

Vendor Terms and Conditions

These Vendor Terms and Conditions, together with all of the Orders, the Service Offering www.lucera.com/legal/service-offering-vendor.html, the Privacy Statement www.lucera.com/legal/privacy-vendor.html and the other documents referenced in these Vendor Terms and Conditions (as defined below) (collectively, the “Agreement”) set forth the terms and conditions governing Vendor’s use of and access to the Services (defined below), as well as Vendor offering, licenseing, providing access to or making available Vendor Product using the Services.

1. **Definitions.** As used in this Agreement:

“Additional Services” means, collectively, Services identified in the Service Offering, portal.lucera.com Order(s) or Provider’s invoice.

“Affiliates” means any person, company, partnership or entity controlled by, or controlling, or in common control with a party to this Agreement. A person, company, partnership or entity shall be deemed to control another person, company, partnership or entity if the former person, company, partnership or entity possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the other person, company, partnership or entity whether through the ownership of voting securities or partnership interests, representation on its board of directors or similar governing body, by contract or otherwise.

“Authority” means any government agency or instrumentality, regulator, Market or self-regulatory organization.

“Applicable Laws” means any and all applicable statutes, laws, rules, regulations, codes, ordinances, requirements and restrictions of any Authority of: (a) Vendor’s jurisdiction; (b) the jurisdiction of Provider’s relevant companies with which Vendor does business; (c) the jurisdiction which Provider deems any Services to be accessed or used by you; and (d) the jurisdiction in which Vendor receives any Services.

“Claims” has the meaning set forth in Section 12.

“Expense” has the meaning set forth in Section 12.

“ICDR” has the meaning set forth in Section 24(i).

“Machine” is defined in the Service Offering Vendor Infrastructure-As-A-Service (“Vendor IaaS”) Service portal.lucera.com .

“Market” means, individually, and “Markets” means, collectively, any and all exchanges, markets, execution venues, ECNs (electronic trading networks), MTFs (multilateral trading facilities), ATSS (alternative trading systems) or order matching systems.

“Order(s)” means the order(s) for the applicable service(s) that Vendor elects to obtain from Provider and Provider agrees to provide to Vendor, which include(s) any changes or additions to the service(s) previously selected by Vendor and provided by Provider pursuant to any Order.

“Passwords” has the meaning set forth in Section 3.

“PII” has the meaning set forth in Section 7.1.

“Provider” means Lucera Infrastructures, LLC (or its successor-in-interest).

“Provider Entities” means, collectively, Provider, its Affiliates and its and their respective officers, directors, employees, partners, representatives and agents.

“Recurring Fees” means the fees set forth on the applicable Order(s) or Provider’s invoice, as such fees may be modified, from time to time, by Provider’s notice to Vendor.

“Rules” has the meaning set forth in Section 24(i).

“Service” means, individually, and “Services” means, collectively, the Vendor IaaS Service and the Additional Service(s) or, in the event that none are selected, Vendor IaaS Service as described in the Service Offering portal.lucera.com.

“Service Term” means, subject to the termination rights of Provider and Vendor set forth in the Agreement, the length of the term for the particular Service and, in case of Vendor IaaS Service, for each Machine, which if not otherwise designated in the Order shall be month-to-month, i.e., shall commence on the date the Service is first activated by Provider, shall continue through the last day of the calendar month immediately following the calendar month in which the such activation date falls and shall extend automatically in equal periods of one calendar month each, unless terminated by either party by a written (at least one calendar month long) notice to the other party.

“Service Offering” are the terms and conditions governing Vendor IaaS Services www.lucera.com/legal/service-offering-vendor.html.

“Source” means, individually, and the term “Source(s)” means, collectively, direct and indirect third party or affiliated licensors, vendors, service providers, subcontractors and sources of (i) any of the Services, or any part thereof, or (ii) any system, software, products, services, materials, content, data, applications, hardware or Markets accessible through or using the Services, in each case (i) or (ii) above, whether the same is provided directly to Vendor or through Provider or any third party or accessible on or using the Services.

“Territories” means the United States of America (excluding its territories and possessions), the United Kingdom and such other countries as mutually agreed upon in writing by Vendor and Provider.

“Variable Fees” means the fees set forth on the applicable Order(s) or Provider’s invoice, as such fees may be modified, from time to time, by Provider’s notice to Vendor.

“Vendor” means the entity which is agreeing to this Agreement.

