

**EMPIRICAL SYSTEMS AEROSPACE PROJECT-SPECIFIC ATTACHMENT**

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The following Buyer's terms and conditions are revised to include the following additional provisions for this Purchase Order. These terms and conditions replace any reference to any FAR or DFARS clauses in T001, T003, or T004. If any of the following clauses do not apply to this Purchase Order, such clauses are considered to be self-deleting.

The following FAR/DFARS clauses are hereby incorporated:

- FAR 52.227-11 Patent Rights—Ownership by the Contractor (May 2014)
- FAR 52.227-1 Authorization and Consent (Dec 2007)
- FAR 52.227-1 Alt I Authorization and Consent (Apr 1984)
- FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)
- FAR 52.227-3 Patent Indemnity (Apr 1984)
- DFARS 252.227-7013 Rights in Technical Data—Noncommercial Items (Feb 2014)
- DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Feb 2014)
- DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting (Oct 2016)

If a Purchase Order involves Arms, Ammunition and Explosives (AA&E) or other Hazardous Material, the following mandated FAR, DFARS and local clauses are hereby incorporated (see also Article XIV: Safety and Environmental):

- DFARS 252.223-7001 Hazard Warning Labels
- DFARS 252.223-7002 Safety Precautions for Ammunition and Explosives
- DFARS 252.223-7003 Change in Place of Performance
- DFARS 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials
- DFARS 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition and Explosives
- FAR 52.223-3 Identification and Material Safety Data
- FAR 52.247-29 F.O.B. Origin
- ARDEC 18 Physical Security Standards for Sensitive Items (full text included as addendum)
- ARDEC 169 Explosive Material Handling (full text included as addendum)
- ARDEC 66 Safety Requirements for Hazardous Items (full text included as addendum)
- ARDEC 77 Material Safety Data Sheets (full text included as addendum)

If a Purchase Order requires authorizing the Subcontractor's personnel to accompany United States Armed Forces deployed outside the United States in contingency operations; humanitarian or peacekeeping operations; or other military operations or exercises, when designated by the combatant commander, the following mandated DFARS clause is hereby incorporated (see also Article XV: OPSEC):

- DFARS 252.225-7040 Contractor Personnel Authorized to Accompany US Armed Forces Deployed Outside the United States

If a Purchase Order requires Performance or Delivery in a Foreign Country, the following mandated DFARS clause is hereby incorporated (see also Article XV: OPSEC):

- DFARS 252.225-7043 Antiterrorism/Force Protection for Defense Contractors outside the United States

If a Purchase Order involves Government Furnished Property (GFP), the following mandated FAR/DFARS clauses are hereby incorporated (see also Article XVI: Title and Disposition of Property):

- FAR 52.245-1 Government Property
- FAR 52.245-9 Use and Charges
- DFARS 252.211-7007 Reporting of Government-Furnished Property
- DFARS 252.245-7001 Tagging, Labeling, and Marking of Government-Furnished Property

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- DFARS 252.245-7002 Reporting Loss of Government Property
- DFARS 252.245-7003 Contractor Property Management System Administration
- DFARS 252.245-7004 Reporting, Reutilization, and Disposal

The following referenced articles, sections and paragraphs are as written in the Prime Contract; articles, sections and paragraphs not applicable to the Seller are listed as "Reserved".

- Article I: Scope of the Agreement– Section E of this Article applies only if the Seller will be required to provide input into the listed reports or has NTDC Subcontractors.
- Article II: Term of the Agreement
- Article III: Reserved
- Article IV: Reserved
- Article V: Obligation and Payment
- Article VI: Reserved
- Article VII: Reserved
- Article VIII: Confidential Information
- Article IX: Publication and Academic Rights
- Article X: Patent Rights
- Article XI: Data Rights and Copyrights
- Article XII: Export Control
- Article XIII: Security
- Article XIV: Safety and Environmental
- Article XV: OPSEC
- Article XVI: Title and Disposition of Property
- Article XVII: Reserved
- Article XVIII: Duty-Free Entry
- Article XIX: Reserved
- Article XX: Reserved
- Article XXI: Representations and Warranties
- Article XXII: Reserved
- Article XXIII: Reserved
- Article XXIV: Reserved

**Article I: Scope of the Agreement**

- A. Reserved
- B. Definitions

“Buyer” means Empirical Systems Aerospace

“Milestone” means a scheduled event signifying the completion of a major deliverable or a set of related deliverables as identified in the Purchase Order Supplier Statement of Work.

“NTDC” means non-traditional defense contractors as defined by 10 U.S.C. § 2371b, as amended.

“Parties” means the Buyer or the Seller where collectively identified, and “Party” where each entity is individually identified.

“Prime Contract” means the Other Transaction Authority (OTA) agreement between the Government and the Buyer.

“Purchase Order” refers to the Purchase Order between the Buyer and the Seller that contains all the contractual information regarding the scope of work, project specific terms and conditions, and payment information for the project.

“Seller” means the Subcontractor/Vendor. In Article XI: Data Rights and Copyrights, the Seller is referred to as “subcontractor”.

- C. Reserved
- D. Reserved
- E. Reports

The Seller shall maintain records of the activities performed and funds expended under each awarded Purchase Order. As such, the following Reports are required as part of the performance of each awarded Purchase Order.

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The Seller awarded a Purchase Order shall prepare and submit the following Reports to the Buyer for each Purchase Order they have been awarded.

