

The Business Courts of Texas
First Division

TILSON TECHNOLOGY
MANAGEMENT, INC.

Plaintiff,

v.

GIGAPOWER, LLC

Defendant.

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Cause No. 25-BC01B-0032

PLAINTIFF’S ORIGINAL PETITION

I. INTRODUCTION

Before its 2022 Agreement with Gigapower, Tilson was one of America’s fastest growing private telecommunications firms with hundreds of millions of dollars in annual revenue and over 1,000 employees nationwide. Tilson built this success—and grew from a handful of employees in 2007—by hiring military veterans and prioritizing its “SCRAPI” core values of Safety, Composure, Respect, Accountability, Professionalism, and Integrity.

Gigapower is a joint venture between two of America’s largest companies—AT&T, Inc. and BlackRock, Inc.—to build and own fiber networks that Gigapower leases to retail operators, including AT&T customers, to sell services to customers.

In 2022, Gigapower contracted with Tilson to build approximately \$600 million of fiber networks in Nevada and Arizona—Tilson’s largest ever contract. As Tilson labored and spent hundreds of millions of dollars to deliver the fiber networks, Gigapower delayed, and at times withheld, payment as a tactic to gain leverage over Tilson and to force Tilson to renegotiate rates.

Gigapower tried to coerce Tilson into accepting new contract terms, including lower payments and a reduced scope of work. When Tilson refused, Gigapower terminated Tilson's major scope of work under the Agreement "for convenience."

The sudden and abrupt loss of Tilson's largest contract and scope of work compounded the cash crunch and resulted in Tilson laying off hundreds of employees—many of them veterans—and ultimately filing for Chapter 11.

Tilson now files this lawsuit to recover the termination charges, underpayments, and missed payments that Gigapower owes Tilson under the Agreement.

II. PARTIES

1. Tilson Technology Management, Inc. ("Tilson") is a corporation organized under the laws of the State of Maine with its principal place of business in Portland, Maine.

2. Gigapower, LLC ("Gigapower") is a limited liability company organized under the laws of the State of Delaware with its principal place of business in Dallas, Texas. Upon information and belief, the members of Gigapower include:

- Teleport Communications America LLC, a Delaware limited liability company. The sole member of Teleport Communications America, LLC is AT&T, Inc., a corporation organized under the laws of the State of Delaware with its principal place of business in Dallas, Texas.
- Infrastructure Endeavors Holdings, LLC, a Delaware limited liability company. The sole member of Infrastructure Endeavors Holdings, LLC, is AT&T, Inc., a corporation organized under the laws of the State of Delaware with its principal place of business in Dallas, Texas.

III. JURISDICTION AND VENUE

3. The Court has jurisdiction under Texas Government Code Section 25A.004(d)(1) because this matter arises from a "qualified transaction" under Texas Government Code Section

25A.001(14) and the amount in controversy exceeds \$10,000,000, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs.

4. This Court has personal jurisdiction because Gigapower is a resident of Texas, because Gigapower conducted business in Texas at all material times, and because Tilson's claim arises out of Gigapower's conduct in Texas.

5. Personal jurisdiction and venue are proper under the Outside Plant Labor and Engineering Agreement No. 461393.C ("Agreement") between Tilson and Gigapower, which specifies that this suit may only be brought in the Dallas Division of the United States District Court for the Northern District of Texas or in any Texas State court sitting in Dallas, TX. *See* Texas Government Code § 25A.006(a); Ex. 1, Agreement § 13.12.

6. Because at least two members of Gigapower are citizens of the State of Texas, this suit is not subject to removal under 28 U.S.C. § 1441.

IV. DISCOVERY CONTROL PLAN

7. Discovery will be conducted under Level 3 of Texas Rule of Civil Procedure 190.

V. BACKGROUND

A. Before Gigapower, Tilson was an American success story.

8. Tilson is an industry-leading firm that specializes in designing, building, and maintaining telecommunications networks, including fiber and wireless networks. As a veteran-led business, Tilson recruits and employs service members. In fact, Tilson is a leading participant in the Department of Defense's SkillBridge Program, which allows active-duty service members to gain valuable civilian work experience during their service.

9. Over two decades, Tilson built and deployed dozens of dense fiber networks in communities large and small across the United States. These projects helped fuel Tilson's success

as it grew from a handful of employees in 2007. For fourteen years, Inc. 5000 ranked Tilson as one of America’s fastest growing private companies.

B. Gigapower delayed while Tilson performed.

10. In 2022, Gigapower entered the Agreement for Tilson to build fiber networks in Las Vegas, Nevada; Gilbert, Arizona; and Chandler, Arizona (the “Project”). Under the Agreement, Gigapower agreed to pay Tilson for “Services,” which included construction and engineering “Deliverables.” The Agreement represented approximately \$600 million of work across all markets, making Gigapower Tilson’s largest customer.

11. Tilson anticipated Project capital risks and negotiated the Agreement to provide for adequate cashflows and to establish unambiguous parameters around Project assumptions and responsibility for change orders and delays.

12. Despite Tilson’s planning and the Agreement’s plain language, Gigapower caused delays. For example, from the outset, Gigapower postponed the start of the Las Vegas portion of the Project for months while Gigapower negotiated its franchise agreement with Las Vegas.

13. At the same time, Gigapower pressured Tilson to invest in the staff and equipment necessary to deliver the Project. Among other investments, Tilson staffed and trained over six hundred workers to provide Services to Gigapower in the Arizona and Nevada markets.

14. As a result, three years into the Project, Tilson had invested all its anticipated project margin and ~\$91 million of net cash:

Tilson Project Expenses	Tilson Project Receipts	Tilson Net Cash
\$252,187,517	\$161,198,859	(\$90,988,658)

15. The Project consumed Tilson’s free cash flow from other healthy business lines and projects, consumed Tilson’s financed cash from debt and equity sources, and impaired Tilson’s ability to raise new equity.

16. At the same time, Gigapower failed to deliver on the terms Tilson negotiated to address the Project cashflow risks and repeatedly withheld and reduced payments owed to Tilson.

C. Gigapower pushed Tilson into Chapter 11.

17. 2025 should have been the year when the Project turned a corner. Work was set to resume in Las Vegas due to Tilson's efforts to improve Gigapower's relations with the City of Las Vegas. Assuming Gigapower followed the Agreement, the Project would turn cash flow positive.

18. Unfortunately, Gigapower attempted to exploit the cash crunch Gigapower caused by coercing Tilson into smaller scopes of work that were inconsistent with the Agreement and Tilson's investments in the Project. When Tilson refused, Gigapower escalated.

19. On March 24, 2025, Gigapower notified Tilson it was terminating dozens of work orders in Gilbert, Arizona for convenience "pursuant to Section 12.1 of the Agreement." Gigapower then terminated almost all remaining orders on April 29, 2025, and all outstanding engineering orders on May 20, 2025, for convenience "pursuant to Section 12.1 of Agreement."

20. When Gigapower terminated, it owed Tilson over \$18 million on past-due invoices and change orders for work performed in Nevada and Arizona.

21. Gigapower also owed Tilson the termination charge under the "Termination for Convenience" provision of the Agreement:

Gigapower shall pay Supplier, as a termination charge, for Services rendered (in whole or in part); unrecoverable capital expenses and equipment; any Subcontractor and vendor costs incurred as a result of the termination; demobilization costs, including any work necessary to safely close out and/or preserve the work in progress (e.g., restoration); and Material Delivered through the date of termination.

Ex. 1 § 12.1. As of the filing of this Petition, the termination charge alone exceeds \$140 million.

22. Section 13.13 of the Agreement also requires that, if Gigapower changes the scope of the Deliverables, "[a]n equitable adjustment shall be made to the charges and any affected

Delivery Date or performance date if such change to the scope affects the time or cost of performance of the Deliverables.” Ex. 1 § 13.13.

23. On May 5, 2025, Tilson responded to Gigapower’s termination notices by:

- Acknowledging Gigapower’s termination for convenience;
- Notifying Gigapower it was in breach of the Agreement in multiple ways;
- Demanding payment of outstanding invoices, change orders, and related charges;
- Demanding payment of the termination charge under Section 12.1;
- Demanding payment of the equitable re-rate of prior charges; and
- Suspending work on the Project.

24. Gigapower has not complied with these contractual requirements or agreed to do so. Instead, Gigapower tried to race Tilson to the courthouse by filing an improper replevin action in Arizona state court despite the Agreement’s forum-selection clause for Dallas, Texas. Ex. 1 § 13.12.

25. Gigapower’s actions had devastating consequences. The volume of cash that Tilson dedicated to the Project combined with Gigapower’s refusal to pay for past work performed rendered Tilson unable to pay its bills. Gigapower’s abrupt termination of the major scopes of work remaining under the Agreement meant Tilson had no option but to lay off hundreds of workers.

26. On May 29, 2025, Tilson was forced to file a petition for bankruptcy under Chapter 11 in Delaware. *See In re Tilson Technology Management, Inc.*, Case No. 25-10949 (BLS).

VI. CAUSES OF ACTION

A. Breach of Contract

27. Tilson incorporates all foregoing paragraphs by reference as if fully set forth here.

28. The Agreement is a valid, enforceable contract under which Gigapower must fulfill its obligations to Tilson, including, but not limited to, payment of outstanding invoices and change orders, the termination charge, and amounts owed under the equitable re-rating.

29. Tilson performed, tendered performance of, or is excused from performing all obligations under the Agreement.

30. Gigapower materially breached the Agreement, including by failing to pay.

31. These breaches caused Tilson injuries, including actual and direct damages.

32. Tilson presented its claim under the Agreement to Gigapower. Gigapower has not agreed to pay. Tilson seeks reasonable and necessary attorneys' fees under Chapter 38 of the Texas Civil Practice & Remedies Code.

VII. CONDITIONS PRECEDENT

33. All conditions precedent have been met, have occurred, or have been waived.

VIII. JURY DEMAND

34. Tilson demands a trial by jury.

IX. TEXAS RULE OF CIVIL PROCEDURE 47(c) STATEMENT

35. Tilson seeks monetary relief over \$1,000,000 in the form of actual and direct damages, interest, attorney's fees, and costs.

X. RULE 193.7 NOTICE

36. Tilson notifies Gigapower it intends to use all documents exchanged between the parties during the trial in this matter. *See* Tex. R. Civ. P. 193.7.

XI. PRAYER FOR RELIEF

37. For these reasons, Tilson asks for direct and actual damages, interest, attorneys' fees, costs, and all other relief to which Tilson is entitled in law or equity.

Dated: July 24, 2025

Respectfully submitted,

AHMAD, ZAVITSANOS & MENSING PLLC

/s/ John Zavitsanos

John Zavitsanos

State Bar No. 22251650

jzavitsanos@azalaw.com

Cameron Byrd

State Bar No. 24097444

cbyrd@azalaw.com

Justin Kenney

State Bar No. 24126702

jkenney@azalaw.com

Sean Healey

State Bar No. 24142997

shealey@azalaw.com

1221 McKinney, Suite 2500

Houston, Texas 77010

Phone: (713) 655-1101

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Darian Hammond on behalf of John Zavitsanos

Bar No. 22251650

dhammond@azalaw.com

Envelope ID: 103530763

Filing Code Description: Petition

Filing Description: 2025-07-24 Plaintiff's Original Petition

Status as of 7/24/2025 10:34 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Sean Healey		shealey@azalaw.com	7/24/2025 10:04:02 AM	NOT SENT
Michelle Rivers		mrivers@azalaw.com	7/24/2025 10:04:02 AM	NOT SENT
John Zavitsanos		jzavitsanos@azalaw.com	7/24/2025 10:04:02 AM	NOT SENT
Thomas E.Frasher		tfrasher@azalaw.com	7/24/2025 10:04:02 AM	NOT SENT
Justin Kenney		jkenney@azalaw.com	7/24/2025 10:04:02 AM	NOT SENT
Cameron Byrd		cbyrd@azalaw.com	7/24/2025 10:04:02 AM	NOT SENT
Darian Hammond		dhammond@azalaw.com	7/24/2025 10:04:02 AM	NOT SENT

Outside Plant Labor and Engineering

No. 461393.C

Between

Tilson Technology Management, Inc.

And

Gigapower, LLC

Exhibit No.

1

exhibitstickers.com

This Outside Plant Labor and Engineering Agreement No. 461393.C (this "Agreement") is entered into and effective as of the last date signed by a Party (the "Effective Date") by and between Tilson Technology Management, Inc., a Maine corporation ("Supplier"), and Gigapower, LLC, a Delaware limited liability company ("Gigapower"), each a "Party" and, together, the "Parties." Capitalized terms used herein but not defined within the body of this Agreement shall have the meanings ascribed to them in Appendix A – Definitions.

1.0 Scope of Agreement

1.1 Deliverables

Supplier shall provide to Gigapower the Deliverables described in Appendix B – Description of Deliverables subject to the terms and conditions of this Agreement as requested in Orders submitted to Supplier by Gigapower.

1.2 Pricing

- a. Supplier shall provide the Deliverables at the applicable prices set forth in Appendix C – Price(s). If Supplier at any time makes a general price decrease, then Supplier shall promptly notify Gigapower in writing and extend such decrease to Gigapower effective on the date of such general price decrease. Supplier shall strive to reduce its costs and corresponding prices for Deliverables by at least five percent (5%) each calendar year, through the use of improved processes, supply chain economies and other cost reduction methods. During the initial term of this Agreement, if there is a Material Escalation, Supplier shall promptly notify Gigapower in writing and request corresponding increases to Appendix C.
- b. The Parties agree that on an as-needed basis, but in no event less frequently than a quarterly basis, there will be a review of processes and procedures as they relate to the Services provided. If it is revealed through such a review that Supplier's costs to perform the Services can be reduced, Supplier will share the applicable cost information with Gigapower and the Parties will negotiate in good faith any downward adjustment to the prices set forth in Appendix C – Price(s).

1.3 Orders

Gigapower may, at Gigapower's election, submit Orders for Deliverables to Supplier pursuant to this Agreement (a) in a form agreed to by the Parties or (b) via Gigapower's electronic ordering system. Subject to agreement on Delivery Dates, Supplier shall accept all Orders submitted to it by Gigapower for Deliverables. The terms of this Agreement govern all Orders for Deliverables that Gigapower may place with Supplier. The Parties may vary or supplement the terms of this Agreement in an Order through Special Terms and Conditions, which shall take precedence over any inconsistent term of this Agreement and shall only apply to such Order.

1.4 Non-Commitment; Non-Exclusivity

This Agreement does not grant Supplier any right or privilege to provide to Gigapower any Deliverables of the type described in or purchased under this Agreement, except as may be set forth

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in an Order. Gigapower may contract with third parties for materials or services comparable to those described in or purchased under this Agreement, and Gigapower may itself perform such services.

1.5 Affiliates

Affiliates of Gigapower may transact business under this Agreement and place Orders with Supplier that incorporate the terms and conditions of this Agreement. References to "Gigapower" herein are deemed to refer to an Affiliate when an Affiliate places an Order with Supplier under this Agreement, or when Gigapower places an Order on behalf of an Affiliate, or when an Affiliate otherwise transacts business with Supplier under this Agreement. To the extent that the pricing under this Agreement or any Order provides for discounts of any sort based on volume of purchases by Gigapower (including percentage discounts and tier-based pricing) or requires a certain volume of purchases by Gigapower, Supplier shall aggregate the amount of all purchases by Gigapower and its Affiliates for purposes of determining any such discounts and volumes. An Affiliate is solely responsible for its own obligations, including all charges incurred in connection with such an Order or transaction.

1.6 Term of Agreement

- a. This Agreement shall be effective on the Effective Date and shall continue until December 31, 2025 unless earlier terminated as set forth herein.
- b. Any Order in effect on the date when this Agreement expires or is terminated shall continue in effect until such Order either (i) expires by its own terms or (ii) is separately terminated, prior to its own scheduled expiration, as provided in this Agreement. The terms and conditions of this Agreement shall continue to apply to such Order as if this Agreement were still in effect.

2.0 Delivery, Performance, Acceptance, and Availability

- a. Supplier will complete Delivery in strict conformance with the Specifications, Requirements and General Notes. If Deliverables are not in strict compliance with the Specifications, Requirements and General Notes, Gigapower shall so notify Supplier and provide Supplier an opportunity to cause such Deliverables to strictly comply with the Specifications, Requirements and General Notes. Notwithstanding Gigapower's Acceptance, Gigapower retains the right to revoke Acceptance pursuant to Uniform Commercial Code Section 2-608. In no event shall Acceptance be deemed to occur prior to the date Supplier completes its Delivery of Material or Completion of Services.
- b. Upon Gigapower's written notice to Supplier that the Deliverables do not strictly comply with the Specifications, Requirements or General Notes, Supplier shall respond to Gigapower within twenty-four (24) hours, unless Gigapower advises Supplier of a customer complaint, in which case Supplier will respond to the customer within twenty-four (24) hours. If Supplier fails to make any required corrections or replacements within seven (7) calendar days after requested to do so by Gigapower, then Gigapower may perform the Work itself or have a third party perform the Work and, at Gigapower's option, either (a) charge the cost for such corrections or replacements to Supplier, or (b) deduct the cost for such corrections or replacements from any

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amounts due Supplier for Deliverables. Gigapower shall have no obligation to Accept or pay for any Deliverables which it determines, in its sole discretion, does not conform to the Specifications, Requirements and General Notes established in this Agreement or in an Order. If Deliverables that are found to be unsatisfactory to Gigapower have not been corrected or replaced by Supplier within seven (7) calendar days from Gigapower's written notice, then Gigapower may, in addition to all other rights and remedies provided by law or this Agreement, terminate this Agreement and/or any affected Order.

