



**Terms and Conditions and FAR and DEAR Flowdown Provisions for the Acquisition of  
Non-Commercial Items Funded Under U.S. Government Department of Energy Contracts**

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## ARTICLE I – GENERAL PROVISIONS

**1. DEFINITIONS.** As used throughout this Article I – General Provisions of these terms and conditions, the following terms shall have the meanings set forth below.

“Buyer” means GENERAL ATOMICS or GA.

“Buyer’s Authorized Representative” means an authorized representative of Buyer’s Purchasing Department.

“Counterfeit Item” means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

“Cyber Incident” means actions taken against Information Systems that result in a compromise or an actual or potentially adverse effect on an Information System and/or the information residing therein.

“DEAR” means Department of Energy Acquisition Regulation, issued as Chapter 9 of Title 48, Code of Federal Regulations.

“FAR” means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.

“Government” means the Government of the United States of America or any department, agency or instrumentality thereof, and any successor thereof.

“Government Dispute” means a dispute between the Parties which implicates the conduct and potential liability of the Government.

“Information systems” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. Seller’s Information System(s) includes all computers, servers, networks, electronic mobile devices, communications equipment, software, software as a service or other electronic device that is used by the Seller to store, process, analyze, receive or transmit information related to its business activities with Buyer.

“Order” means the purchase order or subcontract issued by Buyer to Seller to which these terms and conditions are affixed.

“Party” means each of Buyer and Seller.

“Prime Contract” means the contract between Buyer and the U.S. Government or between Buyer and its higher-tier contractor who has a contract with the U.S. Government.

“Seller” means the person, firm, or corporation trust, joint venture, association, company, partnership, limited liability company or government (including any agency or political subdivision thereof) executing the Order with Buyer and who will furnish the supplies or services provided for in the Order.

“Special Tools” has the meaning set forth in Clause 10.

“Suspected Counterfeit Item” means an item for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the item is authentic.

Except as otherwise provided in these terms and conditions, the term “subcontract” includes purchase orders issued by Seller under the Order but does not include Seller’s employment relationships.

All references to “work,” “works,” “supplies,” “articles,” “products,” or “items” shall include “services,” if the Order, wholly or in part, provides for the furnishing of services.

**2. ACCEPTANCE.** Any one of the following methods will constitute acceptance by Seller of the Order (including these terms and conditions and any additional terms and conditions listed on the Order, all of which are hereby deemed to be part of the Order and incorporated into the Order by reference):

- (a) acknowledgement in writing;
- (b) commencement of performance by Seller; or
- (c) delivery in whole or in part of the items or services called for under the Order.

Seller’s acceptance of the Order creates a binding contract between Buyer and Seller, which shall be governed by the provisions of the Order. No condition stated by Seller in its acknowledgement of the Order, quotation or any other document provided by Seller shall be binding upon Buyer if in conflict or inconsistent with, or in addition to the terms and conditions of the Order, unless expressly accepted in writing by Buyer’s Authorized Representative. The rights and obligations described in these terms and conditions shall survive completion and final payment of the Order.

**3. INDEPENDENT CONTRACTOR.** Seller is an independent contractor and not an agent or employee of Buyer either expressly or impliedly. The Order shall not constitute, create, give effect to, or imply a joint venture, pooling arrangement, partnership, formal business organization or any

type of permanent relationship of any kind beyond the specific purposes stated in the Order. Nothing in the Order shall grant to either Party the right to make commitments of any kind for, or on behalf of, the other Party.

Buyer will rely on Seller's expertise and management of each of Seller's employees to perform the work or provide the services under the Order. Seller represents and warrants that: (a) Seller will exclusively control and direct the work of its employees, who shall be free from the control and direction of Buyer in connection with the performance of the work or provision of the services; and (b) Seller is customarily engaged in an independently established trade, occupation, or business of the same nature as the work to be performed or the services to be provided under the Order.

**4. PACKING AND SHIPMENT.** Deliveries shall be made as specified, without additional charge for boxing, crating, carting, or storage unless otherwise specified. Goods shall be suitably packaged to secure the lowest transportation costs, in accordance with the requirements of common carriers, and be packaged to ensure against damage from weather or transportation. Buyer's Order number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment showing materials. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**5. INSPECTION.** Buyer shall be permitted to inspect Seller's manufacture, fabrication and testing facilities. For these purposes, and upon reasonable advance notice, Seller shall provide access to Seller's facilities to enable Buyer, its representatives, and/or Buyer's cognizant government customer, to perform inspections and to determine Seller's orderly, timely and satisfactory compliance with the requirements of the Order.

Inspections and design or planning reviews performed or not performed by Buyer shall not relieve Seller from responsibility to perform all inspection tests and quality assurance measures nor otherwise to comply with the requirements of the Order.

Any work or item which fails to meet the Order requirements may be rejected. If delivered to Buyer's destination, rejected work or items shall be removed promptly by Seller at Seller's expense.

**6. QUALITY CONTROL.** Seller shall establish and

maintain a quality management system in accordance with ISO 9001:2015 (or latest revision) for the goods or services purchased under the 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 known or reasonably suspected violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any goods delivered to Buyer that may be affected.

**7. DELIVERY.** TIME IS OF THE ESSENCE FOR ALL DELIVERIES UNDER THE ORDER. If Seller fails to adhere to the delivery schedule set forth in the Order, and Buyer must therefore demand a more expeditious means of transportation than specified in the Order, Seller shall be liable for the difference in such transportation cost. This in no way affects any other rights and remedies available to Buyer related to such delivery.

Unless otherwise noted on the Order, the date of delivery shall mean the date the item is to be delivered at Buyer's facility or, if the Order is for services, the date the services (or phased thereof) are to be completed.

Buyer's needs are for the quantities specified within the Order. Items delivered in excess of the quantities ordered result in substantial administrative expense to Buyer. Therefore, articles delivered under the Order in excess of the quantity specified may be retained by Buyer at no additional cost. Buyer is under no obligation to notify Seller of any over shipments.

In the event of any anticipated or actual delay in delivery, Seller shall promptly (i) notify Buyer's Authorized Representative in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay, and (ii) provide Buyer with a written recovery schedule.

**8. TITLE AND RISK OF LOSS.** Title shall pass to Buyer at the specified destination. Acceptance and passage of title shall not impair the right of Buyer to inspect and reject any item.

Seller shall assume and bear the risk of any loss of, or damage to, the supplies covered hereby until delivered at the specified destination.

Seller shall bear all risks as the rejected items after notice of rejection.

**9. WARRANTY.** Notwithstanding any inspection and acceptance by Buyer of goods furnished under the Order, all goods furnished under the Order will be free from defects in

material or workmanship and will conform to all requirements of the Order.

Seller warrants that goods ordered to specifications hereunder will conform to the specifications and to any drawings, samples, or other description furnished or adopted by Buyer in connection with the Order. If goods are not ordered to such specifications, Seller warrants that they will be fit for the purpose intended.

All goods purchased hereunder are warranted to be merchantable, to be of good material and workmanship, and to be free from defect for a period of one (1) year after delivery and acceptance by Buyer, or the manufacturer's warranty period, whichever is longer.

All such warranties and guarantees, if any, shall survive inspection or test, acceptance, and payment. All statutory warranties shall apply and Buyer shall additionally have the benefit of any longer manufacturers' warranty periods applicable thereto. Warranties shall run to Buyer, its successors, assigns, and customers.

Seller further warrants that all work and services furnished hereunder shall comply with the requirements of the Order and shall conform to the highest industry standards applicable to them, and that Seller will comply with all applicable laws concerning the provision of work and services, including as related to any workers retained by Seller to provide the services under the Order.

- 10. SPECIAL TOOLS.** If prices are stated separately for dies, tools and/or patterns acquired by Seller for the purpose of filling the Order (each a "Special Tool"), such Special Tool shall be properly identified by the Seller as such. Title shall pass to Buyer upon payment for the Special Tool.

If Buyer provides a Special Tool to Seller for the manufacture of supplies under an Order, then Seller will hold such Special Tool in good condition, normal wear and tear excepted, and hand over such Special Tool to Buyer as applicable, at the completion of the Order unless Buyer directs Seller in writing to dispose of such Special Tool.

