

PHASE FOUR, INC.
COMMERCIAL PURCHASE ORDER TERMS AND CONDITIONS

These Purchase Order Terms and Conditions (this “**Agreement**”) set forth the terms and conditions that apply to all purchases of goods and services by Phase Four from Vendor by means of a purchase order (a “**PO**”) issued by Phase Four to Vendor. As used in this Agreement, “**Vendor**” means the entity identified on the face of a PO as “Vendor” and its affiliates, and “**Phase Four**” means Phase Four, Inc. (and/or its affiliates). Vendor and Phase Four hereby agree as follows:

1. ACCEPTANCE OF AGREEMENT TERMS AND CONDITIONS; SERVICES & DELIVERABLES; SOFTWARE

1.1 **Generally.** Vendor agrees to perform the services (“**Services**”) and/or provide the software (including all updates, revisions, error corrections, and subsequent versions thereof, “**Software**”), materials, equipment, hardware, goods, or deliverables described in a PO (collectively referred to as “**Goods**”), in accordance with the terms and conditions in this Agreement and the terms and conditions on the face of the PO, which terms are incorporated herein by reference. Upon acceptance of a PO, shipment of Goods or commencement of Services, Vendor shall be bound by the provisions of this Agreement, whether Vendor acknowledges or otherwise signs this Agreement or the PO, unless Vendor objects to such terms in writing prior to shipping Goods or commencing Services or the parties have agreed in writing to a separately negotiated purchase agreement that expressly supersedes the terms and conditions of this Agreement (a “**Purchase Agreement**”), in which case the terms and conditions of such Purchase Agreement shall apply. A PO does not constitute a firm offer and may be revoked at any time prior to acceptance. This Agreement may not be added to, modified, superseded, or otherwise altered, except by a writing signed by an authorized Phase Four representative. Any terms or conditions contained in any acknowledgment, invoice, or other communication of Vendor which are inconsistent with the terms and conditions of this Agreement, are hereby rejected. To the extent that a PO might be treated as an acceptance of Vendor’s prior offer, such acceptance is expressly made on condition of assent by Vendor to the terms hereof and shipment of the Goods or beginning performance of any Services by Vendor shall constitute such assent. Phase Four hereby reserves the right to reschedule any delivery or cancel any PO issued at any time prior to shipment of the Goods or prior to commencement of any Services. Phase Four shall not be subject to any charges or other fees as a result of such cancellation. All shrink-wrap, click-wrap, browse-wrap, and similar terms accompanying any Software, and any online terms of use, terms of service, or similar terms relating to Goods or Services, are expressly rejected by Phase Four and are null and void. The terms of this Agreement shall prevail over all other such terms and conditions.

1.2 **Additional Software Terms.** In addition to the terms set forth above, the following terms apply as relevant to Phase Four’s procurement of any Software pursuant to this Agreement:

(a) **License Grant and Limitations.** Vendor hereby grants to Phase Four and Phase Four contractors, consultants, and/or agents, a nonexclusive, transferable, worldwide, royalty-free, fully paid, perpetual license (unless specified otherwise in an ordering document) to use, display and reproduce the Software. Vendor reserves all rights not expressly granted to Phase Four herein. Phase Four shall not decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software except as permitted by law and this Agreement. All Software shall be delivered electronically.

(b) **Title to Software.** Vendor retains title and intellectual property rights to the

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Software provided hereunder, and does not convey any proprietary interest therein to Phase Four other than the license specified above. Notwithstanding anything to the contrary included herein, all right, title and interest in and to the following shall vest in Phase Four and shall be the sole and exclusive property of Phase Four, and Phase Four does not convey any proprietary interest therein to Vendor: (i) any data used in combination with the Software; (ii) all output derived from the use of the Software; and (iii) any additional computer programs that Phase Four develops to operate in combination with the Software for purposes of, including but not limited to, interoperability with Phase Four or third party systems, technology and/or software and/or development of application programming interfaces.

2. **TIMELY PERFORMANCE & DELIVERY**

2.1 **Timely Performance is Critical.** Vendor's timely performance is a critical element of this Agreement.

2.2 **Delivery Schedule.** Delivery of Goods shall be made pursuant to the schedule, via the carrier, and to the place specified on the face of the applicable PO. Phase Four reserves the right to return, shipping charges collect, all Goods received in advance of the delivery schedule. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of transportation by land or sea. If no carrier is specified in the PO, Vendor shall use the least expensive carrier.

2.3 **Timely Notifications Impacting Delivery Schedule.** If Vendor becomes aware of difficulty in performing the agreed-upon work, including meeting the delivery schedule, Vendor shall notify Phase Four within **five (5) days** of any such difficulty, in writing, giving pertinent details. This notification shall not change any delivery schedule.

2.4 **Failure to Deliver.** In the event Vendor fails to deliver the Goods within the time specified, Phase Four may, at its option, decline to accept the Goods and cancel the PO without liability or may demand its allocable fair share of Vendor's available Goods and cancel the balance of the PO without liability.

2.5 **Packaging and Shipment.** Vendor shall ship all Goods to the destination specified by Phase Four in this Agreement. Phase Four reserves the right to specify the mode of shipment. Vendor shall package all items in best available commercially available containers to permit safe transportation and handling and in compliance with applicable federal, state, and local transportation regulations. Vendor is solely liable for packaging design. Each delivered container must be labeled and marked to identify contents without opening and all boxes and packages must contain packing sheets listing contents. Phase Four's PO number must appear on all shipping containers, packing sheets, delivery tickets, and bills of lading. A complete packing list shall be enclosed with all shipments. Vendor will clearly identify the country of origin of all Goods delivered and will indemnify Phase Four with respect to any expenses, duties, penalties, damages, settlements, costs or attorney's fees incurred by Phase Four in connection with Vendor's failure to identify or misidentification of the country of origin.