3.0 Title and Risk

Title and risk of loss to Deliverables purchased, but not to Deliverables licensed, will vest in Gigapower when the Deliverables has been accepted at the F.O.B. destination point designated by Gigapower. If this Agreement calls for Supplier to perform additional Services after Deliverables have been provided, such as unloading or installation, then Supplier will retain risk of loss to the Deliverables until the additional Services have been Delivered and Accepted by Gigapower. All Gigapower provided materials and equipment shall remain the property of Gigapower.

4.0 Invoicing and Payment

4.1 Invoicing

- a. Supplier is expected to invoice within thirty (30) days of Completion of Work. Supplier shall render a correct invoice in duplicate promptly after completing Delivery of all Deliverables required by the Order (unless the Order or an attached Appendix specifies that Supplier may submit invoices for progress payments prior to Acceptance, as provided below). The invoice must specify in detail, if applicable: (i) Supplier's firm name and remit to address, (ii) invoice number, (iii) invoice date, (iv) invoice made out to: As it appears on the Order in the "Mail bill to:" area, (v) Gigapower agreement number, (vi) Work request date, (vii) Gigapower project number/Order number, (viii) location of project, (ix) description of actual work performed, (x) detailed breakdown of the expenses (article and description), (xi) total amount due, (xii) days worked – Start/Complete dates or consecutive dates are acceptable, (xiii) copy of work request, (xiv) hourly time sheets (if applicable) signed by a Gigapower representative (Invoice should have Contract Employees identification number and full name including middle initial), (xv) billing sequent number for partial billing (when allowed); when single bill covers total amount, only "Final" needs be shown, and (xvi) receipts to support miscellaneous charges, if applicable, e.g., recording fees, filing fees, easement payments, etc.

Gigapower shall initiate payment to Supplier no later than thirty (30) days after receipt of an accurate invoice after Acceptance (as determined under the Section entitled "Delivery, Performance, Acceptance and Availability") for Work associated with the High Level Design ("HLD") Deliverable; and no later than ninety (90) days after receipt of an accurate invoice after Acceptance (as determined under the Section entitled "Delivery, Performance, Acceptance and Availability") for all other Deliverables; provided that if such date is a non-business day, then Gigapower may initiate payment to Supplier on the following business day. Unless otherwise agreed, Gigapower may provide payment by standard commercial methods

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of payment, including Automatic Clearinghouse Association transfer. If Gigapower disputes any invoice rendered or amount paid, then Gigapower shall so notify Supplier. The Parties shall work in good faith to resolve invoicing and payment disputes expeditiously, and Gigapower is not obligated to make any payment against a disputed or incorrect invoice until the dispute is resolved or the error corrected. Invoices received by Gigapower more than one (1) year after the Delivery of Deliverables are untimely and Gigapower has no obligation to pay such invoices.

- b. Invoices for or including freight charges shall be accompanied by legible copies of prepaid freight bills, express receipts, or bills of lading supporting the invoice amounts. Such invoices shall include (i) carrier's name, (ii) date of shipment, (iii) number of pieces, (iv) weight, and (v) freight classification.
- c. Gigapower may deduct any setoff or recoupment claims that it or its Affiliates may have against Supplier from amounts due or to become due to Supplier, whether under this Agreement or otherwise. Supplier shall pay any amount due to Gigapower or its Affiliates that is not applied against the invoiced amounts within thirty (30) days after written demand by Gigapower.
- d. If an Order or an Appendix specifies that Supplier may submit invoices for progress payments prior to Acceptance, Supplier is permitted to submit invoices at the end of each month and Gigapower will initiate progress payments to the Supplier at ninety (90) day intervals. Such progress payments shall not exceed ninety percent (90%) of satisfactorily completed Deliverables at the time of billing, as determined by Gigapower. Supplier agrees to use such progress payments for expenses incurred for Services or Material used in performance of the Order for Gigapower.

4.2 Most Favored Customer

Supplier represents and warrants that all prices, benefits, warranties and other terms and conditions in this Agreement are and, during the term of this Agreement, shall continue to be no less favorable to Gigapower than those currently being offered or that will be offered by Supplier to any of its similarly situated customers. Supplier shall review and have an officer of its company certify its compliance with this Section to Gigapower semi-annually. This certification shall be sent to Gigapower's addressee listed under the Section entitled "Notices."

4.3 Taxes

- a. Supplier shall invoice Gigapower the amount of any federal excise, state, and local transaction taxes imposed upon the sale of Material and provision of Services under this Agreement. All such taxes must be stated as separate items on a timely invoice listing the taxing jurisdiction imposing the tax. Installation, labor and other non-taxable charges must be separately stated. Gigapower shall pay all applicable taxes to Supplier that are stated on and at the time the Material or Services invoice is submitted by Supplier. Supplier shall remit taxes to the appropriate taxing authorities. Supplier shall honor tax exemption certificates, and other appropriate documents, which Gigapower may submit, pursuant to relevant tax provisions of the taxing jurisdiction providing the exemption.
- b. Supplier shall pay any penalty, interest, additional tax, or other charge that may be levied or assessed as a result of the delay or failure of Supplier, for any reason, to pay any tax or file any

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return or information required by law, rule or regulation or by this Agreement to be paid or filed by Supplier.

- c. Upon Gigapower's request, the Parties shall consult with respect to the basis and rates upon which Supplier shall pay any taxes or fees for which Gigapower is obligated to reimburse Supplier under this Agreement. If Gigapower determines that in its opinion any such taxes or fees are not payable, or should be paid on a basis less than the full price or at rates less than the full tax rate, Gigapower shall notify Supplier in writing of such determinations, Supplier shall make payment in accordance with such determinations, and Gigapower shall be responsible for such determinations. If collection is sought by the taxing authority for a greater amount of taxes than that so determined by Gigapower, Supplier shall promptly notify Gigapower. If Gigapower desires to contest such collection, Gigapower shall promptly notify Supplier. Supplier shall cooperate with Gigapower in contesting such determination, but Gigapower shall be responsible and shall reimburse Supplier for any tax, interest, or penalty in excess of Gigapower's determination.
- d. If Gigapower determines that in its opinion it has paid Supplier for any taxes in excess of the amount that Gigapower is obligated to pay Supplier under this Agreement, Gigapower and Supplier shall consult in good faith to determine the appropriate method(s) of recovery of such excess payments, which method(s) may include, but is not limited to, (i) Supplier immediately refunding to Gigapower such excess payments, (ii) Supplier crediting any excess payments against tax amounts or other payments due from Gigapower if and to the extent Supplier can make corresponding adjustments to its payments to the relevant tax authority, and (iii) Supplier timely filing claims for refund and any other documents required to recover any excess payments and Supplier promptly remitting to Gigapower all such refunds and interest received.
- e. If any taxing authority advises Supplier that it intends to audit Supplier with respect to any taxes for which Gigapower is obligated to reimburse Supplier under this Agreement, Supplier shall (i) promptly so notify Gigapower, (ii) afford Gigapower an opportunity to participate on an equal basis with Supplier in such audit with respect to such taxes and (iii) keep Gigapower fully informed as to the progress of such audit. Each Party shall bear its own expenses with respect to any such audit, and the responsibility for any additional tax, interest or penalty resulting from such audit is to be determined in accordance with the applicable provisions of this Taxes Section. Supplier's failure to comply with the notification requirements of this Taxes Section will relieve Gigapower of its responsibility to reimburse Supplier for taxes only if Supplier's failure materially prejudiced Gigapower's ability to contest imposition or assessment of those taxes.
- f. In addition to its rights under Subsections c., d., and e. above with respect to any tax or tax controversy covered by this Taxes Section, Gigapower is entitled to contest, pursuant to applicable law and tariffs, and at its own expense, any tax previously invoiced that it is ultimately obligated to pay. Gigapower is entitled to the benefit of any refund or recovery of amounts that it has previously paid resulting from such a contest. Supplier shall cooperate in any such contest, but Gigapower shall pay all costs and expenses incurred in obtaining a refund or credit for Gigapower.
- g. If either Party is audited by a taxing authority or other governmental entity in connection with taxes under this Taxes Section, the other Party shall reasonably cooperate with the Party being

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audited in order to respond to any audit inquiries in an appropriate and timely manner, so that the audit and any resulting controversy may be resolved expeditiously.

- h. Gigapower and Supplier shall reasonably cooperate with each other with respect to any tax planning to minimize taxes. The degree of cooperation contemplated by this Section is to enable any resulting tax planning to be implemented and includes, but is not limited to: (i) Supplier's installing and loading all of the Software licensed by Gigapower, and retaining possession and ownership of all tangible personal property, (ii) Supplier's installing, loading and/or transferring the Software at a location selected by Gigapower, and (iii) Supplier's Delivery of all of the Software in electronic form.
- i. Supplier and any of its affiliates, as appropriate, receiving payments hereunder shall provide Gigapower with a valid United States Internal Revenue Service ("IRS") Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY, or W-9 (or any successor form prescribed by the IRS). Gigapower may reduce any payment otherwise due Supplier in connection with the sale of Material and provision of Services under this Agreement by the amount of any tax imposed on Supplier that Gigapower is required to pay directly to a taxing or other governmental authority ("Withholding Tax"). Alternatively, if applicable law permits, Gigapower agrees that it will honor a valid exemption certificate or other mandated document evidencing Supplier's exemption from payment of, or liability for, any Withholding Tax as authorized or required by statute, regulation, administrative pronouncement, or other law of the jurisdiction providing said exemption. Gigapower shall provide Supplier with documentation evidencing withholding within a reasonable period of time.

5.0 Supplier Personnel and Provision of Services

5.1 Employment and Management Matters

Personnel provided by Supplier shall be considered solely the employees of Supplier or its Subcontractors and not employees or agents of Gigapower. Supplier has and shall retain the right to exercise full control of and supervision over the performance of the Services and full control over the employment, training, direction, assignment, compensation, and discharge of all personnel performing the Services. Supplier and its Subcontractors are and shall be solely responsible for all matters relating to compensation and benefits for all personnel provided by Supplier. Supplier shall ensure that all persons furnished by Supplier conduct themselves in a professional manner and in accordance with all policies provided by Gigapower.

5.2 Replacement of Personnel

If Gigapower requests that Supplier or its Subcontractor remove any person provided by Supplier or its Subcontractor from Gigapower's account for any lawful reason, then Supplier shall immediately comply with such request. Supplier shall, at no cost to Gigapower, provide a qualified replacement.

5.3 Access to Gigapower Premises and Non-Public Information Systems - vendor management system (VMS)

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- a. When appropriate, Supplier Representatives shall have reasonable access to Gigapower's premises during normal business hours, and at such other times as may be agreed upon by the Parties, to enable Supplier to perform its obligations under this Agreement. Supplier shall coordinate such access with Gigapower. Where required by governmental regulations, Supplier shall submit satisfactory clearance from the U.S. Department of Defense and/or other federal, state or local authorities.
- b. Supplier shall ensure that Supplier Representatives, while on or off Gigapower's premises, (i) protect Gigapower's materials, buildings and structures, (ii) perform Services which do not interfere with Gigapower's business operations, and (iii) perform such Services with care and due regard for the safety, convenience and protection of Gigapower, its employees, and property.
- c. Gigapower may require Supplier Representatives to exhibit identification credentials issued by Gigapower's vendor management system (VMS) to gain unescorted access to Gigapower's premises for the performance of Services. In addition, if any Supplier Representative requires access to Gigapower's Nonpublic Information Resources (as defined in the Gigapower Supplier Information Security Requirements), Supplier must obtain an ATT UID for each such Supplier Representative from Gigapower's VMS. ATT UIDs will be provisioned upon Supplier's successful opening of a worker record within the VMS. Supplier Representatives shall also exhibit their company's photo identification, if any. If, for any reason, any Supplier Representative is no longer performing Services or no longer has a need to have access to Gigapower's Nonpublic Information Resources, then Supplier shall immediately close the Supplier Representative's record in the VMS and promptly return any identification credentials issued by the VMS. In cases where a Supplier Representative is being removed due to misconduct involving work at Gigapower, Supplier will immediately inform the Gigapower sponsoring manager of the nature of the misconduct.
- d. Gigapower currently uses a third party VMS vendor and reserves the right to change the VMS vendor at any time and from time to time. Supplier shall enter into an agreement with Gigapower's designated VMS vendor, at no cost to Gigapower, and supply any information about each Supplier Representative reasonably required by the VMS vendor to create a worker record and enable provisioning of identification credentials and ATT UIDs. If Supplier fails to enter into an agreement with Gigapower's VMS vendor to use the VMS, Supplier's Supplier Representatives will not be allowed access to Gigapower's premises (other than on an escorted basis) or to Gigapower's Nonpublic Information Resources. Gigapower reserves the right to restrict Supplier's or Supplier Representatives' access to Gigapower's facilities and/or Nonpublic Information Resources, without liability to Gigapower, until Gigapower is satisfied that Supplier is compliant with its obligations under this Section.
- e. Supplier shall ensure that information provided to Gigapower or the VMS vendor for its Supplier Representatives is 1) input accurately into the VMS (including the SSN/Security ID for each Supplier Representative, the Agreement number in the "Contract or PO #" field as it may be changed, the start and end dates (end date must not be after the expiration date of the Agreement), the citizenship or lawful permanent residence of each Supplier Representative, and the worker classification obtained from the Gigapower sponsoring manager), 2) maintained properly throughout the term of the engagement, and 3) closed on a timely basis upon the termination or expiration of the engagement or the need for the Supplier Representatives to have access to Gigapower's premises or Nonpublic Information Resources. Supplier shall not

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enable or allow any Supplier Representative to let anyone else use the Gigapower identification credentials or an ATT UID issued to that Supplier Representative to gain access to Gigapower's premises or Nonpublic Information Resources.

- f. In addition, notwithstanding anything to the contrary in the Termination section of this Agreement, if Supplier breaches any of its obligations under this Section, then Gigapower may, by giving notice to Supplier, terminate this Agreement, in whole or in part, as of the termination date specified in such notice without regard to any cure period and without liability to Supplier except for payment for Services rendered up to the date of termination.

5.4 Entry on Gigapower Property

To the extent Supplier enters Gigapower's premises, Supplier shall be responsible for inspecting the Services site for visually obvious unsafe conditions and taking the necessary safety precautions for protection of Supplier, its employees, and its agents and ensuring a safe place for performance of the Services.

5.5 Background Checks

- a. Supplier shall conduct the following screens on any Supplier employee, contractor or subcontractor and any employee or agent of any Supplier contractor or subcontractor personnel (each, a "Candidate") whom it proposes to have perform any Services that permit: (1) unescorted access (or escorted access for more than 30 days/year) into Gigapower's, its customers', or multi-tenant shared non-public facilities; (2) virtual access to Gigapower's or its customers' systems or networks, or (3) access to Gigapower Customer Information or Gigapower employee sensitive personal information (together, "Access"):
 - i. Verify identification credentials including Social Security number, driver's license number, educational credentials, employment history, home address, and citizenship indicia.
 - ii. Perform a criminal background check to determine, in the counties, states, and federal court districts where the Candidate has lived, worked, or attended school in the previous ten years, whether the Candidate: (1) has been convicted of any felony; (2) has been convicted of a misdemeanor involving violence, theft, computer crimes, fraud, financial crimes, drug distribution, unlawful possession or use of a dangerous weapon, or sexual misconduct; or (3) is listed on any government registry as a sex offender (together, "Conviction").
 - iii. In connection with providing Access to an Gigapower business customer's facilities or systems, comply with any additional investigation or screening requirements required by such customer, as conveyed by Gigapower in advance of such work, in each case subject to the terms of any applicable Order.
 - iv. If a Candidate would be performing Services which are safety sensitive as initially determined by Supplier, such determination to be shared with Gigapower, including but not limited to Services where: (1) the Candidate would be responsible for the Candidate's own safety or the safety of others, (2) an impairment in performance could put the Candidate or others at risk of harm (by way of example and not limitation, performance of Services that require driving, operating heavy machinery, handling hazardous materials,

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working around high voltage, or working aloft or underground), (3) the Candidate may enter Gigapower's customers' residences, or (4) the Candidate has access to databases which store large amounts of Customer Information or sensitive personal information ("Safety Sensitive Services"), then Supplier will test the Candidate prior to having such Candidate perform Safety Sensitive Services and annually thereafter for so long as the Candidate continues to perform the Safety Sensitive Services for use of illicit drugs including opiates, cocaine, cannabinoids, amphetamines, and phencyclidine ("Drug Screen"). If Gigapower disagrees with Supplier's initial determination that a Service is not a Safety Sensitive Service, Supplier shall perform a Drug Screen on the Candidate. Gigapower's failure to respond to Supplier's determination that any Services are or are not Safety Sensitive Services shall not relieve Supplier of its obligations under this Section.

- b. Based on the foregoing screens:
 - i. If Supplier determines that a Candidate has falsified identification credentials or withheld material information relevant to his or her performance or proposed performance of the Services, Supplier will restrict the Candidate from Access.
 - ii. If a Candidate has a Conviction, Supplier will determine in its sole discretion whether the Candidate is fit and trustworthy to have Access.
 - iii. If a Candidate fails to meet an Gigapower business customer's additional investigation or screening requirements, Supplier will restrict the Candidate from Access to such customer's premises or systems.
 - iv. If a Candidate who would be performing Safety Sensitive Services presents a positive drug test, Supplier will restrict the Candidate from performing the Safety Sensitive Services.
- c. Supplier must maintain records of all Candidate criminal background checks and drug screens for seven years and provide Gigapower access to them upon reasonable request.
- d. This Section is subject to any applicable Laws to the contrary, including those on considering Convictions in employment decisions. Supplier may adapt its screens and determinations to comply with such Laws in applicable jurisdictions, while maintaining the Section's spirit and intent to the extent possible.

