

Elbit Systems of America, LLC  
General Provisions for Purchase Orders  
July 2026

Table of Contents

**A. General Administrative Clauses ..... 4**

1. DEFINITIONS..... 4

2. ENGLISH LANGUAGE ..... 6

3. GENERAL RELATIONSHIP-CONTRACTOR/SUPPLIER EMPLOYEES ..... 6

4. ACCEPTANCE OF CONTRACT TERMS AND CONDITIONS ..... 6

5. CONTENTS ORDER OF PRECEDENCE AND RULES OF INTERPRETATION ..... 7

6. CONTRACT DIRECTION AND CHANGES ..... 8

7. MODIFICATION OF ORDER..... 8

8. CUSTOMER COMMUNICATION ..... 9

9. PAYMENT, INVOICING AND TAXES..... 9

10. ALLOWABLE COSTS AND PAYMENT (COST TYPE CONTRACTS ONLY) ..... 11

11. TRAVEL COSTS ..... 12

12. CONFIDENTIAL RELATIONSHIPS ..... 12

13. AUDIT AND INSPECTION OF RECORDS..... 14

14. ASSIGNMENT OF FOREIGN PERSONS ..... 15

15. ACCESS TO FACILITY AND PROPERTIES ..... 15

16. STOP WORK ORDER ..... 16

17. EXCUSABLE DELAYS..... 17

18. DISPUTES AND JURY WAIVER..... 17

19. TERMINATION ..... 18

20. OFFSET CREDIT, COOPERATION AND DUTY DRAWBACK..... 19

21. BUSINESS CONTINUITY PLANNING..... 20

22. BANKRUPTCY ..... 21

23. NON-SOLICITATION AGREEMENT ..... 21

24. ASSIGNMENT OF CONTRACTORS..... 21

|                                                                |           |
|----------------------------------------------------------------|-----------|
| 25. SUPPLIER SUSTAINABILITY .....                              | 22        |
| 26. ELECTRONIC CONTRACTING .....                               | 22        |
| 27. NO WAIVER OF CONDITIONS .....                              | 22        |
| 28. REMEDIES.....                                              | 23        |
| 29. SURVIVABILITY .....                                        | 23        |
| 30. SEVERABILITY .....                                         | 23        |
| <b>B. Laws and Regulations .....</b>                           | <b>23</b> |
| 1. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS .....         | 23        |
| 2. EXPORT CONTROL COMPLIANCE .....                             | 27        |
| 3. CUSTOMS .....                                               | 32        |
| 4. ETHICAL STANDARDS OF CONDUCT .....                          | 34        |
| 5. CONFLICT MINERALS .....                                     | 35        |
| 6. CLASSIFIED REQUIREMENTS .....                               | 35        |
| 7. CERTIFICATIONS AND NOTICE OF STATUS CHANGE .....            | 36        |
| <b>C. Supplier Quality and Performance .....</b>               | <b>38</b> |
| 1. PRIORITY RATING REQUIREMENT .....                           | 38        |
| 2. QUALITY CONTROL, INSPECTION, REJECTION AND ACCEPTANCE ..... | 38        |
| 3. COUNTERFEIT PARTS.....                                      | 41        |
| 4. PACKING.....                                                | 42        |
| 5. SHIPMENT .....                                              | 43        |
| 6. DELIVERY .....                                              | 43        |
| 7. SETOFF .....                                                | 45        |
| 8. WARRANTY, REPRESENTATIONS AND NON-CONFORMING GOODS .....    | 45        |
| 9. PARTS OBSOLESCENCE.....                                     | 46        |
| 10. NEW MATERIAL .....                                         | 47        |
| 11. FURNISHED, ACQUIRED AND FABRICATED PROPERTY .....          | 47        |
| 12. INTELLECTUAL PROPERTY .....                                | 48        |
| 13. INFORMATION OF BUYER AND SELLER.....                       | 50        |

|                                                                               |           |
|-------------------------------------------------------------------------------|-----------|
| <b>D. Indemnity .....</b>                                                     | <b>54</b> |
| 1. INTELLECTUAL PROPERTY INDEMNITY .....                                      | 54        |
| 2. INDEMNITY AGAINST CLAIMS.....                                              | 55        |
| 3. HAZARD CONDITIONS INDEMNIFICATION.....                                     | 56        |
| 4. RISK OF DAMAGE AND INDEMNIFICATION INSURANCE.....                          | 58        |
| 5. FAILURE TO PERFORM .....                                                   | 61        |
| 6. DEFECTIVE COST OR PRICING DATA.....                                        | 61        |
| <b>E. Information Technology.....</b>                                         | <b>62</b> |
| 1. ARTIFICIAL INTELLIGENCE .....                                              | 62        |
| 2. CYBERSECURITY COMPLIANCE.....                                              | 63        |
| 3. SELLER'S DUTY REGARDING SOFTWARE DELIVERABLES/SELLER'S<br>INFORMATION..... | 63        |
| 4. THIRD PARTY AND OPEN-SOURCE SOFTWARE.....                                  | 64        |

## A. General Administrative Clauses

### 1. DEFINITIONS

As used throughout these Terms and Conditions, the following terms are defined as specified below unless otherwise specifically stated:

“Buyer” means Elbit Systems of America, LLC, a corporation organized and existing under the laws of the state of Delaware, and its wholly owned subsidiaries

“Buyer Information” means proprietary information which may include but is not limited to, trade secrets, specifications, drawings, sketches, models, samples, computer programs, software, reports, data, techniques, designs, codes, documentation, personal Information, and financial, statistical or other technical information, technical data, materials, or know-how related to Buyer’s business, its plans or strategies, potential business and methods of operation, products, services, discoveries, inventions, ideas, techniques, know-how, products and technologies whether or not patentable, designs, drawings, specifications, techniques, formulations, standards, equipment, or finance, in each case of Buyer or its subsidiaries or affiliates; Buyer’s employees’ sensitive personal data, technical Data (as defined in 22 CFR § 120.10), and any other regulated data.

“Buyer's Procurement Representative” means the agent of Buyer with the actual authority to make legally binding commitments on behalf of Buyer as designated on the Purchase Order or Subcontract.

“Contracting Officer” mean U.S. Government Contracting Officer for the Prime Contract.

“Cost or pricing data” means cost or pricing data as defined in FAR 2.101.

“Day” or “Days” means calendar day(s). All periods of days referred to in this Order shall be measured in calendar days. Where a date referenced in this Order falls on a weekend or federal holiday, the date shall be deemed to fall on the next business day unless otherwise specified.

“DFARS” means the Defense Federal Acquisition Regulation Supplement.

“FAR” means the Federal Acquisition Regulation.

“Government” means the Government of the United States of America, unless otherwise specified.

“Government Contract” means Buyer’s contracts with the Department of Defense or one of Buyer’s contracts with a higher-tier contractor with contracts with the Department of Defense.

“Item” means goods, parts, components, supplies, or items including, without limitation, those part numbers model numbers, and/or descriptions set forth on the face of this Order and shall also include computer software or hardware (including any software, firmware or other hardwired logic embedded within the hardware) delivered or to be delivered under this Order. “Parties” means Buyer and Seller, and, if the context requires, their employees, officers, agents (including without limitation, carriers and riggers), subcontractors, wholly owned subsidiaries, and others acting at their respective direction and control or under contract to either.

“Prime Contract” means U.S. Government contract under which an Order may be issued.

“Purchase Order” or “Order” means any Purchase Order or Subcontract issued hereunder, including written change notices, supplements, amendments, and other written modifications thereto, together with any referenced certifications, certificates (including Seller’s Annual Certification), exhibits, attachments or other documents, and includes these terms and conditions, and the Statement of Work, if any.

“Seller” means the legal entity performing work pursuant to this Order and, if the context requires, its employees, officers, agents (including without limitation, carriers and riggers), subcontractors, and others acting at its direction and control or under contract to it.

“Seller’s Annual Certification” means the certifications and representations set forth in Annual Supplier Evaluation and Certification document, attested to and executed by a duly authorized representative of Seller’s company. This document collects relevant representation and certifications required for subcontracting and reporting obligations.

“Services” means any labor, performance of a duty, or effort supplied by Seller incidental to the sale of Items by Seller under this Order including, without limitation, installation, repair, and maintenance services. The term “Services” shall also include, without limitation, any effort specifically required by this Order, including all associated efforts such as design, engineering, repair, maintenance, technical, construction, consulting, professional, or other services.

NOTE: Article Headings are headings and subheadings of Articles contained herein and are to be used for convenience and ease of reference and so not limit the scope or intent if the Article.

## 2. ENGLISH LANGUAGE

All reports, correspondence, drawings, notices, marking, documentation, and other communications shall be in the English language. In the event of any inconsistency with any translation into another language, the American Standard English meaning of this Contract shall prevail. Unless otherwise provided in writing, all documentation and Work shall employ the units of United States standard weights and measures as published by the United States National Institute of Standards and Technology.

## 3. GENERAL RELATIONSHIP-CONTRACTOR/SUPPLIER EMPLOYEES

Seller's relationship to Buyer in the performance of this Order is that of an Independent Contractor. Neither Seller nor any of the persons utilized by Seller to furnish materials or perform work or Services under this Order are employees of Buyer. Seller shall, at its own expense, comply with all applicable laws and regulations and assume all liabilities and obligations imposed by such laws and regulations with respect to this Order. Seller agrees that neither it nor its personnel are employees of Buyer, or provided any benefits provided or rights guaranteed by Buyer, or by operation of law, to Buyer's respective employees, including but not limited to group insurance, liability insurance, disability insurance, paid vacation, sick leave or other leave, retirement plans, health plans, stock options and the like. Seller shall be responsible for and hold harmless Buyer and its customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Order. Buyer shall be solely responsible for all liaison and coordination with Buyer customer, including the Government, as it affects the applicable Government Contract, this Order, and any related contract. Unless otherwise directed in writing by Buyer's Procurement Representative, all documentation requiring submittal to, or action by, the Government or the Contracting Officer shall be routed to, or through, Buyer's Procurement Representative, or as otherwise permitted by this Order.

## 4. ACCEPTANCE OF CONTRACT TERMS AND CONDITIONS

Any of the following acts by Seller shall constitute acceptance of this Order:

- a) execution of the acceptance copy of this Order and receipt by Buyer;
- b) initiation of any aspect of performance, or notification to Buyer that Seller is commencing performance, under this Order;
- c) shipping of any Items in performance of this Order; or
- d) acceptance of any form of payment, partial or complete, under this Order.

ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SUPPLIER OR INCLUDED IN SUPPLIER'S ACKNOWLEDGMENT HEREOF OR ATTACHED TO ANY INVOICE

THEREAFTER, ARE HEREBY REJECTED BY Buyer AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY BUYER'S PROCUREMENT REPRESENTATIVE. Seller's staff shall perform such work as may be ordered by Buyer. The entire direction, scope, control, and interpretation of any work to be performed by Seller's staff shall be made exclusively and solely at the discretion of Buyer. Seller shall at all times employ persons to perform the tasks who are fully experienced and properly qualified to perform the same.

## 5. CONTENTS ORDER OF PRECEDENCE AND RULES OF INTERPRETATION

This Order integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties and shall govern the performance and/or delivery of Items and/or Services provided pursuant to the Order. Seller expressly represents that in accepting this Order it does not rely and has not relied upon any written or oral representation, warranty, or statement not set forth in the Order and that it will not have any right or remedy rising out of any representation, warranty, or other statement not expressly set out in this Order. The provisions of this Order shall be construed and interpreted as consistent whenever possible. Any conflicts in this Order shall be resolved by giving precedence in the following order:

- a) the Purchase Order;
- b) these Terms and Conditions (which are incorporated by reference in any Purchase Order issued hereunder);
- c) the Statement of Work, Specifications, or Requirements.

This Contract, together with all purchase orders, change orders, attachments, exhibits, supplements, specifications, schedules, and other terms referenced in or attached to this Contract, contains the entire agreement of the Parties, and supersedes any and all prior agreements, understandings, and communications between Buyer and Seller related to the subject matter of this Contract. The Parties drafted this without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

Clauses applicable to this Contract from Buyer's contract with its customer, including applicable FAR/DFARS or other agency acquisition regulation clauses, if any, are incorporated elsewhere in this Contract either by attachment or by some other means of reference, and shall prevail as provided for in this "Order of Precedence" Article.

No other documents supersede FAR and DFARS clauses applicable to Buyer's Government Contract when the prime contract is with the Government. All

applicable U.S. Government clauses are to be flowed down to lower-tier subcontractors as required by the clause.

## 6. CONTRACT DIRECTION AND CHANGES

Only the Buyer's Procurement Representative (which does not include Buyer's engineering, technical or program management personnel) has authority on behalf of Buyer to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties. Buyer's engineering and technical personnel may from time-to-time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment. Except as otherwise provided herein, all notices to be furnished by Seller shall be in writing and sent to the Buyer's Procurement Representative.

## 7. MODIFICATION OF ORDER

- a) Buyer's Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this Contract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, 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 Buyer-furnished property; (vi) terms and conditions of this Contract required to meet Buyer's obligations under Government prime contracts or subcontracts; and, if this Contract includes services, (vii) description of services to be performed; (viii) time of performance (e.g., hours of the day, days of the week, etc.); and (ix) place of performance. Seller shall comply promptly with such direction. Except for the rights granted to Buyer under this Article, a change pursuant to this Article shall not give rise to nor authorize any other modification of or amendment to the terms and conditions of this Contract.
- b) If such change increases or decreases the cost or time required to perform this Contract, the Parties shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Contract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Procurement Representative in writing within twenty-five (25) days and deliver a fully supported proposal to Buyer's Procurement Representative within sixty (60) days after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Seller has the burden to support the amount of Seller's claim for equitable adjustment. Further,



Buyer shall have the right to verify the amount of Seller's claim in accordance with the "Financial Records and Audit" Article. Failure of the Parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.

- c) If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Procurement Representative promptly in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Procurement Representative, Seller shall take no action to implement any such change.

## 8. CUSTOMER COMMUNICATION

Except for communication(s) to the Government regarding notification of alleged fraud, waste, or abuse, Seller is expressly prohibited from communicating with Buyer's Customer with respect to Buyer's Government Contract and/or the Order without Buyer's prior express consent. However, nothing in this Article shall be construed to restrict the discussion of day-to-day operational issues or any material matter pertaining to payment to or utilization of Seller. Any authorized communications, other than those expressly provided for herein, between Seller and Buyer's Customer shall be conducted in the presence of Buyer's Procurement Representative unless otherwise agreed by the Parties.

## 9. PAYMENT, INVOICING AND TAXES

### a) PAYMENT

Payment shall be made in accordance with the Purchase Order, if invoice is not sent to email address listed on purchase order, Buyer is not obligated to meet the net terms for payments and payments will not be considered late. Buyer shall pay Seller, upon the submission of proper invoices or vouchers, the prices stipulated in this Order for Items delivered and accepted or Services rendered and accepted, less any deductions provided in this Order.

### b) INVOICING

Seller shall issue a separate invoice, in English, for each shipment or each billing period. Payments will be made from "Original" invoices only. Fax copies, statements, or invoice copies will not be accepted. "Duplicate Original" invoices must not be sent without prior authorization from Buyer. Unless otherwise instructed by Buyer, each invoice shall include:

- I. Buyer Purchase Order Number and Line number;
- II. Buyer Line Description (as referenced on the Order);
- III. the Unit Price and Total Price;

- IV. Seller's invoice number and date;
- V. the payment terms as agreed by the Parties and stated in the Purchase Order; and
- VI. a description of the work performed.