“Vendor Agreement” means a written agreement (in a form acceptable to Provider) between Vendor and a Vendor Customer accessing and using the Vendor Product.

“Vendor Customers” means, collectively, customers of Provider and Vendor who have (i) been activated by Vendor (using the Service) to access and use the Vendor Product and (ii) executed the Vendor Agreement.

“Vendor Devices” means Vendor’s electronic devices accessing or using the Vendor IaaS Service.

“Vendor Product” means systems, connectivity, communications facilities, software, products, services, materials, content, data and applications, provided accessible, licensed and/or made available by Vendor on or using the Service.

“All” includes “any”, “any” includes “all” and “include(s)” and “including” mean “including without limitation.”

2. **Scope of Services.** Subject to the terms and conditions set forth in this Agreement and upon confirmation from Provider that the applicable Service has been activated for Vendor, Vendor shall have the right to (and may enjoy) virtual use of and access to the Services in the Territories for the duration of the applicable Service Term. Vendor shall (i) virtually use and access the Services, in each case, solely within the Territories during the Term at Vendor’s premises on the Vendor Devices and for Vendor’s internal business purposes only; and (ii) ensure that the Services provided to Vendor shall be used and accessed solely by Vendor and Vendor shall not permit any other person or entity to directly or indirectly use or access the Services and/or Vendor Product without Provider’s signed prior written consent. Vendor shall ensure that any users of the Services on behalf of Vendor comply with the terms and conditions of this Agreement, and Vendor shall be fully responsible for such users’ acts and omissions. Vendor acknowledges and agrees that all aspects of the Services (in each and every case as currently existing and as hereafter modified, developed, prepared, customized, purchased, licensed, acquired or otherwise received, conceived, made or suggested, including individually or jointly with the Vendor, Provider, or its or their Representatives, including all such developments as are originated or conceived during the Service Term but are completed or reduced to practice thereafter, regardless of whether the Vendor contributed to the development of or payment therefore) are commercially valuable proprietary products and trade secrets of Provider and/or Source(s), as applicable, which, except to the extent expressly permitted by Provider in writing on a case by case basis, may not be, directly or indirectly, used or accessed by or disclosed to (x) anyone who is not employed or retained by the entity which is agreeing to this Agreement or (y) any third party. Vendor agrees not to take any action to challenge the validity of, oppose or otherwise interfere with any intellectual property rights of Provider Entities and/or Source(s) in or related to any or all aspects of the Services or any system, software, content, data or Markets accessible through or using the Services, including opposing issuance of any patent applications of any Provider Entities and/or Source(s), or opposing or taking any action to challenge the validity of any issued patents of the Provider Entities and/or Source(s). Without limiting the foregoing and in addition thereto, Vendor agrees (i) to hold in confidence and to maintain as confidential any and all proprietary or non-public information Vendor receives, learns or has access to in connection with the Services and/or this Agreement or Provider discloses to Vendor and, for purposes of the same, to use the same standard of care that the Vendor applies to protect its own confidential information (but which in any event shall be not less than a reasonable standard of care); (ii) not to disclose any such information to any third party without the prior written approval of Provider; (iii) not to make any use of any such information except as necessary to receive the Services provided under this Agreement; and (iv) in the absence of Provider’s express written consent, not to use, develop, market, obtain, exploit or implement any such information or any derivatives thereof with or from any and all

party(ies) other than the Company. In addition, Vendor shall not (a) remove, modify or obscure any disclaimer or copyright or trademark notice contained in or on any Service or in or on anything copied or downloaded from any Service or accessed through or using the Service, (b) reverse engineer, disassemble, de-compile (except to the extent that such activity is expressly permitted by applicable law), or create derivative works of (or use any other means to attempt to discover or to discover source code contained in) any Service or any system, software, content, data or Markets accessed through or using the Services; (c) use any system, software, content, data or Markets installed or received on the Vendor Devices on any server(s), PC(s) or any other hardware other than Vendor Devices; or (d) use the Services to provide timeshare, service bureau, application service provider or similar services. Vendor shall promptly notify Provider if Vendor becomes aware of any violation of or attempt to violate the terms of this section. Without limiting the foregoing and in addition thereto, Vendor acknowledges that Vendor's possession, access, or use of the Services and/or Microsoft Products does not transfer any ownership of the Services and/or Microsoft Products, as applicable, any intellectual property rights therein to Vendor.