5.6 Material and Services Provided By Others

If any part of Supplier's Deliverables is dependent upon material or services provided by others, then Supplier shall inspect and promptly report to Gigapower any defect that renders such material or services unsuitable for Supplier's proper performance. Supplier's silence shall constitute approval of such material and services as fit, proper and suitable for Supplier's performance hereunder.

5.7 Use of Subcontractors

Supplier must provide Gigapower with information about a Subcontractor, including its name, the location(s) where it will perform the work, and a description of the work it will perform, before a Subcontractor begins performing work under this Agreement. Upon Gigapower's request, Supplier must not use, or must cease to use, a Subcontractor to perform the work for Gigapower and must promptly provide a replacement Subcontractor or perform such work itself. Supplier is responsible

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for the acts or omissions of its Subcontractors as if such acts or omissions were performed by Supplier. Supplier must bind any Subcontractors to terms and conditions consistent with the terms of this Agreement.

5.8 Offshore Work Prohibited

None of the Services under this Agreement shall be performed or provided and no Information related to this Agreement shall be collected, stored, handled or accessed by Supplier or its Subcontractors at any location outside of the United States. The requirements of this Section are in addition to the requirements of the Sections entitled "Use of Subcontractors" and "Assignment and Delegation."

5.9 Affordable Care Act

For purposes of the Affordable Care Act (ACA), and in particular for purposes of Section 4980H of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, with respect to each individual provided by Supplier to work on Gigapower project(s) for at least thirty (30) hours per week for at least ninety (90) days, whether consecutive or not, Supplier represents and warrants that it or one of its Subcontractors is the common law employer of such individual and shall be responsible for either providing healthcare coverage as required by ACA (to the extent applicable) or for paying any Section 4980H assessable payments that may be required for failure to provide to such individuals

- i. health care coverage, or
- ii. affordable healthcare coverage,

Supplier is required to maintain for a period of ten (10) years information to show compliance with the ACA notwithstanding any other provision in this Agreement to the contrary.

Alternatively, the Supplier represents and warrants that there are no individuals provided by Supplier to work on Gigapower project(s) for at least thirty (30) hours per week for at least ninety (90) days, regardless of whether consecutive.

6.0 Intellectual Property Rights

6.1 Ownership in Intellectual Property Rights and Reservation of Rights

Gigapower shall be the exclusive owner of all right, title, and interest in and to all Supplier Development, including, without limitation, all Intellectual Property Rights therein. Supplier shall assign to Gigapower and hereby assigns to Gigapower all Intellectual Property Rights in and to the Supplier Development. Supplier Development shall always exclude all Excluded Materials, but shall include (without limitation) any modifications, alterations or updates of any Excluded Materials that otherwise fall within the definition of Supplier Development. Supplier hereby grants and promises to grant and have granted to Gigapower and its Affiliates a royalty-free, nonexclusive, sublicensable, assignable, transferable, irrevocable, perpetual, world-wide license in and to the Excluded Materials and any applicable Intellectual Property Rights of Supplier and its direct or

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indirect contractors or suppliers to use, copy, modify, distribute, display, perform, import, make, sell, offer to sell, and exploit (and have others do any of the foregoing on or for Gigapower's or any of its customers' behalf or benefit) the Excluded Materials but only as embedded By Supplier in the Supplier Development.

Other than as provided elsewhere in this Agreement, Supplier is not transferring or granting to Gigapower any right, title or interest, or granting Gigapower or its customers any license or permissions (other than those related to distributing or making use of Items provided by or on behalf of Supplier) in or to any or all Items provided by or on behalf of Supplier. Notwithstanding any other provision of this Agreement, Gigapower is not transferring or granting to Supplier any right, title or interest in or to (or granting Supplier any license or permissions in or to) any or all Items provided by or on behalf of Gigapower.

"Excluded Materials" shall mean those Items that are or have been developed by Supplier or on Supplier's behalf, whether before, on or after the Effective Date of this Agreement, both (i) without use of any Gigapower Items and (ii) independently of any work performed under this Agreement, as well as any specific reconfigurations of Supplier's pre-existing software or service platform that do not add any features, functionality, or capabilities.

"Intellectual Property Rights" means all patents (including all reissues, divisions, continuations, and extensions thereof) and patent applications, trade names, trademarks, service marks, logos, trade dress, copyrights, trade secrets, mask works, rights in technology, database rights, know-how, rights in content (including but not limited to performance and synchronization rights), or other intellectual property rights, protected under the laws of any domestic or foreign governmental authority having jurisdiction.

"Items" shall mean all inventions, discoveries, ideas (whether patentable or not), and all works and materials, including but not limited to products, devices, computer programs, source codes, interfaces, designs, files, specifications, texts, drawings, processes, feedback, content, data or other information or documentation in preliminary or final form, and all Intellectual Property Rights in or to any of the foregoing.

"Supplier Developments" means all Items developed by Supplier (either itself or by its sub-suppliers) pursuant to this Agreement.

6.2 Publicity - No Use of Gigapower Marks

Supplier shall not use Gigapower's or its Affiliates' trademarks, service marks or logos, except pursuant to a separate written agreement duly executed between the Parties. In addition, Supplier shall not, without Gigapower's express prior written consent (a) use Gigapower's or its Affiliates' names, (b) publicly disclose this Agreement, the Deliverables being performed pursuant to this Agreement or the relationship created by this Agreement or (c) use of any language, pictures, videos, symbols, designs or other graphical representation which could in Gigapower's judgment imply Gigapower or its Affiliates' identities, or an endorsement by Gigapower, its Affiliates or any of its or their employees in any communication of whatever nature. Supplier shall refer to Gigapower any questions from the media or third parties regarding the Deliverables or Supplier's relationship with Gigapower and shall not discuss the Deliverables or Supplier's relationship with Gigapower with the media or third parties.

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7.0 Compliance

7.1 Compliance with Laws

Supplier shall comply with all Laws attendant upon Supplier's performance under this Agreement and Gigapower's or its customers' utilization of the Deliverables. Supplier shall procure all approvals, bonds, certificates, insurance, inspections, licenses, and permits that such Laws require for the performance of this Agreement. Supplier shall create and maintain any necessary records, provide any certificate, affidavit or other information or documentation requested or as otherwise required by Gigapower: (a) to show compliance by Supplier and its Subcontractors with Laws, (b) to comply or otherwise establish Gigapower's compliance with Laws or (c) to allow Gigapower to timely respond to any complaints, filings, or other proceedings.

7.2 Gigapower Supplier Information Security Requirements (SISR)

Supplier shall comply with Gigapower's Supplier Information Security Requirements (the "SISR") available at: https://www.attsuppliers.com/misc/ATT_SISR_Appx.pdf, as amended from time to time by Gigapower.

7.3 Notice of Investigations

Supplier shall promptly notify Gigapower of any of the following which is connected with any Deliverables: (a) any investigation, indictment, material lawsuit, or administrative or other proceeding, or (b) the revocation of any license, permit or other document issued to Supplier by any governmental authority.

7.4 Supplier Citizenship and Sustainability

- a. Supplier shall conduct business with an abiding respect for corporate citizenship, sustainability, and human rights ("Citizenship and Sustainability"). To the extent that Supplier has an existing Citizenship and Sustainability program, it shall be no less stringent than Gigapower's Principles of Conduct for Suppliers available at: <http://www.attsuppliers.com/misc/SupplierSustainabilityPrinciples.pdf> and the Gigapower Human Rights in Communication Policy available at: http://www.att.com/Common/about_us/downloads/Human_Rights_Communications_Policy.pdf ("Gigapower Citizenship and Sustainability Policies"). In the event that Supplier does not have a Citizenship and Sustainability program, or such program does not address all areas addressed in the Gigapower Citizenship and Sustainability Policies, Supplier shall conduct its business operations in a manner consistent with the Gigapower Citizenship and Sustainability Policies.
- b. Upon Gigapower's request, Supplier shall provide to Gigapower such information, reports, or survey responses as Gigapower deems necessary to periodically monitor Supplier's business operations in the context of Citizenship and Sustainability. Supplier shall respond to such requests within reasonable timelines as set forth by Gigapower.

7.5 Utilization of Diverse Suppliers

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- a. Diverse Suppliers are those that are certified as Minority, Women, Disabled Veteran, LGBTQ+, Veteran, or Disability Owned Business Enterprises ("Diverse Suppliers").
- b. Supplier must submit an annual Prime Supplier Participation Plan in the form set forth at <https://www.attsuppliers.com> no later than the Effective Date and by December 31 of each calendar year thereafter, establishing Supplier's goals for the upcoming reporting period for participation by Diverse Suppliers, with participation expressed as a percentage of aggregate estimated annual purchases by Gigapower for the reporting period.
- c. By the tenth day following the close of each calendar month, Supplier must report results, in a format and manner acceptable to Gigapower, of its efforts to meet the goals set forth in the applicable participation plan during the preceding calendar month. When reporting results, Supplier must count only expenditures with entities that are certified as Diverse Suppliers by third party certifying agencies. Self-certification is unacceptable to Gigapower.

7.6 Quality Assurance - TL 9000

- a. Quality. Supplier shall ensure an ongoing commitment to quality in the Deliverables furnished under this Agreement. Supplier shall be certified to TL 9000 Quality Management System (QMS) and shall ensure all Subcontractors that provide a portion of Deliverables are certified to TL 9000 QMS. Upon Gigapower's request Supplier shall provide to Gigapower:
 - i. evidence of its and/or its Subcontractors' certification to TL 9000 QMS;
 - ii. a copy of Supplier's and each of its Subcontractors' quality manuals; and
 - iii. a copy of Supplier's and each of its Subcontractors' quality audit plans, audit schedules and most current audit results.
- b. Testing. Supplier shall perform or cause to be performed testing sufficient to ensure Deliverables performs in accordance with the Specifications. If testing indicates the Deliverables does not conform to the Specifications, then Supplier shall promptly notify Gigapower, in writing, of such non-conformance before shipment or provision of Deliverables. Gigapower will advise Supplier whether Supplier should Deliver the non-conforming Deliverables. In the event Gigapower instructs Supplier to Deliver non-conforming Deliverables, Supplier shall not be relieved of any of its obligations hereunder, including warranty obligations. Gigapower's receipt of any such nonconforming Deliverables shall not constitute a waiver of any of Gigapower's rights, warranties, or remedies under this Agreement or elsewhere.
- c. Supplier Performance Management Program and Satisfaction Survey.
 - i. Upon Gigapower's request, Supplier shall participate in an Gigapower supplier performance management program and/or satisfaction survey ("Survey").
 - ii. Supplier shall meet or exceed the quality performance requirements in the Survey categories applicable to Supplier. If the Survey reveals areas needing improvement, Supplier shall provide Gigapower a plan addressing such areas within thirty (30) days after Supplier's receipt of the Survey results.
- d. Supplier Performance Scorecards. At Gigapower's request Supplier shall:

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- i. collect data relating to Supplier's performance on a schedule established by Gigapower;
- ii. enter the data in Gigapower's supplier portal (website) available at: <http://www.attsuppliers.com/> (subject to change) in a format designated by Gigapower; and
- iii. cooperate fully with Gigapower's supplier performance management team to coordinate Supplier's activities as related to the scorecards, which may include participation in feedback sessions, audits and issue resolution.

7.7 Business Continuity Plan

Supplier shall maintain and upon Gigapower's request, promptly furnish to Gigapower Supplier's Business Continuity Plan that complies with the requirements set forth in Appendix – Business Continuity Plan Requirements (BCPR) available at <http://attsuppliers.com/downloads/Business-Continuity-Plan-Requirements-BCPR.pdf>, and incorporated herein by reference, which may be changed from time-to-time by Gigapower.

8.0 Warranty

8.1 Warranties Subject to Warranty Period

For the duration of the Warranty Period:

- a. Supplier warrants (i) that Deliverables are new, merchantable, free from defects in design, material and workmanship, and fit and sufficient for the purposes intended by Gigapower, and (ii) that Deliverables furnished hereunder shall strictly conform to and perform in accordance with applicable Specifications, drawings, models, samples and industry standards.
- b. Supplier warrants that Services provided hereunder are performed in a first-class, professional manner, in strict compliance with the Specifications, and with the care, skill and diligence, and in accordance with industry standards.
- c. If the Parties have identified a System on which Software operates, then Supplier warrants that such Software shall perform on and be compatible with such System and operate satisfactorily in the System environment.

8.2 Warranties Not Subject to Warranty Period

- a. Supplier represents and warrants that there are no actions, suits, or proceedings, pending or threatened, which will have a material adverse effect on Supplier's ability to fulfill its obligations under this Agreement.
- b. Supplier represents and warrants that no consent, approval or withholding of objection is required from any entity, including any governmental authority, with respect to the entering into or the performance of this Agreement or any Order.
- c. Supplier represents and warrants that (i) Deliverables shall be free from all Liens at the time of Delivery and (ii) Supplier conveys good title to Material sold. In addition, if Material comes subject to one or more warranties provided by third party manufacturers or vendors to Supplier

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("OEM warranties"), then Supplier warrants that it has the authority to assign, and hereby assigns, such OEM warranties to Gigapower.

- d. Supplier represents and warrants that the Deliverables shall not infringe any patent, copyright, trademark, trade secret or other intellectual property right. Moreover, as of the Effective Date, no third party claim has been alleged against Supplier that any of the Deliverables provided hereunder infringes upon such third party's intellectual property rights.
- e. Supplier represents and warrants that Supplier has all necessary skills, rights, financial resources, and authority to enter into this Agreement and related Orders, including the authority to provide or license the Deliverables if Supplier does not solely own all intellectual property rights in such Deliverables.
- f. Supplier represents and warrants that the Deliverables provided to Gigapower hereunder will not contain (i) any vulnerability, including any condition in the instructions of the Software, whether consistent with its Specifications or not, that renders any System susceptible to unauthorized access and use, or (ii) any harmful code, including computer viruses, worms, trap doors, time bombs, undocumented passwords, disabling code (which renders Deliverables unusable until a patch or new password is provided), or any similar mechanism or device; provided that enabling keys provided by Supplier to ensure conformance to product licensing restrictions shall be permitted so long as these enabling keys do not interfere with the proper use of the Deliverables at any time after initial installation.

8.3 Other Warranties; Warranty Survival

- a. The foregoing warranties are in addition to all other warranties, express, implied, or statutory. All warranties shall survive inspection, Acceptance, payment and use.
- b. Supplier will immediately notify Gigapower if, during the term of this Agreement, Supplier becomes aware of any action, suit, or proceeding, pending or threatened, which may have a material adverse effect on Supplier's ability to fulfill the obligations under this Agreement or any Order.

8.4 Material and Services Warranty Claims Procedure

If Gigapower believes there is a breach of any warranty with respect to any Deliverable, then in addition to any other remedies Gigapower may have, at Gigapower's option, Supplier shall (a) repair or replace the Material or reperform the Services to correct the breach of warranty at no cost to Gigapower, (b) accept the return of the Material and provide Gigapower with a full refund for such Material or Services, or (c) credit Gigapower with a commercially reasonable reduction in the price of such Deliverable. Supplier shall bear all transportation costs and risk of loss and damage in transit with respect to all Material transported in connection with this Section, and all repaired and replacement Material is warranted as provided herein. If Gigapower elects to have Supplier repair or replace the Material or reperform the Services so as to correct the breach of warranty, and Supplier fails to do so, then, in addition to any other applicable remedies, Gigapower may itself repair the Material or correct the Services, or engage a third party to do so, in either case at Supplier's expense.

8.5 FOSS

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- a. For purposes of this Section, "FOSS" means any and all freeware, open source software or shareware used or included in, or combined by or on behalf of Supplier with, the Deliverables or otherwise provided by or on behalf of Supplier under this Agreement; and a "FOSS Disclosure" means a complete, current, and accurate listing of all FOSS, which identifies for each FOSS component: (i) the component name; (ii) its version or release number; (iii) its web site URL of origin; (iv) the applicable software license and its version number; (v) the URL where Supplier identifies or sets forth the applicable software license; (vi) a brief (e.g., one-line) description of the purpose of the component; and (vii) how the component is linked within the Deliverables or as otherwise provided. A FOSS Disclosure may be provided in the form of a web site made accessible to Gigapower where Supplier posts the foregoing information.
- b. Upon Gigapower's request Supplier shall promptly, but in any event within thirty (30) days of such request, furnish to Gigapower a FOSS Disclosure that is complete, current and accurate when furnished. Neither response nor non-response by Gigapower concerning the receipt or non-receipt of any FOSS Disclosure or any reference to FOSS in the Agreement shall be deemed as acceptance, approval or acquiescence by Gigapower that Supplier's use of the FOSS complies with the legal requirements of applicable FOSS license(s), or is suitable for the intent and purposes furnished hereunder. After receiving any FOSS Disclosure, Gigapower may, upon written notice to Supplier, ask Supplier to use alternate FOSS (or other alternate software), if reasonably warranted to avert a risk that the rights of Gigapower or its third-party suppliers in any proprietary software may be compromised. In that event, if Supplier cannot or will not use such alternate FOSS, then Gigapower may immediately terminate the applicable Order(s), in whole or in part, and/or relevant purchase or funding commitments under this Agreement, without further cost, expense or liability to Gigapower.
- c. Supplier represents and warrants to Gigapower: (i) that Supplier has satisfied all its obligations to any third parties with respect to all FOSS and the applicable FOSS licenses (including, for example, any obligation to make publicly available the FOSS source code for modifications to such FOSS); (ii) that the FOSS, in the form provided to Gigapower, is suitable for the intent and purposes furnished hereunder; (iii) that use of the FOSS in such form for such intent and purposes in no manner creates any added obligation on the part of Gigapower (including, for example, the payment of any additional monies), or diminishes, conditions or eliminates any of the rights, title, or interest that Supplier grants Gigapower in or to any Deliverables or that Supplier may otherwise provide Gigapower under this Agreement; and (iv) that use of the FOSS in such form for such intent and purposes, including, but not limited to, Gigapower's use or combination of the FOSS, in the form provided to Gigapower, with any proprietary software of Gigapower or Gigapower's third-party suppliers, does not subject Gigapower to any obligation of disclosure or distribution to any third party or to the public of any such proprietary software, or otherwise make such proprietary software subject to the terms of any FOSS license or impair Gigapower's or its third-party suppliers' rights, title, or interest in or to such proprietary software.
- d. In the event that Gigapower notifies Supplier or Supplier becomes aware of Supplier's noncompliance with any FOSS license term, then in either case, Supplier shall use all reasonable efforts promptly to cure such noncompliance so as to eliminate risks of public disclosure of proprietary software and prevent disruption of any Gigapower business activity. Supplier shall promptly notify Gigapower of all actions taken by Supplier to cure such noncompliance. Should Gigapower receive notice from any third party alleging acts or omissions which, notwithstanding Gigapower's use of the FOSS for the intent and purposes furnished hereunder, constitute noncompliance with any FOSS license term, then promptly upon Gigapower's notice to Supplier of such allegation, Supplier shall indemnify, defend and

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hold harmless Gigapower against such allegation in accordance with Supplier's obligations to do so as set forth elsewhere in this Agreement, in a manner that preserves any proprietary software of Gigapower or its third-party suppliers from any public disclosure obligation or any other FOSS license noncompliance allegations.