2.6 **In the event of Termination or Change.** In the event of termination e.g termination for convenience in accordance with the relevant "Termination" clauses of this Agreement or a Phase Four-directed change pursuant to the "Changes" clause of this Agreement, no claim shall be allowed for any manufacture or procurement in advance of Vendor's normal flow time unless Phase Four has provided prior written consent.

3. **IDENTIFICATION, RISK OF LOSS, & DESTRUCTION OF GOODS.** Identification of the Goods shall occur in accordance with Section 2501 of the California Commercial Code. Vendor assumes all risk of loss until title transfers to Phase Four. Title to the Goods shall pass to Phase Four upon receipt by it of the Goods at the designated destination. If the Goods ordered are destroyed prior

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to title passing to Phase Four, Phase Four may at its option cancel the applicable PO without liability or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, Phase Four shall have the right to require delivery of the Goods not destroyed.

4. **CHANGES.**

4.1 Phase Four may at any time, by written order and without notice to sureties or assignees, make changes within the general scope of this Agreement in any one or more of the following: (1) drawings, designs, or specifications; (2) method of shipping or packing; (3) place of inspection, acceptance, or point of delivery; (4) description of Services to be performed; (5) time of performance; (6) place of performance; (7) delivery schedule; and (8) amount of Phase Four-furnished property.

4.2 If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of Work to be performed, Phase Four shall make an equitable adjustment in the: (1) estimated price, delivery, or completion schedule, or both; (2) amount of any fixed fee; and/or (3) other affected terms. Changes to the delivery schedule, however, may be subject to a price adjustment only. (c) Vendor must submit any proposal for adjustment under this clause within thirty (30) days from the date of receipt, from Phase Four, of the written order directing the change. If Vendor's proposal includes the cost of property made obsolete or unusable by the change, Phase Four shall have the right to prescribe the manner of disposition of such property.

4.3 Failure to agree to any adjustment shall be resolved in accordance with the relevant disputes clauses of this Agreement. However, nothing in this "Changes" clause shall excuse Vendor from proceeding without delay in the performance of this Agreement as changed.

5. **PAYMENT, PRICES and TAXES.**

5.1 **Contingent Upon Acceptance.** All payments are contingent on acceptance of the Goods or Services deliverables by Phase Four. However, payment shall not always constitute acceptance.

5.2 **Payments.** As full consideration for the performance of the Services, delivery of the Goods and the assignment of rights to Phase Four as provided in this Agreement, Phase Four shall pay Vendor (i) the amount agreed upon and specified in the applicable PO, or (ii) Vendor's quoted price on date of shipment (for Goods), or the date Services were started (for Services), whichever is lower. Payment shall be deemed to have been made as of the date of mailing of Phase Four's payment or electronic funds transfer.

5.3 **Invoicing.** Vendor shall invoice Phase Four for all Goods delivered and all Services actually performed. Each invoice submitted by Vendor must be provided to Phase Four within ninety (90) days of completion of the Services or delivery of Goods and must reference the applicable PO, and Phase Four reserves the right to return all incorrect invoices. Phase Four will receive a 2% discount of the invoiced amount for all invoices that are submitted more than ninety (90) days after completion of the Services or delivery of the Goods. Unless otherwise specified on the face of a PO, Phase Four shall pay the invoiced amount within thirty (30) days after receipt of a correct invoice. Vendor will receive no royalty or other remuneration on the production or distribution of any products developed by Phase Four or Vendor in connection with or based on the Goods or Services provided.

5.4 **Taxes.** Applicable taxes and other charges such as shipping costs, duties, customs, tariffs, imposts, and government-imposed surcharges shall be stated separately on Vendor's invoice. All duties and taxes assessable upon the Goods prior to receipt by Phase Four of Goods conforming to the PO shall be borne by Vendor.

5.5 **Adjustments.** No adjustments to the prices, payments, or value of Goods or Services shall be

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made based on the fluctuation in currencies or rates of exchange, unless the Parties agree otherwise.

5.6 **Billing Disputes.** If Phase Four disputes the accuracy of an invoice (a “**Billing Dispute**”), Phase Four will notify Vendor in writing of the nature of the Billing Dispute within thirty (30) calendar days. Phase Four may withhold payment of the disputed amount and such payment will not be considered past due during Vendor’s investigation. Vendor will make commercially reasonable efforts to completely resolve the Billing Dispute within thirty (30) days following the date on which Vendor received Phase Four’s initial billing inquiry. If the parties are unable to resolve the Billing Dispute within such thirty (30) day period, it will be resolved pursuant to Section 22.3 below.

5.7 **Audit Rights.** Vendor shall maintain written or electronic records reflecting the basis for any charges billed in connection with a PO for five (5) years after Vendor’s receipt of Phase Four’s final payment with respect to the PO. Phase Four shall have the right, but not the obligation, at any time or from time to time, during regular business hours, upon not less than twenty-four (24) hours’ prior notice to Vendor, to inspect, audit or examine Vendor’s operations, records, systems and facilities to determine Vendor’s and any sub-contractor’s compliance with the PO and the basis for any amounts billed to Phase Four. Any such inspection, examination, and/or audit shall not (i) relieve Vendor of any obligation, responsibility or liability, or (ii) constitute Phase Four’s approval of or consent to any actions undertaken or methods, systems and/or procedures used by Vendor. Any inspection, examination and/or audit that Phase Four may perform shall be for Phase Four’s sole benefit. If any such audit discloses any overcharges, Vendor shall, on demand, pay Phase Four the amount of such overcharges, together with interest on such overcharges at the rate of ten percent (10%) per annum, or the maximum amount allowed by law, whichever is less, from the date of each such overcharge, until reimbursed to Phase Four. If any such audit discloses overcharges, in addition to any amounts to which Phase Four may be entitled, Vendor shall, on demand, reimburse Phase Four for all costs and expenses incurred by Phase Four in connection with such audit.