Each payment made shall be subject to reduction to the extent of amounts which are found by Buyer, Buyer's Customer, or Seller not to have been properly payable. Seller shall promptly notify Buyer of any overpayments and remit the overpayment amount to Buyer along with a description of the overpayment, including the circumstances of the overpayment, affected Order and delivery order number if applicable, and affected Order line item or subline item if applicable. Buyer, and any affiliate of Buyer, may withhold, deduct, and/or setoff all money due, or which may become due, from Buyer or any affiliate of Buyer, arising out of Seller's performance under this Order or any other transaction Buyer and its affiliates may have with Seller.

Unless otherwise provided by Buyer on the face of the Order, terms of payment are net sixty (60) calendar days from the latest of the following:

- I. Buyer's receipt of an accurate and approved invoice;
- II. The date the Items or Services are delivered and finally accepted; or (iii) the date provided in the Order for receipt of Items or completion of Services. For interim payments under a financing arrangement, except where Buyer or Buyer's customer requires an audit or other review of a specific payment request, payment terms are net sixty (60) from Buyer's receipt of an accurate and approved invoice. Seller shall notify Buyer in writing within thirty (30) calendar days of the occurrence of any alleged payment disputes. Buyer shall pay Seller the prices set forth on the Order for Items delivered and finally accepted or Services rendered and finally accepted, less any deductions provided in the Order. If Seller does not return the acknowledgement page of the Order and commences performance, Buyer shall only be responsible for payment for the work performed to the extent that the work was required by Buyer, not to exceed the amounts set forth in the Order, and if the Order is cost-reimbursable, only to the extent the costs are allowable under the FAR. All payments shall be made in U.S. Dollars with no adjustments for currency exchange rates. The Parties shall consider the invoices paid on the date the check is postmarked and mailed to Seller. For invoices subject to a prompt payment discount, the discount period will be computed from the date of receipt of a correct invoice to the date Buyer issues a check.

Each payment made shall be subject to a reduction for any amounts found by Buyer, Buyer's customer, or Seller not to have been properly payable, including any overpayments. Seller shall promptly notify Buyer of any overpayments and remit the overpayment amount to Buyer along with a description of the overpayment. To the extent permitted by applicable law, Buyer, and any affiliate or subsidiary of Buyer, may withhold, deduct, or setoff all money due, or which may become due, from Buyer arising out of Seller's performance under the Order or any other transaction Buyer and its affiliates or subsidiaries may have with Seller. Nothing contained herein shall be interpreted to mean that Buyer is required to pay any amount that Buyer disputes.

d) TAXES

Unless otherwise approved by Buyer in writing, the prices for the Items and Services in the Order include and Seller shall be responsible for the payment of any applicable federal, state, and local taxes, duties, tariffs, or other similar fees (collectively "taxes") imposed by any government, unless Seller obtains an applicable exemption. Seller represents that the price does not include any taxes, impositions, charges, or exactions for which it is eligible to obtain or has obtained a valid exemption certificate or other evidence of exemption. Seller shall only include taxes on an invoice that Buyer has preapproved in the Order and shall itemize such taxes separately on Seller's invoice.

10. ALLOWABLE COSTS AND PAYMENT (COST TYPE CONTRACTS ONLY)

- a) No subcontract placed under the Order by Seller shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under a cost-reimbursement subcontract shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- b) If Seller, its subcontractor, or prospective subcontractor at any tier (i) fails to submit and/or certify accurate, complete, and current cost or pricing data, (ii) claims an exception to a requirement to submit cost or pricing data and such exception is invalid, or (iii) violates any applicable laws rules, regulations, ordinances, or the Order, and, as a result of that failure, (1) Buyer's customer reduces Buyer's contract price or fee, (2) Buyer's costs are determined to be unallowable, (3) any fines, penalties, withholdings, or interest are assessed on Buyer, or (4) Buyer incurs any other costs or damages, then Buyer may (A) make a reduction of the corresponding amounts (in whole or in part) plus any other costs incurred including attorneys' fees in either the price of the Order or any other contract with Seller, or (B) recover from Seller an amount equal to the reduction plus any other costs incurred including attorney's fees. Additionally, upon occurrence of any of the

circumstances above, Seller shall be liable and shall pay Buyer at the time any overpayment is repaid: (I) simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to Seller to the date Buyer is repaid by Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S. Code (U.S.C.) § 6621(a)(2); and (II) if Seller knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current, a penalty equal to the amount of the overpayment.

## 11. TRAVEL COSTS

a) All travel expenses incurred by Seller while performing this Contract are included in the Contract price and will not be reimbursed separately by Buyer unless prior written authorization is provided by Buyer's Procurement Representative.

b) If travel is approved under this Contract, Seller will be reimbursed only for necessary, reasonable, and actual costs for transportation, lodging, meals, and incidental expenses, provided these costs do not exceed the applicable maximum per diem rate in effect at the time of travel, as specified by the United States Federal Travel Regulations for the authorized travel location. Airfare reimbursement is limited to coach class only. Lodging costs are allowable only if incurred at accommodations open to the general public.

## 12. CONFIDENTIAL RELATIONSHIPS

a) Seller shall treat as proprietary and confidential all specifications, drawings, blueprints, nomenclature, samples, models and other information supplied by Buyer, except for any such information provided by the Government or to which the Government has other than unlimited rights, in which case Seller shall use and disclose the information in accordance with applicable provisions and/or restrictive markings concerning Seller's use and disclosure of such information. Unless the written consent of Buyer is first obtained, Seller shall not in any manner advertise, publish, or release for publication, including without limitation by news releases, articles, brochures, advertisements, or speeches, any statement mentioning Buyer or the fact that Seller has furnished or contracted to furnish to Buyer Items and/or Services required by this Order, or quote the opinion of any employees of Buyer. Seller shall not disclose any information relating to this Order to any person not authorized by Buyer to receive it. Seller shall use the information supplied by Buyer only to accomplish work covered by this Order and for no other purpose. Upon completion, all information is to either be returned to Buyer upon Buyer's written request or destroyed by Seller in which case Seller shall provide Buyer with a Certificate of Destruction. In the event of a conflict between the terms of this Article and the terms and conditions of any separately

executed and applicable Non-Disclosure Agreement between Buyer and Seller, the terms and conditions of the Non-Disclosure Agreement shall control.

b) Seller is expressly prohibited from communicating with Buyer's Customer with respect to Buyer's Government Contract and/or the Order without Buyer's prior express consent. However, nothing in this Article shall be construed to restrict the discussion of day-to-day operational issues or any material matter pertaining to payment to or utilization of Seller. Any authorized communications, other than those expressly provided for herein, between Seller and Buyer's Customer shall be conducted in the presence of Buyer's Procurement Representative unless otherwise agreed by the Parties.

c) Notwithstanding any proprietary markings, all information of Supplier disclosed to Buyer hereunder may be disclosed by Buyer, with confidential or proprietary labels and markings, to officers, directors, employees, contract workers, consultants, or agents of Buyer, and to any of Buyer's Affiliates, Buyer's Customer, or Buyer's subcontractors and potential subcontractors having a need to access or know such information.

d) Moreover, Buyer may disclose all Supplier information, in accordance with applicable governmental regulations, to the FAA, any other governing airworthiness certifying authority, any investigatory authority (to any airworthiness certifying authority), or any other department or agency of the U.S. Government, including, without limitation, for the purpose of obtaining necessary government approvals or supporting safety investigations. Supplier agrees that it will not accept from any third party, or use, any information that appears to be similar to Proprietary Information without first obtaining Buyer's express written consent, except that Supplier may receive solicitations or purchase orders issued by a partner or higher-tier supplier of Buyer that expressly reference a Buyer Order and contain obligations no less stringent than this Section. Supplier shall promptly notify Buyer if Proprietary Information is offered to Supplier by a third party or of the suspected possession of Proprietary Information by a third party. Supplier acknowledges that exposure to Buyer's Proprietary Information and other Intellectual Property will make it easier for Supplier to manufacture or repair, or to apply for or assist another entity in obtaining FAA or other government approval for, parts that are the same parts or that have the same form, fit, and function, as parts Supplier supplies to Buyer pursuant to an Order hereunder. Supplier also acknowledges that Buyer's goodwill and reputation which become associated with Goods supplied by Supplier pursuant to an Order hereunder once approved for use in Buyer's products make it easier for Supplier to manufacture or repair, or to apply for or assist another entity in obtaining FAA or other government approval for those parts, or parts that have the same form, fit and function, for use in Buyer's products. Supplier agrees that it shall not manufacture or repair parts that Supplier supplies to Buyer pursuant to an Order hereunder, or manufacture or repair

parts having the same form, fit and function, for use in Buyer's products, or apply for or assist another entity in obtaining FAA or other government approval for any such parts, without Buyer's written consent. Supplier agrees to notify Buyer in writing and to obtain Buyer's written consent prior to manufacturing or repairing any parts or applying for or assisting another entity in obtaining FAA or other government approval for any parts, for itself or another entity, that have the same form, fit, and function as any parts Supplier supplies to Buyer pursuant to an Order hereunder. Supplier's notification shall (i) describe the parts to be manufactured or repaired, or for which application for or assistance to another entity in obtaining FAA or other government approval for such parts is to be provided, (ii) identify the corresponding parts Supplier supplies to Buyer, and (iii) provide Buyer with sufficient information to demonstrate that Supplier will manufacture or repair, or apply for or assist another entity in obtaining FAA or other government approval for such parts (as the case may be) without reference to or use of Buyer Proprietary Information or other Buyer Intellectual Property. If Supplier manufactures or repairs any such parts without obtaining Buyer's written consent (or applies for or assists another entity in obtaining FAA or other government approval for such parts), then it shall be considered a breach of the Order and Buyer shall be entitled to injunctive relief and such other remedies as a court may order. Supplier shall not make accessible or sell completed or partially completed or defective Goods manufactured using or containing Proprietary Information to any Unauthorized third party. Goods not provided to Buyer shall be disposed of in a manner that prevents disclosure of Proprietary Information (including by reverse engineering). For Proprietary Information exchanged in connection with the Order, the terms of this Article shall supersede any provisions regarding the protection of proprietary information in any other agreements between the Parties.

### 13. AUDIT AND INSPECTION OF RECORDS

Buyer and Buyer's Customer, including the Government and regulatory authorities, if Buyer agrees with the customer's request to audit Seller's records or Buyer is otherwise obligated to grant the customer access to records, shall have the right to audit and reproduce Seller's records including, but not limited to:

- a) in the event of cancellation, termination, or default;
- b) in connection with any equitable adjustment request;
- c) all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract;
- d) where the terms of this Order, law and regulation, or applicable standard, otherwise entitle Buyer and/or its Customer to audit Seller's records and/or facilities, including the records and/or facilities of Seller's assignees or subcontractors, if any;

- e) in connection with internal investigations of alleged violations of law including, but not limited to, the U.S. Foreign Corrupt Practices Act; or
- f) any type of litigation.

Seller shall keep reasonably detailed records of all costs of the performance of this Order for a period of no less than five (5) years from the date of final payment or termination of any warranty or Item support under this Order, whichever is later. Seller shall provide Buyer, Buyer's Customer and regulatory authorities with access to all facilities involved in the Order and to all applicable records.

#### 14. ASSIGNMENT OF FOREIGN PERSONS

Supplier shall not assign any persons who are not United States citizens or aliens granted permanent residency in the United States to work on this Contract or have access to any Buyer Information without first obtaining Buyer written approval, which approval shall not be unreasonably withheld. Seller acknowledges that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), technical data (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or services provided by Buyer for purposes of this Order may be controlled by the ITAR or the EAR, and may require U.S. Government export authorization before assigning any Foreign Person (as defined and required by 22 CFR 120.16, which includes foreign governments, business entities, groups and international organizations) to perform work under this Order or before granting access to Foreign Persons to any technical data obtained, used, generated, or delivered in performance of this Order. Any request for export authorization must include the information required by applicable export laws and regulations (reference ITAR, EAR or Chapter 10 of the National Industrial Security Program Operating Manual).

#### 15. ACCESS TO FACILITY AND PROPERTIES

Where Seller is either entering or performing work at premises owned or controlled by Buyer or Buyer's customer or obtaining access electronically to Buyer systems or information, Seller shall comply with:

- a) All the rules and regulations established by Buyer or Buyer's customer for access to and activities in and around premises controlled by Buyer or Buyer's customer;
- b) Buyer's requests for information and documentation to validate citizenship or immigration status of Seller's personnel or subcontractor personnel; and
- c) Subject to applicable laws, Buyer shall have the right to require Seller's personnel working onsite to submit to Buyer's standard drug test and/or



background check or equivalent standards, and Seller shall certify that such screening was accomplished before Buyer grants access to Seller's personnel.

Suppliers physically onsite working at any facility shall provide a Certification of Insurance to the Buyer. Buyer and/or its Customer may, at its sole discretion, remove or require Supplier to remove any specified personnel of Supplier from Buyer's or Customer's premises, worksite or system and request that such personnel not be reassigned to any Buyer premises under this Contract or any other contract. Any costs arising from or relating to removal of Supplier's employee shall be borne solely by Supplier and not charged to this Contract. Exclusion from the worksite under the circumstances described in this clause shall not relieve Supplier from full performance of the Contract, nor will it provide the basis for an excusable delay or any claims against Buyer or its Customer.

With respect to Supplier Personnel performing work within Buyer's facility or at Buyer's jobsite, Supplier shall (i) provide to Supplier Personnel, and require all Supplier Personnel to wear, specified safety equipment, including but not limited to, eye and foot protection; (ii) comply with, and ensure that Supplier Personnel comply with, all applicable environmental, occupational health, and safety related Laws, as well as Buyer's environmental, health, and safety standards, including without limitation, Buyer's jobsite safety rules, requirements, and instructions; and (iii) notify Buyer immediately prior to commencement of any work or Services. If Supplier is unable or unwilling to comply with the foregoing, Buyer, in its sole discretion, may withdraw any Orders impacted by Supplier's failure to comply without further recourse by Supplier.

## 16. STOP WORK ORDER

- a) Buyer shall have the right to direct Seller in writing to suspend all or any part of the work for a period of time not to exceed ninety (90) days, and for any further period as the Parties may agree, unless extended by Buyer's customer. Upon receipt of the written notice, Seller shall immediately comply with the terms of the notice and shall take all reasonable measures to mitigate the costs allocable to the suspended portion of the work.
- b) If work is suspended, an adjustment may be made in accordance with the provisions herein for any increase in the time and the cost of performing this Order necessarily caused by such suspension prior to incurrence of costs in excess of the funded value, and this Order may be modified in writing accordingly.
- c) A claim shall not be allowed under this Article unless the claim, in an amount stated, is asserted in writing within thirty (30) days after Buyer's issuance of the notice of termination of the suspension. Suspension may only be terminated by written notice from Buyer, regardless of the expiration of the original or extended



suspension period. When the suspension has been terminated, Seller shall immediately commence performance, notwithstanding the fact that there is no agreement as to a revised schedule or the cost of completing this Order.