9.0 Information

9.1 Confidentiality

- a. With respect to the Information of a Party, the other Party shall: (i) hold all such Information in confidence with the same degree of care with which it protects its own confidential and proprietary Information, but with no less than reasonably prudent care; (ii) restrict disclosure of such Information solely to its Affiliates, employees, contractors, and agents with a need to know such Information, advise such persons of their confidentiality obligations with respect thereto, and ensure that such persons are bound by obligations of confidentiality reasonably comparable to those imposed in this Agreement; and (iii) except as permitted or required under this Agreement, not use, sell, assign, lease, license, copy, distribute, or otherwise commercially exploit any such Information (or allow anyone else to do so) and ensure that any copies bear the same notices or legends, if any, as the originals. Neither Party assigns, transfers, or grants to the other Party any right, title, license, interest, or permission in or to any or all Information of such Party, including any right to use the Information beyond the express rights assigned, transferred, or granted in this Section or elsewhere in the Agreement.
- b. Except for a Party's Customer Information and trade secrets, neither Party shall have any obligation to the other with respect to Information that: (i) at the time of disclosure was already known to the Party free of any obligation to keep it confidential, as evidenced by the Party's written records prepared prior to such disclosure; (ii) is or becomes publicly known through no wrongful act of the Party; (iii) is lawfully received from a third party, free of any obligation to keep it confidential; (iv) is independently developed by the Party or a third party, as evidenced by the Party's written records and where such development occurred without any direct or indirect use of or access to such Information received from the other Party; or (v) the other Party consents in writing is free of restriction. A Party's confidentiality obligations with respect to any Information of the other Party (except its Customer Information and trade secrets) shall remain in effect, including after the expiration or termination of this Agreement, until it qualifies under one of the exceptions in this Subsection. Confidentiality obligations with respect to a Party's Customer Information and trade secrets shall remain in effect indefinitely without exception.
- c. To the extent reasonably feasible, each Party shall clearly mark or otherwise identify Information as confidential; however, the failure to so mark or designate Information as confidential will not constitute a waiver of the confidentiality provisions where: (i) it is reasonably obvious under the circumstances that the Information is confidential, or (ii) the receiving Party's employees, contractors, or agents accessed or received the Information while on the disclosing Party's premises or while accessing the disclosing Party's systems, customers, operations, infrastructure, network, or facilities.

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9.2 Customer Information

- a. As between Supplier and Gigapower, Gigapower retains title to any Gigapower Customer Information, and Supplier retains title to any Supplier Customer Information. With respect to Supplier Customer Information, Supplier is solely responsible for complying with all applicable privacy Laws, including by providing its customers with required notices and obtaining customer consents.
- b. With respect to Gigapower Customer Information, Supplier shall comply with all applicable privacy Laws, including all CPNI requirements, and all applicable privacy requirements, including Gigapower's privacy policies. Except to the extent necessary for performing Services or as otherwise authorized in this Agreement, Supplier shall:
 - i. not use, and not permit any Supplier Representatives to use, Gigapower Customer Information to market or otherwise sell products to Gigapower's customers;
 - ii. not incorporate Gigapower Customer Information into any database other than one maintained exclusively for the storage of Gigapower Customer Information;
 - iii. not incorporate data from any of Supplier's other customers, including Affiliates of Gigapower, into the database maintained exclusively for the storage of Gigapower Customer Information;
 - iv. not use Gigapower Customer Information for its own operations, services, activities, or other purposes; and
 - v. prohibit access to or use of Gigapower Customer Information by any of Supplier's other customers, Supplier's Affiliates, or third parties.

9.3 Security Incident

Supplier shall promptly notify Gigapower in writing and by contacting Gigapower Asset Protection by telephone at 1.800.807.4205 (within the US) or +1.908.658.0380 (outside the US) upon learning of (i) any breach of Subsection b of the Section above entitled "Customer Information"; (ii) any disclosure (inadvertent or otherwise) of Gigapower Information to any third party not expressly permitted to receive or have access to such Information; or (iii) a breach or suspected breach of, or other security incident involving, Supplier's systems or Supplier's network that could permit use, disclosure, or access to Gigapower Information (collectively (i) – (iii), an "Information Security Incident"). Such notice shall include the details of the Information Security Incident. Supplier shall promptly investigate and determine if an Information Security Incident has occurred and, if so, Supplier shall fully cooperate with Gigapower in determining, as necessary or appropriate, actions to be taken, including remediation, customer notification, and coordination with law enforcement and news, press, and media contacts. Supplier shall not communicate with any Gigapower customer regarding an Information Security Incident without Gigapower's consent, which consent shall not be unreasonably withheld. Supplier shall provide Gigapower with regular status updates, including actions taken to resolve such Information Security Incident, at agreed upon intervals for the duration of the incident. Within 15 business days after the closure of the Information Security Incident, Supplier shall provide Gigapower with a written report describing the incident, actions taken by the Supplier during its response, and Supplier's plans to prevent a similar incident from occurring.

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9.4 General Obligations

- a. Compelled Disclosure. If a Party is required to provide Information of the other Party to any court or government agency pursuant to a written court order, subpoena, regulatory demand, or process of law, then such Party must, unless prohibited by applicable Law, first provide the other Party with prompt notice of such requirement and reasonable cooperation should the other Party seek protective arrangements for the production of such Information. The compelled Party shall (i) take reasonable steps to limit its provision of Information to the specific Information required by such court or agency, and (ii) continue to otherwise protect all Information disclosed in response to such order, subpoena, regulatory demand, or process of law.
- b. Return or Destruction of Information; Certification.
 - i. Information. Upon a Party's request, the other Party must promptly return or destroy all or any requested portion of the requesting Party's Information to the extent still retained by or on behalf of the other Party, unless required to be retained pursuant to this Agreement.
 - ii. Gigapower Customer Information and SPI. On an ongoing basis during the term, Supplier must return or destroy Gigapower Customer Information and SPI within 15 business days after the Information is no longer required to comply with this Agreement or is no longer capable of being used for a permitted purpose. If the Agreement or Order term is extended, Gigapower Customer Information and SPI that has not been returned or destroyed may be carried over into the extended term for a permitted purpose, but only for as long as Supplier's continued retention is authorized in writing by Gigapower in connection with such extension. Upon expiration or termination of the Agreement or applicable Order, Supplier must return or destroy any remaining Gigapower Customer Information and SPI and must cease collecting such Information.
 - iii. Destruction Certification. As to all Information in Subsections i and ii, within 15 business days of a Party's request, the other Party shall provide written certification sent by its authorized representative that such Information, including all copies under its control, has been returned or destroyed, provided that with respect to back-up copies on the other Party's systems, the other Party is deemed to have complied with its obligations under this Subsection if it makes reasonable efforts to expunge such copies from such systems, or to permanently render them irretrievable.

10.0 Limitation of Damages, Indemnities, and Insurance

10.1 Limitation of Damages

Except with respect to claims based on the indemnity, infringement, and confidentiality obligations set forth in this Agreement, in no event is either Party liable to the other Party for any consequential or incidental damages, however caused, based on any theory of liability.

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10.2 Indemnity

- a. Except for Covered Losses which are provided for in the Section entitled "Infringement," Supplier shall indemnify, hold harmless, and defend Gigapower and its Affiliates, as well as their respective employees, agents, distributors and customers, individually or collectively, against any third-party Loss arising from, in connection with, or resulting from (i) the Material or Services furnished by Supplier, (ii) Supplier's acts or omissions with respect to this Agreement, or (iii) Employment Claims. SUPPLIER'S DUTY TO INDEMNIFY, HOLD HARMLESS, AND DEFEND AGAINST LOSS EXTENDS TO LOSS THAT MAY BE CAUSED OR ALLEGED TO BE CAUSED IN PART BY THE NEGLIGENCE OF Gigapower AND OTHER PERSONS INDEMNIFIED UNDER THIS AGREEMENT, TO THE FULLEST EXTENT THAT SUCH INDEMNIFICATION IS PERMITTED BY APPLICABLE LAW.
- b. Gigapower shall notify Supplier promptly of any Loss, but such notice shall not be a precondition of Supplier's obligations under this Section, and any delay in such notice shall not relieve Supplier of its obligations under this Section, except to the extent that Supplier can show that such delay materially prejudiced Supplier. Supplier shall promptly accept tender of defense and indemnity under subsection (a) and promptly provide a defense to the Indemnified Parties in accordance with subsection (c). Until such time as supplier accepts the Indemnified Parties' tender of defense and indemnity, Gigapower is entitled to defend or settle any Loss for which an indemnification or defense obligation is owed at its sole discretion, and offset all Loss incurred against any current or future amount owed to Supplier. Supplier's acceptance of any defense or indemnification obligation may not be construed as an admission of liability by Supplier to any third party.
- c. At the request of Gigapower, Supplier shall conduct Gigapower's defense (retaining counsel acceptable to Gigapower and conflict free with Gigapower and its Affiliates) at Supplier's expense against any Loss within the scope of this Section. At its own option, Gigapower may retain separate counsel, including in-house counsel, to participate in Gigapower's defense against such a Loss, and in such case Gigapower and Supplier shall cooperate in the defense. Supplier may control the defense (subject to Gigapower's participation) and settlement of such a Loss, but if the control of the defense or settlement of a Loss may have an adverse effect on Gigapower, then Supplier shall not exercise such control without the consent of Gigapower, and Gigapower shall not unreasonably withhold or delay its consent.
- d. Supplier shall have no right of, nor shall Supplier bring any claim or action for, contribution or subrogation against Gigapower, its Affiliates, or their agents or employees, nor shall Supplier implead any of them in any action brought by another based on injury to the person or death arising out or relating to Supplier's performance under this Agreement.
- e. Supplier waives any immunity from indemnification that Supplier may hold by virtue of Supplier's compliance with its Workers' compensation obligations in any jurisdiction.

10.3 Infringement

- a. **Definitions.** For purposes of this Section:

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This Agreement is not for use or disclosure outside of Gigapower, its Affiliates, and its and their third party representatives, and Supplier except under written agreement by the contracting Parties.

- i. **“Indemnified Parties”** shall mean Gigapower and its Affiliates, as well as their respective agents, distributors, and customers, individually or collectively, as the case may be.
- ii. **“Loss”** shall mean any liability, loss, claim, demand, suit, cause of action, or proceeding, regardless of whether meritorious, settlement payment, cost, expense, interest, award, judgment, assessment, damages (including punitive and exemplary damages and increased damages for willful infringement), liens, fines, fees, penalties, obligation, and Litigation Expense.
- iii. **“Litigation Expense”** means any court filing fee, court cost, arbitration fee, and each other fee and cost of investigating or defending an indemnified claim, including but not limited to a Covered Claim as set forth in Subsection (b)(i) or asserting any claim for indemnification or defense under this Agreement, including attorneys’ fees and other professionals’ fees, and disbursements.
- iv. **“Provided Elements”** shall mean any products, hardware, software, interfaces, systems, content, services, processes, methods, documents, materials, data or information, or any functionality therein, provided by any means (including by way of providing online access) to any Indemnified Party (or its customers) by or on behalf of Supplier (including by any of Supplier’s sub-suppliers), or a reseller or distributor of Supplier’s or its Affiliate’s products, hardware, material, software, content or services pursuant to this Agreement (including under any order, statement of work, exhibit, or other document under, subordinate to, or referencing this Agreement) or pursuant to a separate agreement between any Indemnified Party and the reseller or distributor (whether by way of sale, lease, license or any other means).

b. **Obligations.**

- i. Supplier shall indemnify, hold harmless, and defend (which shall include cooperating with Gigapower as set forth below in the defense of) the Indemnified Parties against any Loss resulting from, arising out of or relating to any allegation, threat, demand, claim or lawsuit brought by any third party (“Covered Claim”), regardless of whether such claim is meritorious, of:
 - 1. infringement (including direct, contributory and induced infringement) of any patent, copyright, trademark, service mark, or other Intellectual Property Right in connection with the Provided Elements, including infringement based on:
 - A. making, repair, receipt, use, importing, sale or disposal (and offers to do any of the foregoing) of Provided Elements (or having others do any of the foregoing, in whole or in part, on behalf of or at the direction of the Indemnified Parties), or
 - B. use of Provided Elements in combination with products, hardware, software, interfaces, systems, content, services, processes, methods, documents, materials, data or information not furnished by Supplier, including use in the form of the making, having made or using of an apparatus or system, or the making or practicing of a process or method unless the function performed by the Provided Elements in

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such combination is of a type that is neither normal nor reasonably anticipated for such Provided Elements (a "Combination Claim");

2. misappropriation of any trade secret, proprietary or non-public information in connection with the Provided Elements;

any and all such Loss referenced in this Subsection (b)(i) being hereinafter referred to as a "Covered Loss."

- ii. Insofar as Supplier's obligations under Subsection (b)(i) result from, arise out of, or relate to a Covered Claim that is a Combination Claim, Supplier shall be liable for only its Proportionate Share of the Covered Loss associated with such Combination Claim. Supplier's "Proportionate Share" shall be a portion of the Covered Loss that is fairly and equitably attributable to Supplier based on the relative materiality of the role played by the applicable Provided Elements in the Combination Claim. If Supplier believes Gigapower's assessment of Supplier's Proportionate Share is not fair and equitable, then Supplier, within 60 days of receiving Gigapower's assessment, shall provide its proposed alternative share calculation ("Supplier-Proposed Share"). If Supplier fails for any reason to provide its Supplier-Proposed Share within the 60 days, the Supplier-Proposed Share shall for all purposes (including, without limitation, for the purposes of arbitration below) be deemed to be seventy-five percent (75%) of Gigapower's assessment. The Parties shall attempt to reach agreement on Proportionate Share through good faith negotiation between the Parties; provided, however, that a failure of the Parties to agree on Supplier's Proportionate Share shall not relieve Supplier of its obligations to pay its Proportionate Share under this Section. Supplier shall make payments in satisfaction of its Proportionate Share obligation whenever such payments become due. Should Supplier not make such payments when due (e.g., when payment is called for in satisfaction of a judgement, or when invoiced for Legal Expenses or other Covered Loss by Gigapower), Gigapower may deduct the amount of said payments from any amount owed by any Indemnified Party then or later to Supplier or its affiliates under this or any other agreement as reimbursement for any amounts that it paid or has to pay in place of Supplier.
- iii. Dispute Resolution of Proportionate Share. The parties shall attempt to resolve any dispute as to Proportionate Share through good faith negotiations. In the event that the Parties have been unable to agree on Supplier's Proportionate Share, then, after final resolution of the Covered Claim (either by way of settlement or final, unappealable judgement), either party may initiate mediation. If mediation fails to resolve the matter, the final determination of Proportionate Share shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof; provided, however, unless both Parties agree otherwise, the arbitrator(s) shall only select either: A) Gigapower's assessment of Proportionate Share (that Gigapower had provided to Supplier under subsection ii immediately above ("Gigapower's Initial Assessment")) or a revised assessment that Gigapower

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submits at arbitration ("Gigapower's Revised Assessment) provided that in no event may Gigapower's Revised Assessment be higher than Gigapower's Initial Assessment); or B) the Supplier-Proposed Share under subsection ii immediately above or a revised assessment that Supplier submits at arbitration ("Revised Supplier-Proposed Share"), provided that in no event may the Revised Supplier Proposed share be lower than the Supplier Proposed Share. The seat of the arbitration shall be Dallas, Texas or such other location as the Parties mutually agree. Where the amount disputed under this provision is less than \$15 million, a single mutually-agreed arbitrator shall hear and determine the Parties' dispute. Where the amount disputed under this provision is equal to or greater than \$15 million, three arbitrators shall hear and determine the Parties' dispute. Within thirty (30) days after either party sends notice of its intention to arbitrate, the parties shall either agree on a single arbitrator for disputes less than \$15 million, or, for a dispute equal to or exceeding \$15 million, each party shall select one person to act as arbitrator. The two arbitrators so selected shall, within ten days of their appointment, select a third arbitrator. If the two arbitrators selected by the parties are unable to select a third arbitrator, then the third arbitrator shall be selected and appointed pursuant to the selection procedure set forth in the AAA Rules. All arbitrators shall be qualified by education, training, and experience in both patent law and the technology relevant to any dispute under this Section.

