



## **Empirical Systems Aerospace General Terms and Conditions**

### **Part A. Definitions**

- (a) "Buyer" means Empirical Systems Aerospace, Inc. ("ESAero")
- (b) "Buyer's Purchasing Representative" means the ESAero person authorized to execute or make changes to this Purchase Order.
- (c) "Purchase Order" or "Order" means this instrument of contracting, including the general terms and conditions of purchase referenced herein and all referenced supplements, documents, exhibits, attachments, and any other agreements incorporated by reference within this Purchase Order.
- (d) "Seller" or "Supplier" means the party identified on the face of the Purchase Order that is contracting with Buyer.

### **Part B. ESAero Standard Terms and Conditions of Purchase - Product (Version November 2021).**

### **Part C. ESAero Purchase Order Attachment U.S. Government Property in Possession of Seller, PT-001 (06/22).**

### **Part D. Addendum to Software Licenses with ESAero, IP-006 (05/23).**

### **Part E. As specified on Purchase Order, E103 Part E, Flowdown Document.**

Parts B-E are incorporated by reference with the same force and effect as if fully set forth herein. By acceptance of this PO, Seller acknowledges Parts B-E are in its possession and accepts the requirements contained therein.

### **Part F. Special Contract Requirements**

1. Since POs hereunder may be certified for national defense use and subject to 15 CFR 700 the Defense Priorities & Allocations System (DPAS), Buyer hereby incorporates DX/DO priority rating provisions and acknowledgment is required accordingly. Buyer shall also verbally advise Seller of the anticipated rating to be applied to this PO if it is over \$50,000, and Seller shall acknowledge its receipt and acceptance to Buyer in writing within ten (10) working days for a DX rating or fifteen (15) working days for a DO rating.

2. To aid in the handling of Seller's goods after receipt, Buyer has added suffixes to some part numbers. Suffix examples include, but are not limited to: "-GFM", "-CFM", OR "-ENG". A part number with a suffix added by Buyer is for Buyer's internal use only, and shall not be used for marking parts. Actual part markings shall be in accordance with the top level drawing of the procured goods. Part numbers with a suffix added by Buyer shall be included on shipping documentation. Any questions should be directed to Buyer's Purchasing Representative.

3. By accepting this Purchase Order, Seller hereby certifies that its last annual offeror registration data, representations and certifications (CR-003) submitted to ESAero is current, accurate and complete as of this date; and that Supplier is in compliance with the following clauses and is, therefore, eligible for this award:

- (a) FAR 52.203-11 "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions" (over \$150,000)
- (b) FAR 52.209-5 "Certification Regarding Responsibility Matters" (over \$35,000)
- (c) FAR 52.222-22 "Previous Contracts and Compliance Reports" (over \$10,000)

4. If a DPAS rating is shown on the face or any line of this Purchase Order, then: this is a "DPAS rated" Order certified for national defense use, and you are required to follow all the provisions of the defense



priorities and allocations system regulation (15 CFR 700 et seq.). All “DPAS rated” Orders must be accepted or rejected as follows:

- (a) “DO” rated POs must be accepted or rejected in writing (hardcopy), or in electronic format, within 15 working days after order receipt.
- (b) “DX” rated POs must be accepted or rejected in writing (hardcopy), or in electronic format, within 10 working days after order receipt.
- (c) Rejection of “DO” or “DX” Orders must be in writing (hardcopy), or in electronic format, giving the specific reason for the rejection.
- (d) If, after acceptance of this Order, Seller subsequently finds that shipment or performance will be delayed, Seller must notify the Buyer immediately in writing (hardcopy), or in electronic format, give reasons for the delay, and advise of a new shipment or performance date.
- (e) If both DPAS rated and unrated PO quantities are reflected in this Order, you are only required to follow the DPAS regulation as it pertains to the DPAS rated quantities.

5. Seller shall comply with the applicable ESAero freight routing guidelines. Purchase Order number(s) and the relevant line item number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading, air waybills and invoices. In the event that Seller uses an unauthorized freight forwarder or carrier to ship defense articles in violation of the International Traffic In Arms Regulations ("ITAR") and Buyer incurs costs in investigating and submitting a voluntary disclosure to the U.S. Department of State, Directorate of Defense Trade Controls ("DDTC") as a result, Seller shall provide Buyer with a payment of either fifty thousand dollars (\$50,000.00) or an amount which represents the purchase price under this Purchase Order, whichever is less, as liquidated damages and not as a penalty, within 10 days of the date of issuance of Buyer's notice of submission of Buyer's voluntary disclosure. Seller's payment under this clause shall not reduce any cap or limits on damages recoverable by Buyer and Buyer's acceptance of such payment shall not be deemed to be a waiver by Buyer to exercise any right or remedy that it may have under this Purchase Order, at law or in equity, or waive any claims for other costs or damages under this Purchase Order.

6. Conflict minerals: if Seller is providing goods to Buyer under this Purchase Order, Seller shall use commercially reasonable efforts to:

- (a) identify whether such goods contain tantalum, tin, tungsten or gold;
- (b) conduct a reasonable country of origin inquiry regarding the origin of such minerals in such goods to determine whether such minerals originated in covered countries, as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and
- (c) conduct due diligence on the chain of custody of the source of any minerals originating in covered countries to identify the smelter of said minerals; and
- (d) assist Buyer in conducting reasonable due diligence concerning the smelters of such minerals. Seller shall include the substance of this section in any agreement between Seller and its lower tier suppliers. Seller shall provide Buyer with reasonable documentation of Seller's and its lower tier suppliers' due diligence efforts, in a format prescribed by Buyer, when requested by Buyer to enable disclosure to the securities and exchange commission.

7. Buyer and Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or



disability. Also, to the extent applicable, the employee notice requirements set forth in 29 CFR, Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Purchase Order.

**8.** If Seller is proposing under the Small Business Administration Section 8(d) Subcontracting Program, by accepting this Purchase Order Seller hereby acknowledges and certifies that its business size and its small business status as recorded in the System For Award Management (SAM) at <https://www.sam.gov/sam/>, or as otherwise certified to Buyer, was current, accurate and complete as of the date of Seller's offer for this Purchase Order.

**9.** In accordance with DFARS 252.204-7008 "Compliance with Safeguarding Covered Defense Information Controls" Seller shall indicate whether deviation from any of the security requirements in the National Institute of Standards and Technology (NIST) special publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations", <http://dx.doi.org/10.6028/nist.sp.800-171> that is in effect at the time this Order is issued is anticipated in the performance of the Purchase Order by Seller or contractors at any tier.

**10.** In accordance with DFARS 252.239-7009 "Representation of Use of Cloud Computing" Seller shall indicate whether the use of cloud computing is anticipated in the performance of the Purchase Order by Seller or contractors at any tier.

**11.** Payment terms: payment due date will 45 days. unless a shorter period is indicated on the first page of this Purchase Order, payment due date will be calculated using 43 days when goods or services provided by Seller are to be provided to the U.S. government on a cost, time & material or progress payment financing basis and payment due dates for all other procurements of goods or services for the U.S. Government will be calculated using 70 days. Calculations of payment due dates will commence from the date a complete and accurate invoice in accordance with the Purchase Order requirements and compliant with ESAero's instructions is received by ESAero accounts payable. Purchase Order number(s) must appear on all such invoices. ESAero accounts payable processes all invoice payments once a week on Friday. Payments shall be rendered to Seller on the first Friday following the net payment date. When the first Friday following a scheduled payment date is a legal U.S. banking holiday, the payment shall be made on the next U.S. business day.

**12.** With the exception of work under DPAS rated Orders, commencement of performance of the work called for by this PO in the absence of Seller's written acknowledgement thereof shall be deemed acceptance of this PO as written.

**13. Prohibited Telecom**

(a) Seller recognizes that Buyer and its respective affiliates are subject to Section 889 of the National Defense Authorization Act for fiscal year 2019 ("Section 889"), which prohibits contractors to the U.S. government from using (regardless of end use) "covered telecommunications equipment or services", as such term is defined in section 889 ("prohibited telecom").

(b) Seller represents that it 1) has not, at any time in the past, and 2) shall not furnish to Buyer any goods or services that use or contain prohibited telecom.

(c) Seller agrees (i) it has processes in place, which include reasonable diligence of its supply chain, to accurately provide the above representation; (ii) to immediately notify Buyer if the above representation is no longer true (a "prohibited telecom use notice"); and (iii) within ten (10) business days of Seller's submission of a prohibited telecom use notice, to provide Buyer with any additional available information as Buyer may reasonably request about such Seller's use of prohibited telecom in the goods and/or services it furnishes, or has furnished, to Buyer, in Order for Buyer to comply with section 889, and to confirm the measures Seller has taken, or will take, to prevent future use of prohibited telecom in the goods it furnishes to Buyer.

**14.** To the extent Supplier is subject to NIST SP 800-171 security requirements in accordance with DFARS 252.204-7012, Supplier represents that it has (1) completed within the last 3 years and will maintain at least a current basic NIST SP 800-171 DOD assessment for all Covered Contractor Information Systems related to its



business with ESAero that are not part of an information technology service or system operated on behalf of the government and (2) submitted or will submit to the government for posting to the USG's Supplier Performance Risk System (SPRS), the information required by paragraph (d) of DFARS 252.204-7020 prior to accepting this Order from ESAero.

**15.** By acknowledging this Purchase Order you (Seller) hereby certify that you or any of your principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency.

**16.** Small Business Subcontracting Plan. Under the terms of this Purchase Order, and pursuant to FAR 52.219-9 Small Business Subcontracting Plan, Seller may be required to submit a small business subcontracting plan to ESAero's Purchasing Representative and use the Electronic Subcontracting Reporting System (esrs) <http://www.esrs.gov/> to input Individual Subcontracting Reports (ISR) against Seller's Small Business Subcontracting Plans. Seller should contact ESAero's Purchasing Representative for required information to complete the ISR in ESRS.

**17.** Delivery Date for U.S. Suppliers. The delivery date listed on the Purchase Order is the date the shipment must arrive on the Buyer dock.

**18.** If this Purchase Order is issued pursuant to a U.S. Government contract, the Duty-Free Entry clauses FAR 52.225-8 and DFARS 252.225-7013 are hereby incorporated into this Order by reference. Supplier should carefully review the categories of the supplies provided in the FAR and DFARS to determine whether any Seller's goods being provided to ESAero hereunder pursuant to a federal government contract are eligible for an exemption. Additionally, Supplier shall notify ESAero at [contracts@esaero.com](mailto:contracts@esaero.com) when a duty-free exemption is being sought. Failure by the Supplier to fully exercise duty-free entitlements will disqualify Supplier from recovery of any costs through equitable adjustment or otherwise. This includes other applicable duty-free entitlement including, but not limited to, the United States Mexico Canada Agreement ("USMCA"). Unless mutually agreed by the Parties in writing, nothing in this Purchase Order shall be construed as a commitment that ESAero will reimburse Supplier or entitle Supplier to any reimbursement for its cost of any tariff duties. If required under DFARS 252.225-7013, Duty-Free Data requirements, Seller shall include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause.



**E103 PART B  
ESAero**

**ESAero Standard Terms and Conditions of Purchase - Product  
November 2021 Version**

**1. DEFINITIONS**

- 1.1. “Affiliate” means, with respect to any entity, any other entity that directly or indirectly controls, is owned by, controlled by or under common ownership or control with such entity.
- 1.2. “Agreement” means any agreement that references these Terms and Conditions, including but not limited to, a long term or master agreement, or an Order.
- 1.3. “ASQR”, including numerical suffixes thereto, means the Aerospace Supplier Quality Requirement Documents, as further set forth on the ESAero Supplier Site, as modified from time to time by Buyer.
- 1.4. “Buyer” means ESAero or Affiliate thereof that issues an Order referencing the Agreement and/or these Terms and Conditions.
- 1.5. “Buyer Personal Information” means any information or data provided (directly or indirectly) or made accessible to Supplier or its agents, representatives, or subcontractors in connection with an Agreement or any Order that relate to any identified or identifiable natural person, or, to the extent of a conflict with applicable law, that is subject to any Data Privacy Laws.
- 1.6. “Buyer's Customer” means the ultimate owner, lessee, or operator of the Goods and/or Services and includes any purchaser of an end product incorporating the Goods and/or Services provided by Supplier under the Order.
- 1.7. “Data Privacy Laws” means applicable national, federal, state, and provincial laws relating to data privacy, the protection of personal information or data, and the cross-border transfer of personal information or data.
- 1.8. “Delivery Date” means the date of delivery for Goods and/or Services as specified in an Order and/or by the Delivery System.
- 1.9. “Delivery System” means Buyer's delivery scheduling system and electronic data exchange billing and invoicing system.
- 1.10. “Enterprise Quality Notes” (Q-Notes) means product specific quality requirements, as further set forth on the ESAero Supplier Site, as modified from time to time by Buyer.
- 1.11. “FAA” means the U.S. Federal Aviation Administration.
- 1.12. “Goods” means goods, parts, supplies, software, technology, drawings, data, reports, manuals, other specified documentation, Services, or items that are required to be delivered pursuant to, or in connection with, an Order. For clarity, changes made by Buyer to the part numbers and/or other description of the Goods as a result of a change under the Changes clause of these Terms and Conditions will continue to be Goods.
- 1.13. “GTC Laws” mean the customs, export control, sanctions and U.S. anti-boycott laws, regulations, and orders applicable at the time of the import, export, re-export, transfer, disclosure, or provision of Technical Data, Goods or Services including, without limitation, the (i) Export Administration Regulations (“EAR”), 15 Code of Federal Regulations (C.F.R.) Parts 730-774; (ii) International Traffic in Arms Regulations (“ITAR”), 22 C.F.R. Parts 120-130; (iii) Foreign Assets Control Regulations, 31 C.F.R. Parts 500-598; (iv) Internal Revenue Code, 26 U.S.C. § 999; (v) regulations administered by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) found in 27 CFR Chapter II; (vi) Customs regulations, 19 United States Code (U.S.C.) and Title 19 C.F.R.; and

- (vii) applicable customs and export laws and regulations of other countries, except to the extent they are inconsistent with the U.S. laws.
- 1.14. "Harmful Code" means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (i) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, any (a) computer, software, firmware, hardware, system, or network; or (b) any application or function of any of the foregoing or the integrity, use, or operation of any data Processed thereby; or (ii) prevent Buyer or any authorized user from accessing or using the Services as intended by this Agreement, and includes any virus, bug, trojan horse, worm, self-help code, back door, or other malicious computer code, and any time bomb or drop dead device.
- 1.15. "Intellectual Property" means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.
- 1.16. "Lead Time" means the maximum time within which Supplier agrees to deliver Goods after receipt of a delivery requirement for such Goods, taking into account the manufacturing lead time and material lead time related to such Goods. Unless otherwise mutually agreed between Buyer and Supplier, Lead Times are measured based on the date of receipt of the relevant Goods at Buyer's facility.
- 1.17. "Order" means a paper or electronic document, sent by Buyer to Supplier, or an entry in the Delivery System, to initiate the ordering of Goods or Services, such as a purchase order, a scheduling agreement, a statement of work or other authorization, including Changes, supplements, or modifications thereto. The phrase "in connection with the Order" includes performance of the Order, performance in anticipation of the Order, and preparation of a bid or proposal for the Order. Where the context permits, the term Order includes an Agreement.
- 1.18. "Party" or "Parties" means Buyer and/or Supplier, individually or collectively, as the context requires.
- 1.19. "Process" means with respect to ESAero Information, to use, access, manipulate, modify, disclose, store (including back-up), transmit, transfer, retain, and dispose of such ESAero Information.
- 1.20. "Program Specific Documents" means the program attachments, including without limitation, program specific terms corresponding to platforms related to commercial and military programs, as the Parties may agree, which set forth the specific terms and conditions for each platform and/or program, as applicable, and which are incorporated into applicable Orders.
- 1.21. "ESAero" means Raytheon Technologies Corporation.
- 1.22. "ESAero Information" means any (i) Proprietary Information; (ii) Buyer Personal Information; and (iii) other data, materials, or information owned or managed by Buyer or Buyer's Affiliates or which Buyer or Buyer's Affiliates are obligated to manage and/or protect on behalf of others: (a) provided to Supplier by Buyer or Buyer's Affiliate; (b) that Supplier or Supplier Personnel collects, Processes, or generates for or on behalf of, or at the direction of Buyer or Buyer's Affiliate in providing the Services, including in each case metadata from Buyer's or Buyer's Affiliates' use of the Services and derivatives of any of the foregoing (e.g., aggregations of ESAero Information, profiles of users of the Services, or analysis of the content of Buyer or Buyer's Affiliate data records or how Buyer or Buyer's Affiliate uses the Services).
- 1.23. "ESAero Supplier Site" means <https://www.esaero.com/qualitytc>, which URL may change from time to time. Any such change shall not affect the applicability of the material referenced therein.
- 1.24. "Services" means Supplier's activities ancillary to manufacture or delivery of Goods, including design, engineering, installation, repair, and maintenance, even if performed prior to the Effective Date of an Agreement or the issuance of an Order.
- 1.25. "Specifications" means all requirements with which Goods and performance hereunder must comply, as





specified or referenced by Buyer in Orders, including, without limitation, drawings, instructions, and standards on a Buyer web site or elsewhere, as such requirements are modified from time to time by Buyer.

- 1.26. “Supplier” means the legal entity providing Goods and/or Services or otherwise performing work pursuant to an Order or Agreement.
- 1.27. “Supplier Personnel” means Supplier’s employees, agents, representatives, subcontractors, subcontractor employees, or any person used by Supplier in the performance under an Order or Agreement.
- 1.28. “Technical Data” means information that is necessary for the design, development, production, operation, modification, or maintenance of Goods or Services as set forth in applicable GTC Laws. Technical Data includes derived Technical Data that is of non-U.S. origin, but subject to U.S. jurisdiction, which may include, but is not limited to, drawings, specifications, or operation sheets containing U.S. origin data or that were developed using U.S. origin data.
- 1.29. “Terms and Conditions” means these ESAero Standard Terms and Conditions of Purchase - Product.

## **2. ORDER ACCEPTANCE**

Supplier's (i) full or partial performance under, or indication thereof, or (ii) acknowledgement of the Order, is acceptance of the Order and all terms and conditions contained in the Order and incorporated into the Order, including these Terms and Conditions. Any terms and conditions proposed in Supplier's offer, acceptance, acknowledgment, invoice, or other Supplier communication that add to, vary from, or conflict with the terms herein are hereby rejected.

## **3. QUALITY REQUIREMENTS**

- 3.1. Supplier shall comply with all Specifications, Buyer quality documents and all subsequent versions thereof applicable at the time of deliveries. Supplier shall immediately notify Buyer, in writing, of any failure of Supplier and/or the Goods to comply with the Specifications.
- 3.2. Supplier and Supplier’s subcontractors that are allowed access to the US Government Industry Data Exchange Program (“GIDEP”) shall participate in monitoring GIDEP alerts that affect the Goods (“GIDEP Alerts”) and shall act on any GIDEP Alerts.
- 3.3. Supplier shall comply with Airworthiness Directives issued by the FAA pursuant to 14 C.F.R. Part 39 that affect the Goods (“ADs”), to correct any unsafe conditions identified therein.
- 3.4. Supplier shall promptly notify Buyer of any GIDEP Alerts and ADs related to the Goods.

## **4. DELIVERY**

- 4.1. Time is of the essence in Supplier’s performance of an Order, and Supplier shall deliver Goods and perform Services by the Delivery Date.
- 4.2. Shipment shall be to the location directed by Buyer. Buyer may serve as importer of record only as described in the sub-Section hereof entitled Customs Clearance. If Buyer will be the importer of record Supplier shall ship Goods FCA Supplier’s facility (Incoterms 2020) unless the Order or Buyer’s Delivery System provide different instructions. Title and, notwithstanding the foregoing, risk of loss shall pass to Buyer upon receipt of Goods at Buyer's facility or third party drop shipment point.
- 4.3. If Buyer requests delivery of Goods on a date which does not allow sufficient Lead Time (a “Need Date”), Supplier shall use all commercially reasonable efforts to meet such Need Date. If Supplier agrees in writing to meet a Need Date, such Need Date shall be considered the Delivery Date. If Supplier does not agree to meet the Need Date, Buyer may, without liability: (i) reduce or cancel its requirements for such Goods, (ii) reallocate to another Order or reschedule any such Goods, or (iii) waive the Need Date and accept such Goods on the original Delivery Date.

## **5. INSPECTION, ACCEPTANCE AND REJECTION OF GOODS**

- 5.1. Supplier shall only tender Goods to Buyer that have passed inspection in accordance with the applicable inspection system and that otherwise conform to all requirements of an Order.
- 5.2. Buyer may provide written notice of acceptance of the Goods to Supplier. However, in the absence of Buyer's written acceptance and notwithstanding (i) prior inspection of, (ii) payment for, (iii) use of, (iv) delivery of, or (v) transfer of title to or risk of loss of the Goods to Buyer, acceptance shall not be deemed to occur until 13 months following Buyer's receipt of Goods ("Inspection Period").
- 5.3. During the Inspection Period, Buyer may: (i) reject all or a portion of any nonconforming Goods; or (ii) accept all or a portion of such nonconforming Goods with a price reduction for the cost of repair or the diminution of value.
- 5.4. Buyer may reject and/or return, at Supplier's risk and expense, shipments of Goods made in excess of the Order quantities, or in advance of the scheduled Delivery Date. Buyer may defer payment on Goods delivered in advance of the scheduled Delivery Date until the scheduled Delivery Date for such Goods.
- 5.5. Within 20 days of Supplier's receipt of Buyer's notification of a nonconformity, Supplier shall, at Supplier's sole cost and expense, investigate the nonconformity, deliver to Buyer a written report of its investigation and conclusions, and formulate a corrective action plan acceptable to Buyer. Once approved by Buyer, Supplier must then timely implement such corrective action plan.
- 5.6. With respect to nonconforming Goods rejected prior to acceptance, Buyer may at its election and at Supplier's risk and expense (i) hold nonconforming Goods for Supplier, or (iii) return nonconforming Goods to Supplier for, at Buyer's option, either (a) full credit or refund, or (b) replacement Goods to be received within 24 hours of nonconformity notification. Title to such rejected Goods returned to Supplier shall transfer to Supplier upon such delivery and such Goods shall not be replaced by Supplier except upon written instructions from Buyer. Replacement Goods delivered to Buyer hereunder shall be shipped at Supplier's expense and risk of loss. Additionally, nonconforming Goods rejected prior to acceptance shall not be tendered again to Buyer for acceptance unless permitted by Buyer and applicable law and accompanied by a disclosure of Buyer's prior rejection.
- 5.7. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from nonconforming Goods, including, but not limited to labor and other costs related to transportation, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, re-inspection, retrofit, replacement, and any and all other such corrective action costs incurred by Buyer.