## 17. EXCUSABLE DELAYS

- a) Seller shall not be liable for any delays in delivery caused by circumstances beyond its reasonable control including acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, third-party strikes or freight embargoes, provided that:
  - I. Seller immediately gives written notice to Buyer of any difficulty or anticipated difficulty in meeting the delivery schedule set forth in the Order;
  - II. Seller immediately gives written notice to Buyer of any actual or potential situation that is delaying, or threatens to delay the timely performance of the Order, including an actual or potential labor dispute; and
  - III. The delay does not materially affect Buyer's scheduling on any system or process.
- b) When any delays in delivery occur, Seller encounters difficulty in meeting performance requirements or Seller anticipates difficulty in complying with the delivery schedule or date, Seller shall immediately give notice thereof to Buyer. If requested by Buyer, Seller shall use additional effort, including premium effort, to avoid or minimize delay to the maximum extent possible. All of the costs of the additional effort shall be borne by Seller. The rights and remedies pursuant to this Article are in addition to rights and remedies provided to Buyer under this Order.
- c) Notwithstanding the above, if such delays extend for more than thirty (30) days from the delivery or performance date or threatens Buyer's delivery commitments under its Government Contract, Buyer may terminate such part of this Order remaining to be performed without liability to Buyer except for the fair value of work already completed and accepted.

## 18. DISPUTES AND JURY WAIVER

- a) This Agreement, irrespective of the place of performance, shall be governed by, subject to, and construed in accordance with the laws of the State of Texas excluding its choice of law rules, except that the federal common law of government contracts, as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the Government, shall be used to construe and interpret any U.S. Government contract clauses and certifications.

- b) Any disputes under this Order that are not disposed of by mutual agreement of the Parties may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with performance of this Order as directed by Buyer. Except as expressly authorized in writing by Buyer, no failure of Supplier and Buyer to reach any agreement regarding a dispute related to any Order shall excuse Supplier from proceeding with performance and delivery obligations during the pendency of such dispute.
- c) Seller may not pursue a claim directly against the Government under this Contract. Seller consents to personal jurisdiction in the state of Delaware and any litigation under this Order must be brought exclusively in a court of competent jurisdiction in the state of Delaware, without regard to conflicts of law principles. The Parties hereby mutually agree to waive their respective rights to trial by jury. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity. Subject to any specific clauses in this Order, Seller shall be liable for any damages incurred by Buyer as a result of Seller's failure to perform its obligations in the manner required by this Order.
- d) The Parties specifically disclaim application to this Order of the United Nations Convention on Contracts for the International Sale of Goods.

## 19. TERMINATION

- a) Termination for Convenience. At any time from and after thirty (30) Days from the effective date of this Contract, by written notice to Supplier, Buyer may terminate this Contract for its convenience with immediate effect, in whole or in part including any statement of work, if the Buyer Procurement Representative determines that it is in Buyer's best interest. Buyer's notice of termination will specify the extent of termination and the effective date and be in accordance with the procedures set forth in FAR 52.249-2 (or FAR 52.249-6 for Cost Reimbursable Goods only), which clause is incorporated herein by this reference. Furthermore, for purposes of this clause "Government" means "Buyer and the Government" and "Contracting Officer" means "Buyer" or the "Contracting Officer." In the event that Buyer terminates this Contract pursuant to U.S. Government direction, Supplier's recovery of termination costs is limited to the extent that Buyer is able to recover such costs from the U.S. Government.
- b) Termination for Default. Buyer may terminate this Contract for default, completely or in part, by written notice to Supplier in any of the following circumstances:
  - I. If Supplier fails to deliver the Goods required by this Contract within the time specified herein, or any extension thereof granted by Buyer in writing;

- II. If Supplier fails to perform any material provision of this Contract or fails to make progress so as to endanger performance of this Contract, and if in either of these two circumstances, Supplier does not cure such failure within a period of eight (8) Days after receipt of written notice from Buyer specifying such failure;
  - III. If Supplier fails to perform any material provision of other contracts issued by Buyer and such default causes Buyer to terminate those other contracts;
  - IV. Supplier files or declares bankruptcy;
  - V. In the event of suspension of Supplier's business, insolvency, liquidation proceedings by or against Supplier, appointment of a trustee or receiver for Supplier's property or business, or any assignment, reorganization or arrangement by Supplier for the benefit of creditors.
- c) If after receiving written notice of termination for default, completely or in part, it is determined for any reason that Supplier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for convenience pursuant to the Termination for Convenience subsection hereof.
- d) If Buyer terminates this Contract for default, completely or in part, it may acquire goods or services similar to those terminated under terms and in the manner Buyer considers appropriate, and Supplier will be liable to Buyer for any reasonable excess costs for those services. However, Supplier shall continue performance of the work not terminated.
- e) If Buyer terminates this Contract for default, completely or in part, it may require Supplier to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer any materials, parts, tools, plans, drawings, information, and contract rights that Supplier has produced or acquired for the performance of this Contract, including the assignment to Buyer of Supplier's subcontracts supporting this Contract. Furthermore, Supplier shall protect and preserve any property in Supplier's possession in which Buyer or its Customer has an interest.
- f) Payment for Goods delivered and accepted by Buyer prior to termination shall be at the Contract price. Payment for the protection and preservation of property will be at a price determined in the same manner as provided in the Termination for Convenience subsection hereof except that Supplier shall not be entitled to profit. Failure to agree is a dispute under the "Disputes/Jury Waiver" section in this Contract.

## 20. OFFSET CREDIT, COOPERATION AND DUTY DRAWBACK

- a) Credits and Refunds. Transferable credits or benefits associated with or arising from Items purchased under this Order, including offsets or trade credits, export credits or rights to the refund of duties, taxes or fees (collectively, "trade credits"), belong

to Buyer. Seller will, at its expense, provide all information necessary (including written documentation and electronic transaction records in Buyer-approved formats) to permit Buyer to receive these benefits, credits, or rights. Seller will furthermore, at its expense, provide Buyer with all information, documentation, and electronic transaction records relating to the Items necessary for Buyer to fulfill any customs-related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable Buyer to claim preferential duty treatment for Items eligible under applicable trade preference regimes, and to make all arrangements that are necessary for the Items to be covered by any duty deferral or free trade zone programs(s) of the country of import. Seller will, at its expense, provide Buyer or Buyer's nominated service provider with export documentation to enable the Items to be exported, and obtain all export licenses or authorizations necessary for the export of the Items unless otherwise indicated in this Order, in which event Seller will provide all information as may be necessary to enable Buyer to obtain such licenses or authorization(s). Buyer retains the right to assign any such offset or countertrade credits to third parties. Seller shall include this clause, for the benefit of Buyer, in all lower- tier purchase orders and subcontracts awarded in the performance of this Order. Seller shall maintain a record of its purchases under this Order and Buyer reserves the right to review such record not more often than every six (6) months to determine offset availability. This Article shall survive two (2) years beyond the completion of this Order.

- b) When applicable, Supplier agrees to assign to Buyer all of Seller's U.S. Customs duty drawback rights, and any such rights obtained from subcontractors, related to the Goods in order for Buyer to seek duty drawback. Seller agrees to:
  - I. Inform Buyer of the existence of such duty drawback rights of which Seller becomes aware;
  - II. Furnish upon request the documentation that Buyer reasonably requires to pursue any such duty drawback rights; and
  - III. Provide such assistance to Buyer as requested in connection with the recovery of such import duties.

## 21. BUSINESS CONTINUITY PLANNING

- a) Supplier shall establish and maintain a disaster recovery and business continuity plan ("BCP"), which includes protection of vital records, and ensures, Supplier can continue to deliver the required Goods to Buyer, if necessary.
- b) Buyer may review the BCP on a periodic basis to ensure its adequacy and completeness.

- c) Supplier shall activate the BCP upon the occurrence of any event where it is necessary or advisable to mitigate any impacts on the performance of its obligations under this Contract. If Supplier is unable to perform its obligations under this Contract for a period of more than ten (10) consecutive Days as a result of such an event, Buyer may, without liability or penalty, terminate this Contract or any affected statement of work or purchase order (in part or in whole) for default.

## 22. BANKRUPTCY

If Seller enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Seller shall furnish by certified mail written notification of the bankruptcy to Buyer. This notification shall include the date on which the bankruptcy petition was filed and the identity of the court where the bankruptcy petition was filed.

## 23. NON-SOLICITATION AGREEMENT

During the term of this Order, and for a period of twelve (12) months following termination of this Order, Seller shall not, directly or indirectly, solicit for employment, employ or otherwise engage the services of employees or individual consultants of Buyer. This clause shall not restrict any employee from responding to or accepting offers of general employment from either party.

## 24. ASSIGNMENT OF CONTRACTORS

Neither this Order itself, nor any interest or obligation hereunder, shall be assigned or transferred by Seller without the prior written consent of Buyer. Seller shall not subcontract the furnishing of any or all or substantially all of complete Items or Services required by this Order, without the prior written approval of Buyer; however, this Article shall not be construed to require the approval of contract of employment between Seller and personnel assigned for Services hereunder. Seller shall flow down all applicable requirements, including all required clauses, to Seller's subcontractors and assignees, if any. Seller further agrees to select subcontractors (including vendors or suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Purchase Order. Seller shall remain primarily responsible for the performance of obligations which it subcontracts hereunder and shall reasonably supervise such work. However, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if 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 adjustments in price with Seller without notice to the assignee. Seller shall give Buyer immediate written notice of any action or suit filed and prompt notice of any claim made against Seller by any subcontractor or vendor that, in the opinion of Seller, may result in litigation related in any way to this

Order, with respect to which Seller may be entitled to reimbursement from Buyer. Buyer may assign this Order, at no cost to Buyer, to any affiliated company, any successor in interest, or Buyer's Customer.

## 25. SUPPLIER SUSTAINABILITY

Supplier shall conduct its business ethically and in compliance with all applicable laws and contractual requirements; maintain a safe and healthy workplace; protect human rights; responsibly manage environmental impacts; exercise reasonable due diligence within its supply chain; maintain appropriate management systems, records, and internal controls; provide information reasonably requested to support Buyer's contractual, regulatory, customer, or publicly disclosed sustainability obligations; communicate substantially equivalent requirements to applicable subcontractors; cooperate with reasonable verification activities; promptly address material nonconformances through corrective action; and acknowledge that material failure to comply with these requirements may constitute a breach of the Agreement.

## 26. ELECTRONIC CONTRACTING

Buyer and Supplier agree that if this Contract, or any statement of work, purchase order, other contract document, or correspondence is transmitted electronically neither Buyer nor Supplier shall contest the validity thereof, on the basis that this Contract, or the statement of work, purchase order, other contract document, 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.

## 27. NO WAIVER OF CONDITIONS

- a) If any provision in this Order is or becomes void or unenforceable by force or operation of law, or is deemed invalid, the void, unenforceable or invalid portion shall be severable, and the remaining terms and conditions shall remain in full force and effect.
- b) A Party's failure at any time to enforce any provision of this Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.
- c) Nothing in this Contract (or any of its attachments, exhibits or otherwise) abrogates, limits, restricts, or waives any rights of the US Government.

## 28. REMEDIES

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

## 29. SURVIVABILITY

If this Order expires, is completed, or is terminated for default or convenience, Seller shall not be relieved of those obligations contained in this Order which by their nature survive, including but not limited to:

- a) Payment, Invoicing and Taxes; Confidential Relationships; Audit and Inspection of Records; Non-Solicitation Agreement; Remedies; Compliance with Federal, State and Local Laws; Export Control Compliance; Customs; Ethical Standards of Conduct; Conflict Minerals; Classified Requirements; Warranty, Representations and Non-Conforming Goods; Risk of Damage and Indemnification Insurance; Counterfeit Parts; Information of Buyer and Seller; Intellectual Property; Intellectual Property Indemnity; Indemnity Against Claims; Hazard Conditions Indemnification; Artificial Intelligence; Cybersecurity Compliance; Third Party and Open-Source Software; Disputes and Jury Waiver; and
- b) Those United States Government flow downs provisions that, by their nature, should survive.

## 30. SEVERABILITY

If any part, term, or provision of this Order shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Order, the validity of the remaining portions of provisions shall not be affected thereby. In the event that any part, term or provision of this Order is held void, illegal, unenforceable, or in conflict with any law of the federal, state, or local government having jurisdiction over this Order, Seller agrees to negotiate a replacement provision, construed to accomplish its originally intended effect, that does not violate such law or regulation.

## **B. Laws and Regulations**

### 1. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

- a) General. Seller shall comply with all applicable federal, state, and local laws, orders, rules, regulations, and ordinances, including any environmental,



transportation, or employment regulations. Seller shall flow this requirement down to its sub-tier suppliers and subcontractors as a condition of the Order. Seller shall procure all required licenses and permits, pay all fees and other required charges, and comply with all applicable guidelines and directives of any local, state, and federal government authority. Unless otherwise specified in the Order, Buyer shall obtain all export licenses. If Buyer determines that Seller has violated any of Seller's obligations, including but not limited to any obligations set forth in this Compliance Obligations Article, Buyer may, in its discretion, either terminate the Order and/or require Seller to implement a corrective action plan as a condition of continued or future business. Seller's violation of any applicable law, rule, or regulation shall be a material breach of the Order.

- b) Reporting Obligations. To the extent applicable, Seller shall provide to Buyer all Item content information required to satisfy both Buyer's content reporting obligations and Buyer's customers' reporting obligations.
- c) Certificates. Upon Buyer's request, Seller shall furnish to Buyer or directly to Buyer's customer any certificate required to be furnished under these General Terms and Conditions, including the clauses set forth in (FAR, DFARS, and NFS Clauses) and (FAA AMS Clauses). A "certificate" may include any plan or course of action or record-keeping function (e.g., a small business subcontracting plan for which flow down is required).
- d) Seller's Business Systems. For purposes of this Article, "Business Systems" means the following systems: material management and accounting, cost estimating, accounting, earned value management, property management, and purchasing. When Seller's Business Systems are reviewed and audited by the Government, Seller shall promptly notify Buyer whenever there is a material change in the status of the Government's audit findings or determination of adequacy of any of Seller's Business Systems. If the Government observes a deficiency in Seller's Business Systems that may result in Seller's Business Systems and/or Buyer's Business Systems being deemed inadequate, and if any of the deficient Business Systems produce data integral to the output of Buyer acting in its role as a contractor to the Government or to another prime contractor, then Seller shall be liable for and hold harmless Buyer from any loss, damage, or expense whatsoever that Buyer may suffer.
- e) Classified Information. In the event the Order requires access to classified information, Seller, at its sole expense, shall comply with all U.S. laws and regulations related to such classified requirements, including obtaining all required authorizations from the U.S. pursuant to, among other requirements, those set forth in the National Industrial Security Program Operating Manual ("NISPOM"), 32 C.F.R.