6. **WARRANTIES.**

6.1 **Services.** Vendor represents and warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good, and sound professional procedures. Further, Vendor represents and warrants that the Services shall be completed in accordance with applicable specifications and any statements of work signed by an authorized representative of Phase Four and shall be correct and appropriate for the purposes stated therein. Vendor represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Vendor is bound.

6.2 **Goods.** Vendor warrants that it has good and transferable title to the Goods and that all Goods provided will be new and will not be used or refurbished. Vendor warrants that all Goods delivered shall be free from all defects and shall conform to all applicable specifications and any statements of work signed by an authorized representative of Phase Four for a period of fifteen (15) months from the date of delivery to Phase Four or for the period provided in Vendor’s standard warranty covering the Goods, whichever is longer (the “**Warranty Period**”). Vendor hereby agrees that it will make spare parts available to Phase Four for a period of seven (7) years from the date of shipment at Vendor’s then current price, less applicable discounts. Additionally, Goods purchased shall be subject to all written express warranties made by Vendor’s agents, and to all warranties provided for by the California Commercial Code. All warranties shall be construed as conditions as well as warranties and shall not be exclusive. Vendor shall furnish to Phase Four Vendor’s standard warranty and service guaranty applicable to the Goods. All warranties shall run both to Phase Four and to its customers. If Phase Four identifies a warranty problem with the Goods during the warranty period, Phase Four will promptly notify Vendor of such problems and will return the Goods to Vendor, at Vendor’s expense.

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Within five (5) business days of receipt of the returned Goods, Vendor shall, at Phase Four's option, either repair or replace such Goods, or credit Phase Four's account for the same. The Warranty Period for any repaired or replaced Goods will restart on Phase Four's receipt of the repaired or replaced Goods.

6.3 **Software.** In addition to, and without limiting the warranties set forth in this Section 6, Vendor represents and warrants that: (a) all Software shall conform in all respects to all applicable documentation; and (b) any disk(s) or other media on which the Software is recorded will be free from defects in materials and workmanship under normal use and service for a period of one (1) year from the date of delivery; (c) the Software and documentation are not subject to any open source or third party licenses that would impose any obligations, encumbrances, royalties, restrictions or requirements on Phase Four; (d) the Software is free of any and all viruses, Trojan horses, trap doors, protecting codes or any other internal components, devices or mechanisms which are intended to: (i) cause the Software to perform any material functions other than those described in the Documentation provided to Phase Four; (ii) halt, disrupt, limit access or grant improper access to or sabotage the Software or any other system, process or device; or (iii) reveal any data or other information accessed through or processed by the Software or other systems, processes or devices without the user's consent; and (e) the remedies set forth in Section 6.2 herein shall apply to any defective or non-conforming Software provided hereunder.

6.4 **Quality Control.** Vendor shall provide and maintain a quality control system to an industry recognized quality standard and in compliance with any other specific quality requirements identified in this Subcontract. Records of all quality control inspection work by Vendor shall be kept complete and made available to Phase Four and Phase Four's Customer.

7. **INSPECTION OF WORK (ACCEPTANCE/REJECTION).**

7.1 **Reasonable Time to Inspect.** Phase Four shall have a reasonable time after receipt at destination of Goods or Service deliverables and before payment to inspect them for conformity to the PO and applicable specifications and any statements of work signed by an authorized representative of Phase Four. Goods received prior to inspection shall not be deemed accepted until Phase Four has run adequate tests to determine whether the Goods conform thereto.

7.2 **Use for Purpose of Inspecting and Testing.** Use of a portion of the Goods for the purpose of testing shall not constitute an acceptance of the Goods.

7.3 **Non-conformance; Defective.** If any Good or Service delivered by Vendor to Phase Four is found to be defective in material or workmanship, or otherwise not in conformity with this Agreement, Phase Four may, in addition to any other remedies available at law or at equity:

- (a) accept all or part of such Goods at an equitable price reduction;
- (b) reject such Goods; or
- (c) require Vendor, at Vendor's cost, to make all repairs, modifications, or replacements at the direction of Phase Four necessary to enable such Goods or Services to comply in all respects with the requirements of this Agreement, in a reasonable timeframe as determined by Phase Four.

7.4 **Nonconforming Goods.** Nonconforming goods will be returned to Vendor freight collect and risk of loss will pass to Vendor upon Phase Four's delivery to the common carrier. Except as otherwise specified in this Agreement, Vendor shall: (1) bear all risks as to rejected Goods or Services after notice of rejection; (2) pay all shipping costs on rejected Goods or Services; and (3) not re-tender rejected Goods or Services without disclosing the corrective action taken.

7.5 **Replacement or Repairment.** Replaced or repaired Goods or Services shall be subject to the provisions of this clause to the same extent as original Goods or Services.

8. **DIMINISHING MANUFACTURING SOURCES AND MATERIAL SHORTAGES/LIFETIME BUY.** At any time during the life of this Agreement, if Vendor becomes aware of diminishing manufacturing sources or material shortages related to any Work to be provided under this Agreement, Vendor shall immediately notify Phase Four in writing.

8.1 In addition to the provisions in the preceding paragraph, at any time during the life of this Agreement, if Vendor determines to stop production of any item to be provided under this Agreement, Vendor shall notify Phase Four at least six (6) months prior to such stop in production. The notice shall be specifically identified as a “Notice of Stop in Production” issued under this clause. Vendor’s notice shall include the anticipated date of the stop in production and the last day orders will be accepted to purchase the item at issue (“**Final Order Date**”). The Final Order Date shall be at least ninety (90) days from Buyer’s receipt of the Notice of Stop in Production. So long as Phase Four submits an order prior to the Final Order Date, Vendor shall allow Phase Four to purchase sufficient quantities of the item at issue to perform Services anticipated by this Agreement (i.e., a “Lifetime Buy”). Vendor shall cooperate with Phase Four, and shall respond to any and all requests by Phase Four for pricing and delivery information regarding a Lifetime Buy

