

These Standard Terms and Conditions, including any Addenda (collectively, "Standard Terms") are incorporated by reference into the Order Form executed by Customer and Picogrid, Inc. ("Picogrid") and form a legally binding agreement between them and govern a Customer's use of the Products and receipt of Services (the Standard Terms and the Order Form, collectively referred to as the "Agreement").

STANDARD TERMS AND CONDITIONS

1. Certain Definitions.

1.1. "Customer Content" means any information, data, text, logos, pictures, or other materials or content provided by Customer in connection with Customer's use of the Product(s).

1.2. "Confidential Information" means all information disclosed by Picogrid to the Customer in connection with this Agreement which the Customer knew or reasonably should have known was the confidential information of Picogrid. Confidential Information shall not include information that (i) is publicly available through no fault of Customer, (ii) is independently developed by the Customer, or (iii) is rightfully obtained by the Customer from independent sources free from any duty of confidentiality.

1.3. "Intellectual Property Rights" means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

1.4. "Order" means the order through which Customer obtains a license or access right to certain Picogrid commercial software products and/or contracts for certain services from Picogrid.

1.5. "Order Form" means Picogrid's standard order form or Government Contract, Task Order or Delivery Order executed by both Customer and Picogrid that references the Standard Terms.

1.6. "Product(s)" mean Picogrid's proprietary Software (as defined below), "Picogrid Platform"

product, as specified by the Customer on the Order Form, including any updates, modifications, patches and upgrades thereto provided to Customer by Picogrid hereunder.

1.7. "Software" means the Picogrid proprietary commercial software, models, and algorithms, and any helpers, extensions, plug-ins, and add-ons, in any format, specified in the Order (and any related purchase orders, statement of work, or amendments, in each case incorporated into this Agreement) or provided in connection with this Agreement, any third-party software incorporated therein, and any improvements, modifications, derivative works, patches, Updates, and upgrades thereto that Picogrid provides in its discretion to Customer hereunder.

1.8. "Updates" means Product changes that Picogrid in its discretion implements in the generally available Products specified in the Order. Updates do not include platform capabilities, configurations, or modules not specified in the Order that Picogrid makes available for an additional charge.

1.9. Terms defined in the Order Form used herein shall have the meanings ascribed thereto in the Order Form.

2. Grant of License.

2.1. If Customer has selected an Evergreen License on the Order Form, the following terms of Section 2.1 apply:

Picogrid grants Customer during the Evergreen Term a non-transferable, non-exclusive, limited license, without any right to sublicense to use the Products solely for its internal purposes, and only (i) in accordance with the technical specification documentation provided to Customer by Picogrid with regards to the Product(s) ("Documentation"), and (ii) if specified, for the number of Picogrid Software specified in the Order, and (iii) for the purposes(s), configuration(s), and module(s) specified in the Order and any associated statement of work. The license(s) granted in the Order shall not be

fungible and shall not be reallocated or expanded by Customer for any purpose, configuration, or module not specified in the Order.

Customer grants Picogrid during the Evergreen Term a fully paid, royalty-free, irrevocable, worldwide, non-exclusive and fully sublicensable right (including any moral rights) and license to use, distribute, reproduce, modify, adapt, perform, and display Customer Content for the purposes of operating, providing, enhancing, improving, supporting, and maintaining the Product(s) for Customer.

2.2. If Customer has specified an Annual Term License on the Order Form, the following terms of Section 2.2 apply:

Picogrid grants Customer during the Annual Term a non-transferable, non-exclusive, limited license, without any right to sublicense to use the Products solely for its internal purposes, and only (i) in accordance with the Documentation provided to Customer by Picogrid, and (ii) if specified, for the number of Picogrid Software specified in the Order, and (iii) for the purposes(s), configuration(s), and module(s) specified in the Order and any associated statement of work. The license(s) granted in the Order shall not be fungible and shall not be reallocated or expanded by Customer for any purpose, configuration, or module not specified in the Order.