## **6. WARRANTY**

- 6.1. Supplier warrants to Buyer, Buyer's successors, assigns, and Buyer's Customers that all Goods provided under the Order shall be, upon acceptance thereof, and thereafter continue to be: (i) merchantable; (ii) fit for the purpose intended; (iii) new; (iv) free from defects in material and workmanship; (v) free from defects in design if the design is not provided by Buyer; (vi) manufactured in strict accordance and compliance with the Specifications; (vii) free from liens or encumbrances on title; and (viii) free of Harmful Code (collectively, "Warranty"). If the Order requires specific Goods to perform as a system, the foregoing Warranty shall also apply to those Goods as a system. Inspection (including Buyer's approval of Supplier's inspection process and any subsequent remedial measures), and acceptance or use of Goods furnished hereunder shall not affect Supplier's obligations under this Warranty, and the Warranty shall survive any such inspection, testing, acceptance, and use.
- 6.2. Supplier warrants to Buyer, Buyer's successors and assigns, and Buyer's Customers that all Services provided under or in connection with an Order: (i) have been, if applicable, and will be performed in a professional and workmanlike manner and in accordance with current, sound and highest generally accepted industry standards and practices by appropriately licensed, trained, supervised personnel who are experienced in the appropriate fields; and (ii) do, if applicable, and will conform to and be in compliance with all applicable Specifications, performance requirements and other requirements



contained in the Order (the "Additional Service Warranty").

- 6.3. Buyer may require Supplier to promptly (i) repair, replace, or refund amounts paid for, at Buyer's option, any Goods which breach the Warranty; and (ii) re-perform, correct, or refund amounts paid for, at Buyer's option, any Services which breach the Additional Service Warranty. If Supplier fails or is unable to repair, replace, or correct non-conforming Goods or Services, Buyer may, at Buyer's option, make such repair, replacement, or correction and charge Supplier for the cost incurred thereby. Goods returned to Buyer hereunder shall be shipped at Supplier's expense and risk of loss and shall be accompanied by a notice stating whether they are new replacements or repaired originals and shall continue to be covered under this Warranty. Supplier shall conduct intake, review, analysis, and any other activity required to evaluate whether the returned Goods are covered by the Warranty at no expense to Buyer.
- 6.4. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from Goods and/or Services not conforming to the Warranty or the Additional Service Warranty, as applicable, including but not limited to labor and other costs related to transportation, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, re-inspection, retrofit, replacement, and any and all other such corrective action costs incurred by Buyer.
- 6.5. Supplier warrants to Buyer that all documentation and certifications by Supplier or Supplier's subcontractors or business partners related to the Goods, Services and Order, as applicable, are current, complete, truthful, and accurate and have been signed or stamped, as applicable, by individuals authorized and qualified to sign or stamp such documentation and certifications.

## **7. INDEMNIFICATION**

Supplier shall indemnify and hold harmless Buyer, Buyer's Customers, insurers, Affiliates and their employees, agents, officers, and directors from and against all suits, claims, judgments, awards, losses, damages, costs, or expenses (including attorneys' fees) relating to, arising out of, or caused by (i) Supplier's performance hereunder, (ii) any act or omission of Supplier, or (iii) any Goods or Services. Supplier's indemnification obligation hereunder covers, without limitation, injuries, sickness, diseases (including occupational disease whenever occurring), or death of Supplier employees.

## **8. TAXES**

- 8.1. Unless otherwise stated in the Order, all payments or prices are exclusive of any transactional taxes, including sales and use, value-added, goods and services, or any other taxes, fees or duties ("Taxes") levied in regard to any of the transactions covered by the Order. Buyer is not responsible for any tax based on Supplier's income, payroll, or gross receipts. Any Taxes that Supplier is required to collect from Buyer shall be separately stated on the invoice and Supplier shall be responsible to remit any such Taxes to the relevant tax authority.
- 8.2. Solely to the extent Buyer is required by law to withhold an amount on account of taxes for which Supplier is responsible, Buyer shall deduct any such withholding from payment to Supplier and provide sufficient supporting documentation to Supplier.
- 8.3. Supplier shall, upon receipt from any tax authority of any levy, notice, assessment, or withholding of any Taxes for which Buyer may be obligated, notify Buyer in writing at its stipulated address, directed to: Director, Indirect Tax. The Parties shall cooperate in the resolution of disputes pertaining to any Taxes. If Buyer may directly contest any Taxes, then it may do so and, to the extent permitted by law, withhold payment during contest pendency. If Buyer is not so permitted, Supplier shall contest the Taxes as requested by the Buyer.
- 8.4. Except as otherwise set forth in an Order, Supplier shall deliver electronically by way of the Internet all software of any type, including manuals. Supplier shall separately itemize the prices of electronically delivered software, licenses, fees, and Services on invoices. Invoices shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via the Internet."

## 9. INSPECTION AND AUDIT RIGHTS

- 9.1. Supplier (which, for the purposes of this Section, includes Supplier and its suppliers, subcontractors and business partners) shall at any time, and after reasonable notice by Buyer, grant to Buyer, Buyer's authorized representatives, Buyer's Customers and to any competent regulatory authority, (i) unrestricted access to (or if requested by Buyer, provide to Buyer copies of) Supplier's books, records, and documentation related to this Agreement (including, without limitation, those pertaining to quality, legal and regulatory compliance, inspection and testing of Goods and Services, physical and network security and data protection procedures and controls, and ethics and compliance programs), wherever such books and records may be located; and (ii) access to Supplier's premises to perform any type of inspection, test, audit or investigation with respect to Supplier's premises and network, including, without limitation, manufacturing and test locations used in connection with the Order, for the purpose of enabling Buyer to verify compliance with the requirements set forth in the Order or for any other purpose indicated by Buyer's Customers or said authority in connection with the design, development, certification, manufacture, sale, use, or support of the Goods or Services.
- 9.2. Supplier shall maintain such complete books, records, and documentation for all Goods and Services, which shall be available to Buyer during performance of an Order and until the later of: (i) 5 years after final payment, (ii) final resolution of any dispute involving the Goods or Services delivered hereunder, (iii) the latest time required by an Order, (iv) the latest time required by applicable laws and regulations, (v) the latest time required by quality requirements effective as of the date of the Order, as applicable, or (vi) as otherwise directed by Buyer.
- 9.3. Any corrective action requested by Buyer, Buyer's Customers, or any said authority following any such inspection, test, audit, or investigation shall be implemented by Supplier at Supplier's cost.

## 10. BUYER-FURNISHED AND BUYER-FUNDED ITEMS

- 10.1. All material, including information, furnished by Buyer to Supplier under the Order ("Buyer Furnished Items") shall be delivered as specified in the Order or, if not specified, in sufficient time to enable Supplier's timely performance. Buyer shall have no liability to Supplier for any delays or failures in the delivery of Buyer Furnished Items. If Buyer Furnished Items are not delivered to Supplier in sufficient time to enable Supplier to meet Delivery Dates, Supplier may notify Buyer of the delay and shall be entitled to an extension of such schedule equal to the period of the delay. Such adjustment shall be Supplier's sole and exclusive remedy. Title to Buyer Furnished Items shall remain with Buyer.
- 10.2. Title to all tooling, test equipment, and material identified as a separate line item under an Order or referred to in any Agreement between Buyer and Supplier, and fabricated or acquired by Supplier ("Buyer Funded Items") shall vest in Buyer. Buyer shall have the right to have Supplier convey possession of Buyer Funded Items to Buyer promptly upon written request.
- 10.3. Buyer Furnished Items and Buyer Funded Items (collectively, "Buyer Items") shall be used only for the purposes of the Order. Supplier shall, at its own expense: (i) furnish Buyer with drawings and documentation describing such Buyer Items, (ii) mark and identify the Buyer Items as directed by Buyer, (iii) periodically (upon Buyer's request) audit the physical location and condition of such Buyer Items, and (iv) keep such Buyer Items in good condition, normal wear and tear excepted. In addition, with respect to Buyer Items: (x) Buyer shall pay shipping, duty, and taxes as applicable; (y) the Parties will jointly establish a maintenance schedule, which shall be comparable to the maintenance schedule currently maintained by Buyer (if applicable); and (z) Supplier shall absorb the labor costs associated with implementing the maintenance schedule.
- 10.4. Buyer Items, excluding U.S. Government property, shall be held by Supplier as bailee thereof. Supplier shall be the bailee of such Buyer Items until the expiration or termination of the Order or Buyer requires Supplier to return such Buyer Items, whichever occurs first. As bailee, Supplier shall maintain property casualty insurance coverage for such Buyer Items in an amount specified by Buyer in the Order, pay any reasonable expenses associated with the storage and maintenance of such Buyer Items, and retain possession of such Buyer Items throughout performance of the Order, unless written permission to move such Buyer Items is obtained from Buyer. Supplier covenants and warrants to Buyer that it will not permit

any third party to assert any liens against the bailed Buyer Items by any agreement, nor use the bailed Buyer Items as collateral in any secured transaction, nor perfect any security interest in or otherwise encumber the bailed Buyer Items. Buyer and its agents shall not be liable for any claims, including claims for bodily injury or property damage, arising from Supplier's use of the bailed Buyer Items. Buyer, in order to protect its interests, may require Supplier to execute documents that are related to Buyer Items, including, Uniform Commercial Code financing statements or any similar documents. Supplier shall not substitute any property for or modify Buyer Items.

- 10.5. Upon Buyer's request, Supplier shall provide an annual written inventory of Buyer's Items, including certification of compliance with this Section and proof of adequate insurance covering full replacement cost of Buyer Items.
- 10.6. Supplier shall, upon discovery, provide notification to Buyer if any Buyer Items are lost, damaged, or destroyed. Upon completion or termination of the Order, or at any time upon Buyer's request, Supplier shall, at its own expense, dispose of Buyer Items in accordance with Buyer's instructions.

## **11. CHANGES**

- 11.1. Buyer's authorized procurement representative (which does not include Buyer's engineering and technical personnel) may unilaterally make changes within the general scope of the Order, including changes in whole or part to: (i) shipping, waste reduction or packing instructions, (ii) place of delivery, (iii) any designs, Specifications and drawings, (iv) the statement of work, (v) the method or manner of performance, (vi) Buyer Items, facilities, equipment, or materials, (vii) flowdown requirements from contracts between Buyer and Buyer's Customer, and/or (viii) quality requirements (collectively "Change(s)"). Supplier shall perform any Changes ordered by Buyer. Any Order terms that incorporate flexibility for variations or modifications shall not be considered Changes within the meaning of this Section.
- 11.2. Except as set forth herein, or as otherwise agreed, if any Change under this Section causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both ("Adjustment Claim"), and Buyer shall modify the Order accordingly. If the cost of property or material made obsolete or excess as a result of a Change is included in the Adjustment Claim, Buyer may direct the disposition of such property or material. For Supplier-initiated requests, Supplier must submit an Adjustment Claim in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's procurement representative no later than 10 days after Supplier's receipt of the Change. Supplier acknowledges and agrees that changes in delivery/performance schedule are normal and anticipated in the course of the program. Supplier further agrees that the cost of such changes is included in the prices provided under the Order, and that any such change does not constitute a Change under this Section. Notwithstanding any pending Adjustment Claims, Supplier shall diligently proceed with the performance of the Order, inclusive of the Change, as directed by Buyer.
- 11.3. Notwithstanding the foregoing, if any Change is the result of a requirement by Buyer's Customer, Supplier is entitled to an equitable adjustment only to the extent that Buyer receives such an adjustment from Buyer's Customer.

## **12. INSURANCE**

- 12.1. Without limiting Supplier's duty to hold harmless and indemnify hereunder, Supplier agrees to secure, maintain, and require its subcontractors to maintain, as a minimum the insurance noted in the Order or, if none are specified, the following minimum insurance coverages and limits:
  - 12.1.1. Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the minimum amount of \$1,000,000 for any one occurrence; and

- 12.1.2. Commercial General Liability Insurance and Umbrella Liability Insurance, including Premises Liability and Contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of \$5,000,000 for any one occurrence.
- 12.2. In addition to the minimum insurance requirements set forth above, Supplier also agrees to secure, maintain, and require its subcontractors to maintain, the additional insurance coverages and limits relevant to Supplier's performance of the Order, as specified in Attachment A hereto (the "Additional Insurance Coverage Requirements").
- 12.3. All such insurance shall be issued by companies authorized or permitted to do business under the laws of the State or jurisdiction in which all or part of the Services are to be performed and must have an AM Best financial rating of A- or better or an equivalent rating as produced by another rating agency acceptable to Buyer.
- 12.4. The insurance coverages described in these Terms and Conditions and in an Order, shall be in a form satisfactory to Buyer, and shall contain a provision prohibiting cancellation or material change except upon at least 30 days' (7 days' in the case of War Risks Insurance) prior notice to Buyer. All such insurance policies or self-insurance will be primary in the event of a loss arising out of Supplier's performance of work and shall provide that where there is more than one insured the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured and shall operate without right of contribution from any other insurance carried by Buyer. Certificates evidencing such insurance and endorsements naming Buyer as an additional insured under the Commercial General Liability and Umbrella Liability insurance or, in the case of All Risk Property Insurance, naming Buyer as a loss payee, shall be filed with Buyer upon execution of an Agreement or any Order and before commencement of any work hereunder, and within 30 days after any renewals or changes to such policies are issued. To the extent permitted by law, Supplier and its insurer(s) agree that subrogation rights against Buyer are hereby waived under the Commercial General Liability, Umbrella Liability, Auto Liability and Workers Compensation insurance; such waiver shall be reflected on the insurance policies. Supplier shall, if requested by Buyer, advise Buyer of the amount of available policy limits and the amounts of any self-insured retention. The certificate of insurance shall identify the contract number or work to be performed and shall acknowledge that such coverage applies to liabilities incurred by Supplier, its employees, invitees or agents under an Agreement or any Order and that such insurance shall not be invalidated by any act or neglect of Supplier whether or not such act or neglect is a breach or violation of any warranty, declaration, or condition of the policies.
- 12.5. Buyer's failure to monitor compliance or unsatisfactory compliance with the terms of these insurance requirements does not modify or waive Supplier's obligations hereunder.
- 12.6. Any self-insurance, self-retained layer, deductibles, and exclusions in coverage in the insurance policies described above or in the applicable Additional Insurance Coverage Requirements, will be assumed by, for the account of, and at the sole risk of Supplier. In no event will the Supplier's liability be limited to the extent of the minimum limits of insurance required herein.

### **13. TERMINATION FOR CONVENIENCE**

- 13.1. Buyer may, at any time, terminate all or part of an Order or Agreement for its convenience.
- 13.2. Upon written notice to Supplier. (i) cease work and place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Order; (ii) prepare and submit to Buyer an itemization of all completed and partially completed Goods and/or Services; (iii) if requested by Buyer, deliver to Buyer any and all Goods and/or Services completed up to the date of termination at the pre-termination Order price; and (iv) if requested by Buyer, deliver any work-in-process.
- 13.3. Buyer shall not be liable to Supplier for an Order terminated prior to the commencement of Lead Time.
- 13.4. In the event Buyer terminates an Order or Agreement for its convenience after performance has

commenced, Buyer will compensate Supplier only for the actual and reasonable work-in-process costs incurred by Supplier on Goods and/or Services required to be delivered within the Lead Time period, calculated from Buyer's issuance of the notice of termination. If the Order does not specify Lead Time, Lead Time shall be the reasonable average time required to manufacture and deliver the Goods and/or perform the Services. Supplier shall use reasonable efforts to mitigate its own and Buyer's liability under this Section. In order to receive compensation, Supplier must submit its termination claim, by means of a form and process directed by Buyer, within 75 days from the effective date of the termination.

- 13.5. Buyer shall not be liable to Supplier for costs or damages other than as described above, and in no event for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the price allocated to the portion of the Order terminated.
- 13.6. Notwithstanding anything to the contrary in these Terms and Conditions, an Agreement, or an Order, Buyer shall not be liable to Supplier for any costs or damages whatsoever for a termination for convenience with respect to a particular program of any of Buyer's Customers, if the termination is due to the cancellation, in whole or in part, of such program by Buyer's immediate customer(s) or Buyer's ultimate customer(s) or the bankruptcy or insolvency of such customer(s).

#### **14. TERMINATION FOR DEFAULT**

- 14.1. Buyer may, by written notice, terminate an Order or Agreement, or any portion thereof, for default without any liability or obligation whatsoever to Supplier for the portion terminated, in the following circumstances: (i) Supplier fails to perform any obligation hereunder (other than a delivery obligation) and fails to cure such obligation within 5 days (or as otherwise mutually agreed) (the "Cure Period"); (ii) Supplier fails to perform any delivery obligation hereunder; (iii) when Buyer has reasonable grounds for insecurity, and Supplier fails to provide adequate assurances of performance in writing within 5 days following Buyer's demand or, (iv) should Supplier (a) become insolvent, (b) become unable to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) have a receiver appointed for the whole or any substantial part of its assets, or (e) become in any way the subject of a bankruptcy petition (each in Subsection (iv), a "Supplier Insolvency"). Notwithstanding the foregoing, if a cure is not possible within such Cure Period, Supplier shall submit to Buyer, within a period of 5 days after receipt of notice from Buyer specifying such failure, a detailed plan to cure such failure (including related time period) acceptable to Buyer in its sole discretion, provided, however, that if such a cure plan is approved by Buyer, Supplier's subsequent failure to comply with such cure plan shall be deemed a default hereunder, and Buyer may terminate immediately without additional cure periods.
- 14.2. Buyer shall have no liability in relation to those Goods and/or Services terminated for Supplier's default. Supplier shall be liable to Buyer for any and all expenses, costs, and damages including increased re-procurement costs, requalification costs, and other non-recurring costs, except in the circumstance of any failure or delay constituting a "Force Majeure Event" as set forth in the Section herein entitled "Force Majeure".
- 14.3. If the Order or Agreement is entirely or partially terminated under this Section other than pursuant to a Supplier Insolvency, Buyer, in addition to any other rights Buyer may have, may require Supplier, at no charge to Buyer, to: (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier in performing the Order; (ii) deliver the tooling and test equipment necessary to make or have made the Goods and perform the Services, (ii) provide technical and transition assistance; and (iv) provide to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license, with the right to grant sublicenses, to Supplier's information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, to the extent necessary, to enable Buyer to make, have made, use, sell and license the Goods and/or perform, or have performed, the Services.
- 14.4. In addition to and not in lieu of other rights to Intellectual Property otherwise set forth in the Order and these Terms and Conditions, Supplier hereby grants to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license ("Additional License"), with the right to grant sublicenses, to Supplier's information, data, know-how, tooling, test equipment and other Intellectual Property, including without



limitation proprietary and manufacturing information to enable Buyer to make, have made, use, sell and license the Goods and/or perform, or have performed, the Services, subject to Buyer's agreement not to exercise such rights under this Additional License except in the event of a Supplier Insolvency, whether or not the Order is terminated. As part of such Additional License, Supplier shall upon Buyer's written request and at no charge to Buyer, promptly (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier in performing the Order, and (ii) deliver the tooling and test equipment necessary to make or have made the Goods, provide the Services and provide technical and transition assistance in order to ensure Buyer's continuing requirements for Goods and/or Services.

- 14.5. If, after notice of termination under this Section, it is determined that Supplier was not in default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the Section herein entitled "Termination for Convenience". In such case, Supplier shall not be entitled to any remedy other than as provided for in the Section herein entitled "Termination for Convenience".

## **15. INTELLECTUAL PROPERTY RIGHTS**

- 15.1. "Background Intellectual Property" shall mean all Intellectual Property other than Foreground Intellectual Property.
- 15.2. "Foreground Intellectual Property" shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the Order.
- 15.3. Each Party retains its existing rights in Background Intellectual Property.
- 15.4. Buyer shall own all Foreground Intellectual Property. Supplier shall disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Supplier shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Supplier hereby irrevocably assigns and promises to assign to Buyer all right, title and interest to all Foreground Intellectual Property. Supplier agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Supplier to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property shall be considered Buyer's Proprietary Information (defined hereinafter). Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of the Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C. §101 shall be considered "Works Made for Hire." For any works of authorship that do not come under such categories, Supplier, warranting that it has the right to do so, hereby assigns and promises to assign all right, title, and interest to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.
- 15.5. Supplier represents and warrants that Supplier has sufficient rights in all Goods, Services, and Intellectual Property and other items that Supplier uses or transfers to Buyer in connection with the Order to allow Supplier to lawfully comply with the Order.
- 15.6. Supplier hereby grants and promises to grant to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made Goods and Services; and (ii) to enable Buyer to practice the Foreground Intellectual Property.
- 15.7. Supplier hereby irrevocably waives and promises to waive all moral rights to the extent permissible by law, all rights of privacy and publicity, and the like, in all Goods provided to Buyer and in all activities in connection with the Order.
- 15.8. Supplier represents and warrants that Supplier shall not provide, in the performance of the Order, any software, including without limitation source code, compiled code, embedded software, firmware, free



software, open source software, freeware, general public license- governed software, or any electronic hardware, including without limitation free hardware designs, or open source hardware designs, in any form that is subject to any obligations or conditions that may provide a legal right to any third party to access such software, and/or electronic hardware, or that could otherwise impose any limitation or condition on Buyer's use, reproduction, modification, distribution, publication, or conveyance of such software or electronic hardware.

- 15.9. Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Supplier a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.