- 11. BUYER-FURNISHED PROPERTY AND MATERIAL.** Buyer's property and material furnished by Buyer to Seller for use in performance of the Order is to be held by Seller for the Parties' mutual benefit, and if such property and material is damaged or not satisfactorily accounted for, Seller will pay for all such property and material. Seller agrees to notify Buyer in writing

within three (3) business days of known loss or damage to Buyer property. Seller shall not use such property or material other than in the performance of the Order.

Seller shall properly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and material. Seller shall secure and maintain, for the benefit of Buyer, insurance against any loss or damage of all property and material furnished by Buyer to Seller for use in performance of the Order. Coverage will be provided on an all risk basis and value will be at replacement cost.

Requirements related to Government-furnished property are addressed under Article II herein, as applicable.

- 12. PAYMENT.** Unless otherwise provided in the Order, payment terms are net thirty (30) calendar days from either the date of Buyer's receipt of an acceptable invoice or Buyer's acceptance of the goods and supporting documentation at destination, whichever occurs last. Seller shall issue a separate invoice for each shipment to the address specified in the Order, which invoice shall include Buyer's Order number and line item number for each item shipped.

Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer (or any of its affiliated entities) against any amount payable by Buyer (or any of its affiliated entities) against any amount payable by Buyer (or any of its affiliated entities) to Seller. Seller's acceptance of payment from Buyer shall constitute a waiver of all claims by Seller against Buyer with respect to the work, items or services to which such payment applies.

- 13. DIMINISHED MANUFACTURING SOURCES.** The Parties recognize that component suppliers at times discontinue or reduce manufacture of components. In the event a component is no longer to be stocked or manufactured as part of Seller's regular product line, Seller shall notify Buyer's Authorized Representative in writing of any pending future action as soon as Seller has made such decision and no later than one hundred eighty (180) days in advance, whichever comes first.

**14. WRITING REQUIRED.**

- (a) No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall be of any effect unless provided in writing.
- (b) No oral statement of any person whosoever shall in any manner or degree, modify or otherwise affect the terms of the Order.
- (c) No extra charge of any kind or change in the price or schedule of the Order will be allowed unless specifically

agreed to in writing by Buyer's Authorized Representative.

**15. RECORDS.** Seller shall retain all records related to the Order for a period of five (5) years after final payment is made under the Order, unless a longer period is specified in the Order or by law or regulation. Records related to the Order include, but are not limited to, financial, proposal, specifications, production, inspection, test, quality, shipping and export, and certification records. Seller agrees that its manufacturing facilities, or such part of any manufacturing plant as may be engaged in the performance of the Order, and its related books, documents, papers and records shall at all reasonable times, and at no additional cost, be subject to examination and audit by any person designated by Buyer.

**16. PROPRIETARY INFORMATION.**

(a) Each party agrees to hold in confidence all drawings, diagrams, specifications and other information furnished by the other party and identified as confidential or proprietary ("Confidential Information") and to use such Confidential Information only for the purpose furnished. Each party further agrees that no party shall reproduce, distribute or disclose the other party's Confidential Information to a third party without first obtaining the other party's written consent; provided, however, notwithstanding anything to the contrary in the Non-Disclosure Agreement ("NDA") (as applicable and as defined below), Buyer is authorized to reproduce, distribute and disclose Seller's Confidential Information to Buyer's customers (or prospective customers), subcontractors, suppliers and other third parties in connection with using any of the work or other deliverables furnished under the Order. Each party shall take all reasonable measures to protect the other party's Confidential Information, which measures shall be at least equal to those with which such party protects its own confidential or proprietary information. All proprietary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by Buyer under the Order are reserved to Buyer, and the use by Seller is restricted to the work to be performed under the Order. Seller agrees to retain in confidence and return to Buyer on completion of the Order, all designs, drawings, specifications, and technical information of every kind belonging to Buyer, including all digital and hard copies thereof, and furnished to Seller in connection with the Order.

- (b) Notwithstanding the foregoing subclause 16(a), neither party shall have an obligation with respect to any Confidential Information which the party receiving such Confidential Information can demonstrate:
  - (i) was in such party's rightful possession free of any obligation of confidence prior to its first receipt from other party,
  - (ii) is publicly known through no fault of the receiving party,
  - (iii) is obtained from a third person who had a right to disclose it, or
  - (iv) was independently developed without access to any confidential or proprietary information of the other party.
- (c) Seller grants Buyer an irrevocable, non-exclusive, royalty free, and worldwide license to utilize any Seller deliverables under the Order, including any technical data or computer software provided to Buyer by Seller for Buyer's use in performing its obligations under its higher-tier contract with its customer, including but not limited to the right to make modifications, create derivative works, integrate into Buyer's deliverables or to deliver to Buyer's customers, and in general to use Seller's deliverables, technical data and computer software to work with Buyer's other contractors in performing Buyer's obligations under its higher-tier contract. Nothing herein conveys any ownership interest in Seller's intellectual property to Buyer.
- (d) In the absence of further written agreement duly signed by both Parties to the Order, such as an NDA, all information which passes from Seller to Buyer shall be treated as non-confidential, including material provided in written form and marked by the originator as being confidential or proprietary, provided however; that data, designs, ideas, or other information of Seller asserted to be proprietary by Seller that is necessary for the performance of the Order shall be disclosed and protected in accordance with the applicable DEAR clause (e.g. 952.227-14, "Rights in Data- General (DOE coverage-alternatives VI and VII)", et seq.) contained in Article II of these terms and conditions; provided, however, that clause 26 of these terms and conditions shall govern any Disputes.

**17. ADVERTISING, USE OF NAME.** Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the goods or services provided for in the Order. Seller agrees that it shall

not use Buyer's name or logo, nor any adaptation or variation thereof, in any manner whatsoever (including, but not limited to, website(s), press releases, reference lists, or similar public announcements concerning the Order or projects contemplated by the Order), without Buyer's prior written consent in each instance.

**18. COMPLIANCE WITH LAWS.** Seller understands and acknowledges that Buyer is committed to compliance with all domestic and foreign laws affecting its business and operations. Seller agrees that in performing its duties under the Order, Seller will conduct itself in strict adherence to all applicable laws, rules and regulations.

**19. INDEMNITY AND PRECAUTIONS.**

(a) Seller agrees to defend, indemnify, and hold harmless Buyer against any and all loss, liability, damage, claim, deficiency, action, judgment, interest, penalty, fine, or award, including costs and expenses, for arising out of or resulting from:

- (i) any asserted trademark, copyright, or patent infringement arising from the performance of any work, services or provision of any items or supplies by Seller, or the manufacture, use, distribution, or sale of any articles furnished to Buyer under the Order, except where such articles are in accordance with Buyer's detailed design or specification and Seller gives prompt notice to Buyer of such claims which come to Seller's attention;
- (ii) any breach of any warranty of Seller under the Order, including these terms and conditions and any additional contract flowdown provisions that are referenced on or attached to the Order;
- (iii) any damages incurred by Buyer or any third party as a result of or arising out of any work, services or provision of any items or supplies, or the manufacture, use distribution or sale of articles furnished by Seller under the Order, including in connection with the filing of any mechanics, materialman's or design lien, and
- (iv) any breach by any personnel of Seller of any agreement between Seller and its personnel required under any of the Additional Terms, or of any other document to which Buyer

and its affiliates are third-party beneficiaries, including any unauthorized use or disclosure of Buyer's Confidential Information by any such personnel.

(b) Seller agrees to accept a reduction in the profit or fee of the Order equal to any reduction in the profit or fee of the Prime Contract and to indemnify Buyer for all of Buyer's costs (both direct and indirect) which are incurred as a result of conduct by the Seller or Seller's lower-tier subcontractors in violation of "Restrictions on Obtaining and Disclosing Certain Information" (41 USC 21) (formerly known as the "Procurement Integrity Act"), as implemented in FAR Part 3.104-2.