3. **Accounts and Passwords.** Provider may provide Vendor with identifiers, security devices or prescribe security procedures relating to use or access to some or all of the Services, which may include, but may not be limited to, any digital certificate(s), unique identifiers, user name(s) or password(s) under separate cover which may be required to access or use the Services (collectively, "Passwords"). Vendor agrees that (i) Vendor shall not, nor shall Vendor permit any other person to, remove, modify, exchange, disable, penetrate or otherwise defeat any such Passwords or security procedures, (ii) Vendor will take all necessary actions to preserve the confidentiality of such Passwords and security procedures, (iii) Vendor shall restrict access to the Passwords and the Services to those persons who are duly authorized to have such access on Vendor's behalf; (iv) Vendor is responsible for ensuring that all information contained in any request for a Password is complete and correct; (v) Vendor is responsible for all acts or omissions that occur under any Password; and (vi) Vendor shall notify Provider immediately in writing in the event that Vendor learns that: (a) any such Password is lost, stolen, or improperly disclosed to any party; (b) the authority or employment of any user provided with a Password has been or is about to be terminated; (c) the confidentiality of any Password has been compromised in any way; (d) Vendor learns about a possible or actual unauthorized access to or use of the Services; or (e) Vendor's membership, regulatory license or other license or authorization required for Vendor's use of the Services or of any system, software, content, data or Markets accessible through or using the Services is terminated, revoked or suspended.
4. **Modification of Terms; Vendor's Obligations.** A. Provider, at any time (i) with or without notice, may monitor, modify any aspect of, limit, suspend or terminate Vendor's use of or access to any or all of the Services or, on request of the Authority or the applicable Source, any system, software, content, data or Market accessible through or using the Services; and (ii) upon notice to Vendor, shall have the right to modify any applicable charges or fees. Notwithstanding anything set forth in this Agreement, Provider has the right to modify the terms and conditions of this Agreement including as may be necessary to accommodate changes to the Applicable Laws and/or the requirements or practices of any Sources or any Markets effective upon posting such modified terms and conditions at **www.lucera.com** and/or sending by e-mail. For avoidance of doubt, Vendor represents and warrants that it has obtained all required hardware, approvals, permissions, licenses and authorizations

from the Sources to the extent necessary for Vendor to access and use the Services or any system, software, content, data or Markets accessible through or using the Services. Vendor acknowledges and agrees that Vendor is responsible for all connectivity to and from the Services including through cables, virtual private networks, the internet or other means, including establishing and maintaining all of the foregoing.

B. Vendor shall ensure that the Vendor Agreement and any and all other agreements between the Vendor and Vendor Customer related to the Services and/or Vendor Products contain provisions that (i) name Provider as an express third party beneficiary of the Vendor Agreement, (ii) include disclaimers of warranties and limitations of liability provisions that are as protective of Provider as they are protective of Vendor, but no less protective than the provisions of this Agreement, (iii) permit Provider to immediately and without notice terminate and/or suspend access and use of the Vendor Product, and (iv) state that in the event of any conflict between the provisions, terms or conditions of this Agreement and those of the Vendor Agreement or such other agreements, the provisions, terms or conditions of this Agreement shall govern and control, and the terms of the Vendor Agreement and such other agreements shall be modified hereby.

5. Fees.

5.1 General Payment Terms. Vendor agrees to pay any and all fees and charges to Provider and shall ensure that Provider receives such payment: (i) for Recurring Fees for Services, on a monthly basis in advance of the first day of each calendar month during the Service Term and (ii) for Variable Fees for Services, if any, within thirty (30) days from the date of Provider's invoice. A breach of this Section 5.1 shall be deemed a material breach of this Agreement.

5.2 Additional Fees. Vendor is solely responsible for any and all bank fees, interest charges, finance charges, over draft charges, and other fees and charges associated with access to or use of the Services using its account with Provider and/or the Passwords and the payment of all fees and charges for such Services. Without limiting the foregoing and in addition thereto, (i) all fees for Services are exclusive of applicable taxes and, except for taxes based on Provider's net income, Vendor is solely responsible for payment of (and shall promptly pay) all applicable value added, consumption, sales, use, excise, access, bypass, franchise, regulatory or other taxes, fees, charges or surcharges, whether now or hereafter enacted, however designated, imposed on or based on the provision, sale or use of the Services and Vendor Product; and (ii) if Vendor is required to deduct or withhold any taxes, or if any taxes are required to be paid by Provider solely on account of the Services performed hereunder, Vendor will pay to Provider such additional amounts as will be required so that the net amount received by Provider from Vendor after such deduction, withholding or payment will equal the amounts otherwise due to Provider under this Agreement. To the extent Vendor is or believes it is exempt from payment of certain taxes, it shall promptly provide to Provider a copy of a valid exemption certificate with regard thereto. (To the extent applicable, where paid using credit card, currency exchange settlements will be based on agreements between Vendor and the provider of Vendor's credit card.) Without limiting anything set forth in this Agreement and in addition thereto, Provider does not give pro-rated refunds for unused time including if cancellation, suspension or termination is initiated during a billing cycle. Vendor shall be responsible for any and all fees, costs and expenses incurred by Provider that are associated with collection of any fees or charges (including reasonable attorney fees) owed by Vendor hereunder. Provider shall have the right to charge a late fee on delinquent payments from the date such amounts were due until paid, at a rate equal to the lesser of (a) the maximum

