



GENERAL PROVISIONS AND FAR FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT

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SECTION I: GENERAL PROVISIONS

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 ACKNOWLEDGMENT HEREOF ARE HEREBY OBJECTED TO BY SRC AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY SRC**

2. APPLICABLE LAWS

- (a) This Contract and all matters arising from or related to it shall be governed by and construed in accordance with the law of the State from which this Contract was issued, 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.
- (b) (1) SELLER shall comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER shall procure all

licenses and permits, and pay all fees and other required charges necessary to conduct its business, all at SELLER's expense.

(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) SRC's contract price or fee is reduced; (ii) SRC's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on SRC; or (iv) SRC 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, SRC may proceed as provided for in subparagraph 2(b)(4) below.

(4) Upon the occurrence of any of the circumstances identified in subparagraph 2(b)(3) above, SRC 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.

(5) In the event it is determined that the Work is not a Commercial Item as defined at FAR 2.101, then SELLER agrees that SRC's TC3 and the corresponding agency flowdowns shall be applicable to this Contract, in lieu of these terms and conditions, effective as of the date of this Contract.

(6) **Indemnification for Defective Pricing – If Buyer is subject to any liability as a result of a failure of the Seller to**

comply with the requirements of FAR 52.215-12 and 52.215-13, Seller agrees to indemnify and hold harmless Buyer, to the full extent of any amount claimed by the Government, from and against any loss, damage, liability or expense (including reasonable attorneys' fees) resulting from such failure. Furthermore, Seller agrees that in any action brought hereunder, the Federal Statute of Limitations shall apply.

- (c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to SRC 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 SRC 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.

3. ASSIGNMENT

Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by SRC. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if SRC 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 SRC against SELLER. SRC shall have the right to make settlements and/or adjustments in price without notice to the assignee.

4. CHANGES

- (a) The SRC Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) specifications, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of SRC furnished property; and (vi) if this Contract includes services: (x) description of services to be performed; (y) time of performance (e.g., hours of the day, days of the week, etc.); and (z) place of performance. SELLER shall comply immediately with such direction.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, SRC shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- (c) Any claim for an equitable adjustment by SELLER must be submitted in writing to SRC Procurement Representative within thirty (30) days from the date of notice of the change, unless SRC and SELLER agree in writing to a longer period.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the paragraph 10 "Disputes/Jury Waiver." However, nothing contained in this paragraph 4 shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

5. COMMERCIAL COMPUTER SOFTWARE

- (a) As used in this paragraph 5, "Restricted Software" means Software that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted, and so marked when delivered or otherwise furnished.

- (b) Notwithstanding any provisions to the contrary contained in any SELLER's standard commercial license or lease agreement, SELLER agrees that the Restricted Software delivered under this Contract shall provide the following rights to SRC and the U.S. Government.

- (1) The Restricted Software may be:
 - (i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any U.S. Government installation to which such computer or computers may be transferred;
 - (ii) Used or copied for use in or with a backup computer if any computer for which it was acquired is inoperative;
 - (iii) Reproduced for safekeeping (archives) or backup purposes;
 - (iv) Modified, adapted, or combined with other Software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, Restricted Software shall be subject to same restrictions set forth in this Contract;
 - (v) Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract; and
 - (vi) Used or copied for use in or transferred to a replacement computer.

- (c) Release from liability. SELLER agrees that the U.S. Government and SRC, and other persons to whom the U.S. Government or SRC may have released or disclosed Restricted Software delivered or otherwise furnished under this Contract, shall have no liability for any release or disclosure of such Restricted Software that are not marked to indicate that such Restricted Software are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

6. CONTRACT DIRECTION

- (a) Only the SRC Procurement Representative has authority to make changes in, to amend, or to modify this Contract. Such changes, amendments or modifications must be in writing.
- (b) SRC 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 paragraph 4 "Changes" and shall not be the basis for equitable adjustment. If SELLER believes the foregoing creates an actual or constructive change, SELLER shall notify the SRC Procurement Representative and shall not accept such direction or perform said action unless authorized under subparagraph 6(a).
- (c) Except as otherwise provided herein, all notices to be furnished by SELLER shall be sent to the SRC Procurement Representative.