## **16. INTELLECTUAL PROPERTY INDEMNIFICATION**

- 16.1. Supplier shall indemnify and hold harmless Buyer, Buyer's Customers, Affiliates, and subsidiaries, their agents, directors, officers, and employees, and each subsequent purchaser or user, from any losses, costs, damages, and liabilities, including, without limitation, any attorney's fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging infringement or violation of any Intellectual Property rights or license, related to the manufacture, use, sale, offer for sale, import, or other exploitation of any Goods or Services delivered or performed in connection with the Order ("IP Claim").
- 16.2. Supplier shall not be liable for any IP Claim based on Supplier's compliance with any Specification created by Buyer, unless: (i) Supplier could have complied with Buyer's Specification using a solution that was non- infringing; (ii) the relevant portion of the Specification was provided by Supplier; or (iii) Supplier knew or should have known of an IP Claim or potential IP Claim and did not promptly notify Buyer in writing.
- 16.3. Supplier shall, upon written notice from Buyer of an IP Claim, promptly assume and diligently conduct the entire defense of an IP Claim at its own expense. Insofar as Buyer's interests are affected, Buyer shall have the right, at its own expense and without releasing any obligation of Supplier, to participate and intervene in an IP Claim. Buyer shall have the right to reasonably reject counsel selected by Supplier. Supplier shall not enter into any settlement without Buyer's prior written consent, which shall not be unreasonably withheld.
- 16.4. Buyer may supersede Supplier in the defense of any IP Claim and assume and conduct the defense at Buyer's sole discretion. In such an event, Supplier shall be released from any obligation to pay for attorneys' fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Supplier's complete cooperation with Buyer in Buyer's defense of such IP Claim at Buyer's expense. Buyer shall not enter into any settlement without Supplier's prior written consent, which shall not be unreasonably withheld.
- 16.5. If the manufacture, use, sale, offer for sale, import, export, or other exploitation of any Goods or Services is enjoined by a court, if delivery is precluded by a government entity, or should Supplier refuse to provide or supply any Goods or Services to avoid a potential IP Claim, Supplier shall avoid any disruption to Buyer and shall (i) secure for Buyer the right to provide, use or sell such Goods or Services; (ii) modify or replace such Goods or Services with equivalent non-infringing Goods or Services; or (iii) provide such other solution acceptable to Buyer. Supplier shall reimburse Buyer for Buyer's costs incurred in obtaining all internal, external and Buyer's Customer approvals, qualifications, certifications, and the like, necessary for making, using, providing, and selling alternate non-infringing Goods or Services. Supplier shall refund to Buyer the purchase price of any such Goods or Services that Buyer is prohibited from providing, using, selling, offering for sale, importing, exporting, or otherwise exploiting.

## **17. PROPRIETARY INFORMATION**

- 17.1. In order to deliver the most effective and efficient Goods and/or Services possible and meet Buyer's requirements for those Goods and/or Services, Buyer and Supplier anticipate the need to exchange Proprietary Information (as defined below) for the design, development, testing, manufacture and/or repair of Goods and/or Services, as applicable in connection with an Order and/or Agreement. In

recognition of the value of that Proprietary Information, as well as to protect Buyer's goodwill and reputation in its products, Supplier agrees to the terms and conditions of this Section.

- 17.2. "Proprietary Information" shall mean all information, knowledge, or data (including without limitation financial, business, and product strategy information; product specifications; product designs; procedures; studies; tests; and reports) in written, electronic, tangible, oral, visual, or other form, (i) disclosed by, or obtained from, Buyer, or (ii) conceived, created, acquired, or first reduced to practice in connection with an Order. If Buyer furnishes sample products, equipment, or other objects or material to Supplier, the items so received shall be used and the information obtained from said items shall be treated as if they were Proprietary Information disclosed in connection with an Order.
- 17.3. Unless Supplier has received Buyer's express written consent to the contrary, Supplier shall (i) use the Proprietary Information solely for the purposes of an Order, and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing equipment for entities other than Buyer; providing services to entities other than Buyer; or obtaining any government or third party approvals to do any of the foregoing); (ii) safeguard the Proprietary Information to prevent its disclosure to or use by third parties; (iii) not disclose the Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Proprietary Information.
- 17.4. Supplier may disclose the Proprietary Information to officers, directors, employees, contract workers, consultants, agents, affiliates, or subcontractors of Supplier who have a need to know such Proprietary Information for the purposes of performing the Order and who have executed a written agreement with Supplier obligating such entity or person to treat such information in a manner consistent with the terms of this Section.
- 17.5. No Order shall restrict Supplier from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of Supplier or a third party; (ii) is received by Supplier without restriction as to disclosure by Supplier from a third party having a right to disclose it; (iii) was known to Supplier on a non-confidential basis prior to the disclosure by Buyer; or (iv) was independently developed by employees of Supplier who did not have access to any of Buyer's Proprietary Information.
- 17.6. If Proprietary Information is required to be disclosed pursuant to judicial process, Supplier shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Proprietary Information shall not be deemed a breach of an Order provided that the obligations of this Section are fulfilled by Supplier.
- 17.7. Buyer shall have the right to audit all pertinent documentation of Supplier, and to make reasonable inspection of Supplier's premises, in order to verify compliance with this Section.
- 17.8. Obligations in this Section regarding Proprietary Information shall continue until such time as all Proprietary Information is publicly known and generally available through no improper act or omission of Supplier or any third party.
- 17.9. Unless required otherwise by law or an Order, Supplier shall promptly return, or otherwise dispose of Proprietary Information as Buyer may direct. Absent contrary instructions, Supplier shall destroy all Proprietary Information 1 year after termination or completion of the Order and provide written acknowledgement to Buyer of such destruction.
- 17.10. Supplier agrees to cause all information regardless of form (including, for example, electronic, magnetic, and optical media, software, and compilations), containing or derived in whole or in part from Proprietary Information to bear the following legend:

**This document contains the property of Empirical Systems Aerospace, Inc. and/or a Empirical Systems Aerospace, Inc. Affiliate. You may not possess, use, copy or disclose this document or any information in it for any purpose, without express written permission. Neither receipt, from any source, nor possession of this document, constitutes such permission. Possession, use, copying or**

**disclosure by anyone without express written permission of Empirical Systems Aerospace, Inc. and/or the Empirical Systems Aerospace, Inc. Affiliate issuing the Order is not authorized and may result in criminal and/or civil liability. Notwithstanding any proprietary or confidential labels or markings, all information of Supplier disclosed to Buyer relating to an Order will be deemed non-confidential and the content of the Order may be disclosed by Buyer to any of Buyer's Affiliates, and/or to Buyer's Customer or Buyer's subcontractors and potential subcontractors, provided that Buyer's Customer or Buyer's subcontractors and potential subcontractors have a need to access or know such information. Moreover, Buyer may disclose all Supplier information, in accordance with applicable governmental regulations, to the FAA, the European Aviation Safety Agency, Transport Canada Civil Aviation, any other governing international airworthiness certifying authority, and/or any other department or agency of the U.S. Government, including, without limitation, for the purpose of obtaining necessary government approvals.**

- 17.11. Supplier agrees that it will not accept from any third party, or use, any information that appears to be similar to Proprietary Information without first obtaining Buyer's express written consent, except that Supplier may receive solicitations or purchase orders issued by a partner or higher-tier supplier of Buyer that expressly reference a Buyer Order and contain obligations no less stringent than this Section. Supplier shall promptly notify Buyer if Proprietary Information is offered to Supplier by a third party or of the suspected possession of Proprietary Information by a third party.
- 17.12. Supplier acknowledges that exposure to Buyer's Proprietary Information and other Intellectual Property will make it easier for Supplier to manufacture or repair, or to apply for or assist another entity in obtaining FAA or other government approval for, parts that are the same parts or that have the same form, fit, and function, as parts Supplier supplies to Buyer pursuant to an Order hereunder. Supplier also acknowledges that Buyer's goodwill and reputation which become associated with Goods supplied by Supplier pursuant to an Order hereunder once approved for use in Buyer's products make it easier for Supplier to manufacture or repair, or to apply for or assist another entity in obtaining FAA or other government approval for those parts, or parts that have the same form, fit and function, for use in Buyer's products. Supplier agrees that it shall not manufacture or repair parts that Supplier supplies to Buyer pursuant to an Order hereunder, or manufacture or repair parts having the same form, fit and function, for use in Buyer's products, or apply for or assist another entity in obtaining FAA or other government approval for any such parts, without Buyer's written consent. Supplier agrees to notify Buyer in writing and to obtain Buyer's written consent prior to manufacturing or repairing any parts or applying for or assisting another entity in obtaining FAA or other government approval for any parts, for itself or another entity, that have the same form, fit, and function as any parts Supplier supplies to Buyer pursuant to an Order hereunder. Supplier's notification shall (i) describe the parts to be manufactured or repaired, or for which application for or assistance to another entity in obtaining FAA or other government approval for such parts is to be provided, (ii) identify the corresponding parts Supplier supplies to Buyer, and (iii) provide Buyer with sufficient information to demonstrate that Supplier will manufacture or repair, or apply for or assist another entity in obtaining FAA or other government approval for such parts (as the case may be) without reference to or use of Buyer Proprietary Information or other Buyer Intellectual Property. If Supplier manufactures or repairs any such parts without obtaining Buyer's written consent (or applies for or assists another entity in obtaining FAA or other government approval for such parts), then it shall be considered a breach of an Order and Buyer shall be entitled to injunctive relief and such other remedies as a court may order. Supplier shall not make accessible or sell completed or partially completed or defective Goods manufactured using or containing Proprietary Information to any unauthorized third parties. Goods not provided to Buyer shall be disposed of in a manner that prevents disclosure of Proprietary Information (including by reverse engineering).
- 17.13. For Proprietary Information exchanged in connection with the Order, the terms of this Section shall supersede any provisions regarding the protection of proprietary information in any other agreements between the Parties.

## **18. SECURITY FOR ESAero INFORMATION**

The following provisions are applicable whenever the Supplier will Process ESAero Information. The obligations contained in this Section are in addition to and do not alter Supplier's obligations under applicable U.S. Government Procurement Regulations.

- 18.1. In addition to capitalized terms used herein but defined elsewhere in these Terms and Conditions, an Agreement, and/or Order, the following term shall have the following meaning:

“Security Incident” means (i) any circumstance that involves, or which a Party reasonably believes may involve the actual or potential (a) accidental or unauthorized access, use, disclosure, modification, storage, destruction, or loss of ESAero Information in Supplier’s or Supplier Personnel’s possession, custody, or control; or (b) interference with system operation in an information system or in any medium or format, including paper (hard) copy documents, that subjects ESAero Information to risk of unauthorized access, use, disclosure, modification, storage, destruction, or loss; (ii) any other similar incident as may be so defined by any Data Privacy Law and by any laws and regulations (national, federal, state, and provincial) relating to the protection of ESAero Information; or (iii) any breach of Supplier’s representations or covenants in these Terms and Conditions, an Agreement and/or an Order regarding safeguarding of ESAero Information.

- 18.2. Supplier agrees to (i) develop, implement, maintain, monitor, and update a reasonable, written security program incorporating administrative, technical, organizational, and physical safeguards, security measures, and security awareness, and (ii) install and implement security hardware and software, in each case, designed to (a) protect the security, availability, and integrity of Supplier’s network, systems and operations, the Goods and Services, and the ESAero Information from unauthorized access and use; (b) guard against Security Incidents; and (c) demonstrate compliance to a generally accepted cybersecurity framework, such as ISO/IEC 27001 or NIST 800-53, to establish a resilient control environment or equivalent level of security protection appropriate for the information involved and the then current state of security solutions. As between the Parties, all ESAero Information will at all times remain the sole property of Buyer, and Supplier will not have or obtain any rights therein.

- 18.3. Supplier further agrees to:

- 18.3.1. Only allow authorized third parties to Process ESAero Information in the performance of its obligations under an Agreement and/or Order or to comply with legal obligations. Supplier will not make any secondary or other use (e.g., for the purpose of data mining) of ESAero Information except (i) as expressly authorized in writing by Buyer in connection with Buyer’s purchase of Goods and/or Services hereunder, or (ii) as required by law.
- 18.3.2. Maintain and implement information security policies which address, at a minimum the domains or categories set forth in a generally accepted cybersecurity framework, such as ISO/IEC 27001 or NIST 800-53, and provide Buyer, upon request, with a SOC 2 (or equivalent) report demonstrating that such domains are addressed in a manner consistent with this Section. Upon Buyer’s request, Supplier shall provide Buyer with an updated index or summary of its policies.
- 18.3.3. Implement measures to restrict anyone other than its authorized employees and Buyer and its agents from accessing the ESAero Information, and use best efforts to segregate (physically or logically) all ESAero Information into a separate database only accessible by Buyer and its agents and those employees and agents of Supplier who require access in order to provide the Goods and/or Services or to maintain the equipment and the program on which it runs, unless otherwise agreed by Buyer.
- 18.3.4. Unless otherwise specified by Buyer in writing or in an Order (i) Process ESAero Information (including, for clarity, for back-up purposes) only on servers located in the United States or other countries specified in the Order by Buyer; and (ii) not transfer (and will not authorize Supplier Personnel to transfer) ESAero Information to, or permit or enable Processing of ESAero Information in, any country other than the United States or those specified in the Order by Buyer.
- 18.3.5. Implement reasonable measures to ensure back-ups of information are conducted, maintained, and tested in accordance with a generally accepted cybersecurity framework, such as CIS CSC 10; ISO/IEC 27001:2013 (A.12.3.1, A.17.1.2, A.17.1.3, and A.18.1.3); or NIST SP 800-53 Rev 4. (CP-4, CP-6 and CP-9). Supplier’s disaster recovery plan shall incorporate such requirements. All such back-up services are part of the Goods and/or



Services and are subject to these Terms and Conditions, including the privacy compliance and data security requirements.

- 18.3.6. Use, and will cause Supplier Personnel to use, industry standard encryption methods or other secure technologies in connection with the Processing of ESAero Information, as authorized or permitted under the Agreement and/or Order. Notwithstanding any provision to the contrary herein, unencrypted Buyer Personal Information shall not be stored on any Supplier mobile computing devices (e.g., laptop computers, mobile phones, personal digital assistants, and the like). Supplier will align to a generally accepted cybersecurity framework, such as CIS CSC (13 and 14); ISO/IEC 27001:2013 (A.8.2.3, A.13.1.1, A.13.2.1, A.13.2.3, A.14.1.2, and A.14.3); or NIST SP 800-53 Rev. 4 (SC-8, SC-11 and SC-12), covering Data-at-rest and Data-in-transit protections.
- 18.3.7. Provide Buyer, prior to any termination or expiration of the Agreement and/or Order, with a termination plan that addresses how ESAero Information will be returned to Buyer, or destroyed as Buyer may direct, at the end of the Agreement and/or Order and how all ESAero Information will be removed from Supplier's equipment and facilities; provided however, that Supplier may retain information stored in routine back-ups maintained in the ordinary course until such back-ups are overwritten. This plan should include supplying the data to Buyer in an industry recognized format.
- 18.3.8. Provide information to and reasonably cooperate with Buyer in response to any subpoena or investigation seeking ESAero Information in the possession of Supplier. Supplier shall promptly notify Buyer upon the receipt of any request requiring that ESAero Information be supplied to a third party.
- 18.3.9. Not provide ESAero Information to any third party without the prior written approval of Buyer. A request for Buyer approval shall include agreement by Supplier and such third party that all of the requirements of this provision are applicable to their performance.
- 18.3.10. Provide prompt written notice to Buyer of a Security Incident, but no later than 72 hours after its discovery. Except as may be required by applicable law, Supplier agrees that it will not inform any third party (excluding law enforcement) of any Security Incident without first obtaining Buyer's prior written consent.
- 18.3.11. (i) Use commercially reasonable efforts to investigate, contain, and remediate the Security Incident; (ii) cooperate with Buyer in the investigation, containment, and remediation; and (iii) preserve all information and evidence related to the Security Incident (including, without limitation, by suspending routine overwriting or deletion of data or log files). Supplier shall provide Buyer with a report of the investigation that summarizes in reasonable detail the impact on Buyer, its agents, and employees affected by such Security Incident and the corrective action and remediation efforts taken or proposed to be taken by Supplier.

## **19. ACCESS TO FACILITIES, SYSTEMS OR ESAero INFORMATION**

These provisions apply whenever Supplier Personnel will be granted access to Buyer's and/or Buyer's Customers' (i) facilities and/or (ii) computer systems, databases, and/or ESAero Information ("Access").

- 19.1. Supplier shall perform identity screenings, work authorization verifications, and background checks on any and all Supplier Personnel seeking Access in order to identify persons or entities ineligible for such Access. In furtherance of this obligation, Supplier shall, in advance of any request or grant of such Access:
  - 19.1.1. Verify the identity and requisite work authorization of Supplier Personnel requiring Access. Buyer or its Affiliates may further direct Supplier to use a designated service provider to verify authorization to work, U.S. person and/or citizenship status, at Supplier's sole cost and expense.



- 19.1.2. Except to the extent not permissible by applicable law, perform a background screen on Supplier Personnel using a company approved by Buyer evidencing that (i) Supplier Personnel do not have any criminal convictions, as reported in the result of a background screen, or (ii) if they do have criminal convictions, Supplier Personnel were hired only after an individualized assessment was conducted in accordance with all applicable laws and taking into consideration the nature and severity of the underlying offenses, the nature and scope of the Access to be granted, the specific jobs at issue, and the length of time since the convictions.
- 19.1.3. Supplier shall not seek Access for any Supplier Personnel ineligible for such Access based on the failure to meet the above criteria, and will notify Buyer immediately, in writing, if any of Supplier's Personnel with Access is no longer eligible.
- 19.2. Supplier agrees that Buyer shall have sole discretion as to whether Supplier is granted Access and agrees that any Access privileges granted to Supplier will be defined by Buyer. Buyer reserves the right to impose additional requirements before granting Supplier Personnel Access, including, without limitation, with respect to export compliance, privacy, protection of ESAero Information, security clearance, applicable training, drug screening, credit check, technology control plans, intellectual property agreements and compliance with other site-specific policies and procedures.
- 19.3. Supplier is responsible for ensuring that any Supplier Personnel requiring Access meet such Access requirements and that Access privileges are limited to approved Supplier Personnel. Supplier shall immediately notify Buyer if, at any time during the performance of the Order, (i) any information related to Supplier Personnel is altered or rendered inaccurate for any reason, or (ii) the need for Access ceases for any of such Supplier Personnel having Access. The need to Access shall automatically cease for any Supplier employees who are terminated, transferred, or otherwise no longer employed by Supplier.
- 19.4. Supplier or Supplier Personnel's refusal or failure to meet Buyer's Access requirements at any time during the performance of the Order may result in Buyer's refusal to grant Supplier Personnel Access.
- 19.5. If Supplier is an individual, Supplier acknowledges that he/she is not an employee of Buyer or Buyer Affiliate and is not entitled to the rights and benefits of a Buyer or Buyer Affiliate employee including, but not limited to, participation in pension, savings, health care, and other employee benefit plans and arrangements. If Supplier is a company or other entity, it acknowledges that Supplier Personnel are not Buyer or Buyer Affiliate employees and are not entitled to the rights and benefits of a Buyer or Buyer Affiliate employee including, but not limited to, participation in pension, savings, health care, and other employee benefit plans and arrangements. Buyer's refusal to grant Supplier Personnel Access does not constitute an employment action by Buyer.
- 19.6. Supplier acknowledges and agrees that any breach of this Section may result in a violation of law for which Buyer, Supplier, and/or Supplier Personnel may be liable. At Buyer's request, in advance of any request or grant of Access and at any other time, Supplier will provide Buyer (i) written certification, in a form provided by Buyer, that the Access requirements have been met, and/or (ii) documentation to verify the methodology, process, and results relied upon by Supplier to comply with the Access requirements. The current certification form is available at the ESAero Supplier Site.

## **20. COMPLIANCE WITH LAWS**

- 20.1. Supplier warrants that it shall comply with all national, federal, state, provincial, and local laws, ordinances, rules, and regulations applicable to the performance of the Order, except to the extent inconsistent with U.S. anti-boycott laws, including (i) the manufacture or provisioning of Goods and the supply of Services, (ii) the shipping of Goods, and (iii) the configuration or content of Goods and/or Services for the use intended by Buyer (collectively, "Laws"). Supplier agrees to cooperate with and support Buyer's and Buyer's Customers' efforts to comply with all Laws, and utilize the tools and systems provided by Buyer to ensure such compliance.
- 20.2. Supplier shall, at the earliest practicable time, notify Buyer in writing if Supplier is subject to any federal, state, or foreign government criminal proceeding alleging fraud or corrupt practices, once initiated by





the filing of a formal charging document in a court of law; and further notify Buyer of any subsequent felony convictions or deferred prosecution agreement(s) related to the foregoing.

- 20.3. Supplier agrees to comply with Buyer's environmental, health and safety standards, requirements, and restrictions during Supplier's performance hereunder and when at Buyer's jobsites, including, without limitation, adhering to Buyer's safety instructions, notifying Buyer prior to the commencement of work, and providing Buyer with any test reports or results related to Goods and/or Services, as applicable.
- 20.4. Supplier shall comply with Data Privacy Laws and shall be responsible for providing any notice required by law to the data subjects whose personal data it provides to Buyer.
- 20.5. Supplier represents that it shall not furnish to Buyer Goods or separately-identifiable items or components of Goods that (i) are an unauthorized copy or substitute of an original equipment manufacturer or original component manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but are represented as OEM authentic or as new; (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes; (vi) fail to meet the requirement of an "Approved Part" as defined in FAA Advisory Circular 21-29C and any updated version thereof; or (vii) are otherwise counterfeit or suspected counterfeit. Such counterfeit or suspected counterfeit Goods shall be deemed non-conforming, and Supplier shall disclose the source of the counterfeit or suspect counterfeit Good to Buyer and cooperate with Buyer with respect to any investigations or remedial actions undertaken by Buyer.
- 20.6. Supplier shall provide to Buyer, upon Buyer's reasonable request, the identity of its suppliers and/or the location of manufacture of the Goods or any subcomponents of the Goods, or provision of Services, as applicable, to confirm compliance with legal and regulatory requirements, the Agreement and/or Order.

## **21. PROHIBITED TELECOMMUNICATIONS EQUIPMENT & SERVICES**

- 21.1. Supplier recognizes that ESAero, Buyer, and their respective Affiliates are subject to Section 889 of the National Defense Authorization Act for Fiscal Year 2019 ("Section 889"), which prohibits prime contractors to the U.S. government from using (regardless of end use) "covered telecommunications equipment or services", as such term is defined in Section 889 ("Prohibited Telecom").
- 21.2. Supplier represents that it shall not furnish to Buyer any Goods or Services that use or contain Prohibited Telecom.
- 21.3. Supplier commits to (i) have in place processes to determine whether it furnishes, or has furnished, to Buyer Goods, separately-identifiable items or components of Goods, or Services that use or contain Prohibited Telecom; (ii) notify Buyer, within 1 business day of Supplier's identification, of the use or existence of Prohibited Telecom in the Goods and/or Services it furnishes, or has furnished, to Buyer (a "Prohibited Telecom Use Notice"), which shall include the brand, model number, and item description of such Goods and/or Services; and (iii) within 5 business days of Supplier's submission of a Prohibited Telecom Use Notice, provide Buyer with such further available information as Buyer may request about such Supplier's use of Prohibited Telecom in the Goods and/or Services it furnishes, or has furnished, to Buyer, and the efforts Supplier has taken, and will take, to prevent the use of Prohibited Telecom in the Goods and/or Services it furnishes to Buyer.
- 21.4. Supplier shall require its subcontractors to satisfy the requirements of this Section.