(c) Seller agrees to indemnify and save harmless and defend Buyer from and against any and all fines, penalties, offsets, claims, demands, actions, debts, liabilities, judgments, costs and attorney's fees, costs and profit disallowed or reduced by Buyer's customer, arising out of claims on account of, or in any manner predicated upon:

- (i) submission by Seller or its subcontractors or suppliers at any tier of any alleged or confirmed false statement, false claim, defective pricing data, or unallowable costs;
- (ii) the alleged or actual violation by Seller or its employees, agents, subcontractors or suppliers at any tier of any applicable statute, regulation, or other law, including but not limited to, as applicable, Cost Accounting Standards (41 USC 15); Truthful Cost or Pricing Data (FAR) (41 USC 35), Truth in Negotiations Act (DEAR) (10 USC 2306 (a)); Restrictions on Obtaining and Disclosing Certain Information (41 USC 21) (formerly known as the Procurement Integrity Act) Kickbacks (41 USC 87) (formerly known as the Anti-Kickback Act of 1986); Buy American (formerly known as Buy American Act) (41 USC 83), and

(iii) any breach by Seller of any contractual requirement, including but not limited to, as applicable, FAR 52.203-13, "Code of Business Ethics and Conduct," FAR 52.204-25, "Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment," FAR 52.222-4, "Contract Work Hours and Safety Standards-Overtime Compensation."

(d) If Seller's work under the Order involves operations by Seller on Buyer's premises or at the site of Buyer's customer, Seller agrees to take all proper precautions in its operations against the occurrence of injury to any person

or damage to property, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with this clause 19.

Further, Seller shall comply with all the rules and regulations established by Buyer or Buyer's customer, as applicable, for access to and activities in and around premises controlled by Buyer or Buyer's customer. While performing under the Order, Seller shall comply with Buyer's policies, practices and rules regarding security and protection of proprietary information and trade secrets.

## 20. INSURANCE.

- (a) Seller will defend Buyer at Seller's expense from any suit or action, criminal or civil, arising out of Seller's performance of the Order, or that of its officers, directors, employees or agents. Further, Seller shall determine at its own risk the amounts and kinds of insurance sufficient to insure its obligations and liabilities hereunder, and shall procure and maintain all such insurance during the term of the Order and at its expense. Without prejudice to the foregoing, such insurance shall include at a minimum the following (except as otherwise specified in the Order):
- (i) Automobile liability insurance protecting Seller from automobile bodily injury, and property damage liability with limits of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury, and \$1,000,000 per occurrence for property damage;
  - (ii) Commercial general liability insurance policy which includes broad form contractual, property damage, product/completed operations, personal injury, premises operations, independent contractors and subcontractors, fire legal liability and professional liability coverage with contractual liability endorsement with limits no lower than \$1,000,000 per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage.
  - (iii) If the Order is for engineering or other professional service, professional liability coverage with a limit no less than \$1,000,000 per claim. and
  - (iv) such insurance of employees as may be required by any Workers' Compensation act
- or other law, regulation or ordinance that may apply in the circumstances.
- For (i) and (ii) above, such policies shall name Buyer as additional insured when seller performs a service on Buyer's premises or the premises of a third party at Buyer's requested, or as otherwise requested by Buyer.
- (b) Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and, such certificates will provide that Buyer shall receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under the Order.
- (c) If Seller fails to maintain such insurance, Buyer shall have the option, but not the obligation, to arrange for such insurance at Seller's sole cost and expense and without any responsibility on Buyer's part for obtaining the insurance, the solvency of the insurance provider, the adequacy of the coverage, or the collection of claims. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any work, goods or services covered by the Order and shall not be required to make further payments except for conforming work, goods delivered or services rendered prior to cancellation.
- (d) If Seller's work under the Order involves operations by Seller on Buyer's premises, Seller agrees to take all proper precautions in its operations against the occurrence of injury to any person or damage to property, to comply with Buyer's workplace safety procedures and protocols, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with this clause 20.

## 21. TAXES.

- (a) Except as may otherwise be provided herein, Seller's price shall not be adjusted by Seller for, and Seller will bear, all timely and applicable Federal, State and local taxes, duties, tariffs, assessments and other charges (hereinafter referred to as the "Taxes" collectively or the "Tax" individually) now or hereafter properly imposed on Seller in respect to the Order or transaction.
- (b) Seller agrees to notify the Buyer's Authorized Representative promptly of any proposed or contemplated

assessment of additional Taxes Seller believes must be borne by the Buyer as the result of an audit or other tax review by a governmental agency, prior to payment of the proposed additional Taxes. Any obligation the Buyer may have to pay the additional Tax is subject to notification permitting the Buyer to review the assessment prior to payment.

- (c) Seller further agrees to take all steps necessary (as requested by the Buyer, on account of the Buyer, and in cooperation with the Buyer) to secure the refund of any Taxes, interest, and penalties borne by the Buyer in connection with the Order or transaction, when such Taxes paid by the Buyer in whole or in part are subsequently deemed inapplicable.
- (d) Buyer and Seller will cooperate in good faith to enable each party to determine its own tax liability and to minimize its liability to the extent reasonably and legally permissible. Each party will provide and make available to the other any exemption certificates (or similar evidence of exemption), any applicable forms, information regarding the Order or transaction, or other information reasonably requested by the other party. Seller will reimburse Buyer for any deficiency relating to applicable Taxes (including any applicable penalties or interest) that are now or hereafter properly imposed on Seller in respect to the Order or transaction.

## **22. EXPORT CONTROLS.**

- (a) The parties acknowledge that information exchanged pursuant to the Order may be subject to U.S. export control laws and regulations. Each party shall comply with all applicable U.S. export control laws and regulations including, but not limited to, the Arms Export Control Act (22 USC 2751- 2794), and the International Traffic in Arms Regulation (ITAR) (22 CFR 120 et seq.), and the Export Administration Act (50 USC app. 2401-2420), including the Export Administration Regulations (EAR) (15 CFR 730-774), and the export control regulations promulgated by the United States Department of Energy at 10 CFR Part 810 (collectively hereinafter referred to as "Export Regulations"), and including the requirement for obtaining any export license, agreement or applicable exemption or exception, if applicable. 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's sub-tier supplier or subcontractor, without the authority of an export license, agreement, or applicable exemption or exception.

Seller agrees to notify Buyer's Authorized Representative if any deliverable under the Order is restricted by export control laws or regulations, unless such export-controlled item originates with Buyer and is incorporated into the deliverable under the Order.

- (b) Seller shall immediately notify Buyer's Authorized 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 the Government.
- (c) If Seller is engaged in the business of either exporting from the United States or manufacturing within the United States (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- (d) Where Seller is a signatory under a Buyer export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to Buyer's Authorized Representative in the event of changed circumstances including, but not limited to, ineligibility, a known violation or potential violation of the ITAR, and the known initiation or existence of a Government investigation, that in Seller's reasonable judgment could affect the Seller's performance under the Order.
- (e) In the event that any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary, significant delay in obtaining them), Seller shall immediately provide written notification to Buyer's Authorized Representative.
- (f) Seller will ensure that all U.S. Federal Government ("Federal Government") export control requirements are conveyed to all sub-tier suppliers or subcontracts, as applicable.

## **23. ASSIGNMENTS AND SUBCONTRACTS.**

- (a) Seller will not assign or transfer the Order, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of Buyer. Any purported assignment or delegation in violation of this

clause shall be null and void. For purposes of this clause 23, a change of control of Seller is construed as an assignment requiring Buyer's written consent. No assignment or delegation shall relieve Seller of any of its obligations under the Order.

In the event written consent is granted, Seller shall promptly supply Buyer two copies of any such assignment. Payment to an assignee of any claim hereunder shall be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller or any of its affiliated entities.

- (b) Seller agrees to obtain Buyer's approval before subcontracting the Order or any substantial portion thereof; provided that this limitation shall not apply to the purchase of standard commercial supplies or raw material. Seller understands, acknowledges and agrees that its use of subcontractors shall not in any way alter its obligations, representations and warranties made to Buyer, including its obligations to indemnify Buyer as set forth in clause 19 herein, or in any additional contract flowdown provisions referenced on or attached to the Order.