1. Quarterly Report: The Quarterly Report has two major sections – Technical Status and Business Status.
  - a. Technical Status: Details the technical progress to date of the Purchase Order and reports all problems, technical issues or major developments during the reporting period. At a minimum, each report shall include:
    - i. A comparison of actual accomplishments with the goals and objectives established for that period.
    - ii. Reasons why established goals and objectives were not met, if appropriate.
    - iii. Other pertinent information, including, when appropriate, analysis and explanation of cost variance.
    - iv. New discoveries, inventions or potential patents, as well as the specific applications or technology transfers stemming from the discoveries, inventions or potential patents. Such disclosures shall be in a form that does not compromise any intellectual property or patent rights.
    - v. A cumulative chronological list of written publications in technical journals, including those in press and manuscripts in preparation for later submission. Indicate likely journals, authors and titles.
    - vi. Any other papers or information presented at meetings, conferences, or seminars.
  - b. Business Status: Details the resource status of the Purchase Order. This will include a quarterly accounting of expenditures and participant cost share contributions.
2. Final Report: The Seller shall submit a Final Report to the Prime within fifteen (15) calendar days of completion of a Purchase Order. The Final Report will provide a comprehensive, cumulative, and substantive summary of the progress and significant accomplishments achieved during the total period of performance. Each of the topics described above shall be addressed as appropriate. The Final Report will include a final accounting of cumulative expenditures, including the status of the cost share contributions of all participants. The Prime shall submit the Final Report to the customer, who will have thirty (30) calendar days to provide comments or request that additional information be included for final approval. The Final Report is also required in the event of a termination in accordance with Article II, Section C.
3. The Quarterly Report is due to the Buyer on the 10<sup>th</sup> of March, June, September and December, regardless of the execution or start date of the Purchase Order.

**Article II: Term of the Agreement**

- A. Reserved
- B. Reserved
- C. Termination Provisions

Subject to a reasonable determination that the program, or a project funded under the program, will not produce beneficial results commensurate with the expenditure of resources, the Government, in its sole discretion, may terminate the Buyer's performance of work, in whole or in part, if they determine that a termination is in the Government's best interest. The Buyer shall terminate by delivering to the Seller a Notice of Termination specifying the extent of the termination and the effective date.

After receipt of a Notice of Termination, and except as directed by the Buyer, the Seller, shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

1. Stop work and direct the subrecipients/subcontractors stop work as specified in the notice.
2. Place no further orders for materials, services, or facilities, except as necessary to complete the continued portion of the Seller award.
3. Terminate all orders to the extent they relate to the work terminated.
4. Assign to the Government, as directed by the Buyer, all right, title, and interest of the Seller under the orders terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

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5. With approval or ratification to the extent required by the Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of orders; the approval or ratification will be final for purposes of this clause.
6. As directed by the Buyer, the Seller under the terminated portion of the Seller award must provide a transfer of title to the following where applicable and deliver to the Government:
  - a. The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
  - b. The completed or partially completed plans, drawings, information, and other property that, if the order had been completed, would have been required to be furnished to the Government.
7. Complete performance of any work not terminated, if applicable.
8. Take any action that may be necessary, or that the Buyer may direct, for the protection and preservation of the property related to this project that is in the possession of the Seller and in which the Government has or may acquire an interest.
9. Use its best efforts to sell, as directed or authorized by the Buyer, any property of the types referred to under Article II, Section C, Termination Provisions, (6)(a) and (b); provided, however, that the Seller:
  - a. Is not required to extend credit to any purchaser, and
  - b. May arrange to acquire the property under the conditions prescribed by, and at prices approved by, the Government.

The proceeds of any transfer or disposition of project property will be applied to reduce any payments to be made by the Buyer under that particular project, including credited to the price or cost of the work, or paid in any other manner directed by the Government.

In the event of a termination of the Purchase Order, the Government shall retain or assume all patent rights as described in Article X, Patent Rights, and all rights in data as described in Article XI, Data Rights and Copyrights. Failure of the parties to agree to an equitable adjustment shall be resolved pursuant to Article VII, Disputes.

#### D. Termination Costs

The Buyer shall negotiate with the Government and the Seller in good faith an equitable reimbursement for appropriate work performed under the Purchase Order. Costs incurred by the Seller awarded a Purchase Order after receipt of a Notice of Termination are not allowable unless the Buyer expressly authorizes them as part of the termination activities.

#### E. Stop Work Order

As directed by the Government, the Buyer may, at any time, by written order to the Seller, require the Seller awarded a Purchase Order to stop all, or any part, of the work called for under any Purchase Order for a period of ninety (90) calendar days after the written order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this Section. Upon receipt of the Stop Work Order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of ninety (90) calendar days after the stop work order is delivered to the Seller, or within any extension of that period to which the Government and the Buyer have agreed, the Buyer shall either:

1. Cancel the stop work order, or
2. Terminate, in whole or in part, the work covered by the Purchase Order.

If a Stop Work Order issued under this clause is canceled, the Seller awarded the Purchase Order shall resume work. The Buyer may make an equitable adjustment in the delivery schedule or Purchase Order cost or price, or both. The Buyer will modify the Purchase Order accordingly if:

1. The Stop Work Order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of the Purchase Order; and
2. The Seller awarded the Purchase Order asserts its right to the adjustment within twenty (20) calendar days after the end of the period of work stoppage; provided that, if the Government decides the facts justify the action, the Government through the Buyer may receive and act upon a proposal submitted at any time before final payment under the Prime award.

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If a Stop Work Order is not canceled and the work covered by the Purchase Order is terminated in accordance with Article II, Section C, Termination Provisions, the Buyer shall work with the Seller to negotiate an equitable reimbursement in accordance with Article II, Section D, Termination Costs.

**F. Material Breach**

If a Seller materially fails to comply with the provisions of this Purchase Order, the Buyer, after the issuance of a Cure Notice, may take one or more of the following actions:

1. Withhold payments until the breach is corrected by the Seller;
2. Disallow all or part of the cost of the activity or action causing the breach;
3. Terminate the Purchase Order in whole or in part; or
4. Take any other legally available remedies.

