



**GENERAL PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS**

**General Provisions**

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**1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

(a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.

(b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.

(c) Additional or differing Terms or Conditions proposed by SELLER or included in SELLER's acknowledgement hereof are hereby objected to by BUYER and have no effect unless expressly accepted in writing by BUYER.

**2. APPLICABLE DEFINITIONS**

(a) BUYER's "Procurement Representative" means the person authorized in the procurement organization to administer and/or execute this Contract.

(b) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a purchase order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.

(c) "Customer" means the entity with whom BUYER has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work. For purposes of paragraphs 5 (BUYER's PROPERTY) and 17 (INDEPENDENT CONTRACTOR RELATIONSHIP), "Customer" shall include any higher tier contractor(s) and, if applicable, the U.S. Government.

(d) "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(e) "FAR" means the Federal Acquisition Regulations, issued as Chapter 1 of Title 48, Code of Federal Regulations.

(f) "Open Source" means with respect to Software and any licenses of same, that Software provided under a license which permits the user to run, copy, distribute, study, change, modify and/or improve the Software but which prohibits the user from: (a) withholding improvements and/or modifications made by the user to the source code when and/if the user thereafter distributes the Software; and/or (b) adding restrictions on use when redistributing or transferring the Software to third parties. For purposes of this Contract, "Open Source" Software shall also include "Free Software" as defined by the Free Software Foundation Inc. By way of example and not limitation, "Open Source" licenses shall include such licenses as the GNU General Public License, the Mozilla

Public License 1.1, Apache Software License Version 2.0, the Academic Free License 2.0, and Open Software License 2.0.

(g) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract."

(h) "SELLER" means the party identified on the face of this Contract with whom BUYER is contracting. For the purposes of paragraphs 9 (CUSTOMER COMMUNICATION) and 17 (INDEPENDENT CONTRACTOR RELATIONSHIP) only, "SELLER" shall also include SELLER's agents, representatives, subcontractors, and suppliers at any tier.

(i) "Software" means: (1) computer programs, source code, source code listings, executable code, machine readable code, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable software to be read, reproduced, recreated, or recompiled; (2) associated documentation such as operating manuals, application manuals, and installation and operating instructions that explain the capabilities of the software and provide instructions on using the software; and (3) derivative works, enhancements, modifications, and copies of those items identified in (1) and (2) above.

(j) "Work" means all required articles, materials, supplies, goods and services, including, but not limited to, technical data and Software, constituting the subject matter of this Contract.

### 3. APPLICABLE LAWS

(a) The laws of New Hampshire, without regard to its conflicts of law principles, shall govern in all respects the performance of this Contract, excluding its choice of law rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR; or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal Government. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. During pendency of any dispute arising under this Contract, both parties shall proceed diligently with performance hereunder.

(b) (1) SELLER shall comply with all applicable laws, orders, rules, regulations, and ordinances and SELLER represents and warrants that the Work supplied under this Contract shall fully comply with all such laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses and permits, certification, representation charges and pay all fees necessary to conduct its business.

(2) SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(3) If: (i) BUYER contract price or fee is reduced; (ii) BUYER costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on BUYER; or (iv) BUYER incurs any other costs or damages as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its directors, officers, employees, agents, suppliers, or subcontractors at any tier, BUYER may proceed as provided for in subparagraph 3(b)(5) below.

(4) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon BUYER's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data is defective as of the applicable cutoff date on BUYER's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; or (iv) furnish data of any description that is inaccurate; or if the U.S. Government alleges any of the foregoing, and, as a result, (1) BUYER's contract price or fee is reduced; (2) BUYER's costs are determined to be unallowable; (3) any fines, penalties or interest are assessed on BUYER or (4) BUYER incurs any other costs or damages; BUYER may proceed as provided for in subparagraph 3(b)(5) below.

(5) Upon the occurrence of any of the circumstances identified in subparagraphs 3(b) (3) and 3(b) (4) above, BUYER may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.

(c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to BUYER hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

(d) SELLER shall provide to BUYER with each delivery any Material Safety Data Sheet (29 C.F.R. 1910.1200) applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state approved counterpart.

### 4. ASSIGNMENT

Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by the

BUYER. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if the BUYER is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of BUYER against SELLER. BUYER shall have the right to make settlements and/or adjustments in price without notice to the assignee.

#### **5. BUYER'S PROPERTY**

(a) All drawings, tools, jigs, dies, fixtures, materials, and other property supplied or paid for by BUYER (BUYER's Property) shall be and remain the property of BUYER. If SELLER fails to return such property upon BUYER's demand, BUYER shall have the right, upon reasonable notice, to enter SELLER's premises and remove any such property at any time without being liable for trespass or damages of any sort. Unless previously authorized in writing by BUYER's Procurement Representative, BUYER's Property shall be used only for the performance of this Contract.