**24. COMMUNICATIONS.** Buyer shall be solely responsible for all liaison and coordination with Buyer's customer, including the Government, as it affects the Prime Contract, the Order, and any other related contract or agreement. Seller shall not communicate with Buyer's customer with respect to any dispute between Seller and Buyer. Notwithstanding the foregoing, Seller may communicate directly with the Government with respect to issues of fraud or other issues covered under whistleblower protections or otherwise protected by law.

**25. CONFLICT OF INTEREST.** Seller shall exercise reasonable care and diligence during the term of the Order to prevent any action or condition which could result in the appearance of, or an actual, conflict of interest with those of Buyer. This obligation shall include the activities of the employees or agents of Seller and their family members in their interactions with the employees of Buyer and their family members, or Buyer's customer representatives, vendors, or subcontractors.

Seller warrants that Seller's performance of work under the Order will not give rise to an organizational conflict of interest, as defined in FAR subpart 9.5 and DEAR Subpart 909.5. If Seller identifies an actual or potential organizational conflict of interest during the performance of the Order, Seller will immediately

make full disclosure in writing to the Buyer.

During the term of the Order, Seller agrees to not enter into contracts with the Government either as a prime or as a subcontractor that will give rise to an organizational conflict of interest as a result of Seller's performance of work under the Order. A breach of this

clause 25 will authorize Buyer to terminate the Order for default.

## **26. DISPUTES.**

Any dispute, claim or controversy, other than a Government dispute, arising out of or in connection with the Order, the Non-Disclosure Agreement ("NDA"), and/or the relationship of Buyer and Seller (each, a "Dispute") shall be subject to the procedures described in this clause 26. Government disputes are governed by paragraph (c) below.

- (a) If a Dispute arises, either party may provide the other party with written notice of such Dispute (the effective date of such notice, the "Dispute Notice Date"). During the thirty (30) days following the Dispute Notice Date, at least one (1) procurement or contracts senior management representative of each party shall meet with the other in good faith, and attempt to resolve the Dispute. If a Dispute arises, Seller shall not suspend performance under the Order while the Dispute is pending. If the Dispute is not resolved within thirty (30) days of the Dispute Notice Date, it will be governed as follows:
  - (i) If Seller is located in the United States of America, then either party may seek its rights and remedies in a court of competent jurisdiction, provided that for any such litigation (and for recognition or enforcement of any judgment or settlement agreement involving such parties), the parties hereby agree to the exclusive jurisdiction of the United States District Court for the Southern District of California, unless federal jurisdiction would not attach in which case venue shall be in Superior Court of California in San Diego, California. For any such litigation, each party accepts, generally and unconditionally, the jurisdiction and venue of the aforesaid applicable court, and each party knowingly waives any objection thereto.
  - (ii) If Seller is located outside of the United States of America, then the Dispute, as well as the determination of the scope or applicability of this agreement to arbitrate, shall be finally decided by arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce Arbitration Rules effective as of the date of the Dispute Notice Date ("ICC Rules"), before a panel of three (3) arbitrators appointed in accordance with the

ICC Rules. Subject to any valid requirements of any applicable statute, the arbitration shall be seated in San Diego, California, United States of America, and, except as the arbitrators may direct for good cause shown, the hearings shall be conducted in San Diego, California. Each party hereto may be represented by counsel in any such arbitration. The arbitration shall be conducted in English. Subject to subclause 26(b), the arbitrators shall have the authority to award temporary, preliminary and permanent injunctive and equitable relief in the arbitration (in addition to any monetary relief). The arbitration proceedings, including the award, shall be confidential, and no party will publicize the nature of any dispute or the outcome of any arbitration proceeding except to the extent required by applicable law, provided in such case the party required to make any disclosure informs the other part(ies) of such requirement to allow the other part(ies) to seek a protective order. The arbitrator will issue appropriate protective orders to safeguard each party's confidential information disclosed in the arbitration. The arbitration shall be final and binding upon the parties, and judgment may be entered upon it in any court having jurisdiction.

(b) Notwithstanding the foregoing, if the Dispute could lead to either party suffering irreparable harm (including any Dispute involving the ownership, use, or disclosure of confidential or proprietary information or trade secrets or to enforce restrictive covenants), such party may opt to seek equitable relief, including emergency injunctive relief, at any time, from a court of competent jurisdiction.

(c) Notwithstanding clause 26(a) above, for a Government Dispute, the following applies:

(i) A Government Dispute will be resolved pursuant to the Prime Contract's "Disputes" clause and under the exclusive jurisdiction of federal courts and Boards of Contract Appeals for disputes involving the Federal Government. For any Government Dispute, Seller may submit a detailed claim to Buyer including, for any claim in excess of \$100,000, an appropriate Seller certification that: (a) the claim is made in good faith, (b) the supporting data are accurate to the best of Seller's knowledge and belief, (c) the

amount requested accurately reflects the Order adjustment for which Seller believes the Government is liable, and (d) the certifying official is duly authorized to certify the claim on behalf of Seller. Buyer shall, upon receipt of adequate information from Seller, submit an appropriate corresponding claim to the Government Contracting Officer pursuant to the "Disputes" clause of the Prime Contract.

(ii) If a decision on a question of fact or law is issued by the Government Contracting Officer under the Prime Contract "Disputes" clause, whether or not based on a claim submitted by Buyer, and the decision relates to the Order, said decision, if binding upon Buyer under the Prime Contract, shall also be binding upon Buyer and Seller with respect to the Order. Under no circumstances shall Seller have the right to pursue any claim directly against the Government in connection with the Order.

However, if Seller is adversely affected by such decision and if Buyer elects not to appeal such decision or bring suit under the "Disputes" clause of the Prime Contract, Buyer shall notify Seller promptly. After receipt of such notice by Buyer, if Seller submits a timely request to Buyer to appeal such decision or bring suit, Buyer shall file an appeal or bring suit.

If Buyer appeals such decision or brings suit, whether at its election or at Seller's request, any decision on such appeal or suit, if binding upon Buyer under the Prime Contract, shall be binding on Buyer and Seller as relates to the Order.

(iii) To the extent any such appeal or suit is taken or brought by Buyer at Seller's request, and to the extent requested by Buyer, Seller shall prosecute for Buyer the appeal or suit. In such event and to such extent, Seller shall select litigation counsel, which must be experienced in government contracts litigation; and Seller shall pay all costs and expenses of the litigation brought on Seller's behalf, including attorney's fees.

Litigation counsel so selected by Seller will represent Buyer in the suit or appeal, but Buyer agrees that Seller may direct the litigation to the extent related to Seller's claim or interest, subject to the overall supervision of the litigation and ultimate decision-making in the case by Buyer.

Buyer may also select counsel to advise Buyer on, or to monitor, any appeal or suit taken or brought by Buyer at Seller's request, in which event Seller agrees to pay the reasonable costs of such counsel. Buyer shall reasonably assist Seller in any appeal or suit being directed by Seller pursuant to this paragraph, and Seller shall reimburse Buyer for its costs incurred in assisting Seller.

- (iv) During the pendency of any Government Dispute or any appeal or suit under the Contract Disputes Act, any monies due or becoming due to Seller under the Order that are in question may be withheld by Buyer until the dispute is finally resolved. If, as a result of any decision or judgment which is binding upon Buyer, Buyer is unable to obtain payment or reimbursement from the Government under the Prime Contract for, or is required to refund or credit to the Government any amount with respect to any item of cost or fee for which Buyer has paid or reimbursed Seller, Seller shall, upon demand, promptly repay such amount to Buyer.
- (v) The Parties agree to accept the relief as to a time extension or additional compensation obtained from the Government, if any, as well as all other aspects of the final decision under the Contract Disputes Act following appeal or the expiration of the time for appeal as full and final resolution of any Government Dispute.
- (vi) Buyer's maximum liability to Seller arising from or relating to a Government Dispute or an appeal or suit brought under the Contract Disputes Act shall not exceed the amount of Buyer's actual recovery from the Government.
- (vii) If the Order is issued by Buyer under a subcontract held by Buyer, and if Buyer has the right under such subcontract to appeal a decision made by the Contracting Officer under the prime contract in the name of the prime contractor, and said decision is also related to the Order, this disputes clause shall also apply to Seller to the extent allowable and in a manner consistent with its intent and similar to its application had the Order been issued by Buyer under a Prime Contract with the Government.
- (viii) If any claim of Seller under this clause 26(b) is determined to be based upon gross negligence or intentional misconduct by Seller or its subcontractors, Seller agrees to defend, indemnify, and hold

Buyer harmless for any and all liability, loss, cost, or expense resulting therefrom.

