

Data Systems Terms

These Data Systems Terms (the “**Agreement**”) are made by and between Oshkosh Corporation and its customers (each, a “Customer”). Customer and Oshkosh are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

This Agreement (i) covers the connected solution(s) offered by Oshkosh (as defined herein, the “**Platform**”), including pursuant to one or more connected products subscription agreements related to the Platform (the “**Subscription Agreement**”), (ii) sets out the terms and conditions upon which the Customer may access and use the Platform provided by Oshkosh in connection with one or more vehicles or other products (each, a “**Product**”), (iii) covers the collection and use of Customer Data (as defined below) by the Platform, and (iv) covers any Third-Party integrations made available on or through the Platform licensed by Customer.

In consideration for such access and use, the Customer agrees to be bound by the terms and conditions of this Agreement and any Subscription Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS.

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Connected Products Services.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity, or otherwise.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the Preamble.

“**AI**” has the meaning set forth in Section 4.1.

“**AI Technology**” has the meaning set forth in Section 4.1.

“**API**” means any API documentation, or other related materials made available (including remotely) through the Connected Products Services to permit access to or by a Third-Party service, including any Maintenance Releases and any New Versions.

“**Availability**” has the meaning set forth in Section 6.2.

“**Availability Requirement**” has the meaning set forth in Section 6.2.

“**Available**” has the meaning set forth in Section 6.2.

“**Business Day**” means a day other than a Saturday, Sunday, or other day on which commercial banks in Milwaukee, Wisconsin are authorized or required by Law to be closed for business.

“**Confidential Information**” has the meaning set forth in Section 10.1.

“**Connected Products Services**” means services provided to a Customer through the Oshkosh Systems, as may be described in a Subscription Agreement, including all wireless and monitoring

services, the collection of usage data regarding the Product, the monitoring, analysis, or other Processing of such data, and making such data available to Customer in a useful form through various aspects of the Oshkosh System. The Connected Products Services may also include one or more APIs. Information regarding the specific Connected Products Services to be provided to the Customer, together with any additional terms and conditions applicable to such specific services, may be set forth in each applicable Subscription Agreement. Customer may be required to execute each applicable Subscription Agreement prior to the access to or use of the Connected Products Services.

“Customer” has the meaning set forth in the Preamble.

“Customer Data” means all information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Customer by or through the use of the Connected Products Services, or that incorporates or is derived from the Processing of such information, data, or content by or through the Connected Products. Notwithstanding the foregoing, Customer Data does not include Statistical Data or any other information reflecting the access or use of the Connected Products Services by or on behalf of Customer, but may include Personal Information.

“Dealer” means an entity that has been granted the right to sell or distribute goods or services on behalf of Oshkosh.

“Disaster Recovery Plan” has the meaning set forth in Section 7.5.

“Disclosing Party” has the meaning set forth in Section 10.1.

“Documentation” means Oshkosh’s user manuals relating to the Platform that Oshkosh provides or makes available to Customer in any form or medium which describe the functionality, components, features or requirements of the Platform, including any aspect of the configuration operation, or use of the Platform.

“DPA” has the meaning set forth in Section 7.4.

“Effective Date” has the meaning set forth in Section 15.1.

“Exceptions” has the meaning set forth in Section 6.2.

“Fees” has the meaning set forth in Section 8.

“Force Majeure Event” has the meaning set forth in Section 16.11.

“Indemnified Party” has the meaning set forth in Section 13.3.

“Indemnifying Party” has the meaning set forth in Section 13.3.

“Intellectual Property Rights” means any and all (a) trade secrets; (b) rights in and to US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, taglines, corporate names, and domain names, and other similar designations of source, sponsorship, association, or origin, together with the goodwill associated with any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world; (c) copyrights; (d) patents; (e) and any other intangible property in which any Person holds proprietary rights, title, interests, or protections, however arising, pursuant to the Laws of any jurisdiction throughout the world where the Platform is made available, including all applications, registrations, renewals, issues, reissues, extensions, divisions, and continuations in connection with any of the foregoing and the goodwill connected with the use of and symbolized by any of the foregoing.

“IP” has the meaning set forth in clause (vi) of the definition of Personal Information.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“Loss” means all losses, damages, deficiencies, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Maintenance Release” means any update, upgrade, release, or other adaptation or modification of the Product Software or API, including any updated Documentation, that Oshkosh may provide to Customer from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Product Software, but does not include any New Version.

“New Version” means any new version of the Product Software or API that Oshkosh may from time to time introduce and market generally as a distinct licensed product (as may be indicated by Oshkosh’s designation of a new version number), and which Oshkosh may make available to Customer at an additional cost under a separate written agreement.

“Notice” has the meaning set forth in Section 16.4.

“Open Source Components” means any software component that is subject to any Open Source License agreement, including any software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open Source Initiative.

“Open Source License” has the meaning set forth in Section 2.3.

“Oshkosh” has the meaning set forth in the Preamble.

“Oshkosh Materials” means the Connected Products Services, Documentation, Oshkosh Systems, AI Technology, API, and Product Software, and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that do not contain any Customer Data and are provided or used by Oshkosh or any Subcontractor in connection with the Connected Products Services or otherwise comprise or relate to the Connected Products Services or the Oshkosh Systems, and any modification, correction, repair, enhancement, derivative work, or other improvement to any of the foregoing. For the avoidance of doubt, Oshkosh Materials include Statistical Data and any information, data, or other content derived from Oshkosh monitoring of Customer’s access to or use of the Connected Products Services; notwithstanding the foregoing, “Oshkosh Materials” does not include Customer Data.

“Oshkosh Privacy and Security Requirements” has the meaning set forth in Section 7.1.

“Oshkosh Systems” means the information technology infrastructure used by or on behalf of Oshkosh in providing the Connected Products Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Oshkosh or through the use of Third-Party services. Without limiting the foregoing, the Oshkosh Systems include: (a) all software associated with the

Connected Products Services, including any mobile applications; (b) the Product Software; (c) the remotely accessed, internet-based, portions of the Connected Products Services; (d) the Product telematics unit and other Product-based components; and (e) tools and may be developed in connection with any of the foregoing from time to time.

“Party” has the meaning set forth in the Preamble.

“Permitted Party” means Oshkosh, its Affiliates, its Subcontractors, its Representatives, its Suppliers, its Dealers, and any third party Customer authorizes or directs the sharing of data with.