(b) Title to BUYER's Property shall remain with BUYER or its Customer as applicable. SELLER shall clearly mark (if not so marked) all BUYER's Property to show its ownership.

(c) All property furnished by BUYER to SELLER shall be supplied in "as-is" condition unless otherwise expressly agreed in writing. SELLER shall have the obligation to maintain any and all property furnished by BUYER to SELLER and all property to which BUYER acquires an interest by this Contract. Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify BUYER of, any loss or damage to BUYER's Property while in SELLER's care, custody, or control. Without additional charge, SELLER shall manage, maintain, and preserve BUYER's Property in accordance with good commercial practices.

(d) SELLER shall maintain adequate insurance as is custom in the industry to cover BUYER's Property against all loss or damage. Upon request, SELLER shall provide BUYER with adequate proof of insurance against such risk of loss or damage.

(e) Work made in accordance with BUYER's specifications and drawings shall not be furnished or quoted by SELLER to any other person, company, or concern without BUYER's prior written consent.

(f) SELLER shall clearly mark, maintain in inventory, and keep segregated or identifiable all of BUYER's property. At BUYER's request, and/or upon completion of this Contract SELLER shall submit, in an acceptable form, inventory lists of BUYER's Property and shall deliver or make such other disposal as may be directed by BUYER.

(g) The Government Property clause FAR 52.245-1 Alt 1 shall apply and govern with respect to U.S. Government-furnished property, or property to which the U.S. Government may take title under this Contract.

#### **6. CHANGES**

BUYER shall have the right by written notice to suspend or stop work or to make changes from time to time in the services to be rendered or the Work to be furnished by SELLER hereunder or the delivery schedule. If such suspension, stoppage or changes cause an increase or decrease in the cost of performance of this Contract or in the time required for its performance, an equitable adjustment shall be negotiated promptly and this Contract shall be modified in writing accordingly. Any claim by SELLER for adjustment must be asserted in writing within fifteen (15) days from the date of receipt by SELLER of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. However, nothing herein shall excuse SELLER from proceeding with this Contract as changed pending resolution of the claim.

#### **7. CONTRACT DIRECTION**

(a) Only the BUYER's Procurement Representative has authority to make changes in, to amend, or to modify this Contract on behalf of BUYER. Such changes, amendments or modifications must be in writing.

(b) Program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment. If SELLER believes the foregoing creates an actual or constructive change, SELLER shall notify the BUYER's Procurement Representative and shall not accept such direction or perform said action unless authorized under subparagraph 7(a).

(c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the BUYER's Procurement Representative.

#### **8. COUNTERFEIT PARTS PREVENTION**

(a) Definitions for purposes of this Contract: (i) "Counterfeit Parts" shall mean a part, component, module, or assembly whose origin, material, source of manufacture, performance, or characteristics are misrepresented. This term includes, but is not limited to, (A) parts that have been (re)marked to disguise them or falsely represent the identity of the manufacturer, (B) defective parts and/or surplus material scrapped by the original manufacturer, and (C) previously used parts pulled or reclaimed and provided as "new". (ii) As used herein, "authentic" shall mean (A) genuine; (B) from the legitimate source claimed or implied by the marking and design of the product offered; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material. (iii) "Independent Distributor" shall mean a person, business, or firm that is neither authorized nor franchised by an Original Component Manufacturer ("OCM") to sell or distribute the OCM's products but which purports to sell, broker, and/or distribute such OCM products. Independent Distributors are also referred to as unfranchised distributors, unauthorized distributors, and/or brokers.

(b) SELLER represents and warrants that only new and authentic materials are used in Work required to be delivered to BUYER and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic

part is to be used unless approved in advance in writing by BUYER. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, SELLER shall only purchase authentic parts/components directly from the Original Equipment Manufacturers ("OEMs")/OCMs or through the OEM's/OCM's authorized distribution chain. SELLER must make available to BUYER, at BUYER's request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by BUYER's Procurement Representative. SELLER must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. BUYER approval of SELLER request(s) does not relieve SELLER's responsibility to comply with all Contract requirements, including the representations and warranties in this subparagraph. A breach of this paragraph/clause or any subparagraph herein shall be considered a material breach of this Contract.

(c) In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable and indemnify BUYER for all costs relating to the removal and replacement of Counterfeit Work, including without limitation BUYER's and higher tier customer's costs of removing Counterfeit Work of installing replacement materials and of any testing necessitated by the reinstallation of Work after Counterfeit Work have been exchanged. The remedies contained in this paragraph are in addition to any remedies BUYER may have at law, equity or under other provisions of this Contract.

(d) SELLER shall maintain a documented system (policy, procedure, or other documented approach) which includes training of personal, inspection and testing of electronic parts, counterfeit parts proliferation, traceability, and use of OEMs/OCMs or provides for prior notification and customer approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. SELLER shall provide copies of such documentation for its system for BUYER's inspection upon BUYER request.