**G. Closeout Procedures**

1. If a Purchase Order is completed or terminated, the Buyer shall initiate closeout of the Purchase Order within thirty (30) calendar days after the Buyer's acceptance of the final deliverable, unless otherwise agreed to by the Buyer. To the maximum extent practicable, closeout procedures similar to FAR 42.708 (Quick-Closeout Procedures) shall be followed.
2. Unless otherwise directed by the Buyer, Sellers awarded a Purchase Order, who are subject to indirect rate submission to a federal administration office, shall follow the following process. Within 120 days from the Seller's last incurred cost submission to the federal administration office covering the fiscal years applicable to the Purchase Order, the Seller shall submit closeout documents to the Buyer.
3. In the event that the Seller awarded a Purchase Order fails to submit the closeout documents within the timeframes required, the Government may unilaterally closeout the Prime award, and the subsequent Purchase Orders. Such a failure shall equate to the Seller's express agreement that the amounts paid pursuant to the Purchase Order, up to the date of the notice of the unilateral closeout, shall constitute the full, complete and final extent of the any further financial obligation to the Seller under the Purchase Order. The Seller will release and discharge the Buyer, its officers, agents and employees, of and from any and all liabilities, obligations, claims, and demands whatsoever arising under or relating to the Purchase Order and expressly authorizes the Buyer to rely on the foregoing representations and release in connection with the Purchase Order. The Buyer will refund the balance of obligated funds that were not paid to the Seller.

**Article III: Reserved****Article IV: Reserved****Article V: Obligation and Payment**

- A. Reserved
- B. Reserved
- C. Reserved
- D. Reserved
- E. Reserved
- F. Reserved
- G. Reserved
- H. Reserved
- I. Reserved

**J. Financial Records and Reports**

The Seller, shall maintain adequate records to account for Federal Funds received under each awarded Purchase Order. The Seller's financial records related to each awarded Purchase Order are subject to examination or audit by the Government for a period not to exceed three (3) years after expiration of the term of the Purchase Order. The Seller's relevant financial records must be available and subject to examination or audit for a period not to exceed three (3) years after final payment of the Seller's project. The Government, or designee, shall have direct access to sufficient records and information of the Seller to ensure full accountability for all funding under each awarded Purchase Order.

Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party. Any audit required during the course of this Purchase Order may be conducted by the Government using Government auditors or, at the request of the Seller, by the Seller's external CPA accounting firm at the expense of the Seller. This clause does not alleviate the requirements for financial reports in accordance with Article I, Section E, Reports.

**Article VI: Reserved**

**Article VII: Reserved**

**Article VIII: Confidential Information**

The current Proprietary Information Agreement in effect is incorporated herein by reference.

**A. Definitions**

"Confidential or Proprietary Information" means information and materials which are designated as Confidential, Proprietary or as a Trade Secret in writing, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if the Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. "Confidential Information" also includes any information and materials considered a Trade Secret by the Disclosing Party on its own behalf or on behalf of their subcontractors or suppliers.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic, engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, regardless of how it is stored, compiled, or memorialized, including physically, electronically, graphically, photographically, or in writing if:

1. The owner has taken reasonable measures to keep such information secret; and
2. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by the public.

**B. Exchange of Information**

The Government may from time to time disclose Government Confidential Information to the Buyer for use by the Buyer, their subcontractors or suppliers, in connection with the Annual Technology Plan and similar processes or particular projects. The Buyer, on behalf of their subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with a project proposal or performance under a Prime Contract. Neither Party shall be obligated to transfer Confidential or Proprietary Information or Trade Secrets independently developed by the Parties, absent an express written agreement between the Parties providing the terms and conditions for the disclosure.

**C. Confidentiality and Authorized Disclosure**

The Receiving Party agrees, to the extent permitted by law, that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party, and that, unless otherwise agreed by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated to third parties or used by for any purposes other than in connection with specified project efforts and the licenses granted in Article X, Patent Rights, and Article XI, Data Rights and Copyrights. The aforementioned shall not extend to information or materials that:

1. Are received or become available without restriction to the Receiving Party under a proper, separate agreement;
2. Are not identified with a suitable notice or legend;

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3. Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure, as demonstrated by prior written records;
4. Are or later become part of the public domain through no fault of the Receiving Party;
5. Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure;
6. Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets, as evidenced by written records; or
7. Are required by law or regulation to be disclosed, provided, however, that the Receiving Party has given written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent further disclosure of such information.

**D. Return of Proprietary Information**

Upon the request of either Party, the other Party shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets that were disclosed. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

**E. Term**

Except to the extent covered by and subject to other provisions of this subcontract, the obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of the subcontract under which the information was provided.

The Seller shall flow down the requirements of this Article to their respective personnel, member entities, agents and subcontractors at all levels.

**Article IX: Publication and Academic Rights****A. Use of Information**

Subject to the provisions of Article VIII, Confidential Information, and other applicable provisions of this Purchase Order, the Government, Buyer and the Sellers awarded Purchase Orders shall have the right to publish or otherwise disclose information or data developed by the Government, the Buyer, or the respective Seller under the Purchase Order. The Sellers awarded a Purchase Order shall include an appropriate acknowledgement of the sponsorship of the projects by the Government in any such publications or disclosures.

**B. Classified Research Projects**

If a desired publication includes information relating to a Classified project, the provisions of the DoD Security Agreement (DD Form 441), Certificate Pertaining to Foreign Interests (SF 328), and the DoD Contract Security Classification Specification (DD Form 254) apply.

**C. Review or Approval of Technical Information for Public Release**

At least **seventy-five (75)** calendar days prior to the scheduled release date, the Seller awarded a Purchase Order, shall submit to the Buyer at least one (1) copy of the information to be released along with the required public release form. The Buyer will route the information to the cognizant Government Public Affairs Office for review and approval. The Government is hereby designated as the approval authority for such releases and the Buyer will provide any such obtained approval documentation.

Where a Seller is an Academic Research Institution, who is performing fundamental research on campus, the Buyer shall require such Seller to provide papers and publications to the Buyer to submit to the Government for review and comment at least **seventy-five (75)** calendar days prior to the formal paper or publication submission. However, if that Academic Research Institution incorporates into its research results or publications artifacts produced by and provided to these institutions by other (non-educational institution) subcontractors (or has authors listed on the paper who are not employees or students of the Academic Research Institution), then the procedures in the preceding paragraph shall be followed.