- iv. Gigapower shall have sole control over the defense of (1) any Combination Claim and (2) any other Covered Claim that involves Supplier and one or more other suppliers of Gigapower or its Affiliates ((1) and (2) being hereinafter referred to separately and collectively as a "Compound Claim"). Supplier shall cooperate in every reasonable way with Gigapower to facilitate the defense and may, at its option and at its own expense, participate with Gigapower in the defense with counsel of its own choosing. Where Gigapower controls the defense under this Subsection (b)(iii), Gigapower shall make good faith efforts to enter into a reasonable joint defense or common interest agreement with Supplier. Should Supplier wish to control the defense of the Provided Elements in any proceeding involving a Compound Claim where Gigapower and Supplier agree that Supplier's proportionate share is at least 25% of the potential Covered Loss (excluding Litigation Expense), Supplier shall have the option to intervene in the proceeding with Gigapower's support in order to defend the Provided Elements, provided that Supplier's counsel agrees to also represent Gigapower in the proceeding at least with respect to the allegations against the Provided Elements; such intervention will be deemed by Gigapower to fully satisfy Supplier's obligation to pay Gigapower for its Proportionate Share of the Litigation Expenses from the date of Supplier's intervention in the proceeding forward.
- v. Insofar as Supplier's obligations under Subsection (b)(i) result from a Covered Claim other than a Compound Claim, Supplier may control the defense of the Covered Claim provided that, promptly upon any of the Indemnified Parties' giving Supplier written notice of the Covered Claim, Supplier delivers to Gigapower (1) a written, properly executed, unconditional, irrevocable, and binding promise to fully indemnify and hold

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harmless the Indemnified Parties from and against all Losses related to the Covered Claim as provided under this Section and (2) written confirmation that it has retained counsel to defend Gigapower acceptable under this Section. In the event that Supplier controls the defense of the Covered Claim, Supplier shall retain as Gigapower's lead counsel, subject to Gigapower's approval, one or more competent attorneys from a nationally recognized law firm who are conflict free with Gigapower and its Affiliates and have significant experience in litigating intellectual property claims of the type at issue. The Indemnified Parties may, at their option and expense, participate with Supplier in the defense of such Covered Claim including by employing separate counsel to provide advice regarding, assistance with, and participation in the defense of such Covered Claim.

vi. Gigapower shall notify Supplier promptly of any Covered Claim; provided, however, that any delay in such notice shall not relieve Supplier of its obligations under this Section, except insofar as Supplier can show that such delay materially prejudiced Supplier.

vii. In no event shall Supplier settle, without Gigapower's prior written consent, any Covered Claim, in whole or in part, in a manner that would require any Indemnified Party to discontinue or materially modify its products or services (or offerings thereof). In no event shall Supplier enter into any agreement related to any Covered Claim or to the Intellectual Property Rights asserted therein that discharges or mitigates Supplier's liability to the third-party claimant but fails to fully discharge all of Gigapower's liabilities as to the Covered Loss.

c. Continued Use of Provided Elements Upon Injunction. Without in any manner limiting the foregoing indemnification, if, as a result of a Covered Claim, (i) Indemnified Parties' rights with respect to the Provided Elements are restricted or diminished, or (ii) an injunction, exclusion order, or other order from a court, arbitrator or other competent tribunal or governmental authority preventing or restricting the Indemnified Parties' use or enjoyment of the Provided Elements ("Adverse Judicial Order") is issued, imminent, or reasonably likely to be issued, then, in addition to its other obligations set forth in this Section, Supplier, in any case at its sole expense (or, in the case of a Combination Claim, at its fairly and equitably apportioned expense) and at no loss, cost or damage to the Indemnified Parties or their customers, shall use commercially reasonable efforts to obtain for the Indemnified Parties the right to continue using or conducting other activities with respect to the Provided Elements (or, in the case of a Combination Claim, shall use commercially reasonable efforts, in cooperation as reasonably needed with other interested parties, to obtain for the Indemnified Parties the right to continue using or conducting other activities with respect to the Provided Elements in the combination at issue); provided that if Supplier is unable to obtain such right, then Supplier shall, after consulting with and obtaining the written approval of the Indemnified Parties, provide modified or replacement non-infringing Provided Elements that are (or, in the case of a Combination Claim, shall use commercially reasonable efforts, in cooperation as reasonably needed with other interested parties, to provide a modified or replacement non-infringing combination, with the Provided Elements being modified or replaced as needed therein, that is) equally suitable and functionally equivalent while retaining the quality of the original Provided Elements and complying fully with all the representations and warranties set forth in this Agreement or the separate agreement between the

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Indemnified Party and the reseller or distributor; provided further that if Supplier is unable in this way to provide such modified or replacement non-infringing Provided Elements, then Gigapower shall have the right, at its option and without prejudice to any other rights or remedies that Gigapower has in contract, law or equity: (1) to terminate this Agreement or relevant purchase or funding commitments hereunder, and/or (2) to require Supplier, as applicable, to remove, accept return of, or discontinue the provision of the Provided Elements, to refund to Gigapower the purchase price thereof or other monies paid therefor (subject, in the case of Provided Elements other than services, to reduction based on the amount of depreciation or amortization over the useful life of the Provided Elements at issue), and to reimburse Gigapower for any and all reasonable out-of-pocket expenses of removing, returning, or discontinuing such Provided Elements.

- d. **Elimination of Charges.** After Gigapower ceases, as a result of actual or claimed infringement or misappropriation, to exercise the rights granted under this Agreement with respect to the Provided Elements, Gigapower has no obligation to pay Supplier any charges that would otherwise be due under this Agreement for such rights.
- e. **Exceptions.** Supplier shall have no liability or obligation to any of the Indemnified Parties for that portion of a Covered Loss which is based on (and only to the extent such portion is based on):
 - i. use of the Provided Elements by the Indemnified Parties in a manner that constitutes a material breach of this Agreement, provided that any action reasonably necessary to achieve the normal or reasonably anticipated use of the Provided Elements shall not qualify as a material breach of this Agreement; or
 - ii. an unauthorized modification of the Provided Elements by an Indemnified Party, other than one that is reasonably necessary to realize the normal or reasonably anticipated use of the Provided Elements; or
 - iii. Supplier's contractually required conformance to the Indemnified Party's written specifications, unless any one or more of the following is true:
 - 1. there was a technically feasible non-infringing means of complying with those specifications; or
 - 2. the relevant specifications are designed to bring the Provided Elements into compliance with, or have the Provided Elements conform to, an industry standard; or
 - 3. the Provided Elements are or have been provided by or on behalf of Supplier to any third party at any time; or
 - 4. the Provided Elements are or have been available on the open market (i.e., provided or offered for general availability to all interested customers by a third party other than the third party who brought the Covered Claim against the Indemnified Parties) at any time; or
 - 5. the relevant specifications for the Provided Elements are of Supplier's (or one or more of its sub-suppliers') origin, design, or selection.
- f. **OTHER LIMITATIONS OF LIABILITY NOT APPLICABLE.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY (AND WHETHER OR NOT SUCH A PROVISION CONTAINS LANGUAGE TO THE

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EFFECT THAT THE PROVISION TAKES PRECEDENCE OVER OTHER PROVISIONS CONTRARY TO IT), WHETHER EXPRESS OR IMPLIED, NONE OF THE LIMITATIONS OF LIABILITY (INCLUDING ANY LIMITATIONS REGARDING TYPES OF OR AMOUNTS OF DAMAGES OR LIABILITIES) CONTAINED ANYWHERE IN THIS AGREEMENT WILL APPLY TO SUPPLIER'S OBLIGATIONS UNDER THIS SECTION.

- g. **No Gigapower Obligations.** Notwithstanding any provision to the contrary in this Agreement, Gigapower shall have no obligation to indemnify, defend, or hold harmless Supplier for any Loss resulting from, arising out of or relating to any allegation, threat, demand, claim or lawsuit brought by any third party in connection with any intellectual property right or other proprietary right held or asserted by such third party.

10.4 Insurance

- a. With respect to Supplier's performance under this Agreement, and in addition to Supplier's obligation to indemnify, Supplier shall at its sole cost and expense:
- i. maintain the insurance coverages and limits required by this Section and any additional insurance and/or bonds required by Laws:
 1. at all times during the term of this Agreement and until completion of all Deliverables associated with this Agreement, whichever is later; and
 2. with respect to any coverage maintained in a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all Deliverables associated with this Agreement, whichever is later. If a "claims-made" policy is maintained, the retroactive date must precede the commencement of Deliverables under this Agreement;
 - ii. require each Subcontractor who may perform work under this Agreement or enter upon the work site to maintain coverages, requirements, and limits commensurate with the scope of work to be performed, and to include as additional insureds any party that Gigapower is required to include as an additional insured (except under the Workers' Compensation policy), and other extensions of coverage required of Gigapower, from the time when the Subcontractor begins work, throughout the term of the Subcontractor's work and, with respect to any coverage maintained on a "claims-made" policy, for two (2) years thereafter;
 - iii. procure the required insurance from an insurance company eligible to do business in the jurisdiction or jurisdictions where work will be performed and having and maintaining a Financial Strength Rating of "A-" or better and a Financial Size Category of "VII" or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, except that, in the case of **Workers' Compensation** insurance, Supplier may procure insurance from the state fund of the state where work is to be performed, provided however, if the work is to be performed in Puerto Rico or the U.S. Virgin Islands, the Supplier shall procure Workers' Compensation insurance in the amount required by law from the respective State Insurance Fund;

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- iv. upon request, provide to Gigapower, certificates of insurance and/or endorsements evidencing the required insurance: (a) within forty-five (45) days following the Effective Date of this Agreement and prior to the commencement of any Deliverables; (b) prior to the expiration of any insurance policy required in this Section; (c) for any coverage maintained on a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all Deliverables associated with this Agreement, whichever is later; and (d) at any such other time as the request is made by Gigapower;
 - v. upon request, provide to Gigapower complete copies of the policies evidencing the required insurance;
 - vi. provide or have the issuing insurance company provide at least thirty (30) days' advance written notice of cancellation, non-renewal, or reduction in insurance coverage, terms or limits.
- b. The Parties agree that:
- i. the failure of Gigapower to request such certificates of insurance, endorsements, or copies of the policy, or to identify a deficiency will not be construed as a waiver of Supplier's obligation to maintain the insurance required under this Agreement;
 - ii. the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect Supplier, nor shall it be deemed as a limitation on Supplier's liability to Gigapower in this Agreement;
 - iii. Supplier may meet the required insurance coverages and limits with any combination of primary and Umbrella/Excess liability insurance;
 - iv. Supplier is responsible for any deductible or self-insured retention; and
- c. The insurance coverage required by this Section includes:

Workers' Compensation: insurance, with benefits afforded under the laws of any state in which the work is to be performed and **Employers Liability** insurance with limits of at least:

\$500,000 for Bodily Injury – each accident

\$500,000 for Bodily Injury by disease – policy limits

\$500,000 for Bodily Injury by disease – each employee

To the fullest extent allowable by Law, the policy must include a waiver of subrogation in favor of Gigapower, its Affiliates, and their directors, officers and employees. In states where **Workers' Compensation** insurance is a monopolistic state-run system, Supplier shall add **Stop Gap Employers Liability** with limits not less than \$500,000 each accident or disease.

Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 12 04 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, products/completed

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operations, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least:

\$2,000,000 General Aggregate limit

\$1,000,000 each occurrence limit for all bodily injury or property damage incurred in any one (1) occurrence

\$1,000,000 each offense limit for Personal Injury and Advertising Injury

\$2,000,000 Products/Completed Operations Aggregate limit

The **Commercial General Liability** insurance policy must:

1. include Gigapower, its Affiliates, and their directors, officers, and employees as Additional Insureds. Upon request, Supplier shall provide a copy of the Additional Insured endorsement to Gigapower. The Additional Insured endorsement may either be specific to Gigapower or may be "blanket" or "automatic" addressing any person or entity as required by contract for ongoing operations and completed operations. A copy of the Additional Insured endorsement must be provided within forty-five (45) days of execution of this Agreement and within forty-five (45) days of each Commercial General Liability policy renewal;
2. include a waiver of subrogation in favor of Gigapower, its Affiliates, and their directors, officers and employees; and
3. be primary and non-contributory with respect to any insurance or self-insurance that is maintained by Gigapower regardless of whether such insurance maintained by Gigapower is designated as primary or excess.

Business Automobile Liability insurance if vehicles will be used in the performance of the contract, with limits of at least \$1,000,000 combined single limit each accident for bodily injury and property damage, extending to all owned, hired, and non-owned vehicles. Gigapower, its Affiliates and their directors, officers and employees shall be included as Additional Insureds on a primary and non-contributory basis.

Umbrella/Excess Liability insurance with limits of at least \$1,000,000 each occurrence with terms and conditions at least as broad as the underlying Commercial General Liability, Business Auto Liability, and Employers Liability policies. The Umbrella/Excess Liability insurance policy must:

1. include Gigapower, its Affiliates, and their directors, officers, and employees as Additional Insureds. Additional Insured status may be conferred by reference to the underlying primary policy, or by endorsement, either specific to Gigapower or via a "blanket" or "automatic" endorsement addressing any person or entity as required by contract for ongoing operations and completed operations;

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2. to the fullest extent allowable by Law, include a waiver of subrogation in favor of Gigapower, its Affiliates, and their directors, officers and employees; and
3. be primary and non-contributory with respect to any insurance or self-insurance that is maintained by Gigapower, regardless of whether such insurance maintained by Gigapower is designated as primary or excess.

11.0 Records and Audits

- a. **Gigapower Audits.** Supplier shall maintain complete and accurate records relating to the Deliverables and the performance of this Agreement. Gigapower and its auditors (including internal audit staff and external auditors) and governmental authorities shall have the right to review such records ("Gigapower Audits"), to verify the following:
 - i. the accuracy and integrity of Supplier's invoices and Gigapower's payment obligations hereunder;
 - ii. the supporting information and calculations regarding invoices;
 - iii. that the Deliverables have been and are being performed/provided by Supplier and its Subcontractors in accordance with this Agreement;
 - iv. the processes, procedures and security practices used in performing/providing the Deliverables;
 - v. the integrity of Supplier's systems that process, store, support, maintain, and transmit Gigapower data;
 - vi. the systems, communications and information technology used in performing/providing the Deliverables;
 - vii. that Supplier and its Subcontractors are complying with Laws and principles of Citizenship and Sustainability; and
 - viii. that the Supplier and Subcontractors are in compliance with the terms of this Agreement.
- b. **Access at Reasonable Times.** Supplier shall provide and shall require that its Subcontractors provide to Gigapower, its auditors, and governmental authorities access at all reasonable times to:
 - i. any facility at which the Services are being performed;
 - ii. systems and assets used to provide the Services;
 - iii. Supplier employees and Subcontractor employees providing the Services; and
 - vi. all Supplier and Subcontractor records, including financial records relating to the invoices and payment obligations and supporting documentation, pertaining to the Services.

Gigapower's access to the records and other supporting documentation shall include the right to inspect and photocopy Supplier's documentation and the documentation of its Subcontractors, and the right to retain copies thereof outside of their physical location with appropriate safeguards, if such retention is deemed reasonably necessary by Gigapower.

- c. **Cooperation with Audits.** Gigapower Audits may be conducted once a year (or more frequently if requested by governmental authorities who regulate Gigapower's business, if required by applicable Law, if auditors require follow-up access to complete audit inquiries, or

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if an audit uncovers any problems or deficiencies) upon at least seven (7) days' advance notice (unless otherwise mandated by Law). Supplier shall cooperate and, subject to the Subsection below entitled "Audit of Subcontractors", shall ensure that its Subcontractors cooperate in the Gigapower Audits, and shall make the information reasonably required to conduct the Gigapower Audits available on a timely basis. If, as a result of an Gigapower Audit, Gigapower determines that Supplier has not performed or has unsatisfactorily performed any obligation under this Agreement, then Supplier will promptly remedy the non-performance or unsatisfactory performance.

- d. **Overcharges.** If an Gigapower Audit indicates that Supplier overcharged Gigapower, then Gigapower may notify Supplier of the amount of such overcharge and Supplier shall promptly pay to Gigapower the amount of the overcharge along with interest from the date of the overcharge. If any such Gigapower Audit reveals an overcharge to Gigapower during any twelve (12) month period exceeding five percent (5%) of all charges in the aggregate paid by Gigapower hereunder during such period, then Supplier shall reimburse Gigapower for the cost of such Gigapower Audit.
- e. **Preservation of Records.** Supplier shall maintain and retain the records set forth in the Subsection above entitled "Gigapower Audits" during the term of this Agreement and for three (3) years thereafter (unless Gigapower makes a discovery or legal hold request with respect to such records, in which case Supplier shall retain such records until Gigapower notifies Supplier that such discovery or legal hold request has expired). Upon notification by Gigapower of a discovery or legal hold request, Supplier shall fully cooperate with such request and immediately preserve any Supplier records covered by such request and promptly provide such Supplier records requested by Gigapower related to the inquiry. Supplier shall provide Gigapower, at Gigapower's request, with paper and electronic copies of documents and information reasonably necessary to verify Supplier's compliance with this Subsection.
- f. **Audit Expenses.** Except as provided in the Subsection above entitled "Overcharges," all reasonable out-of-pocket costs and expenses incurred by Gigapower in connection with an Gigapower Audit shall be paid by Gigapower. Supplier shall be solely responsible for all costs and expenses incurred by Supplier in connection with its obligations under this Section. In the event that Supplier requires that an audit be performed by an independent auditor, Supplier will be responsible for paying for the costs and expenses associated with the independent auditor.
- g. **Audit of Subcontractors.** With respect to Gigapower requests for audits or inspections of Supplier Subcontractors, the following applies:
 - i. If Supplier's agreement with its applicable Subcontractor permits an Gigapower Audit, then Gigapower shall be permitted to conduct such audit directly or through a third-party representative. Supplier shall work with Gigapower in facilitating the Subcontractor's cooperation for an expeditious and thorough audit or inspection.
 - ii. If Supplier's contract with its applicable Subcontractor does not permit Gigapower to directly conduct an audit or inspection, then Supplier shall use best efforts to enable Gigapower to perform an audit of the Subcontractor with Supplier coordinating the audit process. Failing those efforts, Supplier shall, upon Gigapower's request, conduct the audit or inspection on behalf of Gigapower, subject to terms agreed to by Supplier and Gigapower for the Subcontractor audit, such as areas to be audited, applicable fees, and the timeframe for reporting the audit results to Gigapower. If Gigapower's request for a Supplier audit or inspection arises from, in Gigapower's good faith opinion, materially or consistently deficient Services provided by the Subcontractor under this Agreement,

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and the audit in both Parties' opinion confirms such deficiencies, then Supplier shall not charge Gigapower a fee for Supplier's audit of its Subcontractor.