(e) SELLER shall flow the requirements of this clause to its subcontractors and suppliers at any tier for the performance of this Contract. If SELLER is providing electronic components/devices only, the following certification applies: Certification of Origin of Product: Acceptance of this Contract constitutes confirmation by SELLER that it is either the Original Equipment Manufacturer (OEM), Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. SELLER further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM is available upon request. If SELLER is not the OEM/OCM or a franchised or authorized distributor, SELLER confirms by acceptance of this Contract that the product(s) supplied to BUYER has been procured from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM. The supplier further warrants that OEM/OCM acquisition traceability documentation is accurate and available to BUYER upon BUYER's request. A breach of this paragraph/clause or any subparagraph herein shall be considered a material breach of this Contract.

#### **9. CUSTOMER COMMUNICATION**

BUYER shall be solely responsible for all liaison and coordination with the Customer, any higher tier contractor(s), or the U. S. Government, as it affects the applicable Prime Contract, this Contract, and any related contract. Except as required by law, SELLER shall not communicate with the Customer, any higher tier contractor(s), or the U. S. Government, with respect to the applicable Prime Contract, this Contract, and/or any related contract without prior approval of the BUYER's Procurement Representative. SELLER shall promptly notify BUYER of any communications initiated by the Customer, any higher tier contractor(s), or the U. S. Government, that affects the applicable Prime Contract, this Contract, and/or any related contract.

#### **10. DISPUTES/JURY WAIVER**

(a) All disputes arising from or related to this Contract, which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity in accordance with subparagraph 10(b). Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by BUYER.

(b) BUYER and SELLER agree to timely notify each other of any claim, dispute or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, BUYER and SELLER agree that any lawsuit or cause of action that arises from or is related to this Contract shall be filed with and litigated only in a court of competent jurisdiction within the state of New Hampshire.

(c) To the extent permitted by applicable laws, BUYER and SELLER each waive any rights which either may have to trial before a jury of any dispute arising from, or related to, this Contract. SELLER and BUYER further stipulate and consent that any such litigation before a court of competent jurisdiction shall be non-jury.

(d) Under no circumstances shall Seller have the right to pursue a claim directly against the Government.

#### **11. ELECTRONIC CONTRACTING**

BUYER and SELLER agree that if this Contract, or any Purchase Order, ancillary agreement, or correspondence is transmitted electronically, neither BUYER nor SELLER shall contest the validity thereof, on the basis that this Contract, or the Purchase Order, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature or it was generated automatically, without human intervention by a system intended for the purposes of generating same.

#### **12. EXPORT CONTROL**

(a) SELLER warrants and represents that it shall comply with all applicable United States export control laws and regulations,



including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, the International Traffic in Arms Regulation (ITAR), 22 CFR 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 CFR 730-774. SELLER shall obtain all required export licenses or agreements necessary to perform SELLER's Work, as applicable.

(b) Without limiting the foregoing, SELLER shall not transfer any export-controlled item, data or services, to include transfer to a person who is not a "U.S. Person" as defined in the ITAR (22 C.F.R. 120.15), without the authority of a United States Government export license, technical assistance agreement, or other authority. The restrictions on the transfer of export controlled data apply equally to data furnished by BUYER and to any such data incorporated in documents generated by Subcontractor. Additionally, no disclosure of data furnished by BUYER can be made unless and until BUYER has considered the request and provided its written approval through contractually authorized channels. Subcontractor will strictly comply with the conditions in any such approval and in the export license or other Government authorization for such disclosure.

(c) Further, a United States Government export license, export agreement, or applicable license exemption or exception shall be obtained by SELLER prior to the transfer of any export-controlled item, data or services to any U.S. Person that is employed by any "Foreign person" within the meaning of 22 C.F.R. 120.16.

(d) SELLER shall notify BUYER if any use, sale, import or export by BUYER of Work to be delivered under this Contract is restricted by any export control laws or regulations applicable to SELLER.

(e) SELLER shall immediately notify BUYER's Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.

(f) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.

(g) Where SELLER is a signatory under a BUYER export license or export agreement (e.g. TAA, MLA), SELLER shall provide prompt notification to BUYER's Procurement Representative in the event of changed circumstances affecting said license or agreement.

(h) SELLER shall indemnify, hold harmless and, at BUYER's election, defend BUYER, its directors, officers, employees, and agents from and against all losses, costs, claims, causes of action, damages, liabilities and expense, including, but not limited to, reasonable attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from or related to any act or omission of SELLER, its directors, officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this paragraph 12. SELLER shall include the requirements of this paragraph 12 in all agreements with lower tier subcontractors and suppliers. (i) Failure of the United States Government or any other government to issue any required export or import license, or withdrawal/termination of a required export or import license by the United States Government or any other government, shall relieve BUYER of its obligations under this Contract. Provided SELLER has diligently pursued obtaining such license and, through no fault of SELLER, such license has been denied, withdrawn, or terminated, SELLER shall also be relieved of its obligation under this Contract. In either event, this Contract may be terminated by BUYER without additional cost or other liability.