7. CUSTOMER COMMUNICATION

SRC 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 SRC Procurement Representative. SELLER shall promptly notify SRC 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.

8. DEFAULT

- (a) SRC, by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make progress so as to endanger performance of this Contract, or fails to provide adequate assurance of future performance. SELLER shall have ten (10) days (or such longer period as SRC may authorize in writing) to cure any such failure after receipt of written notice from SRC. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) SRC shall not be liable to pay for any Work not accepted; however, SRC may require SELLER to deliver to SRC any supplies and materials, and drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. SRC and SELLER shall agree on the amount of payment for these other deliverables.
- (c) SELLER shall continue all Work not terminated.
- (d) If after termination under subparagraph 8(a), it is later determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

9. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "SRC" means the SRC legal entity as identified on the face of this Contract.
- (b) "SRC Procurement Representative" means the person authorized by SRC's cognizant procurement organization to administer and/or execute this Contract.
- (c) "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.
- (d) "Customer" means the entity with whom SRC has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work. For purposes of paragraphs 14 (FURNISHED PROPERTY) and 16 (INDEPENDENT CONTRACTOR RELATIONSHIP), "Customer" shall include both any higher tier contractor(s) and the U.S. Government.
- (e) "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.
- (f) "FAR" means the Federal Acquisition Regulations, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (g) "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 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.

- (h) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract."
- (i) "SELLER" means the party identified on the face of this Contract with whom SRC is contracting. For the purposes of paragraphs 7 (CUSTOMER COMMUNICATION) and 16 (INDEPENDENT CONTRACTOR RELATIONSHIP) only, "SELLER" shall also include SELLER's agents, representatives, subcontractors, and suppliers at any tier.
- (j) "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 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.
- (k) "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.

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 SRC
- (b) SRC 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, **SRC 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 FROM WHICH THIS CONTRACT WAS ISSUED; AND SRC AND SELLER EACH HEREBY CONSENT AND AGREE TO THE PERSONAL JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED WITHIN THE STATE FROM WHICH THIS CONTRACT WAS ISSUED WITH RESPECT TO ANY SUCH CLAIM, DISPUTE OR CAUSE OF ACTION AND WAIVE ANY DEFENSE OR OBJECTION TO THE EXERCISE OF PERSONAL JURISDICTION AND/OR VENUE BY ANY SUCH COURT.**
- (c) **TO THE EXTENT PERMITTED BY APPLICABLE LAWS, SRC 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 SRC FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY.**

11. ELECTRONIC CONTRACTING

SRC and SELLER agree that if this Contract, or any order, ancillary agreement, or correspondence is transmitted electronically neither SRC nor SELLER shall contest the validity thereof, on the basis that this

Contract, or the 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 Domestic version

- (a) **SELLER 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. 2751-2799, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 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 "Foreign Persons" employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, without the authority of a United States Government export license, export agreement, or applicable license exemption or exception. For purposes of this paragraph 12, "Foreign Persons" shall mean any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).
- (c) SELLER shall notify SRC if any use, sale, import or export by SRC of Work to be delivered under this Contract is restricted by any export control laws or regulations applicable to SELLER.
- (d) SELLER shall immediately notify the SRC 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.
- (e) 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.
- (f) Where SELLER is a signatory under a SRC export license or export agreement (e.g., TAA, MLA), SELLER shall provide prompt notification to the SRC Procurement Representative in the event of changed circumstances affecting said license or agreement.
- (g) SELLER shall indemnify, hold harmless and, at SRC's election, defend SRC, 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.

