

H3X TECHNOLOGIES SALE OF GOODS AND SERVICES AGREEMENT (v1.8.1)

This Sale of Goods and Services Agreement (“**Agreement**”) is entered into between **H3X Technologies Inc.**, a Delaware corporation (“**H3X**”), and the entity accepting this Agreement as the “**Buyer**” (together with H3X, the “**Parties**,” and each, a “**Party**”). This Agreement is effective as of the date accepted by Buyer (e.g., by returning H3X’s written quote (“**Quote**”) with Buyer’s countersignature, by issuing a purchase order against a Quote, by otherwise accepting a Quote, or by otherwise entering into an agreement with H3X under which Buyer will purchase goods and/or services from H3X).

1. Sale of Goods and Services.

- a. H3X will sell to Buyer and Buyer will purchase from H3X the goods set forth on the Quote (the “**Goods**”) in the quantities and at the Prices (as defined in Section 7) and on the terms set forth in the Quote, and subject further to the right of first refusal (“**ROFR**”) set forth in Section 32.
- b. If the Quote specifies services (“**Services**”), H3X will perform the Services for Buyer at the Prices and on the terms set forth in the Quote. Buyer shall supply H3X with all information and other resources that may be necessary or reasonably requested by H3X in connection with H3X’s performance of the Services. For Services performed other than at H3X’s own facility, Buyer shall also ensure that the site(s) where the Services are to be performed are safe and accessible to H3X.

2. Delivery.

- a. H3X will use commercially reasonable efforts to ship the Goods within a reasonable time after the date of receipt by H3X of Buyer’s counter-signed Quote, subject to availability of finished Goods. H3X will not be liable for any delays, loss or damage in transit. Buyer understands that any shipment dates set forth on the Quote are estimates and subject to change.
- b. Unless otherwise provided in the Quote, delivery shall be EXW (Incoterms 2020) from H3X’s designated facility. H3X has no responsibility for any unpacking, installation or other onsite services with respect to the Goods unless the Parties have agreed that H3X will perform such Services in the Quote.
- c. H3X may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer will pay for the units shipped whether such shipment is in whole or partial fulfillment.
- d. If for any reason Buyer fails to accept delivery of any Goods on the date that the Goods have been delivered at the designated delivery point (“**Delivery Point**”), (i) the Goods will be deemed to have been delivered; and (ii) H3X, at its option, may store the Goods until Buyer picks them up, and Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- e. It is expressly understood that there will be no deferred delivery or cancellation of Goods or Services without H3X’s written consent. Buyer agrees to pay H3X all charges to change, expedite or cancel all or any part of the Quote, as set forth in Section 16.b.

3. Non-Delivery. The quantity of any Goods as recorded by H3X on dispatch from H3X is conclusive evidence of the quantity received by Buyer unless Buyer can provide conclusive evidence proving the contrary. H3X will not be liable for any non-delivery of Goods unless Buyer gives written notice to H3X of the non-delivery within 5 days of the date when the Goods should have been received. Any liability of H3X for non-delivery will be limited to delivering the Goods within a reasonable time or adjusting the invoice to reflect the actual quantity delivered.

4. Quantity. If H3X delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth on the Quote, Buyer

will not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and will pay for such Goods at the price set forth in this Agreement adjusted pro-rata. If Buyer receives and properly rejects an overage greater than 10%, H3X will pay the cost of return.

5. Title and Risk of Loss. Title and risk of loss pass to Buyer upon delivery of Goods to the carrier at the shipping point. As collateral security for payment of the Goods, Buyer grants to H3X a lien on and security interest in and to all right, title and interest of Buyer in the Goods, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code. Title to the Goods is further subject to the ROFR, as set forth in Section 32.

6. Inspection and Rejection of Nonconforming Goods.

- a. Buyer will inspect the Goods upon receipt. Buyer will be deemed to have accepted the Goods unless it notifies H3X in writing of any Nonconforming Goods within three (3) days and furnishes written evidence as reasonably required by H3X. “**Nonconforming Goods**” means only: (i) product shipped is different than identified in the Quote and this Agreement; or (ii) the product’s label or packaging incorrectly identifies its contents.
- b. If Buyer timely notifies H3X of any Nonconforming Goods, H3X will, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods. If H3X replaces Nonconforming Goods, H3X will, after receiving Buyer’s shipment of Nonconforming Goods, ship the replaced Goods to the Delivery Point.
- c. Buyer agrees that the remedies set forth in Section 6.a are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Sections 4 and 6.a, Buyer has no right to return Goods purchased under this Agreement to H3X and all amounts paid will be non-refundable.