Part 117, and any specific agency supplements to the NISPOM or other classified requirements as directed by Buyer. (f) U.S. Foreign Corrupt Practices Act. Seller represents and warrants it shall:

- (1) Comply with the requirements of the U.S. Foreign Corrupt Practices Act ("FCPA") (15 U.S.C. §§ 78dd-1, et. seq., as amended), regardless of whether Seller is within the jurisdiction of the United States;
  - (2) Neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery; and
  - (3) Not interact with any government official, political party, or public international organization on behalf of Buyer without the prior written permission of the Buyer's Procurement Representative.
- f) Breach of this provision by Seller shall be irreparable material breach of the Order and shall entitle Buyer to terminate the Order immediately without compensation to Seller.
- g) No gratuities (in the form of entertainment, gifts, travel, or anything of value) or kickbacks shall be offered or given by Seller or by any agent, representative, affiliate, subsidiary, or subcontractor of Seller to any officer or employee of Buyer's customer or Buyer. This restriction specifically prohibits the direct or indirect inclusion of any kickback amounts in any invoices or billings submitted under the Order or any other agreement with Buyer.
- h) No Child or Forced Labor. Seller shall comply with all local, state, and national laws relating to the prohibition on child labor and indentured, prison, or compulsory labor. Seller shall comply with all applicable laws and industry standards relating to working hours, working conditions, and any collective bargaining agreements. Seller further agrees that, if requested by Buyer, it shall demonstrate compliance with all requirements in this paragraph to Buyer's satisfaction. Buyer shall have the right to inspect any site of Seller for compliance with this paragraph. Seller shall include this provision in all its lower-tier subcontracts.
- i) No Human Trafficking. Seller shall comply with all applicable local, state, and national laws in the countries where Seller does business relating to the prohibition of slavery and human trafficking. Upon Buyer's request, Seller shall provide to Buyer a copy of its human trafficking compliance plan and/or other evidence of Seller's compliance with this provision. Seller shall include this provision in all its lower-tier subcontracts.

- j) National Defense Authorization Act for Fiscal Year 2019 Section 889. Buyer, as a Government contractor, is prohibited from using:
- (1) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
  - (2) video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
  - (3) telecommunications or video surveillance services provided by such entities or using such equipment; or
  - (4) telecommunications or video surveillance equipment or services produced or provided by an entity that is owned or controlled by, or otherwise connected to, the government of the People's Republic of China (collectively, "covered telecommunications equipment or services") as a substantial or essential component of any system or as critical technology as part of any system, regardless of whether the use is in performance of work under a federal contract. By acceptance of the Order, Seller represents and warrants that it:
    - (a) does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services, as a substantial or essential component of any system or as critical technology as part of any system; and
    - (b) will not provide covered telecommunications equipment or services to Buyer in the performance of the Order. In the event Seller identifies covered telecommunications equipment or services used as a substantial or essential component of any system or as critical technology as part of any system at any time during the proposal process or contract performance, or Seller is notified of such by a subcontractor at any tier or by any other source, Seller shall immediately notify Buyer and reasonably cooperate with Buyer's requests for supporting documentation and any resolution required by Buyer's customer. Seller shall include this provision in all lower-tier subcontracts. This prohibition and its related requirements are mandatory regardless of whether the Order is in support of a Government contract.

- k) Prohibited Contracting. For purposes of this Article, "Covered Entity" means Kaspersky Lab; any successor entity to Kaspersky Lab; any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or any entity in which Kaspersky Lab has a majority ownership. For purposes of this Article, "Covered Article" means any hardware, software, or service that is developed or provided by the Covered Entity, including any hardware, software, or service developed or provided in whole or in part by the Covered Entity, or any Item that contains components using any hardware or software developed, in whole or in part, by the Covered Entity. Seller is prohibited from providing any Covered Article in the performance of the Order. If Seller identifies that a Covered Article has been provided to Buyer under the Order, Seller shall immediately notify Buyer in writing of such event and discontinue use of the Covered Article under the Order. Seller shall, at Seller's cost, cooperate with Buyer to provide any requested information regarding the Covered Article and any mitigation efforts taken by Seller. Seller shall include this provision in all its lower-tier subcontracts.
- l) Non-discrimination. Buyer and Seller shall abide by the federal and applicable state laws that prohibit discrimination on the bases of race, color, religion, sex, sexual orientation, national origin, disability, or veteran status.
- m) Electrical Equipment Safety. In compliance with the National Electrical Code (NEC) Article 90.7, Seller shall provide evidence of certification by a Nationally Recognized Testing Laboratory (NRTL) such as Underwriter Laboratories (UL), Canadian Standards Association (CSA), or equivalent for all Electrical Equipment. This requirement may be met via a visible label on the product or a certification document.
- n) Russian Prohibition. Seller represents and certifies that neither Seller nor any supplier at any tier supplies or provides Items containing or incorporating any iron, steel, aluminum, or derivative commodities thereof originating in or sourced from Russia. Seller shall include this provision in all its lower-tier subcontracts and shall maintain records of where any iron, steel, aluminum, or derivative commodities are sourced or originated and provide such documentation immediately upon request.
- o) Prohibition. Supplier represents and warrants that it does not and will not provide or use as part of the performance of this Contract any covered articles (as defined in FAR 52.240-91), or any products or services produced or provided by a source, if the covered article or the source is prohibited by an applicable FASCSA Order.

## 2. EXPORT CONTROL COMPLIANCE

Seller, at its sole expense, agrees to comply with all laws and regulations of the United States and other countries related to exports and imports including obtaining all

required authorizations from the U.S. or other applicable governments. Seller shall immediately notify Buyer Representative if Seller's export privileges are denied, suspended or revoked in whole or in part by any U.S. or other government entity or agency. Buyer may deem Seller's failure to comply with the requirements of this Article a material failure to perform under this Order that shall subject Seller to termination in accordance with the Termination provisions herein.

a) ITAR Controlled Hardware, Technical Data, or Services.

- I. Seller is hereby notified that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), technical data (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or services provided by Buyer for purposes of this Order are or may be subject to the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. §§ 120-130). In addition, Seller is hereby notified that hardware, technical data, and/or services sold by Seller that are designed, developed, modified, adapted or configured from hardware, technical data, and/or services provided by Buyer are or may also be subject to the ITAR. The ITAR is accessible at the U.S. Department of State, Directorate of Defense Trade Controls ("DDTC") website at <http://www.pmddtc.state.gov>.
- II. If Seller is a manufacturer and/or exports Defense articles or Defense services, Seller represents that it is registered with the U.S. Department of State and will maintain said registration in order to be eligible to engage in the manufacture and/or export of defense articles and defense services as required by the ITAR (22 C.F.R. § 122.1(a)).
- III. The ITAR restricts access to Buyer's and Seller's controlled hardware, technical data, or services to U.S. citizens and permanent residents (i.e., U.S. person) only. Seller is advised and acknowledges that controlled hardware, technical data, and/or services shall not be exported out of the U.S. or transferred to a non-U.S. person inside the U.S. "deemed export", without prior authorization of the U.S. Government. Seller will be informed by Buyer of the export control status (i.e., jurisdiction and categorization of all hardware, technical data, and/or services provided to Seller by Buyer). Hardware and technical data will be clearly marked as export controlled or not. Seller agrees that it will abide by all restrictions and requirements in the ITAR, including that Seller not transfer or provide access to any ITAR-controlled hardware, technical data, or services provided by Buyer to non-U.S. persons employed by or associated with Seller, whether located in the U.S. or not, without U.S. Government authorization and permission from Buyer.

- IV. If this Order is in an amount of \$500,000 or more, or if this Order is amended so that the total amount of the Order is in an amount of \$500,000 or more, Seller shall, within fifteen (15) days of the date of this Order, or such amendment, inform Buyer in a written statement if Seller has paid, offered or agreed to pay, in respect of the sale for which the Items will be used, political contributions or fees or commissions, within the meaning of 22 C.F.R. Part 130. Seller's statement shall conform to the requirements of 22 C.F.R. Part 130. Failure of Seller to provide Buyer with such a statement within the specified timeframe, or any extension thereof, shall constitute a certification by Seller that it has not paid, offered, or agreed to pay such political contributions, fees or commissions.

b) Goods, Technology, Software Subject to U.S. Export Administration Regulations.

- I. Seller is hereby notified that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), technology (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or software provided by Buyer for purposes of this Order are or may be subject to the Export Administration Regulations ("EAR"). In addition, Seller is hereby notified that the hardware, technology, technical data, and/or software sold by Seller that is derived from hardware, technology, and/or software provided by Buyer are or may also be subject to the EAR. The EAR is accessible at the U.S. Department of Commerce, Bureau of Industry and Security website at <http://www.bis.doc.gov>.
- II. The EAR restrict the shipment, transmission, or transfer of certain of Buyer's and Seller's controlled hardware, technology, technical data and/or software from the U.S. to foreign countries, as well as to foreign persons located inside the U.S. (also referred to as a "deemed export."). Seller is advised and acknowledges that certain controlled hardware, technology, technical data and/or software may not be exported out of the U.S. or to a non-U.S. person inside the U.S. without prior authorization of the U.S. Government. Seller will be informed by Buyer of the export control status (i.e., jurisdiction and categorization) of all hardware, technology, and/or software provided to Seller by Buyer. Hardware and technology will be clearly marked as export controlled or not. Seller agrees that it will not transfer or provide access to any EAR-controlled hardware, technology, technical data, or software provided by Buyer out of the United States or to non-U.S. persons employed by or associated with Seller, whether located in the U.S. or not, without U.S. Government authorization and permission from Buyer.

- c) Seller agrees that it will inform Buyer of the export control status (i.e. jurisdiction and categorization) of all hardware, technical data, technology, software, and/or services sold to Buyer under this Order to include clearly marking all hardware and/or technical data.
- d) Anti-Boycott Laws and Regulations.
  - I. Seller is advised and acknowledges that it is responsible for complying with all applicable U.S. anti-boycott laws, regulations, including but not limited to, the requirements of the Export Administration Regulations, 15 C.F.R. 760, and the Internal Revenue Code, 26 U.S.C. 999, including the requirements on reporting anti-boycott requests to the U.S. Government. Within thirty (30) days of submittal of any anti-boycott report made to the U.S. Government that involves this Order, Seller shall provide a copy to Buyer.
  - II. Seller also certifies to Buyer that it does not, and shall not, participate or comply with any boycott (both domestic and international), or boycott-related request or engage in any restrictive trade practices which are in contravention of a Government law or regulation including 15 C.F.R. Part 760.
- e) Where Seller is a signatory under a Buyer export authorization, Seller shall provide prompt notification to Buyer's Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of applicable export regulations including, but not limited to, those that could affect Seller's performance under this Contract.
- f) Seller shall indemnify Buyer and be solely responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.
- g) U.S. Economic and Trade Sanctions. Seller understands that the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. Seller agrees that it will comply with these OFAC administered regulations and policies and will not transfer any Items or Services to or from or otherwise engage with entities or persons listed on the Specially Designated Nationals ("SDN") List. The SDN List is accessible at <http://www.treasury.gov/resourcecenter/sanctions/SDN->

List/Pages/default.aspx. Seller further agrees that it will not engage in unauthorized transactions, including the transfer any Items or Services to or from, with persons or entities identified on any other U.S. government screening list, including those identified on the U.S. government's Consolidated Screening List. The Consolidated Screening List can be found here: <https://www.trade.gov/consolidated-screening-list>.

- h) Hardware, Technology, or Technical Data Received Without Marking. Seller is hereby notified that, to the extent it should receive any hardware, technology, or technical data from Buyer that is not marked as export controlled (i.e., under the ITAR or EAR), Seller must treat such hardware, technology, or technical data in conformance with the most restrictive standard potentially applicable unless it requests and receives specific written instructions from Buyer that releases Seller from this requirement.
- i) Imports Appearing on the U.S. Munitions Import List. If performance under this Purchase Order requires Seller to permanently import into the U.S. articles appearing on the U.S. Treasury Department, Bureau of Alcohol, Tobacco & Firearms ("BATF") U.S. Munitions Import List at 27 CFR Part 447, Subpart C, Seller is advised and hereby acknowledges that such items may not be permanently imported into the U.S. without an approved import permit issued by BATF pursuant to 27 CFR Part 447, Subpart E, unless an exemption applies. Additionally, if Seller is engaged in the business, in the U.S., of importing articles appearing on the U.S. Munitions Import List, Seller must register with BATF pursuant to 27 CFR Part 447, Subpart D. Downloadable copies of the BATF regulations and forms are accessible at the BATF website at <https://regulations.atf.gov/447>.
- j) Record Keeping. Seller agrees to bear sole responsibility for all regulatory record keeping associated with the use of licenses and license exceptions/exemptions. Without limiting the foregoing, Seller agrees that it will 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 an export license, agreement, or applicable exemption or exception. Seller agrees to share its applicable export control documentation with Buyer upon request. Seller agrees to notify Buyer if any deliverable under this Order is restricted by export control laws or regulations. Seller shall immediately notify Buyer Representative if Seller is, or becomes, 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 U.S. Government entity or agency.
- k) Upon Buyer's request, Seller shall provide a report of all sources outside the United States utilized by Seller or its lower-tier subcontractors in the fulfillment of this Order,



including the names and locations of the sources, and a description of the items or services obtained from such sources. Additionally, Seller shall flow down export and import compliance requirements by contract to its suppliers, vendors, and subcontractors who support Buyer's Orders. Seller shall, on request, provide information to Buyer on the country of origin of any Goods supplied to Buyer, including any and all components, subcomponents, and raw materials contained therein.

- l) Failure of the U.S. Government or any other government to issue any required export or import license, or revocation or termination of a required export or import license by the U.S. Government or any other government, relieves Buyer of its obligations under this Order. If Seller has diligently pursued obtaining such license and, through no fault of Seller, such license has been denied, revoked, withdrawn, or terminated, Supplier also will be relieved of its obligation under this Order. In either event, Buyer may terminate this Contract without additional cost or other liability.
- m) Destruction of Technical Data, Controlled Goods & Controlled Buyer Items. Upon completion of performance, and expiration of recordkeeping obligations under the Order, all Technical Data, controlled Goods, and controlled Buyer Items, shall be destroyed or returned to Buyer, as instructed by Buyer. Destruction of the foregoing items in physical and electronic form must render such items useless beyond repair, rehabilitation, restoration, and recognition of unique characteristics or identifiers. Seller shall provide a written certification of the method of destruction and its completion to Buyer.

### 3. CUSTOMS

#### a) Credits, Refunds, and Trade-Related Benefits

- I. All transferable credits or benefits associated with, or arising from, Items purchased under this Order—including offsets, trade credits, export credits, or rights to refunds of duties, taxes, or fees ("Trade Credits")—shall belong exclusively to Buyer.
- II. Seller shall, at its own expense:
  - i. Provide all information necessary for Buyer to obtain such credits, benefits, or rights, including written documentation and electronic transaction records in Buyer approved formats. Any Trade Credits realized by Seller shall be transferred and/or paid to Buyer within ten (10) days of Seller's receipt of the same.
  - ii. Provide all information, documentation, and electronic records related to the Items necessary for Buyer to meet customs obligations, origin marking

or labeling requirements, certification or local content reporting requirements, and to claim preferential duty treatment under applicable trade preference regimes.

- iii. Take all actions necessary for the Items to qualify for any duty deferral or foreign/free trade zone program in the country of import.
- iv. Provide Buyer or Buyer's nominated service provider with export documentation and obtain all required export licenses or authorizations for the export of the Items.
- III. Seller acknowledges that fulfilling the obligations in this Section may require disclosure of confidential sales or cost information to competent authorities for the purposes of calculating duties or other charges.
- IV. Buyer may assign any offset or Trade Credits arising from this Order to third parties.
- V. Seller shall incorporate this clause, for the benefit of Buyer, into all lower tier purchase orders and subcontracts issued in the performance of this Order.
- VI. Seller shall maintain records of all purchases under this Order. Buyer may review such records, not more than once every six (6) months, to determine offset availability.