Customer grants Picogrid during the Annual Term a fully paid, royalty-free, irrevocable, worldwide, non-exclusive and fully sublicensable right (including any moral rights) and license to use, distribute, reproduce, modify, adapt, perform, and display Customer Content for the purposes of operating, providing, enhancing, improving, supporting, and maintaining the Product(s) for Customer.

3. Payment and Delivery.

3.1. Customer shall pay to Picogrid the fees stated in the Order Form, in accordance with the payment terms stated on the Order Form. All invoices shall be sent to Customer's address for invoices stated on the Order Form. Except as otherwise specified on the Order Form, Customer's payments shall be due within thirty (30) days after the invoice date.

3.2. Any late payment shall be subject to the Prompt Payment Act. On an annual basis, Picogrid may increase recurring fees for its Product (as applicable) or for Support Services as stated on the Order. All fees and other amounts paid by

Customer under this Agreement are non-refundable except for those portions of prepaid fees relating to support services for the Period after Customer's termination of such services (but only to the extent that early termination of such services is permitted under this Agreement).

3.3. Products are deemed delivered upon being made available to Customer for installation, or access.

4. Ownership.

4.1. Except for the limited license rights expressly provided herein, Picogrid retains all rights, title and interest in and to the Product(s), Documentation and any other related documentation or materials provided by Picogrid hereunder (including, without limitation, all Intellectual Property Rights embodied in any of the foregoing). This includes agreed upon rights outlined in the deliverables table in Section F of each Task Order. Customer acknowledges that it is obtaining only a limited license right to the Products, notwithstanding any reference to the terms "purchase" or "customer" herein. The Products are licensed and not sold, and no ownership rights are being conveyed to Customer under this Agreement. Customer will maintain the copyright notice and any other notices or product identifications that appear on or in any Products and any associated media.

4.2. All right, title, and interest in and to the Customer Content (including all Intellectual Property Rights embodied in the Customer Content) are and will remain the sole and exclusive property of Customer.

5. Restrictions.

5.1. Customer will not (and will not allow any third party to): (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any Product (except to the extent that applicable law expressly prohibits such a reverse engineering restriction); (ii) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use a Product for the benefit of any third party; (iii) list or otherwise display or copy any object code of any Product; (iv) copy any Product (or component thereof); (v) develop any improvement, modification or derivative work thereof or include a portion thereof in any other equipment or item; (vi) allow the transfer, transmission, export, or

re-export of any Product (or any portion thereof) or any Picogrid technical data; (vii) provide Customer Content that is infringing, libelous, disparaging, or is otherwise unlawful or tortious material, or store or transmit material in violation of any third-party's proprietary or privacy rights.

5.2. Notwithstanding the foregoing, or any statement to the contrary herein, portions of the Product may be provided with notices and open source licenses from such third parties that govern the use of those portions, and any licenses granted hereunder do not alter any rights and obligations Customer may have under such open source licenses; however, the disclaimer of warranty and limitation of liability provisions in this Agreement will apply to all such software in this Product distribution.

6. Confidentiality.

Customer shall not use Confidential Information for any purpose except as necessary to implement, perform or enforce this Agreement. Customer will use the same reasonable efforts as it uses to protect its own proprietary information and data (but in any event not less than a reasonable standard of care) to: (a) keep all Confidential Information strictly confidential; and (b) not disclose the Confidential Information to anyone other than its Authorized Recipients. Prior to disclosing the Confidential Information to its Authorized Recipients, Customer shall inform them of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. Customer will promptly notify Picogrid if Customer discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use or disclosure. If Customer believes the Confidential Information must be disclosed under applicable law, Customer may do so provided that, to the extent permitted by law, Picogrid is given a reasonable opportunity to contest such disclosure or obtain a protective order. Confidential Information disclosed prior to the Start Date shall be subject to the provisions of this Section 6.