9. **INDEPENDENT CONTRACTOR.** Phase Four is interested only in the results obtained under this Agreement; the manner and means of achieving the results are subject to Vendor’s sole control. Vendor is an independent contractor for all purposes, without express or implied authority to bind Phase Four by contract or otherwise. Neither Vendor nor its employees, agents or subcontractors (“**Vendor Representatives**”) are agents or employees of Phase Four, and therefore are not entitled to any employee benefits of Phase Four, including but not limited to, any type of insurance. Vendor shall be responsible for all costs and expenses incident to performing its obligations under this Agreement and shall provide Vendor’s own supplies and equipment. Phase Four may require a background check of any of Vendor Representatives who perform Services on Phase Four premises, and Vendor hereby agrees to conduct such investigation in accordance with background check standards to be provided by Phase Four, and shall at all times comply with all laws and regulations applicable to background investigations. Phase Four shall keep the results of any such investigation confidential, and provide such information only to those persons with a business need to know, or as required by applicable law. Vendor Representatives shall observe the working rules of all Phase Four premises when on such premises. Phase Four reserves the right to prohibit any Vendor Representatives from performing Services on Phase Four’s premises.

10. **VENDOR RESPONSIBLE FOR TAXES AND RECORDS.** Except as otherwise required by applicable law, Phase Four shall have no responsibility to pay or withhold from any payment to Vendor under this Agreement, any federal, state, or local taxes or fees. Vendor shall be liable for any applicable income taxes, levies, duties, costs, charges, withholdings, deductions or any charges of equivalent effect imposed on, or in respect of the Services provided by Vendor to Phase Four under this Agreement. Where applicable, Vendor will charge Phase Four sales tax, excise tax, use tax, value added tax (“**VAT**”), goods and services tax (“**GST**”), consumption tax, or equivalent type charges (hereinafter “**Transaction Taxes**”) that are owed by Phase Four solely as a result of the Services provided by Vendor to Phase Four under this Agreement and which are required or permitted to be collected from Phase Four by Vendor under applicable law. If Phase Four provides Vendor with a valid exemption certificate, Vendor shall not collect the Transaction Taxes covered by such certificate. All charges will be supported by valid tax invoices provided by Vendor to Phase Four consistent with the applicable EU invoicing directive or comparable authority of the relevant jurisdiction. Where any

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relevant taxation authority imposes any income tax on the payment for Services by Phase Four to Vendor and requires Phase Four to withhold such tax (“**Withholding Tax**”), Phase Four may deduct such Withholding Tax from the payment to Vendor and remit such Withholding Tax to the relevant taxing authority on behalf of Vendor. The determination of the applicability of a Withholding Tax is at Phase Four’s sole discretion. In the event a reduced Withholding Tax rate may apply on payments to Vendor, Vendor shall furnish to Phase Four as soon as practicable all documentation necessary to evidence the qualifications for the reduced rate of Withholding Tax. If the necessary documentation is not provided in a timely fashion before payment, the reduced Withholding Tax rate will not apply and any payments to Vendor shall be subject to the full rate of Withholding Tax. Upon reasonable request by Vendor, Phase Four shall furnish Vendor with tax receipts or other documentation evidencing the payment of such Withholding Tax when available. Upon request, Vendor shall provide Phase Four with a validly executed U.S. Internal Revenue Service form to establish its U.S. or non-U.S. status or any other necessary tax documentation. Where applicable, a non-U.S. Vendor shall note, on each invoice issued to Phase Four under this Agreement, the amount of Services performed by Vendor within the United States, if any.

11. **INSURANCE.** Vendor shall be solely responsible for maintaining and requiring Vendor Representatives to maintain such adequate health, auto, workers’ compensation, unemployment compensation, disability, liability, and other insurance, as is required by law or as is the common practice in Vendor’s and Vendor Representatives’ trades or businesses, whichever affords greater coverage. As evidence of Vendor’s compliance with this clause, upon request, Vendor shall provide Phase Four with certificates of insurance or evidence of coverage before commencing performance under this Agreement. Further, upon request, Vendor shall add Phase Four and its affiliates as “additional insureds” on its relevant insurance policies where reasonably appropriate. Vendor shall provide adequate coverage for any Phase Four property under the care, custody or control of Vendor or Vendor Representatives.

12. **INDEMNITY.** Vendor shall indemnify, hold harmless, and at Phase Four’s request, defend Phase Four, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses, and expenses, including attorneys’ fees, interest, and cost of suit arising out of or in any way connected with the Goods or Services provided by Vendor pursuant to the PO. This includes without limitation, (i) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated cleanup costs, (ii) Vendor failing to satisfy the Internal Revenue Service’s guidelines for an independent contractor, (iii) any claim based on the negligence, omissions, or willful misconduct of Vendor or any of Vendor Representatives, (iv) Vendor failing to satisfy its obligations with regard to the protection of Confidential Data as described in Section 13 below, (v) the failure of Vendor or any Vendor Representatives to comply with a requirement of applicable law, including but not limited to, those relevant to the payment of any wages and/or any other compensation, or statutory benefits of employment, including but not limited to, Workers’ Compensation insurance, and/or for statutory penalties and/or interest, and (vi) any claim by a third party against Phase Four alleging that the Goods or Services, the results of such Services, or any other products or processes provided pursuant to a PO, infringe a patent, copyright, trademark, trade secret, or other intellectual property or other proprietary right of a third party, whether such are provided alone or in combination with other products, software, or processes. Vendor shall not settle any such suit or claim without Phase Four’s prior written approval. Vendor agrees to pay or reimburse all costs that may be incurred by Phase Four in enforcing this indemnity, including attorneys’ fees. Should the use of any Goods or Services by Phase Four, its distributors, subcontractors, or customers be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Vendor shall, at its sole cost and expense, either (a) substitute fully equivalent non-infringing Goods or Services; (b) modify the Goods or Services so that they no longer infringe

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but remain fully equivalent in functionality; (c) obtain for Phase Four, its distributors, subcontractors, or customers the right to continue using the Goods or Services; or (d) if none of the foregoing is possible, refund all amounts paid for the infringing Goods or Services.