#### b) Documentation Requirements

##### I. Advance Notification for Imports

- I. For any shipment that Buyer will import, Seller shall notify Buyer's Procurement Representative in writing at least five (5) business days prior to shipment. The notification shall include:
  - 1. A copy of the commercial invoice;
  - 2. A copy of the packing list; and
  - 3. Any additional information reasonably requested by Buyer.

##### II. Shipping Documents for Customs Clearance

Seller shall provide Buyer with all shipping documents and applicable certificates via email to facilitate Customs clearance. These documents shall include:

- i. A commercial shipping invoice compliant with 19 C.F.R. § 141.86;

- ii. Any documentation supporting eligibility for Free Trade Agreement or Special Trade Program benefits (e.g., USMCA certificates, IFTA certificates of origin); and
- iii. For ocean shipments: Importer Security Filing ("ISF") data elements, provided to Buyer no later than three (3) business days before the cargo is laden aboard the vessel at the foreign port of departure, in accordance with 19 C.F.R. Part 149.
- iv. Seller shall be solely liable for any penalties or fines arising from its failure to comply with ISF requirements.

c) Return of Repaired Articles

For any article returned to Buyer after repair, Seller shall:

- I. Obtain written instructions from Buyer concerning the return shipment prior to sending the repaired article;
- II. Comply with Buyer's written instructions; and
- III. Reference such instructions clearly on all shipping documents.

#### 4. ETHICAL STANDARDS OF CONDUCT

- a) Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Buyer's expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. Buyer's further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards and comply with Buyer's Supplier Code of Conduct available at: <https://elbitsystems.com/ethics-and-conduct-2/>. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically under this contract, Seller shall report such behavior to appropriate Buyer Points of Contact ("POCs"). Buyer's Code of Conduct contains listings of its POCs and is available on <http://www.elbitsystems.com>. Seller's employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities.
- b) Seller shall not participate in any personal business, or investment activity that may be defined as a conflict of interest, whether real or perceived. As a material obligation hereunder, Seller must immediately notify Buyer if, at any time during the term of this Order, Seller becomes aware that it has an actual or potential conflict of interest, as defined by FAR 9.5 and DFAR 252.209-7009, including without limitation a relationship of any nature which may affect or which may reasonably

appear to affect Seller's objectivity or ability to perform the Work ("Conflict of Interest").

- c) Seller Compliance: In performing its obligations under this Order, Seller will not use child labor as defined by local law, will not use forced or compulsory labor, will not physically abuse labor and will respect employees' rights to choose whether to be represented by third parties and to bargain collectively in accordance with local law. In addition, in all wage and benefit, working hours and overtime and health, safety and environmental matters, Seller will comply with all applicable laws and regulations. Seller further agrees that, if requested by Buyer, it shall demonstrate, to the satisfaction of Buyer, compliance with all requirements in this paragraph. Buyer shall have the right to inspect any site of Seller involved in work for Buyer, and failure to comply with the obligations in this paragraph shall be cause for immediate termination without penalty or further liability to Buyer.

## 5. CONFLICT MINERALS

- a) "Conflict Minerals" means, most commonly, tin, tantalum, tungsten, and gold (3TG) and any other mineral or its derivatives determined by the U.S. Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.
- b) Seller represents and warrants that it has adopted and will maintain a supply chain policy and procedure to conduct, and require its suppliers to conduct, a reasonable inquiry to determine whether the Items supplied to Buyer contain Conflict Minerals and whether the source of any such Conflict Minerals not derived from recycled or scrap materials may be the Democratic Republic of the Congo or an adjoining country. If so, Seller shall perform due diligence to identify the facilities used to process such Conflict Minerals and make efforts to identify the location of each mine or location of origin of such Conflict Minerals with the greatest possible specificity.
- c) Seller shall provide written certifications concerning Conflict Minerals contained in Items supplied to Buyer by Seller as Buyer may request from time to time. Seller acknowledges that Buyer will rely on the accuracy and completeness of each such certification.

## 6. CLASSIFIED REQUIREMENTS

In the event this Order requires access to classified information, Seller, at its sole expense, agrees to comply with all laws and regulations of the United States related to such classified requirements, including obtaining all required authorizations from the U.S. pursuant to, among other requirements, those set forth in the National Industrial Security Program Operating Manual ("NISPOM") and any specific agency

supplements to the NISPOM or other classified requirements as directed by Buyer. A copy of the NISPOM is available for download at <https://www.ecfr.gov/current/title-32/subtitle-A/chapter-I/subchapter-D/part-117>

## 7. CERTIFICATIONS AND NOTICE OF STATUS CHANGE

- a) By accepting this Order, Seller certifies that all Seller qualifications and business information, representations and certifications applicable to this Order remain valid. If Seller's status under any of the applicable representations and certifications has changed, Seller must complete and submit to Buyer's Procurement Representative revised representations and certifications prior to taking any action indicating acceptance as stated on the face of this Order.
- b) Seller agrees to provide prompt notification to Buyer's Procurement Representative of any event or change in circumstances that could affect Seller's performance under this Order such as ineligibility to contract with U.S. Government, debarment, assignment of consent agreement, designation under U.S. or foreign sanctions laws and regulations, expiration or cancellation of ITAR registration, potential violation of Export and Sanctions Laws and Regulations (or authorizations issued thereunder), initiation or existence of a U.S. Government investigation, change in place of performance, decrease in manufacturing capacity, diminishing manufacturing sources or material shortages, increase in production requirements, labor reductions, financial or organizational conflicts of interest, and significant financial conditions requiring any of the preceding changes.
- c) Sellers that have provided anti-corruption compliance due diligence information (e.g., related to Seller's ownership and personnel, subsidiaries and third parties, including but not limited to Buyer's due diligence questionnaire, and related certifications) shall provide Buyer with prompt notification and details of any changes to its owners, officers, directors or other information contained in such due diligence materials, and agrees to promptly cooperate with Buyer and provide additional information reasonably requested related to such changed information. In the event of a material change to the owners, offices, directors or other information contained in the due diligence material supplied to Buyer, Buyer reserves the right to suspend performance under this Order by providing written notice to Seller in order for Buyer to conduct anti-corruption due diligence upon such changed circumstances.
- d) Seller shall notify Buyer of any proposed change in Control within thirty (30) days prior to such event. The notice shall describe in reasonable detail the proposed transaction structure and any proposed changes to management, operations, domicile, key locations, the board of directors and/or ownership (along with a

commitment to cooperate with Buyer and provide additional information reasonably requested related to such proposed change in Control). Seller shall not effect a change in Control without prior, written consent from Buyer, such consent not to be unreasonably withheld. For purposes of this Order, "Control" means the power, directly or indirectly, to (a) vote more than fifty percent of the securities that have ordinary voting power for the election of Seller's directors; or (b) direct, or cause the direction of, the management and policies of Seller whether by voting power, contract, or otherwise. If a Person or Entity obtains "Control" by acquiring more than fifty percent of the securities that have ordinary voting power for the election of Seller's directors, that acquisition may be accomplished by one or multiple transfers. For purposes of this Order, "Person or Entity" means a natural person, corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint stock company, joint venture, association, company, trust, or other organization, whether or not a legal entity, and a government or agency or political subdivision of that entity.

- e) Seller shall provide written notification to Buyer prior to making any changes to Seller's tooling, facilities, materials, or processes, and/or shall provide written notification to Buyer upon becoming aware of any such changes by Seller's subcontractors at any tier that could affect Seller's performance under this Order. This requirement includes changes to fabrication, assembly, handling, inspection, Acceptance, testing, manufacturing location, parts, materials, or suppliers. Seller shall notify Buyer of any pending or contemplated future action to discontinue Products purchased pursuant to this Order and shall allow Buyer to submit a forecast of expected annual usage prior to Seller finalizing its decision to discontinue the Products. Seller shall provide Buyer with a "Last Time Buy Notice" at least twelve (12) months prior to the actual discontinuance. Seller shall extend opportunities to Buyer to place last time buys of such Products with deliveries not to exceed one hundred eighty (180) days after the last time buy date. Seller shall flow down to subcontractor(s) the requirements of this Clause and all other applicable flow down provisions.
- f) Seller hereby represents that neither Seller nor any parent, subsidiary, Affiliate, employee, or sublicensee or lower-tier supplier of Seller (i) are located within an ITAR §126.1 listed country, nor (ii) included on any restricted party list maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security ("BIS"), the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom. Seller

further represents that it shall immediately notify Buyer if Seller's status changes with respect to any of the foregoing.

- g) If Seller intends to change the place of performance of Work under this Contract from the place(s) identified in Seller's proposal, Seller shall provide prior written notice to Buyer. Notification of changes to the place of performance from within the United States to a location outside the United States shall be provided by Seller to Buyer at least six months in advance.
- h) Failure to provide the notice under this clause shall be deemed a material breach of this Order.

## **C. Supplier Quality and Performance**

### **1. PRIORITY RATING REQUIREMENT**

In accordance with the Defense Priorities and Allocations Systems ("DPAS"), codified at 15 C.F.R. § 700, Seller must sign and return, or reject in writing, the Order acceptance copy within ten (10) days of Seller's receipt if this Order is DX rated, within fifteen (15) days after receipt if DO rated. For unrated Orders, Seller shall sign and return the Order acceptance copy within ten (10) days after receipt.

### **2. QUALITY CONTROL, INSPECTION, REJECTION AND ACCEPTANCE**

- a) Seller shall establish and maintain a quality management system acceptable to Buyer for the Items or Services purchased under this Order. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Items or Services provided to Buyer during the period of any such violation or deviation. Seller will maintain the accepted quality management system throughout the duration of the Order. If Seller learns of any violations of its obligations under this Article, Seller shall within forty-eight (48) hours so notify Buyer and within sixty (60) days must rectify the non-compliance issues. If the violation is not corrected and certification has not taken place within this time frame, then Buyer at its sole discretion may terminate this Order. Seller will notify Buyer of any significant changes that affect quality within twenty-four (24) hours of that change. These changes include – but are not limited to – change in key management or personnel, change in source of supply of key materials, change in address or site configuration.
- b) Buyer and/or its customer, to the extent practicable at all times and places including the period of manufacture or performance, may inspect and test



material, work in process, services, and supplies. This Order may include requirements for design, test, inspection, verification (including production process verification), use of statistical techniques for product acceptance, and related instructions for acceptance by Buyer, and as applicable critical items including key characteristics and requirements for test specimens (e.g., production method, number, storage conditions) for design approval, inspection/verification, investigation or auditing. This Order grants Buyer and its customer the right to so inspect and test, but not the obligation. Seller retains the obligation to ensure proper inspection and testing.

- c) Seller shall not provide non-conforming Items or Services. Buyer shall have the right to reject any Items or Services or lots of Items which it determines are defective in material or workmanship or otherwise not in conformity with the requirements of this Order and to require their correction or replacement, or to provide other disposition direction for the non-conforming Items or Services. Rejected Items or Services shall be removed or if permitted or required by Buyer, corrected in place by and at the expense of Seller promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Seller fails to promptly replace, correct, or remove such Items or Services or lots of Items which are required to be removed, Buyer may:
- I. Replace or correct such Items or Services and charge to Seller the cost occasioned Buyer thereby;
  - II. Pay for such Items or Services at a reduced price which is equitable under the circumstances;
  - III. Cancel this Order, or any portion thereof, for default as provided herein; or
  - IV. exercise any other applicable rights or remedies.
- d) If Buyer rejects any Items or Services as nonconforming, and Seller fails to inform Buyer in writing of the manner in which Seller desires that Buyer dispose of non-conforming Items or Services within forty-eight (48) hours of notice of Buyer's rejection of non-conforming Items or Services (or such shorter period as is reasonable under the circumstances), Buyer will be entitled to dispose of the non-conforming Items or Services without liability to Seller, provided, however, that in any event Buyer may elect to arrange for the shipment of any non-conforming Items or Services back to Seller at Seller's expense. Seller will bear all risk of loss with respect to all non-conforming Items or Services and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose of any non-conforming Items or Services.

- e) Buyer's payment for any non-conforming Items or Services will not constitute acceptance by Buyer, limit or impair Buyer's right to exercise any rights or remedies or relieve Seller of responsibility for the nonconforming Items or Services. In the event Buyer decides for any reason to accept non-conforming Items or Services, any costs incurred by Buyer testing, evaluating and manufacturing, relating to the design changes to any of the Items or Services, shall be responsibility of Seller, and Seller may not pass along any costs in relation to the design change(s).
- f) If any inspection or test is made by Buyer and/or its customer on the premises of Seller or a lower tier subcontractor, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of Buyer and/or customer inspectors in the performance of their duties. In the case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by Buyer and/or its customer shall be performed in such a manner as not to unduly delay the work. Buyer reserves the right to charge to Seller any additional cost of inspection and test when Items or Services are not ready at the time such inspection and test was specified by Seller or when reinspection or retest is necessitated by prior rejection. Unless otherwise provided herein, final inspection and acceptance or rejection of Items or Services shall be made as promptly as practicable after delivery to Buyer's facility. Buyer's failure to inspect or accept or reject Items or Services in a timely manner shall neither relieve Seller from full compliance with all requirements of this Order, nor impose responsibility on Buyer therefore.
- g) Seller shall provide and maintain an inspection system acceptable to Buyer covering the Items or Services hereunder. Records of all test and inspection work by Seller shall be kept complete and available to Buyer and/or its customer for four (4) years following completion of an Order, or for a longer period of time if required to comply with FAR 4.703. Such records (Rev. 07/20) Page 3 of 22 shall be stored, maintained and handled in accordance with the requirements set forth in FAR 4.805.
- h) Inspection and test by Buyer or its customer of any Items or Services or lots thereof does not relieve Seller from any responsibility regarding defects or other failures to meet Order requirements which may be discovered prior to acceptance or during the warranty period set forth in Article (g). In the event Seller discovers an Item or Service is non-conforming subsequent to performance or delivery, Seller shall promptly notify Buyer. Disposition shall be in accordance with paragraphs (c) and (d) of this Article.
- i) If, prior to or at the time of final acceptance or within the warranty period, it was known or should be known by Buyer that said Items or Services would not or did

not conform to the requirements of this Order, final acceptance shall not be construed as a waiver of any rights Buyer may have with respect to the Items or Services purchased under this Order, notwithstanding the failure of Buyer to timely inform Seller of such nonconformance.

- j) Final acceptance by Buyer of the Items or Services provided hereunder shall take place only after complete delivery of all Items or Services in accordance with the delivery schedule specified herein or later agreed upon by the Parties in writing and after final inspection of those Items or Services by Buyer and Buyer's customer. Final acceptance shall be contingent upon agreement by Buyer and Buyer's customer that the Items or Services conform to the requirements of this Order. Final acceptance by Buyer shall be conclusive, except for latent defects, negligent or intentional misrepresentations by Seller that a nonconformity or defect would be or had been cured or did not exist, acceptance induced by false or negligent assurances of Seller, or as otherwise provided in this Order or applicable law. Final acceptance by Buyer of the Items or Services delivered hereunder shall not limit or affect the warranty or indemnity granted by Seller hereunder.
- k) Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses, and damages related to or arising from nonconforming Goods, including, but not limited to, labor and other costs related to transportation, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, re-inspection, retrofit, replacement, and any and all other such corrective action costs incurred by Buyer.
- l) Unless otherwise specified in the Order, Seller shall bear the risk of loss and damage to all Items to be supplied hereunder until final acceptance by Buyer, Buyer's Customer, or the United States Government. Buyer shall have equitable title to all Items for which interim, partial or progress payments have been furnished to Seller.