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Parties to this Purchase Order are responsible for assuring that an acknowledgment of Government support will appear in any publication of any material based on or developed under the awarded subcontract, using the following acknowledgement terms:

“This effort was sponsored by the U.S. Government under the DoD Ordnance Technology Consortium (DOTC) Other Transaction Agreement (OTA) (W15QKN-18-9-1008) with the National Armaments Consortium (NAC). The U.S. Government is authorized to reproduce and distribute reprints for Government purposes notwithstanding any copyright notation herein.”

The Seller to this Purchase Order is also responsible for assuring that every publication of material based on or developed under a Purchase Order contains the following disclaimer:

“The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government.”

The Seller shall flow down these requirements to all tiers.

**D. Notices**

To avoid disclosure of Confidential Information or Trade Secrets belonging to the Government, or the Buyer, or the loss of patent rights as a result of premature public disclosure of patentable information, the Seller that is proposing to publish or disclose such information shall provide advance notice to the Buyer and identify such other parties, including the Government, as may have an interest in the information. The Buyer shall notify such parties at least thirty (30) calendar days prior to any Seller submission for publication or disclosure, together with any and all materials intended for publication or disclosure relating to technical reports, data, or information developed by the parties during the term of and pursuant to this subcontract. The Government, via the Buyer, or Buyer must notify the Seller of any objection to disclosure within the forty-five (45) day period, or the Seller shall be deemed authorized to make the disclosure.

**Article X: Patent Rights****A. Allocation of Principal Rights**

Patent Rights under this Purchase Order or subsequent Purchase Orders shall be determined in accordance with FAR 52.227-11 (Patent Rights—Ownership by the Contractor (May 2014)), which is hereby incorporated by reference with the following modifications:

1. The Government shall have the initial option to retain title to each subject invention made only by Government employees or made jointly by the Seller and Government employees. The Government, via the Buyer, shall promptly notify the Seller upon making this election, and agrees to timely file patent applications at its own expense and agrees to grant to the Seller a non-exclusive, irrevocable paid-up license to practice the subject invention throughout the world.
2. The Seller shall elect in writing whether or not to retain ownership of any subject invention by notifying the Buyer within five (5) months of disclosure. In any case where publication, on sale, or public use has initiated the one (1) year statutory period during which valid patent protection can be obtained in the United States, the period of election of title shall no later than forty-five (45) calendar days prior to the end of the statutory period.
3. The Seller may request an extension to the five (5) month period for ownership election. The Government, via the Buyer, may, in their discretion, extend the ownership election period, but the ownership election period shall not exceed two (2) years from the disclosure of the subject invention.

FAR 52.227-1 (Authorization and Consent (Dec 2007)) and Alternate I (Apr 1984) and FAR 52.227-2 (Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)) are also incorporated by reference under this Agreement. If FAR 52.227-3 3 (Patent Indemnity (Apr 1984)) is applicable, it shall be incorporated into the Purchase Order.

**B. Patent Reports**

All Purchase Orders shall require the use of DD Form 882, Report of Inventions and Subcontracts, to file an invention report for every Purchase Order. Negative reports are also required. The Seller shall provide the Buyer, with an Annual



Invention Report at the close of each performance year of each Purchase Order and at the end of the term of each Purchase Order.

**C. Final Payment**

Final payment of a Purchase Order cannot be made until the Seller delivers to the Buyer all disclosures of subject inventions and confirmatory instruments required by this Purchase Order.

**D. Lower Tier Agreements**

The Seller shall include this Article, suitably modified in all lower tier agreements, regardless of tier, for experimental, developmental, or research work performed under the Purchase Orders awarded pursuant to this Purchase Order. The provisions of this Article shall survive termination of this Purchase Order under Article II, Section C.

**Article XI: Data Rights and Copyrights**

Although this Article shall serve as the default and overarching terms and conditions for the handling of Data Rights and Copyrights, every Purchase Order is individually negotiated, and any specific Data Rights or Copyright terms and conditions in the Purchase Order Statement of Work will control over this Article.

Technical Data and Computer Software Rights under this Purchase Order shall be determined in accordance with DFARS 252-227-7013 (Rights in Technical Data—Noncommercial Items (Feb 2014)) and DFARS 252.227-7014 (Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Feb 2014)), except as otherwise specified in this Article or the Purchase Order. The definitions included in this Article shall replace the definitions found in the referenced DFARS clauses.

**A. Definitions**

- i. “Government Purpose” means any activity in which the Government is a party. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.
- ii. “Government Purpose Rights” means the right to use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and to release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for Government purposes. This is a middle path unique to defense contracts that allows contractors to have the exclusive right to use the technical data in the commercial market. Unless otherwise agreed, Government Purpose Rights convert to Unlimited Rights five years after execution of the Purchase Order.
- iii. “Limited Rights” means the right to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party. However, the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if it is necessary for emergency repair and overhaul, or a release or disclosure to a covered Government support contractor in performance of its covered Government support contract (management and administrative support). The recipient of the technical data is subject to prohibition on the further reproduction, release, disclosure, or use of the technical data, and the Buyer or Seller asserting the restriction shall be notified of such reproduction, release, disclosure, or use.
- iv. “Restricted Rights” applies only to noncommercial computer software and means the Government’s right to use a computer program on a limited number of computers, and make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes. However, the Government may allow the use of the noncommercial computer software outside of the Government under a limited set of circumstances, including use by a covered Government support contractor in performance of its covered Government support contract (management and administrative support), and after the Buyer or Seller asserting the restriction is notified.
- v. “SBIR Data Rights” refers to a Small Business Innovation Research contract and applies to both technical data and computer software. The Seller is entitled the SBIR data protection to all technical data and computer software developed during performance of a SBIR Phase III agreement, regardless of the funding source.

SBIR Data Rights are generally equivalent to Limited Rights for technical data and Restricted Rights for computer software. In the DOD, SBIR Data Rights survive for five years from the completion of the project, at which point they will convert to Unlimited Rights. SBIR efforts are divided into three successive phases (I, II, III), with the ultimate goal of commercializing the technology in question. The Government can award an unlimited number of SBIR Phase III agreements as long as they are a logical follow-on to the technology being developed, and with the understanding that the five-year clock restarts with every award.