“Person” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“Personal Information” means any information that: (a) the relevant data protection or privacy Laws define as “personal information” or “personal data”; or (b) in absence of such a definition in the relevant data protection or privacy Laws, such information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household from that data alone or in combination with other information in Oshkosh’s possession or control or that Oshkosh is likely to have access to. Without limiting the foregoing, Personal Information may include: (i) a first or last name or initials; (ii) a home or other physical address, including street name and name of city or town; (iii) an e-mail address or other online contact information, such as an instant messaging user identifier or a screen name that reveals an individual’s e-mail address; (iv) a telephone number; (v) a social security number, tax ID number or other government-issued identifier; (vi) an Internet Protocol (“IP”) address or host name that identifies an individual; (vii) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies an individual; (viii) birth dates; (ix) coded data that is derived from Personal Information; and (x) any other information by which one is reasonably able to personally identify a natural Person. Additionally, to the extent any other information (including case report form information, personal profile information, IP addresses, and other unique identifiers) is associated or combined with Personal Information, then such information also will be considered Personal Information.

“Platform” has the meaning set forth in the Preamble.

“Process” means any operation or set of operations which is performed on information or on sets of information, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure, or destruction. Processing also includes transferring Personal Information to Third-Parties. The terms **“Processing”** and **“Processed”** have a correlative meaning.

“Processed” has the meaning set forth in the definition of Process.

“Processing” has the meaning set forth in the definition of Process.

“Product” has the meaning set forth in the Preamble.

“Product Data” has the meaning set forth in Section 11.3.

“Product Software” means the executable, object code version of software installed on a Product, and any Maintenance Releases provided to Customer pursuant to this Agreement.

“Product Transfer” has the meaning set forth in Section 9.1(a).

“Receiving Party” has the meaning set forth in Section 10.1.

“Representatives” means, with respect to a Party, that Party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, Subcontractors, and legal advisors.

“Scheduled Downtime” has the meaning set forth in Section 6.2(h)(ii).

“Security Incident” has the meaning set forth in Section 7.2.

“Service Availability Credit” has the meaning set forth in Section 6.3.

“Service Availability Failure” has the meaning set forth in Section 6.3.

“Statistical Data” means data and information related to Customer’s use of the Connected Products Services, including to compile statistical and performance information related to the provision and operation of the Connected Products Services.

“Subcontractor” has the meaning set forth in Section 2.10(a).

“Subscription Agreement” has the meaning set forth in the Preamble. Notwithstanding anything to the contrary in any Subscription Agreement, the Parties acknowledge and agree that the terms of this Agreement are hereby incorporated into each Subscription Agreement by this reference as if fully set forth therein.

“Supplier” means an entity that provides one or more components for incorporation into and/or provision with the Product.

“Support Services” has the meaning set forth in Section 5.1.

“Term” has the meaning set forth in Section 15.1.

“Third-Party” means a Person other than a Party.

“Third-Party Materials” means materials and information, in any form or medium, that are not proprietary to Oshkosh, including any Third-Party: (a) documents, data, content or specifications; (b) Open Source Components or other software, hardware or other products, facilities, equipment or devices; and (c) accessories, components, parts or features of any of the foregoing.

“VIN” has the meaning set forth in Section 11.3.

2. SERVICES; LICENSES.

2.1. Access and Use of Services. Subject to and conditioned on Customer’s compliance with the terms and conditions of this Agreement, Oshkosh hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 16.8) right to access and use the Connected Products Services during the Term, solely in accordance with the terms and conditions herein. Such access and use is limited to Customer’s internal use. Customer agrees and acknowledges that it shall only access the Connected Products Services when it is safe to do so, and that Customer is solely responsible to exercise its own discretion as to how and when to access or use the Connected Products Services, and to observe all safety measures required by Law. Without limiting the foregoing, Customer agrees and acknowledges that access to and use of the Connected Products Services is at Customer’s sole risk.

2.2. Product Software License Grant. Subject to and conditioned on Customer’s payment of all amounts set forth in the Subscription Agreement, if any, and compliance with all other terms and conditions of this Agreement, Oshkosh hereby grants to Customer a non-exclusive, non-sublicensable, and non-transferable (except in compliance with

Section 16.8) license to use the Product Software on the applicable Product during the Term.

- 2.3. Open Source Licenses.** The Product Software may include Open Source Components licensed under the license terms for each such Open Source Component set forth in the Documentation (each, an “**Open Source License**”). Any use of the Open Source Components by Customer is governed by, and subject to, the terms and conditions of the Open Source License(s).
- 2.4. Documentation License.** Oshkosh hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 16.8) license to use the Documentation during the Term solely for Customer’s internal business purposes in connection with its use of the Connected Products Services.
- 2.5. Connected Products Services and Connected Products System Control.** Except as otherwise expressly provided in this Agreement, as between the Parties: (a) Oshkosh has and will retain sole control over the operation, provision, maintenance, and management of the Oshkosh Materials; and (b) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Products, and sole responsibility for all access to and use of the Oshkosh Materials by any Person by or through the Products or any other means controlled by Customer, including any: (i) instructions, information, or materials provided by any of them to the Connected Products Services or Oshkosh; (ii) results obtained from any use of the Connected Products Services or Oshkosh Materials; and (iii) conclusions, decisions, or actions based on such use.
- 2.6. Product Software Security Measures.** The Product Software may contain technological measures designed to prevent unauthorized or illegal use of the Product Software. Customer acknowledges and agrees that: (a) Oshkosh may use these and other lawful measures to verify Customer’s compliance with the terms and conditions of this Agreement and enforce Oshkosh’s rights, including all Intellectual Property Rights, in and to the Product Software; (b) Oshkosh may deny Customer (or other Person’s acting for on or behalf of Customer) access to and/or use of the Product Software if Oshkosh, in its sole discretion, believes such access to or use of the Product Software would violate any provision of this Agreement, regardless of whether Customer authorized such access to or use of the Product; and (c) Oshkosh and its Representatives may collect, maintain, use and otherwise Process diagnostic, technical, usage and related information, including information about Customer’s use of the Oshkosh Materials.
- 2.7. Changes.** Oshkosh reserves the right, in its sole discretion, to make any changes to the Connected Products Services and Oshkosh Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Oshkosh’s products and services to its customers; (ii) the competitive strength of or market for Oshkosh’s products and services; or (iii) the Oshkosh Materials cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, such changes to the Connected Products Services and other Oshkosh Materials may include making available or otherwise modifying one or more APIs.
- 2.8. Suspension or Termination of the Services.** Oshkosh may, directly or indirectly, and by use of any lawful means, suspend, terminate, or otherwise deny Customer’s or any other Person’s access to or use of all or any part of the Connected Products Services or Oshkosh Materials, without incurring any resulting obligation or liability, if: (a) Oshkosh receives a judicial or other governmental demand or order, subpoena, or law enforcement

request that expressly or by reasonable implication requires Oshkosh to do so; (b) Oshkosh can no longer provide the Oshkosh Materials in compliance with applicable Law or this Agreement; or (c) Oshkosh believes, in its good faith and reasonable discretion, that: (i) Customer has failed to comply with any material term or provision of this Agreement or the Subscription Agreement, or accessed or used the Connected Products Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or the Subscription Agreement or in any manner that does not comply with any material instruction or requirement of the Documentation; (ii) Customer is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iii) this Agreement or the Subscription Agreement expires or is terminated. This Section 2.8 does not limit any of Oshkosh's other rights or remedies, whether at law, in equity, or under this Agreement or the Subscription Agreement.