- (ix) Nothing said or written in the prosecution of any claim against the Government shall constitute or be regarded as admissions or declarations against interest of either Party in any litigation between Buyer and Seller.
- (x) Pending resolution of any dispute, Seller shall proceed as directed by Buyer in writing.
- (xi) The rights and obligations of this clause 26 shall survive completion of and final payment under the Order.

**27. GOVERNING LAWS.** The Order and any dispute arising hereunder shall be governed by the substantive law of federal procurement and, to the extent there is no applicable federal procurement law, the substantive and procedural laws of the State of California, except, however, that California's choice of law provisions shall not apply. The 1980 U.N. Convention on Contracts for the International Sale of Goods shall not apply to any sales transactions governed by these terms and conditions.

**28. NON WAIVER.** The failure of Buyer to insist, in one or more instances, upon strict performance or to exercise any rights shall not waive or relinquish to any extent Buyer's right to assert or rely upon any such terms or rights on any future occasion.

**29. ORDER OF PRECEDENCE.** In the event of an inconsistency between provisions of the Order, the inconsistency shall be resolved by giving precedence in the following order, except to the extent that any inconsistency involving a mandatory FAR or DEAR clause that is included in the Prime Contract shall be resolved such that the mandatory FAR or DEAR clause will always take precedence:

- (a) The typed provisions on the face of the Order,
- (b) Article I – General Provisions of these terms and conditions;
- (c) Article II – Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) Provisions of these terms and conditions;
- (d) Any additional Prime Contract flowdown provisions, provided through an Addendum or other similar document, that are incorporated by referenced or attached to the Order;

- (e) Other specifications or documents incorporated by referenced in the Order; and
- (f) Other attachments to, or referenced in, the Order.

In the event of any conflicting provisions, Seller shall promptly notify Buyer thereof.

- 30. NOTICES.** All notices and other communications hereunder shall be in writing and shall be deemed to have been given upon receipt of hand delivery, registered mail, return receipt requested, national overnight courier service, or facsimile transmission with confirmation receipt followed by delivery by a nationally recognized overnight courier (receipt requested). All notices hereunder shall be delivered to the address or facsimile number of the applicable party set forth on the Order.
- 31. HEADINGS.** The division of these terms and conditions into Articles and clauses, and the insertion of headings, are for convenience of reference only and shall not affect the construction or interpretation of these terms and conditions. The terms “these terms and conditions,” “hereof,” “hereunder,” and similar expressions in these terms and conditions refer to these terms and conditions and not to any particular Article, clause, or other portion and include any terms and conditions supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and clauses are to Articles and clauses of these terms and conditions.
- 32. SEVERABILITY.** If any aspect of any of these terms and conditions is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the Order shall not be affected, and the rights and obligations of the Parties are to be construed and enforced as if the Order did not contain such term.
- 33. ENTIRE AGREEMENT.** The Order including Article I - General Provisions, Article II - Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) Provisions, any special FAR or DEAR clauses, and the other attachments to, or referenced in the Order, constitute the complete and exclusive agreement between Buyer and Seller and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings,

whether written or oral between the Parties related to the subject matter of the Order. No agreement or understanding varying or extending the terms or conditions of the Order will be binding on Buyer unless executed in writing by Buyer’s Authorized Representative.

- 34. COUNTERFEIT PREVENTION AND CHAIN OF CUSTODY.** Seller shall only deliver goods that (i) are and only contain materials obtained directly from the original manufacturer (OM), an authorized distributor, or an authorized aftermarket manufacturer, and (ii) are not and do not contain Counterfeit Items or Suspect Counterfeit Items, and (iii) contain only authentic, unaltered OM labels and other markings, unless Buyer expressly provides an exception. Seller shall obtain and retain all documentation required to fully trace the chain of custody of distribution and sale of the goods delivered hereunder back to the relevant OM, and, on request of Buyer, shall provide such authenticating documentation. Upon Buyer’s request, Seller shall provide Buyer certificates of conformance with respect to the goods delivered.
- Seller shall not act as or engage an independent distributor, non-authorized distributor, non-franchised distributor, non-authorized supplier, or non-authorized reseller (collectively a “Broker”), to assist it in delivering goods pursuant to the Order unless the Buyer provides prior written approval to do so. Any Seller request to procure from a Broker shall include complete and compelling support for such request and shall include all actions completed by Seller to ensure the goods procured are not Counterfeit Items. When authorized by Buyer, Seller shall be responsible for counterfeit risk mitigation testing and providing traceability identifiers (i.e. Date Code / Lot Code, Serial number) for Broker procured parts, and identifying items delivered to Buyer that contain such parts.
- Seller shall have, and require all lower-tier contractors to have, a counterfeit risk mitigation process for all goods delivered and shall provide evidence of such program upon request from Buyer. A counterfeit risk mitigation process shall address the following:
- a) Training and awareness on identification, reporting and prevention of counterfeit items;
  - b) Processes to communicate and eliminate counterfeit items;
  - c) Full traceability of procured items back to their manufacturer;
  - d) Utilization of original manufacturers or their authorized distributors;
  - e) Established processes for identification, quarantine, test, and confirmation of counterfeit items;
  - f) Flow-down of counterfeit detection and avoidance requirements to sub-tier suppliers; and

- g) Monitoring counterfeit information and trends and updating training.

Seller shall immediately notify Buyer with all relevant information should Seller become aware of or suspect that items delivered under the Order are, or contain, suspect or confirmed counterfeit items. Buyer has the right to quarantine counterfeit, or suspected counterfeit items for further investigation which may include third party testing or governmental investigative agencies required by law or regulations. Buyer retains the right to possess the goods during the investigation period and shall not be required to return the goods if found to be counterfeit. Seller shall, at its own expense, promptly replace such Counterfeit Items with genuine work conforming to the requirements of the Order. Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Items including any testing necessitated by the re-installation of items after Counterfeit Items have been exchanged.

Seller shall include the substance of this clause, including this paragraph, in all procurements for goods. Failure to conform to the requirements within this clause shall be deemed a material breach of the Order.

### **35. INFORMATION SYSTEMS CYBERSECURITY.**

Seller agrees that it shall maintain basic safeguarding requirements on its Information System(s) for the purpose of safeguarding information related to the business activities between Buyer and Seller. The Seller shall have implemented the following basic safeguarding requirements and procedures to protect Seller's Information Systems. Requirements and procedures for basic safeguarding of Information Systems shall include, at a minimum, the following security controls:

- (i) Limit Information System access to authorized users, processes acting on behalf of authorized users, or devices (including other Information Systems).
- (ii) Limit Information System access to the types of transactions and functions that authorized users are permitted to execute.
- (iii) Verify and control/limit connections to and use of external Information Systems.
- (iv) Control information posted or processed on publicly accessible Information Systems.
- (v) Identify Information System users, processes acting on behalf of users, or devices.
- (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to al-

lowing access to organizational Information Systems.

- (vii) Sanitize or destroy Information System media containing information related to business activities between Buyer and Seller before disposal or release for reuse.
- (viii) Limit physical access to organizational Information Systems, equipment, and the respective operating environments to authorized individuals.
- (ix) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational Information Systems) at the external boundaries and key internal boundaries of the Information Systems.
- (x) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
- (xi) Identify, report, and correct information and Information System flaws in a timely manner.
- (xii) Provide protection from malicious code at appropriate locations within organizational Information Systems.
- (xiii) Update malicious code protection mechanisms when new releases are available.
- (xiv) Perform periodic scans of the Information System and real-time scans of files from external sources as files are downloaded, opened, or executed.