7. Price. Buyer will purchase the Goods and Services from H3X at the price (the “**Price**”) set forth in the Quote. For Services, Buyer will also reimburse H3X’s preapproved travel and other expenses. All Prices are exclusive of all sales, use and excise taxes, custom fees, duties, and any other similar taxes or charges imposed by any governmental authority on any amounts payable by Buyer. Buyer will be responsible for all such taxes, fees, duties and charges; provided, that Buyer will not be responsible for any taxes imposed on H3X’s income, revenues, gross receipts, personnel or other assets. Buyer will pay all Prices in U.S. dollars.

8. Payment Terms. Buyer will pay all invoiced amounts within 30 days from the date of H3X’s invoice. Buyer will make all payments hereunder by wire transfer or check in US dollars. Buyer will pay interest on all late, canceled or rejected payments at the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer will reimburse H3X for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. H3X shall have the right, in addition to any and

all other rights and remedies available at law or in equity, to delay or cancel any delivery of Goods or performance of Services if Buyer is in default of payments or has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part.

9. **No Setoff.** Buyer will not, and acknowledges that it will have no right, to withhold or offset any amounts owed to H3X, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by H3X, for any reason.

10. **Intellectual Property.**

- a. Nothing in the Quote or this Agreement, saving the license grant in Section 10.b, will grant Buyer a right in any intellectual property owned or developed by H3X. H3X retains all right, title and interest in and to all intellectual property protecting or comprising the Goods, Services, and/or used to develop, manufacture, and market the Goods and/or Services, including without limitation all patents, trademarks, copyrights, and technology, know how, processes, and techniques.
- b. The Goods may include delivery of accompanying pre-installed software or firmware (collectively “**Software**”). The Software is licensed, not sold. Subject to Buyer’s compliance with this Agreement, H3X hereby grants to Buyer a limited, nonexclusive, personal, license (without right to sublicense) to use the Software in object code only as embedded by H3X in the Goods and solely to operate such Goods. The license is nontransferable, except that Buyer may transfer its license to use Software embedded by H3X in a particular unit of Goods as part of a transfer of that unit of Goods that is permitted under Section 32. Buyer acknowledges that any other resale or transfer of the Software (or any Goods or portions thereof that contain the Software) without H3X’s prior written approval is prohibited.
- c. If Buyer shares with H3X any general feedback or suggestions regarding the Goods or Services (collectively, “**Feedback**”), Buyer grants H3X an unrestricted, perpetual, irrevocable, royalty-free, worldwide, sublicensable license to use, display, modify, distribute and create derivative works of such Feedback in any way H3X deems reasonable, without any attribution or accounting to Buyer.
- d. Buyer will not (i) use or access the Goods, Services or Software for the purpose of developing or operating a competing product; (ii) attempt to reverse engineer, decompile, create other works from, or disassemble the Goods; or (iii) unless it has notified H3X in writing prior to purchase, use the Goods or Services for medical or weapons applications. Without limiting the ROFR or other restrictions and conditions on Buyer’s resale or transfer of the Goods, Buyer will impose the same restrictions in this Section 10.d on any subsequent purchaser, lessee or similar recipient of the Goods. Buyer will indemnify H3X against any liabilities, losses, costs, and expenses H3X or an H3X Indemnitee may incur from Buyer’s failure to comply with this Section 10.d.
- e. Buyer agrees that H3X may use Buyer’s name, logos and associated trademark rights to publicly identify Buyer as an H3X customer, and for related publicity purposes.

11. **Warranties.**

- a. Buyer warrants and represents that (i) it will store all Goods at the appropriate temperature, as specified on packaging for the Goods, (ii) it will remove from its sales and usage channels any Goods that have been tampered with or damaged in any way, and (iii) it will only use the Goods and Services in accordance with best industry practices and all instructions for use provided with the Goods or Services.

- b. H3X warrants and represents that (i) for a period of six (6) months from the date of shipment, all Goods will (A) conform in all respects to all samples and specifications provided by H3X, and (B) be properly contained, packaged, and labeled; and (ii) the Services will be performed in a professional, workmanlike manner. If Buyer experiences any issues with any Good(s) or Services during handling, use or otherwise, Buyer agrees to promptly (i.e., within one week) contact H3X to disclose the applicable handling or use issues.