2.9. Statistical Data. Notwithstanding anything to the contrary in this Agreement, Oshkosh may monitor Customer's use of the Connected Products Services, and collect and compile Statistical Data. Customer acknowledges that Oshkosh may compile Statistical Data based on Customer Data collected or otherwise Processed by the Connected Products Services and that Oshkosh may: (a) make Statistical Data available to Third-Parties in compliance with applicable Law; (b) use Statistical Data in any manner not prohibited by applicable Law.

2.10. Subcontracting. Oshkosh may from time to time in its discretion engage Third-Parties to perform the Connected Products Services or otherwise perform its obligations under this Agreement (each such Third-Party, and each subcontractor of such Third-Party, a "**Subcontractor**"). Without limiting the foregoing: (a) Oshkosh shall ensure each Subcontractor complies with all relevant terms and conditions of this Agreement, including all provisions relating to Customer Data, Personal Information or other Confidential Information of Customer; (b) Oshkosh shall remain responsible and liable for any and all: (i) performance required hereunder, including the proper supervision, coordination and performance of the Connected Products Services and other obligations under this Agreement; and (ii) acts and omissions of each Subcontractor (including, such Subcontractor's employees and agents, who, to the extent they are involved in providing any Connected Products Services or other obligations of Oshkosh, are deemed Oshkosh personnel) to the same extent as if such acts or omissions were by Oshkosh; (c) any noncompliance by any Subcontractor or its employees or agents with the provisions of this Agreement will constitute a breach by Oshkosh.

3. LICENSE AND USE RESTRICTIONS.

3.1. Age Requirements. The Connected Products Services are only licensed to Persons who are 18 years of age or older. Customer shall not permit any Person who is under the age of 18 to access or use a Product or the Connected Products Services.

3.2. Customer License and Use Restrictions. Customer shall not, and shall not permit any other Person to, access or use any Oshkosh Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, any applicable Third-Party license agreement. Without limiting the generality of the foregoing, except as this Agreement expressly permits, and subject to Section 2.3 with respect to Open Source Components, Customer shall not, and shall not permit any other Person to:

- (a) copy, modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of any Oshkosh Materials, in whole or in part;

- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Oshkosh Materials to any Third-Party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service, provided, however, that Customer may permit access to the API by authorized Third-Parties;
- (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Oshkosh Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Oshkosh Materials or access or use the Oshkosh Materials, unless such access or use is by Customer (or Customer's Representatives) through Customer's own, then-valid Access Credentials;
- (e) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks, or serial numbers on or relating to any copy of the Oshkosh Materials;
- (f) input, upload, transmit, or otherwise provide to or through the Connected Products Services or the Oshkosh Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;
- (g) conduct any port scans, penetration testing, vulnerability testing, or other security testing against the Connected Products Services;
- (h) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Connected Products Services, Oshkosh Systems, or Oshkosh's provision of services to any Third-Party, in whole or in part;
- (i) access or use the Oshkosh Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Third-Party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Oshkosh customer), or that violates any applicable Law;
- (j) use the Oshkosh Materials for purposes of: (i) benchmarking or competitive analysis of any portion of the Oshkosh Materials; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to Oshkosh's detriment or commercial disadvantage;
- (k) use (i) the Oshkosh Materials in any manner or for any purpose or application not expressly permitted by this Agreement; or (ii) any Third-Party Materials in any manner or for any purpose or application not expressly permitted by the controlling Third-Party Material license.

3.3. EMERGENCIES. CUSTOMER AGREES AND ACKNOWLEDGES THAT THE CONNECTED PRODUCTS SERVICES ARE NOT DESIGNED TO RESPOND TO, OR MITIGATE THE EFFECTS OF, EMERGENCIES, OR FOR EMERGENCY SITUATIONS, INCLUDING PRODUCT OR MEDICAL EMERGENCIES, OR ANY OTHER SITUATION THAT COULD LEAD TO PERSONAL INJURY OR PHYSICAL OR PROPERTY DAMAGE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT THE CONNECTED PRODUCTS SERVICES ARE LIMITED TO THE COLLECTION OF PRODUCT DATA

AND RELAYING THAT PRODUCT DATA TO THE CUSTOMER AND THAT OSHKOSH HAS NO DUTY OR OBLIGATION, AND DOES NOT ENDEAVOR TO, NOTIFY, RESPOND TO, OR FOLLOW UP WITH CUSTOMER OR ANY OTHER EMERGENCY PERSONNEL (INCLUDING LAW ENFORCEMENT AND OTHER FIRST RESPONDERS) REGARDING ANY PRODUCT DATA COLLECTED. CUSTOMER SHALL ENSURE THAT OPERATORS OF PRODUCTS ARE ADVISED TO SEEK, AND TO NOT DISREGARD OR DELAY SEEKING, EMERGENCY HELP BASED ON THEIR OWN OBSERVATIONS OF THE PRODUCT OR THE CONNECTED PRODUCTS SERVICES.

- 3.4. Third-Party Agreements.** Customer shall comply with all application store and other applicable agreements with Customer's wireless carrier, the manufacturer and retailer of Customer's mobile devices, the developer of the operating systems for Customer's mobile devices, and the operator of any application store, marketplace, or similar service through which Customer obtains or accesses any of the Connected Products Services or Third-Party Materials. Notwithstanding anything to the contrary in this Agreement, Oshkosh will not be liable for its failure to provide any Connected Products Services, or to otherwise perform under this Agreement or any Subscription Agreement, to the extent such failure arises from Customer's failure to comply with the terms of this Section 3.4.

4. ARTIFICIAL INTELLIGENCE TECHNOLOGY.

- 4.1. Use of AI Technology.** Customer agrees and acknowledges that the Connected Products Services may use machine learning, deep learning, and other artificial intelligence ("AI") technologies, including statistical learning algorithms, models (including large language models), neural networks, and other AI tools or methodologies, and any software implementations of the foregoing, and related hardware equipment, which may be capable of generating various types of content, including text, images, video, audio, or computer code based on user-supplied prompts (collectively, "**AI Technology**").