7. Support Services.

7.1. Subject to the payment of the applicable fees set forth in the Order Form as they become due, Picogrid shall use commercially reasonable efforts to provide Customer with Support Services

as further set forth in the Order Form in accordance with this Agreement. If Customer elects to renew Support Services, Customer must renew Support Services in full. If Customer fails to pay by the end of the then-current Support Services Period, Customer shall be deemed to have cancelled Support Services and Picogrid shall no longer provide Customer with Support Services. Customer must reinstate Support Services after a period in which it was cancelled, provided (i) Picogrid then offers Support Services, and (ii) in order to receive Updates which Customer had not received due to cancellation, Customer pays Picogrid the current commercial Pricelist Support Services fee and any Support Services fee that would have been payable during the period during which Support Services fee was cancelled. Support Services fees shall be negotiated by Picogrid and Customer and at the conclusion of any applicable option period and/or Order period, shall default to the standard undiscounted rate available to customer via Picogrid's commercial Price List.

7.2. Picogrid shall have no obligation to support: (i) altered or damaged Product or any portion of a Product incorporated with or into other software; (ii) Product problems caused by Customer's negligence, abuse or misapplication, use of Product other than as specified in the Documentation, or other causes beyond the control of Picogrid; or (iii) Product installed on any hardware that is not supported by Picogrid. Picogrid shall have no liability for any changes in Customer's hardware, which may be necessary to use Product due a maintenance release.

8. Infrastructure Services.

8.1. Customer shall, at its expense, procure and maintain the computer hardware, systems software, and other items required for use of, or access to, the Product (the "Specified Configuration") and for updating the Specified Configuration in accordance with Picogrid's updates. If not yet completed, Customer shall complete its procurement and installation of the Specified Configuration prior to the Start Date. Customer shall devote all equipment, facilities, personnel and other resources to begin using the Product on a timely basis as contemplated by this Agreement.

8.2. To the extent reasonably necessary for Picogrid to perform its obligations under this Agreement, Customer shall provide to Picogrid

access to Customer's location site, equipment, data and employees, and shall otherwise cooperate with Picogrid in its performance hereunder.

8.3. To the extent that Customer uses Passwords to access the Product(s), Customer shall hold any such Passwords in strict confidence and shall not assign, share, misuse or abuse the Passwords or attempt to render ineffective the password protection of the Product. If Customer suspects or learns that a Password is being used to gain unauthorized access to the Product, Customer will immediately notify Picogrid so that it can change, or assist Customer in changing, the applicable Password.

8.4. At Picogrid's expense and upon written request with reasonable notice, Customer will permit Picogrid, its personnel or its outside auditors to enter the relevant Customer locations during normal business hours and audit the use of the Product(s). Such audits shall not occur more than once in any twelve (12) month period (unless Picogrid believes, in good faith, that there has been a breach of this Agreement by Customer) and shall be performed in a manner not to disrupt Customer's business and operations and will respect the confidentiality of Customer, its suppliers and customers. Customer will, in a timely manner, reasonably cooperate with the auditors and provide the auditors all assistance as they may reasonably request in connection with the audit. Customer may require auditors acting on behalf of Picogrid to execute reasonable confidentiality agreements and comply with Customer reasonable security requirements, but this requirement will not apply to internal auditors otherwise bound by the confidentiality conditions of this Agreement.

9. Professional Services.

In addition to any Support Services and Training discussed above, Picogrid, at its election, may provide Customer with additional services with respect to Customer's use of the Products ("Professional Services"), if the Customer requests any such services. Upon agreement by the Parties, such Professional Services shall be provided on pricing and terms set forth in writing in the Order Form.

10. Training.

Subject to payment of the applicable fees set forth in the Order, Picogrid agrees to provide

training services for the number of Customer personnel specified in the Order ("Training"), if any.

11. Customer Content.

11.1. Customer acknowledges that all Customer Content is the sole responsibility of the Customer. Customer, and not Picogrid, is entirely responsible for all Customer Content that Customer uploads, posts, transmits or otherwise makes available through the Services.

11.2. Customer represents that Customer owns and/or has all license rights necessary to use, license, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, derive revenue or other remuneration from, communicate, perform and display Customer Content in the manner Customer will use such Customer Content on or through the Services.

12. Term and Termination.

12.1. Term. This Agreement shall commence on the Start Date and remain in effect for the period of time set forth below.

(a) If Customer has specified an Evergreen License, this Agreement shall continue for so long as the Customer elects to receive Support Services and pays all applicable Fees (the "Evergreen Term").