- c. Buyer acknowledges that it will read and comply with (and ensure that its personnel read and comply with) all safety instructions and hazard labels provided by H3X. **IN PARTICULAR, BUYER ACKNOWLEDGES THAT THE GOODS MAY EXPOSE BUYER OR ITS PERSONNEL TO HIGH VOLTAGES, HIGH TEMPERATURES, HIGH ROTATING SPEEDS, AND/OR STORED KINETIC ENERGY.**

- d. **EXCEPT AS SET FORTH IN THIS SECTION, H3X MAKES NO OTHER WARRANTY WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY WARRANTY (i) OF MERCHANTABILITY; (ii) OF FITNESS FOR A PARTICULAR PURPOSE; (iii) OF TITLE; (iv) THAT ANY PARTICULAR RESULTS WILL BE ACHIEVED; OR (v) AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

12. **Limitations of Liability. IN NO EVENT WILL H3X BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER H3X WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL H3X’S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO H3X WITH RESPECT TO THE APPLICABLE GOODS OR SERVICES. FURTHER, BUYER AGREES AND ACKNOWLEDGES THAT TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IT ACCEPTS ALL RISK ASSOCIATED WITH THE USE AND OPERATION OF THE GOODS AND SERVICES, AND AGREES THAT H3X SHALL HAVE NO LIABILITY FOR DAMAGES OF ANY NATURE ASSOCIATED WITH DEATH, BODILY INJURY OR PROPERTY DAMAGE CAUSED BY THE GOODS OR SERVICES.**

13. **Compliance with Law.** Buyer is in compliance with and will comply with all applicable laws, and regulations. Buyer has and will maintain in effect all the licenses, authorizations, and permits that it needs to carry out its obligations under this Agreement. Without limitation, Buyer shall not export, directly or indirectly, any Goods or technical data acquired pursuant to this Agreement or any product utilizing the Services or any such Goods or data to any country for which the U.S. Government or any agency thereof

at the time of export requires an export license or other government approval without first obtaining such license or approval.

14. Indemnification.

- a. H3X shall defend Buyer from and against any claim, demand, or action in any form brought by a third party against Buyer ("**Buyer Indemnified Party**"), and indemnify and hold Buyer harmless from any damages, liabilities, losses, costs, and expenses, including reasonable attorneys' and experts' fees, in each case that are finally awarded to the third party by a court of competent jurisdiction or otherwise owed in any settlement, in each case to the extent arising from or related to any allegation that the Goods or Services, as provided to Buyer, infringes any U.S. patent, copyright, or trade secret. Notwithstanding the foregoing, H3X will have no liability for any infringement claim of any kind if the claim results from: (i) modifications made other than by H3X; (ii) unauthorized or unlicensed use; (iii) any third-party applications or services; (iv) the combination, operation or use of any component of the Goods or Services with equipment, devices or software not supplied by H3X, to the extent such a claim would have been avoided if the Goods were not used in such combination; or (v) compliance by H3X with designs, plans, procedures or specifications furnished by or on behalf of Buyer.
- b. Buyer will defend H3X and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**H3X Indemnified Party**") from and against any claim, demand, or action in any form brought by a third party against an H3X Indemnified Party, and indemnify and hold the H3X Indemnified Parties harmless from any damages, liabilities, losses, costs, and expenses, including reasonable attorneys' and experts' fees, in each case that are finally awarded to the third party by a court of competent jurisdiction or otherwise owed in any settlement, relating to Buyer's negligence, willful misconduct, violation of law, or failure to use the Goods or Services in accordance with instructions or industry standard practice applicable to the use of the Goods or Services.
- c. An indemnifying Party will not enter into any settlement without the applicable H3X Indemnified Party's prior written consent.

15. Insurance. During the term of this Agreement and for a period of one year thereafter, Buyer will, at its own expense, maintain and carry insurance which includes, but is not limited to, commercial general liability in a sum no less than \$500,000 with financially sound and reputable insurers. Upon H3X's request, Buyer will provide H3X with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance will name H3X as an additional insured. Buyer will provide H3X with 60 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer will require its insurer to waive all rights of subrogation against H3X's insurers and H3X.

16. Termination.

- a. In addition to any remedies that may be provided in this Agreement, H3X may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has

commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

- b. Buyer may not terminate the Quote or this Agreement for any reason other than (i) with the prior written consent of H3X, or (ii) in the event of H3X's breach of any of the terms hereof that is not cured within fifteen (15) business days following H3X's receipt of written notice of such breach.

17. Confidential Information. All non-public, confidential or proprietary information of H3X, including, but not limited to, specifications, samples, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by H3X to Buyer, whether disclosed orally or in writing, and whether or not marked as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed unless authorized by H3X in writing. Upon H3X's request, Buyer will promptly return all documents and other materials received from H3X. H3X will be entitled to injunctive relief for any violation of this Section. This Section will not apply to information that is: (a) in the public domain; (b) known to the Buyer at the time of disclosure; or (c) rightfully obtained by the Buyer on a non-confidential basis from a third party.

18. Non-Solicitation. To the greatest extent permitted by law, during the term of this Agreement and for twelve months thereafter, Buyer will not directly or indirectly solicit to hire, or to engage on a contract basis, any person who is, at the time of the solicitation, an employee or contractor of H3X and whom Buyer met in connection with this Agreement, or with the Goods or Services themselves.

