or any information relating to any project, marketing or business plans, or suppliers, customers, employees or investors, whether in written, oral, graphic or electronic form. Confidential Information will remain the property of the disclosing party. The parties to this Agreement will not, without the prior written consent of the disclosing party, publish, disclose or otherwise make available, directly or indirectly, any item of Confidential Information to any person other than its employees, agents, or contractors who have a need to know in the performance of their duties and who are under a similar written obligation limiting the use and disclosure of the disclosing party's Confidential Information. The receiving party further agrees that it will use the Confidential Information solely in connection with its obligations under this Agreement. The parties shall protect and maintain the confidentiality of all Confidential Information with the same degree of care as it employs to protect its own Confidential Information of like kind, but in any case by using at least a reasonable degree of care. Neither party will copy, duplicate, reverse engineer, reverse compile or attempt to derive the composition or underlying information of any Confidential Information. Confidential Information will not include any information which: (i) was in the receiving party's lawful possession prior to the submission thereof by the disclosing party; (ii) is later lawfully obtained by the receiving party from a third party under no obligation of confidentiality; (iii) is independently developed by the receiving party; (iv) is, or later becomes, available to the public through no act or failure to act by the receiving party; or (v) the receiving party is required to disclose in response to an order by a court or governmental agency or body, with respect to which the receiving party shall, if legally permissible, give prompt notice to the disclosing party of such order. Notwithstanding the foregoing, any information regarding the Services will be deemed to be the Confidential Information of 2ndGear, regardless of marking or identification.

19. **Change Control:** Proposed changes to any Schedule may be initiated by providing a written request to the other party. The parties will review the requested changes and advise the other party if the requested changes have been

accepted in whole or in part. Changes to a Schedule (including but not limited to the revised scope and the revised fees and expenses) will not be effective unless agreed to in writing by authorized representatives of both parties.

20. **Non-Solicitation:** Neither party will solicit the services of any employee or contracted partner's employee who may have performed Services under any Schedule until one year after the expiration or termination of the applicable Schedule, unless approved in writing by authorized representatives of both parties; provided, however, that nothing in the foregoing will prohibit either party from (i) engaging in general solicitations not directed at such persons; or (ii) soliciting any such person whose employment with the other party has been terminated prior to the commencement of the solicitation.
21. **Miscellaneous:** This Agreement, including any Schedules, will be governed by and construed in accordance with the laws of the State of California, including all matters of construction, validity, performance, and enforcement, but without regard to its conflict of laws provisions. 2ndGear and Customer specifically agree to submit to the exclusive jurisdiction of, and venue in, the courts in Orange County, California in any dispute arising out of this Agreement. ALL TRANSACTIONS UNDER THIS AGREEMENT EXCLUDE THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, IF OTHERWISE APPLICABLE. In the event of any conflict between this Agreement and a Schedule, this Agreement will govern. It is understood that the terms and conditions of this Agreement will take precedence over any terms and conditions set forth in Customer's purchase order. Terms and conditions on Customer's purchase order or other acknowledgment form, which are in addition to, or in conflict with this Agreement, will be of no force or effect. Neither this Agreement nor any Schedule may be assigned in whole or in part by Customer without the prior written consent of 2ndGear. Any attempted assignment in violation of this provision will be null and void. This Agreement, together with any Schedule, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous proposals, agreements or representations, written or oral, with respect to the subject matter hereof. No provision of this Agreement or any Schedule may be amended or modified, unless agreed to in writing by authorized representatives of both parties. The waiver by either party of any right, claim, default or breach of this Agreement will not constitute a waiver of any other or

subsequent right, claim, default or breach. If any provision of this Agreement or any Schedule is held to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect. In the event either party to this Agreement will elect to enforce the terms and conditions of this Agreement in any arbitration or litigation, the prevailing party will be entitled to recover from the other party its reasonable attorney's fees and costs, including those incurred on appeal, as determined by the arbitrator or court. Those terms and conditions which would, by their meaning or intent, survive the termination or expiration of this Agreement, will so survive. 2ndGear is an independent contractor and nothing in this Agreement or any Schedule will be construed to create a partnership, joint venture, or agency relationship between the parties.