#### **Cyber Incident Reporting**

If Seller discovers a Cyber Incident that affects the Seller's Information System or the information residing therein, or that affects the Seller's ability to perform the requirements of the Order, Seller shall notify Buyer in writing within 72 hours of discovery.

Seller shall include the substance of this clause, ensuring that subcontractors providing products or services supporting orders from Buyer shall meet the requirements as set forth in this clause.

## ARTICLE II – FEDERAL ACQUISITION REGULATION (FAR) AND DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR) PROVISIONS

The clauses in Part 52 of the Federal Acquisition Regulation (FAR) and Part 952 of the Department of Energy Acquisition Regulations (DEAR) set forth below, and in effect on the date of the Order, are incorporated by this reference and made a part of the Order when the condition(s) for applicability is/are met. In all such clauses, the term “Contractor” and “Offeror” shall mean “Seller,” the term “Contract” shall mean the “Order,” and the term “Government Contracting Officer” (or equivalent phrases) shall mean “Buyer,” except that in those clauses conferring patent and data rights to the Government, the term “Government” or “Contracting Officer” retains its literal meaning and is not to be construed as “Buyer.”

It is intended that the FAR and DEAR clauses referenced below shall apply to Seller and its lower-tier subcontractors in such a manner necessary to reflect the position of Seller as a subcontractor to Buyer to ensure Seller’s obligations to Buyer and to the U.S. Government, and to enable Buyer to meet its obligations under its contracts funded by the U.S. Government. Clauses incorporated by reference have the same force and effect as if they were given in full text. The full text of all FAR and DEAR clauses referenced below may be accessed electronically at the following address: [www.acquisition.gov](http://www.acquisition.gov).

| Clauses   | Title                                                                                                                              | Applicability                                                                                                         |
|-----------|------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| 52.203-3  | Gratuities                                                                                                                         | Orders exceeding \$350,000                                                                                            |
| 52.203-5  | Covenant Against Contingent Fees                                                                                                   | Orders exceeding \$350,000                                                                                            |
| 52.203-6  | Restrictions on Subcontractor Sales to the Government                                                                              | Orders exceeding \$350,000                                                                                            |
| 52.203-7  | Anti-Kickback Procedures<br><i>Except that paragraph (c)(1) does not apply</i>                                                     | Orders exceeding \$200,000                                                                                            |
| 52.203-8  | Cancellation, Rescission and Recovery of Funds for Illegal or Improper Activity                                                    | Orders exceeding \$350,000                                                                                            |
| 52.203-10 | Price or Fee Adjustment for Illegal or Improper Activity                                                                           | Orders exceeding \$350,000                                                                                            |
| 52.203-11 | Certification and Disclosure Regarding Payment to Influence Certain Federal Transactions                                           | Orders expected to exceed \$200,000                                                                                   |
| 52.203-12 | Limitation on Payments to Influence Certain Federal Transactions                                                                   | Orders expected to exceed \$200,000                                                                                   |
| 52.203-13 | Contractor Code of Business Ethics and Conduct                                                                                     | Orders exceeding \$7,500,000 with a period of performance greater than 120 days                                       |
| 52.203-14 | Display of Hotline Posters                                                                                                         | Orders exceeding \$7,500,000 except when the work will be performed entirely outside the U.S.                         |
| 52.203-17 | Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights                               | Orders exceeding \$350,000                                                                                            |
| 52.203-19 | Prohibition on Requiring Certain Internal Confidentiality Agreements or Statement                                                  | All Orders                                                                                                            |
| 52.204-2  | Security Requirements<br><i>Except that paragraph (c) does not apply.</i>                                                          | Orders involving access to classified information                                                                     |
| 52.204-9  | Personal Identity Verification of Contractor Personnel                                                                             | Orders requiring physical access to a Federally controlled facility and/or access to Federally controlled information |
| 52.204-10 | Reporting Executive Compensation and First-Tier Subcontract Awards<br><i>Except that paragraphs (d)(1) and (d)(2) do not apply</i> | Orders valued at \$40,000 or more                                                                                     |
| 52.204-21 | Basic Safeguarding of Covered Contractor Information Systems                                                                       | Orders that may have Federal contract information residing in or transiting through its information system            |

| <b>Clauses</b> | <b>Title</b>                                                                                                                                        | <b>Applicability</b>                                                                           |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| 52.204-23      | Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities                   | All Orders                                                                                     |
| 52.204-25      | Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment                                              | All Orders                                                                                     |
| 52.204-27      | Prohibition of a ByteDance Covered Application                                                                                                      | All Orders                                                                                     |
| 52.204-30      | Federal Acquisition Supply Chain Security Act Orders – Prohibition                                                                                  | All Orders                                                                                     |
| 52.209-6       | Protecting the Government’s Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment                            | Orders exceeding \$45,000                                                                      |
| 52.209-10      | Prohibition on Contracting with Inverted Domestic Corporations                                                                                      | All Orders                                                                                     |
| 52.211-5       | Material Requirements                                                                                                                               | All Orders                                                                                     |
| 52.211-15      | Defense Priority and Allocation Requirements                                                                                                        | DPAS rated Orders exceeding \$175,000                                                          |
| 52.215-2       | Audit and Records – Negotiation                                                                                                                     | Orders exceeding \$350,000                                                                     |
| 52.215-10      | Price Reduction for Defective Certified Cost or Pricing Data<br>In paragraph (c)(1) the term “Contracting Officer” does not change.                 | Orders exceeding \$2,500,000                                                                   |
| 52.215-11      | Price Reduction for Defective Certified Cost or Pricing Data - Modifications<br>In paragraph (d)(1) the term “Contracting Officer” does not change. | Orders exceeding \$2,500,000                                                                   |
| 52.215-12      | Subcontractor Certified Cost or Pricing Data                                                                                                        | Orders exceeding \$2,500,000                                                                   |
| 52.215-13      | Subcontractor Certified Cost or Pricing Data – Modifications                                                                                        | Orders exceeding \$2,500,000                                                                   |
| 52.215-14      | Integrity of Unit Prices<br>Except that paragraph (b) does not apply                                                                                | Orders exceeding \$350,000                                                                     |
| 52.215-15      | Pension Adjustments and Asset Reversions                                                                                                            | Orders exceeding \$2,500,000                                                                   |
| 52.215-16      | Facilities Capital Cost of Money                                                                                                                    | Orders exceeding \$2,000,000<br>\$2,500,000 when facilities capital cost of money is proposed  |
| 52.215-17      | Waiver of Facilities Capital Cost of Money                                                                                                          | Orders exceeding \$2,500,000 when facilities capital cost of money is not proposed             |
| 52.215-18      | Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions                                                              | Orders exceeding \$2,500,000                                                                   |
| 52.215-19      | Notification of Ownership Changes                                                                                                                   | Orders exceeding \$2,500,000                                                                   |
| 52.215-23      | Limitations on Pass-Through Charges                                                                                                                 | Cost-Reimbursement Orders exceeding \$350,000                                                  |
| 52.216-7       | Allowable Cost and Payment<br>In paragraph (a)(3), use 30th                                                                                         | Cost-reimbursement or time-and-material Orders, but not for labor-hour                         |
| 52.216-8       | Fixed Fee                                                                                                                                           | Cost-plus-fixed-fee Orders                                                                     |
| 52.216-10      | Incentive Fee                                                                                                                                       | Cost-plus-incentive-fee Orders                                                                 |
| 52.219-8       | Utilization of Small Business Concerns                                                                                                              | Orders that offer further subcontracting opportunities                                         |
| 52.219-9       | Small Business Subcontracting Plan                                                                                                                  | Orders to large businesses exceeding \$900,000 that offer further subcontracting opportunities |