### 3. COUNTERFEIT PARTS

- a) This clause is applicable to all Orders. If DFARS 252.246-7007 and DFARS 252.246-7008 are also applicable to this Order, the provisions of paragraphs (a) – (e) of DFARS 252.246-7007, including its definition of "electronic parts," are incorporated in this paragraph by reference and "Contracting Officer" shall mean "Buyer". Seller shall establish and maintain a material authenticity process that ensures the requirements of these clauses or other authenticity requirements in this Order are met. Seller's obligation to substantiate authenticity shall survive Acceptance of and payment for Products delivered under this Order.
- b) Seller shall not furnish suspect counterfeit or counterfeit parts to Buyer under this Order. All material delivered under this Order shall be authentic and traceable to

the original manufacturer. Seller shall provide authenticity and traceability records to Buyer upon request. Electronic parts shall not be acquired from brokers unless approved in advance in writing by Buyer. Seller shall immediately notify Buyer if Seller cannot provide parts, components, and/or assemblies traceable to the original component manufacturer or the original equipment manufacturer. Upon receipt of such notification, Buyer reserves the right to terminate this Order at no cost to Buyer or require specific material validation test and inspection protocol requirements to Seller.

- c) Seller shall immediately notify Buyer in writing if Seller becomes aware of, or has reason to suspect that, any part, component or end item, purchased from Seller for delivery to Buyer, contains counterfeit parts or suspect counterfeit parts. If suspect counterfeit or counterfeit parts are identified in any of the Products delivered hereunder, such items will be impounded by Buyer. Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer. Seller shall be liable for all costs relating to the removal and replacement of said parts, including without limitation Buyer's external and internal costs of removing such suspect/counterfeit parts, of reinserting replacement parts and of any testing or validation necessitated by the reinstallation of Seller's Products after suspect/counterfeit parts have been exchanged. Buyer's remedies described herein shall not be limited by any other clause agreed upon between Buyer and Seller in this Order and are in addition to any remedies Buyer may have at law, equity or otherwise under this Order. At Buyer's request, Seller shall return any removed suspect counterfeit or counterfeit parts to Buyer in order that Buyer may turn such parts over to its U.S. Government customer for further investigation. For purposes of this clause, Seller agrees that any U.S. Government directive/information or GIDEP alert, indicating that such parts are suspect counterfeit or counterfeit, shall be deemed definitive evidence that Seller's Products contain suspect counterfeit or counterfeit parts.
- d) Seller agrees to insert the substance of this clause, including this sentence, in any lower tier subcontract.

#### 4. PACKING

- a) Unless otherwise specified in this Order, Seller shall be responsible for safe and adequate packing conforming to the requirements of carriers' tariffs or, in the absence of such requirements, conforming to the best commercial practices. All expendable packaging materials must be legally and economically disposable or recyclable. Seller shall separately number all cases, packages, etc., showing the corresponding numbers on the invoices. An itemized packing slip, bearing this Order number must be placed in each container. No extra charge shall be made for packaging or packing materials unless authority therefore is set forth in this

Order. Seller must assure package integrity throughout the shipping cycle. Each package and pack shall provide physical, chemical, and cleanliness protection to prevent damage or deterioration of the Product during handling, shipment and storage under anticipated environmental conditions. All materials, fabrication techniques and workmanship shall conform to the requirements specified herein or, if not specified, otherwise meet or exceed good commercial quality and practice. Damage resulting from improper Product packaging will be charged to Seller. Seller must comply with all applicable carrier regulations, including National Motor Freight Classification and Department of Transportation Regulations. No extra charge for packaging or insurance shall be allowed unless specifically noted herein. Products received without proper packaging, packing, marking and/or bar coding as set forth herein may be rejected by Buyer and returned to Seller at Seller's expense.

- b) All goods shall be prepared (cleaned, preserved, etc.) and packed per Military Standard Packaging, when required, or best commercial practice for export shipment in a manner to comply with carrier regulations and to prevent damage or deterioration during handling, shipment and indoor storage for up to ninety (90) days at destination. Wood Packaging Materials must meet International Standards.

## 5. SHIPMENT

Seller shall comply with Buyer's routing and shipping instructions. If Buyer's routing and shipping instructions are not attached to the Purchase Order or have not been previously received by Seller, Seller shall immediately request the Instructions from Buyer. Seller shall remain liable for any and all additional charges which accrue as a result of Seller's failure to comply with Buyer's routing and shipping instructions.

## 6. DELIVERY

Shipments made pursuant to this Order must be shipped as specified in the Purchase Order. If Seller does not use Buyer's specified carrier(s) and Buyer incurs additional freight cost as a result, such additional freight cost shall be Seller's responsibility. Moreover, unless otherwise specified, Seller hereby agrees to the following:

- a) Buyer reserves the right to refuse shipments made in advance of the schedule set forth in this Order. Shipments made in advance of schedule can only be authorized in writing by the Buyer's purchasing representative. If Seller tenders Items for delivery to Buyer in advance of the delivery date specified in Buyer's delivery schedules, Buyer may, in its absolute discretion, either:

- I. Refuse delivery, return early deliveries at Seller's expense, and require re-delivery at Seller's expense on the delivery date; or
  - II. Retain such Items and make payment in accordance with the original payment schedule in the Purchase Order regardless of the actual date of delivery. Seller bears the risk of loss of all Items delivered in advance of the delivery date specified in Buyer's delivery schedules.
- b) Over shipment allowances require prior Buyer authorization and will be applied to the entire Order. Unauthorized over shipments shall be returned to Seller at Seller's sole expense. Seller has the right to deem over shipments uneconomical to return, relieving Buyer of responsibility to return or pay for the over shipment.
- c) **TIME IS OF THE ESSENCE IN SELLER'S PERFORMANCE OF THE ORDER, AND SELLER SHALL DELIVER ITEMS AND SERVICES BY THE DELIVERY DATE SPECIFIED IN BUYER'S DELIVERY SCHEDULES.** If Seller tenders Items for delivery to Buyer after the delivery date specified in Buyer's delivery schedules:
- I. Buyer may, in its sole discretion, refuse late deliveries.
  - II. If Buyer agrees to accept deliveries after the contracted delivery date the Parties agree that delays which are not excusable or mutually agreed upon shall be subject to liquidated damages of one percent (1%) of the total order value per day, up to a maximum amount of twenty-five percent (25%) of the Purchase Order value, for each day delivery or performance is delayed beyond the date set forth in the Schedule of this Purchase Order. Such liquidated damages shall be paid by Seller within sixty (60) days of Buyer's acceptance of such deliveries. Buyer's right hereunder to recover liquidated damages for Seller's delayed performance is not an exclusive remedy for delay and shall be in addition to all other rights and remedies that Buyer has under this Order and at law and equity. The liquidated damages amount shall be subtracted from the line-item value. If the delivery delay was as a result of any action taken on the part of Buyer, Seller shall notify Buyer in writing at the time the delay occurs and request that Buyer waive liquidated damages provided herein. Failure to notify Buyer will result in liquidated damages. Seller may not refuse shipment of said line item to avoid late delivery liquidated damages.
  - III. When any delays in delivery occur, Seller shall immediately give notice thereof to Buyer. If requested by Buyer, Seller shall use additional effort, including premium effort, to avoid or minimize delay to the maximum

extent possible. All of the costs of the additional effort shall be borne by Seller. The rights and remedies pursuant to this Article are in addition to rights and remedies provided to Buyer under this Order.

- IV. Acceptance of late deliveries shall not be deemed a waiver of Buyer's right to hold Seller liable for any loss or damage resulting therefrom, nor shall it act as a modification of Seller's obligation to make future deliveries in accordance with the delivery schedule set forth in this Order.
- V. Seller at the request of Buyer, shall provide a written explanation for the root cause of the delay, Seller's corrective action plan to address the late deliveries and assurances that Seller will make all future deliveries in accordance with the Order requirements and schedule.
- VI. Delivery shall be to the location directed by Buyer.

## 7. SETOFF

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

## 8. WARRANTY, REPRESENTATIONS AND NON-CONFORMING GOODS

a) Goods Warranty. Supplier represents and warrants that:

- I. It and each of its personnel assigned to perform hereunder have the proper skill, training, and background to be able to perform in a competent and professional manner and all work will be performed in accordance with the applicable statement of work and this Contract; it is and shall remain free of any obligation or restriction which would interfere or be inconsistent with, or present a conflict of interest concerning the Goods to be furnished by Supplier under this Contract;
- II. Buyer will receive free, good, and clear title to all deliverables developed under this Contract;
- III. If the any Goods or any part of the Goods provided under this Contract are a commercial item, the commercial warranty will be transferred to Buyer; and
- IV. All Goods provided pursuant to this Contract shall strictly conform to all specifications, and descriptions, and other requirements of this Contract.

b) Additional Warranties. In addition to the foregoing warranties, statements of work may contain additional warranties that specifically apply to such statement of work.



- c) **Warranty Period.** The warranty begins upon acceptance of the Good by Buyer or Buyer's Customer, whichever is later, and extends for a period of two (2) years unless a longer term is specified in writing in which event the longer term applies. If the Good fails to conform to the foregoing warranty, Supplier shall, at Buyer's option and without additional charge, promptly repair or replace Good. If repair or replacement of the Good is not timely or fails to correct the non-conformity, Buyer may elect to re-procure or re-perform the Good at Supplier's expense. All warranties run to Buyer and its Customers.
- d) **Malicious Technology.** Supplier warrants that the Goods will not:
- I. Contain any Malicious Technology;
  - II. Monitor Buyer's use of the Goods;
  - III. Replicate, transmit or activate itself without control of a person operating the computing equipment on which it resides; or
  - IV. Alter, damage or erase any data or computer programs resident on Buyer computers or hardware without control of a person operating the computing equipment on which it resides.

If Supplier is in breach of this subsection, no "right to cure" period will apply. Buyer reserves the right to pursue any available civil or criminal action against Supplier for violation of this provision. Supplier will not install, use, or execute any software on any Buyer central processing unit without Buyer's written approval. Supplier acknowledges that it does not have any right to electronically repossess or use any self-help related to the Good.

## 9. PARTS OBSOLESCENCE

Seller shall be responsible for monitoring component obsolescence and providing written notification within a reasonable time to Buyer of any impending obsolescence during the life of the Order. Seller shall be responsible for all costs incurred due to component obsolescence, including but not limited to component lifetime purchases, storage of components, and non-recurring engineering/redesign efforts. Seller shall provide timely written notification to Buyer of any imminent lifetime purchases. Buyer may direct Seller to procure additional quantities of components deemed necessary to support program objectives beyond the Order term. Buyer shall be responsible for the mutually agreed upon cost of any additional quantities of components procured by Seller beyond the Order term. If Seller's purchase of an obsolete component results in a reduction of that component's bill-of-material unit price, then Seller will reduce the unit price of each Article by a value to be mutually agreed upon by the Parties. If Seller determines a component to be at risk of obsolescence after the effective Order term, then Seller shall provide timely written notification to the Buyer with funding requirements for a lifetime purchase and a

cutoff date to support component order placement or, if necessary, funding requirements for a redesign effort.

## 10. NEW MATERIAL

- a) "Material," as used in this clause, includes, but is not limited to raw material, parts, items, components and end Items. "New," as used in this clause, means previously unused or composed of previously unused materials allowing for typical in-factory or site use including, but not limited to integration, installation, assembly, test, burn-in, training, troubleshooting, and rework as required.
- b) Unless Buyer specifies in writing otherwise, Seller shall deliver New Material under this contract that is fully warranted and does not contain any counterfeit material. Material verification includes documentation that Seller is purchasing product directly from the original equipment manufacturer or authorized franchised distributor. In addition, the New Material is not of such age or so deteriorated, due to storage factors, as to impair its usefulness or safety.

## 11. FURNISHED, ACQUIRED AND FABRICATED PROPERTY

Buyer may provide drawings, tools, dies, fixtures, materials, and other property owned by Buyer or Buyer's customer (the "Furnished Property") solely for Seller to use in the performance of the Order. All rights, title, and interest in the Furnished Property shall remain with Buyer or Buyer's customer. Seller shall clearly mark, maintain an inventory, and keep segregated or identifiable all of the Furnished Property. Seller shall manage, maintain, and preserve the Furnished Property in accordance with good commercial practice, and upon Buyer's reasonable request, provide Buyer with written records of Seller's management, maintenance, and preservation of the Furnished Property, including any inventory lists. The Furnished Property shall be promptly returned to Buyer on request or upon completion or termination of the Order. If Seller fails to return the Furnished 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 trespasses or damages of any sort. Except for reasonable wear and tear, Supplier shall be responsible for maintaining, managing, preserving, and insuring, all Property from loss or damage while in Supplier's care, custody, or control, without additional charge, in accordance with good commercial practice, and FAR 52.245-1 where the U.S. Government owns the Furnished Property. Supplier shall notify Buyer within ten (10) Days of any loss or damage to All Property. Where the U.S. Government owns the Furnished Property or the Acquired Property, Supplier shall also provide a report containing all information required by FAR 52.245-1 to Buyer within thirty (30) Days. Supplier shall support all Buyer or Customer investigations relative to the loss, damage, or destruction of this property. At Buyer's sole option, Supplier shall immediately replace, reimburse, repair, and/or provide consideration to Buyer for

such loss or damage. d) All Property associated with Goods under this Contract shall be received, inspected, inventoried, processed, and reported as required by FAR 52.245-1 or 52.245-1 Alt 1, unless otherwise stated by this Contract. At Buyer's request, and/or upon completion of this Contract Supplier shall submit, in an acceptable form, inventory lists of All Property and shall deliver or make such other disposal as may be directed by Buyer.

## 12. INTELLECTUAL PROPERTY

### a) Definitions:

- I. Intellectual Property. Intellectual Property means inventions, discoveries and improvements, know-how, works of authorship, technical data, drawings, specifications, process information, reports and documented information, and computer software.
- II. Background Intellectual Property. Background Intellectual Property means Intellectual Property that is:
  - i. In existence prior to the effective date of this Order; or
  - ii. Is designed, developed or licensed after the effective date of this Order independently of both the work undertaken or in connection with this Order, and the proprietary information and Intellectual Property of the other party to this Order.
- III. Foreground Intellectual Property. Foreground intellectual property means intellectual property conceived, created, acquired, developed, derived from or based on development performed under this Order or information supplied by Buyer, or first actually reduced to practice by Seller in connection with this Order.

b) All Intellectual Property supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless:

- I. Otherwise required by the U.S. Government contract flowdowns; or
- II. Buyer has executed a separate agreement restricting the use and disclosure of such Intellectual Property.

c) Foreground Intellectual Property. Unless otherwise expressly agreed in writing to the contrary and subject to this Article paragraph (g) below, all Foreground Intellectual Property developed exclusively with Buyer monies (i.e., development was accomplished entirely with monies paid by Buyer to Seller that are not subject to recovery by Buyer under a government contract) and not subject to this Article paragraph (d) below is hereby assigned to Buyer and shall be proprietary to Buyer,

shall be used by Seller only for purposes of providing Items or Services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer's express written consent. All such Foreground Intellectual Property shall be promptly provided to Buyer on request or upon completion of this Order. Any work performed pursuant to this Order which includes any copyright interest shall be considered a "work made for hire." The tangible medium storing copies of all reports, memoranda, or other materials in written form, including machine-readable form, prepared by Seller and furnished to Buyer pursuant to this Order shall become the sole property of Buyer.