- vi. "Specifically Negotiated License Rights" means any modification by mutual agreement to the standard DFARS noncommercial data rights categories (Unlimited Rights, Government Purpose Rights, Limited/Restricted Rights) laid out in this Article that the Government, the Buyer and the Seller consider appropriate to the specific contract action, but shall not provide rights less than that provided by Limited Rights. Any rights so negotiated shall be identified in a license agreement written into or made part of the Purchase Order and the Prime Contract.
- vii. "Technical Data" means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial or management information.
- viii. "Unlimited Rights" means the right to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

#### B. Allocation of Principle Rights

The Government shall receive a Government Purpose Rights license or an Unlimited Rights license to all technical data and computer software developed and delivered under this Purchase Order, except for the technical data and computer software that was previously developed exclusively at private expense and identified in the Purchase Order Statement of Work and Prime Contract. To the maximum extent practicable, segregable portions of deliverables that will be restricted shall be clearly identified and labeled by the Seller.

The Government, via the Buyer, and the Seller can negotiate for a specific level of rights to all, or a distinct subset of the technical data and computer software that is developed and delivered for a specific Purchase Order, which will have the full force and effect of an executed license.

#### C. Copyrights

The Seller reserves the right to protect by copyright original works developed under this Purchase Order and any subsequent Purchase Order, pursuant to 17 U.S.C. §§ 401 and 402. All such copyrights will be in the name of the individual Seller. The Seller, hereby grants to the Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Governmental purposes, any copyrighted materials developed under this Purchase Order, and to authorize others to do so.

In the event that information is exchanged with a notice indicating that it is protected under copyright as a published, copyrighted work, and it is also indicated that such information existed prior to, or was produced outside of this Purchase Order or any subsequent Purchase Order, the Government, the Buyer, or the Seller receiving the information and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out its responsibilities under this Purchase Order.

#### D. Handling of Data

The Seller shall clearly identify, prior to award, the technical data and computer software (and the items, components or processes to which they pertain) that will have asserted restrictions in each Purchase Order Statement of Work. If, after award, the Seller wishes to use any other internally developed technical data or computer software, or any other pre-existing proprietary information not previously identified in the Purchase Order Statement of Work, then the Seller shall disclose its intent in writing to the Buyer prior to its use, and shall receive written approval from the Government, via the Buyer, prior to its use or incorporation. The asserted restrictions in the Purchase Order Statement of Work are the unilateral claims of the Seller, and the inclusion of those restrictions in the Purchase Order Statement of Work does not equate to the Government's agreement to those claims. At any time, the Government, via the Buyer, has the

right to request substantiating information supporting those claims, and can challenge or reject those claims if they are unsupported.

Technical Data and Computer Software Provided by the Government via the Buyer

Technical data and computer software provided by the Government, via the Buyer, under this Purchase Order shall be appropriately marked with a suitable notice or legend and maintained in confidence and disclosed and used by the Seller only for the purpose of carrying out their responsibilities under a specific Purchase Order. At no time will technical data and computer software provided by the Government, via the Buyer, under this Purchase Order become the property of the Seller, nor does its use in carrying out their responsibilities grant any form of license to the Seller to disclose or use that technical data or computer software for any other purpose, unless specifically agreed to in writing by the Government via the Buyer. This includes all technical data and computer software first produced by the Government, via the Buyer, under this Purchase Order. All Purchase Orders that contain technical data or computer software provided by the Government shall have appropriate non-disclosure agreements signed by the Seller. Upon completion of a Purchase Order, the aforementioned technical data and computer software shall be disposed of as requested by the Government via the Buyer.

Oral and Visual Information

If information which the Seller considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to the Government, the exchange of such information must be reduced to a tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government, via the Buyer, within five (5) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information.

Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:

1. Data or software not identified with a suitable notice or legend as set forth in this Article; nor
2. Information contained in any data or software for which disclosure and use is restricted under Article VIII, Confidential Information, if such information is or becomes generally known without breach of the above, is known to or is generated by the Government independently of carrying out responsibilities under this subcontract, is rightfully received from a third party without restriction, or is included in data or software which the Seller has or is required to furnish to the Government without restriction on disclosure and use.

**E. Marking of Data**

Except for technical data and computer software developed or delivered with Unlimited Rights, all technical data and computer software developed and delivered under this Purchase Order shall have appropriate Data Rights Markings in accordance with DFARS 252.227-7013(f) and 252.227-7014(f). The Government will have Unlimited Rights to all unmarked technical data or computer software. In the event that unmarked technical data or computer software should have contained a restrictive legend, the Buyer, on behalf of the Seller, can cure the omission by providing written notice to the Government within thirty (30) calendar days of the erroneous disclosure. To support this written notice, the Seller must provide written notice to the Buyer within twenty (20) calendar days of the erroneous disclosure. The Government will not be responsible for any additional disclosures of the inappropriately marked technical data or computer software prior to that written notice.

**F. Lower Tier Agreements**

The Seller shall include this Article, suitably modified, in all lower tier agreements, regardless of tier, for work performed under the Purchase Order.

The provisions of this Article shall survive termination of this Purchase Order under Article II, Section C.

**Article XII: Export Control**

## A. Export Control

The Seller shall comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. § 2401-2420. The Seller is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Purchase Order. Accordingly, the Seller shall not export, directly or indirectly, any products or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

## B. Lower Tier Agreements

The Seller shall include this Article, suitably modified in all lower tier agreements, regardless of tier, for work performed under the Purchase Order.

The provisions of this Article shall survive termination of this Purchase Order under Article II, Section C.

**Article XIII: Security**

Individual Purchase Orders may require access to Classified Information, including but not limited to information classified as Controlled Unclassified Information (CUI), Confidential, Secret, or Top Secret. As such, DoD Manual 5200.01 (DoD Information Security Program: Protection of Classified Information) shall apply and all appropriate measures shall be followed. The Seller shall also comply with DD Form 254 (Contract Security Classification Specification), DD Form 441 (DoD Security Agreement), DoD 5220.22-M (National Industrial Security Program Operating Manual), and all other security requirements including but not limited to OPSEC requirements.