13. EXTRAS

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

14. FURNISHED PROPERTY

- (a) SRC may provide to SELLER property owned by either SRC or its Customer (Furnished Property). Unless previously authorized in writing by SRC Procurement Representative, Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in SRC or its Customer as applicable. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) The Furnished Property shall be supplied in "as-is" condition unless otherwise expressly agreed in writing. Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify SRC of, any loss or damage to Furnished Property while in SELLER's care, custody, or control. Without additional charge, SELLER shall manage, maintain, preserve, and insure Furnished Property in accordance with good commercial practice.
- (d) At SRC's request, and/or upon completion of this Contract SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by SRC
- (e) The Government Property clause contained in Section II shall apply in lieu of subparagraphs 14(a) through 14(d) above with respect to Government furnished property, or property to which the Government may take title under this Contract.

15. GRATUITIES/KICKBACKS PROHIBITION

- (a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, or anyone acting on SELLER's behalf, to any employee of SRC with a view toward securing favorable treatment as a supplier.
- (b) **By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. Sec. 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.**

16. INDEPENDENT CONTRACTOR RELATIONSHIP

- (a) SELLER's relationship to SRC shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between SRC and SELLER or SRC 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 SRC SELLER assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. SRC 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 SRC benefit plan.
- (c) SELLER personnel: (i) will not remove SRC's or its Customer's assets from SRC's or Customer's premises without SRC's authorization; (ii) will use SRC or Customer assets only for purposes of this Contract; (iii) will only connect with, interact with or use SRC's computer networks and equipment, communications resources, programs, tools or routines as SRC agrees, all at SELLER's risk and expense, and then only in compliance with applicable SRC policies; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone

numbers. SRC may monitor any communications made over or data stored in SRC computer networks and equipment or communications resources.

- (d) **SELLER SHALL INDEMNIFY, HOLD HARMLESS AND, AT SRC'S ELECTION, DEFEND SRC, 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, 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 CONTRACT.**

17. INFORMATION OF SRC

Information provided by SRC to SELLER remains the property of SRC. SELLER shall comply with all proprietary information markings and restrictive legends applied by SRC to anything provided hereunder to SELLER. SELLER shall not use any SRC 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 SRC.

18. INFORMATION OF SELLER

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

19. INSPECTION AND ACCEPTANCE

- (a) SRC and its Customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SRC shall perform such inspections in a manner that will not unduly delay the Work. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection (or election not to inspect) shall relieve SELLER of its obligations to furnish all Work in strict accordance with the requirements of this Contract. SRC's final inspection and acceptance shall be at destination.
- (c) If SELLER delivers non-conforming Work, SRC may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SELLER.
- (d) When Work is not ready at the time specified by SELLER for inspection, SRC may charge to SELLER the additional cost of inspection.
- (e) SRC may also charge SELLER for any costs of additional inspection and/or transportation when rejection makes reinspection necessary.
- (f) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

20. INSURANCE/ENTRY ON SRC OR CUSTOMER PROPERTY

- (a) In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of SRC or its Customer for any reason in connection with this Contract, then SELLER and its subcontractors

shall procure and maintain worker's compensation (with a waiver of subrogation in favor of SRC), automobile liability, comprehensive general liability (bodily injury and property damage) insurance in amounts reasonably acceptable to SRC, and such other insurance as SRC may reasonably require. SELLER shall indemnify, hold harmless and, at SRC's election, defend SRC, 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 while on the site(s) of SRC or its Customers. 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 20 shall apply regardless of cause. SELLER shall provide SRC 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 SRC as an additional insured for the duration of this Contract. Insurance maintained pursuant to this paragraph 20 shall be considered primary as respects the interest of SRC and is not contributory with any insurance that SRC may carry. "Subcontractor" as used in this subparagraph 20(a) shall include SELLER's subcontractors at any tier.

- (b) SELLER shall ensure that personnel assigned to work on SRC's or Customer's premises comply with any on-premises guidelines. Unless otherwise authorized in writing by SRC, SELLER's personnel assigned to work on SRC's or Customer's premises shall while on SRC'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/or (v) not solicit SRC's employees for employment during business hours.
- (c) All SELLER personnel, property, and vehicles entering or leaving SRC's or Customer's premises are subject to search.
- (d) SELLER shall promptly notify SRC 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 SRC's or Customer's property, that occur on SRC's or its Customer's premises.
- (e) SRC may, at its sole discretion, remove or require SELLER to remove any specified employee of SELLER from SRC's or Customer's premises and request that such employee not be reassigned to any SRC 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.