- h. Apart from Gigapower Audits, Supplier shall respond to Gigapower's reasonable requests for certifications, responses to questionnaires, or similar documentation to demonstrate Supplier's compliance with the terms of this Agreement.

12.0 Termination

12.1 Termination for Convenience

Gigapower may at any time, for its own convenience and without cause, by providing Supplier notice, terminate this Agreement and/or any Order placed hereunder in whole or in part. Gigapower shall pay Supplier, as a termination charge, for Services rendered (in whole or in part); unrecoverable capital expenses and equipment; any Subcontractor and vendor costs incurred as a result of the termination; demobilization costs, including any work necessary to safely close out and/or preserve the work in progress (e.g., restoration); and Material Delivered through the date of termination.

12.2 Termination for Cause

- a. If Supplier breaches any provision of this Agreement and/or any Order, and (i) if the breach is one that by its nature could be cured, and a cure of such breach commenced and diligently pursued within thirty (30) days after Gigapower provides written notice, or (ii) if the breach is one that by its nature cannot be cured, or (iii) if the breach is a material violation of Laws, then, in addition to any other applicable remedies, Gigapower shall have the right upon notice to immediately terminate this Agreement and/or any such Order without any obligation or liability. Failure of Gigapower to immediately terminate this Agreement and/or any Order (1) following a breach which continues longer than such cure period, provided such breach has not been cured prior to Gigapower's provision of a notice of termination, or (2) following a breach that cannot be cured or that constitutes a violation of Laws, shall not constitute a waiver of Gigapower's rights to terminate. If Gigapower terminates an Order for cause, then Supplier shall refund any amounts Gigapower may have previously paid for Deliverables that Gigapower returns or does not Accept, and reimburse Gigapower for any cost incurred in returning Material to Supplier and restoring Gigapower's site to its previous condition. If Gigapower returns or rejects any Material to which title has already passed, then title in such Material shall revert to Supplier when Supplier satisfies its refund and reimbursement obligations under the preceding sentences. Supplier bears the risk that such Material may be lost or damaged in transit.
- b. If Supplier repeatedly breaches any of its obligations under this Agreement, whether or not (i) the effect thereof could reasonably be considered material or (ii) such repeated breaches were cured, then Gigapower may, by giving notice to Supplier, terminate this Agreement and/or any Order, in whole or in part, as of the termination date specified in such notice without regard to any cure period.

12.3 Termination for Nonpayment

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If Gigapower fails to pay any material undisputed amounts which have been invoiced in accordance with this Agreement and does not cure such non-payment within thirty (30) days of notice of such non-payment from Supplier, then Supplier shall have the right upon notice to immediately terminate this Agreement and/or any such Order without any obligation or liability, provided such breach has not been cured prior to Supplier's provision of a notice of termination.

12.4 Intentionally Left Blank

12.5 Termination of Related Orders

Whenever Law or a provision of this Agreement permits Gigapower to terminate any Order, Gigapower may also terminate such other Orders as are related to the same transaction or series of transactions as the Order in question.

12.6 Obligations upon Expiration or Termination

Upon expiration or termination of this Agreement or any Order, Supplier shall, upon the request of Gigapower: (a) return all papers, materials and property of Gigapower held by Supplier and (b) provide reasonable assistance as may be necessary for the orderly, non-disrupted continuation of Gigapower's business. Supplier shall assist in coordinating the transfer of the provision of the Services to Gigapower or a successor supplier, which shall include continuing to provide the required level of Services until the date of expiration or termination and providing Gigapower or such successor supplier with all pertinent information about the Services that does not constitute a Supplier trade secret.

13.0 Miscellaneous

13.1 Electronic Data Interchange

The Parties may exchange Orders, payments, acknowledgements, invoices, remittance notices, and other records ("Data") electronically, in place of tangible documents, and unless otherwise agreed shall exchange such Data in accordance with the Telecommunications Industry Forum EDI Guidelines for use of American National Standards Institute (ANSI) Accredited Standards Committee X12 transaction sets, and shall reasonably cooperate with requests to do so (including by providing documentation necessary to establish EDI). The following additional conditions apply to any such exchanges:

- a. Gigapower Guidelines. Supplier shall transfer Data in accordance with the guidelines located at <https://www.attpurchasing.com>.
- b. Statute of Frauds. All Data transmitted pursuant to this clause shall be deemed to be a "writing" or "in writing" for purposes of the Uniform Commercial Code. Any such Data containing or having affixed to it a Signature shall be deemed for all purposes to: (i) to have been "signed" and "executed," and (ii) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.
- c. Method of Exchange. Data shall be exchanged by direct electronic or computer systems communication between Gigapower and/or by indirect communications using a third party

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service provider to translate, forward and/or store such Data. Each Party shall be responsible for the cost(s) and associated cost(s) of any such third party service provider with which it contracts.

13.2 Independent Contractor

The relationship of Gigapower and Supplier established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to (a) constitute Gigapower and Supplier, or Gigapower and any Supplier Representative, as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or (b) except to the extent expressly set forth in this Agreement, allow any Party hereto to create or assume any obligation on behalf of another Party hereto for any purpose whatsoever.

13.3 Cumulative Remedies

The rights and remedies of the Parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, by statute or otherwise, except in those cases where this Agreement or an Order specifies that a particular remedy is sole or exclusive, but neither Party may retain the benefit of inconsistent remedies. No single or partial exercise of any right or remedy with respect to one breach of this Agreement or any Order precludes the simultaneous or subsequent exercise of any other right or remedy with respect to the same or a different breach.

13.4 No Liens

Supplier shall, and shall cause the Supplier Representatives to, keep all property, including real and personal property, of Gigapower and its Affiliates and their respective employees, contractors, subcontractors, suppliers and other representatives ("Gigapower Representatives") and any Deliverables, products or materials provided by Supplier or Supplier Representatives under this Agreement free and clear of all Liens arising from, or in connection with, Supplier's Deliverables, including any Liens resulting from a failure by Supplier to comply with its obligations to Supplier Representatives or a failure by a Supplier Representative to comply with its obligations to a third party. If any such Lien is asserted for any reason, then Gigapower may, without limitation: (a) pay the amount of such Lien to the entity asserting the Lien and obtain a full release from such entity of the Lien, or bond the amount stated in the Lien, or (b) require Supplier to promptly obtain a properly executed release of the Lien from the entity asserting the Lien that is satisfactory to Gigapower, or bond the amount stated in the Lien. In either case, Supplier shall be liable for any such payments or charges, including any costs, expenses and Litigation Expense incurred by Gigapower and/or Gigapower Representatives, and shall, promptly upon request, reimburse same.

13.5 Assignment and Delegation

Neither Party may assign, delegate, or otherwise transfer its rights or obligations under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without the prior written consent of the other Party, except as follows: Without securing the consent of Supplier, Gigapower may assign its rights, or delegate its duties, or both, in whole or in part: to any present or future Affiliate of Gigapower, to any lender providing

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financing to Gigapower, or to any third party that assumes the operation of or otherwise acquires any substantial portion of the business of Gigapower affected by this Agreement or an Order; and Supplier may subcontract its performance subject to the Section entitled "Use of Subcontractors." Each Party may assign its right to receive money due hereunder, but any assignment of money is void to the extent (a) the assignor fails to give the non-assigning Party at least thirty (30) days prior notice, (b) the assignment purports to impose upon the non-assigning Party additional costs or obligations in addition to the payment of such money, or (c) the assignment purports to preclude Gigapower from dealing solely and directly with Supplier in all matters pertaining to this Agreement. Any assignment, delegation or transfer for which consent is required hereby and which is made without such consent given in writing is void.

13.6 Third Party Administrative Services

A third party administrator may perform certain administrative functions for Gigapower in relation to this Agreement. Such administrative functions may include (a) collecting and verifying certificates of insurance, (b) providing financial analysis, (c) verifying certifications under the Section entitled "Utilization of Diverse Suppliers," and (d) collecting and verifying Supplier profile information. Supplier shall cooperate with such third party administrator in its performance of such administrative functions and shall provide such data as is requested from time to time by the third party administrator. Notwithstanding any other provision of this Agreement, Gigapower may provide any information regarding Supplier to such third party administrator. Gigapower shall contractually require the third party administrator to maintain confidentiality of Supplier's information with rights to use it solely for purposes of the administrative functions. Supplier shall pay the third party administrator an annual fee for the performance of these administrative functions, which annual fee shall not exceed three hundred dollars (\$300.00).

13.7 Supplier's Audited Financial Statements

In the event that Supplier is not a publicly traded corporation, Supplier shall provide to Gigapower (or its third party delegate), upon request and at no charge, its bona fide and unedited audited fiscal year financial statements and other financial documents as reasonably requested by Gigapower to allow an assessment of Supplier's financial condition. If Supplier is a subsidiary of, is owned by, has a majority of its interest held by, or is controlled by an entity that is not a publicly traded corporation, then Supplier shall furnish such documents for both Supplier and its owning, controlling or parent company. If Supplier is a subsidiary of, is owned by, has a majority of its interest held by, or is controlled by an entity that is a publicly traded corporation, then Supplier shall furnish publicly available documents regarding its parent company.

13.8 Entire Agreement

This Agreement, including all appendices, exhibits, attachments and documents incorporated by reference, constitutes the final, complete, and exclusive expression of the Parties' agreement on the matters contained in this Agreement. The terms of this Agreement and an applicable Order shall govern in lieu of all other pre-printed, standardized or other provisions that may otherwise appear in any other paper or electronic record of either Party (such as standard terms on order or acknowledgment forms, advance shipping notices, invoices, time sheets, and packages, shrink wrap terms, and click wrap terms). All prior written and oral negotiations and agreements, and all

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contemporaneous oral negotiations and agreements, between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The Parties do not intend that the provisions of this Agreement be explained, supplemented, or qualified through evidence of trade usage or any prior course of dealings or any course of performance under any prior agreement. In entering into this Agreement, neither Party has relied upon any statement, estimate, forecast, projection, representation, warranty, action or agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than any expressly stated in this Agreement.

13.9 Force Majeure

- a. A Party is excused from performing its obligations under this Agreement or any Order if, to the extent that, and for so long as:
 - i. such Party's performance is prevented or delayed by an act or event (other than economic hardship, changes in market conditions, insufficiency of funds, or unavailability of equipment and supplies) that is beyond its reasonable control and could not have been prevented or avoided by its exercise of due diligence;
 - ii. such Party gives notice to the other Party, within 30 days of the act or event that so prevents such Party from performing its obligations; and
 - iii. such Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay.
- b. By way of illustration, and not limitation, acts or events that may prevent or delay performance (as contemplated by this Section) include: acts of God or the public enemy, acts of civil or military authority, terrorists acts, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, and extreme weather events.
- c. If Supplier is the Party whose performance is prevented or delayed as contemplated by this Section, then Gigapower may elect to:
 - i. terminate this Agreement and/or affected Order, in whole or in part, and Gigapower shall pay Supplier for Services rendered, in whole or in part (the latter of which shall be compensated based on Supplier's actual costs plus a reasonable markup), and Material Delivered through the date of termination; or
 - ii. suspend this Agreement and/or the affected Order or any part thereof for the duration of the delay; and (at Gigapower's option) obtain Deliverables elsewhere and deduct from any commitment under this Agreement or such Order the quantity of the Deliverables obtained elsewhere or for which commitments have been made elsewhere; and resume performance under this Agreement or such Order when Supplier resumes its performance; and any affected Delivery Date or performance date shall be equitably extended to account for the length of time Supplier's performance was delayed, prevented, or impacted. If Gigapower does not give any notice within thirty (30) days after receiving notice under this Section that Supplier's performance has been delayed or prevented, then the option set forth in this Subsection (ii) shall be deemed to have been selected.

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- d. During any labor dispute between Gigapower and the union(s) representing Gigapower's employees, Gigapower may modify the scope of Deliverables under any Order upon notice. Such modification may result in a delay in the resumption of Services when requested by Gigapower.

13.10 Time is of the Essence

Time is of the essence.

13.11 Governing Law

This Agreement and the transactions it contemplates shall be governed, interpreted, construed, enforced and performed in accordance with the Laws of the State of Texas, without regard to conflicts of laws principles.

13.12 Forum

- a. Forum for Judicial Actions. Other than to the extent expressly set forth below in this Section, any legal action or proceeding arising out of or relating to this Agreement or the transactions it contemplates ("Judicial Action") shall be brought only in the Dallas Division of the United States District Court for the Northern District of Texas or in any Texas state court sitting in Dallas, Texas, and each Party consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such Judicial Action and waives any claim of forum non conveniens in connection therewith and objection to venue laid therein. Process in any such Judicial Action may be served on a Party anywhere in the world, whether within or without the State of Texas. The choice of forum above shall not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum.
- b. Mediation of Disputes Relating to Indemnification.
 - i. If any dispute arising out of or relating to a demand by Gigapower, pursuant to the Section entitled "Indemnity" or the Section entitled "Infringement," for indemnification from Supplier cannot be settled through negotiation between the Parties, then the Parties shall first try in good faith to settle the dispute by non-binding mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures before resorting to arbitration pursuant to Subsection (c) as the case may be. The declaration of an impasse by the mediator, or the mutual written agreement of the Parties to withdraw the matter from mediation, shall be a condition precedent to the institution of an arbitration, litigation, or other dispute resolution procedure with respect to such matter.
 - ii. The Parties shall mutually agree upon a mediator within ten (10) days of a request for mediation or, failing such mutual agreement of the Parties, the mediator shall be appointed by the AAA from its panel of mediators utilizing a list procedure.
 - iii. If the dispute arises from or relates to a claim against Gigapower or any Indemnified Party for patent infringement, then unless otherwise mutually agreed by the Parties in writing, any mediator appointed by the Parties or the AAA under this Subsection (b) (Mediation of Disputes Relating to Indemnification) shall be

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an attorney with at least ten (10) years' experience in mediating patent infringement cases.

c. Arbitration of Disputes Relating to Indemnification.

- i. Subject to Subsection (b) (Mediation of Disputes Relating to Indemnification) hereof, any dispute arising out of or relating to a demand by Gigapower, pursuant to the Section entitled "Indemnity" or the Section entitled "Infringement," for indemnification from Supplier in an amount less than or equal to five hundred thousand dollars (\$500,000) (including all settlements or judgments paid by Gigapower, together with all costs of defense and attorneys' fees at both the trial and appellate level), shall be resolved by binding arbitration administered by the AAA in accordance with its Commercial Arbitration Rules (including the Procedures for Large, Complex Commercial Disputes) then in effect, as such rules may be modified or supplemented by the provisions of this Subsection (c) (Arbitration of Disputes Relating to Indemnification), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, subject to each Party's right to appeal the award pursuant to Subsection (vii) of this Subsection (c) (Arbitration of Disputes Relating to Indemnification). An arbitration conducted pursuant to this Subsection (i) shall be before a single arbitrator agreed upon by the Parties within thirty (30) days after initiation of the arbitration or, failing agreement, appointed by the AAA from its National Roster utilizing a list procedure.
- ii. Subject to Subsection (b) (Mediation of Disputes Relating to Indemnification) hereof, any dispute arising out of or relating to a demand by Gigapower, pursuant to the Section entitled "Indemnity" or the Section entitled "Infringement," for indemnification from Supplier in an amount greater than five hundred thousand dollars (\$500,000) (including all settlements or judgments paid by Gigapower, together with all costs of defense and attorneys' fees at both the trial and appellate level) may, at the sole election of Gigapower, be resolved by binding arbitration administered by the AAA in accordance with its Commercial Arbitration Rules (including the Procedures for Large, Complex Commercial Disputes) then in effect, as such rules may be modified or supplemented by the provisions of this Subsection (ii), and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof, subject to each Party's right to appeal the award pursuant to Subsection (vii) of this Subsection (c) (Arbitration of Disputes Relating to Indemnification). In the event Gigapower elects not to resolve such a dispute by arbitration, that dispute shall be resolved by an action in an appropriate court pursuant to the provisions of Subsection (a) (Forum for Judicial Actions). An arbitration conducted pursuant to this Subsection (ii) shall be before a panel of three arbitrators. Each Party shall appoint one arbitrator, and the two Party-appointed arbitrators shall agree on the third arbitrator, who shall serve as chair of the panel, provided, however, that, if the Party-appointed arbitrators cannot agree on the third arbitrator within fifteen (15) days after the second of the two Party-appointed arbitrators has been appointed, the AAA shall appoint the third arbitrator from its National Roster utilizing a list procedure.