13. **CONFIDENTIALITY; PERSONAL DATA; DATA SECURITY.**

13.1 **Confidentiality.** Vendor may acquire knowledge of Phase Four Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such Phase Four Confidential Information in confidence during and following termination or expiration of this Agreement. “**Phase Four Confidential Information**” includes but is not limited to all information, whether written or oral, in any form, including without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined in Section 14, below), and other material or information considered proprietary by Phase Four relating to the current or anticipated business or affairs of Phase Four which is disclosed directly or indirectly to Vendor and/or that Vendor learns through its performance of Services or provision of Goods under this Agreement. In addition, Phase Four Confidential Information means any third party’s proprietary or confidential information disclosed to Vendor in the course of providing Services or Goods to Phase Four. Phase Four Confidential Information does not include any information (i) which Vendor lawfully knew without restriction on disclosure before Phase Four disclosed it to Vendor, (ii) which is now or becomes publicly known through no wrongful act or failure to act of Vendor, (iii) which Vendor developed independently without use of the Phase Four Confidential Information, as evidenced by appropriate documentation, or (iv) which is hereafter lawfully furnished to Vendor by a third party as a matter of right and without restriction on disclosure. In addition, Vendor may disclose Phase Four Confidential Information that is required to be disclosed pursuant to a requirement of a government agency or law so long as Vendor provides prompt notice to Phase Four of such requirement prior to disclosure. Vendor agrees not to copy, alter, or directly or indirectly disclose any Phase Four Confidential Information. Additionally, Vendor agrees to limit its internal distribution of Phase Four Confidential Information to Vendor Representatives who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Vendor Representatives of nondisclosure agreements with provisions substantially similar to those set forth in this Agreement. In no event will Vendor use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Phase Four Confidential Information. Vendor further agrees not to use the Phase Four Confidential Information except in the course of performing hereunder and will not use such Phase Four Confidential Information for its own benefit or for the benefit of any third party. The mingling of the Phase Four Confidential Information with information of Vendor shall not affect the confidential nature or ownership of the same as stated hereunder. Vendor agrees not to design or manufacture any products incorporating Phase Four Confidential Information without Phase Four’s express written consent in each instance. All Phase Four Confidential Information is and shall remain Phase Four property. Upon Phase Four’s written request or the termination of this Agreement, Vendor shall return, transfer, or assign to Phase Four all Phase Four Confidential Information, including all Work Product.

13.2 **Protection of Personal Data.** As a result of this Agreement, Vendor and Vendor Representatives may obtain certain information relating to identified or identifiable individuals (“**Personal Data**”), and such Personal Data shall be considered Phase Four Confidential Information. Vendor shall have no right, title or interest in Personal Data obtained by it as a result of this Agreement. Vendor shall, and shall ensure that any Vendor Representatives with access to Personal Data: (a) collect, access, maintain, use, process and transfer Personal Data in accordance with the requirements set forth in this section and for the sole purpose of performing Vendor’s obligation under this Agreement; (b) comply with Phase Four’s instructions regarding Personal Data, as well as all

applicable laws, regulations and international accords, treaties, or accords, including without limitation, the EU/US Safe Harbor program (collectively, “**Legal Requirements**”), and refrain from engaging in any behavior which renders or is likely to render Phase Four in breach of same; (c) promptly notify Phase Four in writing of any requests from an individual with respect to Personal Data, and work with Phase Four to promptly and effectively handle such requests; and (d) if Vendor has access to Personal Data collected by Phase Four in Europe, abide by the EU-US and Swiss-US Safe Harbor programs as may be amended from time to time (including by the entry into force of any eventual successor to a Safe Harbor program) or, in the absence of it, abide by the requirements of a data importer iterated in the Model Contract Clauses as approved by the European Commission, the Swiss Transborder Data Flow Agreement, or equivalent, adequate contractual instruments which shall be entered into separately.

13.3 **Data Security.** Vendor shall take all appropriate legal, organizational and technical measures to protect against unlawful and unauthorized processing of Personal Data or Phase Four Confidential Information (“**Confidential Data**”). Vendor shall maintain reasonable operating standards and security procedures, and shall use its best efforts to secure Confidential Data through the use of appropriate physical and logical security measures including, but not limited to, appropriate network security and encryption technologies, and the use of reasonable user identification or password control requirements, including multiple-factor authentication, strong passwords, session time-outs, and other security procedures as may be issued from time to time by Phase Four. If requested by Phase Four at any time during the term of this Agreement, Vendor shall provide Phase Four with a copy of Vendor’s then current security policy. Vendor shall promptly notify Phase Four in the event that Vendor learns or has reason to believe that any person or entity has breached or attempted to breach Vendor’s security measures, or gained unauthorized access to Confidential Data (“**Information Security Breach**”). Upon any such discovery, Vendor will (a) investigate, remediate, and mitigate the effects of the Information Security Breach, and (b) provide Phase Four with assurances reasonably satisfactory to Phase Four that such Information Security Breach will not recur. If Phase Four determines that notices (whether in Phase Four’s or Vendor’s name) or other remedial measures (including notice, credit monitoring services, fraud insurance and the establishment of a call center to respond to customer inquiries) are warranted following a Security Breach, Vendor will, at Phase Four’s request and at Vendor’s cost and expense, undertake the aforementioned remedial actions.