5. SUPPORT; MAINTENANCE RELEASES; NEW VERSIONS.

- 5.1. Support Services.** The Connected Products Services include any standard support services provided by Oshkosh ("**Support Services**") at a support level as may have been purchased by Customer. Absent a prior written agreement to the contrary, Oshkosh may amend its standard support services and/or a support level thereof from time to time in its sole discretion. Customer may purchase enhanced support levels (above the standard support levels) separately at Oshkosh's then-current rates, unless otherwise agreed to by the Parties in writing.
- 5.2. Maintenance Releases.** During the Term, Oshkosh will provide Customer with all Maintenance Releases (including updated Documentation) that Oshkosh may, in its sole discretion, make generally available to its licensees at no additional charge. Customer acknowledges and agrees that Maintenance Releases may modify or delete in their entirety certain features and functionality of the Product Software. Customer acknowledges and agrees that Oshkosh may provide Maintenance Releases to Customer in any manner, at Oshkosh's sole discretion, including automatic download and installation, notification to Customer that Maintenance Releases are available for download and installation, or making such Maintenance Releases available for download and installation at a Dealer location or service center. Customer hereby consents to the automatic download and installation of Maintenance Releases on Customer's system. Customer will install all Maintenance Releases as soon as practicable after receipt.
- 5.3. New Versions.** Customer does not have any right hereunder to receive any New Versions of the Product Software or other Oshkosh Materials that Oshkosh may, in its sole

discretion, release from time to time. Customer may license any New Version at Oshkosh's then-current list price and subject to a separate license agreement, provided, however, that Customer is in compliance with the terms and conditions of this Agreement and the Subscription Agreement.

6. SERVICE AVAILABILITY; SERVICE LEVELS.

- 6.1. Availability.** Customer agrees and acknowledges that Customer's right to access and use the Connected Products Services is subject to the availability of the Connected Products Service in the Product's and Customer's location. Customer agrees and acknowledges that Connected Products Service may not be available on all Products, at all times (subject to Section 6.2), or in all locations. Customer further agrees and acknowledges that access to, and collection of Customer Data by, the Connected Products Services may not be available, or may be impaired, due to other events or factors outside of Oshkosh's control, including weather, obstructions, Customer's failure to properly maintain the Product or the Connected Products Services components in its control, Customer modifications to the Product or the Connected Products Services components in its control, and/or damage to the Product.
- 6.2. Availability Requirement.** Subject to the terms and conditions of this Agreement, Oshkosh shall use commercially reasonable efforts to make the Connected Products Services Available, as measured over the course of each calendar month during the Term, at least ninety-five percent (95%) of the time, excluding the time the Connected Products Services are not Available in connection with one or more Exceptions described below (the "**Availability Requirement**"). "**Available**" means the Connected Products Services are available and operable for access and use by Customer in material conformity with the Documentation, including the collection of Product Data. "**Available**" and "**Availability**" have correlative meanings. For the purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and the Connected Products Services will not be considered un-Available due, in whole or in part, to: (a) any act or omission (including misuse) of Customer related to the Oshkosh Materials; (b) any failure of Customer's (or the Product's) telecommunications connectivity, including failures arising from weather or obstructions; (c) internet connectivity; (d) Customer's failure to properly maintain the Product and the Connected Products Services components in its control; (e) Customer modifications to the Product or components of the Oshkosh Materials in its control; (f) damage to the Product; (g) emergency maintenance related to a threat to the Availability or integrity of the Connected Products Services; or (h) Scheduled Downtime. Oshkosh will use commercially reasonable efforts to: (i) schedule downtime for routine maintenance of the Connected Products Services between the hours of 10:00 PM and 3:00 AM PST; and (ii) give Customer at least two (2) hours prior notice of all other scheduled outages of the Connected Products Services (the "**Scheduled Downtime**").

7. Connected Products Services SECURITY; PRIVACY.

- 7.1. Oshkosh Systems and Security Obligations.** Oshkosh will employ reasonable and appropriate administrative, physical, and technical safeguards to protect Customer Data against unauthorized access, acquisition, disclosure, destruction, alteration, accidental loss, misuse or damages that are no less rigorous than generally accepted industry practices and that comply with applicable data protection and privacy Laws, as further set forth in the security Documentation available on or through the Connected Products Services ("**Oshkosh Privacy and Security Requirements**"). Notwithstanding the foregoing, the Parties agree and acknowledge that the transmission of information across

information networks is not completely secure, and Oshkosh does not make any representations or warranties regarding the security, confidentiality, or integrity of any information transmitted to the Connected Products Services, and any such transmission is at Customer's own risk. Oshkosh is not responsible for the circumvention of any privacy or data security measures deployed on the Connected Products Services or any Product Software.

- 7.2. Data Breach Procedures.** Oshkosh maintains a cyber incident breach response plan in accordance with accepted industry standards and will implement the procedures required under such plan on the occurrence of any act or omission that materially compromises the security, confidentiality, integrity, or availability of Product Data or the Connected Products Services (a "**Security Incident**"). Oshkosh shall notify Customer of a Security Incident that affects Customer's Product Data without undue delay (in any event, in compliance with any timelines set forth under applicable Law) after Oshkosh becomes aware of it.
- 7.3. Customer Control and Responsibility.** Customer may be required to create an account to access and use all or part of the Oshkosh Materials. Customer shall treat all Access Credentials associated with such account as confidential, and shall not, and shall not permit any other Person to, disclose the Access Credentials or provide access to the Oshkosh Materials to any Person other than its authorized Representatives who need to know the Access Credentials or access the Oshkosh Materials in the normal and ordinary course of their relationship with Customer. Customer shall employ all reasonable and appropriate physical, administrative, and technical controls, screening, and security procedures, and all other safeguards to protect the Access Credentials and against any access to or use of the Oshkosh Materials that are no less rigorous than accepted industry practices and shall ensure that all such safeguards comply with applicable Laws and the terms and conditions of this Agreement. Customer has and will retain sole responsibility for: (a) the Product; (b) all consents and permissions necessary related to Customer Data, including its collection, content, use and other Processing by or on behalf of Oshkosh; (c) all information, instructions, and materials provided by or on behalf of Customer in connection with the Connected Products Services; (d) all access to and use of any Access Credentials; (e) all access to and use of the Oshkosh Materials directly or indirectly by or through the Customer information technology systems, the Product, or Customer's Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use. Customer shall notify Oshkosh of any actual or likely unauthorized access to or use of the Oshkosh Materials or any of Customer's Access Credentials immediately upon becoming aware of such access or use.
- 7.4. Data Privacy Agreements.** Where the Personal Information is subject to specific Laws related to the protection and privacy of such Personal Information that require additional terms and conditions for the lawful Processing of such personal information (including, without limitation, the GDPR in the European Union), the Parties shall enter into a specific data processing agreement ("**DPA**") containing terms and conditions in order to comply with the relevant obligations and requirements, such DPA to be attached hereto as Exhibit C and incorporated into this Agreement if fully set forth in this Agreement. In the event of a conflict between the applicable terms and conditions of the DPA and any terms and conditions of this Agreement, the terms and conditions of the DPA will prevail.
- 7.5. Disaster Recovery/Business Continuity.** The Oshkosh Systems are programmed to perform routine data backups as set forth in Oshkosh's backup policy then in effect as may be updated from time to time. In the event of any loss, destruction, damage, or corruption of Customer Data caused by the Oshkosh Systems or Connected Products