(j) If the technical data required to perform this Contract is subject to the United States International Traffic in Arms Regulations (ITAR), SELLER shall comply with the following: (1) The technical data shall be used only in performance of Work required by this Contract; and (2) The data shall not be disclosed to any other person, including lower-tier subcontractors within the same country, unless said person is expressly authorized pursuant to an export license or export agreement. The restrictions on the disclosure of export-controlled data apply to both data furnished by BUYER and to any such data incorporated in documents generated by Subcontractor; and (3) Any rights in the data may not be acquired by SELLER or any other Non-U.S. Person; and (4) SELLER shall return, or at BUYER's direction, destroy all of the technical data exported to SELLER pursuant to this Contract upon fulfillment of its terms; (5) Unless otherwise expressly directed by BUYER, SELLER shall deliver the Work only to BUYER or to an agency of the U.S. Government.

### **13. EXTRAS**

Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for risk of loss, handling charges, and return shipment costs for any excess quantities.

### **14. FORCE MEJEURE**

Neither party shall be held responsible for any delay or failure in performance of any part of this Contract to the extent such delay or failure is caused by fire, flood, earthquake, strike, civil, governmental or military authority, act of God, or other similar causes beyond its reasonable control and without the fault or negligence of the delayed or non-performing party or its subcontractors. SELLER's liability for loss or damage to BUYER's material in SELLER's possession or control shall not be modified by this clause. When a SELLER's delay or non-performance continues for a period of at least fifteen (15) days, BUYER may terminate, at no charge, this Contract.

### **15. GOVERNMENT CONTRACTS**

In the event that the Work or Services being acquired hereunder are for ultimate sale to the United States Government, then BUYER's Appendix 1: Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS)

FLOWDOWN PROVISIONS are incorporated herein and shall apply to this Contract.

#### **16. INDEMNITY AGAINST CLAIMS**

(a) SELLER shall keep Work supplied by it hereunder and BUYER premises free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance of this Contract by SELLER or by any of its vendors or subcontractors. SELLER may be required by BUYER to provide a satisfactory release of liens as a condition of final payment.

(b) SELLER shall, without limitation, indemnify and save BUYER and its customer(s) and their respective officers, directors, employees and agents harmless from and against (i) all claims (including claims under Workers' Compensation or Occupational Disease laws or other equivalent laws in SELLER's country) and resulting costs, expenses (including attorney fees and costs) and liability which arise from personal injury, death, or property loss or damage attributed to, or caused by, the Work supplied, or the services performed by SELLER pursuant to this Contract, including, without limitation, latent defects in such Work and/or services, except to the extent that such injury, death, loss or damage is caused solely and directly by the negligence of BUYER; and (ii) all claims (including resulting costs, expenses and liability) by the employees of SELLER or any of its subcontractors; and (iii) all claims, losses, costs, damages, expenses, liabilities and the like resulting from SELLER's breach of any warranty or representation under this Contract.

#### **17. INDEPENDENT CONTRACTOR RELATIONSHIP**

(a) SELLER's relationship to BUYER shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between BUYER and SELLER or BUYER and SELLER personnel. SELLER personnel engaged in performing Work under this Contract shall be deemed employees of SELLER and shall not for any purposes be considered employees or agents of, BUYER. SELLER assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. BUYER assumes no liability for SELLER personnel.

(b) Nothing contained in this Contract shall be construed as granting to SELLER or any personnel of SELLER rights under any BUYER benefit plan.

(c) SELLER personnel: (i) will not remove BUYER or its Customer's assets from BUYER's or Customer's premises without BUYER's authorization; (ii) will use BUYER or Customer assets only for purposes of this Contract; (iii) will only connect with, interact with or use BUYER's computer networks and equipment, communications resources, programs, tools or routines as BUYER agrees, all at SELLER's risk and expense, and then only in compliance with applicable policies; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. BUYER may monitor any communications made over or data stored in BUYER's computer networks and equipment or communications resources.

#### **18. INFORMATION OF BUYER**

Information provided by BUYER to SELLER remains the property of BUYER. SELLER shall comply with all proprietary information markings and restrictive legends applied by BUYER to anything provided hereunder to SELLER. SELLER shall not use any BUYER provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of BUYER.

#### **19. INFORMATION OF SELLER**

SELLER shall not provide any proprietary information to BUYER without prior execution by BUYER of a Proprietary Information or Non-Disclosure Agreement that expressly covers the performance of Work under this Contract.