13.4 **Investigation; Noncompliance.** In the event of an investigation by a data protection regulator or similar authority regarding Personal Data, Vendor shall provide Phase Four with reasonable assistance and support, including, where necessary, access to Vendor’s premises to the extent needed to respond to such investigation. In the event that Vendor is unable to comply with the obligations stated in this Section 13., Vendor shall promptly notify Phase Four, and Phase Four may do one or more of the following: (i) suspend the transfer of Personal Data to Vendor; (ii) require Vendor to cease processing Personal Data; (iii) demand the return or destruction of Personal Data; or (iv) immediately terminate this Agreement. Upon termination of this Agreement for any reason, Vendor shall promptly contact Phase Four for instructions regarding the return, destruction or other appropriate action with regard to Personal Data.

14. **INTELLECTUAL PROPERTY; OWNERSHIP OF WORK PRODUCT.**

14.1 For purposes of this Agreement, “**Work Product**” includes, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, Service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, documents, information and materials made, conceived, or developed by Vendor, alone or with others, which result from or relate to the Services performed pursuant to a PO, and all copies thereof. Standard Goods manufactured by Vendor and sold to Phase Four without having been designed, customized, or modified for Phase Four do not constitute Work Product.

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14.2 All Work Product shall at all times be and remain the sole and exclusive property of Phase Four. Vendor hereby agrees to assign and transfer to Phase Four and does hereby assign and transfer to Phase Four all of its worldwide right, title, and interest in and to the Work Product including all associated intellectual property rights. Phase Four will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name, or to follow any other procedure that Phase Four deems appropriate.

14.3 Vendor agrees: (i) to disclose promptly in writing to Phase Four all Work Product in its possession; (ii) to assist Phase Four in every reasonable way, at Phase Four's expense, to secure, perfect, register, apply for, maintain, and defend for Phase Four's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in Phase Four's name as it deems appropriate; and (iii) to otherwise treat all Work Product as Phase Four Confidential Information as described above. These obligations to disclose, assist, execute, and keep confidential survive the expiration or termination of this Agreement.

14.4 All tools and equipment supplied by Phase Four to Vendor shall remain the sole property of Phase Four. Vendor will ensure that Vendor Representatives appropriately waive any and all claims and assign to Phase Four any and all rights or any interests in any Work Product or original works created in connection with this Agreement. Vendor irrevocably agrees not to assert against Phase Four or its direct or indirect customers, assignees, or licensees any claim of any intellectual property rights of Vendor affecting the Work Product.

14.5 Phase Four will not have rights to any works conceived or reduced to practice by Vendor which were developed entirely on Vendor's own time without using equipment, supplies, facilities, or trade secret or Phase Four Confidential Information, unless (a) such works relate to Phase Four's business, or Phase Four's actual or demonstrably anticipated research or development, or (b) such works result from any Services performed by Vendor for Phase Four.

15. **NEW MATERIALS.** Goods and Services to be delivered under this Agreement shall consist of new materials, not used, reconditioned, remanufactured, or of such age as to impair such materials' usefulness or safety.

16. **GRATUITIES; ANTI-CORRUPTION COMPLIANCE.**

16.1 **Gratuities.** Vendor represents and warrants that neither it nor any of its employees, agents, or representatives has offered or given any person or entity any gift, gratuity, payment, kickback or other inducement with a view toward securing business from Phase Four or influencing the terms, conditions or performance of this Agreement or any PO.

16.2 **Compliance.** Vendor shall comply with, and shall ensure that all Vendor Representatives comply with all applicable laws and regulations enacted to combat bribery and corruption, including the United States Foreign Corrupt Practices Act, the UK Bribery Act, the principles of the OECD Convention on Combating Bribery of Foreign Public Officials, and any corresponding laws of all countries where business or services will be conducted or performed pursuant to this Agreement. Vendor shall not, and shall ensure that Vendor Representatives do not, either directly or indirectly, pay, offer, promise to pay, or give anything of value (including any amounts paid or credited by Phase Four to Vendor) to any person including an employee or official of a government, government controlled enterprise or company, or political party, with the reasonable knowledge that it will be used for the purpose of obtaining any improper benefit or to improperly influence any act or decision by such person or for the purpose of obtaining, retaining, or directing business. Any amounts paid by Phase Four to Vendor or Vendor Representatives pursuant to the terms of this Agreement will be for

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services actually rendered, or products sold, in accordance with the terms of this Agreement. Vendor shall not, and shall ensure that Vendor Representatives do not, offer or accept bribes or kickbacks in any form.

16.3 **Disclosure of Government Related Parties.** Vendor and Vendor Representatives represents and warrants that they have, to the best of the Vendor's and Vendor's Affiliate's knowledge and to the extent permitted by law, provided Phase Four with complete and accurate information regarding any majority owner, partner, officer, director, manager of Vendor or Vendor Representatives, or any other party who is authorized to conduct business on behalf of Vendor or Vendor Representatives (collectively, "**Vendor Authorized Parties**") that is, has been or will become, an official or employee of a governmental entity or political party or a candidate for political office (each, a "**Government Related Party**"). If at any time during the term of this Agreement, Vendor or Vendor Representatives becomes aware, or otherwise has reason to believe, that any Vendor Authorized Party is, has been or will become, a Government Related Party, then, to the extent permissible by law, Vendor shall promptly notify Phase Four.

17. **TERMINATION.** Phase Four may terminate this Agreement upon written notice to Vendor if Vendor fails to perform any of its obligations under, or otherwise breaches, this Agreement, files a petition in bankruptcy, becomes insolvent, or dissolves. In the event of such termination, Phase Four shall pay Vendor for the portion of the Services satisfactorily performed and those conforming Goods delivered to Phase Four through the date of termination, less appropriate offsets, including any additional costs to be incurred by Phase Four in completing the Services. Phase Four may terminate this Agreement for any other reason such as for convenience, or for no reason, upon **ten (10) days'** written notice to Vendor identified as a "**Termination Notice**". Vendor shall cease to perform Services and/or provide Goods under this Agreement on the date of termination specified in such notice. In the event of such termination, Phase Four shall be liable to Vendor only for those Services satisfactorily performed and those conforming Goods delivered to Phase Four through the date of termination, less appropriate offsets. Vendor may terminate this Agreement upon written notice to Phase Four if Phase Four fails to pay Vendor within **sixty (60) days** after Vendor notifies Phase Four in writing that payment is past due. Upon the expiration or termination of this Agreement for any reason: (i) each party will be released from all obligations to the other arising after the date of expiration or termination, except for those which by their terms survive such termination or expiration; and (ii) Vendor will promptly notify Phase Four of all Phase Four Confidential Information or any Work Product in Vendor's possession and, at the expense of Vendor and in accordance with Phase Four's instructions, will promptly deliver to Phase Four all such Phase Four Confidential Information and/or Work Product.