21. INTELLECTUAL PROPERTY

- (a) 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 SRC's election, defend SRC 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 SRC'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 SRC 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 SRC shall have a nonexclusive, worldwide, irrevocable, paid-up, royalty-free license and right, to enable SRC 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 SRC herein.

22. 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 charges hereunder. SELLER shall retain such records for three (3) years from final payment of this Contract, unless another period is specified by FAR Part 4.7.
- (b) SRC 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 SRC 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.

23. NEW MATERIALS

Unless authorized in writing by the SRC Procurement Representative, all Work to be delivered hereunder shall consist of new materials (as defined in FAR 52.211-5(a)), and shall not be used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

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 SRC. SELLER shall cooperate with SRC in the fulfillment of any foreign offset/countertrade obligations.

25. OPEN SOURCE SOFTWARE

Without the prior written approval of SRC, which SRC 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 SRC 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 SRC 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 FOB Destination.

27. PARTS OBSOLESCENCE

SRC may desire to place additional orders for items purchased hereunder. SELLER shall provide SRC 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 thirty (30) days from the latest of the following: (i) SRC's receipt of SELLER's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work. SRC shall have a right of setoff against payments due or at issue under this Contract or any other contract between SRC and SELLER.
- (b) Each payment made shall be subject to reduction to the extent of amounts which are found by SRC 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 SRC's payment or electronic funds transfer.
- (d) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

29. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) face of the Purchase Order, 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 by reference under paragraph 35; (5) these terms and conditions; (6) statement of work; and (7) specifications or drawings.

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 CFR Part 700). Under DPAS regulations, if this Contract supports the U.S. Government, is DX or DO Rated, and exceeds \$50,000.00, 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 shall provide and maintain a quality control system to an industry recognized Quality Standard and 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 SRC and its Customers.

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 the SRC Procurement Representative.

33. **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.

34. **STOP WORK ORDER**

- (a) SELLER shall stop Work for up to one hundred (100) days in accordance with the terms of any written notice received from SRC, or for such longer period of time as SRC and SELLER may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- (b) Within such period, SRC shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment in accordance with paragraph 4 "Changes" shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within twenty (20) days after such continuation.

35. **SUPPLEMENTAL TERMS AND CONDITIONS**

The following supplemental terms and conditions are hereby incorporated by reference, and shall also apply to this Contract: (i) for Contracts issued in support of a Department of Defense Prime Contract SRC's TC2A applies, (ii) for Contracts issued in support of a National Aeronautics and Space Administration Prime Contract SRC's TC2B applies, or (iii) for Contracts issued in support of a Department of Energy Prime Contract SRC's TC2C applies.

36. **SURVIVABILITY**

If this Contract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

- (a) Applicable Laws
 - Disputes/Jury Waiver
 - Electronic Contracting
 - Export Control
 - Furnished Property
 - Independent Contractor Relationship
 - Information of SRC
 - Insurance/Entry on SRC or Customer Property
 - Intellectual Property
 - Maintenance of Records
 - Parts Obsolescence
 - Release of Information
 - Warranty
- (b) Those U.S. Government flowdown provisions that by their nature should survive.

37. **TERMINATION FOR CONVENIENCE**

- (a) For specially performed Work: SRC may terminate part or all of this Contract for its convenience by giving written notice to SELLER. Upon receipt of such notice SELLER shall immediately: (i) cease work; (ii) prepare and submit to SRC an itemization of all completed and partially completed deliverables and services; (iii) deliver to SRC deliverables satisfactorily completed up to the date of termination at the agreed upon prices in this Contract; and (iv) deliver upon request any Work in process. SELLER shall use reasonable efforts to mitigate SRC's liability under this paragraph 33 by, among other actions, accepting the return of, returning to its suppliers, selling to others, or otherwise using the canceled deliverables (including raw materials or work in process) and provided such expenses do not exceed the prices set forth in this Contract. SRC's only obligation shall be to pay SELLER a percentage of the price reflecting the percentage of the Work performed in accordance with the Contract schedule prior to the notice of termination, plus reasonable charges that SELLER can demonstrate to the satisfaction of SRC, using generally accepted accounting principles, have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.