#### **20. INSPECTION AND ACCEPTANCE**

(a) All Work shall be subject to inspection and test at all reasonable times and places by BUYER or BUYER's customer before, during, and after performance and delivery. BUYER may require SELLER to repair, replace or reimburse the purchase price of rejected Work or BUYER may accept any Work and, upon discovery of nonconformance, may reject or keep and rework any such Work not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging, and/or re-inspection by BUYER shall be at SELLER's expense. BUYER's acceptance of Work shall not be deemed to diminish BUYER's rights or be final or binding on BUYER if latent defects, fraud, or misrepresentation on the part of SELLER exists.

(b) If inspection and test are made on the premises of SELLER or SELLER's lower-tier subcontractors, SELLER shall furnish, without additional charge, all reasonable facilities, information, and assistance necessary for the safe and convenient inspection and tests required by BUYER inspectors in the performance of their duty. The foregoing provisions of this Section are supplementary to and not in lieu of the provisions of paragraph 20 (a) above.

(c) Neither BUYER's inspection nor BUYER's failure to inspect shall relieve SELLER of any responsibility to perform according to the terms of this Contract. Notwithstanding any other provision of this Contract, the risk of loss of, or damage to, nonconforming Work remains with SELLER until cure or acceptance.

#### **21. INSURANCE/ENTRY ON BUYER OR CUSTOMER PROPERTY**

(a) SELLER shall maintain the following insurances: 1) worker's compensation (with a waiver of subrogation in favor of BUYER), 2) product liability, 3) automobile liability, 4) comprehensive general liability (bodily injury and property damage) insurance in amounts reasonably acceptable to BUYER, and such other insurance as BUYER may reasonably require. SELLER shall indemnify, hold harmless and, at BUYER's election, defend BUYER, its directors, officers, employees, and agents from and against all losses, costs, claims, penalties, causes of action, damages, liabilities, fees, and expenses, including, but not limited to, reasonable attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury or death to any person arising from or related to the actions or omissions of SELLER, its directors, officers, employees, agents,

suppliers, or subcontractors. With respect to any injury, including, but not limited to, death, to employees of SELLER or SELLER's agents, subcontractors or suppliers, SELLER's obligation to indemnify and defend in accordance with this paragraph 21 shall apply regardless of cause. SELLER shall provide BUYER thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name BUYER as an additional insured for the duration of this Contract. Insurance maintained pursuant to this paragraph 21 shall be considered primary as respects the interest of BUYER and is not contributory with any insurance that BUYER may carry. "Subcontractor" as used in this subparagraph 21(a) shall include SELLER's subcontractors at any tier.

(b) SELLER shall ensure that personnel assigned to work on BUYER's or Customer's premises comply with any on-premises guidelines. Unless otherwise authorized in writing by BUYER, SELLER's personnel assigned to work on BUYER's or Customer's premises shall, while on BUYER's or Customer's premises, (i) not bring weapons of any kind; (ii) not manufacture, sell, distribute, possess, use, or be under the influence of controlled substances or alcoholic beverages; (iii) not possess hazardous materials of any kind; (iv) remain in authorized areas only; and (v) not solicit BUYER employees for employment.

(c) All SELLER personnel, property, and vehicles entering or leaving BUYER's or Customer's premises are subject to search.

(d) SELLER shall promptly notify BUYER and provide a report of any and all physical altercations, assaults or harassment, and accidents or security incidents involving death, personal injury or loss of or misuse of or damage to BUYER's or Customer's property, while on BUYER or its Customer's premises.

(e) BUYER may, at its sole discretion, remove or require SELLER to remove any specified employee of SELLER from BUYER's or Customer's premises and request that such employee not be reassigned to any BUYER or Customer premises under this Contract. Any costs arising from or related to removal of SELLER's employee shall be borne solely by SELLER and not charged to this Contract.

## **22. INTELLECTUAL PROPERTY**

(a) SELLER agrees that all Work provided under this Contract shall be "Work for Hire" and SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.

(b) SELLER shall indemnify, hold harmless and, at BUYER's election, defend BUYER and its Customer from and against all losses, costs, claims, penalties, causes of action, damages, liabilities, fees, and expenses, including, but not limited to, reasonable attorneys' fees, arising from or related to any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity. If an injunction is obtained against BUYER's use of the Work or a portion thereof as a result of infringement or misappropriation of the intellectual property of any third party, SELLER shall either (i) procure for BUYER and Customer the right to continue using the Work or (ii) replace or modify the Work so it becomes non-infringing. This indemnity and hold harmless provision shall not be considered an allowable cost under any provisions of this Contract except with regard to allowable insurance costs.

(c) SELLER grants and agrees that BUYER shall have a nonexclusive, worldwide, irrevocable, paid-up, royalty-free license and right, to enable BUYER to satisfy its contractual obligations to its Customer, to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, publish, distribute, copy, prepare derivatives or compilations, and authorize others to do any, some or all of the foregoing, with respect to any and all, inventions, discoveries, improvements, technology, designs, works of authorship, mask works, patents, copyrights, technical information, data, databases, Software, business information and other information, conceived, developed, generated or delivered in performance of this Contract. SELLER shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to BUYER herein. To the extent that the Work or Services being acquired hereunder are for ultimate sale to the United States Government, then Government shall have the same rights as BUYER.