Services, Oshkosh shall, as its sole obligation and liability and as Customer's sole remedy, use commercially reasonable efforts to restore the Customer Data from Oshkosh's then most current backup of such Customer Data in accordance with its then-current backup policy. Without limiting the foregoing, throughout the Term, Oshkosh shall maintain a business continuity and disaster recovery plan for the Connected Products Services (the "**Disaster Recovery Plan**"), and implement such a Disaster Recovery Plan in the event of any material unplanned interruption of the Connected Products Services.

8. **LICENSE FEES.** Customer shall pay Oshkosh the license fees set forth the Subscription Agreement in accordance with the Subscription Agreement's terms (the "**Fees**").

9. **TRANSFER, LEASE, AND RENTAL OF PRODUCTS TO THIRD-PARTIES.**

9.1. **Product Transfer.** Customer shall: (a) inform Oshkosh about any sale, permanent transfer, of change of ownership of any Product (collectively, a "**Product Transfer**") no later than the date on which such Product Transfer occurs; (b) inform such new owner of the existence of this Agreement and all applicable Subscription Agreements. If the new owner of a Product indicates its desire to use the Connected Products Services and receive the Connected Products Services, Customer shall provide Oshkosh with the name and contact information for such new owner or shall, prior to such Product Transfer, ensure that such Third-Party using the Connected Products Services enters into an agreement for the access and use of the Connected Products Services substantially in the form of Oshkosh's then-current data systems agreement (and a corresponding subscription agreement) and registers the applicable Products with Oshkosh.

9.2. **Product Rental or Lease.** If Customer rents, leases or otherwise transfers possession or control of a Product to a Third-Party or otherwise permits a Third-Party to use the Product, Customer shall notify the Third-Party of collection and use of Customer Data from the use of the Product, this Agreement, and all applicable Subscription Agreements, and shall obtain all necessary consents and authorizations from such Third-Party related to such collection and use and the use of the Connected Products Services and shall, when necessary, require such Third-Party to agree and execute the Grant of Rights substantially in the form of Exhibit B.

10. **CONFIDENTIALITY.**

10.1. **Confidential Information.** In connection with this Agreement, each Party (the "**Disclosing Party**") may disclose or make available Confidential Information to the other Party (the "**Receiving Party**"). Subject to Section 10.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as "confidential." Without limiting the foregoing: (a) the Oshkosh Materials are the Confidential Information of Oshkosh; and (b) Customer Data is the Confidential Information of Customer.

10.2. **Exclusions.** Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a Third-

Party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

10.3. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, and notwithstanding any confidentiality agreements that may be in effect between the Parties, the Receiving Party shall, during the Term and for a period of five (5) years thereafter:

- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- (b) except as may be permitted under the terms and conditions of Section 10.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 10; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 10;
- (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and
- (d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 10.

Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 10 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

10.4. Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party will: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 10.3; and (b) provide reasonable assistance to the Disclosing Party[, at the Disclosing Party's sole cost and expense,] in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 10.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party will disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, will use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

11. INTELLECTUAL PROPERTY RIGHTS.

11.1. Oshkosh Materials. All right, title, and interest in and to the Oshkosh Materials, including all Intellectual Property Rights therein, are and will remain with Oshkosh and, with respect to Third-Party Materials, the applicable Third-Party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Oshkosh Materials except as expressly set forth in Section 2.1, Section 2.2, Section 2.4 or the applicable Third-Party license, in each case subject to Section 3. All other rights in and to the Oshkosh Materials are expressly reserved by Oshkosh. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Oshkosh an assignment of all right, title, and interest in and to the Statistical Data, including all Intellectual Property Rights relating thereto. Without limiting the foregoing, Customer acknowledges and agrees that: (a) the Product Software and Documentation are licensed, not sold, to Customer by Oshkosh and Customer does not have under or in connection with this Agreement any ownership interest in the Product Software or Documentation, or in any related Intellectual Property Rights; and (b) Customer hereby unconditionally and irrevocably assigns to Oshkosh or Oshkosh's designee, its entire right, title and interest in and to any Intellectual Property Rights that Customer may now or hereafter have in or relating to the Product Software or Documentation (including any rights in derivative works or patent improvements relating to either of them), whether held or acquired by operation of Law, contract, assignment or otherwise.

11.2. Customer Cooperation and Notice of Infringement. Customer shall, during the Term:

- (a) promptly notify Oshkosh in writing if Customer becomes aware of: (i) any actual or suspected infringement, misappropriation or other violation of Oshkosh's Intellectual Property Rights in or relating to the Oshkosh Materials or Documentation; or (ii) any claim that any of the Oshkosh Materials, including any production, use, marketing, sale or other disposition of the Oshkosh Materials, in whole or in part, infringes, misappropriates or otherwise violates the Intellectual Property Rights or other rights of any Person; and
- (b) fully cooperate with and assist Oshkosh in all reasonable ways in the conduct of any Action by Oshkosh to prevent or abate any actual or threatened infringement, misappropriation or violation of Oshkosh's rights in, and to attempt to resolve any Actions relating to, any of the Oshkosh Materials, including having Customer's employees testify when requested and making available for discovery or trial relevant records, papers, information, samples, specimens and the like.