- (b) For other than specially performed Work: SRC may terminate part or all of this Contract for its convenience by giving written notice to SELLER and SRC's only obligation to SELLER shall be payment of SELLER's standard restocking or service charge, not to exceed ten (10) percent of the price of the terminated Work.
- (c) In either case, SELLER shall continue all Work not terminated.
- (d) In no event shall SRC be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within sixty (60) days from the effective date of the termination.

38. **TIMELY PERFORMANCE**

- (a) SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by SRC, SRC 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 SRC, in writing, giving pertinent details. This notification shall not change any 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 SRC's Procurement Representative.

39. **WAIVER, APPROVAL, AND REMEDIES**

- (a) Failure by SRC 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 SRC thereafter to enforce each and every such provision(s).
- (b) SRC's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- (c) The rights and remedies of SRC in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

40. **WARRANTY**

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to all specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or six (6) months, whichever is longer, if SELLER is not the manufacturer and has not modified the Work or, (ii) one (1) year or the manufacturer's warranty period, whichever is longer, if SELLER is the manufacturer of the Work or has modified it. If any non-conformity with Work appears within that time, SELLER shall promptly repair, replace, or reperform 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, SRC may elect to return the nonconforming Work or repair or replace Work or reprocur the Work at SELLER's expense. All warranties shall run to SRC and its Customer(s). **Any implied warranty of merchantability and fitness for a particular purpose is hereby disclaimed.**

3. Insert "and SRC" after "Government" or "Contracting Officer", as appropriate, throughout this clause.
4. Insert "or SRC" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to SELLER to/from the Contracting Officer shall be through the SRC Procurement Representative.

D. AMENDMENTS REQUIRED BY PRIME CONTRACT

SELLER shall, at the request of SRC, accept amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as SRC may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to paragraph 4 "Changes" in Section I of these terms and conditions.

E. PRESERVATION OF THE GOVERNMENT'S RIGHTS

If SRC furnishes designs, drawings, special tooling, equipment, engineering data or other technical or proprietary information (Furnished Items) to which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that SRC, acting on its own behalf, may modify or limit any rights the Government may have to authorize the Contractor's use of such Furnished Items in support of other U. S. Government prime contracts.

FAR FLOWDOWN CLAUSES

REFERENCE TITLE

1. The following FAR clauses apply to this Contract:

- (a) 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) (Note 2 applies.)
- (b) 52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT 1997) (Note 2 applies.)
- (c) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (Note 2 applies.)
- (d) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Note 2 applies.)
- (e) 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004) (If this Contract, except contracts to small business concerns, exceeds \$100,000 the Contractor must include this clause in all lower tier subcontracts that offer subcontracting opportunities.)
- (f) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
- (g) 52.222-26 EQUAL OPPORTUNITY (MAR 2007) (Only subparagraphs (b)(1)-(11) apply.)
- (h) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008) (Note 5 applies.)
- (i) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2009)

SECTION II: FAR FLOWDOWN PROVISIONS

A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, during the performance of this Contract. When a FAR clause uses a word or term that is defined in the FAR, the word or term shall have the same meaning as in the definition in FAR 2.101 in effect on the date of this Contract unless (i) a different definition is expressly set forth in this Contract; or (ii) the part, subpart, or section of the FAR where the clause is prescribed provides a different meaning; or (iii) the word or term is defined in FAR Part 31, for use in the cost principles and procedures. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act of 1978, as amended, shall have no application to this Contract. Any reference to "Disputes" clause shall mean paragraph 10 "Disputes/Jury Waiver" in Section I of these terms and conditions.

B. GOVERNMENT SUBCONTRACT

This Contract is entered into by SRC and SELLER in support of a U.S. Government contract.