| <b>Clauses</b> | <b>Title</b>                                                                                                                    | <b>Applicability</b>                                                                                                                                                      |
|----------------|---------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 52.219-16      | Liquidated Damages – Subcontracting Plan                                                                                        | Orders to large businesses exceeding \$900,000                                                                                                                            |
| 52.222-1       | Notice to the Government of Labor Disputes                                                                                      | All Orders                                                                                                                                                                |
| 52.222-2       | Payment for Overtime Premiums<br>In paragraph (a), the authorized overtime premium is \$0, unless otherwise stated in the Order | Orders for cost-reimbursement exceeding \$350,000                                                                                                                         |
| 52.222-4       | Contract Work Hours and Safety Standards Act – Overtime Compensation                                                            | Orders involving employment of laborers or mechanics exceeding \$200,000                                                                                                  |
| 52.222-19      | Child Labor – Cooperation with Authorities and Remedies                                                                         | Orders exceeding \$15,000                                                                                                                                                 |
| 52.222-35      | Equal Opportunity for Veterans                                                                                                  | Orders of \$150,000 or more                                                                                                                                               |
| 52.222-36      | Equal Opportunity for Workers with Disabilities                                                                                 | Orders exceeding \$15,000                                                                                                                                                 |
| 52.222-37      | Employment Reports on Veterans                                                                                                  | Orders of \$150,000 or more                                                                                                                                               |
| 52.222-40      | Notification of Employee Rights Under the National Labor Relations Act                                                          | Orders exceeding \$10,000                                                                                                                                                 |
| 52.222-50      | Combating Trafficking in Persons                                                                                                | All Orders except that section (h) only applies to Orders exceeding \$700,000 for items acquired, or services performed, outside the U.S.                                 |
| 52.222-54      | Employment Eligibility Verification                                                                                             | Orders exceeding \$3,500 for services performed in the U.S.                                                                                                               |
| 52.222-62      | Paid Sick Leave Under Executive Order 13706                                                                                     | All Orders subject to Service Contract Labor Standards statute or Wage Rate Requirements statute performed in whole or in part in the U.S. including District of Columbia |
| 52.223-3       | Hazardous Material Identification and Material Safety Data                                                                      | Orders where delivery of hazardous material will be required                                                                                                              |
| 52.223-7       | Notice of Radioactive Materials                                                                                                 | Orders for radioactive materials                                                                                                                                          |
| 52.223-11      | Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons                                                 | Orders for supplies which contain ozone depleting substances                                                                                                              |
| 52.225-8       | Duty Free Entry                                                                                                                 | Orders exceeding \$20,000 for foreign supplies imported into the U.S.                                                                                                     |
| 52.225-13      | Restrictions on Certain Foreign Purchases                                                                                       | All Orders                                                                                                                                                                |
| 52.226-7       | Drug-Free Workplace                                                                                                             | All Orders                                                                                                                                                                |
| 52.226-8       | Encouraging Contractor Policies to Ban Text Messaging While Driving                                                             | Orders exceeding \$15,000                                                                                                                                                 |
| 52.227-1       | Authorization and Consent                                                                                                       | Orders exceeding \$350,000                                                                                                                                                |
| 52.227-2       | Notice and Assistance Regarding Patent and Copyright Infringement                                                               | Orders exceeding \$350,000                                                                                                                                                |
| 52.227-9       | Refund of Royalties                                                                                                             | Orders where the amount of royalties reported will exceed \$250                                                                                                           |
| 52.227-10      | Filing Patent Applications – Classified Subject Matter                                                                          | Orders that cover or may cover classified subject matter                                                                                                                  |
| 52.227-11      | Patent Rights – Ownership by the Contractor                                                                                     | Orders for experimental, developmental or research work performed by a small business or nonprofit organization                                                           |
| 52.227-14      | Rights in Data - General                                                                                                        | Orders where data, and rights therein, necessary to fulfill contractual requirements will be acquired, produced, or furnished                                             |

| <b>Clauses</b> | <b>Title</b>                                                                                                                                                       | <b>Applicability</b>                                                                                                         |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| 52.227-19      | Commercial Computer Software License                                                                                                                               | Orders for the acquisition of commercial computer software                                                                   |
| 52.228-5       | Insurance – Work on a Government Installation                                                                                                                      | Orders for work on a government installation                                                                                 |
| 52.229-3       | Federal, State, and Local Taxes                                                                                                                                    | Fixed-price Orders exceeding \$350,000 where performance will be wholly or partly in the U.S. or outlying areas              |
| 52.229-10      | State of New Mexico Gross Receipts and Compensating Tax                                                                                                            | Cost-reimbursement Orders performed in whole or in part within the state of New Mexico                                       |
| 52.230-2       | Cost Accounting Standards<br>Except that paragraph (b) does not apply                                                                                              | Orders exceeding \$2,500,000; unless an exemption applies                                                                    |
| 52.230-3       | Disclosure and Consistency of Cost Accounting Practices<br>Except that paragraph (b) does not apply                                                                | Orders exceeding \$2,500,000; unless an exemption applies                                                                    |
| 52.230-4       | Disclosure and Consistency of Cost Accounting Practices - Foreign Concerns<br>Except that paragraph (b) does not apply                                             | Orders exceeding \$2,500,000; unless an exemption applies                                                                    |
| 52.230-5       | Cost Accounting Standards - Educational Institution<br>Except that paragraph (b) does not apply                                                                    | Orders exceeding \$2,500,000; unless an exemption applies                                                                    |
| 52.230-6       | Administration of Cost Accounting Standards                                                                                                                        | Orders where any of the following Cost Accounting Standards FAR clauses may apply: 52.230-2; 52.230-3; 52.230-4, or 52.230-5 |
| 52.232-7       | Payments under Time-and-Materials and Labor-Hour Contracts<br>In paragraph (h)(2), use 30 <sup>th</sup>                                                            | Time-and-materials, and labor-hour Orders                                                                                    |
| 52.232-20      | Limitation of Cost                                                                                                                                                 | Cost-reimbursement Orders                                                                                                    |
| 52.232-22      | Limitation of Funds                                                                                                                                                | Cost-reimbursement Orders                                                                                                    |
| 52.232-40      | Providing Accelerated Payments to Small Business Subcontractors                                                                                                    | Orders to small businesses                                                                                                   |
| 52.234-1       | Industrial Resources Developed Under Title III, Defense Production Act                                                                                             | All Orders                                                                                                                   |
| 52.240-1       | Prohibition on Unmanned Aircraft Systems Manufactured or Assembled by American Security Drone Act-Covered Foreign Entities                                         | All Orders                                                                                                                   |
| 52.242-1       | Notice of Intent to Disallow Costs<br>Except that in paragraph (a)(2), replace the first reference to 60 days with 30 days                                         | Cost-reimbursement, fixed-price incentive, or price redetermination Orders                                                   |
| 52.242-13      | Bankruptcy<br>Except replace “a listing of Government contract numbers and contracting offices for all Government contracts” with “a listing of all Buyer Orders.” | Orders exceeding \$350,000                                                                                                   |
| 52.242-15      | Stop Work Order<br>Except in paragraph (b)(2), replace 30 days with 15 days.                                                                                       | All Orders                                                                                                                   |
| 52.243-1       | Changes – Fixed-Price<br>Except in paragraph (c), replace 30 days with 15 days.                                                                                    | Fixed-price Orders                                                                                                           |
| 52.243-2       | Changes – Cost-Reimbursement<br>Except in paragraph (c), replace 30 days with 15 days.                                                                             | Cost-reimbursement Orders                                                                                                    |
| 52.243-3       | Changes – Time-and-Materials or Labor-Hours<br>Except that in paragraph (c), replace 30 days with 15 days.                                                         | Time-and-materials or labor-hour Orders                                                                                      |
| 52.243-6       | Change Order Accounting                                                                                                                                            | All Orders                                                                                                                   |