amount chargeable by law, or (b) 1½% per month.

5.3 Billing Questions. If Vendor has any questions regarding fees or billing, Vendor shall notify Provider in writing immediately. Absent such notice, Provider will have the right to assume that all invoices and billing information is correct.

5.4 Vendor Fees. Within sixty (60) days following receipt by Provider of the applicable payments by Vendor Customers to Provider for the Vendor Products, if any, Provider shall pay to Vendor, subject to Provider's right to set-off, an amount equal to a percentage of such payments (such percentage to be set forth in the applicable Order).

6. Compliance with Applicable Laws. Vendor hereby assumes full responsibility for, and shall ensure compliance with, (i) any Applicable Laws that may apply to (a) the access to or use of any of the Services by Vendor, through Vendor's account and/or by any other person who accesses or uses any of the Services under a Password; or (b) any communication to or from Vendor, through Vendor's account and/or by any other person who accesses or uses the Services under a Password; and (ii) any requirements of Provider and any of the Authorities, Sources and/or Markets.

7. Use of Information.

7.1 Personally Identifiable Information. Provider agrees to treat any personally identifiable information of a natural person using the Services provided by the Vendor to Provider ("PII") in accordance with the Privacy Statement.

7.2 Content and Data. Notwithstanding anything set forth in this Agreement and in addition thereto, Provider shall have the right to use and disclose any content or data (including names of Vendor Customers) provided by Vendor through the Services to the extent necessary for Provider to make the Services available and/or pursuant to Applicable Laws or requirements of the Authorities, Sources and/or Markets.

7.4 Performance Data. Notwithstanding anything set forth in this Agreement and in addition thereto, Provider shall have the right to collect and use any and content, and data collected with respect to performance of the Services and/or other statistical information gathered through the Services.

8. Use of the Services. Vendor represents and warrants to Provider that any and all person(s) using or accessing any Services through Vendor's account and/or using any Passwords is fully trained in the use of such Services, is aware of the difficulties, limitations and risks relating to such access and use, and is familiar with and will abide by all Applicable Laws and requirements of the Authorities, Sources and/or Markets. Vendor acknowledges and agrees that Vendor shall be responsible for Vendor Customers' use of and access to the Services and Vendor Products and Vendor Customers' compliance with this Agreement as if they were Vendor hereunder.

9. Term, Termination and Survival. Each Service may have its own Service Term, which unless otherwise specified in the applicable Service Offering or Order(s), shall commence on the date of first activation by Provider and continue for the Service Term unless terminated in accordance with this Agreement. The term of this Agreement shall commence coterminously with Provider receiving Vendor's consent to this Agreement and shall

continue until terminated pursuant to terms set forth in these Vendor Terms and Conditions. Provider shall have the right to suspend or terminate any Service Term and/or this Agreement immediately upon Vendor's failure to pay any amounts due hereunder without any obligation to provide notice to Vendor. Either party shall have the right to terminate the applicable Service Term (and Provider shall have the right to terminate this Agreement) upon prior written notice to the other party if the other party has materially breached this Agreement and has not cured such breach within thirty (30) days following such notice. Notwithstanding the foregoing, the provisions of Article 2, 5 and 7 and Articles 9 through 24 and Section 4(B), in each case, of this Agreement, and Sections 3 and 4 of the Service Offering and any other Articles, Sections or attachments of this Agreement that by their nature may reasonably be presumed to survive any termination or expiration of this Agreement, shall so survive.

10. **Access.** Provider shall have the right, upon reasonable advance notice, to obtain access to premises, systems, records and other information as may be necessary for the purpose of auditing the records and practices related to access to and/or use of the Services, Vendor Products or access to and/or use of any system, software, content, data or Markets in connection with or accessible through the Services.