As used in the clauses referenced below and otherwise in this Contract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this Contract.
3. "Contractor" means SELLER, as defined in this document, acting as the immediate (first-tier) subcontractor to SRC
4. "Prime Contract" means the contract between SRC and the U.S. Government or between SRC and its higher-tier contractor in support of a contract with the U.S. Government.
5. "Subcontract" means any contract placed by Contractor or lower-tier subcontractors under this Contract.

C. NOTES

1. Substitute "SRC" for "Government" or "United States" throughout this clause.
2. Substitute "SRC Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.

2. **The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:**

- (a) 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006) (Applies only if Contract value equals or exceeds \$25,000.)
- (b) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

3. **The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$550,000:**

- (a) 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008) (Applicable if the Contractor is not a small business. Note 2 is applicable to subparagraph (c) only; the Contractor's subcontracting plan is incorporated herein by reference.)
- (b) 52.219-16 LIQUIDATED DAMAGES – SUBCONTRACTING PLAN (JAN 1999) (Delete subparagraphs (d) and (e). Note 2 applies. Note 3 applies to subparagraph (f) only.)

4. **The following clauses apply as indicated:**

- (a) 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work involves access to classified information. Delete paragraph (c) of the clause.)
- (b) 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004) (Applicable if Contract exceeds \$100,000.)
- (c) 52.222-41 SERVICE CONTRACT ACT OF 1965 (NOV 2007) (Applicable if this Contract is for services covered by the Service Contract Act of 1965. Note 2 applies.)
- (d) 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (Applicable to Work containing covered radioactive material. In the blank insert "30". Notes 1 and 2 apply.)
- (e) 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
- (f) 52.225-1 BUY AMERICAN ACT - SUPPLIES (FEB 2009) (Applicable if the Work contains other than domestic components.)
- (g) 52.225-5 TRADE AGREEMENTS (AUG 2009) (Applicable if the Work contains other than domestic components.)
- (h) 52.245-2 GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES (JUN 2007) (Applicable if Government property is furnished in the performance of this Contract. Note 1 applies except in the phrases "Government property," "Government-furnished property," and in references to title to property. The following is added as paragraph (m): "Contractor shall provide to SRC immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of its property control system." Note 2 applies.)
- (i) 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006) (Note 2 applies.)

G. **CERTIFICATIONS AND REPRESENTATIONS**

(1) **This Subsection II(G) contains certifications and representations that are material representations of fact upon which SRC will rely in making awards to Contractor. By submitting its written offer, or providing oral offers/quotations at the request of SRC, or accepting any Contract, Contractor certifies to the representations and certifications as set forth below in this Subsection II(G). These certifications and representations shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by SRC Contractor shall immediately notify SRC of any change of status with regard to these certifications and representations.**

(2) SELLER represents and warrants that the Work provided under this Contract constitutes a "Commercial Item" as defined in FAR 2.101.

(3) The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to this Contract. In each clause incorporated below, substitute "SRC", for "Government" and "Contracting Agency", and "SRC Procurement Representative" for "Contracting Officer" throughout.

(a) **FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.**

(1) Contractor certifies that, to the best of its knowledge and belief, that Contractor and/or any of its Principals, (as defined in FAR 52.209-5) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

(2) Contractor shall provide immediate written notice to SRC if, any time prior to award of any Contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(b) **FAR 52.222-22 Previous Contracts and Compliance Reports.** Contractor represents that if Contractor has participated in a previous contract or subcontract subject to Equal Opportunity clause (FAR 52.222-26) (i) Contractor has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(c) **FAR 52.222-25 Affirmative Action Compliance.** Contractor represents (1) that Contractor has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 C.F.R. 60-1 and 60-2), or (2) that in the event such a program does not presently exist, Contractor will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.

(4) **Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act.** In compliance with 22 C.F.R. 130, neither Contractor nor its subcontractors at any tier have paid, offered or agreed to pay, or will pay or offer or agree to pay, in respect to the Work which is to be provided to SRC under any Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.