19. Entire Agreement. This Agreement, including and together with the Quote, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. H3X objects to any additional or contrary terms in a purchase order or other communication from Buyer and only the terms of the Quote, and this Agreement will be binding upon the Parties. In the event of a conflict between the Quote and this Agreement, the Quote shall control.

20. Survival. Any provisions that should survive expiration or termination, will survive the expiration or earlier termination of this Agreement. All other provisions of this Agreement will not survive.

21. Notices. All notices, consents, and other communications under this Agreement must be in writing and addressed to the other Party at its address set forth on the Quote (or to such other address that the receiving Party may designate). All notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (return receipt requested, postage prepaid). A notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

22. Severability. If any term of this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other term of this Agreement.

23. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

24. Waiver. No waiver by either Party of any provision of this Agreement will be effective unless set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right or remedy arising from this Agreement will operate as a waiver.

25. Cumulative Remedies. Unless otherwise specified, all rights and remedies in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies.
26. Assignment. Buyer will not assign, transfer, or subcontract any of its rights or obligations under this Agreement without the prior written consent of H3X. Any purported assignment, transfer, or subcontract in violation of this Section will be null and void. H3X may at any time assign, transfer, or subcontract any of its rights or obligations under this Agreement without Buyer's prior written consent. This Agreement is binding on and inures to the benefit of the Parties and their permitted successors and assigns.
27. No Third-Party Beneficiaries. Nothing in this Agreement confers on any other person or entity any legal or equitable right, benefit or remedy of any nature by reason of this Agreement.
28. Choice of Law. This Agreement will be governed by the laws of the State of Delaware, without regard to the conflict of laws provisions thereof.
29. Dispute Resolution. Any controversy or claim arising out of this Agreement, or the breach thereof, including failure by Buyer to effectuate payment for any Goods or Services, will be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The number of arbitrators will be one. The legal place of arbitration will be Denver, Colorado. The language used will be English.
30. Force Majeure.
 - a. Neither Party will be liable or responsible, nor be deemed to have breached this Agreement (except for any obligations of the Buyer to make payments to H3X), to the extent such failure or delay is caused by events beyond the reasonable control of the impacted Party (such event, a "**Force Majeure Event**"; such Party, the "**Impacted Party**"), including, without limitation, the following: (i) acts of God; (ii) flood, fire, earthquake, extreme weather conditions, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) epidemic, pandemic, quarantine; (vi) supply chain or shipping delays, embargoes or blockades in effect after the date of this Agreement; (vii) severe shortages of critical raw materials; and (viii) national or regional emergency.
 - b. The Impacted Party will give notice to the other Party, within 7 days of the Force Majeure Event, stating the period of time the occurrence is expected to continue. The Impacted Party will use diligent efforts to end the failure or delay. The Impacted Party will resume the performance of its obligations as soon as reasonably practicable. In the event that the Impacted Party's failure or delay remains uncured for 30 consecutive days following its written notice, either Party may thereafter terminate this Agreement upon 10 days' written notice.
31. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, legal partnership, or joint venture between the Parties, and neither Party will have authority to contract for or bind the other Party. No relationship of exclusivity will be construed from this Agreement.
32. Right of First Refusal for Repurchase; Exception.
 - a. Buyer hereby grants to H3X the right of first refusal to accept any bona fide offer that (i) Buyer intends to make to a third party for the sale, lease or similar transfer of the Goods, or (ii) Buyer receives for the purchase, lease or similar transfer of the Goods and intends to consider (each, an "**Offer**"). Buyer shall provide a copy of the Offer,

including the identity of the third party to which Buyer intends to make the Offer or from which the Offer was received, in writing prior to submission to the intended third party (if originating with Buyer), or within five (5) days of its receipt (if originating with a third party). H3X shall have thirty (30) days from the date on which it receives from Buyer a copy of the Offer (the "**ROFR Period**") in which to either accept, in a written response to Buyer, the Offer's price and other material terms applicable to the Goods, or waive its ROFR with respect to the Offer. If H3X waives its right to a given Offer, or does not exercise its right to accept the Offer within the ROFR Period, Buyer may make or accept (as applicable) the Offer, but shall nevertheless submit any subsequent modified Offer to H3X for a new ROFR Period.

- b. Notwithstanding Section 32.a, Buyer need not notify H3X of Offers covering only Integrated Systems (as defined below), and H3X's ROFR shall not apply to such Offers. "**Integrated Systems**" means vehicles or other tangible systems that (i) integrate the Goods with other components; and (ii) add substantial functionality beyond that of the Goods themselves.