- d) Inventions. Subject to this Article paragraph (g) below, any invention constituting Foreground Intellectual Property is hereby assigned to Buyer and Buyer shall own all right, title, and interest in such property. Seller shall execute all documents necessary to perfect Buyer's interest in and title thereto, including, without limitation, assigning any and all right, title and interest Seller has in any such invention to Buyer. Seller shall ensure that any third party with whom Seller has subcontracted to deliver Items or Services, and Seller's employees also executes and assigns any and all rights, titles, and interest in any such invention to Buyer. Seller shall, within two (2) months after conception or first actual reduction to practice of any invention constituting Foreground Intellectual Property and prior to completion of the Order, disclose in writing to Buyer all inventions, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all written instruments and assist as Buyer reasonably directs in order to file, acquire, prosecute, maintain, enforce and assign Buyer's invention rights. Seller hereby irrevocably appoints Buyer and any of Buyer's officers and agents as Seller's attorney in fact to act on Seller's behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such written instruments.
- e) Seller-Owned Intellectual Property. Seller shall retain ownership of all Background Intellectual Property and of any Foreground Intellectual Property not assigned to Buyer pursuant to this Article paragraphs (c) and (d) (collectively, "Seller-Owned Intellectual Property"). Unless otherwise expressly agreed in writing to the contrary and in addition to U.S. Government's Intellectual Property rights, Seller grants to Buyer an nonexclusive, irrevocable, sublicensable, paid-up, royalty-free worldwide right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works of any and all Seller-Owned Intellectual Property in the performance of its Government Contract or higher-tier contract obligations (including obligations of follow-on contract or contracts for subsequent phases of the same program).

- f) Buyer-Owned Intellectual Property. Buyer shall retain ownership of all Buyer Intellectual Property provided hereunder and of any Foreground Intellectual Property assigned to Buyer pursuant to this Article paragraph (c) above (collectively, "Buyer-Owned Intellectual Property"). Buyer grants to Seller a non-exclusive, royalty-free right during the term of this Order to use, reproduce, modify, practice and prepare derivative works of any Buyer-Owned Intellectual Property solely as necessary for Seller to perform its obligations under this Order. Seller shall not, without Buyer's prior written consent, use Buyer-Owned Intellectual Property or any derivative works of any of the Buyer-Owned Intellectual Property in any manner not authorized under this Order, including, but not limited to, developing, manufacturing, offering for sale or selling any item or service which utilizes or is enabled by Buyer-Owned Intellectual Property.
- g) Nothing in this Article shall modify or alter any rights that the U.S. Government may have in any items or services, including technical data or computer software deliverables to the U.S. Government. Applicable Government procurement regulations incorporated into this Order dealing with subcontractors' rights in Intellectual Property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between the Parties.

Unless otherwise expressly set forth in this Order or a separate written agreement, Buyer shall have the right to use, for any purpose, information concerning Seller's Items, manufacturing methods or processes which Seller has disclosed to Buyer prior to or during the performance of this Order. In the event of a conflict between the terms of this Article and the terms and conditions of any separately executed and applicable Non-Disclosure Agreement between Buyer and Seller, the terms and conditions of the Non- Disclosure Agreement shall control.

### 13. INFORMATION OF BUYER AND SELLER

- a) Unless expressly stated otherwise herein, the exchange of information under this Order shall be governed by this Order and, in particular this clause, which supersedes any prior agreement between Buyer and Seller to protect information relating to the purpose of this Order.
- b) The Receiving Party shall hold all Proprietary Information in confidence and restrict disclosure thereof to only its employees, contract labor, subcontractors, advisors, and agents who have a need to know so that the Receiving Party may perform its obligations under this Order and are under obligations to hold such information in confidence under terms and conditions at least as restrictive as the terms and conditions of this Order.

- c) Seller agrees to use Buyer's Proprietary Information only for purposes necessary for performing Seller's obligations under this Order and shall not use Buyer's Proprietary Information for any other purpose without the prior written consent of Buyer. Upon Buyer's request, Seller shall destroy or transfer to Buyer all existing copies of Buyer's Proprietary Information. If the Proprietary Information is copied or reproduced in whole or in part, the copy or reproduction shall carry the same marking as that which appears on the original.
- d) Seller agrees that Buyer may share Seller's information with other contractors under Buyer's higher tier contract or Prime Contract, and any follow-on contracts to such agreements, if the other contractors need to use Seller's information to complete their contracts provided that (1) any restrictive markings remain on the information, (2) the other contractor is under an obligation to protect Seller's Proprietary Information to the same degree as provided herein, and (3) the other contractor's use of the information is limited to performance of a contract under Buyer's higher tier contract or Prime Contract, and any follow-on contracts to such agreements.
- e) Seller hereby grants to Buyer and Buyer's higher tier customer a non-exclusive, irrevocable, worldwide, right and license to copy, modify, use and disclose to the U.S. Government or any higher tier contractor any information received from Seller, including Seller's Proprietary Information, for the performance of this Order and any higher tier contract or Prime Contract from which this Order is issued, and any follow-on contracts to such agreements.
- f) The Receiving Party agrees to use at least the same degree of care in safeguarding the Disclosing Party's Proprietary Information, including during storage and transmittal, as it uses for its own Proprietary Information, but in no case less than reasonable care. Promptly upon discovery of an unauthorized disclosure, access, or use, the Receiving Party shall: (a) notify the Disclosing Party; (b) make reasonable attempts to retrieve the Proprietary Information; (c) comply with any reasonable written requests of Disclosing Party regarding such unauthorized disclosure, access, or use; and (d) review and take other reasonable action as appropriate to prevent any future unauthorized disclosures, accesses, or uses.
- g) Exceptions:
  - I. The Receiving Party shall not be liable hereunder for use or disclosure of Proprietary Information which occur after such Proprietary Information:
    - i. Is or becomes publicly known through no wrongful act of the Receiving Party; or

- ii. Is known to or in the possession of the Receiving Party without restriction on disclosure or use through no wrongful act of the Receiving Party, as evidenced by competent proof; or
  - iii. Is rightfully received by the Receiving Party from a third party without restriction and without breach of this Order; or
  - iv. Is independently developed by the Receiving Party without the use of or reference to the Proprietary Information.
- II. In addition, the Receiving Party shall not be liable hereunder for use or disclosure of Proprietary Information if such Proprietary Information is disclosed to satisfy a legal order by a court of competent jurisdiction or U.S. Government action; provided, however, that the Receiving Party shall first advise the Disclosing Party within sufficient time prior to the disclosure so that the Disclosing Party has the opportunity to seek appropriate relief from the court or governmental order, and provided further that the Receiving Party shall disclose only those portions of the Proprietary Information legally required to be disclosed and request confidential treatment of the Proprietary Information by the court or governmental entity.
- h) All documents and other tangible media transferred in connection with this Order, together with any copies thereof, are and remain the property of Buyer.
- i) Neither the existence of this Order nor the disclosure hereunder of Buyer information or any other information shall be construed as granting expressly, by implication, by estoppel or otherwise, a license under any invention or patent now or hereafter owned or controlled by Buyer or Buyer's customer, except as specifically set forth herein.
- j) The Receiving Party agrees that the Proprietary Information of the Disclosing Party is valuable and unique, and that the loss resulting from unauthorized disclosure thereof may cause irreparable injury to the Disclosing Party, which may not be adequately compensated in money damages. The Receiving Party, therefore, expressly agrees that the Disclosing Party shall be entitled to seek injunctive and/or other equitable relief, in addition to any other remedies available to the Disclosing Party for breach of this clause.
- k) A Party's obligations with respect to information or Data disclosed hereunder prior to the performance in full or termination of this Order shall not, except as expressly set forth herein, be affected by such performance in full or termination.
- l) Notwithstanding the foregoing, nothing in this clause is intended to affect the rights or exercise of rights, if any, obtained by the U.S. Government under the "Rights in Technical Data – Other Than Commercial Products and Commercial



Services" clause DFARS 252.227-7013 and "Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation" clause DFARS 252.227-7014, or any similar or successor clauses, or other clauses that may be contained in any contracts or subcontracts between Buyer and Seller and any customer.

m) Without limiting Seller's other obligations under this Order, Seller hereby represents, warrants and covenants that:

- I. Restrictions on Disclosure: Seller shall not disclose or provide any Buyer Proprietary Information or Buyer Sensitive Information, or any portion or derivative thereof, to any AI System accessible to any person other than Buyer and Seller.
  - II. Prohibited Uses: Seller shall not use any Buyer Proprietary Information or Buyer Sensitive Information, or any portion or derivatives thereof, in the training, development, or retraining of any AI System or any other datasets, systems, algorithms, or methodologies, except as Buyer may agree in writing on a case-by-case basis.
  - III. Conditions for Permitted Use: Seller may use Buyer Proprietary Information or Buyer Sensitive Information in an AI System (accessible only by Buyer and/or Seller) provided that: (i) the AI System meets the information security requirements of this Order; (ii) the AI System does not train, retrain, or develop itself based on such information, nor maintain any persistent copy of such information, or any portion or derivative thereof; and (iii) the use of such information is strictly limited to processing and generating outputs without altering the underlying AI model or dataset.
  - IV. Documentation and Compliance: Seller shall maintain adequate documentation of the use of Buyer Proprietary Information or Buyer Sensitive Information in any AI System and shall provide such documentation to Buyer immediately upon request to ensure compliance with these terms.
- n) Defend Trade Secrets Act provision – applicable only to individuals or to be flowed down to individuals. Pursuant to the Defend Trade Secrets Act of 2016, if Seller is an individual, Seller acknowledges that he/she shall not have criminal or civil liability under any Federal or State trade secret law for the disclosure of a trade secret that is made
- I. In confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney and;

- II. Solely for the purpose of reporting or investigating a suspected violation of law; or
  - III. Is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, if Seller files a lawsuit for retaliation by Buyer for reporting a suspected violation of law, then Seller may disclose the trade secret to Seller's attorney and may use the trade secret information in the court proceeding, provided Seller both files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order. Seller agrees to flow down this provision to all contract labor and agents of Seller who are authorized under this Order to receive Buyer's Proprietary Information and who are individuals.
- o) Buyer's right to use and disclose information provided under this clause shall not be affected by termination or completion of this Order and remains in effect until performance in full of all contracts and agreements through which Buyer needs to use Seller's information to perform under Buyer's higher tier contract or Prime Contract, and any follow-on contracts to such agreements. The limitations on the scope of use of information under this clause shall not be affected by termination or completion of this Order.

## **D. Indemnity**

### **1. INTELLECTUAL PROPERTY INDEMNITY**

- a) Seller warrants that the Items and Services performed and delivered under this Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. For Items and Services delivered hereunder, Seller shall be liable for, defend, indemnify and hold harmless Buyer, and each subsequent purchaser or user thereof, from all loss or damage of any kind (including all costs and expenses including attorneys' fees) arising out of any and all allegations, actions, proceedings, claims, or awards for any infringement, misappropriation, or wrongful use suit or action, including, without limitation, any proceeding under 28 U.S.C. § 1498, alleging that manufacture, use or sale infringes any patent, trademark, copyright, trade secret, mask work right or other proprietary or intellectual property right (collectively "Infringement Claim(s)") in connection with any Items, software or data furnished hereunder, whether such are provided alone or in combination with other Items, software or processes. Seller hereby agrees to defend any and all such actions, at Seller's expense, if requested to do so by Buyer. If, however, the Infringement Claim arises as a necessary consequence of Seller's compliance with Buyer's drawings and

specification, which describe that aspect of the Items and Services upon which the Infringement Claim is based, Seller shall have no obligation to indemnify Buyer.

- b) Seller and Buyer agree to notify each other in writing as soon as they become aware of a challenge of infringement or wrongful use in connection with any such Items, software or data furnished hereunder. Seller, if required to indemnify Buyer under this Article, shall promptly assume and diligently conduct the entire defense of such Infringement Claim at its own expense. Buyer shall have the right to reasonably reject counsel selected by Seller and the right to reject any settlement that would negatively impact Buyer as determined solely by Buyer. Buyer shall have the right, but not the obligation, to participate with Seller in determining the strategy to defend any such suit or action, and shall have the right, but not the obligation, with the permission of the court, to intervene in any such Infringement Claim.
- c) Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such Infringement Claim and thereafter to assume and conduct the same according to Buyer's sole discretion. Upon Buyer's election, Seller shall be released from its obligation to pay for attorney's fees and court costs. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged Infringement Claim.
- d) If the use or sale of Items or Services, in respect to which Seller indemnifies Buyer, is enjoined as a result of such Infringement Claims, Seller, at no expense to Buyer, shall obtain for Buyer and its customers, the right to use and sell said Items or Services or shall substitute equivalent Items or Services acceptable to Buyer and extend this patent indemnity with respect to such equivalent Items or Services. In the event that Seller is unable to secure such right of use for Buyer or its customer or to secure equivalent Items or Services as a substitute, Seller will indemnify Buyer and its customer for any and all losses or damages sustained by reason of such injunction.
- e) Seller's obligation to defend, indemnify, and hold harmless Buyer and its customers under this Article shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to Buyer's Government Contract for infringement of a U.S. patent and Buyer and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorney's fees by a third party.

## 2. INDEMNITY AGAINST CLAIMS

- a) Seller shall keep its work and all Items 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 Order 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. All personal property belonging to Buyer in Seller's custody or possession, shall be at Seller's risk from loss or damage from all hazards.

- b) To the extent not covered by the Intellectual Property Indemnity clause, Seller shall, without limitation, indemnify, save, and hold harmless Buyer and its customer(s) and their respective officers, directors, employees and agents harmless from and against every liability, claim of liability, allegation, judgment, cost, expense, attorney fees, cause of action, loss or damages whatsoever, including, without limitation, any and all claims (including claims under Workers' Compensation or Occupational Disease laws) and resulting costs, expenses and liability which arise from personal injury, death, or property loss or damage arising out of or as a result of Seller activity or omissions under this Order, including, without limitation, latent defects in such Services or other Items, whether arising out of the actions or inactions of Seller or of its employees, subcontractors, and lower tier subcontractors.
- c) Seller agrees to notify Buyer as soon as practicable of any such claim described in subparagraph (b) above. Seller, if required to indemnify Buyer under this Article, shall promptly assume and diligently conduct the entire defense of such claim at its own expense. Buyer shall have the right to reasonably reject counsel selected by Seller and the right to reject any settlement that would negatively impact Buyer as determined solely by Buyer. Buyer shall have the right to participate with Seller in determining the strategy to defend any such suit or action, and shall have the right, with the permission of the court, to intervene in any such claim.
- d) Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such claim and thereafter to assume and conduct the same according to Buyer's sole discretion. Upon Buyer's election, Seller shall be released from its obligation to pay for attorney fees and court costs. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged claim.
- e) In the event Buyer should bring action to enforce the indemnification clauses of this Article and prevail in such action, Seller agrees that Buyer shall be entitled to be awarded its reasonable attorney's fees and costs.