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- iii. If the dispute arises from or relates to a claim against Gigapower or any Indemnified Party for patent infringement, then unless otherwise mutually agreed by the Parties in writing, any arbitrator appointed by a Party or the AAA under this Subsection (c) (Arbitration of Disputes Relating to Indemnification) shall be an attorney with at least ten (10) years' experience in litigating patent infringement cases.
- iv. Any arbitration pursuant to this Subsection (c) (Arbitration of Disputes Relating to Indemnification) shall be held in Dallas, Texas. The arbitrator(s) shall render a reasoned award.
- v. In any arbitration conducted pursuant to Subsection (i) of this Subsection (c) (Arbitration of Disputes Relating to Indemnification), each Party shall be entitled to take the following discovery: (1) three (3) depositions of the adverse party and/or non-party witnesses; (2) service of up to fifteen (15) interrogatories to be answered under oath by the adverse Party; and (3) document requests directed to the adverse Party. The arbitrator may, for good cause shown, enlarge the extent of discovery but shall not reduce the foregoing limits.
- vi. In any arbitration conducted pursuant to Subsection (ii) of this Subsection (c) (Arbitration of Disputes Relating to Indemnification), each Party shall be entitled to take the following discovery: (1) six (6) depositions of the adverse party and/or non-party witnesses; (2) service of up to twenty (20) interrogatories to be answered under oath by the adverse Party; and (3) document requests directed to the adverse Party. The arbitrators may, for good cause shown, enlarge the extent of discovery but shall not reduce the foregoing limits.
- vii. The Parties hereby agree: that an award rendered by the arbitrator(s) pursuant to this Subsection (c) (Arbitration of Disputes Relating to Indemnification) (an "Underlying Award") may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules ("Appellate Rules"); that the Underlying Award rendered by the arbitrator(s) shall, at a minimum, be a reasoned award; and that the Underlying Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of an Underlying Award, as defined by Rule A-3 of the Appellate Rules, by filing a Notice of Appeal with any AAA office. Following the appeal process, the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof. The appellate panel shall grant oral argument if requested by either Party or if the panel deems it appropriate. Oral arguments shall be conducted in Dallas, Texas. Members of the appellate panel shall have the same qualifications as required for an arbitrator under Subsection (iii) of this Subsection (c) (Arbitration of Disputes Relating to Indemnification) (if any).
- viii. In any arbitration conducted pursuant to this Subsection (c) (Arbitration of Disputes Relating to Indemnification), the prevailing Party shall be entitled to recover its Litigation Expenses (including Litigation Expenses incurred in

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connection with an appeal under Subsection (vii) of this Subsection (c) (Arbitration of Disputes Relating to Indemnification)).

- ix. For the avoidance of doubt, no disputes arising out of or relating to this Agreement, other than those arising out of or relating to a demand by Gigapower, pursuant to the Section entitled "Indemnity" or the Section entitled "Infringement," for indemnification as described above, shall be subject to arbitration, unless otherwise stated herein.

13.13 Amendments and Waivers

- a. The Parties may not amend this Agreement or an Order except by a written agreement of the Parties that identifies itself as an amendment to this Agreement or such Order and is signed by both Parties, or as otherwise expressly provided below in this Section. No waiver of any right or condition is effective unless given in writing and signed by the Party waiving such right or condition. No delay or omission by either Party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any Party of any breach, condition or covenant shall not be construed to be a waiver of any succeeding breach or condition or of any other covenant. All waivers must be in writing and signed by the Party waiving its rights.
- b. Gigapower's project manager may, at any time, propose changes to the scope of Deliverables, which shall be confirmed in writing, and Supplier shall not unreasonably withhold or condition its consent. An equitable adjustment shall be made to the charges and any affected Delivery Date or performance date if such change to the scope affects the time or cost of performance of the Deliverables.
- c. An equitable adjustment shall be made to the charges and any affected Delivery Date or performance date if a delay by Gigapower affects the time or cost of performance of the Deliverables.

13.14 Severability

If any provision of this Agreement or any Order is determined to be invalid, illegal, or unenforceable, then the remaining provisions of this Agreement or such Order shall remain in full force if both the economic and legal substance of the transactions contemplated by this Agreement or such Order are not affected in any manner that is materially adverse to either Party by severing the provision determined to be invalid, illegal, or unenforceable.

13.15 Construction and Interpretation

- a. This Agreement has been prepared jointly and has been the subject of arm's length and careful negotiation. Each Party has been given the opportunity to independently review this Agreement with legal counsel and other consultants, and each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of its provisions. Accordingly, the drafting of this Agreement is not to be attributed to either Party.
- b. Headings contained in this Agreement are for reference purposes only and are not to affect the meaning or interpretation of this Agreement. The word "include" in every form means to include without limitation by virtue of enumeration and a derivative of a defined term shall

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have the meaning appropriate to the context of its use. References to content posted on any website referred to in this Agreement shall mean such content as it may be revised from time to time. Whenever this Agreement refers to a consent or approval to be given by either Party, such consent or approval is effective only if given in writing and signed by the Party giving approval or consent. The use of singular words includes the plural and vice versa.

13.16 Third Party Beneficiaries

Except to the extent expressly set forth to the contrary in this Agreement, there are no third party beneficiaries of this Agreement, and this Agreement shall not provide any third person or entity with any remedy, claim, liability, reimbursement, claim of action or other legal or equitable right in excess of those existing without reference to this Agreement.

13.17 Survival of Obligations

Obligations and rights under this Agreement or an Order that by their nature would reasonably continue beyond the termination or expiration of this Agreement or an Order (including those in the Sections entitled "Compliance with Laws," "Information," "Indemnity," "Infringement," "Insurance," "Ownership of Paid-For Development, Use and Reservation of Rights," "Publicity," "Restricted Activities" and "Warranty") will survive the termination or expiration of this Agreement or such Order.

13.18 Payment Card Industry-Data Security Standard Compliance

To the extent that Services and/or Materials provided by, or on behalf of Supplier process, transmit, and/or store credit cardholder data and/or related transaction status for or on behalf of Gigapower, Supplier must be Payment Card Industry-Data Security Standard certified, as that standard is maintained and updated by the Payment Card Industry Security Standards Council on www.pcisecuritystandards.org, including any successor standard or website thereto. Supplier must be compliant with the standards prior to performing such services for Gigapower, must have a plan in place to ensure continued compliance in the event of any change or update to the standard and must promptly submit a copy of Supplier's most recent executed Attestation of Compliance (AOC) and a copy of Supplier's most updated Responsibility Matrix documentation to g18906@att.com. Supplier must also submit certifications of compliance and Responsibility Matrix documentation on an annual basis and promptly following any modification or update to the standard in order to continue to provide payment card related services for Gigapower.

13.19 Notices

- a. Each Party giving or making any notice, consent, request, demand, or other communication (each, a "notice") pursuant to this Agreement must give the notice in writing. Notice to a Party shall be given by email. Notice by email which for the purposes of this Agreement is a writing and shall be provided in PDF format and must specifically refer to this Section in the subject line of the email. Each Party giving a notice shall address the notice to the appropriate person (the "Addressee") as the receiving Party at the address listed below:

Gigapower:

Supplier:

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This Agreement is not for use or disclosure outside of Gigapower, its Affiliates, and its and their third party representatives, and Supplier except under written agreement by the contracting Parties.

Attn: Steve Davis or Chris Jones
Email Address: sd4789@att.com or
cj6263@att.com
With a copy to:
Gigapower Legal Department
Email Address: tg1324@att.com

Attn: Legal Department
Email Address: Legalnotices@tilsontech.com
Business Number: (207) 591-6427

- b. A notice is effective only if the Party giving notice has complied with the foregoing requirements of this Section and the Addressee has received the notice. A notice is deemed to have been received, on the business day if delivered during business hours (based on U.S. Central Time Zone) (otherwise on the next business day), the Party giving notice receives an acknowledgement or read receipt and if such notice is sent in time to allow it to be accessible by the Addressee before the time allowed for giving such notice expires. If Gigapower is the Party receiving notice, then a confirmation copy should be sent to the second Gigapower Addressee, if one is provided.
- c. The addresses and email to which notices may be given to the Addressees of either Party may be changed by written notice given by such Party to the other pursuant to this Section.

13.20 Right to Complete Work

- a. Gigapower reserves the right to take over the Work, including any Material, and complete the Work under this Agreement without prejudice to any other right or remedy it may have, upon forty-eight hours (48) written notice to the last known business address of the Supplier, if:
 - i. Supplier fails to diligently perform the Work after receiving fifteen (15) days' notice from Gigapower and not correcting the deficiency;
 - ii. A delay in the Work occurs by reason of strike, lockout or operation of any law, whether or not the Supplier is excused by reason for such delay;
 - iii. Supplier is brought into bankruptcy proceeding, whether voluntary or involuntary, or makes an assignment for the benefit of its creditors; or
 - iv. Supplier breaches any of the terms of this Agreement and fails to comply with Section 12.2.
- b. If Gigapower completes the Work, Supplier shall not be entitled to further payments under the Agreement, until the Work is completed and Accepted by Gigapower. Gigapower will pay Supplier only for Work performed by Supplier. Gigapower's payment to Supplier for Work started by Supplier, but not completed, will be negotiated by Gigapower and Supplier. If Gigapower's costs and expenses to complete the Work exceed the unpaid balance of the contract price, Supplier will pay the difference to Gigapower. The completion of the Work by Gigapower shall not terminate any other obligation of the Parties under the Agreement.

13.21 Previous Services for Gigapower

- a. Supplier will determine whether each individual who performs Services for Gigapower has performed work as an employee or temporary worker for Gigapower, or any Gigapower Affiliate, in the six (6) months preceding the individual's proposed commencement of work for Gigapower. Supplier will provide Gigapower with written notice of any individuals who

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meet the foregoing criteria. Gigapower may require that Supplier provide another individual to perform the work.

- b. Supplier will ensure that no individual providing Services in connection with an Order submitted by Gigapower provides Services to Gigapower for more than thirty-six (36) consecutive months, unless Gigapower provides written authorization for the individual to perform Services for more than thirty-six (36) consecutive months.

13.22 Releases Void

Neither Party shall require waivers or releases by any person or representative of the other Party for visits to its premises, and no such releases or waivers shall be pleaded by either Party in any action or proceeding.

13.23 Notification of Injury

Supplier shall promptly notify Gigapower of any injury, death, loss or damage to persons, animals, or property which is in any way related to the Work performed under this Agreement, even though such occurrence was not caused or contributed to by Supplier its employees and agents.

13.24 Inspection of Material

It shall be the duty of the Supplier to inspect all Material used in the performance of the Work, whether or not furnished by Gigapower, for defects or hazardous conditions which could cause property damage, personal injury, or otherwise affect the quality of the complete Work. Supplier shall report all defects or hazardous conditions to an Gigapower representative as soon as a defect has been identified. Supplier shall not use any defective Material without written approval from an Gigapower representative.

13.25 Emergency Work

In an emergency, Gigapower's representative may orally request Supplier to perform work. Gigapower shall issue a confirming Order for all such oral requests.

13.26 Conflict of Interest

- a. Supplier represents and warrants that no officer, director, employee or agent of Gigapower has been or will be employed, retained or paid a fee, or otherwise has received or will receive, any personal compensation or consideration, by or from Supplier or any of Supplier's officers, directors, employees or agents in connection with the obtaining, arranging or negotiation of this Agreement or other documents entered into or executed in connection with this Agreement.
- b. Supplier shall not offer or give gratuities in the form of gifts, entertainment, concessions, or otherwise to Gigapower or its employees or representative(s), or any person related by blood or marriage to such individuals for the express or implied purpose of obtaining an Order or contract or securing favorable treatment with respect to the awarding, amending, or administration of such Order or contract, or in the inspection or acceptance of the services to be performed thereunder. Supplier shall not engage in any conduct which will constitute or appear to constitute a conflict of interest between Supplier's responsibility to Gigapower under

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this contract and Supplier's responsibility to any person, business, or other entity with which Supplier may have had any dealings.

13.27 Testimony

Matters relating to Work under this Agreement may be at issue before various governmental bodies. Supplier agrees to have appropriate members of its company willing to testify at appropriate times at no additional cost, regarding any aspect of the Work, unless otherwise mutually agreed upon by the Parties.

13.28 Damage to Property

If Supplier causes damage to Gigapower's property, including damage to copper or fiber cable, Supplier shall reimburse Gigapower for any damages or losses incurred in connection therewith, including damages for loss of use.

13.29 Identification of Supplier's Personnel and Equipment

- a. Supplier's personnel, who may have contact with the public while performing Work for Gigapower, shall carry and display upon request identification showing that they are the employees of Supplier. Supplier's personnel shall be responsible for securing permission to enter upon private property when entry is necessary to Supplier's performance of the Service.
- b. All of Supplier's owned, leased or rented vehicles shall be marked with Supplier's identification, including Supplier's company name and telephone number.

13.30 Inspection of Work

Gigapower may have (third-party or Gigapower) inspectors at the job site to inspect the performance and quality of the Services and to ensure Supplier's compliance with the plans and Specifications of the Order and with the terms and conditions of this Agreement. Any Gigapower inspectors, employees or agents, however, shall have no authority to direct or advise Supplier concerning the method or manner by which the Services are to be performed. Supplier has sole authority, responsibility and control over the Services and shall exercise its full responsibilities as an independent contractor.

13.31 Material and Services Furnished

Supplier shall furnish all Services, including individuals to provide field and administrative support, and Supplier shall furnish all Miscellaneous Material required to perform the Work, as shown on the Order, except those items specifically listed in this Agreement or in an Order to be furnished by Gigapower. The prices of the Deliverables as set forth in Appendix C – Price(s) are inclusive of such furnished Miscellaneous Material. Any Major Material or Minor Material provided by Gigapower shall remain Gigapower's Material and shall be used only in connection with Work under this Agreement. Supplier shall protect and preserve Gigapower's Material and shall promptly return at the end of contracted Work any Material not used, unless Gigapower instructs Supplier otherwise in writing.

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13.32 Reel Use and Return

Gigapower and Supplier have free use of the fiber cable manufacturer's reels, on which fiber cable is delivered, for up to 365 days after the fiber cable was delivered to Gigapower's third-party logistics provider. Supplier must return empty reels back to Gigapower's third-party logistics provider to avoid incurring charges for such unreturned reels. Gigapower shall not be responsible for charges for unreturned reels that were in Supplier's possession and will pass on such charges to Supplier if or when reels are not returned in a timely manner.

13.33 Sharing of Costs for Joint Projects

On joint projects, including, but not limited to, joint trenching projects, Supplier shall submit individual bills for the work it performs to each respective Party participating in the project for such Party's proportionate share of the cost of the work. IN NO EVENT SHALL Gigapower BE LIABLE TO SUPPLIER FOR ANY OTHER PARTY'S PROPORTIONATE SHARE OF THE COST OF THE WORK.

13.34 Contractors Use of Customer's Lines or Phone Service

Supplier shall ensure that its representatives will avoid the use of customer lines to place calls, to do testing or for any other purpose if at all possible. If such use cannot be avoided, Supplier's employees will use a calling card or other means, which prevent charges to customer accounts. Supplier will inform its representatives of this requirement and take steps to enforce compliance and, upon request, will provide documentation thereof to Gigapower.

13.35 Protection of Property

Supplier shall immediately report to Gigapower's representative any hazardous or unusual conditions or damage to any property caused or observed by Supplier or Supplier's agents on or about the property where the Work is being performed. Supplier agrees to make reasonable efforts to watch for any type of unsatisfactory or unsafe plant condition in need of correction and report such to Gigapower's representative.

13.36 Transmission of Original Signatures and Executing Multiple Counterparts

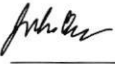
Original signatures transmitted and received via facsimile, other electronic transmission of a scanned document (e.g., pdf or similar format), and digital signatures meeting the requirements of the Uniform Electronic Transactions Act or the Electronic Signatures in Global and National Commerce Act, are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. This Agreement may be executed in multiple counterparts, each of which shall be deemed to constitute an original but all of which together shall constitute only one document.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Tilson Technology Management, Inc.

By: 
Name: Joshua Broder
Title: CEO
Date: Dec 16, 2022

Gigapower, LLC

By: 
Amy E Wheelus (Dec 30, 2022 09:22 CST)
Name: Amy E Wheelus
Title: CTIO
Date: Dec 30, 2022

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Appendix A - Definitions

“Accept” or “Acceptance” means Gigapower’s acceptance of the Deliverables as specified in the Section entitled “Delivery, Performance, Acceptance and Availability.”

“Acceptance Test Period” means the length of time specified in an Order, or, if not so specified, a period of no less than sixty (60) business days, during which the Acceptance Tests are performed.

“Acceptance Tests” means the performance and reliability demonstrations and tests that the Deliverables must satisfy during the Acceptance Test Period. These tests include: (a) Gigapower’s routine business test transactions, (b) tests, demonstrations, or transactions presented or performed by Supplier, and (c) any other tests, demonstrations or transactions included or referenced in the applicable Order or Specifications to determine whether the Deliverables meet the Specifications.