## **23. MAINTENANCE OF RECORDS**

(a) SELLER shall maintain complete and accurate records in accordance with generally accepted accounting principles and good commercial practices to substantiate SELLER's performance hereunder. SELLER shall retain such records for ten (10) years from final payment of this Contract, unless another period is specified under this Contract.

(b) BUYER shall have access to such records, and any other records SELLER is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for so long as such records are required to be retained. Audit rights shall be available to BUYER on all performance related reports and other records, except records pertaining to proprietary indirect cost data. Audit of any proprietary indirect cost data may be accomplished through the responsible DCAA representative or a mutually agreeable third party auditor from a nationally recognized firm of certified public accountants.

## **24. OFFSET CREDIT/COOPERATION**

All offset or countertrade credit value resulting from this Contract, and any lower tier subcontracts, shall accrue solely to the benefit of BUYER. SELLER shall cooperate with BUYER in the fulfillment of any foreign offset/countertrade obligations.

## **25. OPEN SOURCE SOFTWARE**

Without the prior written approval of BUYER, which BUYER may withhold in its sole discretion, SELLER shall not incorporate any

Open Source Software, including any source code governed by an Open Source license, into Work to be performed and/or delivered under this Contract. Before BUYER will consider providing written approval for the incorporation of such Open Source Software, SELLER shall first identify all Open Source Software incorporated into Work to be performed and/or delivered under this Contract, including a complete source code listing of the Software comprising the Work with a description of the operation of the Software in English and machine-readable form, together with copies of any licenses required to be accepted.

#### **26. PACKING AND SHIPMENT**

(a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

(b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the BUYER's Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

(c) Unless otherwise specified, delivery shall be FCA Origin.

#### **27. PARTS OBSOLESCENCE**

BUYER may desire to place additional contracts for items purchased hereunder. SELLER shall provide BUYER with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.

#### **28. PAYMENTS, TAXES, AND DUTIES**

(a) Unless otherwise provided, terms of payment shall be net sixty (60) days from the latest of one of the following: (i) BUYER's receipt of SELLER's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work. BUYER shall have a right of setoff against payments due or at issue under this Contract or any other contract between BUYER and SELLER.

(b) Each payment made shall be subject to reduction to the extent of amounts which are found by BUYER not to have been properly payable and shall also be subject to reduction for overpayments.

(c) Payment shall be deemed to have been made as of the date of mailing payment or electronic funds transfer.

(d) Unless this Contract specifies otherwise, the price of this Contract includes, and SELLER is liable for and shall pay, all taxes, impositions, charges, customs duties or tariffs and similar fees imposed by any government on or measured by this Contract, except for applicable sales and use taxes that are separately stated on SELLER's invoice. Prices shall not include any taxes, impositions, charges or exactions for which BUYER has furnished a valid exemption certificate or other evidence of exemption. To the extent that BUYER is required to do so under applicable law or tax regulations, BUYER may deduct from any payments due to SELLER pursuant to this Contract such taxes as BUYER is required to withhold from such payments and pay such taxes to the relevant tax authorities; provided, however, that BUYER provides SELLER with relevant tax receipts or other suitable documentation evidencing the payment of such taxes promptly after such taxes are paid.

#### **29. PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) face of this Contract, release document or schedule, (which shall include continuation sheets), as applicable, to include any special provisions; (2) any master-type agreement (such as corporate, operating group, or blanket agreements); (3) representations and certifications; (4) any supplemental terms and conditions incorporated in this Contract; (5) these terms and conditions; (6) statement of work; (7) specifications or drawings; (8) Work or Services being acquired for ultimate sale to the United States Government, then all U.S. Government Procurement Regulations incorporated into this Purchase Order shall, when applicable, take precedence over any conflicting provision.

#### **30. PRIORITY RATING**

If so identified, this Contract is a "rated order" certified for national defense use, and SELLER shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 C.F.R. Part 700). Under DPAS regulations, if this Contract supports the U.S. Government, is DX or DO Rated, the SELLER must acknowledge acceptance of DX-Rated orders within ten (10) days, and DO-Rated orders within fifteen (15) days of receipt hereof. Commencement of performance of the Work called for by this Contract in the absence of SELLER's written acknowledgement thereof shall be deemed acceptance of this Contract as written.