18. **SURVIVAL OF OBLIGATIONS.** Any obligations and duties that by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

19. **REMEDIES.** If Vendor breaches this Agreement, Phase Four shall have all remedies available by law and at equity. For the purchase of Goods, Vendor's sole remedy in the event of breach of this Agreement by Phase Four shall be the right to recover damages in the amount equal to the difference between market price at the time of breach and the purchase price specified in the Agreement. No alternate method of measuring damages shall apply to this transaction. Vendor shall have no right to resell Goods for Phase Four's account in the event of wrongful rejection, revocation of acceptance, failure to make payment or repudiation by Phase Four and any resale so made shall be for the account of Vendor. Vendor acknowledges and agrees that the obligations and promises of Vendor under this Agreement are of a unique, intellectual nature giving them particular value. Vendor's breach of any of

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the promises contained in this Agreement will result in irreparable and continuing damage to Phase Four for which there will be no adequate remedy at law and, in the event of such breach, Phase Four will be entitled to seek injunctive relief, or a decree of specific performance.

20. **LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (OR ANY PARTY REPRESENTATIVES, OR ANY THIRD PARTY) FOR ANY INCIDENTAL LOSSES OR DAMAGES, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAD BEEN INFORMED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES.

21. **COMPLIANCE WITH LAWS; EXPORT CONTROL; SAFETY AND LABOR STANDARDS.**

21.1 **General.** Vendor and Vendor Representatives will comply with all applicable laws and regulations (including, without limitation, the applicable laws, orders, policies, and regulations of the U.S. Government, U.S. Customs, and any other jurisdiction in which Goods or Services are provided, relating to import, export and re-export of Goods, Services, technical data and software, privacy, labor and employment, anti-discrimination and anti-harassment, freedom of association, environmental protection, hazardous substances management, pollution prevention and resource sustainability, waste management, recycling, protection of intellectual property, and anti-corruption (including, without limitation, the U.S. Export Administration Regulations (“**EAR**”), the U.S. International Traffic in Arms Regulations (“**ITAR**”) and other U.S. and non-U.S. export controls (collectively, “**Export Controls**”)) and Vendor will defend and hold Phase Four harmless from any expense or damage resulting from its violation or alleged violation of any such law or regulation in the performance of this Agreement. Vendor is solely responsible for compliance by Vendor and/or Vendor Representatives with all laws and regulations regarding the payment of wages and/or other compensation to Vendor Representatives, including ensuring the provision of Workers’ Compensation insurance for all Vendor Representatives.

21.2 **Export Compliance.** Vendor agrees that it will not export, re-export, resell or transfer any Good, Service, technical data or software in violation of any applicable Export Controls. Vendor represents, warrants, and covenants that any Good, Service, technical data or software that it supplies or transfers to Phase Four shall not be on the EAR Commerce Control List or the ITAR United States Munitions List.

21.3 **Customs.** Upon Phase Four’s request, Vendor will promptly provide Phase Four with a statement of origin for all Goods and United States Customs documentation for Goods wholly or partially manufactured outside of the United States. To the extent that services will be provided in the United States and/or that Goods will be transported into the United States, Vendor represents that either (a) it is C-TPAT certified by U.S. Customs & Border Protection, and will maintain that certification while providing services in, or transporting Goods into, the United States or (b) it will comply with the C-TPAT (Customs Trade Partnership Against Terrorism) security procedures that may be found on the U.S. Customs website at www.cbp.gov (or such other website that the C-TPAT security procedures may be moved to by the U.S. Government).

21.4 **Fair Labor Standards Act.** Vendor represents that all Goods or Services provided under this Agreement has, where applicable, been manufactured in compliance with all terms, rules, and regulations issued under the Fair Labor Standards Act of 1938 (“**FLSA**”), as amended. The administration and enforcement of the FLSA is the responsibility of the U.S. Department of Labor,

and any questions as to the requirements of the FLSA or its applicability to Work provided under this Agreement should be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C., 20210, or to a Labor Department Regional Office.

21.5 **Hazardous Materials and Dangerous Goods.** If Goods include hazardous materials, Vendor represents and warrants that Vendor understands the nature of any hazards associated with the manufacture, handling, and transportation of such hazardous materials. Packaging, packing, marking, labeling, shipping paper designations and certifications, handling, and movement of materials ordered herein shall be in accordance with all relevant and applicable U.S. laws and regulations, including 49 C.F.R., Subt B, Ch. I, Subch. C, and all international regulations (e.g., International Air Transport Association (“IATA”) or International Maritime Dangerous Goods (“IMDG”)) covering shipments of dangerous goods or hazardous materials.

(a) **Chemical Substances.** Vendor represents that each chemical substance constituting or contained in Good sold or otherwise transferred to Phase Four hereunder is on the list of chemical substances compiled and published by the U.S. Environmental Protection Agency (“EPA”) pursuant to the Toxic Substances Control Act (15 U.S.C. 2601-2692) as amended.

(b) **Material Safety Data Sheet.**

(i) Prior to shipping hazardous materials (solids, liquids, cryogenic liquids, gases) hereunder, Vendor shall provide Phase Four with a copy (electronic submittal preferred) of the Material Safety Data Sheet (“MSDS”) for each material, inclusive of all required information as described in 29 C.F.R. 1910.1200 as amended. Vendor also shall include one (1) hard copy of the MSDS with the shipment of the material(s).