### 3. HAZARD CONDITIONS INDEMNIFICATION

- a) Seller shall comply with applicable Environmental Laws and Toxic Substances Laws, including any specifications included by Buyer as part of this Order. Seller

shall comply with the appropriate revision and section of MIL-STD-882 or Buyer equivalent, which Buyer will make available upon Seller's request. In the event that Seller or Buyer learns of any issue relating to a potential safety hazard or unsafe condition in any of the Items or Services produced hereunder, or is advised of such by competent authorities of any government having jurisdiction over such Items, materials or Services, it will immediately advise the other party by the most expeditious means of communication. When any change occurs that affects requirements or recommendations for safe handling, use, or disposal Seller shall provide Buyer with a copy of any new restriction on handling, use, or disposal and receive approval from Buyer before shipment.

- b) Expenses associated with the correction of a safety hazard or unsafe condition as identified in (a) above, caused by or associated with Items or Services produced by Seller, including reasonable attorneys' fees, court costs, expenses, and the like, if they become necessary, shall be solely Seller's responsibility, subject only to any other arrangement negotiated by the Parties in light of the particular facts and circumstances then existing.
- c) Seller agrees to protect, defend, hold harmless, indemnify, and reimburse Buyer, its officers, directors, agents, employees, distributors, dealers, affiliates, insurers, and customers during the term of this Order and any time thereafter for any and all costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses, overhead, settlements, judgments, and court costs) arising out of or related to any Environmental Laws and Toxic Substances Laws liability, demand, lawsuit, or claim alleging or asserting in whole or in part:
  - I. Any Failure of Items or Services to comply with applicable specifications, warranties, and certifications under this Order (including those set forth in Seller's Annual Certification);
  - II. The negligence or fault of Seller in design, testing, development, manufacture, or otherwise with respect to Items or parts therefore;
  - III. Claims, demands, or lawsuits that, with respect to the Items or any parts thereof allege product liability, strict product liability, or any variation thereof;
  - IV. Any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean-up costs; or
  - V. any claim based on the negligence, omissions or willful misconduct of Seller or any of Seller's agents, subcontractors, employees or anyone acting on behalf of Seller.
- d) Buyer agrees to protect, defend, hold harmless, and indemnify Seller in a similar fashion from and against any liability, claim, demands, or cost or expense that is

the result of design or other special requirements specified by Buyer and actually incorporated in the Items or Services over the written objection of Seller. Buyer also agrees to protect, defend, hold harmless, and indemnify Seller in a similar fashion from and against any liability, claim, demands, or cost or expense arising out of death of or injury to any person or damage to tangible property which is the result of the negligence or other fault of Buyer.

- e) Should Buyer's use, or use by its distributors, subcontractors or customers, of any Items or Services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either:
  - I. Substitute fully equivalent non-infringing Items or Services;
  - II. Modify the Items or Services so that they no longer infringe but remain fully equivalent in functionality;
  - III. Obtain for Buyer, its distributors, subcontractors or customers the right to continue using the Items or Services; or
  - IV. If none of the foregoing is possible, refund all amounts paid for the infringing Items or Services.
- f) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all liens which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

#### 4. RISK OF DAMAGE AND INDEMNIFICATION INSURANCE

All personal property belonging to Buyer in Seller's custody or possession, shall be at Seller's risk from loss or damage from all hazards. Seller shall defend, indemnify, and hold harmless Buyer, its subsidiaries, and their directors, officers, employees, and agents from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, and damages of any kind and nature whatsoever for property damage, personal injury, or death (including injury to or death of employees of Seller or any subcontractor thereof) and all expenses, costs of litigation, and attorneys' fees related thereto or incident to establishing the right to indemnification, arising out of or in any way related to this Contract, the performance thereof by Seller, by any subcontractor thereof, or by other third parties within the control or acting at the direction of Seller, or by any of their respective employees (collectively for the purposes of this paragraph, "Seller Parties"), including the provision of goods, services, personnel, facilities, equipment, support, supervision, or review. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to

or provided by any Seller Party. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or other source, to the extent of the indemnity set forth in this subparagraph.

Seller and its subcontractors and lower tier subcontractors shall comply with the following:

- a) Commercial General Liability. Seller shall carry and maintain, and ensure that all subcontractors thereof carry and maintain, throughout the period when work is performed and until final acceptance by Buyer, commercial general liability insurance with available limits of not less than \$2,000,000 per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability (including that specifically assumed under subparagraph a herein), and goods and completed-operations insurance with limits of not less than \$2,000,000 per occurrence for a minimum of twenty-four (24) months after final acceptance of the occurs while on premises owned or controlled by Buyer. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by any Seller Party. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or other source, to the extent of the indemnity set forth in this subparagraph.
- b) Commercial General Liability. Seller shall carry and maintain, and ensure that all subcontractors thereof carry and maintain, throughout the period when work is performed and until final acceptance by Buyer, commercial general liability insurance with available limits of not less than \$2,000,000 per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability (including that specifically assumed under subparagraph a herein), and goods and completed-operations insurance with limits of not less than \$2,000,000 per occurrence for a minimum of twenty-four (24) months after final acceptance of the thereof does not have blanket coverage.
- c) Automobile Liability. If licensed vehicles are used in connection with the performance of the work, Seller shall carry and maintain, and ensure that any subcontractor thereof who uses a licensed vehicle in connection with the performance of the work carries and maintains, throughout the period when work is performed and until final acceptance by Buyer, business automobile liability insurance covering all vehicles, whether owned, hired, rented, borrowed, or otherwise, with available limits of not less than \$2,000,000 per occurrence combined single limit for bodily injury and property damage.



- d) **Workers' Compensation and Employers' Liability.** Throughout the period when work is performed and until final acceptance by Buyer, Seller shall, and ensure that any subcontractor thereof shall, cover or maintain insurance in accordance with the applicable laws relating to workers' compensation (and employers' liability with limits not less than \$1,000,000 per incident) with respect to all of their respective employees working on or about Buyer's premises. If Buyer is required by any applicable law to pay any workers' compensation premiums with respect to an employee of Seller or any subcontractor, Seller shall reimburse Buyer for such payment.
- e) **Certificates of Insurance.** Prior to commencement of the work, Seller shall provide for Buyer's review and approval certificates of insurance reflecting full compliance with the requirements set forth in subparagraphs a-d. All CGL and automobile liability insurance shall designate Buyer, its subsidiaries and affiliates, and its directors, officers, and employees as additional insureds. All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. Insurance companies providing coverage must be rated by A-M Best with at least an A-VII rating. Such certificates shall be kept current and in compliance throughout the period when work is being performed and until final acceptance by Buyer and shall provide for thirty (30) days' advance written notice to Buyer in the event of termination. Any other coverage available to Buyer shall apply on an excess basis. Failure of Seller or any subcontractor thereof to furnish certificates of insurance, or to procure and maintain the insurance required herein, or failure of Buyer to request such certificates, endorsements, or other proof of coverage shall not constitute a waiver of Seller's or its subcontractor's obligations hereunder.
- f) **Self-Assumption.** Any self-insured retention, deductibles, or exclusions in coverage in the policies required under this Article shall be assumed by, for the account of, and at the sole risk of Seller or the subcontractor which provides the insurance and, to the extent applicable, shall be paid by such Seller or subcontractor. In no event shall the liability of Seller or any subcontractor thereof be limited to the extent of any of the minimum limits of insurance required herein.
- g) **Protection of Property.** Seller assumes and shall ensure that all subcontractors thereof and their respective employees assume the risk of loss or destruction of or damage to any property of such parties, whether owned, hired, rented, borrowed, or otherwise, brought to a facility owned or controlled by Buyer or Buyer's customer. Seller waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against Buyer, its subsidiaries and their respective directors, officers, employees, and agents for any such loss, destruction, or damage. At all times, Seller shall, and ensure that all

subcontractors thereof shall, use suitable precautions to prevent damage to Buyer's property. If any such property is damaged by the fault or negligence of Seller or any subcontractor thereof, Seller shall promptly and equitably reimburse Buyer for such damage or repair or otherwise make good such property to Buyer's satisfaction. If Seller fails to do so, Buyer may do so and recover from Seller the cost thereof.

- h) Seller agrees that Seller, Seller's insurer(s) and anyone claiming by, through, under or on Seller's behalf shall have no claim, right of action or right of subrogation against Buyer and/or Buyer's Customer based on any loss or liability insured against under the foregoing insurance.

## 5. FAILURE TO PERFORM

- a) Except for defaults of subcontractors at any tier, neither party shall be liable for any excess costs if the failure to provide the Goods under the Contract is due to fires, floods, third-party strikes, lockouts, epidemics, pandemics, accidents, or other causes beyond the reasonable control (each a "Force Majeure Event") of the non-performing party. In each instance, the failure to perform must be beyond the reasonable control and without the fault or negligence of the non-performing party.
- b) Supplier agrees that its sole remedy under this Section is schedule relief, and any excusable delay is non-compensable.

## 6. DEFECTIVE COST OR PRICING DATA

If Supplier and its lower-tier subcontractors:

- a) submit and/or certify cost or pricing data that are defective;
- b) 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 are defective as of the applicable cutoff date on Buyer's Certificate of Current Cost or Pricing Data;
- c) claim an exception to a requirement to submit cost or pricing data and such exception is invalid;
- d) furnish data of any description that is inaccurate; or (v) if the U.S. Government alleges any of the foregoing, and, as a result:
  - I. Buyer's contract price or fee is reduced;
  - II. Buyer's costs are determined to be unallowable;

- III. any fines, penalties or interest are assessed on Buyer; or
- IV. then Buyer incurs any other costs or damages, Buyer may make an setoff reduction of corresponding amounts (in whole or in part) due to Supplier under this Contract or any other contract with Supplier, and/or may demand payment (in whole or in part) of the corresponding amounts. Supplier shall promptly pay amounts so demanded.

## **E. Information Technology**

### **1. ARTIFICIAL INTELLIGENCE**

Seller agrees to inform the Buyer if any tools or elements of artificial intelligence (AI) are used in the products or services provided under this Order. 'AI' means any software functionality or service component, including those provided by Seller, that performs tasks typically requiring human intelligence, including but not limited to understanding natural language, recognizing patterns, making predictions, generating content or making autonomous decisions. AI may include, without limitation, the use of Machine Learning (ML) models, Natural Language Processing (NLP), Large Language Models (LLMs), Generative Pretrained Transformer (GPT) and Generative AI technologies (capable of producing text, images, code, videos or other outputs in response to user prompts).

In no event shall Seller exploit information provided by or on behalf of Buyer to train, use or input into any AI except when and to the extent such training, use or input is a requirement of the contract. Even where it is a requirement of the contract, in no event shall Seller train, use or input Export Controlled Information included in the information provided by or on behalf of Buyer in its AI. Where Seller will use and/or deliver AI, Seller represents and warrants that: (i) it has proper license rights to use and/or provide and enable Buyer the right to use the AI to lawfully fulfill obligations under the contract or otherwise owns the AI; (ii) it will not use any AI in violation of the contract; and (iii) any such delivery and/or use of AI is in an ethical manner and does not violate any laws, regulations or ethical standard governing the creation and use of AI.

In no event shall Buyer Information be exposed to any open source or other third-party license terms that may require the disclosure, modification or distribution of the Information. Seller agrees that it is wholly responsible for the accuracy and completeness of any output generated by artificial intelligence and that Buyer's rights in the work and/or services otherwise granted are unchanged by the use of any artificial intelligence tools. Upon Buyer's request, Seller shall furnish information detailing the traceability of AI generated content, including source content where the AI generated content is created by artificial intelligence tools. Seller, upon Buyer's request, shall furnish information demonstrating Seller's compliance with the United

States Department of Defense Ethical Artificial Intelligence Principles in the use of AI Technology.

The provisions set forth above supplement and do not alter, change or supersede any obligations contained in a confidentiality, proprietary and/or non-disclosure agreement between the parties. DFARS 252.204-7012 applies to covered defense information if such clause is included in the contract.

## 2. CYBERSECURITY COMPLIANCE

Seller acknowledges that certain Purchase Orders issued by Buyer (each of which Seller is responsible for reviewing and understanding) may be subject to Defense Federal Acquisition Regulation Supplement (DFARS) Clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting. Seller shall comply with all requirements of DFARS 252.204-7012, including, without limitation, the implementation of adequate security controls in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-171. Seller further acknowledges and agrees that all suppliers must promptly notify Buyer if the confidentiality of any Buyer intellectual property is compromised through any form of data breach.

Seller shall flow down all applicable requirements of DFARS 252.204-7012, including subcontractor-level obligations, to its supply chain to ensure full compliance. In the event of a cyber incident affecting Covered Defense Information or Seller's information systems, Seller shall immediately notify Buyer in accordance with the reporting timelines prescribed in DFARS 252.204-7012 and shall fully cooperate with all associated investigative, mitigation and remediation activities. Any costs incurred in investigating or remedying Incidents shall be borne by Seller at Buyer's discretion.

Should DFARS Clause 252.204-7021 apply, additional terms, obligations or context shall be incorporated into the applicable Purchase Orders. Failure by Seller to comply with DFARS Clause 252.204-7012 may result in significant legal and contractual consequences, including, but not limited to, termination for default, suspension or debarment from government contracting, financial penalties, liability for damages arising from cybersecurity incidents and imposition of mandatory corrective actions.

## 3. SELLER'S DUTY REGARDING SOFTWARE DELIVERABLES/SELLER'S INFORMATION

a) Where computer software is delivered as a deliverable of the Work or is otherwise a part of embedded in the Work, Seller shall provide the title(s), version(s), type(s) and licenses for the software (including any third-party software components) as soon as practicable but no later than at the time of delivery.

b) Seller shall not provide any proprietary information to Buyer without prior execution of a proprietary information agreement by the parties receive the benefit of the Contract.

#### 4. THIRD PARTY AND OPEN-SOURCE SOFTWARE

a) This Article only applies to Items and Services that include the delivery of software. As used herein, "Open-Source Software" means any software, programming, or other intellectual property that is subject to

I. any agreement with terms requiring any intellectual property owned or licensed by Buyer to be

i. Disclosed or distributed in source code or object code form;

ii. Licensed for the purpose of marking derivative works; or

iii. Redistributable.

b) In the event Seller provides any third-party software, including Open-Source Software, to Buyer in connection with the Order ("Third-Party Software"), the following shall apply:

I. Seller shall specifically identify in writing to the Buyer's Procurement Representative all Third-Party Software and submit written copies of all third-party license agreements applicable to Buyer; and

II. Seller warrants that

i. It has the right to license any Third-Party Software licensed to Buyer under the Order;

ii. To the best of Seller's knowledge, the Third-Party Software does not, and the use of the Third-Party Software by Buyer as contemplated by the Order will not infringe any intellectual property rights of any third party; and

iii. Unless specifically provided otherwise herein, Buyer shall have no obligation to pay any third party any fees, royalties, or other payments for Buyer's use of any Third-Party Software.

c) Seller shall obtain the Buyer's Procurement Representative's prior written consent, which may be withheld in Buyer's sole discretion, before using or delivering any Open-Source Software in connection with the Order. All Open-Source Software provided by Seller to Buyer shall be considered, as appropriate, part of and

included in the definition of "Seller Background IP" and subject to all warranties, indemnities, and other requirements of the Order, including scope of license and maintenance and support, relating to the Seller Background IP. Seller represents and warrants all Open-Source Software used or delivered in connection with the Order:

- I. Does not require any software to be published, accessed, or otherwise made available without the consent of Buyer; or
- II. Does not require distribution, copying, or modification of any software free of charge.