#### **31. QUALITY CONTROL SYSTEM**

(a) SELLER agrees to provide and maintain a quality control system to an industry recognized quality standard and to provide access to SELLER's facilities at all reasonable times by BUYER, authorized Customer representatives, and regulatory authorities. Right of access shall include the applicable areas of all facilities, at any level of the supply chain, involved in this Contract and to all applicable records. SELLER agrees to include, and to require its subcontractors to include, the substance of this paragraph, including this sentence, in each of its subcontracts under this Contract. Further, SELLER shall be in compliance with any other specific quality requirements identified in this Contract.

(b) Records of all quality control inspection work by SELLER shall be kept complete and available to BUYER and its Customer.

(c) SELLER agrees to notify BUYER's Procurement Representative of nonconforming material that does not meet the requirements of this Contract that cannot be reworked to compliance. Written approval will be required by BUYER's Procurement Representative prior to supplier shipment of nonconforming material to BUYER.



(d) SELLER agrees to promptly notify BUYER's Procurement Representative in writing detailing any changes in product and/or process, changes of suppliers, and changes of manufacturing facility locations for products under contract and in process prior to making the change and, when required by BUYER, obtain written approval before proceeding with implementing such changes for work in support of the purchase order(s).

(e) SELLER shall inform BUYER's Procurement Representative in writing whether or not there have been any changes in product and/or process, changes of suppliers, and changes of manufacturing facility locations since this hardware was last procured by BUYER's Procurement Representative, identifying in detail any such changes, and when required by BUYER, obtain written approval before proceeding with work in support of the purchase order(s).

### **32. RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, shall be made by SELLER without the prior written approval of BUYER's Procurement Representative.

### **33. RESPONSIBLE SUPPLY CHAIN MANAGEMENT**

The SELLER recognizes its operations and activities have social, economic, and environmental impacts across its value chain, in wider society and the environment in general. A responsible supply chain management approach applies to all the supply chain activities and represents a journey of continuous improvement towards creating an economically, socially, and environmentally responsible and sustainable supply chain.

#### **(a) Ethics:**

(1) Gratuities/Kickbacks: SELLER represents and warrants that SELLER, its affiliates, and their respective directors, officers, employees, agents, and any other persons associated with or acting on behalf of SELLER directly or indirectly, shall not, with regard to any aspect of SELLER's performance under this Contract: (i) violate any provisions of the Foreign Corrupt Practices Acts of the United States or similar statute in the United Kingdom (the "Principal ABAC Statutes"); (ii) violate any applicable anti-bribery or anti-corruption law or regulation enacted in any jurisdiction, whether in connection with or arising from the OECD Convention Combating Bribery of Foreign Public Officials in International Business Transactions or otherwise; or (iii) make, or offer to make, promise to make or authorize the payment of or giving of, directly or indirectly, any bribe, rebate, payoff, influence payment, facilitation payment, kickback or other unlawful payment or gift of money, or anything of value prohibited under any applicable law or regulation (any such payment, a "Prohibited Payment"). SELLER further agrees not to make or authorize the making of any gift or payment to any third person if SELLER knows or has reason to suspect that all or any portions of such gift or payment will be used for any Prohibited Payment.

(2) Basic Working Conditions and Human Rights. SELLER represents and warrants that it provides a safe and secure working environment and protects and advances basic human rights in its worldwide operations.

(3) SELLER represents and warrants that it will comply with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and to use commercially reasonable efforts to i) identify whether such Work contain tantalum, tin, tungsten or gold; ii) conduct a reasonable country of origin inquiry regarding the origin of such minerals in such Work; iii) determine whether such minerals originated in Covered Countries, as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and iv) If such minerals originated in Covered Countries, conduct due diligence on the chain of custody of the source of such minerals; and v) assist BUYER in conducting due diligence concerning the smelters of such minerals. SELLER shall promptly notify BUYER of all such findings, identifying all such Work in sufficient detail as BUYER may reasonably request to allow BUYER to meet its customer commitments. SELLER shall include the substance of this in any agreement between SELLER and its lower tier sellers and provide BUYER with reasonable documentation of SELLER's and its lower tier sellers' due diligence efforts.

(b) Environmental Health and Safety Performance. SELLER acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system ("EMS") appropriate for its business throughout the performance of this Contract.

#### **(c) Community:**

(1) Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities and Veterans. (This clause is applicable if this Contract exceeds \$10,000) SELLER shall abide by the requirements of 41 CFR 60-741.5 which prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities; and 41 CFR 60-300.5 which prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

(2) Small Business Concerns: SELLER agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned small business concerns to participate in its subcontracts. SELLER awards to the fullest extent consistent with the efficient performance of this Contract.

### **34. RIGHT OF ACCESS**

(a) SELLER, without additional charge, shall permit reasonable access by representatives of BUYER, BUYER's customers and applicable regulatory agencies to SELLER's premises (and the premises of SELLER's subcontractors and supplier(s)) for the

purpose of examining SELLER's facilities, processes, goods, and records relating to this Contract. Such examination may include inspection and testing of equipment, materials, parts, items (including software and licensed materials) to be furnished and services to be rendered, manufacturing and assembly processes, testing and quality procedures, and all applicable records relating to the manufacture, inspection, testing, and sale of such items and the furnishing of such services. Access to proprietary financial data shall be restricted to the U.S. Government or a mutually agreed upon independent third party.