11.3. Customer Data. As between Customer and Oshkosh, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 11.4. Without limiting the foregoing, Customer agrees and acknowledges that Customer Data includes:

- 11.3.1. **"Usage Data,"** which includes Connected Products Services usage, data usage, and other information necessary or useful to provide the Connected Products Services;
- 11.3.2. **"Product Data,"** which means information collected by, from, about, or otherwise associated with Customer's use of a Product, whether collected by Oshkosh, a Supplier, a Third Party in cooperation with Oshkosh, or by other means. Product Data includes, without limitation:

- a. Product health data (e.g., Product diagnostic data, the number of engine hours, battery state of health information, the number of Product hours, etc.);
- b. Product efficiency data;
- c. Product operation data (e.g., the amount of fuel used, time of operation, etc.);
- d. Product identification number;
- e. Product location, orientation, or configuration;
- f. Product mileage;
- g. Product Software version number(s);
- h. Product attachment or implements; and
- i. Images and video of spaces of, in, and around the Product, which may include images of individuals, images of houses, images of buildings, images of private property, images of users of the Product, and images of baggage, refuse, or other materials being handled or processed by the Product.

11.4. Consent. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data as are necessary or useful to Permitted Parties to enforce this Agreement and exercise each of the Permitted Parties' rights and perform their respective obligations hereunder, including the right to use the Customer Data as set forth herein.

11.5. Use and Sharing of Customer Data. Without limiting anything in Section 11.4, Customer hereby grants to Permitted Parties the perpetual and irrevocable right to use Product Data for their own necessary and useful lawful business purposes, including, without limitation:

- 11.5.1. helping to ensure security and integrity of the Connected Products Services;
- 11.5.2. troubleshooting and debugging to identify and repair errors that impair existing intended functionality in the Connected Products Services;
- 11.5.3. providing and suggesting proactive maintenance and diagnostics on the Product and the Connected Products Services;
- 11.5.4. conducting warranty and accident research investigations;
- 11.5.5. carrying out Permitted Parties obligations and enforcing rights arising from contracts entered into between Customer and a Permitted Party related to providing the Connected Products Services to Customer, including for maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing the analytics services, providing storage, and providing Customer dashboards;
- 11.5.6. providing advanced driver assistance systems (ADAS) for use in connection with the Products;
- 11.5.7. monitoring individuals' progression on and off an airplane;

- 11.5.8. monitoring individuals' refuse to detect potential contaminants therein, including to associate such contaminants with location data for a particular user and notify Customer in response to detecting such contaminants;
 - 11.5.9. internal research for technological development and demonstration for products and services;
 - 11.5.10. fulfilling contractual audit or regulatory compliance regulations;
 - 11.5.11. for the purpose of marketing products and services;
 - 11.5.12. transferring anonymous Product Data to Third-Party business partners domestically and internationally;
 - 11.5.13. for any other purpose a Permitted Party may describe when the Product Data is collected;
 - 11.5.14. to fulfill any other purpose for which a Permitted Party has collected the Product Data; and
 - 11.5.15. for any other purpose with Customer's consent.
- 11.6. Statistical Data.** Customer hereby grants Oshkosh a non-exclusive, perpetual, royalty-free license to create and use Statistical Data for any and all purposes that are necessary or useful to Oshkosh, its Affiliates, its Subcontractors, or its Representatives, including to: (a) build or improve the quality of Oshkosh's products and services; (b) to prevent, detect, or investigate data Security Incidents or protect against malicious, deceptive, fraudulent, or illegal activity; (c) comply with federal, state, or local Laws, or comply civil, criminal, or regulatory inquiry, investigation, subpoena, court order, or summons by federal, state, or local authorities; and (d) exercise or defend legal claims.
- 11.7. No Implied Rights.** Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Customer or any Third-Party any Intellectual Property Rights or other right, title, or interest in or to any of the Oshkosh Materials.

12. REPRESENTATIONS, WARRANTIES, AND COVENANTS.

- 12.1. Customer Representations, Warranties, and Covenants.** Customer represents, warrants, and covenants to Oshkosh that: (a) Customer owns or otherwise has and will have the necessary rights and consents in and relating to Customer Data so that, as received by Oshkosh and Processed in accordance with this Agreement, such Customer Data is not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights or any privacy or other rights of any Third-Party; (b) Customer is in compliance with and shall comply with all applicable Laws related to the access and use of Oshkosh Materials; (c) Customer has and shall remain in effect all licenses, permissions, authorizations, consents, and permits necessary to access and use the Oshkosh Materials, provide the Customer Data, and otherwise carry out its obligations under this Agreement; (d) Customer will not, and will not permit any other Person to, use the Oshkosh Materials in violation of Laws or for any unlawful or abusive purposes; (e) all users of the Oshkosh Materials will or have been informed of, and will comply with, the Documentation and all other obligations related to the use of the Oshkosh Materials; and (f) all users of the Product and the Oshkosh Materials are 18 years old or older.
- 12.2. DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED HEREUNDER, ALL OSHKOSH MATERIALS AND OTHER PRODUCTS, INFORMATION, MATERIALS

AND SERVICES PROVIDED BY OSHKOSH ON OR THROUGH THE CONNECTED PRODUCTS SERVICES ARE PROVIDED “AS IS,” “AS AVAILABLE,” AND “WITH ALL FAULTS,” AND WITHOUT WARRANTIES OF ANY KIND. OSHKOSH SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, OSHKOSH MAKES NO WARRANTY OF ANY KIND THAT THE OSHKOSH MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR OTHER PERSONS’ REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEMS, OR OTHER SERVICES, BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE, THAT ERRORS WILL BE CORRECTED, OR FREE OF OUTPUTS PROVIDED BY ARTIFICIAL INTELLIGENCE MODELS THAT ARE FALSE, NONSENSICAL, OR NOT GROUNDED IN THE TRAINING DATA OF THE MODEL. WITHOUT LIMITING THE FOREGOING, ALL OPEN SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN SOURCE COMPONENTS AND THIRD-PARTY MATERIALS AND NOT WITH OSHKOSH. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. CUSTOMER SHALL PROMPTLY NOTIFY OSHKOSH OF ANY ERRORS OR OTHER NON-CONFORMITY IN THE OSHKOSH MATERIALS.