| Clauses   | Title                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Applicability                                                      |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| 52.244-6  | Subcontracts for Commercial Products and Commercial Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | All Orders                                                         |
| 52.245-1  | <p>Government Property</p> <p>In which “Government” means “Buyer” except:</p> <p>(1) in the terms “Government furnished property” and “Government property,” and</p> <p>(2) in subparagraph (d)(3)(i)(B), subparagraph (e), subparagraph (f)(1)(ii), and subparagraph (j)(1) “Government” means “Government and/or Buyer” in subparagraph (g), and subparagraphs (h)(3), (h)(4), and (i)</p> <p>The following is added as paragraph (n) “Seller shall provide Buyer immediate written notice if the Government (i) revokes its assumption of risk of loss under any direct contracts with Seller, or (ii) makes a determination that Seller’s Government property management practices are inadequate, and /or present an undue risk, and the Seller has failed to take timely corrective action when required.”</p> | Orders where Government property will/may be furnished or acquired |
| 52.246-1  | Contractor Inspection Requirements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Orders at or below \$350,000                                       |
| 52.246-2  | <p>Inspection of Supplies – Fixed-Price</p> <p>Except that in paragraphs (c), (d) and (k) the term “Government” shall mean “Government and Buyer”</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Fixed-price Orders for supplies                                    |
| 52.246-3  | Inspection of Supplies – Cost-Reimbursement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Cost-reimbursement Orders for supplies                             |
| 52.246-4  | <p>Inspection of Services – Fixed-Price</p> <p>Except that in paragraphs (c) and (d) the term “Government” shall mean “Government and Buyer”</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Fixed-price Orders for services                                    |
| 52.246-5  | Inspection of Services – Cost-Reimbursement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Cost-reimbursement Orders                                          |
| 52.246-6  | Inspection – Time-and-Materials or Labor-Hours                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Time-and-materials and labor-hour Orders                           |
| 52.246-16 | Responsibility for Supplies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Fixed-price Orders expected to exceed \$350,000                    |
| 52.246-17 | <p>Warranty of Supplies of a Noncomplex Nature</p> <p>In the blanks at (b)(1) and (c)(1), insert “one year after acceptance.”</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Fixed-price Orders for supplies                                    |
| 52.246-18 | <p>Warranty of Supplies of a Complex Nature</p> <p>In paragraph (b)(1) insert the words “one year after acceptance.”</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Fixed-price Orders for research and development                    |
| 52.246-20 | Warranty of Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Fixed-price Orders for services                                    |
| 52.246-26 | Reporting Nonconforming Items                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | All Orders                                                         |
| 52.247-63 | Preference for U.S. Flag Air Carriers                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Orders that may involve international air transportation           |
| 52.247-64 | Preference for Privately Owned U.S.-Flagged Commercial Vessels                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Orders that may involve ocean transportation of supplies           |
| 52.248-1  | Value Engineering                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Orders of \$350,000 or more                                        |
| 52.249-1  | Termination for Convenience of the Government (Fixed Price) (Short Form)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Fixed-price Orders less than \$350,000                             |

| Clauses    | Title                                                                                                                                                                                                                                                                                                                                                                                                                          | Applicability                                                                                                                                  |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| 52.249-2   | Termination for Convenience of the Government (Fixed Price)<br>In paragraph (c), termination inventory schedule shall be submitted no later than “60 days from the effective date of termination;” paragraph (d) is deleted; in paragraph (e), “the Seller shall submit the termination settlement proposal within 6 months,” and in paragraph (l), “a request for an equitable adjustment shall be requested within 45 days.” | Fixed-price Orders exceeding \$350,000                                                                                                         |
| 52.249-5   | Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)<br>In paragraph (c), termination inventory schedule shall be submitted no later than “60 days from the effective date of termination,” in paragraph (d) “the Seller shall submit the termination settlement proposal within 6 months,” and paragraph (h) is deleted.                                                              | Orders with an educational or non-profit institution for research and development work on a no-profit or no-fee basis                          |
| 52.249-6   | Termination (Cost-Reimbursement)<br>In paragraph (d), termination inventory schedule shall be submitted no later than “60 days from the effective date of termination;” paragraph (e) is deleted; in paragraph (f), “the Seller shall submit the termination settlement proposal within 6 months,” and paragraphs (j) and (n) are deleted.                                                                                     | Cost-reimbursement Orders                                                                                                                      |
| 52.249-8   | Default (Fixed-Price Supply and Service)                                                                                                                                                                                                                                                                                                                                                                                       | Fixed-price Orders exceeding \$350,000                                                                                                         |
| 52.249-9   | Default (Fixed-Price Research and Development)                                                                                                                                                                                                                                                                                                                                                                                 | Fixed-price Orders for research and development exceeding \$350,000                                                                            |
| 52.249-10  | Default (Fixed-Price Construction)                                                                                                                                                                                                                                                                                                                                                                                             | Fixed-price Orders for construction work exceeding \$350,000                                                                                   |
| 52.249-14  | Excusable Delays                                                                                                                                                                                                                                                                                                                                                                                                               | Cost-reimbursement, time-and-materials, and labor-hour Orders                                                                                  |
| 952.204-70 | Classification/Declassification                                                                                                                                                                                                                                                                                                                                                                                                | All Orders which involve classified information                                                                                                |
| 952.204-71 | Sensitive Foreign Nations Controls<br>In paragraph (a), second sentence, replace “60 days” with “40 days”                                                                                                                                                                                                                                                                                                                      | All Orders which may involve making unclassified information about nuclear technology available to certain sensitive foreign nations           |
| 952.204-72 | Disclosure of Information<br>Used in place of DEAR clauses 952.204-2, Security Requirements, and 952.204-70, Classified/Declassification, for research involving nuclear technology                                                                                                                                                                                                                                            | All Orders with educational institutions for research work performed at their facilities that are not likely to produce classified information |
| 952.204-73 | Facility Clearance                                                                                                                                                                                                                                                                                                                                                                                                             | All Orders that require employees to have access authorization                                                                                 |
| 952.204-75 | Public Affairs                                                                                                                                                                                                                                                                                                                                                                                                                 | All Orders when unclassified information related to DOE policies, programs and activities are to be released                                   |
| 952.204-76 | Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information                                                                                                                                                                                                                                                                                                                           | All Orders which involve classified information, access to special nuclear materials or the provision of protective services                   |
| 952.204-77 | Computer Security                                                                                                                                                                                                                                                                                                                                                                                                              | All Orders which may provide access to computers owned, leased or operated on behalf of the DOE                                                |
| 952.208-70 | Printing                                                                                                                                                                                                                                                                                                                                                                                                                       | All Orders                                                                                                                                     |

| <b>Clauses</b> | <b>Title</b>                                                     | <b>Applicability</b>                                                                                                                |
|----------------|------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| 952.209-72     | Organizational Conflicts of Interest                             | All Orders exceeding \$350,000 for advisory and assistance services                                                                 |
| 952.215-70     | Key Personnel                                                    | All Orders when specific key personnel are required                                                                                 |
| 952.216-7      | Allowable Cost and Payment                                       | Cost Reimbursement Orders and Time-and-Material Orders (other than for a commercial item)                                           |
| 952.225-71     | Compliance With Export Control Laws and Regulations              | All Orders                                                                                                                          |
| 952.226-74     | Displaced Employee Hiring Preference                             | All Orders (except commercial items pursuant to 41 USC 403) which exceed \$500,000                                                  |
| 952.227-9      | Refund of Royalties                                              | All Orders when royalties reported during negotiation will exceed \$250                                                             |
| 952.227-11     | Patent Rights - Retention by the Contractor (Short Form)         | All Orders for experimental, research, or developmental work performed by a small business firm or domestic non-profit organization |
| 952.227-13     | Patent Rights - Acquisition by the Government                    | All Orders which are not covered by the provisions of DEAR 952.227-11                                                               |
| 952.227-14     | Rights in Data-General<br>(DOE Coverage - Alternates VI and VII) | All Orders if it is contemplated that data will be produced, furnished, or acquired under the Order                                 |
| 952.235-71     | Research Misconduct                                              | All Orders that involve research                                                                                                    |
| 952.242-70     | Technical Direction                                              | All Orders when Buyer's Representative will issue technical direction under the Order                                               |
| 952.247-70     | Foreign Travel                                                   | All Orders when foreign travel may be required                                                                                      |
| 952.251-70     | Contractor Employee Travel Discounts                             | Cost Reimbursement Orders when significant costs for rail travel, car rental, or lodging will be required to perform the Order      |

~End~