“Affiliate” means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under common control with, such entity. For purposes of this Agreement, “control” (including the terms “controlled by” and “under common control with”) means the power to direct or cause the direction of the management or policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

“Gigapower Customer Information” means, whether received, observed, collected, handled, stored, or accessed in any way: Gigapower’s or its Affiliates’ customers’ names, addresses, and phone numbers, CPNI, SPI, any such customer’s or its employee’s Internet and mobile application activities, history, and/or patterns of use, information concerning accounts, network performance and usage information, location information, any other information associated with a customer of Gigapower or its Affiliates or with persons in the household of a customer of Gigapower or its Affiliates, and any information available to Gigapower, its Affiliates and/or the suppliers of Gigapower or its Affiliates (for avoidance of doubt, including Supplier) by virtue of Gigapower’s or its Affiliates’ relationship with customers as a provider of services, including the quantity, technical configuration, location, type, destination, and amount of use of services subscribed to, and information contained on the bills of Gigapower’s or its Affiliates’ customers. Notwithstanding the foregoing, Gigapower Customer Information does not include Supplier Customer Information.

“Gigapower Data Assets” means the following to the extent received by, or collected by or on behalf of, Supplier in connection with this Agreement: (i) Gigapower Customer Information, (ii) Gigapower employee SPI, and (iii) data in any form from Gigapower’s network, hardware, or software components.

“Gigapower Derived Information” means any information, including any data structures, algorithms, and software, as well as information related to any process, method, system, apparatus, product, or service, whether anonymous or not, that results, in whole or in part, from processing Gigapower Data Assets – alone or in combination with other data – by or on behalf of Supplier; where processing includes aggregation, de-identification, enhancement (e.g., joining with other data sets), reformatting, manipulation, modification, feature engineering, machine learning, predictive analytics, natural language processing, summarization, classification, translation, condensation, compilation, analysis, optimization, and evaluation. Gigapower Derived Information does not include Supplier Customer Information and information Supplier possessed prior to any work performed under, or in anticipation of, this Agreement.

“Attorney’s Fees” include a charge for the service of in-house counsel at the market rate for independent counsel of similar experience.

“CPNI” means customer proprietary network information as that term is defined in Section 222 of the Communications Act of 1934, 47 U.S.C. §222, as amended.

“Deliver” or “Delivery” occurs (a) for Material, upon (i) Gigapower’s possession of Material at the destination specified in the Order, if Supplier is not required to provide additional Services (including

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installation, configuration, or modification, but not including maintenance Services) at the destination, in connection with providing Material, or (ii) Supplier's completion of such additional Services, if Supplier is required to provide such additional Services at the destination in connection with providing Material, (b) for Services (other than maintenance Services), upon complete provision of the Services, and (c) for maintenance Services, at the end of each calendar month during the maintenance Services term.

"Deliverables" means all or any portion, as the case may be, of the Material and Services that Supplier is supplying pursuant to this Agreement.

"Delivery Date" means the date in the Order or this Agreement on which Supplier is scheduled to complete its Delivery.

"Delivery" or "Completion" means Supplier's obligation to provide Material and Services that strictly conform to the Specifications, Requirements and General Notes. Supplier completes Delivery of Material or Completion of Services: (i) upon Gigapower's possession of the Material if Supplier is not required to provide additional Services, such as installation, (ii) upon completing such additional Services, if Supplier is required to provide such Services in connection with providing Material, or (iii) for Services, upon completing the provision of Services. Notwithstanding the above, Delivery and Completion shall not be deemed to have occurred until Supplier causes the Material and Services to strictly conform to the Specifications, Requirements and General Notes.

"Documentation" means all tangible and intangible written materials including user instructions and training materials.

"Employment Claims" means any claims by any federal, state or local governmental agency or any of Supplier's current or former applicants, agents, employees or Subcontractors, or agents or employees of Supplier's Subcontractors arising out of the employment relationship with Supplier, or otherwise with respect to performance under this Agreement, including claims, charges and actions arising under Title VII of the Civil Rights Act of 1964, as amended, The Equal Pay Act, the Age Discrimination in Employment Act, as amended, The Rehabilitation Act, the Americans with Disabilities Act, as amended, the Fair Labor Standards Act, the Family and Medical Leave Act, Workers' Compensation laws, the National Labor Relations Act and any other applicable Laws, including any liability, cause of action, lawsuit, penalty, claim or demand, administrative proceeding in which Gigapower or its Affiliates is named as or alleged to be an "employer" or "joint employer" with Supplier.

"Information" means confidential or proprietary data and information regardless of form (e.g., tangible, intangible, electronic), method of transmission (e.g., mail, electronic mail), or whether in the possession of the other Party prior to the Agreement Effective Date, including (a) any data or information of a third party with respect to which a Party owes a duty of confidentiality, that is reasonably related to either: (i) this Agreement or any Order; or (ii) the potential acquisition by Gigapower of Supplier products or services that are beyond the scope of this Agreement or an Order; (b) SPI, trade secrets, discoveries, ideas, concepts, know-how, techniques, processes, procedures, designs, specifications, strategic information, proposals, requests for proposals/information, products or proposed products, drawings, blueprints, tracings, diagrams, models, samples, flow charts, databases, data sets, algorithms, software, code, computer programs, marketing plans, operational information, network architecture, engineering information, infrastructure components and configuration, networks, systems, facilities, products, rates, regulatory compliance, competitors and other technical, financial, or business information; and (c) with respect to the respective Party, Gigapower Customer Information, Gigapower Data Assets, Gigapower Derived Information, and Supplier Customer Information.

"Intellectual Property Rights" means all patents (including all reissues, divisions, continuations, and extensions thereof) and patent applications, trade names, trademarks, service marks, logos, trade dress, copyrights, trade secrets, mask works, rights in technology, know-how, rights in content (including

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performance and synchronization rights), or other intellectual property rights that are in each case protected under the Laws of any governmental authority having jurisdiction.

“Laws” includes all federal, state, provincial, regional, territorial and local laws, statutes, ordinances, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by governmental authority.

“Lien” means any mortgage, lien, pledge, security interest, charge, claim, restriction or encumbrance of any nature whatsoever.

“Litigation Expense” means any court filing fee, court cost, arbitration fee, and each other fee and cost of investigating or defending an indemnified claim or asserting any claim for indemnification or defense under this Agreement, including Attorney’s Fees, other professionals’ fees, and disbursements.

“Loss” includes any liability, claim, demand, suit, or cause of action, regardless of whether meritorious, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), liens, fines, fees, penalties, and Litigation Expense.

“Major Material” means Material items that, when in service, Gigapower must pay taxes on. These are items that have a MIC code assigned that is used to do the disbursement CPR transaction which will enter the item into service. These items are tracked when in inventory and include, but are not limited to, such items as cross connect cabinets (SAI), PFP cabinets, load coils, cable stubs, Fiber Terminals (greater than 24 fiber), air dryers, poles, manholes, huts and cable, etc.

“Material” means a unit of equipment, apparatus, components, tools, supplies, material, Documentation, hardware, or firmware thereto, or Software purchased or licensed hereunder by Gigapower from Supplier or otherwise provided by or on behalf of Supplier, including third party Material provided or furnished by Supplier. “Material” shall be deemed to include any replacement parts.

“Material Escalation” means any “Percent Change from 12 months ago” in excess of five percent (5%) in the U.S. Bureau of Labor Standards Consumer Price Index for All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average All Items (1982-84 = 100).

“Minor Material” means Material items specific to Gigapower construction builds. They are not tracked or inventoried separately but are associated with the installation of material that is inventoried. Minor Material could include, but are not limited to, fiber terminals, handholes, pedestals, fiber closures, strand, service drops, innerduct.

“Miscellaneous Material” means Material items of outside plant which are individually of small value and ordinarily not reused or recovered. These could include but are not limited to tapes, screws, tie-wraps, lubricants, towels, caulk, etc. (items typically found in home improvement stores). A non-exhaustive list of such Miscellaneous Material is included, for reference, in Appendix D – Miscellaneous Materials.

“Order” means such paper or electronic records (a) as Gigapower may send to Supplier in accordance with the terms hereof, for the purpose of ordering Deliverables hereunder, or (b) as the Parties may execute for the purpose of ordering Deliverables hereunder.

“Services” means anything that is not otherwise Material, including any labor or service, provided in connection with this Agreement or any Order.

“Software” means any and all software (irrespective of whether it is Paid-For Development) and firmware in any form (including source code and object code), as well as any Documentation, licensed or otherwise provided by or on behalf of Supplier.

“Spare Parts” means, for any Material provided hereunder, functionally equivalent Material (including component and replacement parts) and maintenance and technical support Services.

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“Special Terms and Conditions” means written terms and conditions that are different from or additional to the terms and conditions set forth in this Agreement, which are agreed upon by the Parties and included in an Order.

“Specifications” means (a) Supplier’s applicable specifications and descriptions, including any warranty statements, and (b) Gigapower’s requirements, specifications, and descriptions specified in, or attached to, this Agreement or an applicable Order, which shall control over an inconsistency with Supplier’s specifications and descriptions.

“SPI” means sensitive personal information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context, including date of birth, government-issued identification numbers such as driver’s license numbers, taxpayer identification numbers, social security numbers, and passport numbers, bank account numbers, credit card numbers, payment card data, authentication credentials (including hints), biometric data, criminal history, racial or ethnic origin, trade union membership, information related to an employee’s or customer’s political affiliation, religious belief, or sexual orientation, protected health information as that term is defined in 45 C.F.R. §160.103, as amended, and other medical and health information.

“Subcontractor” or **“subcontractor”** means any person or entity (including an agent) supplying services or materials including data processing services to perform or assist in the performance of any or all of Supplier’s obligations under this Agreement. The terms “Subcontractor” or “subcontractor” specifically includes any person or entity at any tier of subcontractors and shall not be limited to those persons or entities with a direct relationship with Supplier.

“Supplier Customer Information” means Information collected by Supplier from its customers (other than Gigapower or Gigapower’s Affiliates) under Supplier’s terms of service.

“Supplier Representatives” means Supplier’s Subcontractors and Supplier’s and its Subcontractors’ respective partners, officers, directors, members, employees, temporary workers, contractors, vendors, agents and/or other representatives.

“System” means the hardware, operating system and application Software, interfaces, and databases that interact with Software.

“Technical Information” includes (a) manufacturing drawings and Specifications of all Material, (b) manufacturing drawings and specifications covering special tooling, raw materials, component parts, and the operation thereof and (c) a detailed list of all commercially available parts and components purchased by Supplier disclosing the part number, name, location of the vendor and price lists.

“Warranty Period” means the longer of the period stated in the Order, the applicable OEM’s warranty, or one (1) year. The “Warranty Period” in all cases shall commence upon Acceptance by Gigapower.

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Appendix B - Description of Deliverables

Supplier shall provide the Deliverables in accordance with any Specifications set forth below:

Supplier will provide full, end-to-end planning, design, and construction of a fiber network in the designated geographic area(s) as directed by Gigapower.

The Services described in this Appendix B are not intended to be an exhaustive list of all possible tasks Supplier may need to undertake to complete the Work, as ordered by Gigapower.

Supplier will begin engineering and design Work within seven (7) calendar days following the Effective Date.

Supplier will commence construction Work no more than ninety (90) days following Gigapower establishing the network hut ("OLT") location. Gigapower will communicate to Supplier at the earliest possible time the date on which that location is, or will be, determined.

Supplier will be responsible for obtaining all necessary information to develop and establish the required fiber feeder routes, determining the proposed distribution points (PFP Cabinets), and determining the distribution area served. This will include maintaining a record of cable inventory, all necessary system updates, and establishing the required project documentation. Determine the size necessary of the distribution point cabinet and all other key planning documents per the required Gigapower standards.

The engineering portion will include, but is not limited to, the following:

- Complete the cable design to provide fiber services to a FTTx house, including obtaining all necessary field notes, conducting all required safety analysis (for example pole loading, line of site issues, etc.), obtain all necessary permissions to utilize a 3rd party structure, develop a work package for Supplier's construction organization to utilize, obtain all necessary permitting, and all other necessary documents.
- Complete designs utilizing a CAD system and complete all necessary updates in the IQGeo or equivalent system(s) as designated by Gigapower.
- Implement quality program to ensure designs are completed per required standards.
- Complete all required right of way ("ROW") and easement research and all associated permitting requirements.
- Update the Gigapower-designated system based on actual work completed in the field

The construction portion will include, but is not limited to, the following:

- Aerial, underground, and buried placement based on the design created by Supplier and approved by the necessary permitting agency or agencies.
- Complete all necessary ROW and easement staking to ensure placement in the approved route
- Includes all necessary work area protection per industry standards and required by the governing body (traffic control, working aloft, confined space, etc.)
- Adhere to all state and local municipality requirements for cable and utility locating.
- Includes all necessary telecom make-ready work to place new facilities (tree trimming, negotiating access to customer's property, etc.)

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- Includes all necessary marking of cables, pedestals, PFP counts and terminal marking
- Includes all necessary fiber splicing and testing
- Includes all necessary restoration work to meet any local municipality requirements and to ensure customer's property is restored to a "like or better" state after Work is complete
- Provide a completed work package to Gigapower reflecting actual work completed.
- Upload completed work plan into the Gigapower designated system(s).

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Appendix C - Price(s)

Supplier shall provide the Deliverables for the following prices:

LAS VEGAS, NV			
	Deliverable	Price	Unit of Measure
1	High Level Design	\$134.17	Per Living Unit
2	Design Complete / Permits Received	\$368.98	Per Living Unit
3	Path Creation	\$670.87	Per Living Unit
4	Cable Placing / Splicing / Testing	\$419.29	Per Living Unit
5	Closeout Package	\$86.86	Per Living Unit

The Parties agree to the following:

- 1) The prices for the Deliverables listed above are based on:
 - a. A minimum number of billable living units of 265,179 within the Foxtrot Phase 1 Build.
 - b. Total footage of 13,147,823 feet
 - i. Feeder footage ("F1") of 3,354,456 feet
 - ii. Distribution footage ("F2") of 10,063,367 feet
 - c. Assumption that all multiple dwelling units within 1,000 linear feet and businesses within 500 linear feet of build, are billable living units.
 - d. 30" depth for boring and trenching for feeder.
 - e. Assumption that 30% of boring linear feet only will encounter caliche.
 - f. Assumption that 1.5% of boring linear feet only will encounter drillable rock.
 - g. Assumption that 75% of overall linear feet will be micro-trenched.
 - h. 0.75" width, 12" depth micro-trench.
 - i. Assumption of 1.5" depth occupied by (3) 12MM OD micro-ducts.
 - j. Assumption of 6.5" depth of pea gravel base backfill.
 - k. Assumption of 4.0" depth of fast patch 8400 for asphalt restoration.
 - l. High Level Design ("HLD") Milestone: All areas will have a full HLD showing preliminary conduit pathway to all planned single family units. Splitter locations will be defined during low level design
- 2) The prices include the following, and Supplier shall not request additional compensation from Gigapower to cover such costs
 - a. Basic traffic control costs (signage and cones)

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- b. Hard surface restoration costs within the trench.
 - c. Rock boring costs, as provided in Section 1 above.
 - d. High-profile crossings (i.e. railroads, major waterway bores, bridge attachments)
 - e. Municipal bonding costs
- 3) The prices exclude the following:
- a. Additional traffic control costs (flaggers, police details, etc.). Gigapower shall reimburse Supplier for such additional traffic control at cost, plus ten percent (10%) markup.
 - b. Drop construction
 - c. FDH (remote OLT) construction
 - d. Permit fees. Supplier may request reimbursement from Gigapower for costs associated with verifiable permit fees paid. Gigapower shall reimburse Supplier for such fees at cost, with no additional markup.
 - e. All materials, equipment, and customer premise equipment
 - f. All jurisdictionally required third-party inspection fees
- 4) Supplier shall submit an invoice to Gigapower after the completion of each Deliverable, and Gigapower shall pay Supplier for such an invoice after Acceptance, per the terms of Section 4.1 of this Agreement. Supplier may submit invoices for progress payments prior to Acceptance.

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Appendix D – Miscellaneous Materials

Non-exhaustive list of Miscellaneous Material, for illustrative purposes.

Category	Material
Chemicals	CLEANER
	CLEANER CONCENTRTE
	CLEANER FOAM
	CLEANER XTRA STRNGTH
	LUBRICANT
	SOLVENT
	SPIRITS
	WIPES
General Hardware	ANCHOR MASONRY
	ANCHOR PLASTIC
	BACKBOARD
	BACKBOARD PLYWOOD
	BOLT
	BOLT ANCHOR
	BOLT CARRIAGE
	BOLT HEX HEAD
	BOLT KIT
	BOLT SIGN
	BOLT STOVE
	BOLT TOGGLE
	BRACKET
	CABLE SUPPORT
	CABLE TIE
	CLAMP
	CLAMP KIT
	CLIP
	CLIP MASONRY
	CLIP SIDING
	FASTENER
	FASTENER MASONRY-B
	FIRESTOP
	GRAVEL

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Category	Material
	HARDWARE
	INSERT CONCRETE
	INSERT NUTS
	INSIGNIA
	LUG
	MOUNT CABLE TIE
	NUT
	POST
	POST MOUNTING
	POST SIGN
	ROPE
	SAND
	SAND PAPER
	SCREW
	SCREW MACHINE
	SCREW PAN
	STAPLE
	SUPPORT RACK
	SUPPORT WIRE
	TIE
	TIE CABLE
	WASHER
Manhole	MANHOLE BOLT
	MANHOLE EQUIPMENT (Safety, blowers, gas testers, etc)
	MANHOLE HARDWARE (racking, shoes, etc.)
Tape/Adhesive	ADHESIVE
	CAULK
	CEMENT
	COMPOUND
	COMPOUND ADHESIVE
	COMPOUND GUN
	COMPOUND JOINT
	COMPOUND SEALING
	DUCT ADHESIVE
	GLUE
	SEALANT

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Category	Material
	SEALANT B
	SEALANT DUCT SEAL
	TAPE

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