11. **Disclaimer of Warranties.** A. PROVIDER ENTITIES AND SOURCES HEREBY EXPRESSLY DISCLAIM ANY AND ALL IMPLIED OR EXPRESS WARRANTIES, GUARANTIES, CONDITIONS, COVENANTS AND REPRESENTATIONS RELATING TO THE SERVICES OR ANY PROPRIETARY OR THIRD PARTY TECHNOLOGY, HARDWARE, SYSTEM, SOFTWARE (INCLUDING OPEN SOURCE SOFTWARE), DATA, CONTENT OR SERVICES PROVIDER ENTITIES AND/OR SOURCE(S) MAY USE TO PROVIDE ANY SERVICES TO VENDOR INCLUDING MERCHANTABILITY, QUALITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, TIMELINESS, CURRENCY, ABSENCE OF VIRUSES OR DAMAGING OR DISABLING CODE. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES THAT ANY SERVICES OR ANY USE OF OR ACCESS TO ANY PORTION OF SUCH SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN SUCH SERVICES WILL BE CORRECTABLE OR CORRECTED. PROVIDER HAS NO RESPONSIBILITY TO INFORM VENDOR OF ANY DIFFICULTIES PROVIDER OR ANY THIRD PARTY EXPERIENCES CONCERNING USE OF OR ACCESS TO THE SERVICES OR TO TAKE ANY ACTION IN CONNECTION WITH THOSE DIFFICULTIES. UNLESS OTHERWISE REQUIRED BY APPLICABLE LAWS, PROVIDER ENTITIES ALSO HAVE NO DUTY OR OBLIGATION TO VERIFY, CORRECT, COMPLETE OR UPDATE ANY INFORMATION DISPLAYED IN OR AVAILABLE THROUGH THE SERVICES. THE SERVICES ARE BEING PROVIDED "AS IS" AND VENDOR ASSUMES THE ENTIRE RISK.

B. VENDOR HEREBY RELEASES PROVIDER ENTITIES AND/OR SOURCE(S) FROM ANY AND ALL CLAIMS (AS DEFINED BELOW) FROM EXPENSE (AS DEFINED BELOW), INCLUDING PERSONAL INJURIES, DEATH AND PROPERTY DAMAGE, ARISING IN CONNECTION WITH OR AS A RESULT OF THIS AGREEMENT OR PAST OR CURRENT USE OF OR ACCESS TO ANY OF SERVICES. TO THE EXTENT APPLICABLE, VENDOR HEREBY WAIVES CALIFORNIA CIVIL CODE SECTION 1542, WHICH STATES, "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,

WHICH, IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

C. EXCEPT AS OTHERWISE PROVIDED IN THE IMMEDIATELY PRECEDING SECTION, VENDOR ACKNOWLEDGES AND AGREES THAT THE PROVIDER ENTITIES’ TOTAL AGGREGATED LIABILITY (WHETHER ARISING UNDER CONTRACT, NEGLIGENCE, TORT, BREACH OF STATUTORY DUTY OR OTHERWISE) TO VENDOR, SOURCES OR ANY THIRD PARTIES SHALL NOT EXCEED THE FEES ACTUALLY PAID BY VENDOR TO PROVIDER DURING THE ONE (1) MONTH PERIOD IN WHICH THE CLAIM FIRST AROSE.

D. IN ANY EVENT, PROVIDER ENTITIES SHALL HAVE NO LIABILITY (WHETHER ARISING UNDER CONTRACT, NEGLIGENCE, TORT, BREACH OF STATUTORY DUTY OR OTHERWISE) TO VENDOR, SOURCES OR ANY THIRD PARTY FOR ANY LOSS OF PROFIT, LOST BUSINESS, LOSS OF REVENUE OR OPPORTUNITY (IN EACH CASE, WHETHER DIRECT OR INDIRECT), OR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.

E. VENDOR ACKNOWLEDGES AND AGREES THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN PROVIDER ENTITIES AND VENDOR. THE FEES CHARGED BY PROVIDER FOR THE SERVICES REFLECT AND ARE SET IN RELIANCE UPON THIS ALLOCATION OF RISK AND THE EXCLUSION OF DAMAGES SET FORTH IN THIS AGREEMENT.