13. INDEMNIFICATION.

13.1. Oshkosh Indemnification. Oshkosh shall indemnify, defend, and hold harmless Customer and Customer’s officers, directors, employees, agents, permitted successors and permitted assigns (the “**Customer Indemnitees**”) from and against any and all Actions brought by unaffiliated Third-Parties against a Customer Indemnitee, and any and all Losses awarded to such Third-Parties for such Actions, to the extent such Actions result from the actual or alleged infringement by the Oshkosh Materials of a Third-Party’s Intellectual Property Rights in any jurisdiction where the Connected Products Services are offered. This Section 13.1 does not apply to the extent that the infringement arises from:

- (a) Open Source Components or other Third-Party Materials;
- (b) combination, operation, or use of any of the Oshkosh Materials in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Oshkosh or specified for Customer’s use in the Documentation, unless otherwise expressly permitted by Oshkosh in writing;
- (c) modification of any of the Oshkosh Materials other than: (i) by Oshkosh or its contractor in connection with this Agreement; or (ii) with Oshkosh’s express written authorization and in strict accordance with Oshkosh’s written directions and specifications;
- (d) use of any version of the Product Software or other parts of the Oshkosh Materials other than the most current version or failure to timely implement any Maintenance Release, modification, update or replacement of the Product Software or any other of the Oshkosh Materials made available to Customer by Oshkosh;

- (e) use of any applicable components of the Oshkosh Materials after Oshkosh's notice to Customer of such activity's alleged or actual infringement, misappropriation or other violation of a Third-Party's rights;
- (f) negligence or more culpable conduct, abuse, misapplication, or misuse (including any unsafe or illegal use) of the Oshkosh Materials or the Product by or on behalf of Customer, Customer's Representatives, or a Third-Party;
- (g) use of the Oshkosh Materials by or on behalf of Customer that is outside the purpose, scope, or manner of use authorized by this Agreement or in any manner contrary to Oshkosh's instructions;
- (h) events or circumstances outside of Oshkosh's commercially reasonable control (including any Third-Party hardware, software, or system bugs, defects, or malfunctions); or
- (i) Actions or Losses for which Customer is obligated to indemnify Oshkosh pursuant to Section 13.2.

13.2. Customer Indemnification. Customer shall indemnify, defend, and hold harmless Oshkosh and its Affiliates, and each of its and their respective officers, directors, employees, agents, Subcontractors, service providers, permitted successors and permitted assigns (the "**Oshkosh Indemnitees**") from and against any and all Losses incurred by an Oshkosh Indemnatee resulting from any Action by a Third-Party:

- (a) alleging that any Intellectual Property Rights or other right of any Person, or any Law, is or will be infringed, misappropriated, or otherwise violated by any: (i) use or combination of the Oshkosh Materials by or on behalf of Customer or any of its Representatives with any hardware, software, system, network, service, or other matter whatsoever that is neither provided by Oshkosh nor authorized by Oshkosh in this Agreement and the Documentation or otherwise in writing; and (ii) information, materials, or technology directly or indirectly provided by Customer or directed by Customer to be installed, combined, integrated, or used with, as part of, or in connection with the applicable Product or Oshkosh Materials;
- (b) relating to facts that, if true, would constitute a breach by Customer of any representation, warranty, covenant, or obligation under this Agreement;
- (c) relating to any access to or use of the Oshkosh Materials, directly or indirectly, by or through Customer's information technology systems, the Product, or Customer's Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use;
- (d) relating to negligence, abuse, misapplication, misuse (including any unsafe operation) or more culpable act or omission (including recklessness or willful misconduct), by or on behalf of Customer or any of its Representatives with respect to the operation of the Product or the Oshkosh Materials or otherwise in connection with this Agreement;
- (e) relating to transportation; storage; improper use; failure to follow instructions or warnings, or to carry out any preventative maintenance; unauthorized modifications unauthorized repair; normal wear and tear; or other external causes such as accidents, abuse, or other actions or events outside of Oshkosh's reasonable control related to the Product; or

- (f) relating to use of the Oshkosh Materials by or on behalf of Customer or any of its Representatives that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to Oshkosh's instructions.

13.3. Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to Section 13.1 or Section 13.2. The Party seeking indemnification (the "**Indemnified Party**") shall cooperate with the other Party (the "**Indemnifying Party**") at the Indemnifying Party's sole cost and expense. The Indemnifying Party shall promptly assume control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnifying Party's sole cost and expense. The Indemnified Party may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnifying Party shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnified Party without the Indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed. The Indemnified Party's failure to perform any obligations under this Section 13.3 (including the failure to notify the Indemnifying Party) will not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure.

13.4. Mitigation. If the Oshkosh Materials, or any part of the Oshkosh Materials, is, or in Oshkosh's opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any Third-Party Intellectual Property Right, or if Customer's use of any part of the Oshkosh Materials is enjoined or threatened to be enjoined, Oshkosh may, at its option and sole cost and expense:

- (a) obtain the right for Customer to continue to use the Oshkosh Materials materially as contemplated by this Agreement;
- (b) modify or replace the Oshkosh Materials, in whole or in part, to seek to make the Oshkosh Materials non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software will constitute Oshkosh Materials under this Agreement; or
- (c) if none of the remedies set forth in the above Section 13.4(a) or Section 13.4(b) is reasonably available to Oshkosh, terminate this Agreement, in its entirety or with respect to the affected part or feature of the Oshkosh Materials, effective immediately on Notice to Customer, in which event:
 - (i) Customer shall cease all use of the applicable Oshkosh Materials immediately on receipt of Oshkosh's Notice; and
 - (ii) provided that Customer fully complies with its post-termination obligations set forth in Section 15.4, Oshkosh shall promptly refund to Customer, on a pro rata basis, the share of any license Fees prepaid by Customer for the future portion of the Term that would have remained but for such termination.

13.5. SOLE REMEDY. THIS SECTION 13 SETS FORTH CUSTOMER'S SOLE REMEDIES AND OSHKOSH'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT ANY OF THE OSHKOSH MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR

OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD-PARTY.

14. LIMITATIONS OF LIABILITY.

- 14.1. EXCLUSION OF DAMAGES.** IN NO EVENT WILL OSHKOSH, ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE SUBCONTRACTORS, SUPPLIERS, OR SERVICE PROVIDERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (A) INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (B) LOSS OF GOODWILL OR REPUTATION, (C) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY OSHKOSH MATERIALS, OR OPEN SOURCE COMPONENTS OR OTHER THIRD-PARTY MATERIALS, (D) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (E) COST OF REPLACEMENT GOODS OR SERVICES, OR (F) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, OR WHETHER SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 14.2. CAP ON MONETARY LIABILITY.** IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF OSHKOSH, ITS AFFILIATES, AND ANY OF THEIR RESPECTIVE SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO OSHKOSH UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 14.3. Service Provider Liabilities.** Customer agrees and acknowledges that it has no contractual relationship with Oshkosh's service providers, and any agreements between Oshkosh and Customer are solely for their benefit and the benefit of their respective successors and assigns. Customer is not intended to be a third-party beneficiary of any such agreements. The Parties agree and acknowledge that nothing herein, express or implied, is intended to or shall confer upon Customer or any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of such agreements between Oshkosh and its service providers.
- 14.4. Limitations Under Applicable Law.** The limitations and exclusions set forth in this Section 14 do not affect any liability which cannot be excluded or limited under applicable Law.