## **22. CONFLICT MINERALS**

Supplier recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten, and gold (the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries ("DRC

Countries”). Accordingly, Supplier commits to comply with Section 1502 of the Act and its implementing regulations; to the extent Supplier is not a “Registrant” as defined in the Act, Supplier shall comply with Section 1502 of the Act and its implementation regulations except for the filing requirements. In particular, Supplier commits to have in place a supply chain policy and processes to undertake (i) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into Goods it provides Buyer; (ii) due diligence of its supply chain, following a nationally or internationally recognized due diligence framework, as necessary, to determine if Conflict Minerals sourced from the DRC Countries directly or indirectly support unlawful conflict there; and (iii) risk assessment and mitigation actions necessary to implement the country of origin inquiry and due diligence procedures. Upon written request, Supplier will promptly provide Buyer with commercially reasonable information regarding the foregoing requirements in order to support ESAero’s obligations under the Act.

### **23. GLOBAL CHEMICAL REGULATIONS AND MATERIALS OF CONCERN**

- 23.1. To the extent the Goods contain, or the manufacturing processes for the Goods use, chemical substances subject to Global Chemical Regulations or Materials of Concern (“MOC”), as defined below, Supplier shall:
  - 23.1.1. Comply with all applicable Laws regarding the global regulation of chemicals, including but not limited to any: (i) registration, notification, authorization, restriction, or ban obligations; and (ii) hazard classification, labeling, packaging, Safety Data Sheet, or safe use compliance and communication obligations (the “Global Chemical Regulations”).
  - 23.1.2. Cooperate with Buyer’s efforts to comply with Global Chemical Regulations and applicable customer requirements and to develop products and manufacturing processes that minimize risk to human health and the environment. Such cooperation includes, but is not limited to: (i) investigating and communicating to Buyer the nature and extent of any MOCs contained in the Goods or in the processes used to manufacture, assemble, use, maintain, or repair any Goods; (ii) providing all reasonably necessary documentation to verify the material composition, on a substance by substance basis, including quantity of each MOC contained in any Goods; (iii) providing Buyer with safe use communications and safety data sheets; (iv) promptly responding to Buyer’s requests for information, in the form requested by Buyer, regarding MOC used or intended to be used in connection with the Goods and related regulatory controls such as use restrictions and permit and authorization requirements; (v) upon request, cooperating with efforts to obtain necessary regulatory approval(s), including, but not limited to, registrations and authorizations for the continued sale to and use of Goods by Buyer; and (vi) using the tools and forms provided by Buyer through the ESAero Supplier Site, or other means.

For purposes of this Section, “MOC” means substances that are substances of concern to Buyer or Buyer’s customer identified in a Materials of Concern list made available through the ESAero Supplier Site or provided through other means.

### **24. COMPLIANCE COVENANTS**

- 24.1. Supplier has not offered or given and shall not offer or give anything of value (in the form of entertainment, gifts, gratuities, or otherwise) to Buyer's employees or representatives for the purpose of obtaining any Order or favorable treatment under any Order. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Supplier.
- 24.2. Supplier represents and warrants that it has not made, nor will it make, or offer to make any political contributions, or pay, or offer to pay any fees or commissions in connection with any Order.
- 24.3. If Supplier engages directly or indirectly in representing, lobbying, marketing, or advocating on behalf of Buyer in connection with U.S. or foreign (non-U.S.) Government contract or procurement activities, Supplier shall conduct affirmative screening of Supplier Personnel proposed for engagement in such activities to ensure that any such activities will not result in a violation of U.S. or foreign (non-U.S.) post-government employment (e.g., “Revolving Door”) laws and regulations.

- 24.4. Supplier shall ensure that Supplier Personnel assigned to perform Buyer work avoid conflicts of interest (“COIs”) and any actual or potential COIs are properly identified and mitigated by Supplier.

## **25. SUPPLIER CODE OF CONDUCT**

- 25.1. Supplier shall adopt and comply with a code of conduct or policy statement regarding business conduct, ethics and compliance that satisfies, at a minimum, the principles and expectations set forth in the ESAero Supplier Code of Conduct available at the ESAero Supplier Site (“Supplier Code of Conduct”). Supplier acknowledges and agrees that failure to satisfy the requirements of this Section shall constitute a material breach of the Order.
- 25.2. Supplier shall have management systems, tools and processes in place that (i) ensure compliance with applicable laws and regulations and the requirements set forth in the Supplier Code of Conduct; (ii) promote an awareness of and commitment to ethical business practices, including, without limitation, the expectations set forth in the Supplier Code of Conduct; (iii) facilitate the timely discovery, investigation (including cooperation with any Buyer initiated investigation involving Supplier), disclosure (to Buyer and others as appropriate), and implementation of corrective actions for violations of law, regulations, an Agreement, Order, or the expectations set forth in the Supplier Code of Conduct; and (iii) provide training to its employees on compliance requirements, including the expectations set forth in the Supplier Code of Conduct.

## **26. GLOBAL TRADE COMPLIANCE**

- 26.1. Compliance with GTC Laws. Supplier hereby certifies that, in connection with the performance of the Agreement and/or Order, it will comply with all applicable GTC Laws. Supplier agrees that no hardware, software, Technical Data, and/or services (collectively referred to as “items”) controlled under any U.S. or other applicable non-U.S. export and import laws and regulations and provided by Buyer in connection with the Order shall be provided to any person or entity, including non-U.S. person employees, subsidiaries, or affiliates, unless the transfer is expressly permitted by a U.S. or non-U.S. Government license or other authorization, or is otherwise in accordance with applicable laws and regulations.
- 26.2. Denied Party Screening. Supplier shall not engage any Supplier Personnel who is ineligible to perform hereunder because of any embargo, sanction, debarment, or designation as a Specially Designated National or a denied party, as maintained by the U.S. government or any applicable non-U.S. government or union of states (e.g., European Union). Supplier shall perform denied party screenings on Supplier Personnel and promptly notify Buyer in writing if any such Supplier Personnel has been identified as ineligible because of the reasons listed above.
- 26.3. Export Licensing. If any Order requires either Party to obtain government-approved export authorization to facilitate activities and obligations set forth under such Order, the Parties shall mutually exercise reasonable efforts to support the preparation and management of the authorization in full compliance with applicable GTC Laws. Each Party, as applicable, shall be individually responsible for obtaining required documentation or other information from any third party required by such Party to perform its obligations under an Order. Upon request, and when permissible under applicable laws and regulations, the Parties shall exchange copies, redacted as appropriate, of all government export authorizations related to the Technical Data, Goods or Services, and all provisions, conditions, limitations, or information relating to the authorization. Each Party shall ensure all required authorizations remain valid for the duration of the Order. Each Party, as applicable, shall be individually responsible for compliance with all government export authorizations, including without limitation ensuring that all export-related documentation is properly completed and timely filed.
- 26.4. Export and Import Classification; Registration. Where known, or where Supplier is the design authority for the Technical Data, Goods or Services that are subject to the Agreement and/or Order, Supplier shall provide Buyer with (i) the applicable Harmonized Tariff Schedule Number; (ii) the applicable U.S. export jurisdiction and classification; and (ii) any analogous classification under any other applicable law. Supplier shall timely notify Buyer in writing of any changes to the export or import classification on the Technical Data, Goods or Services subject to the Order. If, under any Order, Supplier will engage in any manufacturing or exporting of items on the U.S. Munitions List or engage in the provision of defense

services (as defined in 22 C.F.R. § 120.9), Supplier shall maintain registration with the Directorate of Defense Trade Controls (“DDTC”) as may be required by Part 122 of the ITAR. Upon request, Supplier shall provide Buyer annually with its DDTC registration expiration date.

- 26.5. GTC Law Compliance – Subcontracting. If Buyer authorizes Supplier to engage in subcontracting for procurements related to the Order, Supplier shall incorporate into its subcontracts the provisions of this Section requiring compliance with U.S. and other applicable non-U.S. export and import control laws and regulations.
- 26.6. Certifications. If the Order forms the whole or a part of a sale by Buyer of defense articles or defense services being sold in support of a Foreign Military Sale or commercially to or for the use of the armed forces of a foreign country or international organization, Supplier shall upon acceptance of the Order, or within 5 days of being requested by Buyer to do so, with respect to all Orders received by the Supplier’s legal entity to date in relation to the Buyer Customer Contract or Solicitation Number related to the Order, provide information, in the format specified by Buyer, in furtherance of the requirements stipulated in Part 130 of the ITAR, 22 CFR §§130.9 and 130.10.
- 26.7. Brokering. Supplier acknowledges that it shall not engage in “brokering activity” as that term is defined in 22 C.F.R. § 129.2 in conjunction with activity authorized pursuant to the Order.
- 26.8. Technical Data Transfer. Supplier shall not export, re-export, transfer, disclose, or otherwise provide physical or electronic access to Technical Data to any person not authorized to receive Technical Data under existing GTC Laws and/or government export authorization (including unauthorized third party information technology service providers), or modify or divert such Technical Data to any military application or other end- use prohibited by applicable GTC Laws. Supplier shall develop and implement information technology security procedures which ensure that Technical Data is accessible only by authorized persons.
- 26.9. Destruction of Technical Data, Controlled Goods & Controlled Buyer Items. Upon completion of performance under an Order, and expiration of recordkeeping obligations under the Agreement and/or Order, Supplier and subcontractors shall destroy or return to Buyer all Technical Data, all controlled Goods, and controlled Buyer Items, as instructed by Buyer. Destruction of the foregoing items in physical and electronic form must render such items useless beyond repair, rehabilitation, restoration, and recognition of unique characteristics or identifiers, Supplier must provide a written certification of the method of destruction and its completion to Buyer.
- 26.10. Technology Control Plan. When the terms of the Agreement and/or Order require access to or possession of Technical Data controlled under the ITAR or at an Anti-Terrorism level or higher under the EAR, or the equivalent level of controls under applicable and governing non-U.S. GTC Laws, Supplier shall create and follow a Technology Control Plan (“TCP”) that, at a minimum, incorporates the following elements: (i) facility security; (ii) global trade compliance training program; (iii) information technology security; (iv) record keeping requirements; (v) denied party screening as defined above in this Section; and (vi) personnel oversight (including oversight of Supplier Personnel who are non-U.S. persons and/or dual/third country nationals, and visitor management). Supplier shall make a signed copy of the TCP available to Buyer within 20 days of request.
- 26.11. Country of Origin.
- 26.11.1. “Country of Origin” shall mean the country where a Good is wholly obtained or produced entirely, or, when two or more countries are involved in the production of a Good, the country where the last substantial transformation was carried out. The Supplier shall identify the Country of Origin of all Goods on the commercial invoice or pro forma invoice accompanying the shipment, and in any other format as Buyer may direct, including but not limited to, Supplier proposals and Supplier certifications in electronic, and/or scan-readable format. Where the Supplier is not the manufacturer of the Good, it shall obtain the Country of Origin from the manufacturer of such Good.
- 26.11.2. Country of Origin Marking. Supplier shall mark all Goods with the name of the Country of

Origin in accordance with the local laws of the destination country. Where the Good is exempt from the Country of Origin marking requirements of the destination country or no such markings are otherwise required, Supplier shall mark the container of such Good with the name of the Country of Origin of the Good.

- 26.11.3. **Preferential Treatment.** Upon Buyer's request, Supplier shall provide, or assist in obtaining from its subcontractors, certificates of origin, declarations, and/or affidavits necessary to support Buyer's claims for duty-free or preferential duty treatment under international agreements, multi-lateral or bilateral free trade agreements, or other preferential tariff programs (e.g., Agreement on Trade in Civil Aircraft, Free Trade Agreements, Goods Returned, Generalized System of Preferences, etc.) ("Preferential Treatment"). Supplier shall maintain all records and make available to Buyer all documentation for duty free or preferential duty treatment for 6 years after the date on which the aforementioned documentation was provided to Buyer as support for Buyer's Preferential Treatment claim.
- 26.12. **Importer Security Filing.** For all ocean shipments of Goods to Buyer, destined or passing through a U.S. port, Supplier shall provide Buyer or Buyer's designated agent with accurate "Data Elements" for the U.S. Importer Security Filing regulation (the "ISF Rule") to ensure Buyer or Buyer's designated agent has sufficient opportunity to comply with its filing obligations. Supplier further agrees to comply with or assist Buyer or Buyer's designated agent to comply with other manifest regulations based on the jurisdiction of the shipping destination.
- 26.13. **Duty Drawback.** Supplier agrees to assign to Buyer any and all of Supplier's U.S. Customs duty drawback rights and duty drawback rights obtained from subcontractors related to the Goods furnished hereunder in order for Buyer to seek duty drawback. Supplier agrees to inform Buyer of the existence of such duty drawback rights of which Supplier becomes aware. Supplier agrees to furnish upon request documents, records, and other supporting information that Buyer reasonably requires, including, but not limited to, proof of importation, duties paid and other documentation, including a signed U.S. Customs Form 7552 (Certificates of Manufacture and Delivery). Supplier further agrees to provide such assistance to Buyer as requested in connection with the recovery of said import duties.
- 26.14. **Supply Chain Security Programs.** Supplier and any of its subcontractors who either ship Goods directly or package Goods for shipment shall participate in or comply with all requirements of SAFE Framework security programs of the destination country (e.g., CTPAT, Authorised Economic Operator, or similar programs). Supplier must also make all shipments under the Order with transportation companies that are certified and validated through CTPAT or the trade security program in the country of shipment.
- 26.15. **Customs Documentation.** Supplier shall provide complete and accurate customs documentation, including without limitation, documentation required for customs clearance, Harmonized Tariff Schedule classification, valuation, origin, applicable export authorization, preferential treatment, duty drawback, and other terms, as required.
- 26.16. **Customs Clearance.**
- 26.16.1. If the Order is issued in the United States for goods shipped directly to the United States from the country where Supplier is located, Buyer may serve as importer of record.
- 26.16.2. Unless the Order specifies otherwise, Supplier agrees in all other cases to serve as importer of record and to be responsible for Customs clearance and for payment of any and all duties, taxes, and fees for goods entering into the United States or other relevant country. If Supplier acts as importer of record, the price may include, if separately stated on Supplier's invoice, duties, taxes, and fees resulting from that importation, unless Buyer has furnished a valid exemption certificate or other evidence of exemption, which the applicable government agency has granted. For any Order that includes customs clearance services, such services shall be quoted and charged at a fixed sum and performed by Supplier as the importer of record in accordance with Program Specific Terms incorporated into the Order. In no event shall an Order that includes customs clearance services allow or provide for contingent or success fees.



- 26.17. Anti-Dumping/Countervailing Duties. Supplier shall inform Buyer of any applicable anti-dumping or countervailing duty, investigation, and/or orders, and shall provide Buyer any documentation necessary to establish, where applicable, that imported Goods are outside the scope of the Orders.
- 26.18. Required Notices. Supplier shall promptly notify Buyer if Supplier becomes aware of any failure by Supplier or its subcontractors to comply with this Section and shall cooperate fully with Buyer in any investigation of such failure to comply. Supplier shall also promptly notify Buyer of any name change, change in DDTC registration status, address change, or change in ownership or control of Supplier. If the change in ownership or control of Supplier involves a country designated under ITAR Section 126.1 or EAR Part 740, Supp. No. 1, Country Group D:5, E:1, or E:2, Supplier shall notify Buyer at least 50 days prior to the change.

## **27. INTERNATIONAL OFFSET**

- 27.1. Supplier grants to Buyer exclusive rights to all offset and industrial participation credits and benefits generated by Supplier, its suppliers, and subcontractors arising out of the Order. Buyer may use all or any part of the value of the Order, including the value of any subcontracts placed by Supplier for the Order to satisfy international offset or industrial participation obligations of Buyer, Buyer's Affiliates, or any entity to which Buyer transfers such value.
- 27.2. Supplier shall support Buyer in meeting Buyer's offset requirements in proportion to the value of the Goods and/or Services supplied by Supplier to the value of the end item sold by Buyer into the particular country.
- 27.3. Upon Buyer's request, Supplier shall (i) report all subcontract sources outside the United States utilized in the fulfillment of the Order, including the name and location of each such source, amounts paid and committed thereto, and identification of the Goods or Services procured; (ii) provide copies of all purchase orders; and (iii) execute all necessary documents to evidence Buyer's right to use, claim, or assign any offset credits or industrial participation. Supplier shall include the substance of this sub-Section, in favor of Buyer, in its subcontracts issued at all tiers pursuant to the Order.

## **28. ASSIGNMENT**

Any assignment by Supplier of an Agreement and/or Order, in whole or in part, without Buyer's prior written consent shall be null and void and shall constitute a material breach of such Agreement and/or Order.

## **29. SUBCONTRACTING**

- 29.1. Supplier may not assign, delegate, or subcontract all or substantially all of its rights, responsibilities or obligations due or to become due under the Order without the prior written consent of the Buyer.
- 29.2. Any such assignment, delegation or subcontracting by Supplier of its rights, responsibilities, or obligations hereunder, without Buyer's prior written consent, shall be wholly void, invalid, and totally ineffective for all purposes. In the case of any approved assignment, delegation, or subcontracting of any of its rights, responsibilities, or obligations hereunder, Supplier shall perform all supply management activities that are necessary for the on-time delivery of Goods and/or Services conforming to the requirements set forth herein. Supplier shall be solely and fully responsible for monitoring said suppliers under all provisions of the applicable subcontracts, and for ensuring that each of its suppliers complies with the requirements set forth herein. Supplier shall remain fully liable to Buyer for, and shall be Buyer's sole point of contact for, all aspects of proper performance of the Order, regardless of (i) any assignment, delegation, or subcontracting; (ii) Buyer approval of the subcontractors; or (iii) Supplier's failure to ensure the relevant subcontracts contain provisions that comply in substance with the requirements set forth herein.

## **30. CHANGE IN CONTROL OR GRANT OF SECURITY INTEREST**

- 30.1. For purposes of this Section:



“Change in Control” means and is deemed to have occurred if there is (i) a change in the beneficial ownership of Supplier, either directly or indirectly, of 25% or more; (ii) any change, of any amount, in the beneficial ownership of Supplier, either directly or indirectly, which involves a direct or indirect competitor of Buyer; (iii) a sale, lease, exchange, transfer, or other disposition, directly or indirectly, of substantially all of either (a) the assets of Supplier or (b) the assets Supplier uses to perform its obligations under an Agreement or Order; or (iv) the entry by Supplier or its Affiliate into any agreement contemplating any of the foregoing transactions.

“Security Interest” means an interest in the assets of Supplier by any third party or parties, collectively, that accounts for a value equal to 25% or more of the Supplier’s total assets, including without limitation, real property and the tangible or intangible personal property of the Supplier (including but not limited to interest in Supplier’s tooling, fixtures, receivables, and intellectual property rights).

- 30.2. Prior to a potential Change in Control of Supplier or grant of such a Security Interest by Supplier and at least 100 days prior to the proposed effectiveness of such Change in Control or grant of Security Interest, Supplier will promptly notify Buyer in writing thereof (including the identity of and reasonable information regarding the potential third party or parties) and obtain Buyer’s written consent prior to the effectiveness of such Change in Control or grant of Security Interest, consistent with applicable law and confidentiality restrictions. As a condition of granting such consent, Buyer shall have the right to (i) require Supplier to obtain a guarantee from the new controlling party or secured party or other adequate assurances of performance, as applicable; and (ii) extend the effective term of an Agreement for up to an additional 37 months, under the pricing and other terms and conditions contained herein, by providing written notice thereof to Supplier. In the event such consent is not sought or obtained in accordance with the terms hereof, Buyer shall have, in addition to the rights described above, the right to terminate the Agreement and/or Order, or any portion thereof, for default without a right to cure and without any liability or obligation whatsoever to Supplier for the portion terminated and Buyer’s rights and remedies as set forth in the Section herein entitled “Termination for Default” shall apply.
- 30.3. In addition, in the event Buyer grants its consent to a Change in Control or grant of Security Interest, Buyer shall have 190 days following its receipt of notice of the foregoing or the effective date thereof, whichever is later, to inform Supplier, upon 20 days advance written notice, of Buyer’s intention to terminate the Agreement and/or Order, or any portion thereof, with Buyer’s only obligation to pay for those conforming Goods and Services actually received prior to the expiration of such 20 day period. If Buyer chooses to terminate the Agreement and/or Order under this Section and the remaining term of the this Agreement is in excess of 5 months, Supplier shall, at no additional charge to Buyer, (i) provide Buyer with unrestricted access to all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier and necessary for the production of the Goods, (ii) deliver or have unrestricted access to that tooling and test equipment necessary to make or have made the Goods, and (iii) provide to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license, with a right to grant sublicenses, to Supplier’s information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, to the extent necessary, to enable Buyer to make, have made, use, sell and license the Goods; and assist and compensate Buyer for the costs associated with transitioning to another supplier or Buyer assuming the production of the Goods itself, protecting the tooling and other equipment necessary for production of the Goods, and taking other reasonable steps to ensure the Goods are produced without interruption according to Buyer’s Specifications.

## **31. STOP WORK ORDER**

Buyer may, from time to time, require Supplier to stop all or any portion of the work called for by the Order for a period of up to 130 days at each such time, or such longer period of time as may be required by Buyer’s Customers (“Stop Work Period”). Upon receipt of written notice detailing the length and scope of the Stop Work Period, Supplier shall immediately comply with its terms at no charge. Within the Stop Work Period, Buyer may either: (i) cancel the stop-work order and Supplier shall resume work; or (ii) terminate the work covered by the stop-work order, for default or convenience, as the context requires, in accordance with the provisions of the Order. If Buyer has not exercised its rights set forth in either (i) or (ii) above prior to the expiration of the Stop Work Period, then at least 40 days prior to said expiration, Supplier shall notify Buyer of its intent to resume work under the applicable Order and

shall obtain Buyer's written consent prior to resuming work.

### **32. FORCE MAJEURE**

- 32.1. Supplier shall be liable for any failure or delay in performance in connection with an Order, except where such failure or delay results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of its control and without its fault or negligence, provided Supplier gives Buyer, within 2 days of Supplier's learning of such cause, written notice to the effect that a failure or delay by Supplier will occur or has occurred (a "Force Majeure Event"). If a failure or delay in performance is caused by an event affecting any of Supplier's suppliers, such failure or delay shall not be excusable unless such event is a Force Majeure Event as defined above and the good or service to be provided by such supplier is not obtainable by Supplier from other sources in time for timely delivery of the Goods to Buyer. Buyer may cancel any Order without liability to Supplier for its purchase of any Goods affected by Supplier's failure or delay in performance and, if the delay is expected to last for a period that could impact deliveries to Buyer's Customers, Buyer may cancel, without liability, any portion of or the entire Order.
- 32.2. Buyer shall be excused for any failure or delay in performance due to any cause beyond its reasonable control, including an unforeseen reduction in demand or any cause attributable to Buyer's Customers.

### **33. DUTY TO PROCEED**

Supplier shall proceed diligently with the performance of the Order. Except as expressly authorized in writing by Buyer, no failure of Supplier and Buyer to reach any agreement regarding a dispute related to any Agreement or Order shall excuse Supplier from proceeding.

### **34. ASSURANCE OF PERFORMANCE**

At any time, if Buyer, in its reasonable discretion, believes that Supplier may not have the ability, for any reason, to continue performing any Agreement or Order, including, without limitation, any material change to Supplier's financial condition, balance sheet, or its credit or similar rating, Buyer may request, and Supplier shall provide, written adequate assurances from Supplier of its ability, desire and intent to continue performing. Buyer will specify the nature of its concerns, and Supplier will provide Buyer with documents, financial data, or other information needed to satisfy Buyer's concerns including, but not limited to, audited financial statements including monthly profit & loss, balance sheet and cash flow, bank statements, accounts payable aging, profitability by part number including capital / productivity improvements. Further, Supplier will immediately notify Buyer in the event Supplier believes it may be unable to pay its debts when due or there is a material change in Supplier's financial position, balance sheet or its credit or similar rating. In the event either or both Parties have concern about Supplier's ability to continue its performance, the Parties will coordinate to ensure that Buyer receives Goods and/or Services without interruption in accordance with the Order. In particular, Supplier will assist and compensate Buyer for the costs associated with transitioning to another supplier, Buyer assuming the production of the Goods and/or performance of the Services itself, protecting the tooling and other equipment necessary for production of the Goods and/or performance of the Services, and taking other reasonable steps to ensure the Goods are produced and/or Services performed without interruption according to Buyer's Specifications. Buyer shall also have the right to require Supplier to (i) obtain a guarantee from a controlling party of, or a secured party to, Supplier, if applicable, and (ii) implement remedial actions directed by Buyer to improve Supplier's performance under the Agreement and/or Order.

### **35. SETOFF**

Buyer and Buyer's Affiliates may withhold, deduct and/or set off all money due, or which may become due to Supplier arising out of Supplier's performance under any Order or any other transaction with Buyer or Buyer's Affiliates.

### **36. GOVERNING LAW AND FORUM**

- 36.1. The Agreement and any Order shall be interpreted in accordance with the plain English meaning of its

terms and the construction thereof shall be governed by the laws in force in the State of California, USA without regard to conflicts of law principles, except that the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980, as amended to date, will not apply. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of an Order in the appropriate court in San Luis Obispo or Los Angeles Counties, California, and Supplier hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process. If Supplier or any of its property is entitled to immunity from legal action on the grounds of sovereignty or otherwise, Supplier hereby waives and agrees not to plead such immunity in any legal action arising out of the Agreement and/or Order.

- 36.2. Any action or claim by Supplier with respect hereto shall also be brought in California, if Buyer so elects. Accordingly, Supplier shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within 40 days from receipt thereof, makes its election as aforesaid. If Buyer and Supplier mutually agree to participate in alternative dispute resolution, Supplier agrees that all alternative dispute resolution proceedings shall take place in San Luis Obispo County, California.

### **37. DISPUTE RESOLUTION**

- 37.1. Except as provided below, prior to a Party initiating a formal legal proceeding relating to a dispute under the Order, such Party must provide the other with a written request for dispute resolution. Each Party shall, within 5 calendar days after such written request is received, designate a representative who will be responsible for negotiating, in good faith, a resolution of the dispute. Should the representatives fail to reach agreement within 30 calendar days of receipt of the request, executives of each Party shall attempt to resolve the issue within 60 calendar days of receipt of such written request.
- 37.2. Either Party may (i) resort to a formal legal proceeding for equitable relief at any time and (ii) institute litigation in order to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors.
38. The dispute resolution procedures set forth herein do not supersede, delay or otherwise affect any rights of termination that are expressly set forth herein.

### **39. ORDERS UNDER U.S. GOVERNMENT CONTRACTS**

For Orders issued under contracts between Buyer and the U.S. Government Department of Defense or National Aeronautics and Space Administration, or subcontracts at any tier under such U.S. Government contracts, the terms and conditions of the Flowdown Document in Part E in effect on the date of the particular Order shall apply.

### **40. SUPPLIER DIVERSITY**

For work performed in the United States under Orders placed by U.S. Buyers, Supplier shall exercise reasonable commercial efforts to use Diverse Business Enterprises (“DBEs”), as such term is more particularly defined at the ESAero Supplier Site. The overall target (i.e., dollar value, percentage of purchases, etc.) for purchases made from DBEs may be set forth in the Order.

### **41. NEWS RELEASES, PUBLICITY AND OTHER DISCLOSURES**

Supplier shall not make or authorize any news release, advertisement, or other disclosure that relates to the Agreement or Order or the relationship between Buyer and Supplier, deny or confirm the existence of the Agreement or Order, or make use of Buyer's name or logo without the prior written consent of Buyer.

### **42. DELAYS**

Whenever there is an actual delay or threat to delay the timely performance of the Order, Supplier shall immediately notify Buyer in writing of the probable length of any anticipated delay and take, and pay for,



all activity to mitigate the potential impact of any such delay.

#### **43. REMEDIES**

Supplier shall be liable for any costs, expenses and damages incurred by Buyer related to or arising from Supplier's acts or omissions under the Agreement and/or Order. Except as expressly provided herein, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity.

#### **44. PARTIAL INVALIDITY**

If in any instance any provision of the Agreement or Order shall be determined to be invalid or unenforceable under any applicable law by any competent court or arbitration tribunal, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms unless the purposes of the Agreement or Order can no longer be preserved by doing so. The provision declared invalid or unenforceable shall be deemed to be restated to reflect as nearly as possible the meaning and essence of such provision without rendering such amended provision invalid or unenforceable, to the extent permissible by applicable law.

#### **45. SURVIVAL**

All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of the Agreement or Order, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of Intellectual Property and Proprietary Information), and product support obligations shall survive the expiration or termination of the Agreement or any Order.

#### **46. NO WAIVER**

No failure of any Party to exercise any right under, or to require compliance with, the Agreement or Order, or knowledge of past performance at variance with the Agreement or Order, shall constitute a waiver by such Party of its rights hereunder. No concession, latitude, or waiver allowed by either Party to the other at any time shall be deemed a concession, latitude, or waiver with respect to any rights unless and only to the extent expressly stated in writing, nor shall it prevent such Party from enforcing any rights in the future under similar circumstances.

#### **47. RELATIONSHIP OF THE PARTIES**

The relationship between Supplier and Buyer will be that of independent contractors and not that of principal and agent, nor that of legal partners. Neither Party will represent itself as the agent or legal partner of the other Party nor perform any action that might result in other persons believing that it has any authority to bind or enter into commitments on behalf of the other.

#### **48. CAPTIONS**

The captions, headings, section numbers, and table of contents appearing in the Agreement and Order have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of the Agreement or Order, or any provision thereof.

#### **49. INTERPRETATION**

These Terms and Conditions and any Agreement and/or Order shall be construed as if drafted jointly by the Parties and no provision in these Terms and Conditions, any Agreement and/or the Order shall be interpreted for or against any Party because that Party or that Party's legal representative drafted the provision.

#### **50. ORDER OF PRECEDENCE**

50.1. The order of precedence provision in an Agreement, if any, shall prevail over this Section.



50.2. In the event of any conflict or inconsistency between the provisions applicable to the Order and these Terms and Conditions, such conflict or inconsistency shall be resolved by giving precedence to the provision in the following order of priority:

- 50.2.1. any written, non-preprinted express terms contained in any Order, including Part A;
- 50.2.2. any Buyer-issued Specifications and work statements incorporated by Buyer in any Order;
- 50.2.3. the terms of any Program Specific Documents incorporated into the Order;
- 50.2.4. these Terms and Conditions; and
- 50.2.5. pre-printed terms and conditions on Buyer's Orders and terms incorporated in the Order not described in the Subsections above.

Notwithstanding the above sub-Sections, for Orders issued under contracts between Buyer and the U.S. Government or subcontracts at any tier under U.S. Government contracts, the Parties agree that in the event of any conflict or inconsistency between the provisions applicable to the Order and the provisions of the Flowdown Document incorporated by reference pursuant to the Section of these Terms and Conditions entitled, "Orders Under U.S. Government Contracts" (collectively, the "USG Provisions and Clauses") the USG Provisions and Clauses shall control.

50.3. Supplier shall promptly and duly execute and deliver to Buyer such further documents and take such further actions as Buyer may from time-to-time reasonably request in order to effectively carry out the intent and purpose of the Agreement and/or Order.

## **ATTACHMENT A**

### **Additional Insurance Coverage Requirements**

In addition to the insurance requirements set forth in the Section of these Terms and Conditions entitled “Insurance”, Supplier shall secure, maintain and require its subcontractors to maintain, the following additional insurance coverages and limits relevant to Supplier’s performance of the Order:

#### **General Liability Coverage and Limits:**

If Supplier is providing asbestos abatement/removal, armed security services, demolition work, fire/sprinkler installation, general construction, excavation work, plumbing work (new installation, re-work, building wide systems) electrical work (new installation, rework, building wide systems), supplier must maintain Commercial General Liability insurance in the minimum amount of \$10,000,000.

#### **Automobile Liability Coverage and Limits:**

If Supplier is operating motor vehicles in performance of the Order, Supplier must maintain the following coverage and limits:

Private Passenger Vehicles: \$1,000,000 per accident covering all owned, non-owned, and hired vehicles.

Commercial<sup>1</sup> Vehicles: \$5,000,000 per accident covering all owned, non-owned, and hired vehicles.

#### **Professional Liability Coverage and Limits:**

If Supplier is providing any computer software (other than standard, off the shelf, non-customized software), computer coding or algorithms, or information technology services and/or non-commercial communications products and services or technology products and services, Supplier must maintain Technology Errors & Omissions Liability Insurance in the minimum amount of \$10,000,000.

If Supplier will process or store ESAero Information, including Buyer Personal Information, in its possession through an arrangement to externally host data, or Supplier is responsible for managing or having access to Buyer’s network, Supplier must maintain Network Security and Privacy Liability Insurance, as part of a Professional Liability (E&O) Insurance policy or as stand-alone “Cyber Coverage”, in the minimum amount of \$10,000,000.

If the Supplier is providing architect and engineering services, including, but not limited, to designs and/or structural calculations, the Supplier must maintain Architects & Engineers Professional Liability Insurance in the minimum amount of \$5,000,000.

If the Supplier is providing consulting services, media services and/or other professional services, Supplier must maintain Professional Liability (Errors and Omissions) Insurance in the minimum amount of \$1,000,000. For a claims-made-policy, the retroactive coverage date shall be no later than the effective date of the Agreement and coverage shall be maintained for a period of 4 years after expiration or termination of the Agreement and any Order.

#### **Aviation Liability, Completed Operations Liability Coverage and Limits:**

If Supplier will use an aircraft in performance of any Order, Supplier must maintain Hull All Risks Insurance in an amount not less than fair market value of the aircraft, including Hull War and Allied Perils.

For manned aircraft used for test flight purposes when (i) Supplier will pilot the aircraft, (ii) the test flight path will be over unpopulated areas and (iii) there will be no Buyer personnel onboard, Supplier must maintain Aviation Liability, including war risk liability (AVN52) with a minimum limit of \$5,000,000 per occurrence.



For manned aircraft used for test flight purposes when Supplier is chartering or leasing an aircraft (piloted by Supplier) (i) with 10 seats (or its equivalent if seats are removed) or less, or a test flight with Buyer personnel on-board, Supplier must maintain Aviation Liability, including war risk liability (AVN52) with a minimum limit of \$50,000,000 per occurrence; (ii) with 11-15 seats (or its equivalent if seats are removed) on the aircraft, Supplier must maintain Aviation Liability, including war risk liability (AVN52) with a minimum limit of \$100,000,000 per occurrence; or (iii) with 16 or more seats (or its equivalent if seats are removed) on the aircraft, or any wide body, or specialty jet aircraft, Supplier must maintain Aviation Liability, including war risk liability (AVN52) with a minimum limit of \$200,000,000 per occurrence. Such coverage must be world-wide and not have a per passenger sublimit when passengers are onboard.

If the Supplier will use a Drone / UAV / UAS in performance of any Order, Supplier must maintain Aviation Liability with a minimum limit of \$2,000,000 if 55 lbs. or less; or \$5,000,000 if over 55 lbs.

Such insurance coverage shall remain in effect for 3 years after the expiration or termination of the Agreement and any Order.

#### **Hangarkeepers Legal Liability Insurance Coverage and Limits:**

If Supplier will have a Buyer aircraft (or an aircraft for which Buyer is responsible) stored, maintained, repaired, and/or refueled on Supplier's premises/hangar; and/or Supplier will have care, custody and control of the aircraft for any reason, Supplier must maintain Hangarkeepers Legal Liability Insurance in the minimum amount of \$50,000,000 per aircraft/per occurrence.<sup>ii</sup>

Such insurance shall remain in effect for 3 years after the expiration or the termination of the Agreement and any Order.

#### **Aircraft Products Liability Coverage and Limits:**

In performance of any Order, if Supplier will be (i) providing original or spare component parts for any aviation product, including, but not limited to, commercial or military jet engines, or missiles; (ii) providing service to an aircraft (e.g., helicopters, missiles, spacecraft, satellites, launch vehicles); or (iii) supplying products for an aircraft, including ground support or control equipment, spare parts for aircraft, or repair services for aircraft, the Supplier must maintain Aircraft Products Liability and Completed Operations Insurance in the minimum amount of \$50,000,000 per occurrence for: (A) product, component parts, and materials which are classified as Flight Safety Parts, or its equivalent, or having Critical Characteristics, or its equivalent, in accordance with the current revision of ASQR and/or any documents referenced therein and are critical to the successful take-off, landing, or flight of an aircraft; and (B) the propulsion, telemetry or guidance of a missile, or satellite, or detection used in a radar.

Such insurance coverage shall remain in effect for 3 years after the expiration or termination of the Agreement and any Order.

#### **All Risk Property Insurance / Builder's Risk Coverage and Limits:**

If Supplier will have custody and control (via a bailment agreement or similar agreement) over any Buyer or Buyer's Customer owned equipment or materials, for which it has risk of loss, Supplier must maintain All Risk Property Insurance, including extended coverage for flood and earthquake, for all equipment and materials in Supplier's custody and control used in performance of the Order against loss or damage resulting from any insurable causes. The policy must include business interruption and terrorism coverage, with replacement cost value at 100%. In the case of third party storage facilities or warehouses, the limit of insurance shall be in the minimum amount of \$5,000,000. Notwithstanding the foregoing, minimum All Risk Property Insurance limits for third party logistics services shall be set forth in the applicable Order.

If the Order requires Supplier to insure the property while the buildings or structures are being constructed, Supplier must maintain All Risk Builder's Risk Property Insurance, upon the entire project, including work and materials, for the full replacement cost at the time of loss. This insurance shall include as "named insureds," the owner of the property and Buyer, and as "additional insureds," the engineer and suppliers at any tier. The policy shall provide All Risk coverage to insure against direct risk of physical loss or damage including, but not limited to: terrorism; flood or other water damage; earthquake or other earth movement; property in transit; off-



site temporary storage; damage resulting from defective design, faulty workmanship, or materials; or delay in start-up (soft cost), business interruption; boiler and machinery; delay in opening; and testing (both hot & cold).

**Crane and Riggers Legal Liability or Installation Floater Coverage and Limits:**

If, in performance of the Order, Supplier is operating a crane, or using rigging materials or equipment to lift, move and set in place property of Buyer, Supplier must maintain Crane / Riggers Liability Insurance (via an inland marine policy or by attaching a riggers liability endorsement to the Commercial General Liability policy that modifies or deletes the “care, custody or control” exclusion) for 100% replacement cost value of the asset / equipment being lifted at any one time in the minimum amount of \$1,000,000.

If, in performance of the Order, Supplier will be installing, fabricating, or erecting project materials for Buyer, an Installation Floater is required (via an inland marine or property insurance policy) for 100% replacement cost value of the property (materials, supplies, machinery, fixtures and equipment) during the transport and until the installation work is completed and is accepted by Buyer.

Note: The Installation Floater may be used to satisfy the Crane / Riggers Liability Insurance requirement should such Installation Floater be broad enough to cover both rigging and installation risks.

**Marine Transit Insurance:**

If, in performance of the Order, Supplier will be shipping product and risk of loss passes to Buyer upon receipt of Goods at Buyer's facility or third party drop shipment point, Supplier must maintain adequate insurance pursuant to any Supply Chain/Logistics Corporate Wide Agreement in the minimum amount of \$250,000 per conveyance. Such insurance shall insure shipments by all modes of transportation until delivery and acceptance by Buyer.

**Contractors Pollution Liability or Environmental Impairment Liability Coverage and Limits:**

If Supplier is producing hazardous waste emissions during manufacturing, performing environmental services, waste depository services and/or performing construction related services, including but not limited to excavation, demolition/site work, concrete contracting services, drilling (or any subsurface work), interior/exterior renovation projects and/or asbestos abatement contractors, Supplier must maintain Contractors Pollution Liability coverage or an Environmental Impairment Liability insurance coverage in the minimum amount of \$5,000,000.

For a claims-made-policy, the retroactive coverage date shall be no later than the effective date of the Agreement or Order and coverage shall be maintained for a period of 4 years after expiration or termination of the Agreement and any Order.

- 
- <sup>i</sup> Commercial means all vehicles, other than passenger vehicles (e.g., box trucks, food trucks, work vans, and service utility trucks).
  - <sup>ii</sup> In-Flight Hangarkeepers Legal Liability Insurance is required when Supplier will have care, custody, and control of the aircraft while in-flight.



**E103 PART C**  
**ESAero**

**Government Property in Possession of Seller (06/22)**

1. The Federal Acquisition Regulation (“FAR”) clauses listed below shall apply to the Purchase Order as required by the terms of the Buyer’s higher-tier subcontract under which this Purchase Order is a subcontract (the “Government Contract”). The effective version of each FAR clause, including the applicable Alternate clauses flowing to the Purchase Order, shall be the same version as that which appears in the Government Contract. The requirements set forth in this Part C shall not be construed to limit or relieve Seller of any of its obligations, including additional Federal Acquisition Regulation (“FAR”) or other U.S. Government (“Government”) property clauses, incorporated in the Purchase Order.
  - a. FAR clause 52.245-1 or its Alternate clauses, and 52.245-2 and 52.245-9 are incorporated herein when applicable with the same force and effect as if they were given in full text. Upon Seller's request, Buyer's Purchasing Representative will make their full text available. Also, the full text of a FAR provision or clause may be accessed electronically at this address: <https://www.acquisition.gov/far/>. Terms shall be revised in the FAR clause to suitably identify the parties to establish Seller’s obligations to Buyer and to the Government; and to enable Buyer to meet its obligations under the Government Contract. In all clauses listed herein, terms shall be revised to suitably identify the party to establish Seller’s obligations to Buyer and to the Government, and to enable Buyer to meet its obligations under the Government Contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term “Government” and equivalent phrases shall mean “Buyer”, the term “Contracting Officer” shall mean “Buyer’s Purchasing Representative”, the term “Contractor” or “Offeror” shall mean “Seller”, “Subcontractor” shall mean “Seller’s Subcontractor” under this Purchase Order, and the term “Contract” shall mean this “Purchase Order”. For the avoidance of doubt, the words “Government” and “Contracting Officer” do not change when a right, act, authorization, or obligation can be granted or performed only by the Government or its Contracting Officer or duly authorized representative or when title to property is to be transferred directly to the Government. Seller shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR clauses in accordance with the flow down requirements specified in such clauses when Seller’s Subcontractor will be receiving, fabricating, or acquiring Government Property.
  - b. Applicability of the clauses are as follows:
    - i. **52.245-1 “Government Property”** (Applicable to Purchase Orders issued under non-DoD prime contracts containing FAR 52.245-1 without Alternate I and the Purchase Order is either a cost- reimbursement, time and materials, or labor hour type, or is a fixed priced Purchase Order awarded on the basis of submission of certified cost or pricing data (reference FAR 45.104). Under DoD prime contracts containing FAR 52.245-1 without Alternate I, in addition to the Purchase Order types listed at FAR 45.104, the clause is applicable to negotiated fixed-price Purchase Orders awarded on a basis other than submission of certified cost or pricing data. For Government Property issued under Installation Operation Services (FAR 52.245-2), FAR 52.245-1 is included.)
    - ii. **52.245-1 Alt I “Government Property”** (Alternate I – Applicable to Purchase Orders issued under prime contracts containing FAR 52.245-1 with Alternate I, and to Purchase Orders issued under contracts containing FAR 52.245-1 without Alternate I when the Purchase Order awarded is of a type other than a Purchase Order type listed in FAR 45.104 or DFARS 245.104.)
    - iii. **52.245-1 Alt II “Government Property”** (Applicable to Purchase Orders for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit institutions whose primary purpose is the conduct of scientific research.)
    - iv. **52.245-2 “Government Property Installation Operation Services”** (Applicable if the Purchase Order is a service contract to be performed on a Government installation when Government furnished property will be provided for initial provisioning only and the Government is not responsible for repair or replacement.)
    - v. **52.245-9 “Use and Charges”** (Applicable to all contracts where FAR 52.245-1 or either of its alternate

clauses is imposed.)

- c. In the event the provisions the Government Contract require that title to Government Property, as that term is defined in 52.245-1 (hereinafter "Property"), acquired by Seller shall vest in either Buyer or the Government, title to such Property shall vest in Buyer or the Government upon acquisition by Seller or Seller's Subcontractors. Title to such Property shall at that time immediately and directly pass to Buyer or the Government so that title shall not at any time vest in Seller or Seller's Subcontractors.
2. Seller shall obtain Buyer approval prior to acquiring or fabricating Property, excluding Material as that term is defined in 52.245-1, for this Purchase Order.
3. Seller shall establish and maintain a system to ensure the adequate control and protection of the Property in accordance with 52.245-1. The party liable for loss, theft, damage, or destruction of or to Government Property shall be in accordance with FAR 52.245-1 or the FAR 52.245-1 Alternate clause applicable to the Purchase Order.
4. Upon receipt of notification from Buyer's Property Personnel, Seller shall complete and return a completed Property Management System Survey (Form 10-3680PC), or any electronic version, describing the system that will be used to control Property according to all the requirements in FAR 52.245-1 and this Purchase Order. Seller shall submit completed form to Buyer's Property Personnel within sixty (60) days.
5. Seller shall, commencing with its receipt and during its custody or use of any Property, accomplish not less than the following.
  - a. examine Property upon receipt to detect damage in transit;
  - b. when receiving Property from Buyer or the Government, verify the contents of the Property shipment against the packing sheet as to the completeness and content and return a signed copy promptly to Buyer. If no discrepancy is reported within five (5) working days of such receipt from Buyer or the Government, Property shall be deemed to have been received in acceptable condition as listed and described on the accompanying packing sheet. If after receipt and installation of such Property Seller determines that the Property is in a condition not suitable for use, Seller shall promptly notify Buyer, in writing, so Buyer can determine further course of action;
  - c. unless otherwise specified, perform functional testing prior to further processing or installation to determine satisfactory operation. If Property is not suitable for use, Seller shall promptly notify Buyer, in writing;
  - d. establish and maintain records as required by FAR 52.245-1(f)(1)(iii) and this Purchase Order, and make such records available for review upon Buyer's request;
  - e. provide the necessary precautions to guard against damage from handling, deterioration during storage, and loss;
  - f. perform periodic inspection to assure adequacy of storage conditions; and utilize, consume, move, and store Property only as authorized in accordance with FAR 52.245-1 and this Purchase Order, and ensure Property is used only for performing this Purchase Order, unless otherwise provided in this Purchase Order or approved in writing by Buyer.
6. Seller shall perform a physical inventory of all property in the possession of Seller at a minimum every other year, or more frequently if requested by the Buyer's Property Personnel. Physical inventories of Sensitive Property, as that term is defined in 52.245-1, shall be performed as frequently as necessary in accordance with ASTM standards, but not to exceed once per year. Within sixty (60) days after the completion of each inventory, Seller shall report the results, including all Property located at the facilities of any of Seller's subcontractors at any tier, and shall validate to Buyer's Property Personnel the accuracy and completeness of such physical inventory. Seller shall submit inventory reports to Buyer's Property Personnel who requested it. Seller shall assist Buyer's Property Personnel in resolving all discrepancies related to Seller, Seller's lower-tier subcontractors, or Buyer's property inventory accounting.
7. Seller shall not make any modifications or alterations to Property, unless they are:



- a. reasonable and necessary due to the scope of work under the applicable Purchase Order or its terms and conditions;
  - b. required for normal maintenance; or
  - c. otherwise authorized in writing by Buyer.
8. Any modification or alteration made by Seller that is not authorized, is the sole responsibility of Seller and is accomplished at Seller's expense. If modifications have been authorized by Buyer, Seller shall provide Buyer with the applicable modification detail to include:
  - a. new part number;
  - b. original part number before modification occurred;
  - c. cost of modification;
  - d. engineering order, drawing revision or other engineering authorization number (as applicable);
  - e. update applicable Seller drawings;
  - f. any additional record information pertinent to the modification.
9. The Seller shall not cannibalize Property unless specifically authorized in this Purchase Order or otherwise authorized in writing by Buyer.
10. Seller agrees to store and maintain in serviceable condition, including the performance of calibration and preventative maintenance, all Property in possession of Seller or Seller's lower-tier subcontractors during the performance of this Purchase Order and until receipt and completion of disposition instructions.
11. Seller shall have a process to create and provide copies of audits and self- assessments, corrective actions, and other Property related reports as requested by Buyer.
12. Seller will promptly report Property as excess to Buyer when no future requirements exist.
13. Immediately upon termination or completion of this Purchase Order, Seller shall perform a physical inventory, and, if Property is applicable to such terminated or completed Purchase Order, shall cause its lower-tier subcontractors and the following shall apply:
  - a. Buyer will coordinate the disposition of Property with Customer on behalf of Seller. Scrap and excess Property is subject to disposition instructions provided by Buyer or the Government. Seller shall execute Buyer's or the Government's disposition instructions for Property deemed to be excess or scrap and return evidence of said disposition to Buyer. All Property return shipments, including related packing and crating tasks, require advance notification, coordination, and negotiation with Buyer.
  - b. Seller shall prepare inventory schedules using the Government Standard Form 1428, Inventory Disposal Schedule, or equivalent, of all Property in the possession of Seller, or Seller's lower-tier subcontractors. The inventory schedule(s) shall be in such detail as acceptable to Buyer. Seller shall safeguard and store Property identified on an inventory disposal schedule pending receipt of written disposition instructions from Buyer or the Government, and shall maintain such Property in accordance with the provisions of the Purchase Order, including FAR 52.245-1.
14. Seller shall be responsible and liable for the decontamination of excess or scrap if contamination occurs as a part of doing business in providing the goods or services under this Purchase Order. For Property acquired by Seller on behalf of Buyer or the Government that is contaminated, Seller shall be responsible and liable for decontamination costs.
15. Seller agrees that in placing any lower-tier subcontracts or purchase orders under this Purchase Order that involve



the use of Property, Seller shall ensure appropriate flow-down of these purchase order terms and conditions (e.g., extent of liability for loss of Government Property), and Seller agrees that it shall exercise rights for the benefit of Buyer or the Government, as Buyer or the Government may direct.

16. When the materials, and products (“goods”) or services, including the products resulting from services for use in connection with a Government Department of Defense prime contract or higher-tier subcontract regardless of dollar value, the following clause set forth in the Department of Defense FAR Supplement (DFARS) shall apply, as required by the terms of the prime contract or by operation of law or regulation. The effective version of each DFARS provision shall be the same version as that which appears in the Government Contract. In the event of a conflict between this DFARS provision and Part B or any FAR provisions, the DFARS provision herein shall control.
  - i. 252.211-7007 “Reporting of Government-Furnished Property” (Applicable to Purchase Orders when FAR Clause 52.245-1 is contained in the Government Contract and Seller is in possession of Government Property, Seller will comply with paragraph (d) of this clause by providing Buyer a Microsoft Excel report containing the data elements required in paragraph (d) when in possession of Government- furnished property.)





**E103 PART D  
ESAero**

**Addendum to Software Licenses (05/23)**

This Addendum, which is an amendment to the software license agreement ("Agreement") identified below, is made by and between Empirical Systems Aerospace Inc. ("ESAero") and the software vendor identified below ("Licensor"). ESAero or its designated affiliate are hereinafter referred to as "Licensee".

The Licensor is \_\_\_\_\_.

The Agreement is the software license agreement which is applicable to the software identified below ("Software") and which software license is either attached to this Addendum or which is a shrink-wrap, click-wrap, browse-wrap or similar license which is made applicable by acceptance on the internet or by incorporation in the Software, Software packaging, Licensor's proposal, made applicable by acceptance within a cloud computing environment (e.g., an in-cloud software sales store), or other similar means.

The Software is \_\_\_\_\_.

The Software which is the subject of this Addendum is as described either in the attached Agreement, in a separate attachment to this Addendum, or in the Associated Purchase Order between Licensee and Licensor ("Associated Purchase Order") which either has this Addendum attached or incorporated by reference. All references to Software herein shall, as appropriate by the context, include related documentation and any updates, upgrades, modifications, and bug fixes provided by Licensor.

In connection with the Agreement and the Software, Licensor and Licensee agree to the following provisions which shall take precedence over any conflicting provision in the Agreement:

**I. Use of Software**

- A. Licensee shall be permitted to transfer the Software and licenses granted with respect to the Software as set forth in the Transfer of Software section below.
- B. Licensee shall be permitted to grant access to the use of the Software to its affiliates, consultants, subcontractors, team members, customers, agents and similar parties and to their respective employees ("Authorized Users") in connection with Licensee's authorized uses thereof provided that all such parties have suitable obligations protecting Licensor's rights in the Software which are in substance consistent with the provisions of the Agreement (as hereby amended).
- C. Licensee shall be permitted to transfer the rights and licenses granted by the Agreement (as hereby amended) to any affiliate of Licensee which agrees in writing to be bound by the terms of the Agreement (as hereby amended) provided that Licensee shall be responsible for the affiliate's compliance with all applicable terms and conditions of the Agreement (as hereby amended).
- D. Licensee shall be permitted to assign the license to any party which acquires all or substantially all of Licensee's business and assets related to the activities for which the Software is licensed provided that Licensee gives Licensor notice of any such assignment and that the assignee agrees in writing to be bound by all applicable terms and conditions of this Agreement (as hereby amended).
- E. Licensee shall be permitted to use the Software with a backup computer, system, or cloud computing server if the computer, system, or server for which it was acquired is inoperative or malfunctioning.
- F. Licensee shall be permitted to copy the Software solely for archival or backup purposes in accordance with Licensee's standard disaster recovery practices.
- G. Subject to applicable prohibitions against reverse engineering and if the Software is a development tool or is provided with source code, Licensee shall be permitted to modify the Software as necessary to use the Software for its intended purpose.

- H. Licensee shall be permitted to combine the Software with other software as necessary to use the Software for its intended purpose.
- I. Licensee shall be permitted to use the Software on the computer(s) or system(s) for which it was acquired at any location to which the computer(s) or system(s) may be installed or relocated by Licensee or Licensee's cloud computing services provider.
- J. Notwithstanding anything in the Agreement to the contrary and for the sake of clarity, Licensee shall be permitted to perform all acts necessary to use the Software for its intended purpose including accessing Licensee data and/or Licensee content for Licensee's internal business purposes. It is also understood that direct or indirect access to Licensee data and/or Licensee content independently of using the licensed Software or batching data or content into or out of a database is a permitted use and no additional license fees shall be required. Licensee may freely distribute Licensee data and Licensee content that it has processed using the Software.
- K. Unless otherwise expressly provided in writing on the Associated Purchase Order, if the Software is a development tool then Licensee may deploy and distribute any resulting application software prepared by Licensee without obligation to Licensor with respect to such application software.

## II. Liability

- A. In no event shall Licensee, Authorized Users, or their respective customers, employees or agents be liable (whether in contract, tort or otherwise) for any special, exemplary, indirect, incidental, speculative or consequential damages and, in no event, shall Licensee have any liability to Licensor, howsoever arising, except for unauthorized use or disclosure of the Software.
- B. Licensor's liability shall be the greater of any limits of liability specified in the Agreement or the amounts recoverable from Licensor's insurance but in no event shall Licensor's liability, howsoever arising in connection with the subject matter of the Agreement, be less than the amounts paid to Licensor in connection therewith. Any limits on Licensor's liability shall not apply with respect to liability arising out of Licensor's gross negligence or willful misconduct or with respect to any breach of warranty or indemnity set forth herein.

## III. Confidentiality

- A. Licensee's duty to protect the Software shall not exceed the use of the customary degree of care Licensee uses to protect its own proprietary information of similar character and in no event shall Licensee be liable for inadvertent disclosure if such standard of care is used. It is also understood that Licensee shall be permitted to exercise such rights with respect to the Software and related documentation as may be permitted under applicable copyright law and to treat Software and related documentation which bears a copyright notice as a published copyrighted work. Licensee's obligations of confidentiality shall cease five (5) years after the effective date of the Agreement. Nothing contained in this Section is intended to or shall modify or obviate any rights which Licensor may have under applicable copyright law which protects Licensor's rights in the Software.
- B. In order for the Software to be treated as confidential and proprietary, the Software must be identified with appropriate markings in human readable form with Licensor's name and a statement of its proprietary nature. There shall be no restrictions applicable to Software, portions thereof, or any other information supplied by Licensor which (i) has been or is independently developed by or on behalf of Licensee; (ii) was in Licensee's possession prior to receipt from Licensor; (iii) has been or is rightfully obtained from a third party; (iv) is or becomes publicly available other than through the fault or negligence of Licensee; or (v) has been or is released without restriction by Licensor.
- C. Notwithstanding anything in the Agreement to the contrary, (i) latent data such as deleted files, and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files, and metadata that can only be retrieved by computer forensics experts and that is generally considered inaccessible without the use of specialized tools and techniques and (ii) back up files of the Software made in the normal course of business as part of Licensee's disaster recovery plan will not be subject to requirements for return or destruction of proprietary information.

- D. Notwithstanding anything in the Agreement to the contrary, Licensee shall have the right to perform such activities in relation to the Software as may be reasonably necessary to satisfy security requirements and to confirm the absence of malware, latent defects and the like. Information obtained by Licensee as the result of such activities shall be used by Licensee only for the aforementioned purposes and shall otherwise be treated as Licensor's proprietary information.

#### IV. Intellectual Property Warranty and Indemnity

Licensor warrants that the Software as licensed and any other deliverable supplied by Licensor does not infringe any third party intellectual property rights. Provided that Licensee shall give prompt written notice to Licensor of any claims against Licensee, its affiliates, and/or their customers that the Software and/or related documentation and/or any other deliverable supplied by Licensor infringes any patent, copyright or other intellectual property right of a third party, Licensor shall, at Licensor's expense, indemnify and hold-harmless Licensee, its affiliates and their customers from any such claim and from any resulting costs and expenses including reasonable attorney's fees and shall also, at Licensee's written request and at Licensor's expense, defend Licensee, its affiliates and their customers against any such claim. As used herein "customer" includes any indirect customer such as an ultimate end-user or higher tier subcontractor or contractor. Failure by Licensee to give prompt written notice shall not relieve Licensor of its obligations hereunder unless such failure is material to Licensor's ability to defend or settle the claim.

##### A. Governing Law and Export Controls

- B. By adoption of the parties, the State of New York, United States of America, is deemed to be the place of contracting and, by agreement of the parties, any claim or controversy relating to the Agreement (as hereby amended), its interpretation, performance, or validity shall, except as otherwise provided in the Sections below related to the application of US Federal law when applicable, be construed and interpreted in accordance with the laws of the State of New York without giving effect to its internal principles of conflict of laws. The parties agree that the Uniform Computer Information Transaction Act, or any version thereof, adopted by any state in any form ("UCITA") shall not apply to the Agreement. To the extent that UCITA is otherwise applicable, the parties agree to opt out of the applicability of UCITA pursuant to the opt-out provisions contained therein.
- C. In the event that the Software is subject to export control limitations under the Export Control Regulations of the United States and/or under the International Traffic in Arms Regulations (ITAR) of the United States, Licensor shall be responsible to advise Licensee in writing and with specificity of the applicable limitations and controls, including advising Licensee whether ITAR applies and advising Licensee of applicable control number on the Commodity Control List under the Export Administration Regulations.

#### V. Warranties

- A. Licensor warrants that the Software shall, when delivered, perform substantially in accordance with the applicable specifications and related documentation and Licensor shall correct or replace any defective Software within thirty (30) days of Licensee's written notification of the claimed defect. If Licensor is unable to promptly correct the defective Software, Licensee may, at its option, terminate the Agreement and receive a prompt refund of all amounts paid to Licensor in connection therewith. Licensor further warrants that any media or other tangible items supplied by Licensor shall be free from defects in materials and workmanship for a period of one (1) year from the date of receipt by Licensee, and Licensor shall promptly repair or replace any item which does not conform to such warranty.
- B. Licensor warrants that it owns the Software or otherwise has all necessary rights to grant the licenses thereunder which are the subject of this Addendum.
- C. Licensor warrants that the Software furnished to Licensee shall not contain any Malicious Code which is defined as (i) any undisclosed program routine, device or other feature or hidden file, including, without limitation, a time bomb, virus, software lock, trojan horse, drop-dead device, worm, malicious logic or trap door, that is designed to delete, disable, deactivate, interfere with or otherwise harm the Software or any hardware, software, data or other programs of Licensee or its customers, or (ii) any transmitting or activating computer program, any communication feature or tool which enables Licensor to collect information regarding Licensee's activities or data, or any hardware-limiting, software-limiting, or services-limiting function

(including, but not limited to, any key, node lock, time-out or other similar functions), whether implemented by electronic or other means. Notwithstanding the foregoing, it is understood that access to the Software may be limited by means of specific number of keys as expressly set forth in the Agreement (as hereby amended) or Associated Purchase Order.

- D. If any third party software is incorporated or embedded in the Software, Licensor represents and warrants that it has all rights and licenses with respect to the third party software necessary to license the Software to Licensee on the terms provided in the Agreement (as hereby amended) and that in no event is there any third party software incorporated or embedded in the Software which would impose on Licensee any obligations which are not expressly provided in the Agreement (as hereby amended) or which would require Licensee to provide source code to any third party. Licensor shall defend, indemnify and hold harmless Licensee, its customers and permitted transferees from and against any claims, damages, losses, costs and expenses including reasonable attorneys' fees howsoever arising as the result of breach of the warranty in this paragraph.
- E. Licensor's warranties under the Agreement and under the Intellectual Property Warranty and Indemnity Section above and the Transfer of Software Section below shall extend to the benefit of any permitted transferees as set forth in the Transfer of Software Section.

#### VI. Conflicting Provisions and Order of Precedence

- A. Except as provided below, the provisions of this Addendum shall take precedence over any conflicting provision in Licensor's proposal, in the Agreement, in any pre-printed terms and conditions contained in the Associated Purchase Order issued by Licensee, or elsewhere in connection with the licensing of the Software.
- B. Terms and conditions of licenses or other agreements (including click-on licenses accepted by Licensee) for access to, or use of, the Software required by automatic sales or checkout procedures implemented through in-cloud software sales stores conflicting with the provisions of this Addendum are void and the terms and conditions of this Addendum shall apply. For clarity, the terms and conditions of this Addendum, shall have a higher order of precedence over terms and conditions of licenses or other agreements, including click-on licenses, required to be accepted by in-cloud stores.
- C. Any provisions which have been typed or written in the Associated Purchase Order (as issued by Licensee) shall take precedence over any conflicting provisions in any other document. The provisions of the Agreement (other than provisions in the Agreement which state that the Agreement contains the entire understanding between the parties or which state that additional provisions do not apply or provisions having similar meaning), as hereby amended, shall take precedence over conflicting pre-printed terms and conditions in the Associated Purchase Order. This Addendum may not be modified or amended except by a written amendment executed by an authorized representative of each party. Unless otherwise expressly set forth on the face of the Associated Purchase Order, no provision of the Agreement which purports to grant rights or immunities under Licensee's patent rights or other intellectual property of Licensee shall apply.

#### VII. Outsource Providers and Transition Services

- A. Licensee may enter into contractual arrangements, either directly or through an affiliate, with an information technology service ("outsource") provider ("ITSP") whereby the ITSP shall provide certain software products and related services to Licensee. Licensor agrees that (a) Licensee may permit the ITSP to act on behalf of Licensee in exercising rights under the Agreement (as hereby amended) as Licensee believes necessary to allow the ITSP to provide outsource services to Licensee; and (b) the ITSP may acquire Software and related services for Licensee on the basis provided for in the Agreement (as hereby amended); and (c) Licensee may grant access to the Software and related documentation and to the use thereof to the ITSP as necessary to allow the ITSP to provide outsource services.
- B. Should Licensee sell or otherwise transfer ("Transfer") assets or equity ownership of any business unit of Licensee or of any affiliate of Licensee and should Licensee agree in connection with such Transfer to provide the transferee with transition services in connection with such Transfer to perform such activities previously performed by Licensee or its affiliate in connection with the operation of the relevant business which require the use of the Software to perform such transition services, then Licensor agrees that, notwithstanding anything contained elsewhere in the Agreement to the contrary, Licensee shall have the right to utilize the Software to



provide such transition services to the transferee for a reasonable period of time not to exceed twelve (12) months.

#### VIII. Federal Law and Procurement Regulations

- A. If the Software and / or other deliverables are being supplied in connection with or pursuant to a contract with the U.S. Government or a subcontract thereunder, the applicable U.S. Federal Law and Procurement Regulations shall apply as appropriate in connection with the Agreement (as hereby amended) and with the rights and obligations of the U.S. Government, including those regulations referenced in the Associated Purchase Order.
- B. Without limiting the general applicability of the paragraph above, if the Software and/or deliverables are being supplied in connection with or pursuant to a contract with the U.S. Government or a subcontract thereunder, no provision of the Agreement (as hereby amended) shall apply with respect to the U.S. Government insofar as such provision conflicts with applicable U.S. Federal Law, Federal Procurement Regulations, or applicable published procurement policies and practices of the relevant U.S. Government agency, including by way of example:
- (i) Provisions which conflict with 31 USC 1341 and 41 USC 11 (Anti-Deficiency Laws).
  - (ii) Provisions which conflict with 28 USC 516 (DOJ Jurisdictional Statute).
  - (iii) Provisions providing for payment of interest on late payments which are not in accordance with 31 USC 3901 et seq. (Prompt Payment Act) and 5 CFR 1315.
  - (iv) Provisions requiring payment of attorneys' fee by the U.S. Government except as provided in 5 USC 504 (Equal Access To Justice Act).
  - (v) Provisions which, directly or indirectly, make the U.S. Government responsible for federal, state, or local taxes.
  - (vi) Provisions which obligate the U.S. Government to be bound by terms imposed by third party suppliers where such terms are not expressly set forth in the Agreement.
  - (vii) Governing law or dispute resolution provisions which conflict with applicable United States Federal law or provisions which make the United States Government subject to equitable remedies.
  - (viii) Provisions which provide for unilateral termination or modification of the Government's rights or which are inconsistent with FAR 52.233-1, FAR 12.302(b), FAR 1.601(a), or FAR 43.102.
  - (ix) Provisions which are inconsistent with 5 USC 552 (Freedom of Information Act).

#### IX. Invoices and Audit

- A. Licensor shall reference the Associated Purchase Order number on all invoices. Any provision in the Agreement providing for payment of interest shall not be applicable. Any provision in the Agreement requiring payment of invoices sooner than sixty (60) days after receipt, shall not apply. Any taxes to be paid to Licensor (e.g., sales taxes) must be separately stated in Licensor's quote and invoices, and in lieu of payment of such taxes, Licensee may provide a direct payment permit or evidence of exemption.
- B. Notwithstanding anything contained in the Agreement to the contrary, any right which Licensor may have to audit compliance with the Agreement shall be limited to once per each semiannual period during the term of the Agreement, shall require reasonable prior written notice, and shall be subject to all security and confidentiality requirements applicable to the facility or facilities in question. It is understood that the United States Government may prohibit audits at United States Government facilities as necessary for security reasons. Information acquired during any such audit shall be used solely for purposes of confirming Licensee's compliance with the Agreement (as hereby amended). In the event the license granted by the Agreement is terminated, any final audit shall be completed within one (1) year of termination.

X. Transfer of Software

- A. In addition to such rights as are set forth in the Agreement or in the Use of Software Section above, Licensee may transfer the Software and applicable rights and licenses thereto to Licensee's customers in connection with the transfer of the computer(s), system(s), or application(s) for which the Software was acquired provided that:
- (i) In the case of transfers to parties other than agencies of the United States Government, such transfer may be made either (a) by assignment of the Agreement (as hereby amended) to the transferee provided that such assignment is made in writing or under other conditions which obligate the transferee to be bound by all applicable provisions of the Agreement (as hereby amended), (b) by causing the transferee to execute a license agreement directly with Licensor or to otherwise acknowledge acceptance of either Licensor's standard commercial license terms or the subject Agreement as hereby amended, or (c) pursuant to a contract with the transferee which provides in substance that (1) title to software provided by third party suppliers remains with the third party supplier, (2) transferee shall have only a non-exclusive license to use software provided by third party suppliers in connection with the equipment, system(s) or application(s) supplied by Licensee, (3) transferee shall not reverse engineer or decompile software provided by third party suppliers, (4) transferee shall not copy software provided by third party suppliers except to make appropriate back-up or archival copies, (5) the license granted with respect to software provided by third party suppliers is limited to transferee's use of such software for the authorized purposes and transferee is prohibited from sublicensing, timesharing, rental, facility management or service bureau usage of such software, and (6) transferee acknowledges that the third party supplier of such software is an intended third party beneficiary of the applicable provisions of the contract protecting third party software and may enforce such provisions against the transferee; and
- B. In the case of transfers of commercial computer software to agencies of the United States Government such transfers may be made by any of the means described in subparagraph (A)(i) above or by transfer which identifies the Software as commercial computer software subject to the applicable Federal Acquisition Regulations or supplements thereto which are applicable to supply of commercial computer software; provided, however, that Licensor agrees that in no event shall the United States Government have less than the rights provided for in FAR 52.227-19 (Dec. 2007) or equivalent successor regulation and provided that Licensor shall be responsible to ensure that Software delivered to Licensee shall be properly marked as commercial computer software where applicable in accordance with the requirements of applicable Federal Acquisition Regulations. In the event that the subject Software is not commercial computer software as defined by the applicable Federal Acquisition Regulations, then Licensor agrees that, if the Software is to be delivered to an agency of the United States Government, the United States Government shall have such rights as are required by the applicable laws and regulations. Transfers to agencies of the United States Government shall also be subject to the Federal Law and Procurement Regulations Section above. In the event that Licensee transfers the Software to a third party which is a contractor or subcontractor pursuant to a contract with an agency of the United States Government where the United States Government is the intended end-user of the Software, then such transferee and any intermediate transferees may transfer the Software and applicable license rights to the U.S. Government on the same basis as ESAero is permitted to do pursuant to subparagraph (A)(ii) above. Licensee may also transfer the Software to intermediate parties where the End User is not an agency of the United States Government for ultimate transfer to an End User provided that the intermediate parties are subject to substantially the same obligations as Licensee under the Agreement (as hereby amended) and such intermediate parties may transfer the Software to the End User in the same way Licensee is permitted to do so under subparagraph (A)(i) above.
- C. Transfers to agencies of foreign governments may be made in accordance with the applicable procurement laws and regulations of the government in question.
- D. In the event of permitted assignment as provided in this Addendum, Licensee shall remain bound by its continuing confidentiality obligations as set forth in the Agreement (as hereby amended) and its obligations to make any payments due prior to assignment; but in the event of any such assignment or other permitted transfer as provided above, Licensor shall otherwise look solely to the assignee or to the permitted transferee for performance of the assignee's or transferee's obligations with respect to the use and protection of the Software. In the event the assignee or transferee is an agency of the United States Government, Licensor agrees that any claim against or dispute with such agency shall be subject to applicable United States law such as the Federal





Tort Claims Act and the Contract Disputes Act and to the jurisdiction of the federal courts as provided in the United States Code.

- E. In addition to the foregoing, any special requirements or mandatory provisions, which may be required by Licensee's customer and which are set forth or referenced in the Associated Purchase Order, shall apply.
- F. For the avoidance of doubt, it is understood that, if Licensee has a license for multiple copies of the Software or has a multiple seat license for the Software, Licensee's rights to transfer the Software and the applicable rights and licenses as provided in this Addendum shall include the right to transfer the applicable rights and licenses in whole or only with respect to a portion of the licensed copies or licensed seats.

XI. Publicity

Licensor shall not use Licensee's name in any promotional material, advertising, customer list, or the like without Licensee's express prior written consent.

XII. Third Party Software

Upon request by Licensee, Licensor shall provide Licensee with a written list of all third party software incorporated in the Software or necessary to use the Software and with copies of the applicable license agreements.

XIII. Termination

In the event the Agreement is terminated in accordance with the provisions thereof, it is agreed that (a) such termination shall not effect any provisions of the Agreement (as hereby amended) which by their nature are inherently intended to survive termination, (b) except in the case of willful and intentional material breach of the Agreement (as hereby amended), Licensee shall be entitled to a reasonable period of time to wind down its use of the Software in an orderly fashion, and (c) such termination shall not effect any licenses previously transferred to third parties.

XIV. Notices

Any notice under, or in connection with, the Agreement or this Addendum shall be in writing and shall be deemed to have been given when received by the party to which said communication is directed at its address set forth in the Agreement, Associated Purchase Order, or at such other address as such party may have theretofore, designated in writing to the other party hereto. A receipt evidencing delivery by certified or registered mail or by recognized commercial courier service shall constitute evidence of receipt. Any notice requiring prompt action shall be contemporaneously sent by facsimile transmission or electronic mail with the receipt confirmed by answer back or similar confirmation of receipt by the receiving terminal.

XV. Licensee's Intellectual Property

Any provision in the Agreement which requires Licensee to grant Licensor rights under Licensee's intellectual property shall not apply.



**E103 PART E  
ESAero**

**Flowdown Document  
N00014-23-C-1022**

**Prime Contract Number:** N00014-23-C-1022  
**DPAS Rating:** DO-C9  
**Date of Creation:** 6/21/2023

**If the Purchase Order is valued at or above \$700,000.00, and is not for commercial items, the following applies:**

**In order to meet the requirements of FAR 52.219-9, Seller agrees to provide a Small Business Subcontracting Plan prior to the award of a Purchase Order. The referenced plan should contain goals for subcontracting with small businesses, small, disadvantaged businesses, woman-owned small business, historically under-utilized small business, veteran owned and service disabled veteran owned businesses in accordance with the plan requirements outlined in FAR 52.219-9.**

**In addition, the Seller must submit an Individual Subcontracting Report (ISR) via the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>) on a semi-annual basis for reporting periods ending on March 31st and September 30th. Reports are due no later than 15 days after the close of each reporting period.**

**Email for Seller's official acknowledging or rejecting the ISR: <insert email address>**  
(Seller must include contractor official on the ISR report email notification)

***The following customer contract requirements apply to this Purchase Order to the extent indicated below and are hereby incorporated into the Purchase Order by full text or by reference with the same force and effect as if they were given in full text. Upon Seller's request, Buyer's Purchasing Representative will make their full text available. Also, the full text of a FAR or DFARS provision or clause may be accessed electronically at these addresses: <http://farsite.hill.af.mil/> or <https://www.acquisition.gov/far/>:***

In all provisions and clauses listed herein, terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer and to the Government, and to enable Buyer to meet its obligations under the Buyer's higher-tier subcontract under which this Purchase Order is a subcontract (the "Government Contract"). Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean "Buyer", the term "Contracting Officer" shall mean "Buyer's Purchasing Representative", the term "Contractor" or "Offeror" shall mean "Seller", "Subcontractor" shall mean "Seller's Subcontractor" under this Purchase Order, and the term "Contract" shall mean this "Purchase Order". For the avoidance of doubt, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the Government Contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2 or (2) when title to property is to be transferred directly to the Government. Seller shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR and DFARS provisions and clauses in accordance with the flow down requirements specified in such clauses.

Nothing in this Purchase Order grants Seller a direct right of action against the Government. If any of the following FAR or DFARS clauses do not apply to this Purchase Order, such clauses are considered to be self-deleting.

# **CLAUSES INCORPORATED BY REFERENCE:**

Clause Number	Title	Applicability (Reference to “Purchase Orders” includes underlying Solicitations)
FAR 52.203-5	Covenant Against Contingent Fees (May 2014)	Applicable to Orders over the Simplified Acquisition Threshold.
FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (Jun 2020) — Alternate I (Nov 2021)	Applicable to all Orders over the Simplified Acquisition Threshold, for the acquisition of commercial products or commercial services.
FAR 52.203-7	Anti-Kickback Procedures (June 2020)	Applicable to all Orders that exceed \$150,000, excepting paragraph (c)(1).
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Jun 2020)	Applicable to all Orders exceeding \$150,000.
FAR 52.203-13	Contractor Code of Business Ethics and Conduct (Nov 2021)	Applicable to all Orders, including for commercial products or commercial services pursuant to 52.244-6, (i) that have a value more than \$6 million; and (ii) that have a performance period of more than 120 days. (In Paragraph (b)(3)(i), the meaning of “agency office of the Inspector General” and “Contracting Officer” does not change, in Paragraph (b)(3)(ii) the meaning of “Government” does not change, and in Paragraphs (b)(3)(iii) and (c)(2)(ii)(F), the meaning of “OIG of the ordering agency”, “IG of the agency” “agency OIG” and “Contracting Officer” do not change.
FAR 52.203-14	Display of Hotline Poster(s) (Nov 2021)	Applicable to Orders over \$6,000,000, except for Orders performed entirely outside the United States or for the acquisition of a commercial product or commercial service.
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Jun2020)	Applicable to all Orders over the Simplified Acquisition Threshold.
FAR 52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6.
FAR 52.204-2	Security Requirements (Mar 2021)	Applicable to all Orders that involve access to classified information. Any reference to the Changes clause is excluded.
FAR 52.204-2	Security Requirements —Alternate I (Apr 1984)	Applicable to all cost Orders for research and development with an educational institution that involve access to classified information. Any reference to the Changes clause is excluded.
FAR 52.204-10	Reporting Executive Compensation and First —Tier Subcontract Awards (Jun 2020)	Applicable to all Orders when the Buyer is the Prime Contractor and the Order exceeds \$30,000. Substitution of the parties is not applicable to this clause. Seller shall report to Buyer the information required under the clause.
FAR 52.204-21	Basic Safeguarding of Covered Contractor Information Systems (Nov 2021)	Applicable to all Orders, including for commercial products or commercial services pursuant to 52.244-6, except commercially available off-the-shelf items, in which the Seller may have Federal contract information residing in or transiting through its information system.
FAR 52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by	Applicable to all Orders, including for commercial products or commercial services.

	Kaspersky Lab and Other Covered Entities (Nov 2021)	
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)	Applicable to all Orders, including subcontracts for the acquisition of commercial products or commercial services.
FAR 52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Nov 2021)	Applicable to Orders exceeding \$35,000 or the dollar threshold in effect as of the date of the prime contract, except for Orders for commercially available off-the-shelf items.
FAR 52.215-2	Audit and Records — Negotiation (Jun 2020) — Alternate III (Jun 1999)	Applicable to the following Orders that exceed the Simplified Acquisition Threshold: (i) that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these, (ii) for which certified cost or pricing data are required; or (iii) that require Seller to furnish reports as discussed in paragraph (e) of the clause. Alt III applies when the head of the agency has waived the examination of records by the Comptroller General in accordance with 25.1001.
FAR 52.215-10	Price Reduction for Defective Certified Cost or Pricing Data (Aug 2011)	Applicable to all Orders that require the Seller to provide certified cost or pricing data. This clause does not apply to Orders for commercial items or if the Seller qualifies for any of the other exemptions in FAR 15.403-1.
FAR 52.215-12	Subcontractor Certified Cost or Pricing Data (Jun 2020)	Applicable to Orders in excess of \$2 Million. This clause does not apply to Orders for commercial items or if the Seller qualifies for any of the other exemptions in FAR 15.403-1.
FAR 52.215-14	Integrity of Unit Prices (Nov 2021)	Applicable to Orders exceeding the Simplified Acquisition Threshold less paragraph (b) in the clause, except for construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial products and commercial services; and petroleum products.
FAR 52.215-15	Pension Adjustments and Asset Reversions (Oct 2010)	Applicable to Orders for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to Part 31.
FAR 52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Jul 2005)	Applicable to Orders that require certified cost or pricing data. This clause does not apply to Orders for commercial items or if the Seller qualifies for any of the other exemptions in FAR 15.403-1.
FAR 52.215-19	Notification of Ownership Changes (Oct 1997)	Applicable to Orders that require certified cost or pricing data. This clause does not apply to Orders for commercial items or if the Seller qualifies for any of the other exemptions in FAR 15.403-1.
FAR 52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data — Modifications (Nov 2021)	Applicable to all Orders when certified cost or pricing data, or data other than certified cost or pricing data, will be required for modifications.
FAR 52.215-23	Limitations on Pass-Through Charges (Jun 2020)	Applicable to all cost-reimbursement Orders that exceed the Simplified Acquisition Threshold; except if the Buyers' prime contract is with the DoD, then applicable to all cost-reimbursement Orders and all fixed-price Orders, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

FAR 52.216-7	Allowable Cost and Payment (Jun 2013)	Applicable to Cost Reimbursement or Time & Material Orders. Seller must execute assignment documents in accordance with requirements in the clause.
FAR 52.216-8	Fixed Fee (Jun 2011)	Applicable to cost plus fixed fee Orders.
FAR 52.219-8	Utilization of Small Business Concerns (Oct 2022)	
FAR 52.219-9	Small Business Subcontracting Plan (OCT 2022) — Alternate II (Nov 2016)	
FAR 52.222-21	Prohibition of Segregated Facilities (Apr 2015)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6. Foreign Sellers: Applicable to Orders except to the extent that work under the Order will be performed outside the United States or by employees that are not recruited within the United States to work on the Order. “United States”, as used in this parenthetical, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
FAR 52.222-26	Equal Opportunity (Sep 2016)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6, that are not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended. Foreign Sellers: Applicable to Orders except to the extent that work under the Order will be performed outside the United States or by employees that are not recruited within the United States to work on the Order. “United States”, as used in this parenthetical, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
FAR 52.222-37	Employment Reports on Veterans (Jun 2020)	Applicable to all Orders over \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary.
FAR 52.222-40	Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6, that exceed \$10,000 will be performed wholly or partially in the United States.
FAR 52.222-50	Combating Trafficking in Persons (Nov 2021)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6, except that the requirements in paragraph (h) of the clause apply only to (i) supplies that are other than commercially available off-the-shelf items that are acquired outside the United States, or for services to be performed outside the United States, and (ii) that exceed \$550,000 in value.
FAR 52.222-54	Employment Eligibility Verification (May 2022)	Applicable to all Orders (i) for construction or commercial or noncommercial services (except commercial services that are part of a purchase of a COTS item, or an item that would be a COTS item, but for minor modifications, performed by the COTS provider, and that are normally provided for that COTS item); (ii) has a value more than \$3,500; and (iii) includes work performed in the United States. Foreign Sellers: “United States” means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.
FAR 52.223-6	Drug-Free Workplace (May 2001)	(ii) Applicable to Orders except when (i) the value of the acquisition is at or below the Simplified Acquisition Threshold, however, the requirements shall apply to contracts of any value awarded to an individual; (ii) the Order is for the acquisition of commercial items; or (iii) performance or partial performance will be outside the United States and its outlying areas.

FAR 52.223-18	Encouraging Contractor Policies To Ban Text Messaging While Driving (Jun 2020)	Applicable to all Orders over the Micro-Purchase Threshold.
FAR 52.225-13	Restrictions on Certain Foreign Purchases (Feb 2021)	Applicable to all Orders.
FAR 52.227-1	Authorization and Consent (Jun 2020) — Alternate I (Apr 1984)	Applicable to all Orders over the Simplified Acquisition Threshold when the primary purpose of Seller's work is research and development, excluding construction or a architect-engineer work.
FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (Jun 2020)	Applicable to all Orders over the Simplified Acquisition Threshold.
FAR 52.227-10	Filing of Patent Applications — Classified Subject Matter (Dec 2007)	Applicable to all Orders that cover or likely to cover classified subject matter.
FAR 52.230-2	Cost Accounting Standards (Jun 2020)	Applicable when stated in the Order.
FAR 52.230-6	Administration of Cost Accounting Standards (Jun 2010)	Applicable when stated in the Order.
FAR 52.232-39	Unenforceability of Unauthorized Obligations (Jun 2013)	Applicable to all Orders involving EULA, TOS, or similar software agreement.
FAR 52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Mar 2023)	
FAR 52.243-2	Changes — Cost-Reimbursement (Aug 1987) — Alternate V (Apr 1984)	Applicable to cost-reimbursement Orders.
FAR 52.244-5	Competition in Subcontracting (Dec 1996)	Applicable to all Orders.
FAR 52.245-1	Government Property (Sep 2021)	Applicable to all Orders when Government property is acquired or furnished (see PT- 001).
FAR 52.245-9	Use and Charges (Apr 2012)	Applicable to all Orders when Government property is acquired or furnished (see PT- 001).
DFARS 252.203-7000	Requirements Relating to Compensation of Former DoD Officials (Sep 2011)	Applicable to all Orders.
DFARS 252.203- 7001	Prohibition on Persons Convicted of Fraud or Other Defense Contract-Related Felonies (Jan 2023)	
DFARS 252.203- 7002	Requirement to Inform Employees of Whistleblower Rights (Dec 2022)	
DFARS 252.204-7000	Disclosure of Information (Oct 2016)	Applicable to all Orders when Seller will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.
DFARS 252.204-7009	Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information (Jan 2023)	
DFARS 252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting (Jan 2023)	
DFARS 252.204-7015	Notice of Authorized Disclosure of	



	Information for Litigation Support (Jan 2023)	
DFARS 252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services (Jan 2023)	
DFARS 252.204-7020	NIST SP 800-171 DoD Assessment Requirements (Jan 2023)	
DFARS 252.209-7004	Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism (May 2019)	Applicable to Orders over \$35,000.
DFARS 252.219-7004	Small Business Subcontracting Plan (Test Program) (Dec 2022)	
DFARS 252.222-7006	Restrictions on the Use of Mandatory Arbitration Agreements (Jan 2023)	
DFARS 252.223-7002	Safety Precautions for Ammunition and Explosives (May 1994)	Applicable to all Orders that involve ammunition or explosives.
DFARS 252.223-7003	Change in Place of Performance – Ammunition and Explosives (Dec 1991)	Applicable to all Orders that involve ammunition or explosives.
DFARS 252.223-7004	Drug-Free Work Force (Sep 1988)	Applicable to Orders except when (i) performance or partial performance will be outside the United States and its outlying areas. (ii) the value of the acquisition is at or below the Simplified Acquisition Threshold, or (iii) the Order is for Commercial Items.
DFARS 252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials (Sep 2014)	Applicable to all Orders that require, may require, or permit a Seller or its lower tier subcontractors access to a DoD installation.
DFARS 252.223-7007	Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (Sep 1999)	Applicable to all Orders for (i) the development, production, manufacture, or purchase of arms, ammunition, and explosives (AA&E), or (ii) when AA&E will be provided to the Seller as Government-furnished property.
DFARS 252.225-7012	Preference for Certain Domestic Commodities (Apr 2022)	
DFARS 252.225-7048	Export-Controlled Items (Jun 2013)	Applicable to all Orders.
DFARS 252.225-7052	Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten (Jan 2023)	
DFARS 252.225-7056	Prohibition Regarding Business Operations with the Maduro Regime (Jan 2023)	
DFARS 252.225-7058	Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China (Jan 2023)	
DFARS 252.225-7060	Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region (Jan 2023)	

DFARS 252.226-7001	Utilization of Indian Organizations, Indian- Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Jan 2023)	
DFARS 252.227-7013	Rights in Technical Data- Other Than Commercial Products and Commercial Services (Jan 2023)	
DFARS 252.227-7014	Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation (Jan 2023)	
DFARS 252.227-7016	Rights in Bid or Proposal Information (Jan 2023)	
DFARS 252.227-7018	Rights in Other Than Commercial Technical Data and Computer Software-Small Business Innovation Research (SBIR) Program (Mar 2023)	
DFARS 252.227-7019	Validation of Asserted Restrictions-Computer Software (Jan 2023)	
DFARS 252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (Jan 2023)	
DFARS 252.227-7037	Validation of Restrictive Markings on Technical Data (Jan 2023)	
DFARS 252.227-7038	Patent Rights—Ownership by the Contractor (Large Business) (Jun 2012)	Applicable to all Orders for experimental, developmental, or research work if the Seller is not a small business or nonprofit organization, unless a different patent rights clause is required by FAR 27.303.
DFARS 252.231-7000	Supplemental Cost Principles (Dec 1991)	Applicable to Orders that are subject to the principles and procedures described in FAR subparts 31.1, 31.2, 31.6, or 31.7.
DFARS 252.235-7002	Animal Welfare (Dec 2014)	Applicable to all Purchase Orders that involve research, development, test, and evaluation or training that use live vertebrate animals.
DFARS 252.235-7004	Protection of Human Subjects (Jul 2009)	Applicable to all Purchase Orders that may include research involving human subjects. This clause does not apply to subcontracts that involve only the use of cadaver materials.
DFARS 252.235-7010	Acknowledgment of Support and Disclaimer (May 1995)	Applicable to all Purchase Orders for research and development.
DFARS 252.244- 7000	Subcontracts for Commercial Products or Commercial Services (Jan 2023)	
DFARS 252.246-7008	Sources of Electronic Parts (Jan 2023)	
DFARS 252.247-7023	Transportation of Supplies by Sea (Jan 2023)	



## CLAUSES INCORPORATED IN FULL TEXT:

### FAR 52.216-7 ALLOWABLE COST AND PAYMENT. (AUG 2018)

(a) Invoicing. (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert 30th"] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs. (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of the clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term costs includes only-

- (i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
- (ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for-

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made-

- (1) In accordance with the terms and conditions of a subcontract or invoice; and
- (2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

- (iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless-

- (i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost- reimbursement under this clause.



(c) Small business concerns. A small business concern may receive more frequent payments than every 2 weeks.

(d) Final indirect cost rates. (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) General and Administrative expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) Overhead expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) Occupancy expenses (intermediate indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) Facilities capital cost of money factors computation.

(G) Reconciliation of books of account (i.e., General Ledger) and claimed direct costs by major cost element.

(H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.

(J) Subcontract information. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.

(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).

(O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at <https://www.whitehouse.gov/wpcontent/uploads/2017/11/ContractorCo>

mpensationCapContractsAwardedBeforeJune24.pdf  
and

<https://www.whitehouse.gov/wpcontent/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf>.

- (C) Identification of prime contracts under which the contractor performs as a subcontractor.
- (D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).
- (E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).
- (F) Certified financial statements and other financial data (e.g., trial balance, compilation, review, etc.).
- (G) Management letter from outside CPAs concerning any internal control weaknesses.
- (H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.
- (I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.
- (J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.
- (K) Federal and State income tax returns.
- (L) Securities and Exchange Commission 10-K annual report.
- (M) Minutes from board of directors meetings.
- (N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.
- (O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

- (v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may-

- (A) Determine the amounts due to the Contractor under the contract; and



- (B) Record this determination in a unilateral modification to the contract.
  - (ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.
- (e) Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates-
  - (1) Shall be the anticipated final rates; and
  - (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (f) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.
- (g) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- (h) Final payment. (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
  - (2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver-
    - (i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and
    - (ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except-
      - (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
      - (B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and
      - (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

#### **FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT. (MAR 2000)**

- (a) The Government may extend the term of this contract by written notice to the Contractor within the period of performance; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 1 day before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 21 months.

(End of clause)





## **FAR 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION. (MAR 2023)**

(a) Definitions. As used in this clause-

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern-

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause.

(2) Affiliates, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

(b) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts-

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

(d) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code(s) assigned to this contract. The small business size standard corresponding to this NAICS code(s) can be found at <https://www.sba.gov/document/support-table-sizestandards>.

(e) The small business size standard for a Contractor providing an end item that it does not manufacture, process, or produce itself, for a contract other than a construction or service contract, is 500 employees, or 150 employees for information technology value-added resellers under

NAICS code 541519, if the acquisition-

(1) Was set aside for small business and has a value above the simplified acquisition threshold;

(2) Used the HUBZone price evaluation preference regardless of dollar value, unless the Contractor waived the price evaluation preference; or

(3) Was an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(f) Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and (c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see paragraph (c) of this clause), that the data have been validated



or updated, and provide the date of the validation or update.

(g) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (f) or (h) of this clause.

(h) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

- (1) The Contractor represents that it ☐ is, ☐ is not a small business concern under NAICS Code ☐ assigned to contract number ☐.
- (2) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.
- (3) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it ☐ is, ☐ is not a women- owned small business concern.
- (4) Women-owned small business (WOSB) joint venture eligible under the WOSB Program. The Contractor represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The Contractor shall enter the name and unique entity identifier of each party to the joint venture: ☐.
- (5) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The Contractor represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The Contractor shall enter the name and unique entity identifier of each party to the joint venture: ☐.
- (6) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it ☐ is, ☐ is not a veteran- owned small business concern.
- (7) [Complete only if the Contractor represented itself as a veteran-owned small business concern in paragraph (h)(6) of this clause.] The Contractor represents that it ☐ is, ☐ is not a service-disabled veteran-owned small business concern.
- (8) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that-
  - (i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and
  - (ii) It ☐ is, ☐ is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (h)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture. The Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: ☐. Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

[Contractor to sign and date and insert authorized signer's name and title.] (End of clause)

#### **FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUMS. (JUL 1990)**

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed zero or the overtime premium is paid for work-

- (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
- (2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
- (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or



(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall-

- (1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;
- (2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
- (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and
- (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

(End of clause)

#### **FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS. (JUN 2020)**

(a) Definitions. As used in this clause-

"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

#### **FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES. (JUN 2020)**

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

#### **FAR 52.244-2 SUBCONTRACTS. (JUN 2020)**

(a) Definitions. As used in this clause-

Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance



with Part 44 of the Federal Acquisition Regulation (FAR).

Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that-

- (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
- (2) Is fixed-price and exceeds-

- (i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract; or
- (ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts: See Paragraph J.

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

- (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the type of subcontract to be used.
- (iii) Identification of the proposed subcontractor.
- (iv) The proposed subcontract price.
- (v) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
- (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
- (vii) A negotiation memorandum reflecting-
  - (A) The principal elements of the subcontract price negotiations;
  - (B) The most significant considerations controlling establishment of initial or revised prices;
  - (C) The reason certified cost or pricing data were or were not required;
  - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;
  - (E) The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
  - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
  - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.



(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination-

- (1) Of the acceptability of any subcontract terms or conditions;
- (2) Of the allowability of any cost under this contract; or
- (3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: Empirical Systems Aerospace

(End of clause)

#### **FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES. (MAR 2023)**

(a) Definitions. As used in this clause-

Commercial product, commercial service, and commercially available off-the-shelf item have the meanings contained in Federal Acquisition Regulation (FAR) 2.101.

Subcontract includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial products, commercial services, or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial products or commercial services:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509), if the subcontract exceeds the threshold specified in FAR 3.1004(a) on the date of subcontract award, and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (NOV 2021), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

(v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).



- (vi) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).
- (vii) 52.219-8, Utilization of Small Business Concerns (OCT 2022) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (viii) 52.222-21, Prohibition of Segregated Facilities (APR 2015).
- (ix) 52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).
- (x) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212(a)).
- (xi) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).
- (xii) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).
- (xiii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xiv) (A) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O. 13627).  
(B) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
- (xv) 52.222-55, Minimum Wages for Contractor Workers under Executive Order 14026 (JAN 2022), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.
- (xvi) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706), if flowdown is required in accordance with paragraph (m) of FAR clause 52.222-62.
- (xvii) (A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).  
(B) Alternate I (JAN 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency- provided training is acceptable).
- (xviii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).
- (xix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (MAR 2023), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.
- (xx) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial products or commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

#### **FAR 52.248-1 VALUE ENGINEERING. (JUN 2020)**

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) Definitions. Acquisition savings, as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include -

- (1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;
- (2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and





(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

Collateral costs, as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

Collateral savings, as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

Contracting office includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

Contractor's development and implementation costs, as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

Future unit cost reduction, as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (1) throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump-sum payment, which cannot later be revised.

Government costs, as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

Instant contract, as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

Instant unit cost reduction means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

Negative instant contract savings means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

Net acquisition savings means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

Sharing base, as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

Sharing period, as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

Unit, as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

Value engineering change proposal (VECP) means a proposal that –

- (1) Requires a change to this, the instant contract, to implement; and
- (2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; provided, that it does not involve a change -
  - (i) In deliverable end item quantities only;
  - (ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or
  - (iii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

- (1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.
- (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
- (3) Identification of the unit to which the VECP applies.
- (4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.
- (5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.
- (6) A prediction of any effects the proposed change would have on collateral costs to the agency.
- (7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
- (8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) Government action. (1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing rates. If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon (1) this contract's type (fixed-price, incentive, or cost-reimbursement), (2) the sharing arrangement specified in paragraph (a) above (incentive, program requirement, or a combination as delineated in the Schedule), and (3) the source of the savings (the instant contract, or concurrent and future contracts), as follows:

<b>Contractor's Share of Net Acquisition Savings (Figures in Percent)</b>				
<b>Contract type</b>	<b>Sharing arrangement</b>			
	<b>Incentive (voluntary)</b>		<b>Program requirement (mandatory)</b>	
	<b>Instant contract rate</b>	<b>Con-current and future contract rate</b>	<b>Instant contract rate</b>	<b>Con-current and future contract rate</b>
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	<sup>1</sup> 50	<sup>1</sup> 50	25	25
Incentive (fixed-price or cost) (other than award fee)	( <sup>2</sup> )	<sup>1</sup> 50	( <sup>2</sup> )	25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	<sup>3</sup> 25	<sup>3</sup> 25	15	15
<sup>1</sup> The Contracting Officer may increase the Contractor's	<sup>2</sup> Same sharing arrangement	<sup>3</sup> The Contracting		
sharing rate to as high as 75 percent for each VECP.	as the contract's profit or fee adjustment formula.	Officer may increase the Contractor's sharing rate to as high as 50 percent for each VECP.		

(g) Calculating net acquisition savings. (1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and

offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) Contract adjustment. The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall -

- (1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;
- (2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;
- (3) Specify the Contractor's dollar share per unit on future contracts, or provide the lumpsum payment;
- (4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and
- (5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:
  - (i) Fixed-price contracts - add to contract price.
  - (ii) Cost-reimbursement contracts - add to contract fee.

(i) Concurrent and future contract savings.

- (1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firmfixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.
- (2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by (i) subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset and (ii) multiplying the result by the Contractor's sharing rate.
- (3) The Contracting Officer shall calculate the Contractor's share of future contract savings by (i) multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period, (ii) subtracting any Government costs or negative instant contract savings not yet offset, and (iii) multiplying the result by the Contractor's sharing rate.
- (4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see subparagraph (h)(3) above) and shall not be subject to subsequent adjustment.
- (5) Alternate no-cost settlement method. When, in accordance with section 48.104-4 of the Federal Acquisition Regulation (FAR), the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:
  - (i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.
  - (ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

(j) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixedprice, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

(k) Relationship to other incentives. Only those benefits of an accepted VECP not rewardable under performance, design-



to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

(l) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract-valued at or above the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments provided, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering clause of contract \_\_\_\_\_, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms unlimited rights and limited rights are defined in part 27 of the Federal Acquisition Regulation.)

(End of clause)

#### **FAR 52.252-4 ALTERATIONS IN CONTRACT. (APR 1984)**

Portions of this contract are altered as follows: Revisions or supplements after issuance of the solicitation or contract award will occur via amendment or modification.

(End of clause)

#### **FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES. (NOV 2020)**

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of (DEVIATION) after the date of the clause.

(b) The use in this solicitation or contract of any Defense Federal Acquisition Regulation Supplement (48 CFR Chapter 2) clause with an authorized deviation is indicated by the addition of (DEVIATION) after the name of the regulation.

(End of clause)

#### **FAR DEVIATIONS 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (DEVIATION 2022-O0001) (OCT 2021)**

(a) Before awarding any subcontract expected to exceed \$2 million, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$2 million, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with Federal Acquisition Regulation (FAR) 15.408, Table 15-2 (to include any



information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1(b) applies. If the \$2 million threshold for submission of certified cost or pricing data is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that, when entered into, exceeds \$2 million, the Contractor shall insert either—

- (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or
- (2) The substance of the clause at 52.215-13, Subcontractor Certified Cost or Pricing Data— Modifications (DEVIATION 2022-O0001).

(End of clause)

#### **FAR DEVIATIONS 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (DEVIATION 2023-O0002) (DEC 2022)**

(b) Definitions. As used in this contract—

HUBZone small business concern means a small business concern that meets the requirements described in 13 CFR 126.200, certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) and SAM.

Service-disabled veteran-owned small business concern—

- (1) Means a small business concern—
  - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
  - (ii) The management and daily business operations of which are controlled by one or more servicedisabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C.101 (2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria and size standards in 13 CFR part 121, including the size standard that corresponds to the NAICS code assigned to the contract or subcontract.

Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that-

- (1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by-
  - (i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and
  - (ii) Each individual claiming economic disadvantage has a net worth not exceeding \$850,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

Veteran-owned small business concern means a small business concern-

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in





the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern-

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(c) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, servicedisabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c)(1) A joint venture qualifies as small business concern if—

(i) Each party to the joint venture qualifies as small under the size standard for the solicitation; or

(ii) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under a SBA mentor-protégé program.

(2) A joint venture qualifies as—

(i) A service-disabled veteran-owned small business concern if it complies with the requirements in 13 CFR part 125; or

(ii) A HUBZone small business concern if it complies with the requirements in 13 CFR 126.616(a) through (c).

(d) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(e)(1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing DSBS at [https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm). If the subcontractor is a joint venture, the Contractor shall confirm that at least one party to the joint venture is certified by SBA as a HUBZone small business concern.

The Contractor may confirm the representation by accessing SAM.

(End of clause)



#### **DFARS 252.235-7011 FINAL SCIENTIFIC OR TECHNICAL REPORT. (DEC 2019)**

The Contractor shall-

- (a) Submit an electronic copy of the approved final scientific or technical report, not a summary, delivered under this contract to the Defense Technical Information Center (DTIC) through the web- based input system at <https://discover.dtic.mil/submit-documents/> as required by DoD Instruction 3200.12, DoD Scientific and Technical Information Program (STIP). Include a completed Standard Form (SF) 298, Report Documentation Page, in the document, or complete the web-based SF 298.
- (b) For instructions on submitting multi-media reports, follow the instructions at <https://discover.dtic.mil/submit-documents/>
- (c) Email classified reports (up to Secret) to [dtic.belvoir.da.mbx.tr@mail.smil.mil](mailto:dtic.belvoir.da.mbx.tr@mail.smil.mil). If a SIPRNET email capability is not available, follow the classified submission instructions at <https://discover.dtic.mil/submit-documents/>.

(End of clause)

#### **DFARS DEVIATIONS 252.225-7972 PROHIBITION ON THE PROCUREMENT OF FOREIGNMADE UNMANNED AIRCRAFT SYSTEMS (MAY 2020) (DEVIATION 2020-O0015)**

(a) Prohibition. In accordance with section 848 of the National Defense Authorization Act for Fiscal Year 2020, the Contractor shall not provide or use in the performance of this contract—

- (1) An unmanned aircraft system (UAS), or any related services or equipment, that—
  - (i) Is manufactured in the People’s Republic of China or by an entity domiciled in the People’s Republic of China;
  - (ii) Uses flight controllers, radios, data transmission devices, cameras, or gimbals manufactured in the People’s Republic of China or by an entity domiciled in the People’s Republic of China;
  - (iii) Uses a ground control system or operating software developed in the People’s Republic of China or by an entity domiciled in the People’s Republic of China; or
  - (iv) Uses network connectivity or data storage located in, or administered by an entity domiciled in, the People’s Republic of China; or
- (2) A system for the detection or identification of a UAS, or any related services or equipment, that is manufactured—
  - (i) In the People’s Republic of China; or
  - (ii) By an entity domiciled in the People’s Republic of China.

(b) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (b), in all subcontracts or other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

#### **DFARS DEVIATIONS 252.245-7004 REPORTING, REUTILIZATION, AND DISPOSAL (DEVIATION 2022-O0006) (NOV 2021)**

(a) Definitions. As used in this clause—

- (1) “Demilitarization” means the act of eliminating the functional capabilities and inherent military design features from DoD personal property. Methods and degree range from removal and destruction of critical features to total destruction by cutting, tearing, crushing, mangling, shredding, melting, burning, etc.
- (2) “Export-controlled items” means items subject to the Export Administration Regulations (EAR) (15 CFR parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). The term includes—
  - (i) “Defense items,” defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, etc.; and
  - (ii) “Items,” defined in the EAR as “commodities,” “software,” and “technology,” terms that are also defined in the EAR, 15 CFR 772.1.

- (3) “Ineligible transferees” means individuals, entities, or countries—
- (i) Excluded from Federal programs by the General Services Administration as identified in the System for Award Management Exclusions located at <https://sam.gov>;
  - (ii) Delinquent on obligations to the U.S. Government under surplus sales contracts;
  - (iii) Designated by the Department of Defense as ineligible, debarred, or suspended from defense contracts; or
  - (iv) Subject to denial, debarment, or other sanctions under export control laws and related laws and regulations, and orders administered by the Department of State, the Department of Commerce, the Department of Homeland Security, or the Department of the Treasury.
- (4) “Scrap” means property that has no value except for its basic material content. For purposes of demilitarization, scrap is defined as recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit, and function have been destroyed. Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable components and parts are not “scrap.”
- (5) “Serviceable or usable property” means property with potential for reutilization or sale “as is” or with minor repairs or alterations.

(b) Inventory disposal schedules. Unless disposition instructions are otherwise included in this contract, the Contractor shall complete the Plant Clearance Inventory Schedule using the Plant Clearance capability of the Government Furnished Property (GFP) Module of the Procurement Integrated Enterprise Environment (PIEE), an electronic equivalent of the SF form 1428, Inventory Disposal Schedule. Users may register for access and obtain training on the PIEE home page <https://wawf.eb.mil/piece-landing>.

- (1) The Plant Clearance Inventory Schedule requires the following:
- (i) If known, the applicable Federal Supply Code (FSC) for all items, except items in scrap condition.
  - (ii) If known, the manufacturer name for all aircraft components under Federal Supply Group (FSG) 16 or 17 and FSCs 2620, 2810, 2915, 2925, 2935, 2945, 2995, 4920, 5821, 5826, 5841, 6340, and 6615.
  - (iii) The manufacturer name, make, model number, model year, and serial number for all aircraft under FSCs 1510 and 1520.
  - (iv) Appropriate Federal Condition Codes. See Appendix 2.5 of Volume 2 of DLM 4000.25-2, Supply Standards and Procedures, edition in effect as of the date of this contract. Information on Federal Condition Codes can be obtained at <https://www.dla.mil/Portals/104/Documents/DLMS/manuals/dlm/v2/Volume2Change13Files.pdf>.
- (2) If the schedules are acceptable, the plant clearance officer shall confirm acceptance in the GFP Module Plant Clearance capability, which will transmit an acceptance email to the contractor. The electronic acceptance is equivalent to the DD Form 1637, Notice of Acceptance of Inventory.

(c) Proceeds from sales of surplus property. Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

- (1) Forwarded to the Contracting Officer;
- (2) Credited to the Government as part of the settlement agreement;
- (3) Credited to the price or cost of the contract; or
- (4) Applied as otherwise directed by the Contracting Officer.

(d) Demilitarization, mutilation, and destruction. If demilitarization, mutilation, or destruction of contractor inventory is required, the Contractor shall demilitarize, mutilate, or destroy contractor inventory, in accordance with the terms and conditions of the contract and consistent with Defense Demilitarization Manual, DoDM 4160.28-M, edition in effect as of the date of this contract. The plant clearance officer may authorize the purchaser to demilitarize, mutilate, or destroy as a condition of sale provided the property is not inherently dangerous to public health and safety.

(e) Classified Contractor inventory. The Contractor shall dispose of classified contractor inventory in accordance with applicable security guides and regulations or as directed by the Contracting Officer.

(f) Inherently dangerous Contractor inventory. Contractor inventory dangerous to public health or safety shall not be disposed of unless rendered innocuous or until adequate safeguards are provided.

(g) Contractor inventory located in foreign countries. Consistent with contract terms and conditions, property disposition shall be in accordance with foreign and U.S. laws and regulations, including laws and regulations involving export controls, host nation requirements, Final Governing Standards, and Government-to-Government agreements. The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(h) Disposal of scrap.

(1) Contractor with scrap procedures. (i) The Contractor shall include within its property management procedure, a process for the accountability and management of Government- owned scrap. The process shall, at a minimum, provide for the effective and efficient disposition of scrap, including sales to scrap dealers, so as to minimize costs, maximize sales proceeds, and, contain the necessary internal controls for mitigating the improper release of non-scrap property.

(ii) The Contractor may commingle Government and contractor-owned scrap and provide routine disposal of scrap, with plant clearance officer concurrence, when determined to be effective and efficient.

(2) Scrap warranty. The plant clearance officer may require the Contractor to secure from scrap buyers a DD Form 1639, Scrap Warranty.

(i) Sale of surplus Contractor inventory. (1) The Contractor shall conduct sales of contractor inventory (both useable property and scrap) in accordance with the requirements of this contract and plant clearance officer direction.

(2) Any sales contracts or other documents transferring title shall include the following statement:

“The Purchaser certifies that the property covered by this contract will be used in (name of country). In the event of resale or export by the Purchaser of any of the property, the Purchaser agrees to obtain the appropriate U.S. and foreign export or re-export license approval.”

(j) Restrictions on purchase or retention of Contractor inventory.

(1) The Contractor may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(i) Is a civilian employee of the DoD or the U.S. Coast Guard;

(ii) Is a member of the armed forces of the United States, including the U.S. Coast Guard; or

(iii) Has any functional or supervisory responsibilities for or within the DoD's property disposal/disposition or plant clearance programs or for the disposal of contractor inventory.

(2) The Contractor may conduct Internet-based sales, to include use of a third party.

(3) If the Contractor wishes to bid on the sale, the Contractor or its employees shall submit bids to the plant clearance officer prior to soliciting bids from other prospective bidders.

(4) The Contractor shall solicit a sufficient number of bidders to obtain adequate competition. Informal bid procedures shall be used, unless the plant clearance officer directs otherwise. The Contractor shall include in its invitation for bids, the sales terms and conditions provided by the plant clearance officer.

(5) The Contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect the property and prepare bids.

(6) For large sales, the Contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(7) In addition to mailing or delivering notice of the proposed sale to prospective bidders, the Contractor may (when the results are expected to justify the additional expense) display a notice of the proposed sale in appropriate public places, e.g., publish a sales notice on the Internet in appropriate trade journals or magazines and local newspapers.

(8) The plant clearance officer or representative will witness the bid opening. The Contractor shall submit, either electronically or manually, two copies of the bid abstract.

(9) The following terms and conditions shall be included in sales contracts involving the demilitarization, mutilation, or destruction of property:

(i) Demilitarization, mutilation, or destruction on Contractor or subcontractor premises. Item(s) \_\_\_\_ require demilitarization, mutilation, or destruction by the Purchaser. Insert item number(s) and specific



demilitarization, mutilation, or destruction requirements for item(s) shown in Defense Demilitarization Manual, DoDM 4160.28-M, edition in effect as of the date of this contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(ii) Demilitarization, mutilation, or destruction off Contractor or subcontractor premises.

(A) Item(s) \_\_\_\_ require demilitarization, mutilation, or destruction by the Purchaser. Insert item number(s) and specific demilitarization, mutilation, or destruction requirements for item(s) shown in Defense Demilitarization Manual, DoDM 4160.28-M, edition in effect as of the date of this contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(B) Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been accomplished and verified by a Government representative. Demilitarization will be accomplished as specified in the sales contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(C) The Purchaser agrees to assume all costs incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.

(iii) Failure to demilitarize. If the Purchaser fails to demilitarize, mutilate, or destroy the property as specified in the contract, the Contractor may, upon giving 10 days written notice from date of mailing to the Purchaser—

(A) Repossess, demilitarize, and return the property to the Purchaser, in which case the Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property;

(B) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor; or

(C) Repossess and resell the property under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor.

(End of clause)