12. **INDEMNIFICATION.** (A) VENDOR SHALL INDEMNIFY AND HOLD HARMLESS ALL PROVIDER ENTITIES AND THE APPLICABLE SOURCE(S) AGAINST ANY AND ALL COSTS, EXPENSES, LOSSES, LIABILITIES, OBLIGATIONS, SETTLEMENT AMOUNTS, DAMAGES AND PENALTIES (COLLECTIVELY, “EXPENSES”), TO WHICH ANY SUCH PROVIDER ENTITIES OR THE APPLICABLE SOURCE(S) MAY BECOME SUBJECT INCLUDING, WITHOUT LIMITATION, REASONABLE LEGAL AND OTHER PROFESSIONAL FEES INCURRED IN INVESTIGATING, DEFENDING OR APPEALING PENDING OR THREATENED CLAIMS, ACTIONS, SUITS, PROCEEDINGS, ARBITRATIONS OR CAUSES OF ACTIONS (COLLECTIVELY, “CLAIMS”) ARISING OUT OF OR RELATING TO: (i) USE OF OR ACCESS TO THE SERVICES INCLUDING OFFERING OR MAKING AVAILABLE VENDOR PRODUCTS USING THE SERVICES; (ii) ANY BREACH OF THIS AGREEMENT OR FAILURE BY VENDOR TO CARRY OUT ANY REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR RESPONSIBILITIES HEREUNDER; (iii) VENDOR’S FAILURE TO COMPLY WITH APPLICABLE LAWS; OR (iv) ANY INTRODUCTION OF VIRUS, WORM, TROJAN HORSE, MALICIOUS CODE, DISABLING CODE OR OTHER EXECUTABLES INTO THE SERVICES, IN EACH CASE, EXCEPT TO THE EXTENT A COURT OF APPLICABLE JURISDICTION FINDS IN A NON-APPEALABLE JUDGMENT THAT SUCH EXPENSES RESULTED DIRECTLY AND PRIMARILY FROM PROVIDER’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(B) WITHOUT LIMITING THE FOREGOING AND IN ADDITION THERETO VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS ALL PROVIDER ENTITIES AND THE APPLICABLE SOURCE(S) AGAINST ANY AND ALL EXPENSES, TO WHICH ANY SUCH PROVIDER ENTITIES OR THE APPLICABLE SOURCE(S) MAY BECOME SUBJECT INCLUDING REASONABLE LEGAL AND OTHER PROFESSIONAL FEES INCURRED IN

INVESTIGATING, DEFENDING OR APPEALING CLAIMS ARISING OUT OF OR RELATING TO THE VENDOR PRODUCT OR VENDOR DEVICES OR, IN EACH CASE, ITS USE, SALE, DISCLOSURE, EXECUTION, REPRODUCTION, MODIFICATION, ADAPTATION, DISTRIBUTION, PERFORMANCE OR DISPLAY INFRINGING OR MISAPPROPRIATING ANY COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET OR OTHER FORM OF PROPRIETARY RIGHT OF ANY THIRD PARTY.

Provider shall give Vendor prompt notice of any such claim made against it (but the failure to give such notice shall not relieve Vendor of any of its obligations under this Section except to the extent Vendor is materially prejudiced thereby), shall allow Vendor control of the defense of any such Claim made against it (so long as any settlement (x) does not, without Provider's prior written approval, (A) involve the admission of any wrongdoing by any Provider Parties or any applicable Source(s), (B) restrict any Provider Parties' or any applicable Source(s)' future actions, or (C) require any Provider Party or any applicable Source(s) to take any action, including, without limitation, the payment of money, and (y) includes a full release of the Provider Parties and applicable Source(s)), and shall give Vendor reasonable assistance, at Vendor's expense, requested by Vendor in writing in connection therewith.

13. Cumulative Rights and Remedies; Binding Nature; Severability; Assignment.

Provider's rights and remedies and Vendor's obligations in this Agreement are cumulative. This Agreement shall be binding upon Vendor and Vendor's respective successors and assigns and inure to the benefit of Provider Entities, the Source(s) and their respective successors and assigns. Vendor shall have no right to assign this Agreement or subcontract or assign any of its rights or obligations under this Agreement without the prior written approval of Provider which Provider has the right to withhold in its sole discretion. Provider shall have the right to assign this Agreement, and/or subcontract or assign any of its rights or obligations under this Agreement, in each case, in whole or in part to any of Provider's Affiliates or an acquirer, in whole or in part, of any of the business or assets of Provider or any of its Affiliates. If any provision of this Agreement is declared or found to be invalid, illegal, unenforceable or void, then (i) the parties to this Agreement shall be relieved of all obligations arising under such provision, but only to the extent that such provision is invalid, illegal, unenforceable or void, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it valid, legal and enforceable while preserving its intent or, if that is not possible, by substituting therefor another provision that is valid, legal and enforceable and achieves the same objective, and (ii) the remaining provisions hereof shall be unimpaired and remain in full force and effect.

14. Agreement Modifications; Headings; Miscellaneous. This Agreement represents the entire understanding and agreement between Vendor and Provider and supersedes all prior agreements with respect to the subject matter hereof; provided, however, for clarity, to the extent that Vendor is required by Provider to agree to the terms of the Agreement with respect to the provisioning of new Services, changes to existing Services or for any other reason, then any then-existing Orders that have not otherwise been cancelled are not superseded but are added to the Agreement. This Agreement (i) may be executed in counterparts, (ii) may be modified pursuant to Section 4 and (iii) may be waived only by a written instrument duly executed by the officers of Provider and Vendor, respectively. Any failure by Provider at any time to enforce performance by Vendor of any provision of this Agreement shall in no way affect Provider's rights thereafter to enforce the same, nor shall the waiver by Provider of any breach of any provision hereof be deemed to be a waiver by

Provider of any other breach of the same or any other provision hereof. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Any and all headings in the text of this Agreement are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

15. **Force Majeure.** Provider shall not be liable for any failure to perform any of its obligations under this Agreement during any period in which such failure to perform arises directly or indirectly out of an act of nature, acts of the public enemy, embargoes, insurrection, riot, the intervention of any government authority or any other act beyond Provider's reasonable control. Without limiting the foregoing and in addition thereto, Provider shall not be responsible or liable for any delay or other failure to perform due to any or all act(s) or omission(s) of telecommunication providers, interconnection service providers, landlords, carriers, suppliers or any third parties or Sources.
16. **NOT FAULT TOLERANT.** THE SERVICES MAY INCLUDE OR PROVIDE ACCESS TO OR USE TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SERVICES OR SUCH TECHNOLOGY COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.
17. **Export Controls.** Vendor acknowledges and agrees that the Services, or a portion thereof, may be subject to the U.S. Export Administration Regulations and diversion, use or access contrary to U.S. law and regulation is prohibited. Vendor agrees to not directly or indirectly export, import or transmit the Services or Vendor Product to any country, end user or for any access or use that is prohibited by any applicable U.S. regulation or statute (including those countries embargoed from time to time by the U.S. government or the United Nations). Additionally, Vendor agrees to not directly or indirectly export, import, transmit access or use the Vendor Product or the applicable Services contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or use. Vendor represents and warrants that neither the United States Bureau of Industry and Export Administration nor any other governmental agency has (I) issued sanctions against (A) it or those who access or use any of the Services through Vendor's account; (B) it or those who access or use any of the Vendor Product, and/or (C) any other person who accesses or uses any of the Services under a Password or (II) otherwise suspended, revoked or denied its export privileges.
18. **Electronic Documents.** Vendor represents and warrants that Vendor has all consents, rights, authority, and have taken all actions necessary, to execute this Agreement and access and use the Services. Vendor acknowledges and agrees that Provider may seek consent to this Agreement by means of an electronic signature of Vendor by affirmatively clicking or checking a box or other similar means indicating acceptance to this Agreement. If a Vendor "clicks" on such box or uses such other means, Vendor's "click" or use of such other means will be deemed a legally binding electronic signature. Any such acceptance is deemed to be "in writing." For clarity, if Vendor's signature, agreement, consent or acknowledgment is required or requested in order to enter into the Agreement, Vendor's "click" or use of such other means will be deemed to have the same effect as if Vendor had

signed the document manually. Vendor acknowledges and agrees that through Vendor's "click" or use of such other means: (i) that Vendor intends to form a legally binding contract with Provider; (ii) that Vendor has read and agrees to the terms and conditions of this Agreement; (iii) that Vendor agrees and intends that this Agreement be the legal equivalent of signed, written contracts, and equally binding; (iv) that by electronically agreeing to this Agreement, Vendor acknowledges that Vendor has reviewed a copy of this Agreement through the web page where this Agreement is displayed; and (v) that the individuals executing this Agreement certify that they are authorized representatives, duly authorized, including where applicable, by all necessary action to agree to this Agreement on behalf of Vendor and to bind Vendor to this Agreement.

19. **Use of E-mail.** Vendor acknowledges that if Provider Entities use e-mail to communicate with Vendor, Provider Entities do so as an accommodation to Vendor and have no obligation whatsoever to accept instructions or cancellations via electronic mail. Use of e-mail necessarily involves certain risks, including but not necessarily limited to those referred to below. By using e-mail to communicate with Provider Entities' personnel Vendor is agreeing to assume all such risks. E-mail may not be secure, and communications through e-mail may not be confidential. In addition, Provider assumes no responsibility to update any information communicated through e-mail. Furthermore, even though any of Provider Entities' personnel has communicated with Vendor through e-mail recently, such person may not (and Provider assumes no obligation to) timely see, process, act on or respond to any message from Vendor through e-mail.
20. **Governing Law.** This Agreement will be governed and construed in all respects by the laws of the State of New York without giving effect to principles of conflicts of laws.
21. **Venue.** Any controversy between Vendor, any of Vendor's Affiliates or any of Vendor's or their partners, officers, directors or employees on the one hand, and Provider Entities or any of its partners, officers, directors or employees on the other hand shall be submitted exclusively to Federal or State courts in the State of New York (located in New York County). In addition, if for any reason the arbitration provisions described below do not apply or are waived, then any such controversy shall be submitted exclusively to Federal or state courts in the State of New York (located in New York County). Vendor consents (and shall cause Vendor's Affiliates and any of Vendor's or their partners, officers, directors or employees to consent) to personal jurisdiction in any such court for purposes of any such litigation. To the extent permitted by law, all parties to this Agreement hereby waive any right to trial by jury with respect to any claim or action.
22. **Microsoft™ Products.** Notwithstanding anything set forth in this Agreement and in addition thereto, Microsoft shall have no liability (whether arising under contract, negligence, tort, breach of statutory duty or otherwise) to Vendor for any damages, whether direct, indirect, or consequential arising from the products and services found at <http://www.microsoft.com/licensing/contracts> (collectively, "Microsoft Products"). All title and intellectual property rights in and to the Microsoft Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Microsoft Products) are owned by Microsoft or its suppliers. The Microsoft Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Vendor's possession, access, or use of the Microsoft Products does not transfer any ownership of the

Microsoft Products or any intellectual property rights to Vendor.

23. **Notices.** All notices hereunder to Provider shall be in writing and shall be deemed to have been given and received when (i) delivered personally (against receipt); or (ii) received by certified or registered mail, return receipt requested, postage prepaid; in each case, (i) and (ii) above, at the addresses set forth below or at such other address as Provider may specify in a notice pursuant to this Section: Lucera Infrastructures, LLC 110 East 59th Street, New York, NY 10022 with a copy to General Counsel at the same address.
24. **Arbitration.** At Provider's option, the following provision will apply in lieu of Section 21:
- i. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the International Centre for Dispute Resolution ("ICDR") in accordance with its International Arbitration Rules ("Rules"). Such Rules are deemed to be incorporated by reference into this clause.
 - ii. The parties acknowledge and agree that this Agreement concerns the international supply of goods, a cross-border transaction, or an international matter as contemplated by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
 - iii. The place of arbitration shall be New York, New York.
 - iv. The number of arbitrators shall be one, selected by agreement of the parties or, failing agreement, selected in accordance with the Rules.
 - v. The language to be used in the arbitral proceedings shall be English.
 - vi. The parties hereby waive formal service of process in and pursuant to the laws of their respective home jurisdictions and agree that notice pursuant to the address provided by Vendor is actual and legally sufficient notice of arbitration proceedings.
 - vii. The parties consent to the jurisdiction of the arbitrators to make interim orders or awards in the manner dictated by the applicable rules; the parties further agree to acknowledge and abide by any such interim orders or awards as if they were final "arbitral awards" within the meaning of Article 1 of the Convention on the Recognition and Enforcement of Foreign Arbitral Award or an "award of arbitrators" within the meaning of the Federal Arbitration Act, 9 U.S.C. 1 et seq.
 - viii. The parties agree to limit discovery in any arbitration proceeding to strictly document production; the parties agree that declarations from any witnesses proposed for any arbitral hearing shall be provided no fewer than sixty (60) calendar days before the hearing or, in the event of exigent circumstances, any such time as the arbitrator may order; the parties agree that they shall not be entitled to take any depositions or formal interviews under oath except as agreed upon by the parties.

(End of Vendor Terms and Conditions.)

Last updated: July 2015