



PRIME FLOWDOWN CLAUSES ESAero

If E163 Flowdown Document is specified in this Purchase Order, the following terms apply to this order:

Flowdown Document

Prime Contract Number:

DPAS Rating:

Date of Creation: February 21, 2025

Buyer hereby provides notice to Seller, which Seller hereby acknowledges and accepts, that this PO or RFP is issued by Buyer under a Company Funded Request (“CFR”) in anticipation of a United States Government (“USG”) prime contract being issued to Buyer or Buyer’s customer at a higher tier. Therefore, 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.

ADDITIONAL CLAUSES AND REQUIREMENTS MAY APPLY TO SELLER AFTER BUYER OR ITS CUSTOMER RECEIVES THE USG PRIME AWARD AND THE PARTIES AGREE THE BUYER SHALL INCORPORATE ANY SUCH CLAUSES AND REQUIREMENTS INTO THIS PO.



CLAUSES INCORPORATED BY REFERENCE

FAR Part 12 commercial clauses may apply to this order.

FAR	TITLE	DATE
52.204-2	Security Requirements	MAR 2021
52.204-14	Service Contract Reporting Requirements	OCT 2016
52.204-21	Basic Safeguarding of Covered Contractor Information Systems	NOV 2021
52.215-23	Limitations on Pass-Through Charges	JUN 2020
52.216-7	Allowable Cost and Payment (<i>Fill-in: 30 days</i>)	AUG 2018
52.222-2	Payment for Overtime Premiums (<i>requires fill in</i>)	JUL 1990
52.225-13	Restrictions on Certain Foreign Purchases	FEB 2021
52.225-19	Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States	MAY 2020
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	MAR 2023
52.240-1	Prohibition on Unmanned Aircraft Systems Manufactured or Assembled by American Security Drone Act-Covered Foreign Entities	NOV 2024
52.204-2	Security Requirements	MAR 2021
52.204-14	Service Contract Reporting Requirements	OCT 2016
52.245-1	Government Property	SEP 2021
52.245-9	Use and Change	APR 2012
52.246-3	Inspection of Supplier – Cost-Reimbursement	MAY 2001
52.249-6	Termination (Cost-Reimbursement)	MAY 2004

GENERAL SERVICES ACQUISITION MANUAL (GSAM), CLAUSES INCORPORATED BY REFERENCE

The full text of a clause may be accessed electronically at the GSAM website:

www.acquisition.gov/gsam/gsam.html/

GSAM	TITLE	DATE
552.204-9	Personal Identity Verification Requirements	APR 2023
552.215-70	Examination of Records by GSA	JUN 2016
552.232-25	Prompt Payment (Deviation FAR 52.232-25)	JAN 2022
552.232-39	Unenforceability of Unauthorized Obligations (Deviation FAR 52.232-39)	FEB 2018
552.232-78	Commercial Supplier Agreements – Unenforceable Clauses	FEB 2018
552.237-71	Qualification of Employees	MAY 1989



**DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) CLAUSES
INCORPORATED BY REFERENCE**

The full text of a clause may be accessed electronically at the Defense Pricing and Contracting website:
www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html

DFARS	TITLE	DATE
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	JAN 2023
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	DEC 2022
252.203-7004	Display of Hotline Posters	JAN 2023
252.204-7000	Disclosure of Information	OCT 2016
252.204-7004	Antiterrorism Awareness Training for Contractors	JAN 2023
252.204-7009	Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information	JAN 2023
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	JAN 2023
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support	JAN 2023
252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services	JAN 2023
252.204-7020	NIST SP 800-171 DoD Assessment Requirements	JAN 2023
252.204-7023	Reporting Requirements for Contracted Services	JUL 2021
252.211-7003	Item Unique Identification and Valuation	JAN 2023
252.211-7008	Use of Government Assigned Serial Numbers	SEP 2010
252.222-7006	Restrictions on the Use of Mandatory Arbitration Agreements	JAN 2023
252.223-7006	Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials – Basic	SEP 2014
252.225-7004	Report of Intended Performance Outside the United States and Canada – Submission after Award	OCT 2020
252.225-7007	Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies	DEC 2018
252.225-7013	Duty-Free Entry	DEC 2022
252.225-7040	Contractor Personnel Supporting U.S. Armed Services Deployed Outside the United States	OCT 2015
252.225-7043	Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States	JUN 2015
252.225-7048	Export-Controlled Items	JUN 2013
252.225-7056	Prohibition Regarding Business Operations with the Maduro Regime	JAN 2023

DFARS	TITLE	DATE
252.225-7058	Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China	JAN 2023
252.227-7013	Rights in Technical Data—Other Than Commercial Products and Commercial Services	MAR 2023
252.227-7014	Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation	MAR 2023
252.227-7015	Technical Data-Commercial Products and Commercial Services	MAR 2023
252.227-7016	Rights in Bid or Proposal Information	JAN 2023
252.227-7019	Validation of Asserted Restrictions—Computer Software	JAN 2023
252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	JAN 2023
252.227-7026	Deferred Delivery of Technical Data or Computer Software	APR 1988
252.227-7027	Deferred Ordering of Technical Data or Computer Software	APR 1988
252.227-7030	Technical Data—Withholding of Payment	MAR 2000
252.227-7037	Validation of Restrictive Markings on Technical Data	JAN 2023
252.228-7005	Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.	NOV 2019
252.239-7000	Protection Against Compromising Emanations	OCT 2019
252.239-7010	Cloud Computing Services	JAN 2023
252.239-7016	Telecommunications Security Equipment, Devices, Techniques, and Services	DEC 1991
252.244-7000	Subcontracts for Commercial Products of Commercial Services	JAN 2023
252.244-7001	Contractor Purchasing System Administration	MAY 2014
252.246-7001	Warranty of Data - Basic	MAR 2014
252.244-7000	Subcontracts for Commercial Products of Commercial Services	JAN 2023
252.244-7001	Contractor Purchasing System Administration	MAY 2014
252.246-7001	Warranty of Data - Basic	MAR 2014
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System	JAN 2023
252.246-7008	Sources of Electronic Parts	JAN 2023
252.247-7023	Transportation of Supplies by Sea	JAN 2023



FAR CLAUSES INCORPORATED BY FULL TEXT

FAR 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)

(a) *Definitions.* As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g.,

connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

FAR 52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION (JUN 2023)

(a) *Definitions.* As used in this clause—

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)—

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) Of that equipment; or

(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.

(b) *Prohibition.* Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this contract, including equipment provided by the Contractor’s employees; however, this prohibition does not apply if the Contracting Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M-23-13.



(c) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed six months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days.

(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 30 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days 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 84 months.

(End of clause)

52.229-8 TAXES – FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)

- a. Any tax or duty from which the United States Government is exempt by agreement with the Government of any nation within the AOR of AFRICOM, CENTCOM, EUCOM, NORTHCOM, PACOM, and SOUTHCOM - or from which the Contractor or any subcontractor under this contract is exempt under the laws of any nation within the AOR of AFRICOM, CENTCOM, EUCOM, NORTHCOM, INDOPACOM, and SOUTHCOM - shall not constitute an allowable cost under this contract.
- b. If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

(End of clause)

DFARS CLAUSES INCORPORATED BY FULL TEXT

DFARS 252.225-7972 PROHIBITION ON THE PROCUREMENT OF FOREIGN-MADE UNMANNED AIRCRAFT SYSTEMS (DEVIATION 2020-O0015) (MAY 2020)

(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 252.225-7993 PROHIBITION ON PROVIDING FUNDS TO THE ENEMY (DEVIATION 2020-O0022) (AUG 2020)

(a) The Contractor shall—

(1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this contract are provided directly or indirectly (including through subcontracts) to a person or entity who is actively opposing United States or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities;

(2) Check the list of prohibited/restricted sources in the System for Award Management (SAM) at www.sam.gov—

- (i) Prior to subcontract award; and
- (ii) At least on a monthly basis; and

(3) Terminate or void in whole or in part any subcontract with a person or entity listed in SAM as a prohibited or restricted source pursuant to section 841 of the National Defense

Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), as amended, unless the Contracting Officer provides to the Contractor written approval of the head of the contracting activity to continue the subcontract.

(b) The Head of the Contracting Activity has the authority to—

(1) Terminate this contract for default, in whole or in part, if the Head of the Contracting Activity determines in writing that the contractor failed to exercise due diligence, as required by paragraph (a) of this clause; or

(2)(i) Void this contract, in whole or in part, if the Head of the Contracting Activity determines in writing that any funds received under this contract have been provided directly or indirectly to a person or entity who is actively opposing United States or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.



(ii) When voided in whole or in part, a contract is unenforceable as contrary to public policy, either in its entirety or with regard to a segregable task or effort under the contract, respectively.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts, including subcontracts for commercial items, under this contract that have an estimated value over \$50,000 and will be performed outside the United States and its outlying areas.

(End of clause)

DFARS 252.225-7975 ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS (DEVIATION 2020-O0022) (AUG 2020)

(a) In addition to any other existing examination-of-records authority, the Government is authorized to examine any records of the Contractor and its subcontractors to the extent necessary to ensure that funds, including supplies and services, available under this contract are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(b) The substance of this clause, including this paragraph (b), is required to be included in subcontracts, including subcontracts for commercial items, under this contract that have an estimated value over \$50,000 and will be performed outside the United States and its outlying areas.

(End of clause)

See Contractor Operations for guidance regarding applicability of DFARS 252.228-7001 and 252.228-7007.

DFARS 252.228-7007 PUBLIC AIRCRAFT AND STATE AIRCRAFT OPERATIONS— LIABILITY (MAR 2023)

(a) Definitions. As used in this clause—

“Civil aircraft” means an aircraft other than a public aircraft or state aircraft.

“Public aircraft” means an aircraft that meets the definition in 49 U.S.C. 40102(a)(41) and the qualifications in 49 U.S.C. 40125. Specifically, a public aircraft means any of the following:

(1) An aircraft used only for the Government, except as provided in paragraphs (5) and (7) of this definition.

(2) An aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration, except as provided in paragraph (7) of this definition.

(3) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(4) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(5) An aircraft owned or operated by the armed forces or chartered to provide transportation or other commercial air service to the armed forces under the conditions specified by 49 U.S.C. 40125(c). In the preceding sentence, the term “other commercial air service” means an aircraft operation that—

(i) Is within the United States territorial airspace;

(ii) The Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public; and



(iii) Must comply with all applicable civil aircraft rules under title 14, Code of Federal Regulations.

(6) An unmanned aircraft that is owned and operated, or exclusively leased for at least 90 continuous days, by an Indian Tribal government, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), except as provided in paragraph (7) of this definition.

(7) As described in 49 U.S.C. 40125(b), an aircraft described in paragraph (1), (2), (3), or (4) of this definition does not qualify as a public aircraft when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

“Public aircraft operation” means operation of an aircraft that meets the legal definition of public aircraft established in 49 U.S.C. 40102(a)(41) and the legal qualifications for public aircraft status outlined in 49 U.S.C. 40125.

“State aircraft” means an aircraft operated by the Government for sovereign, noncommercial purposes such as military, customs, and police services. Military aircraft are afforded status as state aircraft. In very rare circumstances, DoD-contracted aircraft may be designated, in writing, by a responsible Government official pursuant to DoD Directive 4500.54E, DoD Foreign Clearance Program, to be operated in state aircraft status, and such status cannot be deemed without a written designation by an authorized Government official.

(b) Combined regulation/instruction. Upon award, for contract performance to be conducted as a public aircraft operation, the Contractor shall be bound by the operating procedures contained in the combined regulation/instruction entitled “Contractor’s Flight and Ground Operations” (Air Force Instruction 10220, Army Regulation 95-20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210-1 (Series)) in effect on the date of contract award.

(c) Contractor liability for operations for contract performance conducted as public aircraft operations or state aircraft operations.

(1) The Contractor assumes responsibility for all damage or injury to persons or property, including the Contractor’s employees and property, and Government personnel and property, occasioned through the use, maintenance, and operation of the Contractor’s aircraft or other equipment by, or the action of, the Contractor or the Contractor’s employees and agents.

(2) The Contractor, at the Contractor’s expense, shall maintain adequate public liability and property damage insurance, including hull insurance for the Contractor’s aircraft, during the duration of this contract, insuring the Contractor against all claims for injury or damage.

(3) The Contractor shall maintain workers’ compensation and other legally required insurance with respect to the Contractor’s own employees and agents.

(4) The Government will in no event be liable or responsible for damage or injury to any person or property occasioned through the use, maintenance, or operation of any aircraft or other equipment by, or the action of, the Contractor or the Contractor’s employees and agents in performing under this contract, and the Government shall be indemnified and saved harmless against claims for damage or injury in such cases.

(End of clause)

DFARS 252.237-7023 CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010)

(a) Definitions. As used in this clause—

(1) “Essential contractor service” means a service provided by a firm or individual under contract to DoD to support mission-essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales



customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations has the

potential to be seriously impaired by the interruption of these services, as determined by the appropriate functional commander or civilian equivalent.

(2) “Mission-essential functions” means those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities, as determined by the appropriate functional commander or civilian equivalent. Failure to perform or sustain these functions would significantly affect DoD’s ability to provide vital services or exercise authority, direction, and control.

(b) The Government has identified all or a portion of the contractor services performed under this contract as essential contractor services in support of mission essential functions. These services are listed in Section J, Attachment Q.

(c)(1) The Mission-Essential Contractor Services Plan submitted by the Contractor, is incorporated in this contract.

(2) The Contractor shall maintain and update its plan as necessary. The Contractor shall provide all plan updates to the Contracting Officer for approval.

(3) As directed by the Contracting Officer, the Contractor shall participate in training events, exercises, and drills associated with Government efforts to test the effectiveness of continuity of operations procedures and practices.

(d)(1) Notwithstanding any other clause of this contract, the contractor shall be responsible to perform those services identified as essential contractor services during crisis situations (as directed by the Contracting Officer), in accordance with its Mission-Essential Contractor Services Plan.

(2) In the event the Contractor anticipates not being able to perform any of the essential contractor services identified in accordance with paragraph (b) of this section during a crisis situation, the Contractor shall notify the Contracting Officer or other designated representative as expeditiously as possible and use its best efforts to cooperate with the Government in the Government’s efforts to maintain the continuity of operations.

(e) The Government reserves the right in such crisis situations to use Federal employees, military personnel or contract support from other contractors, or to enter into new contracts for essential contractor services.

(f) Changes. The Contractor shall segregate and separately identify all costs incurred in continuing performance of essential services in a crisis situation. The Contractor shall notify the Contracting Officer of an increase or decrease in costs within ninety days after continued performance has been directed by the Contracting Officer, or within any additional period that the Contracting Officer approves in writing, but not later than the date of final payment under the contract. The Contractor’s notice shall include the Contractor’s proposal for an equitable adjustment and any data supporting the increase or decrease in the form prescribed by the Contracting Officer. The parties shall negotiate an equitable price adjustment to the contract price, delivery schedule, or both as soon as is practicable after receipt of the Contractor’s proposal.

(g) The Contractor shall include the substance of this clause, including this paragraph (g), in subcontracts for the essential services.

(End of Clause)