The Seller shall comply with Distribution Statements, as mandated by DoDI 5230.24 (Distribution Statements on Technical Documents).

Covered Defense Information (CDI) will be identified at the Purchase Order. The Seller shall comply with DFARS 252.204-7012 (Oct 2016): Safeguarding Covered Defense Information and Cyber Incident Reporting, which includes implementing on its covered contractor information systems the security requirements specified by DFARS 252.204-7012. Nothing in this paragraph shall be interpreted to foreclose the Seller's right to seek alternate means of complying with the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 (as contemplated in DFARS 252.204-7008 (Compliance with Safeguarding Covered Defense Information Controls) (Oct 2016) and DFARS 252.204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting (Oct 2016)).

**Article XIV: Safety and Environmental**

Purchase Orders that involve the handling of Arms, Ammunition and Explosives (AA&E) shall be subject to all appropriate FAR and DFARS clauses, as well as all Federal, State and local rules and regulations required in order to maintain a safe and non-hazardous occupational environment. A Safety Survey will be conducted by the Government prior to handling of explosives, production of any hardware or fire testing under the Purchase Order.

If a Purchase Order will involve AA&E or other Hazardous Material, the following clauses with their prescribed usages MUST be reviewed for applicability to the procurement action. The following Federal Acquisition Regulation Supplement (FARS), Defense Federal Acquisition Regulation Supplement (DFARS) clauses by reference, and local

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clauses with the same force and effect as if they were given in full text shall be incorporated into the Purchase Order if applicable.

DFARS 252.223-7001	Hazard Warning Labels
DFARS 252.223-7002	Safety Precautions for Ammunition and Explosives
DFARS 252.223-7003	Change in Place of Performance
DFARS 252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials
DFARS 252.223-7007	Safeguarding Sensitive Conventional Arms, Ammunition and Explosives
FAR 52.223-3	Identification and Material Safety Data
FAR 52.247-29	F.O.B. Origin
ARDEC 18	Physical Security Standards for Sensitive Items
ARDEC 169	Explosive Material Handling
ARDEC 66	Safety Requirements for Hazardous Items
ARDEC 77	Material Safety Data Sheets

At a minimum, the Seller shall provide the following reports and materials to the Buyer on an as needed basis:

1. **Accident/Incident Report:** The Seller shall report immediately any major accident/incident (including fire) resulting in any one or more of the following: causing one or more fatalities or one or more disabling injuries; damage of Government property exceeding \$10,000; affecting program planning or production schedules; degrading the safety of equipment under initiative, such as personnel injury or property damage may be involved; and identifying a potential hazard requiring corrective action. The Seller shall prepare a DI-SAFT-81563 report for each incident.
2. **Material Safety Data Sheets (MSDS):** The Seller shall prepare and maintain MSDS for all materials used and generated under this Purchase Order.
3. **Explosive Hazard Classification Report:** The Seller shall submit an explosive hazard classification report (DI-SAFT-81299A) for each item that requires utilizing ARDEC capabilities to obtain Interim Hazard Classification (IHC) for shipment of R&D quantities of energetic materials and items in support of this subcontract. The Seller shall utilize the capability of ARDEC to obtain IHC for shipment of R&D quantities of energetic materials and items only on an as needed basis. In order to use this support, the Seller shall provide technical data (Explosive Hazard Classification Data) to ARDEC System Safety Group at least seventy-five (75) calendar days prior to shipment of the energetic materials or items. This will include the necessary data explained in Army Technical Bulletin (TB) 700-2 and DI-SAFT-81299A. DOT and UN Serial number information, along with packaging methods, will be based on Title 49, Code of Federal regulations (CFR). The Seller shall determine the explosive weight for quantity-distance determination in accordance with the guidance of paragraph 15.4C of AMC-R 385-100.
4. **Pollution Prevention:** Consideration should be given to alternative materials and processes in order to eliminate, reduce, or minimize hazardous waste being generated. This is to be accomplished while minimizing item cost and risk to item performance.
5. **Environmental Compliance:** All activities must be in compliance with Federal, State, and local environmental laws and regulations, Executive orders, treaties, and agreements. The Seller shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during projects under this Purchase Order.
6. **Hazardous Waste Report:** The Seller shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during this Purchase Order. The Seller shall submit a Hazardous Waste Report in accordance with DI-MGMT-80899.
7. **Disposal Instructions for Residual/Scrap Materials:** The Seller shall dispose of all residual and scrap materials generated from this Purchase Order, including high explosives. The Seller shall specify the anticipated quantities, methods, and disposal costs.

**Article XV: OPSEC**

Antiterrorism (AT) Level I Training. If a project requires the Seller employees to perform technical activities, e.g., activities other than administrative tasks, program reviews, demonstrations, or meetings, under this Purchase Order in

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a designated area of performance within a DoD installation, facility or area (herein referred to as “an area of performance”), then all Seller employees requiring access to DOD installation, facilities and controlled access areas shall complete AT Level I awareness training within thirty (30) calendar days after effective date of the Purchase Order award. The Seller shall submit certificates of completion for each affected Seller employee to the Buyer, within fifteen (15) calendar days after completion of training by all employees. AT level I awareness training is available at the following website: <https://securityawareness.usalearning.gov/opsec/index.htm>.

Access and General Protection/Security Policy and Procedures. If a project requires the Seller employees to have an area of performance within a DoD installation, facility or area, the Seller employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by Government representatives). The Seller shall also provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office. The Seller employees must comply with all personal identity verification requirements as directed by DOD, HQDA and/or local policy. In addition to the changes otherwise authorized, should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in the Seller security matters or processes.