15. SUBSCRIPTION AGREEMENTS; TERMINATION.

- 15.1.** All Subscription Agreements are subject to the terms of this Agreement. The term of this Agreement commences as of the first effective date of an applicable Subscription Agreement (the "**Effective Date**") and continues in effect until the expiration or termination of all applicable Subscription Agreements in accordance with their terms or the terms of this Agreement (the "**Term**").

15.2. Termination of this Agreement and the Subscription Agreement for Breach. Customer's breach of any term or condition of this Agreement shall be deemed a material breach of any Subscription Agreement then in effect, and upon any such breach by Customer, notwithstanding anything to the contrary in this Agreement or in any Subscription Agreement, Oshkosh may terminate any Subscription Agreement, or any of the Connected Products Services provided to Customer under any Subscription Agreement, in accordance with the terms of such Subscription Agreement or, in the absence of termination rights under the Subscription Agreement, upon thirty (30) days written notice.

15.3. Additional Termination Rights. In addition to any right of termination set forth elsewhere in this Agreement or in a Subscription Agreement, Oshkosh may terminate any Subscription Agreement upon Notice to Customer if: (i) Customer fails to comply with any applicable Law; (ii) Customer breaches any term or condition of Section 3; or (iii) Oshkosh determines that a change in applicable Law prevents either Party from fulfilling all or part of its obligations under the Subscription Agreement or this Agreement, and such obligations cannot be amended in accordance with this Agreement in a reasonable period of time.

15.4. Effect of Termination or Expiration. On the expiration or earlier termination of any Subscription Agreement:

- (a) all rights, licenses, consents, and authorizations granted by either Party to the other Party hereunder will immediately terminate with respect to such Subscription Agreement;
- (b) Customer shall, with respect to such Subscription Agreement: (i) immediately cease all use of and other activities with respect to the applicable Oshkosh Materials; (ii) promptly deliver to Oshkosh, or at Oshkosh's written request destroy and permanently erase from all devices and systems Customer directly or indirectly controls (other than the Product), the applicable Oshkosh Materials, including all documents, files, and tangible materials (and any partial and complete copies) containing, reflecting, incorporating, or based on any of the foregoing, whether or not modified or merged into other materials.
- (c) Oshkosh may disable all Customer access to and use of the Connected Products Services and other Oshkosh Materials applicable to such Subscription Agreement; and
- (d) Oshkosh shall immediately cease all use of any Customer Data applicable to such Subscription Agreement.

15.5. Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement, including this Section 15.5, Section 1, Section 8, Section 10, Section 11, Section 12, Section 13, Section 14, and Section 16.

16. MISCELLANEOUS.

16.1. Further Assurances. On a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

- 16.2. 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, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- 16.3. Public Announcements.** Neither Party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other Party, which shall not be unreasonably delayed or withheld, provided, however, that Oshkosh may, without Customer's consent, include Customer's name and other indicia in its lists of Oshkosh's current or former customers of Oshkosh in promotional and marketing materials.
- 16.4. Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and will be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third (3rd) day after the date mailed, by certified or registered mail (in each case, return receipt requested, postage pre-paid). Notwithstanding the foregoing, day-to-day communications and notifications under this Agreement (excluding notices of default, renewal, termination and indemnification) may be made through other reliable means, including through email. Notices must be sent to the respective Parties at the addresses for the Parties as shall be specified in a Notice given in accordance with this Section 16.4.
- 16.5. Interpretation.** For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices [attached] to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.
- 16.6. Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- 16.7. Entire Agreement.** This Agreement, together with the Subscription Agreements and any other documents incorporated herein by reference, constitutes the sole and entire

agreement of the Parties with respect to the subject matter of this Agreement and the Subscription Agreements and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, any Subscription Agreement, the related exhibits, schedules, attachments, and appendices (other than an exception expressly set forth as such therein) and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, excluding its exhibits, schedules, attachments, and appendices; (b) second, the applicable Subscription Agreement; (c) third, the exhibits, schedules, attachments, and appendices to this Agreement as of the Effective Date; and (d) fourth, any other documents incorporated herein by reference.

- 16.8. Assignment.** Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Oshkosh's prior written consent, which consent shall not unreasonably be delayed or withheld. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 16.8 is void. This Agreement is binding on and inures to the benefit of the Parties hereto and their respective successors and permitted assigns.
- 16.9. Export Regulation.** The Oshkosh Materials may be subject to US export control Laws, including the US Export Administration Act and its associated regulations. Customer will not directly or indirectly, export, re-export or release the Oshkosh Materials to, or make the Oshkosh Materials accessible from, any jurisdiction or country, any country, jurisdiction or Person to which export, re-export or release is prohibited by applicable Law. Customer will comply with all applicable Laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Oshkosh Materials available outside the US.
- 16.10. US Government Rights.** Each of the Documentation and the software components that constitute the Oshkosh Materials is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Oshkosh Materials and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.
- 16.11. Force Majeure.** No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term or provision of this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control and which it could not have mitigated, avoided, or prevented the non-performance through the exercise of reasonable care and precautions (a "**Force Majeure Event**"), including, without limitation: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or Law; (e) actions, embargoes, or blockades; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances (not limited to the non-

performing Party's employees); (i) shortage of adequate power or transportation facilities; (j) pandemic or other widespread disease or illness. The Party suffering a Force Majeure Event shall give notice of the Force Majeure Event to the other Party promptly after the beginning of the Force Majeure Event, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The expiration of the then-current Term and any data specifically designated for the non-performing Party's performance under this Agreement (except for any obligations to make payments to the other Party hereunder) will automatically be extended for a period equal to the duration of the Force Majeure Event.

16.12. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

16.13. Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by an authorized Representative of each Party. No waiver by any Party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16.14. Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. On such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

16.15. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal Laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the Laws of any jurisdiction other than those of the State of Wisconsin. Any Action out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Wisconsin, in each case located in or having jurisdiction over the city of Green Bay, Wisconsin and County of Winnebago, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such Action. Service of process, summons, notice or other document by mail to such Party's address set forth herein will be effective service of process for any Action brought in any such court.

16.16. Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 3, Section 8, Section 10, Section 11, or Section 13 of this Agreement would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief,

including in a restraining order, an injunction, specific performance, and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

16.17. Attorneys' Fees. In the event that any Action is instituted or commenced by either Party against the other Party arising out of or related to this Agreement, the prevailing Party is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party.

16.18. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.