(b) If requested by BUYER, SELLER shall provide at its facility, without additional charge, suitable and convenient office space for representatives of BUYER and/or representatives of BUYER's customers, as reasonably required. The office shall be properly lighted and heated and maintained in a clean condition and have telephones and Internet access.

### **35. SEVERABILITY**

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

### **36. SURVIVABILITY**

SELLER's obligations that, by their very nature, must survive expiration, termination or completion of this Contract, shall survive expiration, termination or completion of this Contract, including but not limited to obligations under the following:

(a) Applicable Laws, Disputes/Jury Waiver, Electronic Contracting, Export Control, BUYER's Property, Independent Contractor Relationship, Information of BUYER's, Indemnity Against Claims, Insurance/Entry on BUYER or Customer Property, Intellectual Property, Maintenance of Records, Parts Obsolescence, Release of Information, Responsible Supply Chain Management, Termination for Convenience, Termination for Default, and Warranty.

(b) Those U. S. Government flowdown provisions that, by their nature, should survive.

### **37. TERMINATION FOR CONVENIENCE**

(a) BUYER may, by written notice, terminate this Contract for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default. In the event of partial termination, SELLER is not excused from performance of the non-terminated balance of work under this Contract.

(b) In the event of termination for convenience by BUYER, SELLER shall be reimbursed for actual, reasonable, substantiated and allocable costs, plus a reasonable profit for work performed to the date of termination. Any termination settlement proposal shall be submitted to BUYER promptly, but no later than thirty (30) days from the effective date of the termination. In no event shall the amount of any settlement be in excess of this Contract value. BUYER may take immediate possession of all Work, complete or incomplete, upon written notice of termination to SELLER.

### **38. TERMINATION FOR DEFAULT**

(a) BUYER may, by notice in writing, terminate this Contract in whole or in part at any time for SELLER's (i) breach of any one or more of its terms, (ii) failure to deliver Work within the time specified by this Contract or any written extension, (iii) failure to make progress so as to endanger performance of this Contract, or (iv) failure to provide adequate assurance of future performance. BUYER may also terminate this Contract in whole or in part in the event of SELLER's suspension of business, insolvency, appointment of a receiver for SELLER's property or business, or any assignment, reorganization or arrangement by SELLER for the benefit of its creditors. In the event of partial termination, SELLER is not excused from performance of the non-terminated balance of work under this Contract.

(b) In the event of SELLER'S default hereunder, BUYER may exercise any or all rights and remedies accruing to it, both at law or in equity.

(c) If this Contract is terminated for default, BUYER may require SELLER to transfer title to, and deliver to BUYER, as directed by BUYER, any (1) completed Work, and (2) partially completed Work and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this Section) that SELLER has specifically produced or acquired for the terminated portion of this Contract. Upon direction of BUYER, SELLER shall also protect and preserve property in its possession in which BUYER has an interest.

### **39. TIMELY PERFORMANCE**

(a) SELLER's timely performance is a critical element of this Contract.

(b) Unless advance shipment has been authorized in writing by BUYER, BUYER may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

(c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify BUYER, in writing, giving pertinent details. This notification shall not change any Contract delivery schedule.

(d) In the event of a termination or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by BUYER's Procurement Representative.

### **40. WAIVER, APPROVAL AND REMEDIES**

(a) Failure by BUYER to enforce any provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of BUYER thereafter to enforce each and every such provision(s).

(b) BUYER's approval of documents shall not relieve SELLER from complying with all requirements of this Contract.

(c) The rights and remedies of BUYER in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

(d) BUYER shall be entitled at all times to set off any amount owing at any time from SELLER or any of its affiliated companies to BUYER, against any amount payable at any time by BUYER or any of its affiliated companies to SELLER

#### **41. WARRANTY**

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to all specifications, drawings, samples, descriptions, and other requirements of this Contract, be free from defects in design, material, workmanship, is merchantable and fit for the purposes intended. This warranty shall begin upon final acceptance and extend for a period of one (1) year, except for any latent defects which shall have no time period. Latent defects are defined as defects which existed at the time of acceptance, but would not have been discovered by a reasonable inspection. If any non-conformity with Work appears within the warranty period, SELLER shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SELLER's expense. If repair or replacement or reperformance of Work is not timely, BUYER may elect to return the nonconforming Work or repair or replace Work or re-procure the Work at SELLER's expense. All costs associated with SELLER's non-conforming Work shall be borne by SELLER, including BUYER's associated costs. All warranties shall run to BUYER and its Customer(s). All warranties in this Contract shall survive inspection, test, final acceptance, and payment of Work.