AT Awareness Training for the project Seller personnel traveling overseas. If a project requires Seller employees to travel overseas, then Seller personnel shall be made available to receive Government provided area of responsibility specific AT awareness training as directed by AR 525-13. Specific area of responsibility training content is directed by the combatant commander with the unit ATO being the local point of contact.

iWATCH Training. If a project requires the Seller employees to have an area of performance within a DoD installation, facility or area, all Seller employees requiring access to a DoD installation, facility or area (herein referred to as “an area of performance”) shall be briefed on the local iWATCH program (training standards provided by the requiring activity ATO). This locally developed training will be used to inform employees of the types of behavior to watch for and to instruct employees to report suspicious activity to the Government, via the Buyer. This training shall be completed within twenty (20) calendar days of project Purchase Order award and within twenty (20) calendar days of new employees commencing performance with the results reported to the Government, via the Buyer, NLT ten (10) calendar days after project Purchase Order award.

Project Recipient Employees Who Require Access to Government Information Systems. All Seller employees with access to a Government information system must be registered in the ATCTS (Army Training Certification Tracking System) at commencement of services, and must successfully complete the DoD Information Assurance Awareness training prior to access to the IS, and then annually thereafter.

If a project requires an OPSEC Standard Operating Procedure/Plan, the Seller shall develop an OPSEC Standard Operating Procedure (SOP)/Plan within seventy-five (75) calendar days of project Purchase Order award, to be reviewed and approved by the responsible Government OPSEC officer, per AR 530-1, Operations Security. This SOP/Plan will include the Government's critical information, why it needs to be protected, where it is located, who is responsible for it, and how to protect it. In addition, the Seller shall identify an individual within its organization who will be an OPSEC Coordinator. The Seller will ensure this individual becomes OPSEC Level II certified per AR 530-1.

If a project requires OPSEC Training, per AR 530-1, Operations Security, the Seller employees must complete Level I OPSEC training within thirty (30) calendar days of their reporting for duty. All the Seller employees must complete annual OPSEC awareness training.

If a project requires Information Assurance (IA)/information technology (IT) training, all Seller employees and associated sub-contractor employees must complete the DoD IA awareness training before issuance of network access and annually thereafter. All Seller employees working IA/IT functions must comply with DoD and Army training requirements in DoD 8570.01, DoD 8570.01-M and AR 25-2 within six (6) months of employment.

If a project requires information assurance (IA)/information technology (IT) certification, per DoD 8570.01-M, DFARS 252.239.7001 and AR 25-2, the Seller employees supporting IA/IT functions shall be appropriately certified

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upon Purchase Order award. The baseline certification as stipulated in DoD 8570.01-M must be completed upon project Purchase Order award.

If a project requires authorizing the Seller's personnel to accompany United States Armed Forces deployed outside the United States in contingency operations; humanitarian or peacekeeping operations; or other military operations or exercises, when designated by the combatant commander, DFARS Clause 252.225-7040, Contractor Personnel Authorized to Accompany US Armed Forces Deployed Outside the United States is applicable.

If a project requires Performance or Delivery in a Foreign Country, DFARS Clause 252.225-7043, Antiterrorism/Force Protection for Defense Contractors outside the United States is applicable. This clause applies to both contingencies and non-contingency support. The key AT requirement is for non-local national personnel to comply with theater clearance requirements and allows the combatant commander to exercise oversight to ensure the Seller's compliance with combatant commander and subordinate task force commander policies and directives.

The Seller shall include this Article, suitably modified in all lower tier agreements, regardless of tier, for work performed under the Purchase Order.

**Article XVI: Title and Disposition of Property**

In this Article, "property" means any tangible property other than property actually consumed during the execution of work under this Purchase Order.

**A. Title to Property**

No significant items of property are expected to be acquired under this Purchase Order. Title to any item of property valued at \$10,000 or less or property with an acquisition value greater than \$10,000 that was included in the final proposal selected by the Government and that is acquired by the Seller pursuant to performance under a Purchase Order shall remain with the Buyer, or Seller upon Buyer concurrence, upon acquisition with no further obligation of the Parties unless otherwise determined by the Government. If an item of property with an acquisition value greater than \$10,000 is required after award, the Seller shall obtain prior written approval, if not included in the final proposal selected by the Government, from the Government, via the Buyer, prior to acquisition. Title to this property shall remain with the Government unless the Government grants title to the Buyer, or Seller upon Buyer concurrence, prior to acquisition. The Seller shall be responsible for the maintenance, repair, protection, and preservation of all property acquired under this Purchase Order at its own expense. Property acquired pursuant to this Article shall not be considered as in exchange for services in performance of the project, but shall be considered a Government contribution to the project.

**B. Government Furnished Property**

The Government may provide the Seller with Government Furnished Property (GFP) to facilitate the performance of individual projects under this Purchase Order. The GFP will be specifically identified and contractually inserted into a particular Purchase Order. The GFP shall be utilized only for performance of that individual Purchase Order unless a specific exception is made in writing by the Government, via the Buyer.

Except for Seller's who have an adequate property management system as defined in FAR 52.245-1 (Jan 2017) and are using this system to manage the GFP provided in this Purchase Order, Sellers who receive GFP for a Purchase Order shall assume the risk of and be responsible for any loss or destruction of, or damage to, any GFP while in its possession or control, with the exception of reasonable wear and tear or reasonable and proper consumption. All property shall be returned at the end of the Purchase Order in as good as condition as when received with the exception of said reasonable wear and tear or in accordance with the provisions of the Purchase Order regarding its use. The Seller shall obtain explicit written authorization by the Government, via the Buyer, for any transfer or disposition of GFP.

As applicable, the following clauses may be incorporated into Purchase Orders that utilizes GFP: FAR 52.245-1 Government Property; FAR 52.245-9 Use and Charges; DFARS 252.211-7007 Reporting of Government-Furnished Property; DFARS 252.245-7001 Tagging, Labeling, and Marking of Government-Furnished Property; DFARS 252.245-7002 Reporting Loss of Government Property; DFARS 252.245-7003 Contractor Property Management System Administration; and DFARS 252.245-7004 Reporting, Reutilization, and Disposal.