(ii) Definitions - A hazardous material is a material which: (A) is defined as a hazardous material by the Occupational Safety and Health Act of 1970, U.S. Department of Transportation, EPA, IATA, IMDG, or any other federal, state, or local environmental, health, or safety agency; (B) in the course of normal operations or foreseeable emergencies, may produce dusts, gases, vapors, mists, fumes, or smoke; or (C) if used without special precautions, would constitute a health or physical hazard to humans.

(iii) Where two (2) or more hazardous materials are supplied separately or in kit form for the purpose of combining such materials to form an end compound, which is the result, in whole or in part, of a chemical reaction, Vendor shall provide an MSDS for the end compound as well as for each component part.

(iv) Proprietary or trade secret information about products containing a hazardous material, as defined above, shall be disclosed as required by 42 U.S.C. 11043, 40 C.F.R. 372.45, and 29 C.F.R. 1910.1200(i), as amended.

(v) Mandatory resubmission of an MSDS is required with each change in: (A) formulation of the material that affects its hazardous characteristics; (B) information regarding the material’s hazardous characteristics; and (C) information regarding handling procedures for the material.

(c) **Hazardous Materials Incorporated Into Work.** For materials that do not require an MSDS, Vendor agrees to submit a list to Phase Four of the hazardous materials, including those considered as ingredients, with their common chemical names and percentage of content of each to be incorporated into Work provided under this Subcontract. A statement shall be made to the effect that the degree of toxicity will not be increased by making any change in the composition without first advising Phase Four. All shipments CONTAINING hazardous materials shall be clearly marked in accordance with all applicable federal, state, and local regulations.

22. MISCELLANEOUS.

22.1 **Publicity.** Vendor will not use (or permit Vendor Representatives to use) Phase Four's marks, logo or other commercial or product designations for any purpose, or make (or permit Vendor Representatives to make) any public statement whatsoever (including, without limitation, press releases, media statements, case studies or the like) regarding the existence of this Agreement or the parties' relationship, without Phase Four's prior written consent.

22.2 **Governing Law.** This Agreement and the rights and obligations of the parties will be governed by and construed and enforced in accordance with the laws of the State of California as applied to agreements entered into and to be performed entirely within California between California residents, without regard to conflicts of law principles. The parties expressly agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or to their relationship.

22.3 **Dispute Resolution, Jurisdiction and Venue.**

(a) If there is a dispute between the parties (whether or not the dispute arises out of or relates to this Agreement), the parties agree that they will first attempt to resolve the dispute through one senior management member of each party. If they are unable to do so within sixty (60) days after the complaining party's written notice to the other party, a party may submit the dispute, controversy, or claim to a court of competent jurisdiction or, if agreed upon by the Parties, an arbitration proceeding.

(b) Pending final resolution or settlement of any dispute arising under this Agreement, Vendor shall proceed diligently with the performance of this Agreement as directed by Phase Four.

22.4 **Equitable Relief.** Notwithstanding Section 22.3 above, either party may seek equitable relief in order to protect its confidential information or intellectual property at any time, provided it does so in the state or federal courts in Los Angeles County, California (and only those courts). The parties hereby waive any bond requirements for obtaining equitable relief. The confidentiality provisions of this Agreement will be enforceable under the provisions of the California Uniform Trade Secrets Act, California Civil Code Section 3426, as amended.

22.5 **Entire Agreement; Modification.** This Agreement is the complete, final, and exclusive statement of the terms of the agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements between them relating to the subject matter hereof. This Agreement may not be varied, modified, altered, or amended except in writing signed by the parties. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Vendor. Notwithstanding the foregoing, this Agreement will not supersede or take the place of any written agreement that is signed by both parties and covers the same subject matter as this Agreement or its related POs.

22.6 **No Assignment; Waiver.** Vendor may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of Phase Four. Any purported assignment without Phase Four's written consent shall be void. Vendor agrees to obtain Phase Four's written consent before subcontracting this Agreement or any portion thereof; provided, however, that this limitation shall not apply to the purchase of standard commercial goods or raw material.

22.7 **Nonexclusive Agreement.** This is not an exclusive agreement. Phase Four is free to engage others to perform Services or provide Goods the same as or similar to Vendor's. Vendor is free to, and is encouraged to, advertise, offer, and provide Vendor's Services and/or Goods to others; provided however, that Vendor does not breach this Agreement.

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22.8 **Notices.** Except for POs which may be sent by local mail or electronically transmitted, all notices under this Agreement must be in writing addressed to the authorized representative(s) of the other party. Notice will be deemed given (i) when delivered personally; (ii) one day after having been sent by commercial overnight carrier specifying next-day delivery with written verification of receipt; and (iii) three days after having been sent by first class or certified mail postage prepaid. A copy of any notice sent to Phase Four must also be sent simultaneously via email to **legal@phasefour.io**.

22.9 **Force Majeure.**

(a) Neither party will be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence including, but not limited to, acts of God or of the public enemy, acts of any U.S. or foreign governmental authority, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, or unusually severe weather, provided it promptly notifies the other party and uses reasonable efforts to correct its failure to perform.

(b) If the delay in delivery is caused by the delay of a sub-vendor of Vendor and if such delay arises out of causes beyond the reasonable control of both Vendor and the sub-vendor, and without fault or negligence of either of them, Vendor shall not be liable to Phase Four in damages unless the articles or services to be furnished by the sub-vendor were obtainable from other sources in sufficient time to permit Vendor to meet the required delivery schedule. Vendor shall notify Phase Four in writing within ten (10) days after the beginning of any such delay.

22.10 **Severability.** If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

22.11 **Attorneys' Fees.** In any action to enforce this Agreement, the prevailing party shall be entitled to recover all court costs and expenses and reasonable attorneys' fees, in addition to any other relief to which it may be entitled.