(b) If Customer has specified an Annual License, this Agreement shall continue for one (1) year ("Initial Term"). The Customer, at its option, may elect to renew this Agreement in one-year increments under the same terms and conditions ("Renewal Term," and together with the Initial Term, (the "Annual Term"); provided however, that Customer has provided written notice to Picogrid at least ninety days prior to the date of expiration of its intention to renew the Agreement and Customer has met its payment obligations under Section 3 of this Agreement.

13. Termination

The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Customer except as specifically agreed upon by all parties. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance.

14. Effect of Termination

The provisions of Sections 4, 5, 6, 15, 16, 17, 18 and 19 shall survive any termination of this Agreement, whether under this Section 14 or otherwise. Customer shall be liable for all payments due to Picogrid for the period ending on the date of termination. Upon termination of this Agreement, whether under this Section 14 or otherwise, or upon the expiration or termination of a Term, Customer shall: (a) discontinue all use of the affected Product(s) and Documentation; (b) promptly return to Picogrid all copies of the affected Product(s) and Documentation then in Customer's possession; and (c) give written notice to Picogrid certifying that all copies of such items have been permanently deleted.

15. Indemnification.

15.1. Picogrid shall indemnify and hold harmless Customer from and against damages, costs, and attorneys' fees, if any, finally awarded against Customer from any claim of infringement or violation of any U.S. patent, copyright, or trademark asserted against Customer by a third party based upon Customer's use of the Products in accordance with the terms of this Agreement, provided that Customer shall: (i) provide Picogrid notice of such claim within ten (10) days of Customer receiving written or oral notice of such claim (whether or not the subject of a formal action), and (ii) promptly update Picogrid of all filings, communications and developments regarding the claim and consult with Picogrid in the defense and/or settlement of such claim, provided that Customer shall not enter into any settlement that binds Picogrid without Picogrid's prior written consent. The foregoing indemnification obligation of Picogrid shall not apply (1) if the claim is based in whole or in part on Customer Content or caused by Customer's misconduct or negligence; (2) if the Products are modified by any party other than Picogrid; (3) if the Products are modified by Picogrid at the request of Customer; (4) if the Products are combined or used with other non-Picogrid products or processes not authorized by Picogrid; (5) to any unauthorized use of the Products; (6) to any superseded release of the Products; or (7) to any third party software code contained within the Products. Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has

the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

15.2. If Customer's use of any of the Products are, or in Picogrid's opinion is likely to be, enjoined due to the type of infringement specified above, or if required by settlement, Picogrid may, in its sole discretion: (a) substitute for the Products substantially functionally similar products; or (b) procure for Customer the right to continue using the Products. If Picogrid reasonably determines that options (a) and (b) are commercially impracticable, Picogrid may suspend provision of the Products or Services or terminate this Agreement and refund to Customer, a license fee paid hereunder for an Evergreen License by Customer as reduced to reflect a four year, straight-line amortization from the date on which such Products were first delivered by Picogrid, or refund to Customer a pro-rated portion of the license fee paid for an Annual License that reflects the remaining portion of the Term at the time of termination.

15.3. In the event of a claim (whether or not the subject of a formal action) or in Picogrid's opinion, likely claim, that may subject Picogrid to liability arising out of any Customer Content (including without limitation any third party claim that any Customer Content is inaccurate, false, misleading, disparaging, infringing or a misappropriation, as applicable, of any intellectual property rights of a third party or violates any law, rule or regulation), then Customer agrees to promptly cease using the offending Customer Content with the Product, or if arising out of any of the conditions set forth in Section 15.1(1) through (6), then Customer agrees to promptly cease such activity so that such conditions no longer exist.

15.4. THIS SECTION 15 SETS FORTH PICOGRID'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

16. Disclaimer of Warranties.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCT(S) AND DOCUMENTATION ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, WITH RESPECT TO ANY MATTER WHATSOEVER.

PICOGRID EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY, TITLE, QUALITY, ACCURACY, AND FITNESS FOR ANY PARTICULAR PURPOSE. PICOGRID EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON CUSTOMER'S USE OF THE PRODUCT.