**Article XVII: Reserved**

**Article XVIII: Duty Free Entry**

Unless supplies were imported into the customs territory of the United States prior to execution of a Purchase Order, Sellers shall not include any amount for duty on (1) end products or qualifying country end products delivered under this Purchase Order; (2) components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries that are to be incorporated into domestic end products delivered under this Purchase Order; or (3) other supplies for which the Seller estimates that duty will exceed \$200 per shipment into the customs territory of the United States. The definitions in DFARS 252.225-7013 Duty-Free Entry (May 2016) are incorporated by reference. Sellers shall notify the Buyer in writing of any items which are to be accorded duty-free entry. The Government will execute duty-free entry certificates and afford appropriate assistance, but the Seller is responsible for preparation of customs forms. Sellers shall claim duty-free entry only for supplies that will be delivered under this Purchase Order.

**Article XIX: Reserved**

**Article XX: Reserved**

**Article XXI: Representations and Warranties**

Each Party to this Purchase Order represents and warrants to the other Party that (1) it is free to enter into this Purchase Order; (2) in doing so, it will not violate any other agreement to which it is a party; and (3) it has taken all action necessary to authorize the execution and delivery of this Purchase Order and the performance of its obligations.

Except as expressly provided herein, no Party to this Purchase Order makes any warranty, express or implied, either in fact or by operation of law, by statute or otherwise, relating to (1) any research conducted under this Purchase Order; (2) any invention conceived and/or reduced to practice under this Purchase Order; or (3) any other intellectual property developed under this Purchase Order. Each Party to this Purchase Order specifically disclaims any implied warranty of merchantability or warranty of fitness for a particular purpose.

**Article XXII: Reserved**

**Article XXIII: Reserved**

**Article XXIV: Reserved**



## **Addendum A**

### **ARDEC Clauses**

#### **ARDEC 169**

##### **52.223-4005 EXPLOSIVE MATERIAL HANDLING OCT/2010**

The Contractor shall comply with the requirements of the Department of the Army Pamphlet 385-64, Safety, Ammunition and Explosives Safety Program, in effect on the date of the solicitation for this contract.

#### **ARDEC 66**

##### **52.223-4002 SAFETY REQUIREMENTS FOR HAZARDOUS ITEMS OCT/2010**

- a. The contractor shall use the safety data provided in the Hazardous Component Safety Data Sheets (HCSDS) to insure the safe handling of the energetic material. The HCSDS are in Section J of the contract.
- b. The contractor shall comply with Paragraph F, Chapter 1 of DOD 4146.26M, DOD Contractor's Safety Manual for Ammunition and Explosives. This requires the contractor to submit all site and construction plans through the local Defense Contract Management District Safety Office to the Contracting Officer for approval. The contractor must also submit changes for approval. Contractors will assure that their subcontractors follow the same procedures.
- c. Whenever the contractor uses a government facility, he shall comply with the local safety requirements of that facility.
- d. The contractor must obtain written approval from the Contracting Officer before the award of a subcontract involving explosives, propellants or pyrotechnic materials. When the contractor requests the Contracting Officer's approval, the Contracting Officer will arrange a Defense Logistics Agency preaward safety survey for each subcontractor.
- e. The contractor is responsible for decontaminating all facilities/equipment at the end of the contract unless the contractor intends to continue using the facilities/equipment for similar purposes. Any associated costs must be included as part of the contractor's proposal. The contractor must provide the Contracting Officer with a certification that all contaminated facilities/equipment have been decontaminated.
- f. The contractor is responsible for properly disposing of hazardous materials during this contract. If disposal is done on the subcontractor's site, the contractor must note this in his site plan per paragraph b, above. The Contracting Officer must approve a subcontractor prior to him performing disposal per paragraph d, above.
- g. The contractor will provide reports of accidents/incidents as required by Data Item DI-SAFT-81563. The government reserves the right to investigate any accident/incident under Chapter 2, Paragraphs F and G of DOD 4145.26M, DOD Contractor's Safety Manual for Ammunition and Explosives.

**ARDEC 77****52.223-4003 MATERIAL SAFETY DATA SHEETS (MSDS) OCT/2010**

1. The contractor shall send the Material Safety Data Sheets (MSDS) prior to award to the Contracting Officer and a copy with the first delivery of supplies to Commander, U.S. Army ARDEC, ATTN: Safety Division, IMPI-SO, Bldg. 351 S., Picatinny Arsenal, NJ 07806-5000, required by FAR 52.223-3, Hazardous Material Identification and Material Safety Data.
2. Deliveries of any hazardous chemicals/materials will not be accepted when:
  - a. The applicable MSDS is not delivered with the first delivery of the supplies; and/or
  - b. The container label on the supplies is inadequate, unreadable, missing, or does not agree with the accompanying MSDS.

**ARDEC 18****52.223-4000 PHYSICAL SECURITY STANDARDS FOR SENSITIVE ITEMS OCT/2010**

1. When the contract contains sensitive conventional Arms, Ammunition and Explosives (AA&E) the contractor will be required to provide proper storage and accountability. These standards are set forth in Department of Defense (DOD) 5100.76-M, dated August, 2000, entitled "Physical Security of Sensitive Conventional Arms, Ammunition and Explosives".
2. Prior to any contract being awarded, the contractor facility must first have a pre award Physical Security Inspection of their facility conducted by the Defense Security Service (DSS). See DOD 5100.76-M, Appendix 2, Attachment 1, for a listing of DSS regions. Contractor facilities, including any subcontractors, that do not meet all of the security requirements of DOD 5100.76-M will not be awarded a contract until such time as they correct all deficiencies noted in the DSS inspection.
3. When the contract requires transportation of Sensitive Conventional AA&E, the standards set forth in Defense Transportation Regulation 4500.9-R., Defense Traffic Management, shall be followed.
4. The following website is provided to obtain the publications identified above:  
<http://www.dla.mil/J-6/DLSMO/elibrary/Manuals/regulations/asp>