17. Limitation of Liability.

IN NO EVENT WILL PICOGRID BE LIABLE FOR ANY LOSS OF DATA, LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY, LOST REVENUE, OR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT, BASED ON ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PICOGRID'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING ALL ORDERS, SHALL UNDER NO CIRCUMSTANCES EXCEED THE FEES ACTUALLY PAID BY CUSTOMER IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM OF LIABILITY.

18. Government Matters.

The Product, Upgrades, Support Services, Training, and Professional Services created by Picogrid are "commercial items" as defined at 48 C.F.R. 2.101, consisting of commercial computer software, commercial software documentation and commercial services. All Products, Software, and Upgrades provided to the U.S. Government are provided with the commercial license rights and restrictions described in this Agreement. If acquired by or on behalf of a civilian agency of the U.S. Government, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the FAR and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This Agreement, consistent with 48 C.F.R. 12.212 and

48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision of the contract under which this Software, Upgrades, and Products are obtained solely with respect to the U.S. Government's rights in computer software, computer software documentation or technical data. Since Customer or end user is a U.S. governmental entity, then Customer acknowledges and agrees that its (i) use, duplication, reproduction, release, modification, disclosure, or transfer of the Products, Upgrades and any related documentation of any kind, including, without limitation, technical data and manuals, will be subject to the terms and conditions of this Agreement; (ii) the Products, Upgrades and documentations were developed fully at private expense and (iii) all other use of the Products, Upgrades and documentation except in accordance with the license grant provided herein are strictly prohibited.

19. Entire Understanding.

This Agreement, Contract and Order Form states the entire understanding between the Parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the Parties with respect to the subject matter of this Agreement.

20. Force Majeure.

Neither party shall be in default or liable for any delay or failure of compliance with these Standard Terms due to any event which is beyond the control of the defaulting party including, without limitation, fire, flood, hurricane, tornado, earthquake, war, embargo, riot or an unforeseeable intervention of any government authority ("Force Majeure Event") provided the party relying on such Force Majeure Event promptly notifies the other party of such delay or failure of compliance.

21. Technology Export.

Customer shall comply with all applicable export related laws and regulations, both foreign and domestic. Such laws include, but are not limited to, the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), the trade sanctions administered by the Office of Foreign Assets Control (OFAC), and the Antiboycott Regulations administered by the US Departments of Commerce and Treasury.

Customer shall not export or re-export directly or indirectly (including via remote access) any Product(s) or Documentation (or parts thereof) to any applicable jurisdiction or entity prohibited by law or to which a license is required without first obtaining an appropriate license from the applicable regulatory authority. Customer will not provide to Picogrid any Products or Documentation, including technical data subject to the ITAR, that is either prohibited for export or subject to export licensing requirements under applicable law without first expressly notifying Picogrid in writing that Customer wishes to make such a transfer, and obtaining Picogrid's express written consent to such transfer. Customer will defend, indemnify and hold harmless Picogrid from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors, or employees.

no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. This Agreement shall be governed by and construed in accordance with United States Federal law.

22. Miscellaneous.

Neither this Agreement, nor the rights granted herein are assignable or transferable by the Customer; any attempt to do so shall be void. Picogrid may assign the Agreement in whole or in part. Any notices required or permitted under this Agreement shall be in writing and sent by first class U.S. mail to the address specified in the Order Form. The relationship between the Parties under this Agreement is that of independent contractors and not partners, joint venturers or agents. Picogrid may utilize and/or make available third-party services in the provision of the Products and processing of Content (each a "Third-Party Service"). Such Third-Party Services may be set forth in the Documentation or otherwise be mutually agreed by and between the Parties. Picogrid is not responsible and liable for any Third-Party Service (including without limitation, uptime guarantees, outages, or failures). It is Customer's responsibility to provide Picogrid with the necessary information for Picogrid to comply with applicable requirements, and to ensure that all end-uses and end-users relating to Customer's reexports and retransfers of the Products, Documentation, and Support and Maintenance comply with applicable controls. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each Party. No waiver by any Party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement,