



**STELLANT SYSTEMS, INC.**  
**GENERAL TERMS AND CONDITIONS AND FLOWDOWN CLAUSES FOR THE PURCHASE OF**  
**COMMERCIAL ITEMS AND SERVICES UNDER A U.S. GOVERNMENT CONTRACT**  
**(APPLICABLE TO FIXED PRICE, COST TYPE, AND TIME AND MATERIAL PURCHASE ORDERS)**

**SECTION 1 - ARTICLES APPLICABLE TO ALL ORDERS**

**1. DEFINITIONS:**

- (a) "Buyer" means Stellant Systems, Inc., a corporation organized and existing under the laws of the state of Delaware, and all of its subsidiaries and affiliates.
- (b) "Buyer's Procurement Representative" means the agent of Buyer with the actual authority to make legally binding commitments on behalf of Buyer as designated on the Order.
- (c) "Cost or pricing data" means cost or pricing data as defined in FAR 2.101.
- (d) "DFARS" means the Defense Federal Acquisition Regulation Supplement.
- (e) "FAA AMS" means the Federal Aviation Administration's Acquisition Management System.
- (f) "FAR" means the Federal Acquisition Regulation.
- (g) "Government" means an agency of the federal government of the United States, unless otherwise specified.
- (h) "Government Contract" means Buyer's contract with the Government or Buyer's contract with a higher-tier contractor with a contract where the funding originates with the Government.
- (i) "Item" means goods, parts, components, articles, or supplies, including, without limitation, those part numbers model numbers, and/or descriptions set forth on the face of the Order, and shall also include computer software or hardware (including any software, firmware or other hardwired logic embedded within the hardware) delivered under the Order.
- (j) "NFS" means the National Aeronautics and Space Administration's (NASA's) supplement to the FAR.
- (k) "Order" means any purchase order or subcontract issued hereunder, including written change notices, supplements, amendments, and other written modifications thereto, together with any referenced certifications, certificates, exhibits, attachments or other documents, and includes these General Terms and Conditions and the statement of work, if any.
- (l) "Party" or "Parties" means Buyer and Seller individually or collectively.
- (m) "Seller" means the legal entity performing work pursuant to an Order and, if the context requires, its employees, officers, agents, subcontractors, and others acting at its direction and control or under contract to it.
- (n) "Services" means any labor, performance of a duty, or effort supplied by Seller under an Order such as installation, manufacturing, design, engineering, repair, maintenance, technical, construction, consulting, professional, or other services, where the cost of such Services are separate from and not included in the price of the Item.

**2. PURCHASE OF ITEMS AND SERVICES AND ORDER OF PRECEDENCE:**

(a) These terms and conditions shall govern the delivery of Items or performance of Services provided by Seller under an Order. All documents provided for under an Order shall be in English. Any additional or different terms and conditions contained in Seller's order document, any prior quotation, or any acknowledgment of an Order (including, but not limited to, any shrink-wrap or click-through terms) that are not negotiated by the Parties and identified on the Order are explicitly rejected by Buyer without further notice of rejection and shall be of no effect nor under any circumstances binding upon Buyer. Seller expressly represents that in accepting the Order it does not rely and has not relied upon any written or oral representation, warranty, or statement not set forth in the Order and that it will not have any right or remedy rising out of any representation, warranty, or other statement not expressly set out in the Order.

(b) The headings and subheadings of Articles contained herein are used for convenience and ease of reference and do not limit the scope or intent of the Article. The terms and conditions of the Order shall be construed and interpreted as consistent whenever possible. Any conflicts in an Order shall be resolved by giving precedence in the following order: (i) the Order document; (ii) the master agreement entered into between the Parties, if any (which is incorporated by reference in any Order issued hereunder); (iii) these General Terms and Conditions (which are incorporated by reference in any Order issued hereunder); (iv) the statement of work; (v) any specifications, drawings, or other requirements attached hereto or incorporated herein by reference; and (vi) any supplement terms, conditions, or provisions (such as an End User License Agreement) negotiated between the Parties and identified on the Order. In the event of a conflict in the Articles contained in Section 1 (Articles Applicable to All Orders) and applicable clauses contained in Section 2 (FAR, DFARS, and NFS Clauses), or Section 3 (FAA AMS Clauses), the applicable clauses in Section 2 (FAR, DFARS, and NFS Clauses), and Section 3 (FAA AMS Clauses) shall control to the extent necessary for Buyer to comply with Buyer's Government Contract. No other document can be less restrictive than the mandatory FAR, DFARS, NFS, and FAA AMS clauses applicable to Buyer's Government Contract.

**3. ACCEPTANCE OF THE ORDER:** Any of the following acts by Seller shall constitute acceptance of the Order: (i) execution of the acknowledge page of the Order and return to Buyer within three (3) business days of receipt or within the timeframe required by applicable law; (ii) initiation of any aspect of performance or notification to Buyer that Seller is commencing performance under the Order; (iii) shipment of any Items or performance of any Services under the Order; or (iv) acceptance of any form of payment, partial or complete, under the Order.

**4. DELIVERY, TITLE, AND RISK OF LOSS:**

(a) Items and Services shall be delivered or performed in accordance with the schedule, shipping instructions, and delivery location set forth in the Order. For international shipments: unless otherwise set forth on the face of the purchase order, the INCOTERM for all shipments under the Order shall be DPU, Buyer's Dock,

INCOTERMS 2020. Time is of the essence in Seller's performance of the Order. Buyer reserves the right to refuse shipments made in advance of the schedule set forth in the Order and may return early delivery shipments at Seller's expense. If Buyer chooses to retain the Items shipped in advance of the schedule date, Buyer may make payment in accordance with the original delivery schedule in the Order. Buyer shall not be responsible for any additional costs associated with early delivery. Buyer may also refuse deliveries made after the scheduled delivery date set forth in the Order, and in such case, will not be liable to Seller for any Items or Services not accepted. Acceptance of early or late deliveries shall not be deemed a modification of Seller's obligation to make future deliveries in accordance with the delivery schedule set forth in the Order.

(b) When any delays in delivery occur or Seller anticipates difficulty in complying with the delivery date set forth on the Order, Seller shall immediately notify Buyer in writing. Such notice shall include a revised schedule and shall not constitute a waiver to Buyer's rights and remedies hereunder. Seller shall take all steps necessary to avoid or minimize delay. Except to the extent delay is caused by Buyer, all of the costs of delay and any additional effort shall be borne by Seller. Seller, at the request of Buyer, shall provide (i) a written explanation for the root cause of the delay, (ii) a corrective action plan to address the late deliveries, and (iii) assurances that Seller will make all future deliveries in accordance with the Order requirements and schedule. Such corrective action plan and assurances shall be satisfactory to Buyer as determined by Buyer in its sole discretion. If Buyer agrees to accept deliveries after the delivery date has passed, Buyer shall have the right to direct Seller to make shipments by the most expeditious means, and the total cost of such expedited shipment and handling shall be borne by Seller.

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

(d) Unless otherwise specified in the Order, Seller shall be responsible for safe and adequate packing conforming to the requirements of carriers' tariffs or, in the absence of such requirements, conforming to the best commercial practices. All expendable packaging materials must be legally and economically disposable or recyclable. Wooden packaging from Seller must conform to International Standards for Phytosanitary Measures (ISPM 15) regarding the Regulation of Wood Packaging Material in International Trade (2019), as amended. Seller shall separately number all containers, packages, etc., showing the corresponding number on the invoice. An itemized packing slip bearing the Order number must be placed in each container. Unless set forth in the Order, Seller shall not charge extra for packaging or packing materials.

(e) Unless prohibited by applicable law, Seller may be subjected to liquidated damages for delivery of any Items or performance of any Services after the delivery date set forth on the Order in the amount of one percent (1%) of the total value of the delayed Item or Service for each day delivery or performance is delayed beyond the delivery date set forth in the Order (up to a maximum amount of twenty-five percent (25%) of the total value of the delayed Item or Service). Seller shall pay any liquidated damages within sixty (60) calendar days of Buyer's acceptance of the Items or Services or Buyer may adjust payment amount to account for liquidated damages incurred. Buyer's right to recover liquidated damages shall be in addition to all other rights and remedies that Buyer has under the Order. The total amount of liquidated damages shall be subtracted from the line item value. If the delivery delay was as a result of any action taken on the part of Buyer, Seller shall notify Buyer in writing at the time the delay occurs and request that Buyer waive liquidated damages provided herein. Failure to notify Buyer may result in liquidated damages.

(f) Any overshipment allowances require prior Buyer authorization and will be applied to either the line item or entire Order, at Buyer's discretion. Unauthorized overshipments shall be returned to Seller at Seller's sole expense.

(g) Unless otherwise specified in the Order, Seller shall bear the risk of loss and damage to all Items supplied hereunder until final acceptance by Buyer, Buyer's customer, or the Government. Buyer shall have equitable title to all Items for which interim, partial, or progress payments have been made to Seller.

## **5. QUALITY CONTROL AND NON-CONFORMANCE:**

(a) Seller and its suppliers shall establish and maintain a quality management, inspection and counterfeit parts program acceptable to Buyer and consistent with current industry standards (e.g., ISO9001, AS9100, AS9115, AS9120, AS5553, AS6496, AS6174, etc.). Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Items or Services provided to Buyer during the period of any such violation or deviation. If Seller learns of any violations of its obligations under this Quality Control and Non-Conformance Article, Seller shall within forty-eight (48) hours so notify Buyer and within sixty (60) calendar days must rectify the non-compliance issues. If the violation is not corrected and certification has not taken place within this time frame, then Buyer at its sole discretion may terminate the Order. Seller will notify Buyer of any changes that affect quality within twenty-four (24) hours of that change. These changes include, but are not limited to, change in key management or personnel, change in source of supply of key materials, change in address or site configuration.

(b) Subject to applicable national security regulations, Seller shall provide Buyer and Buyer's customer right of access, on a non-interference basis, to any area of Seller's or Seller's supply chain sub-tier premises where any part of the work is being performed. Seller shall flow this requirement down to its sub tier supply chain suppliers as a condition of the Order. Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities, and assistance for the safety and convenience of Buyer and Buyer's representatives in the performance of their duties.

(c) An Order may include requirements for design, test, inspection, verification (including production process verification), use of statistical techniques for product acceptance, and related instructions for acceptance by Buyer, and as applicable, critical items including key characteristics and requirements for test specimens (e.g., production method, number, storage conditions) for design approval, inspection/verification, investigation or auditing. Seller shall properly test and inspect its Items in accordance with the Order requirements and applicable law. Buyer and Buyer's customer shall have the right, but not the obligation, to inspect and test material, work in process, services and supplies. Seller shall keep and maintain inspection, test, and related records, for a period of six (6) years following completion of the Order. Seller shall allow copies to be made and shall furnish all records required by Buyer or Buyer's customer.

(d) Seller shall notify Buyer within forty-eight (48) hours upon Seller's discovery that an Item or Service is non-conforming. If Seller delivers a non-conforming Item or Service, Buyer may, at its option and Seller's expense: (i) return the Item or Service for refund or credit; (ii) accept all or part of the Item or Service at a mutually agreed upon price reduction or other consideration; (iii) require Seller to promptly correct or replace the Item or Service; (iv) obtain a conforming Item or Service from another source; (v) cancel the Order for default, or (vi) exercise any other applicable rights or remedies. Buyer shall specify in writing the reason for any rejection of a non-conforming Item or Service. If Buyer elects to return the non-conforming Item or Service, Seller shall provide disposition instructions regarding the non-conforming Item or Service, and if applicable, the date the non-conforming Item or Service will be repaired or replaced and returned to Buyer. Seller shall bear all risk of loss for the non-conforming Item or Service and be liable for any increase in costs, including re-procurement costs, attributable to Buyer's rejection of the non-conforming Item or

Service. If Buyer rejects an Item or Service as non-conforming and Seller does not acknowledge Buyer's rejection and plan of disposition for the Item or Service within two (2) business days, Buyer will be entitled to dispose of the non-conforming Item or Service without liability to Seller. Additionally, Buyer may elect to return the nonconforming Item or Service back to Seller at Seller's risk of loss and expense.

(e) Buyer's payment for any non-conforming Item or Service will not constitute final acceptance by Buyer, limit or impair Buyer's right to exercise any rights or remedies, or relieve Seller of responsibility for the non-conforming Item or Service. In the event Buyer decides for any reason to accept a non-conforming Item or Service, any costs incurred by Buyer for testing, evaluating, and manufacturing relating to the design changes to the Item or Service, shall be responsibility of Seller, and Seller may not pass along any costs in relation to the design changes.

(f) Final acceptance by Buyer of the Items or Services provided hereunder shall take place only after complete delivery of all Items or Services in accordance with the delivery schedule specified in the Order, or later as agreed upon by the Parties in writing, and after final inspection of those Items or Services by Buyer and Buyer's customer. Final acceptance shall be contingent upon agreement by Buyer and Buyer's customer that the Items or Services conform to the requirements of the Order. Final acceptance by Buyer is final, except for latent defects, negligent or intentional misrepresentations by Seller that a nonconformity or defect would be or has been cured or did not exist, acceptance induced by false or negligent assurances of Seller, or as otherwise provided in the Order or applicable law. Final acceptance by Buyer of the Items or Services delivered hereunder shall not limit, void, or affect in any way the warranty or indemnity granted by Seller hereunder. Payment alone shall not constitute final acceptance of the Items or Services rendered. The requirements and obligations in this Quality Control and Non-Conformance Article are material terms of the Order.

## 6. COUNTERFEIT PARTS:

(a) For purpose of this Article, the following definitions apply: (i) "Authorized Aftermarket Manufacturer" or "AAM" means an entity that fabricates a Part under a contract with, or with the express written authority of, the Original Manufacturer based on the Original Manufacturer's designs, formulas and/or specifications, usually due to the Original Manufacturer's decision to discontinue production.

(ii) "Authorized Distributor" or "AD" means a distributor authorized in writing by an Original Manufacturer to distribute product within the terms of a contractual agreement. The term Franchised Distributor is synonymous with AD.

(iii) "Authorized Reseller" means a reseller that purchases Parts either from the Original Manufacturer or their ADs within the terms of a contractual agreement and then sells the part to the end user. Some Parts an Authorized Reseller would handle include Commercial Off-The-Shelf (COTS) assemblies and commodities and Information Technology (IT) equipment, hardware, fasteners, and raw materials.

(iv) "Authorized Source" means an Original Manufacturer, AD, AAM, Authorized Reseller, or other supplier approved by Buyer in writing that obtains Parts exclusively from an Original Manufacturer, AD, or AAM

(v) "Contract Manufacturer" means a company that produces goods under contract for another company under the label or brand name of that company.

(vi) "Counterfeit Part" means (1) an unauthorized copy, imitation, substitute, or modified part, which is knowingly misrepresented as a specified genuine part of the original manufacturer, or (2) a previously used Electrical, Electronic, and Electromechanical Part which has been modified and is knowingly misrepresented as new without disclosure to Buyer that it has been previously used. Examples of a Counterfeit Part include, but are not limited to, the false identification of grade, serial number, date code, or performance characteristics. NOTE: This definition shall be read so as not to conflict with the definition for "counterfeit electronic part" cited in DFARS 252.246-7007, where that definition shall govern to the extent that clause applies.

(vii) "Electrical, Electronic, and Electromechanical Part" or "EEE Part" means a component designed and built to perform specific functions using electricity and is not subject to disassembly without destruction or impairment of design use. Examples of an electrical part include but are not limited to resistors, capacitors, inductors, transformers, and connectors. Examples of an electronic part include but are not limited to active devices, such as monolithic microcircuits, hybrid microcircuits, diodes, and transistors. An electromechanical part is a device that has electrical inputs with mechanical outputs, or mechanical inputs with electrical outputs, or combinations of each, including but not limited to motors, synchros, servos, and relays. Although some electromechanical parts may typically be referred to as assemblies, for the purpose of these terms, they are considered to be electromechanical parts.

(viii) "Independent Distributor" means a distributor that purchases parts (typically from excess inventories) from an Original Manufacturer, Contract Manufacturer, or other distributor (authorized or independent) with the intention to resell them back into the market to other Original Manufacturers, Contract Manufacturers, or other distributors. Independent Distributors do not have contractual agreements with the Original Manufacturer.

(ix) "Original Component Manufacturer" or "OCM" means an entity that designs and/or engineers a Part and is entitled to any intellectual property rights to that Part. The Part and/or its packaging is typically identified with the OCM's trademark. OCMs may contract out manufacturing and/or distribution of their Part. Different OCMs may produce or supply Parts for the same application or to a common specification.

(x) "Original Equipment Manufacturer" or "OEM" means a company that manufactures and assembles Parts that it has designed from purchased materials/components and sells those Parts under the company's brand name.

(xi) "Original Manufacturer" means an OCM or OEM.

(xii) "Part" means broadly all parts, including EEE Parts, products, materials, chemicals, assemblies, subassemblies, hardware, and all other components or pieces of components that may go into an Item. A Part can also be an Item.

(b) Authorized Acquisitions.

(i) Seller shall purchase or acquire all Parts directly from Authorized Sources. SELLER SHALL NOT PURCHASE PARTS FROM OR USE INDEPENDENT DISTRIBUTORS TO SUPPLY PARTS WITHOUT THE PRIOR WRITTEN CONSENT OF BUYER.

(ii) Authorized Distributors shall only purchase EEE Parts directly from the Original Manufacturer. Buyer will not accept EEE Parts from other ADs or Independent Distributors without prior written authorization.



- (iii) Contract Manufacturers and Authorized Resellers (including any Contract Manufacturer or Authorized Reseller providing Maintenance Repair and Overhaul (MRO) services) shall only purchase Parts from the Original Manufacturer or their ADs.
- (c) Seller shall not furnish Counterfeit Parts or suspect Counterfeit Parts to Buyer under an Order. Seller shall provide to Buyer or use in Items delivered to Buyer only new and authentic Parts, traceable to the Original Manufacturer. For all purchases, Seller shall ensure the Part remains unchanged from the Part sold by or acquired from the Original Manufacturer and the certifications show the chain of custody from the Original Manufacturer. Upon request, Seller shall provide authenticity and traceability records to Buyer. Seller shall immediately notify Buyer in writing if Seller cannot provide a Part traceable to the Original Manufacturer. Upon receipt of such notification, Buyer reserves the right to terminate the Order at no cost to Buyer and/or require Seller, at Seller's cost, to assist Buyer with material validation testing and inspection at an independent test facility of Buyer's choice.
- (d) If Seller becomes aware or suspects that it has furnished a Counterfeit Part to Buyer under the Order, Seller shall promptly notify Buyer of such no later than fortyeight (48) hours after discovery. Seller shall not invoice any Counterfeit Part or suspected Counterfeit Part. Any Counterfeit Part or suspected Counterfeit Part that has already been invoiced shall be deducted from the value of the Order. Buyer may, at Buyer's sole option, elect not to return the Counterfeit Part or suspected Counterfeit Part to Seller. If Buyer chooses to return the Item or Part to Seller for Seller to remove the Counterfeit Part or suspected Counterfeit Part, Buyer requires Seller provide a certification of destruction through an independent third party chosen by Buyer to prove Seller's destruction of the Counterfeit Part or suspected Counterfeit Part. Seller shall replace, at Seller's own expense, such Counterfeit Part with a Part from an Original Manufacturer or a Buyer-approved Part that conforms to the requirements of the Order. Seller shall be liable for all costs related to (i) the investigation and traceability of any Counterfeit Part or suspected Counterfeit Part, (ii) the replacement of any Counterfeit Part, and (iii) any testing or validation necessitated by the installation of authentic Items or components of Items after a Counterfeit Part has been replaced. Buyer's remedies shall not be limited by the Warranty Article in the Order and are in addition to any remedies Buyer may have at law, equity, or otherwise under the Order. Seller shall include this Counterfeit Parts Article in all of its lower tier subcontracts.

## 7. INVOICING, PAYMENT, AND TAXES:

- (a) Unless otherwise provided by Buyer on the face of the Order, terms of payment are net sixty (60) calendar days from the latest of the following: (i) Buyer's receipt of an accurate and approved invoice; (ii) the date the Items or Services are delivered and finally accepted; or (iii) the date provided in the Order for receipt of Items or completion of Services. For interim payments under a financing arrangement, except where Buyer or Buyer's customer requires an audit or other review of a specific payment request, payment terms are net sixty (60) from Buyer's receipt of an accurate and approved invoice. Seller shall notify Buyer in writing within thirty (30) calendar days of the occurrence of any alleged payment disputes. Buyer shall pay Seller the prices set forth on the Order for Items delivered and finally accepted or Services rendered and finally accepted, less any deductions provided in the Order. If Seller does not return the acknowledgement page of the Order and commences performance, Buyer shall only be responsible for payment for the work performed to the extent that the work was required by Buyer, not to exceed the amounts set forth in the Order, and if the Order is cost-reimbursable, only to the extent the costs are allowable under the FAR. All payments shall be made in U.S. Dollars with no adjustments for currency exchange rates. The Parties shall consider the invoices paid on the date the check is postmarked and mailed to Seller. For invoices subject to a prompt payment discount, the discount period will be computed from the date of receipt of a correct invoice to the date Buyer issues a check.
- (b) Seller shall issue a separate invoice in English for each shipment or each billing period. There shall not be a lapse of more than thirty (30) calendar days between performance and submission of an invoice. Seller shall not backdate any invoices. Unless otherwise instructed by Buyer, each invoice shall include: (i) Buyer Order number and line number; (ii) Buyer line description (as referenced on the Order); (iii) the unit price and total price; (iv) Seller's invoice number and date; (v) the payment terms; and (vi) a description of the work performed. Upon Buyer's request, Seller shall provide a reconciliation of all invoices submitted to Buyer.
- (c) Each payment made shall be subject to a reduction for any amounts found by Buyer, Buyer's customer, or Seller not to have been properly payable, including any overpayments. Seller shall promptly notify Buyer of any overpayments and remit the overpayment amount to Buyer along with a description of the overpayment. To the extent permitted by applicable law, Buyer, and any affiliate or subsidiary of Buyer, may withhold, deduct, or setoff all money due, or which may become due, from Buyer arising out of Seller's performance under the Order or any other transaction Buyer and its affiliates or subsidiaries may have with Seller.
- (d) Unless otherwise approved by Buyer in writing, the prices for the Items and Services in the Order include and Seller shall be responsible for the payment of any applicable federal, state, and local taxes, duties, tariffs, or other similar fees (collectively "taxes") imposed by any government, unless Seller obtains an applicable exemption. Seller represents that the price does not include any taxes, impositions, charges, or exactions for which it is eligible to obtain or has obtained a valid exemption certificate or other evidence of exemption. Any taxes in the Order shall be itemized separately on Seller's invoice.
- (e) No subcontract placed under the Order by Seller shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under a cost-reimbursement subcontract shall not exceed the fee limitations in paragraph 48 C.F.R. §15.404-4(c)(4)(i).
- (f) If Seller, its subcontractor, or prospective subcontractor at any tier fails to (i) submit and/or certify accurate, complete, and current cost or pricing data, (ii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid, or (iii) violates any applicable laws rules, regulations, ordinances, or the Order, and, as a result of that failure, (1) Buyer's customer reduces Buyer's contract price or fee, (2) Buyer's costs are determined to be unallowable, (3) any fines, penalties, withholdings, or interest are assessed on Buyer, or (4) Buyer incurs any other costs or damages, then Buyer may make a reduction of the corresponding amounts (in whole or in part) plus any other costs incurred including attorneys fees in either the price of the Order or any other contract with Seller, or recover from Seller an amount equal to the reduction plus any other costs incurred including attorney's fees. Additionally, upon occurrence of any of the circumstances above, Seller shall be liable and shall pay Buyer at the time any overpayment is repaid: (A) simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to Seller to the date Buyer is repaid by Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. § 6621(a)(2); and (B) if Seller knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current, a penalty equal to the amount of the overpayment.
- (g) **FOR COST TYPE AND TIME AND MATERIAL ORDERS ONLY:** Buyer shall not be obligated to pay Seller for amounts in excess of the funded value of the Order as set forth on the face of the Order or any duly authorized modifications ("Funded Value"). If at any time Seller has reason to believe that the costs that will accrue in performing the Order in the next succeeding sixty (60) calendar days, if added to all other costs previously accrued, will exceed seventy-five percent (75%) of the Funded Value, Seller shall immediately notify Buyer to that effect and shall provide a current estimate for completion. If the estimate for completion is greater than the Funded Value, then such notification also shall contain the costs to date, estimated costs to completion, and total costs, together with supporting reasons and documentation. Seller is not authorized to incur costs in excess of the Funded Value until Buyer notifies Seller in writing that the Funded Value has been increased. If, after Seller's notification, additional funds are not allotted to the Funded Value within sixty (60) calendar days, Buyer may terminate the Order in accordance with the Termination for Convenience Article.

**8. CHANGES:**

- (a) Buyer may, at any time and without notice to third parties, unilaterally direct changes in writing for: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) time and/or place of delivery, inspection, acceptance, or performance; (iv) the quantity of Items ordered or Services to be performed; (v) the statement of work; (vi) method or manner of performance; (vii) any property, facilities, equipment, or materials to be provided by Buyer under the Order; and (viii) the terms and conditions of the Order required to meet Buyer's obligations under the Buyer's customer contract.
- (b) During performance of the Order, Seller shall not make any changes in the Services to be performed or in the design or manufacturing of Items to be furnished by Seller under the Order, including any changes to the process, manufacturing location, or use of suppliers, without advance notification to and written approval of the Buyer's Procurement Representative. Only the Buyer's Procurement Representative has authority on behalf of Buyer to make changes to the Order, which shall be in writing. Items or Services that change without prior notification and consent shall be deemed nonconforming Items or Services under the Order. The issuance of information, advice, approvals, or instructions by Buyer's technical personnel shall be deemed expressions of personal opinion only and shall not affect the Parties' rights and obligations hereunder, unless the change expressly states that it constitutes an amendment to the Order and is signed in writing by the Buyer's Procurement Representative. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect upon Seller's performance.
- (c) If any written change causes an increase or decrease in the estimated costs or the time required for performance of the Order, Seller shall promptly notify the Buyer's Procurement Representative and assert its claim for equitable adjustment in writing within thirty (30) calendar days after the written change is ordered or within such extension as Buyer may grant in writing. Buyer may, in its sole discretion, consider any such claim regardless of when asserted, except that no claim for equitable adjustment shall be allowed after final payment. Nothing in this clause shall be deemed to constitute acceptance by Buyer of the validity of Seller's claim or any part thereof. Once asserted, an equitable adjustment to the Order price and/or delivery schedule may be made and the Parties may modify the Order in writing accordingly. Any equitable adjustment in price to which Seller may be entitled as a result of an increase in the quantity of Items or Services ordered shall not exceed the Funded Value (for cost type) or unit price established for such Items or Services herein. If the Parties are unable to agree upon an equitable adjustment, the matter will be resolved in accordance with the Governing Law and Disputes Article. Nothing contained herein, including failure of the Parties to agree upon any equitable adjustment, shall excuse Seller from proceeding without delay with the Order as changed by Buyer's written direction. In no event shall Seller acquire any direct claim or cause of action against the Government.

**9. WARRANTY:**

- (a) Seller represents and warrants that the Items and Services provided hereunder: (i) shall conform to the requirements of the Order, the applicable specifications, and, to the extent not inconsistent therewith, Seller's documentation; (ii) shall be merchantable; (iii) shall be fit for the use intended by Buyer, whether expressed or reasonably implied, and/or which is stated on any packaging, labeling, or advertising; (iv) shall be free from security interests, liens, or encumbrances and of good title; (v) will not infringe or otherwise violate the intellectual property rights of any third party, and (vi) are and when delivered to Buyer shall be free from viruses, spyware, and other similar harmful and destructive code designed to damage, destroy, reveal, or alter any software, hardware, or data, permit unauthorized access to any software or hardware, or disable any program automatically. Seller represents and warrants that for a period of twelve (12) months after final acceptance the Items furnished hereunder shall be free from defects in material, workmanship, design, and fabrication. In the case of latent defects, Buyer's rights to corrective action by Seller shall commence upon Buyer's discovery of the latent defect and notification of Seller thereof.
- (b) Seller represents and warrants (i) its performance of the Order does not and will not violate or conflict with any agreement to which Seller is a party; (ii) there is no pending or threatened litigation that would have a material adverse impact on its performance under the Order, (iii) Seller or any of its officers or directors are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency, and (iv) it will perform all Services in a professional and competent manner using properly qualified and trained personnel with the degree of skill and judgment normally exercised by recognized professionals delivering or performing the same or similar services.
- (c) Remedies for breach of any of these warranties shall be at Buyer's election, including those specified in Article 5(d) (Quality Control and Non-Conformance) for non-conforming Items and Services. Seller shall follow the procedure set forth in Article 5(d) (Quality Control and Non-Conformance). Any Items or Services corrected or replaced pursuant to this Warranty Article shall be subject to all provisions of this Warranty Article to the same extent as Items and Services initially delivered.
- (d) The warranties set forth herein shall survive inspection, test, final acceptance, and payment of Items and Services. The approval by Buyer of Seller's design or material used or Buyer's inspection of same shall not relieve Seller from any obligations under the warranties set forth in the Order. The warranties set forth in the Order shall run to Buyer, Buyer's customers, and any users of the Items or Services, and shall not be deemed to be the exclusive rights of Buyer, but shall be in addition to other rights of Buyer under law, equity, or the terms of the Order.

**10. END OF LIFE AND SUPPORT:**

- (a) Seller shall notify Buyer in writing if any Items or any parts, subcomponents, components, assemblies, or subassemblies in the Items delivered hereunder, including those supplied by Seller's lower-tiered subcontractors, are or are expected to be going out of production or will no longer be commercially available. Such notice shall: (i) be provided to Buyer at least twelve (12) months prior to the anticipated date of discontinuance or unavailability, or if twelve (12) months' notice is not reasonable given the circumstances, as soon as practically possible; and (ii) specifically identify the name and address of the supplier and the part by name, part number, function, and the location in the Item delivered. In such case, Seller shall make available to Buyer and hereby grants Buyer a royalty free license to use all drawings, specifications, data, and know-how to enable Buyer or Buyer's customer to manufacture or procure the Item, component, subassembly, or spare part.
- (b) Seller shall support the Items purchased hereunder during the operational life of the Items or for a period of ten (10) years from the date of final shipment under the Order and expiration of any warranty period. Support includes, but is not limited to, technical service for the Item. Additionally, Seller shall maintain an inventory of subassemblies and spare parts as may be required to support the operation of the Item.

- 11. SUSPENSION OF WORK:** Buyer shall have the right to direct Seller in writing to suspend all or any part of the work for a period of time not to exceed one hundred twenty (120) calendar days, and for any further period as the Parties may agree or as extended by Buyer's customer. Upon receipt of the written stop work notice, Seller shall immediately comply with the terms of the notice and shall take all reasonable measures to mitigate the costs allocable to the suspended portion of the work.

At the end of the suspension period, Buyer shall either (i) cancel the suspension, or (ii) terminate the work covered by the suspension as provided for in the Termination for Convenience Article of the Order; provided that a suspension may only be canceled or work terminated by written notice from the Buyer's Procurement Representative, regardless of the expiration of the suspension period. If Buyer cancels the suspension, Seller shall immediately commence performance, notwithstanding the fact that there

is no agreement as to a revised schedule or the cost of completing the Order. If work is suspended, an equitable adjustment may be requested in accordance with the provisions of Article 8(c) (Changes) for any increase in the time and the cost of performing the Order necessarily caused by such suspension, exclusive of profit, and the Order may be modified in writing accordingly. For cost type Orders, Seller shall request the equitable adjustment prior to the incurrence of any costs in excess of the Funded Value. Nothing in the clause shall excuse Seller from diligently continuing with performance of work not suspended.

**12. FORCE MAJEURE:** If either Party cannot perform, in whole or in part, any of its obligations under the Order because of any act of God, act of any government, government delay, court order, public enemy, fire, flood, pandemic, epidemic, strike, freight embargo, industrial disturbance, or any other cause beyond the Party's reasonable control, and provided further that the Party could not have mitigated, avoided, or prevented the cause or delay through the exercise of reasonable care and precautions (a "Force Majeure Event"), then the non-performing Party will (i) promptly notify the other Party in writing, (ii) take commercially reasonable steps to resume performance as soon as possible, and (iii) not be considered in breach during the duration of and to the extent its performance is prevented by the Force Majeure Event. In the event a Force Majeure Event continues for a period of fifteen (15) calendar days or threatens Buyer's delivery commitments under its Government Contract, Buyer may terminate such part of the Order remaining to be performed by providing written notice to Seller with no further liability to Buyer.

**13. FURNISHED PROPERTY:**

(a) Buyer may provide drawings, tools, dies, fixtures, materials, and other property owned by Buyer or Buyer's customer ("Furnished Property") solely for Seller to use in the performance of the Order. All rights, title, and interest in the Furnished Property shall remain with Buyer or Buyer's customer. Seller shall clearly mark, maintain an inventory and keep segregated or identifiable all of the Furnished Property. Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice, and upon Buyer's reasonable request, provide Buyer written records of Seller's management, maintenance, and preservation of the Furnished Property, including any inventory lists. Furnished Property shall be promptly returned to Buyer on request or upon completion or termination of the Order. If Seller fails to return the Furnished Property upon Buyer's demand, Buyer shall have the right, upon reasonable notice, to enter Seller's premises and remove any such property at any time without being liable for trespasses or damages of any sort. Except for reasonable wear and tear, Seller assumes all risk of loss, destruction, or damage of Furnished Property while in Seller's possession, custody, or control. Upon request, Seller shall promptly provide Buyer with adequate proof of insurance against such risk of loss. Seller shall promptly notify Buyer of any loss or damage to the Furnished Property.

(b) With respect to Government Furnished Property or property under the Order to which the Government may take title: (i) FAR 52.245-1 shall apply and is incorporated by reference; and (ii) Seller shall provide to Buyer immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of Seller's property control system. Seller shall include this Furnished Property Article in all of its lower tier subcontracts and notify Buyer and obtain approval prior to passing Furnished Property to any lower tier subcontractor.

**14. SELLER OPERATING AT BUYER FACILITY:**

(a) Seller's employees, agents, and contractors (collectively, "personnel") may be granted access to Buyer facilities, subject to compliance with Buyer's standard administrative and security requirements and policies provided to Seller. Seller acknowledges and agrees Seller's personnel with access to Buyer's facilities can be removed and/or barred from entry at Buyer's sole discretion. Upon Buyer's direction, Seller shall remove such personnel and promptly provide a qualified replacement. Seller agrees to use its best efforts to ensure continuity of performance under the Order. (b) Subject to applicable laws, if Seller's personnel are to be onsite at any of Buyer's facilities, Buyer shall have the right to require Seller's personnel to submit to Buyer's standard drug test and/or background check or equivalent standards prior to performing any Services. Prior to access being granted to Seller's personnel, Seller shall certify that such screening was accomplished.

**15. RIGHTS IN DATA AND INVENTIONS:**

(a) The following terms shall have the meanings set forth below:

(i) "Intellectual Property" or "IP" means inventions, discoveries and improvements, know-how, works of authorship, technical and other data, drawings, specifications, process information, reports and documented information, and computer software.

(ii) "Background IP" means Intellectual Property that is (i) in existence prior to the effective date of the Order or (ii) is designed, developed, or licensed after the effective date of the Order independently of both the work undertaken or in connection with the Order and the proprietary information and IP of the other party to the Order.

(iii) "Foreground IP" means Intellectual Property conceived, created, acquired, developed, derived from, or based on development performed under the Order or information supplied by Buyer, or first actually reduced to practice by Seller in connection with the Order.

(b) Buyer shall retain ownership of all Intellectual Property and other information supplied by Buyer hereunder ("Buyer-Owned IP"). Seller shall treat as proprietary and confidential all Buyer-Owned IP, except for any such information provided by the Government or to which the Government has other than unlimited rights, in which case Seller shall use and disclose the information in accordance with applicable provisions and/or restrictive markings concerning Seller's use and disclosure of such information. Buyer grants to Seller a non-exclusive, non-transferable (except as expressly provided herein), royalty-free right during the term of the Order to use, reproduce, modify, practice, and prepare derivative works of any Buyer-Owned IP solely as necessary for Seller to perform its obligations under the Order. Seller shall not, without Buyer's prior written consent, use Buyer-Owned IP or any derivative works of any of the Buyer-Owned IP in any manner not authorized under the Order, including, but not limited to, developing, manufacturing, offering for sale or selling any item or service which utilizes or is enabled by Buyer-Owned IP. On Buyer's request or upon completion or termination of the Order for any reason, Seller shall promptly return or destroy, at Buyer's option, all Buyer-Owned IP and all copies. If Seller destroys the Buyer-Owned IP, Seller shall provide Buyer a certificate of destruction. In the event of a conflict between the terms of this paragraph (b) and the terms and conditions of any separately executed and applicable Non-Disclosure Agreement ("NDA") between Buyer and Seller, the terms and conditions of the NDA shall control.

(c) To the extent the Items and Services delivered hereunder will be used for Buyer to perform its contractual obligations under its Government Contract, Seller grants to Buyer a limited, nonexclusive, irrevocable, worldwide, fully paid license to use all IP provided by Seller hereunder for the purpose of performing under the Government Contract (including obligations of any follow-on contract(s) for subsequent phases of the same program); provided that such IP will not, without Seller's prior written consent, be disclosed or supplied on a non-confidential basis, in whole or in part to any third party, or used in whole or in part for design, manufacture, re-procurement or any other purpose whatsoever. Seller shall assert all required data rights and markings on any IP delivered, in whole or in part, in accordance with the clauses set forth in Section 2 (FAR, DFARS, and NFS Clauses) and Section 3 (FAA AMS Clauses) herein.

(d) Unless otherwise expressly agreed in writing to the contrary and subject to this paragraph (g) below, all Foreground IP developed exclusively with Buyer monies (i.e., development was accomplished entirely with monies paid by Buyer to Seller that are not subject to recovery by Buyer under a Government Contract) and not

subject to paragraph (f) below is hereby assigned to Buyer, shall be proprietary to Buyer, and Buyer shall own all right, title, and interest in such property. Buyer grants to Seller a non-exclusive, non-transferable (except as expressly provided herein), royalty-free right during the term of the Order to use the Foreground IP solely as necessary for Seller to perform its obligations under the Order. Seller shall not, without Buyer's prior written consent, (i) use Foreground IP in any manner not authorized under the Order, including, but not limited to, developing, manufacturing, offering for sale, or selling any item or service which utilizes, is enabled by, or is derived from Foreground IP, and (ii) disclose the Foreground IP to any third party. Seller shall provide all Foreground IP free of any Seller confidential or proprietary markings and legends. Except as required for the performance of the Order and for archival purposes, Seller shall not make copies or permit copies to be made of Foreground IP without the prior written consent of Buyer. On Buyer's request or upon completion or termination of the Order for any reason, Seller shall promptly provide to Buyer all Foreground IP and all copies. Notwithstanding the foregoing, to the extent it is not reasonably feasible to remove Foreground IP or Buyer-Owned IP from disaster recovery or other archival systems, Seller shall be relieved from the foregoing return obligation, provided however, that all such Foreground IP or Buyer-Owned IP shall remain subject to the confidentiality obligations under the NDA and the Order, including after expiration or termination of the Order for any reason. Any work performed pursuant to the Order that includes any copyright interest shall be considered a "work made for hire" and all rights, title and interest shall be and are hereby assigned to Buyer. The tangible medium storing copies of all reports, memoranda, or other materials in written form, including machine-readable form, prepared by Seller and delivered to Buyer pursuant to the Order shall become the sole property of Buyer and shall be provided to Buyer free of any Seller confidential or proprietary markings or legends.

- (e) Subject to paragraph (g) below, any invention constituting Foreground IP is hereby assigned to Buyer and Buyer shall own all right, title, and interest in such property. Seller shall execute all documents necessary to perfect Buyer's interest in and title thereto, including, without limitation, assigning any and all right, title and interest Seller has in any such invention to Buyer. Seller shall ensure that any third party with whom Seller has subcontracted to furnish Items or Services, and Seller's employees, also execute and assign any and all rights, titles, and interest in any such invention to Buyer. Seller shall, within two (2) months after conception or first actual reduction to practice of any invention constituting Foreground IP and prior to completion of the Order, disclose in writing to Buyer all inventions, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all written instruments, and assist as Buyer reasonably directs in order to file, acquire, prosecute, maintain, enforce and assign Buyer's invention rights. Seller hereby irrevocably appoints Buyer and any of Buyer's officers and agents as Seller's attorney in fact to act on Seller's behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such written instruments.
- (f) Seller shall retain ownership of all Seller Background IP and of any Foreground IP not assigned to Buyer pursuant to paragraphs (d) and (e) (collectively, "Seller-Owned IP"). If Seller includes any Seller-Owned IP in any Foreground IP or Item provided to Buyer or any Seller-Owned IP is required to fully exploit such Foreground IP or Item, Seller grants to Buyer an nonexclusive, irrevocable, sublicensable, paid-up, royalty-free worldwide right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works of any and all Seller-Owned IP incorporated into the Foreground IP or Item or otherwise delivered to Buyer in connection with the Order. The foregoing, however, shall not include the right for Buyer to separate the Seller-Owned IP from the Foreground IP or Item and separately exploit or use the Seller-Owned IP. For Orders that include the delivery of software, the permitted use and license grant of any software shall be extended to Buyer's affiliates and subsidiaries and Buyer's contractors and outsourcers performing services for or on behalf of Buyer.
- (g) Nothing in this Rights in Data and Inventions Article shall modify or alter any rights that the Government may have in any Items or Services, including technical data or computer software deliverables to the Government. Applicable government procurement regulations incorporated into the Order relating to subcontractors rights in IP are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between the Parties.
- (h) If any tools, gauges, appliances, or equipment (collectively "Tools") should be manufactured or procured by Seller for producing or developing the Items delivered under the Order, then such Tools shall become the property of Buyer or Buyer's customer. Buyer shall have all right, title, and interest to such Tools irrespective of whether the Tools are an Item under the Order. Seller shall manage, maintain, and preserve the Tools in accordance with good commercial practice, and upon Buyer's reasonable request, provide Buyer written records of Seller's management, maintenance, and preservation of the Tools, including any inventory lists. Buyer grants to Seller a non-exclusive, non-transferable (except as expressly provided herein), royalty-free right during the term of the Order to use the Tools solely as necessary for Seller to perform its obligations under the Order. All Tools shall be promptly provided to Buyer on request or upon completion or termination of the Order.

## 16. THIRD PARTY SOFTWARE:

- (a) This Third Party Software Article only applies to Items and Services that include the delivery of software. As used herein, "Open Source Software" means any software, programming, or other intellectual property that is subject to (i) the General Public License ("GPL"), Lesser/Library GPL, (LGPL), the Affero GPL (AGL), the Apache license, the Berkeley Software Distribution ("BSD") license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or any similar license, including, but not limited to, those licenses listed at <http://www.opensource.org/licenses> or (ii) any agreement with terms requiring any intellectual property owned or licensed by Buyer to be (1) disclosed or distributed in source code or object code form, (2) licensed for the purpose of marking derivative works, or (3) redistributable.
- (b) In the event Seller provides any third party software, including Open Source Software, to Buyer in connection with the Order ("Third Party Software"), the following shall apply: (i) Seller shall specifically identify in writing to the Buyer's Procurement Representative all Third Party Software and submit written copies of all third party license agreements applicable to Buyer; and (ii) Seller warrants that (1) it has the right to license any Third Party Software licensed to Buyer under the Order, (2) to the best of Seller's knowledge, the Third Party Software does not, and the use of the Third Party Software by Buyer as contemplated by the Order will not, infringe any intellectual property rights of any third party, and (3) unless specifically provided otherwise herein, Buyer shall have no obligation to pay any third party any fees, royalties, or other payments for Buyer's use of any Third Party Software.
- (c) Seller shall obtain the Buyer's Procurement Representative's prior written consent, which may be withheld in Buyer's sole discretion, before using or delivering any Open Source Software in connection with the Order. All Open Source Software provided by Seller to Buyer shall be considered, as appropriate, part of and included in the definition of "Seller-Owned IP" and subject to all warranties, indemnities, and other requirements of the Order, including scope of license and maintenance and support, relating to the Seller-Owned IP. Seller represents and warrants all Open Source Software used or delivered in connection with the Order: (i) does not require any software to be published, accessed or otherwise made available without the consent of Buyer; or (ii) does not require distribution, copying or modification of any software free of charge.

## 17. INSURANCE:

(a) **Minimum Insurance.** Seller shall maintain, at its expense, on an occurrence basis (except as noted below), at all times during the term of the Order and for three (3) years following completion of all work performed under the Order, whichever is later, the insurance coverage listed below with insurance companies eligible to do business in the jurisdiction in which work is performed and maintaining an AM Best's rating of A- VII or better. The required insurance shall include limits of not less than the minimum limits of liability specified below, policy limits, or limits required by law, whichever are greater. Limits of insurance required herein may be satisfied with any combination of primary and Umbrella/Excess insurance. Additionally, Seller shall cause its subcontractors performing work under the Order to maintain insurance as per the insurance requirements herein. Such insurance shall include:

- (i) **Commercial General Liability Insurance:** Coverage shall be on an occurrence form with limits not less than \$5,000,000 combined single limit per occurrence (unless higher limits are required by statute or law) for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, personal and advertising injury, and products and completed operations coverage.
- (ii) **Automobile Liability Insurance:** Should the performance of the Order involve the use of automobiles including instances when Seller will be using an automobile onsite at a Buyer facility, Seller shall provide business automobile insurance insuring the ownership, operation, and maintenance of all owned, non-owned, and hired motor vehicles. Seller shall maintain limits of at least \$5,000,000 combined single limit per accident for bodily injury and property damage. If Seller's work involves the delivering, hauling, or transportation of goods, such policy shall include the Motor Carrier Act endorsement (MCS-90) and ISO Pollution Liability Broadened Coverage for covered auto endorsement (CA 99 48) or equivalent form.
- (iii) **Workers' Compensation Insurance:** Such insurance shall provide coverage in amounts at least \$1,000,000 each occurrence and not less than the statutory requirements in the state where the work is performed even if such coverage is elective in that state, including occupational disease coverage, and if applicable, Federal Voluntary Workers' Compensation coverage if employees will be temporarily working outside of the United States. To the extent that any work to be performed is subject to the Jones Act, the Longshore and Harbor Workers' Compensation Act, or the Defense Base Act, the Workers' Compensation policy must be endorsed to cover such liability under such Act. Should Buyer lease or borrow any of Seller's employees to perform Services under the Order, such policy shall include ISO Alternate Employer endorsement WC 00 03 01 A or an endorsement providing equivalent coverage, including Buyer as an alternate employer with respect to Services performed by Seller's employees under the Order.
- (iv) **Employers' Liability Insurance:** Such insurance shall provide limits of not less than \$1,000,000 each person/accident. In states where Workers' Compensation insurance is a monopolistic state-run system (e.g., Ohio, Washington, North Dakota, and Wyoming), Seller shall add Stop Gap Employers Liability with limits not less than \$500,000 for each accident or disease.
- (v) **Excess and/or Umbrella Liability Insurance:** Coverage must be on an occurrence form with limits of not less than \$5,000,000 per occurrence/\$5,000,000 annual aggregate in excess of the limits stated in (i), (ii), and (iv) above.
- (vi) **Professional Liability / Errors & Omissions Insurance/ Technology Errors & Omissions:** If Seller is providing professional services under the Order, Seller shall carry professional liability / errors & omissions / technology errors & omissions and in the amount of at least \$5,000,000 for each wrongful act or omission and in the annual aggregate.

(b) **Additional Insurance.** Some or all of the following additional insurance coverage may be required, depending upon the nature of the work to be performed. These additional insurance requirements will be identified on the Order.

- (i) **Cyber / Privacy Liability or Network Security Insurance (may be separate or combined with the Professional Liability / E&O Liability / Technology E&O Policy):** Such insurance shall (i) cover the liability of Seller by reason of any actual or alleged error, omission, negligent act or wrongful act of the Seller committed in rendering or failing to render any products or services, and shall specifically include coverage for liabilities caused by a security breach, breach of privacy or a breach of privacy regulations, including but not limited to unauthorized disclosure of information, unauthorized access, or failure to protect a network security breach; liabilities resulting from the unauthorized release, transmission or publication of private or technical information in Seller's possession under the scope of the Order, (ii) include the indemnification of Buyer for any costs and expenses, including Buyer's notification expenses, incurred by Buyer arising out of a security breach, privacy breach or breach of privacy regulations; with an occurrence or per claim limit, and an annual aggregate limit of not less than \$5,000,000, and (iii) if underwritten on a claims made insuring agreement, be maintained for a period of not less than two (2) years after the expiration of the Order.
- (ii) **Media Liability Insurance:** Such insurance shall include limits of at least \$2,500,000 per claim or wrongful act.
- (iii) **Aviation Liability / Aircraft / Spacecraft Insurance:** Such insurance shall provide coverage for owners and non-owned aircraft, aircraft/space products, completed operations, war, hijacking, and other perils (AVN 52D) and include limits of \$50,000,000 per occurrence/aggregate for any work involving aircraft or spacecraft products and services.
- (iv) **Hangar-keepers' Liability Insurance:** Such insurance shall include limits of \$50,000,000 per occurrence.
- (v) **All Risk Property Insurance Replacement Value:** Such insurance shall cover the value of property of Buyer or Buyer's customer in the care, custody, or control of Seller and include Buyer as Loss Payee.
- (vi) **Marine General Liability/ Hull/Protection & Indemnity Insurance:** If performance of the Order requires or involves the installation of equipment onboard a vessel and/or if any vessels are used in any of Seller's operations conducted under the terms of the Order, Seller or the watercraft operator shall carry Marine General Liability /Hull/Protection & Indemnity coverage for each vessel with the following minimum limits:
  - (1) **Marine General Liability Coverage:** on an occurrence form with limits not less than \$5,000,000 combined single limit per occurrence (unless higher limits are required by statute or law) for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, personal and advertising injury, and products and completed operations coverage. Watercraft exclusions should be removed from the Marine General Liability policy;
  - (2) **Protection & Indemnity Insurance:** with limit of not less than one million (\$10,000,000) per occurrence for bodily injury and property damage including, but not limited to, coverage for crew (or separate Maritime Employer's Liability) and passengers, Collision/Towers Liability, Contractual Liability, Cargo Legal, In Rem, Wreck Removal, and Pollution Liability;



- (3) **Hull and Machinery Insurance:** for all vessels used in the scope of work under the Order, in amounts equal to the fair market value of the applicable vessel(s) owned and/or operated by or for the service provider. Hull and Machinery shall include coverage for additional perils & war, strikes, riots & civil commotions (s.r. & c.c.); and
- (4) **Vessel Pollution Liability Insurance:** including liability for bodily injury and property damage for all vessels and/or barges of any size used in the scope of work under the Order with limits of at least one million (\$1,000,000) per vessel per occurrence and in the aggregate.
- (vii) **Fidelity or Crime Insurance:** Such insurance shall provide a client coverage endorsement with limits of not less than \$1,000,000 per insuring agreement and shall include Buyer as Loss Payee. Coverage must include employee dishonesty, including but not limited to dishonest acts of Seller, its employees, agents, subcontractors and anyone under Seller's supervision or control, and loss of Buyer property, Forgery, Computer Fraud, and Funds Transfer Fraud. Seller shall be liable for money, securities or other property of Buyer.
- (viii) **Environmental Insurance (Contractor's Pollution Liability Insurance):** If required within the scope of Seller's work to be performed, such insurance shall include limits of at least \$5,000,000 each occurrence, claim, or wrongful act and \$10,000,000 aggregate. The insurance required herein cannot exclude coverage for bodily injury, property damage, pollution or environmental harm resulting from or arising out of the work to be performed, asbestos, lead or silica-related claims, claims arising out of microbial matter or bacteria, testing, monitoring, measuring operations or laboratory analyses, or liability arising out of the operation of a treatment facility. The policy must contain a 'separation of insureds' clause.
- (ix) **Pollution Legal Liability Insurance:** Such insurance shall include limits of at least \$3,000,000 each occurrence, claim, or wrongful act and \$6,000,000 aggregate.
- (x) **Installation Floater and Motor Truck Cargo Liability Insurance:** If Installation Floater (Install &/or Rigging) and Motor Truck Cargo services will be performed, Buyer shall provide Seller required limits.
- (c) **Waiver of Subrogation.** To the fullest extent allowed by law, all required insurance policies shall include a waiver of subrogation in favor of Stellant Systems, Inc., its affiliates, subsidiaries, successors and assigns as their interests may appear, and each of their respective directors, officers and employees. Waiver of subrogation endorsement MUST be attached to the Certificate of Insurance.
- (d) **Additional Insured.** Except for Workers' Compensation Insurance and Fidelity Insurance, Seller shall name Buyer, its subsidiaries, and their directors, officers, employees, agents, and successors and assigns as Additional Insureds under each of Seller's policies with respect to Seller's work, operations, and completed operations, including claims arising from Buyer's vicarious liability emanating from Seller's work or operations. The Additional Insured endorsements shall be included by endorsement to the policies in a form acceptable to Buyer. The endorsements MUST be attached to the Certificate of Insurance. For policies where additional insured coverage is required, policies shall include severability of interest/separation of insureds provisions and shall not contain any cross-suit liability exclusions.
- (e) **Certificate of Insurance.** Seller shall provide to Buyer, within fifteen (15) calendar days of Buyer's issuance of an Order and prior to the start of any work, a Certificate of Insurance evidencing the coverages, limits, and provisions specified in this Article and thereafter upon the renewal of any of the policies including copies of endorsements adding Buyer as an Additional Insured and/or granting waivers of subrogation. The Certificates are to be signed by a person authorized by the insurer to issue certificates of insurance. Seller shall provide Buyer such copies within ten (10) business days of Buyer's written request.
- (f) **General Requirements.** Seller shall give Buyer a minimum of thirty (30) calendar days' written notice prior to any suspension, non-renewal, cancellation (except ten (10) calendar days for non-payment of premium), or material change in coverage, scope, or amount of any policy. Failure to do so shall constitute a material breach of the Order. In the event Seller fails to secure and continuously maintain the insurance coverage required under the Order, Buyer may charge Seller, and Seller shall pay Buyer, (i) Buyer's actual expenses incurred in purchasing similar protection, and (ii) the value or amount of any claims, actions, damages, liabilities, costs, and expenses paid by Buyer which would not have been paid by Buyer if Seller had complied with the requirements of this Article. None of the requirements contained in this Article, including, but not limited to, requirements relating to types and minimum limits of coverage, are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Seller under the Order or as otherwise provided by law. Seller's purchase and maintenance of the insurance described in this Article shall not release Seller from its respective obligations or liabilities in connection with the Order. Furthermore, Seller is responsible for any losses, claims, and incidental costs arising out of the Services which exceed the limits of liability or which may be outside the coverage required in this Article. No provision of the Order shall impose on Buyer any duty or obligation to verify the existence or adequacy of the insurance coverage maintained by Seller and/or Seller's subcontractors. Any failure on the part of Buyer to pursue or obtain the evidence of insurance required by the Order from Seller or any other party and/or failure of Buyer to point out any non-compliance of such evidence of insurance shall not constitute a waiver of any of the insurance required under the Order. Seller is required to fully fund losses within its deductibles, selfinsured retentions, and self-insured programs, without contribution from Buyer. Seller's required insurance coverage shall be primary insurance, and any insurance or self-insurance maintained by Buyer shall be excess and non-contributory with Seller's insurance.

## 18. TERMINATION FOR CONVENIENCE:

- (a) **Fixed Price Orders.**
- (i) At any time, Buyer may, in its sole discretion and by written notice, direct Seller to terminate work under the Order, in whole or in part. In such event, Buyer shall have all rights and obligations accruing to it either at law or in equity, including Buyer's right to title and possession of any of the Items and Services paid for by Buyer. Upon notice of termination, Buyer may take immediate possession of all work so performed.
- (ii) Upon notice of termination, Seller shall immediately stop work and limit costs incurred on the terminated work. In the event Buyer partially terminates the Order, Seller shall continue the performance of the Order to the extent not canceled.
- (iii) Upon notice of termination for convenience, Seller shall submit a settlement proposal to Buyer within sixty (60) calendar days (unless otherwise extended in writing) with full supporting documentation for all costs claimed. Buyer, after deducting any amounts previously paid, shall reimburse Seller for the actual, reasonable, substantiated, and allowable costs of the work. The total amount to be paid by Buyer for the work shall be determined by Buyer and shall not exceed the value of the Order. Payment for completed Items delivered and accepted by Buyer shall be at the price set forth in the Order.
- (b) **Cost Type Orders.** Buyer may terminate the Order in accordance with FAR 52.249-6, Termination (Cost-Reimbursement), substituting the language in accordance with the information listed in Section 2 (FAR, DFARS, and NSF Clauses). Within sixty (60) calendar days of receiving such termination notice, Seller shall submit its settlement proposal to the Buyer's Procurement Representative with full supporting documentation for all costs claimed. As required by Buyer or

Buyer's customer, audits and examinations of records for such settlement proposal may be performed by Buyer, Buyer's customer, or an independent certified public accounting firm, mutually acceptable to the Parties. Seller agrees to fully cooperate with any such audit.

#### **19. TERMINATION FOR DEFAULT:**

- (a) Buyer may terminate the Order for default, in whole or in part, by written notice to Seller if: (i) Seller fails to make delivery of the Items or perform the Services within the time specified in the Order; (ii) Seller fails to perform any of the other obligations of the Order, or fails to make progress, so as to endanger performance of the Order; (iii) it is found that gratuities (in the form of entertainment, gifts, travel or anything of value) or kickbacks were offered or given by Seller, or by any agent or representative of Seller, to any employee or agent of Buyer; (iv) Seller is sanctioned, suspended, or debarred by the Government; (v) it is found that Seller has a potential, actual, or apparent personal or organizational conflict of interest related to or arising out of its performance of the Order and Buyer determines that such conflict cannot be adequately avoided or mitigated; or (vi) Seller fails to agree upon any deletion, amendment, or addition to the Order that is required by statute, executive order, or applicable regulation, or results from a modification to Buyer's Government Contract by Buyer's customer. Upon written notice by Buyer, Seller shall have five (5) calendar days to cure such deficiency, unless Buyer extends the cure period in writing.
- (b) Seller shall promptly notify Buyer if Seller: (i) becomes insolvent or makes a general assignment for the benefit of creditors; or (ii) files a petition or application or commences any proceeding under any bankruptcy or similar statute or has a petition or application filed or any such proceeding commenced against it. In such event, Buyer may determine Seller's financial condition endangers completion of performance and may require Seller to post such financial assurance, as Buyer, in its sole discretion, deems necessary. Seller's failure to remedy any insolvency, assignment, petition, or post such financial assurance upon seven (7) calendar days written notice shall constitute a default under the Order. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or equity under the Order.
- (c) After receipt of notice of termination for default, Seller shall stop work under the Order on the date and to the extent specified in the notice of termination for default.
- (d) Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed Items and any raw material, parts, Tools, dies, jigs, fixtures, plans, drawings, Services, and information ("Materials") as Seller has produced or acquired for the performance of the Order. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Except for situations where Seller is in violation of the U.S. Foreign Corrupt Practices Act as referenced in Article 27(f) (Foreign Corrupt Practices Act): (i) payment for completed Items delivered and accepted by Buyer shall be at the Order price; and (ii) payment for unfinished Items or Services, which have been delivered and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience Article, except that Seller shall not be entitled to profit.
- (e) If Seller is terminated for default pursuant to this clause, Seller shall be liable to Buyer for any excess repurchase costs incurred in acquiring goods and/or services similar to those terminated for default, and for any other damages, whether or not repurchase is effected.

**20. CHANGE OF CONTROL:** For the purposes of this Change of Control Article, "Change of Control" means (i) the sale, conveyance, transfer, distribution, lease, assignment, license, or other disposition of all or substantially all of the assets of Seller, (ii) any consolidation or merger of Seller or its controlling affiliates, any dissolution of Seller or its controlling affiliates, or any reorganization of one or more of Seller or its controlling affiliates, or (iii) any sale, transfer, issuance, or disposition of any equity securities or securities or instruments convertible or exchangeable for equity securities (collectively, "securities") of Seller or its controlling affiliates in which the holders of all of the securities that may be entitled to vote for the election of any member of a board of directors or similar governing body of Seller or such controlling affiliate immediately prior to such transaction(s) hold less than fifty percent (50%) of the securities that may be entitled to vote for the election of any such member in such entity immediately following such transaction(s). Seller shall provide Buyer written notice of any Change of Control within seven (7) calendar days prior to the effective date of the Change of Control. Buyer will have sixty (60) calendar days from the date that Buyer receives written notice to notify Seller of its decision to terminate the Order for Buyer's convenience. The effective date of the termination will be no sooner than thirty (30) calendar days after the effective date of the written notice of termination.

#### **21. INDEMNIFICATION:**

(a) Seller shall defend, indemnify, and hold harmless Buyer, its officers, directors, customers, agents, employees, successors, and assigns against any and all claims, actions, awards, liabilities, damages, losses, and expenses, including attorneys' fees, expert fees, and court costs, arising out of or relating to: (i) Seller's breach of any warranty contained in the Order; (ii) death, personal injury, destruction, or damage to real or tangible personal property, contamination of the environment, and any associated clean-up costs caused or contributed to by Seller or Seller's agents, subcontractors, employees, or anyone acting on behalf of Seller; (iii) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor; (iv) any negligent act, omission, or willful misconduct of Seller or any of Seller's agents, subcontractors, employees, or anyone acting on behalf of Seller; (v) the violation by Seller or Seller's personnel of any applicable federal, state, or local law, including but not limited to export control, hazardous substance, toxic substance, and hazardous conditions laws; (vi) any employment-related claims, including those arising from Worker's Compensation or Occupational Disease law, brought by Seller's personnel against any indemnified party of Buyer; and (vii) Seller's failure to keep its work, all Items supplied by Seller hereunder, and Buyer's premises free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance by Seller or by any of its vendors or subcontractors.

(b) Except to the extent that the U.S. government assumes liability therefor, Seller shall, at Seller's expense, defend, indemnify, and hold harmless Buyer, its officers, directors, customers, agents, employees, successors, and assigns from all claims, actions, awards (including, but not limited to, awards based on infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fees and/or costs), liabilities, damages, losses, and expenses, including attorneys' fees, expert fees, and court costs, arising out of or relating to the actual or alleged infringement or misappropriation of a third party's patent, copyright, trademark, trade secret, or other intellectual property right. Seller's infringement indemnification obligation does not apply to the extent the infringement claim arises from Seller's adherence to Buyer's written instructions or direction which involves the use of other than items or merchandise of Seller's origin, design, or selection or where Seller's Item has been modified by anyone other than Seller and the infringement or claim of infringement arises as a result of such modification. Seller's infringement indemnification obligation shall be excluded from any limitation of liability.

(c) If the Items or Services become or are likely to become the subject of an infringement claim, then, in addition to defending the claim and paying any damages and attorneys fees as required above, Seller shall, at its option and expense, either: (i) promptly replace or modify the Items or Services, without loss of material functionality or performance, to make it non-infringing; or (ii) promptly procure for Buyer the right to continue using the Items or Services pursuant to the Order. If after using commercially reasonable efforts Seller fails to provide one of the foregoing remedies within forty-five (45) calendar days of notice of the claim, Buyer shall have the right to terminate the Order with no further liability to Seller, and Seller shall refund to Buyer all amounts paid for the infringing Items or Services.

(d) Buyer shall provide Seller with prompt written notice of any indemnified claim, permit Seller to control the defense and settlement of such claim, and reasonably cooperate and assist Seller in connection with the defense and settlement of such claim; provided that all settlements shall require prior written approval by Buyer. Seller shall provide Buyer with regular updates as to the status of the defense and settlement, including copies of documents and materials associated with the defense and settlement. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing Seller's indemnification obligations, including attorneys' fees.

**22. LIENS:** Seller shall keep its work, equipment, Materials, all Items supplied hereunder, and Buyer's premises free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance of the Order by Seller or any of its agents or subcontractors. As a condition of final payment, Seller may be required by Buyer to provide a satisfactory release of liens with reasonable evidence that all services, labor, materials, and equipment have been paid in full. All property belonging to Buyer or Buyer's customer in Seller's custody or possession shall be at Seller's risk from loss or damage.

**23. INSPECTION OF RECORDS:** Buyer and Buyer's customer, including the Government and regulatory authorities, shall have the right to audit and reproduce Seller's records in instances including, but not limited to: (i) in the event of cancellation, termination, or default; (ii) in connection with any equitable adjustment request; (iii) to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of the Order; (iv) where the terms of the Order or applicable law, regulation, or standard entitle Buyer and/or Buyer's customer to audit Seller's records or facilities, including the records or facilities of Seller's assignees and subcontractors, if any; (v) in connection with internal investigations of alleged violations of applicable law including, but not limited to, the U.S. Foreign Corrupt Practices Act; or (vi) any litigation. Seller shall keep reasonably detailed records of all costs of the performance of the Order for a period of no less than six (6) years from the date of final payment or expiration of any Item warranty or support, whichever is later. Seller shall provide Buyer, Buyer's customer, and regulatory authorities access to all applicable records and all facilities associated with the Order.

**24. OFFSETS AND INDUSTRIAL PARTICIPATION:** When Buyer has identified an offset obligation directly related to the performance of the Order in its solicitation or in relation to any properly enacted modification, and Seller's performance of the Order generates offset credits which Buyer could use to satisfy that identified offset obligation, then Buyer shall have the right to such Seller offset credits. Buyer retains the right to assign any such offset or countertrade credits to third parties. Seller shall include this clause, for the benefit of Buyer, in all lower-tier purchase orders and subcontracts awarded in the performance of the Order. Seller shall maintain a record of its purchases under the Order and Buyer reserves the right to review such record not more often than every six (6) months to determine offset availability. Buyer shall have no rights to any other offset credits that may be generated by Seller in connection with the Order. Seller agrees to provide all reasonably necessary information in such form as may be required to enable Buyer to obtain the aforementioned offset credits.

**25. EXPORT CONTROL COMPLIANCE:** Seller agrees to comply with all applicable import, export, and economic sanctions laws and regulations, including those of the United States and other applicable foreign jurisdictions. Within thirty (30) calendar days of contract award or prior to receipt by Buyer, whichever comes first, Seller shall provide Buyer with all applicable trade control classification information, including the commodity jurisdiction, classification, and required customs information, for all Items and data supplied to Buyer. For the purpose of this Export Control Compliance Article, "data" means information in an electronic form and includes but is not limited to, technical data as defined in 22 C.F.R. §120.10, technology as defined in 15 C.F.R. §772.1, and source code as defined in 15 C.F.R. §722.1. The requirements and obligations of this Export Control Compliance Article are material terms of the Order.

(a) ITAR and EAR.

(i) Seller is hereby notified that certain articles, software, data, and/or services provided by Buyer for purposes of the Order may be subject to the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. §§ 120-130) or the Export Administration Regulations ("EAR") (15 C.F.R. §§ 730 et seq.). In addition, Seller is hereby notified that articles, software, data, and/or services that are designed, developed, modified, adapted or configured from articles, software, data, and/or services provided by Buyer may also be subject to the ITAR or EAR. Buyer shall provide written notice to Seller of the export control status (i.e., jurisdiction and classification) of all articles, software, data, and/or services provided by Buyer to Seller prior to providing access.

(ii) Seller shall not transfer or provide access to any ITAR-controlled or EAR-controlled articles, software, data, or technology provided by Buyer to any non-U.S. persons/foreign nationals, including foreign national employees of U.S. companies, foreign companies, or other entities, whether located in the U.S. or not, without Buyer's express written consent and also proper export license or other approval from the U.S. government.

(iii) If Seller is a manufacturer and/or exports ITAR-controlled articles or services, Seller represents that it is duly registered with the U.S. Department of State and will maintain its registration for the duration of the Order, in accordance with 22 C.F.R. Part 122. Non-U.S. companies shall be registered as required under applicable foreign government export regulations.

(iv) Seller represents that it is knowledgeable of the requirements contained in 22 C.F.R. Part 130. To the extent Seller meets the definition of "supplier" or "vendor" in 22 C.F.R. Part 130, Seller agrees to comply with Buyer's request to provide information regarding fees, commissions, or political contributions to Buyer as set forth in 22 C.F.R. 130.10 and 22 C.F.R. 130.12. In the event Buyer does not request such information from Seller and Seller nonetheless has made, or offered or agreed to make, fees, commissions or political contributions that are within the scope of 22 C.F.R. Part 130, Seller agrees to proactively disclose such information to Buyer within fifteen (15) calendar days after Seller has made the payment, offer or agreement, whichever comes first.

(b) IT Services. In the event Seller will host, receive, or otherwise access Buyer's software or data, Seller agrees that Buyer's information will remain in the United States and accessible by only U.S. Persons as defined in 22 C.F.R. 120.15.

(c) Anti-Boycott Laws and Regulations. Seller acknowledges and agrees that it may be responsible for complying with any applicable anti-boycott laws and regulations. Seller warrants to Buyer that it does not, and shall not, participate or comply with any boycott request or engage in any restrictive trade practices in contravention of any applicable law or regulation.

(d) Notice Required. Seller shall provide prompt written notification to the Buyer's Procurement Representative in the event of changed circumstances that could affect Seller's performance under the Order, including, but not limited to, revocation of export privileges, whether in whole or in part, or a violation or potential violation of applicable export regulations as the violation or potential violation relates to any of Buyer's articles, software, data, or services provided hereunder.

(e) OFAC Listed Person. Seller warrants that it is not (i) a Specially Designated National or Blocked Persons pursuant to the lists published by the U.S. Office of Foreign Assets Control ("OFAC Listed Person"), or (ii) a department, agency, or instrumentality of, or otherwise controlled by or acting on behalf of any OFAC Listed Person or the government of a country subject to comprehensive U.S. economic sanctions administered by OFAC. Seller further warrants that it will provide immediate written notice to Buyer if it becomes subject to either of the foregoing.



- (f) Consolidated Screening List. Seller further agrees that it will not engage in unauthorized transactions involving the articles, software, technology or services provided hereunder, to or from, with persons or entities identified on any U.S. government screening list, including, but not limited to those identified on the U.S. government's Consolidated Screening List. Seller also agrees to comply with any foreign jurisdiction regulations involving denied or restricted persons or entities.
- (g) Imports Appearing on the U.S. Munitions Import List. If performance under the Order requires Seller to permanently import into the U.S. articles enumerated on the Bureau of Alcohol, Tobacco & Firearms ("BATF") U.S. Munitions Import List, Seller hereby acknowledges that such items may not be permanently imported into the U.S. without an approved import permit pursuant to 27 C.F.R. Part 47, unless an exemption applies. Additionally, if Seller is engaged in importing articles appearing on the U.S. Munitions Import List into the U.S., Seller agrees to maintain active registration with BATF pursuant to 27 C.F.R. Part 47.
- (h) Items Requiring Approved BATF Permits. If performance under the Order requires Seller to export from the U.S. items defined in 27 C.F.R. Part 179, Seller hereby acknowledges that such items may not be exported from the U.S. without an approved export permit issued by BATF. Seller is also advised that an approved export license issued by the DDTC may also be required pursuant to the relevant requirements of the ITAR.
- (i) Record Keeping. Seller agrees to bear sole responsibility for all regulatory record keeping associated with the use of import and export licenses and license exceptions or exemptions. Seller agrees to produce its applicable authorizations to Buyer upon written request.

## 26. CUSTOMS:

- (a) Credits and Refunds. All transferable credits or benefits associated with or arising from Items purchased under the Order, export credits, or rights to the refund of duties, taxes, or fees (collectively, "trade credits") belong to Buyer.
- (b) Documentation.
  - (i) For any shipments to be imported by Buyer, Seller shall provide to the Buyer's Procurement Representative five (5) business days advance written notification of shipments. Such notification shall include submission of a copy of the commercial invoice and packing list required by this provision and such other information as Buyer may reasonably request.
  - (ii) Seller shall forward copies of its shipping documents and any applicable certificates via email or facsimile to Buyer so that Buyer may facilitate Customs clearance. These documents shall include:
    - (1) Commercial Shipping Invoice in accordance with 19 CRF § 141.86;
    - (2) Any benefit Buyer may receive from an applicable Free Trade Agreement or Special Trade Program supported by Seller's certifications/statements of eligibility and qualification (examples include United States Mexico Canada Agreement or IFTA certificates of origin); and
    - (3) If using Ocean Transport: The Importer Security Filing ("ISF") data elements in accordance with 19 C.F.R. Part 149 shall be provided to Buyer three (3) business days before the cargo is laden aboard the vessel at foreign port of departure. Any penalty or fine due to the failure of Seller or any of its agents in support of the ISF requirement shall be to the account of Seller.
  - (iii) For articles returned to Buyer after repair, Seller shall:
    - (1) Obtain and reference written instructions on how the repaired article is to be returned to Buyer prior to shipment and on shipping documents, respectively;
    - (2) Include a Foreign Repairer Certificate attesting to the work performed abroad in accordance with 19 C.F.R. § 10.8;
    - (3) Include a commercial invoice stating the reason for return. Items returned to Buyer after repair must include the hardware value in accordance with 19 C.F.R. Part 152, Subpart E. from the original sale of the item. Ex: "Hardware value for Customs purposes only: \$ \_\_\_";
    - (4) Include the cost of the repair (parts and labor) as a separate line item on the commercial invoice. Ex: "Repair value for Customs purposes only: \$ \_\_\_"; and
    - (5) For repair work done under warranty, Seller shall include the cost of repair. Ex: "WARRANTY repair value for Customs purposes only: \$ \_\_\_".
  - (iv) For articles returned with a Department of State license, Seller shall indicate the license number on the commercial invoice.
  - (v) For articles returned under any ITAR exemption, Seller shall include the exemption citation on the commercial invoice in accordance with 22 C.F.R. §123.4(d)(1)(i).
  - (vi) For any Duty Free Entries against a U.S. prime contract, Seller shall include the requirements of DFARS 252.225 -7013(e)(2)(iv).
- (c) Sources. Upon Buyer's written request, Seller shall provide a report of all sources outside the United States utilized by Seller or its lower-tier subcontractors in the fulfillment of the Order, including the names and locations of the sources, and a description of the items or services obtained from such sources.
- (d) Customs-Trade Partnership Against Terrorism. Seller acknowledges that Stellant Systems, Inc. Technologies Inc. is a certified Customs Trade Partnership Against Terrorism ("C-TPAT") member. Consistent with Buyer's obligations and responsibilities under C-TPAT, if Seller has any international cargo shipping responsibilities, Seller agrees to comply with the C-TPAT Program Minimum Security Criteria (MSC). Seller shall provide one of the following documents, with a copy to CTPAT@Stellant Systems, Inc., at time of execution of the Order to verify compliance with C-TPAT MSC requirements: (i) copy of Seller's C-TPAT certification; (ii) certification of Seller's participation in an approved Authorized Economic Operator (AEO) program with a Mutual Recognition Arrangement (MRA) with the U.S.; (iii) written/electronic documentation from Seller's corporate officer attesting to compliance; or (iv) a complete copy of Buyer's supply chain security questionnaire.
- (e) This Customs Article shall survive five (5) years beyond the completion of the Order.

## 27. COMPLIANCE OBLIGATIONS:

- (a) General. Seller shall comply with all applicable federal, state, and local laws, orders, rules, regulations, and ordinances, including any environmental, transportation, or employment regulations. Seller shall procure all licenses and permits, pay all fees and other required charges, and comply with all applicable guidelines and directives of any local, state, and federal government authority. Unless otherwise specified in the Order, export licenses will be obtained by Buyer. If Buyer determines that Seller has violated any of the obligations, including but not limited to any obligations set forth in this Compliance Obligations Article, Buyer may, in its discretion, either terminate the Order and/or require Seller to implement a corrective action plan as a condition of continued or future business. The violation of any applicable law, rule, or regulation shall be deemed a material breach of the Order.

- (b) **Reporting Obligations.** To the extent applicable, Seller agrees to provide to Buyer all Item content information required to satisfy both Buyer's content reporting obligations and Buyer's customers' reporting obligations.
- (c) **Certificates.** Upon Buyer's request, Seller agrees to furnish to Buyer or directly to Buyer's customer, any certificate required to be furnished under these General Terms and Conditions including the clauses set forth in Section 2 (FAR, DFARS, and NFS Clauses) and Section 3 (FAA AMS Clauses). A "certificate" may include any plan or course of action or record keeping function (e.g., a small business subcontracting plan for which flow down is required).
- (d) **Seller's Business Systems.** "Business Systems" as used in this clause means material management and accounting system, cost estimating system, accounting system, earned value management system, property management system, and purchasing system. When Seller's Business Systems are reviewed and audited by the Government, Seller shall provide prompt notice to Buyer whenever there is a material change in the status of the Government's audit findings or determination of adequacy of any of Seller's Business Systems. If the Government observes a deficiency in Seller's Business Systems that may result in Seller's Business Systems and/or Buyer's Business Systems being deemed not adequate and if any of the deficient Business Systems produce data integral to the output of Buyer acting in its role as a contractor to the Government or to another prime contractor, then Seller shall be liable for and hold harmless Buyer from any loss, damage, or expense whatsoever that Buyer may suffer.
- (e) **Classified Information.** In the event the Order requires access to classified information, Seller, at its sole expense, agrees to comply with all laws and regulations of the United States related to such classified requirements, including obtaining all required authorizations from the U.S. pursuant to, among other requirements, those set forth in the National Industrial Security Program Operating Manual ("NISPOM") and any specific agency supplements to the NISPOM or other classified requirements as directed by Buyer. A copy of the NISPOM is available for download at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/522022M.pdf>.
- (f) **U.S. Foreign Corrupt Practices Act.** Seller represents and warrants it shall: (i) comply with the requirements of the U.S. Foreign Corrupt Practices Act ("FCPA") (15 U.S.C. §§ 78dd-1, et. seq., as amended), regardless of whether Seller is within the jurisdiction of the United States; (ii) neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery; and (iii) not interact with any government official, political party, or public international organization on behalf of Buyer without the prior written permission of the Buyer's Procurement Representative. Breach of this provision (f) by Seller shall be considered an irreparable material breach of the Order and shall entitle Buyer to terminate the Order immediately without compensation to Seller.
- (g) **No Gratuities.** No gratuities (in the form of entertainment, gifts, travel, or anything of value) or kickbacks shall be offered or given by Seller or by any agent, representative, affiliate, subsidiary, or subcontractor of Seller to any officer or employee of Buyer's customer or Buyer. This restriction specifically prohibits the direct or indirect inclusion of any kickback amounts in any invoices or billings submitted under the Order or any other agreement with Buyer.
- (h) **No Child Labor.** Seller shall comply with all local, state, and national laws relating to the prohibition on child labor and indentured, prison, or compulsory labor. Seller shall comply with all applicable laws and industry standard relating to working hours, working conditions, and any collective bargaining agreements. Seller further agrees that, if requested by Buyer, it shall demonstrate, to the satisfaction of Buyer, compliance with all requirements in this paragraph. Buyer shall have the right to inspect any site of Seller for compliance with this paragraph. Seller shall include this provision in all of its lower tier subcontracts.
- (i) **No Human Trafficking.** Seller shall comply with all applicable local, state, and national laws in the countries where Seller does business relating to the prohibition of slavery and human trafficking. Upon Buyer's request, Seller shall provide to Buyer a copy of its human trafficking compliance plan and/or other evidence of Seller's compliance with this provision. Seller shall include this provision in all of its lower tier subcontracts.
- (j) **National Defense Authorization Act Section 889.** Buyer, as a Government contractor, is prohibited from using: (i) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (ii) video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (iii) telecommunications or video surveillance services provided by such entities or using such equipment; or (iv) telecommunications or video surveillance equipment or services produced or provided by an entity that is owned or controlled by, or otherwise connected to, the government of the People's Republic of China (collectively, "covered telecommunications equipment or services") as a substantial or essential component of any system or as critical technology as part of any system, regardless of whether the use is in performance of work under a federal contract. By acceptance of the Order, Seller represents and warrants that it: (1) does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services, as a substantial or essential component of any system or as critical technology as part of any system; and (2) will not provide covered telecommunications equipment or services to Buyer in the performance of the Order. In the event Seller identifies covered telecommunications equipment or services used as a substantial or essential component of any system or as critical technology as part of any system at any time during the proposal process or contract performance, or Seller is notified of such by a subcontractor at any tier or by any other source, Seller shall immediately notify Buyer and reasonably cooperate with Buyer's requests for supporting documentation and any resolution required by Buyer's customer. Seller shall include this provision in all lower tier contracts.
- (k) **Prohibited Contracting.** For purposes of this Article, "Covered Entity" means Kaspersky Lab, any successor entity to Kaspersky Lab, any entity that controls, is controlled by, or is under common control with Kaspersky Lab, or any entity of which Kaspersky Lab has a majority ownership. For purposes of this Article, "Covered Article" means any hardware, software, or service that is developed or provided by the Covered Entity, includes any hardware, software, or service developed or provided in whole or in part by the Covered Entity, or contains components using any hardware or software developed in whole or in part by the Covered Entity. Seller is prohibited from providing any Covered Article in the performance of the Order. In the event Seller identifies that a Covered Article has been provided to Buyer under the Order, Seller shall immediately notify Buyer in writing of such event and discontinue its use under the Order. Seller will, at Seller's cost, cooperate with Buyer to provide any requested information regarding the Covered Article and any mitigation efforts taken by Seller. Seller shall include this provision in all of its lower-tier subcontracts.
- (l) **Equal Opportunity.** Buyer and Seller shall abide by the equal opportunity federal and state laws that prohibit discrimination on the bases of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status and require affirmative measures to prevent discrimination on those bases from occurring, including employment and advance in employment requirements.

**28. CYBER SECURITY AND INCIDENT REPORTING:** In addition to the security and reporting requirements specified in DFARS 252.204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting), Seller shall comply with the following:

- (a) Seller shall establish and maintain environmental, safety and facility procedures, data security procedures, and other safeguards against the destruction, corruption, loss or alteration of Buyer's data and to prevent access, intrusion, alteration or other interference by any unauthorized third parties of the same, that are: (i) no less rigorous than those maintained by Seller for its own information or the information of its customers of a similar nature; (ii) no less rigorous than the accepted practices in the industry; and (iii) no less rigorous than those required by applicable data security and privacy statutes and regulations.



(b) Seller shall rapidly report cyber incidents to Buyer and the DoD at <http://dibnet.dod.mil> and provide the requisite information required under the DFARS clause and as reasonably requested by Buyer. Without exception, Seller shall report to Buyer any breach of Seller's data security procedures that result in any actual or threatened loss, corruption, or alteration of Buyer's data within seventy-two (72) hours of Seller's discovery of the incident. In such an instance, in addition to Seller's other obligations under the Order, or under any law or regulation, Seller agrees to promptly remedy any such breach and to fully cooperate with Buyer in resolving such breach and mitigating any damage from such breach at Seller's cost. Failure to report any cyber incidents will be considered a material breach of the Order. In the event of a data breach, Buyer shall be afforded unfettered access to certain technical information (e.g., logs, packet flow information, etc.) in order to satisfy information requests from Buyer or Buyer's customer.

(c) Should Buyer elect to utilize supplier checklists, representations or certifications of compliance, outside vendor verification, or onsite security audits, Seller shall support as required to meet the continuing needs of Buyer or Buyer's customer.

(d) Seller agrees to submit to and comply with any cyber security assessments performed or requested by the DoD as further described in DFARS 252.204-7019 (Notice of NIST SP 800-171 DoD Assessment Requirements) and DFARS 252.204-7020 (NIST 800-171 DoD Assessment Methodology) and report such results as required by the DFARS clauses.

## 29. ETHICAL STANDARDS OF CONDUCT:

(a) Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Buyer's expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. Buyer's further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards equivalent to Buyer's Supplier Code of Conduct (available at: [https://www.Stellant Systems, Inc.com/sites/default/files/2020-08/Stellant Systems, Inc.SupplierCodeOfConduct\\_1.pdf](https://www.Stellant Systems, Inc.com/sites/default/files/2020-08/Stellant Systems, Inc.SupplierCodeOfConduct_1.pdf)) or comply with Buyer's Supplier Code of Conduct. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically under the Order, Seller shall report such behavior to the Buyer's Procurement Representative or the appropriate Buyer points of contact set forth in Buyer's Supplier Code of Conduct. Seller's employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities. Seller shall include this Ethical Standards of Conduct Article in all of its lower tier subcontracts.

(b) Seller acknowledges and agrees it is neither obligated nor expected to deliver or provide Items or perform work that will place Seller in an Organizational Conflict of Interest ("OCI") per FAR 9.5, which could serve as a basis for excluding Seller from supplying products or services to the Government. Seller shall identify to Buyer any situation in which an actual OCI or potential for an OCI exists, including without limitation, a relationship of any nature which may affect or which may reasonably appear to affect Seller's objectivity or ability to perform the work. Failure to provide notice to Buyer is a material breach of the Order.

(c) As required by FAR 3.104, Seller certifies no person it uses to perform any Services herein has any legal restrictions as a result of Government service (e.g., postemployment restrictions related to representing a company to the Government) that would prevent such person from reasonably performing the work contemplated in the Order.

**30. CONFLICT MINERALS:** By accepting these terms and conditions, Seller agrees to timely respond, to the best of its knowledge and belief following a reasonable country of origin due diligence inquiry in accordance with the framework in the Organization for Economic Cooperation and Development Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas or other prevailing industry standard, to any request by, or on behalf of, Buyer, for information on the origin, source and chain of custody information of tin, tantalum, tungsten, and gold ("3TG") minerals necessary to the functionality or production of a product manufactured by Seller to Buyer. Seller agrees to provide Buyer timely notice when Seller becomes aware that any 3TG minerals in an Item it supplies to Buyer finances or benefits armed groups in the Democratic Republic of Congo or an adjoining country. Seller understands and acknowledges that any information Seller provides may be used by Buyer to comply with its reporting obligations under the Rule 13p-1 of the Securities and Exchange Act of 1934, as amended and the Dodd-Frank Wall Street Reform and Consumer Protection Act, including filing a Form SD and Conflict Minerals Report with the U.S. Securities and Exchange Commission.

## 31. ASSIGNMENT AND SUBCONTRACTING:

(a) Neither the Order nor any interest herein nor claim hereunder may be transferred, novated, assigned, or delegated by Seller without the prior written consent of Buyer. Lack of consent shall not be deemed as a waiver or otherwise relieve Seller of its obligations to comply fully with the requirements hereof. Seller shall promptly notify Buyer in writing of any organizational changes made by Seller, including name, ownership changes, mergers, or acquisitions as set forth in the Change of Control Article, and any changes made to Seller's strategic suppliers or the location or identity of Seller's manufacturers.

(b) Seller shall not subcontract the Order, in whole or in part, without the prior written authorization of Buyer, and Seller shall require an agreement with conforming performance requirements from immediate lower-tier suppliers. Seller shall be and remain responsible to Buyer for (i) the performance of all work, including Services performed or provided by Seller's subcontractors, and (ii) the acts and omissions of Seller's subcontractors in connection with the performance or provision of any of the work.

## 32. GOVERNING LAW AND DISPUTES:

### (a) Governing Law and Disputes.

(i) The Order, irrespective of the place of performance, shall be governed by, subject to, and construed in accordance with the laws of the State of New York, without regard to its conflict of law provisions, except that any provision in the Order that is (i) incorporated in full text or by reference from the FAR; (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR; or (iii) substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal government. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to the Order. The Parties agree that any and all disputes, claims, or litigation arising from or related in any way to the Order shall be resolved exclusively by the courts in New York City, New York, and each Party waives any objections against and agrees to submit to the personal jurisdiction of such state and federal courts, including objections or defenses based upon an inconvenient forum. **THE PARTIES HEREBY AGREE TO WAIVE THEIR RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE ORDER OR THE SUBJECT MATTER HEREOF.**

(ii) Any disputes under the Order that are not disposed of by mutual agreement of the Parties may be decided in an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with performance of the Order, as directed by Buyer. Buyer and Seller shall each bear its own costs of processing any dispute hereunder. In no event shall Seller acquire any direct claim or direct course of action against the Government, and with respect to any potential claims against the Government, Seller shall follow the procedures outlined in paragraph (b) below.



(iii) The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity. Subject to any specific clauses in the Order, Seller shall be liable for any damages incurred by Buyer as a result of Seller's failure to perform its obligations in the manner required by the Order.

(b) Claim Sponsorship.

(i) As used here, the word "appeal" means an appeal taken under the Contract Disputes Act of 1978 ("CDA") (41 U.S.C. §§ 7101-7109-1, as amended). Any decision of the Contracting Officer under Buyer's prime contract which binds Buyer shall bind both Buyer and Seller to the extent that it relates to the Order; provided that: (i) Buyer notifies Seller of such decision with reasonable promptness; (ii) Buyer, in its sole discretion, authorizes in writing Seller to appeal in the name of Buyer such decision at its own expense in accordance with the requirements set forth in this paragraph; and (iii) if Buyer should appeal such decision, Buyer, in its sole discretion, offers to Seller the opportunity at its own expense to join Buyer in such appeal. Any decision upon such appeal, when final, shall be binding upon Seller. Seller shall keep Buyer informed of any appeal it makes by providing copies of all pertinent documents to Buyer. If Seller is unable to support any part of its claim and it is determined that such inability is attributable to fraud or misinterpretation of fact on the part of Seller, then Seller shall indemnify, defend, and hold harmless Buyer from any and all liability of any kind incurred by or imputed to Buyer under Section 7103(c) (Fraudulent Claims) of the CDA. Nothing in this provision nor any authorization or offer shall be deemed to constitute acceptance or acknowledgement by Buyer of the validity of Seller's claim or any part thereof, nor be deemed to limit or in any way restrict Buyer from taking any actions, included available remedies, it deems appropriate to protect its own interests.

(ii) Seller claims resulting from Government acts or omissions

(1) In the case of any claims by Seller that the Parties agree result from the acts or omissions of the Government in connection with work performed under an Order, including changes authorized or required under the Buyer's prime contract, Buyer agrees, after review and determination that such claims are submitted in good faith, to sponsor Seller claims before the Government. Seller shall prosecute such claims in Buyer's name, in accordance with the terms of the Disputes Clause in the prime contract. Seller represents that it shall only submit legal claims in good faith.

(2) In the case of any sponsored claim covered by paragraph (ii)(1) above, Seller shall be bound by the procedure and final determinations as specified in the Disputes Clause of Buyer's prime contract, and shall not take any other action or actions with respect to any such claims and shall pursue no independent litigation with respect thereto, other than to avail itself of any appellate procedures available under the CDA. Seller shall not be entitled to receive any greater amount from Buyer than Buyer receives from the Government on account of Seller's claim(s), less any costs incurred by Buyer, and Seller shall accept such amount, if any, as a full accord and satisfaction of all such claims against the Government.

(3) The terms of this provision shall be Seller's sole and exclusive remedy with regard to claims resulting from the acts or omissions of the Government in connection with an Order, provided however that if for any reason Buyer refuses to sponsor Seller's claim brought in good faith, or fails to cooperate with Seller in the prosecution of any such claim, Seller reserves its rights with respect to Buyer under the Governing Law and Disputes Article of this Order.

(iii) Government claims alleging Seller responsibility: As to any claims made by the Government which are alleged to result directly from Seller's acts or omissions in connection with work performed under an Order, which claims are not disposed of by agreement, Seller agrees to defend such claims at its own cost, in Buyer's name, and to keep Buyer apprised of the status of such claims.

(iv) Cooperation in prosecuting or defending claims: Buyer and Seller shall cooperate fully in prosecuting or defending all claims brought under this Claim Sponsorship clause. Seller shall have full responsibility for preparation and presentation of such claims. Buyer shall provide reasonable assistance as requested by Seller to enable the Seller to prosecute or defend such claims in Buyer's name, subject to reimbursement by Seller of Buyer's actual, reasonable, out-of-pocket costs and expenses relating to the claim (e.g., travel costs, attorneys' and consultants' fees). In its sponsorship of Seller's claims, Buyer will follow all relevant procedural rules to enable the claim to proceed.

(v) If Seller is unable to support any part of a claim contemplated under this Claim Sponsorship clause and it is determined that such inability is attributable to fraud or misinterpretation of fact on the part of Seller, then Seller shall indemnify, defend, and hold harmless Buyer from any and all liability of any kind incurred by or imputed to Buyer under Section 7103(c) (Fraudulent Claims) of the CDA. Nothing in this section nor any authorization or offer shall be deemed to constitute acceptance or acknowledgement by Buyer of the validity of Seller's claim or any part thereof, nor be deemed to limit or in any way restrict Buyer from taking any actions, included available remedies, it deems appropriate to protect its own interests.

**33. NOTICES:** All notices permitted or required under the Order shall be in writing to the address in the Order, unless otherwise specified, and shall be by personal delivery, a nationally recognized overnight carrier, facsimile transmission, or certified or registered mail, return receipt requested.

**34. RELATIONSHIP OF THE PARTIES:**

(a) Seller's relationship to Buyer in the performance of the Order is that of an independent contractor and nothing herein contained shall be construed as creating any employer/employee, agency, or other relationship of any kind. Under no circumstance shall Seller be deemed an agent or representative of Buyer or authorized to commit Buyer in any way.

(a) Buyer shall be solely responsible for all liaison and coordination with Buyer's customer as it affects the applicable Government Contract, the Order, and any related order or agreement. Unless otherwise directed in writing by the Buyer's Procurement Representative, all documentation requiring submittal to, or action by, the Government or the Contracting Officer shall be routed to, or through, the Buyer's Procurement Representative, or as otherwise permitted by the Order. This clause does not prohibit Seller from communicating with the Government regarding (i) matters Seller is required by law or regulation to communicate to the Government, (ii) fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information, or (iii) any matter for which the Order, including a FAR, DFARS, NFS, or FAA clause included in the Order, provides for direct communication by Seller to the Government. In all other situations, Seller shall not communicate with Buyer's customer regarding any matters related to this Order unless written approval is received from Buyer.

**35. CONFIDENTIALITY:** The obligations in this Confidentiality Article apply to the extent the Parties have not executed an NDA applicable to the work under the Order. If the Parties have executed a NDA applicable to the work under the Order, the terms and conditions of the NDA control and take precedence over this Confidentiality Article. Buyer may disclose to Seller certain non-public information or materials relating to Buyer's products, intellectual property, business, business plans, marketing programs and efforts, customer lists, customer information, financial information, and other confidential information and trade secrets that is identified or labeled as "proprietary" or "confidential" ("Confidential Information") under the Order or under a nondisclosure agreement. Confidential Information does not include information that: (a) is or becomes publicly available through no breach by Seller of the Order; (b) was previously known to Seller prior to the date of disclosure, as

evidenced by contemporaneous written records; (c) was acquired from a third party without any breach of any obligation of confidentiality; or (d) was independently developed by Seller without reference to Buyer's Confidential Information. To the extent Confidential Information is required to be disclosed pursuant to a subpoena or other similar order of any court or government agency, Seller upon receiving such subpoena or order shall (i) promptly inform Buyer in writing and provide a copy thereof, (ii) cooperate with Buyer in limiting disclosure of Buyer's Confidential Information, and (iii) shall only disclose that Confidential Information necessary to comply with such subpoena or order. Seller will not use or disclose any Buyer Confidential Information without Buyer's prior written consent, except disclosure to and subsequent uses by Seller's authorized employees or consultants on a need-to-know basis for performance of the Order, provided that such employees or consultants have executed written agreements restricting use or disclosure of such Confidential Information that are at least as restrictive as Seller's obligations under this Confidentiality Article. Subject to the foregoing nondisclosure and non-use obligations, Seller agrees to use at least the same care and precaution in protecting such Confidential Information as Seller uses to protect its own Confidential Information and trade secrets, and in no event less than reasonable care. Seller acknowledges that due to the unique nature of the Buyer's Confidential Information, Buyer will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, Buyer shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure. In any action for equitable relief, the Parties agree to waive any requirement for the posting of a bond or security. On Buyer's written request or upon expiration or termination of the Order for any reason, Seller will promptly return or destroy, at Buyer's option, all originals and copies of Buyer's Confidential Information, including all documents and materials it has received containing such Confidential Information, together with all summaries, records, modifications, adoptions and other documents containing or prepared from Buyer's Confidential Information.

**36. NO PUBLICITY:** Seller shall not make any media release or other public announcement relating to or referring to the Order without Buyer's prior written consent. Seller shall acquire no right to use, and shall not use, without Buyer's prior written consent, the terms or existence of the Order, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of Buyer: (i) in any advertising, publicity, press release, customer list, presentation or promotion; (ii) to express or to imply any endorsement of Seller or Seller's Items or Services; or (iii) in any manner other than expressly in accordance with the Order.

**37. NO WAIVER:** Buyer's failure to insist upon or enforce strict compliance by Seller with respect to any aspect of the Order shall not be deemed a waiver or relinquishment to any extent of any of Buyer's rights; rather, the same shall remain in full force and effect. Waiver of a right under the Order shall not constitute a waiver of any other right, waiver or default under the Order.

**38. SEVERABILITY:** If any part, term, or provision of the Order is found to be void, illegal, unenforceable, or in conflict with any law or regulation of the government having jurisdiction over the Order, that part will be enforced to the maximum extent permitted by law and the remainder of the Order will remain in full force. In the event that any part, term or provision of the Order is found to be void, illegal, unenforceable, or in conflict with law, Seller agrees to negotiate a replacement provision, construed to accomplish its originally intended effect that does not violate such law or regulation.

**39. SURVIVABILITY:** All of the provisions of the Order shall survive the termination (whether for convenience or default), suspension or completion of the Order unless they are clearly intended to apply only during the term of the Order.

**40. ELECTRONIC TRANSMISSIONS:** The Parties agree that if the Order is transmitted electronically, neither Party shall contest its validity, or any acknowledgment thereof, on the basis that the Order contains an electronic signature.

**41. ENTIRE AGREEMENT:** The Order, including all exhibits, schedules, and attachments, contains the entire agreement of the Parties, and supersedes any prior negotiations, representations, and course of dealing, whether written or oral, between the Parties with respect to the subject matter hereof. The Order may be amended or supplemented only by a writing that refers explicitly to the Order and is signed by the Buyer's Procurement Representative and Seller.

**42. LIMITATION OF LIABILITY:** IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, MULTIPLE OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE ORDER. IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF BUYER IN ANY CAUSE OF ACTION BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR THE PERFORMANCE OR BREACH OF THE ORDER OR ANYTHING DONE IN CONNECTION THEREWITH EXCEED THE ORDER PRICE. NOTWITHSTANDING ANYTHING ELSE IN THE ORDER TO THE CONTRARY, THE STATED MONETARY LIMITATION HEREINABOVE IS THE MAXIMUM LIABILITY BUYER HAS TO SELLER. TO THE EXTENT THAT THIS LIMITATION OF LIABILITY CONFLICTS WITH ANY OTHER PROVISION OF THE ORDER, THE PROVISION SHALL BE REGARDED AS AMENDED TO WHATEVER EXTENT REQUIRED TO MAKE SUCH PROVISION CONSISTENT WITH THIS LIMITATION OF LIABILITY.

**SECTION 2 – FAR, DFARS, AND NFS CLAUSES FOR COMMERCIAL ITEMS APPLICABLE IF THE ORDER IS PLACED UNDER BUYER CONTRACT CONTAINING SUCH CLAUSES**

In addition to the clauses of Section 1 (Articles Applicable to All Orders), the following Federal Acquisition Regulation ("FAR"), Department of Defense FAR Supplement (DFARS), and NASA FAR Supplement ("NFS") clauses (collectively, "USG Clauses") shall apply to the Order as required by the terms of Buyer's Government Contract, by operation of law or regulation, or by the terms of the specific clause. These USG Clauses are hereby incorporated by reference, as applicable, and in the manner set forth below, including any parenthetical information regarding applicability and bracketed information regarding modifications to the USG Clauses. For certain USG Clauses, Buyer has provided parenthetical language describing the circumstances in which the USG Clauses apply to the Order. This parenthetical language may not encompass all situations where the USG Clauses apply, and Seller is responsible for confirming whether the USG Clauses are applicable to the Order.

The effective version of the USG Clauses shall be the version in effect as of the date the Order is issued, unless a different version appears in Buyer's Government Contract, in which case the version in Buyer's Government Contract applies. The Parties hereby agree to amend this Section 2 (FAR, DFARS, and NFS Clauses) to include any additional or revised USG Clauses incorporated in Buyer's Government Contract that are applicable to the

performance of the Order. Seller shall flow down to its lower-tier subcontractors all applicable USG Clauses and any other requirements of the Order so to enable and ensure that Buyer and Seller comply with all applicable requirements of Buyer's Government Contract.

In interpreting and applying USG Clauses flowed down to Seller, and as context requires, the terms "Contractor" and "Offeror" shall mean Seller, the term "Contract" shall mean the Order, and the term "Government", "Contracting Officer" and equivalent phrases shall mean Buyer and/or the Buyer's Procurement Representative. However, as an exception to the foregoing, the terms "Government" and "Contracting Officer" do not change in the following circumstances:

- (a) in the phrases "Government Property," "Government-Furnished Property," and "Government-Owned Property;";
- (b) in the Patent Rights clauses incorporated therein, if any;
- (c) when a right, act, authorization or obligation can be granted or performed only by the Government or a Contracting Officer or his/her duly-authorized representative;
- (d) when title to property is to be transferred directly to the Government;



- (e) when access to proprietary financial information or other proprietary data is required, except as otherwise provided in the Order; and (f) where specifically modified in the Order.

**(I) FAR CLAUSES FOR COMMERCIAL ITEMS**

The following FAR Clauses are hereby incorporated by reference, as applicable, and made a part of the Order:

- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (applies to Orders over \$150,000)
- 52.203-13 Contractor Code of Business Ethics and Conduct (applies to Orders over \$6M where the performance period is more than 120 days) [“Government” and “Contracting Officer” do not change; Disclosures made under this clause shall be made directly to the Government entities identified in the clause]
- 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (applies if the Order is funded in whole or in part with Recovery Act funds)
- 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (applies to Orders expected to exceed the simplified acquisition threshold)
- 52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
- 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (applies if the Order may result in federal contract information residing in or transiting through Seller’s information system, unless Seller is furnishing commercially available off-the-shelf (COTS) items)
- 52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities
- 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment
- 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
- 52.204-26 Covered Telecommunications Equipment or Services—Representation (applies to solicitations)
- 52.209-6 Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed For Debarment (applies to Orders that exceed \$35,000, unless the Order is for COTS items) [Seller shall furnish to Buyer the information required by para. (d)]
- 52.211-15 Defense Priority and Allocation Requirements (applies to Orders that contain a DPAS rating)
- 52.212-3 Offer Representations and Certifications, Commercial Items (This provision provides a single, consolidated list of representations and certifications for the acquisition of commercial items. Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard)
- 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items
- 52.219-8 Utilization of Small Business Concerns (applies to Orders with further subcontracting opportunities and Seller must include this clause in all lower tier subcontracts that offer subcontracting opportunities)
- 52.222-21 Prohibition of Segregated Facilities (applies if the Order includes FAR 52.222-26)
- 52.222-26 Equal Opportunity (applies unless the Order is exempt from all requirements of E.O. 11246; Alt I applies if Order is exempt from one but not all requirements of E.O. 11246)
- 52.222-35 Equal Opportunity for Veterans (applies to Orders over \$150,000, unless exempted by rules, regulations, or orders of the Secretary of Labor)
- 52.222-36 Equal Opportunity for Workers with Disabilities (applies to Orders that exceed \$15,000)
- 52.222-37 Employment Reports On Veterans (applies to all Orders that exceed \$150,000 and contain the clause FAR 52.222-35)
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (applies to Orders that will be performed wholly or partially in the United States, unless exempt by E.O. 13496)
- 52.222-41 Service Contract Labor Standards (applies if the Order is for services, exceeds \$2,500, and is subject to the Service Contract Labor Standards statute)
- 52.222-50 Combating Trafficking in Persons (Alt I applies if included in Buyer’s Government Contract)
- 52.222-54 Employment Eligibility Verification (applies to Orders over \$3,500 for work performed in the U.S., and is for commercial or non-commercial services, except for commercial services that are part of the purchase of a COTS item, performed by the COTS provider, and are normally provided for that COTS item)
- 52.222-55 Minimum Wages Under Executive Order 13658 (applies to Orders subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute and is to be performed in whole or in part in the United States)
- 52.222-62 Paid Sick Leave Under Executive Order 13706 (applies if the Order is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute and is to be performed in whole or in part in the United States)
- 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (applies to Orders that exceed the micropurchase threshold)
- 52.224-3 Privacy Training (applies to the Order if Seller employees will have access to a system of records, handle personally identifiable information, or design, develop, maintain or operate a system of records; Alt I applies if the agency specifies that only its agency-provided training is acceptable)
- 52.225-1 Buy American Act – Supplies
- 52.225-5 Trade Agreements
- 52.225-13 Restrictions on Certain Foreign Purchases
- 52.225-26 Contractors Performing Private Security Functions Outside the United States (applies to Orders that will be performed outside the U.S. in areas of combat operations or other significant military operations)
- 52.227-1 Authorization and Consent (applies to Orders expected to exceed the simplified acquisition threshold only if in Buyer’s Government Contract) [no substitution of parties for “Government” and “Contracting Officer” apply]
- 52.227-9 Refund of Royalties (applies if the amount of royalties reported during negotiation of the subcontract exceeds \$250)
- 52.228-3 Workers’ Compensation Insurance (Defense Base Act) (applies if the Order is subject to the Defense Base Act)

- 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (applies to Orders with small business concerns and only when Buyer is the prime contractor receiving accelerated payments from the Government)r
- 52.244-6 Subcontracts for Commercial Items
- 52.245-1 Government Property (applies if Government property is furnished in the performance of the Order; Alt I and II apply if included Buyer’s Government Contract)
- 52.245-9 Use and Charges (applies if the Order includes FAR 52.245-1)
- 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Alt I applies if in Buyer’s Government Contract) [in para. (c)(2)(i), change “20” to “10” and in para. (c)(2)(ii), change “30” to “20”]
- 2. DFARS CLAUSES FOR COMMERCIAL ITEMS**
- If the Order identifies a DoD contract number, the following DFARS clauses, in addition to or in lieu of the FAR clauses set forth above, are hereby incorporated by reference, as applicable, and made a part of the Order:
- 52.203-7002 Requirements to Inform Employees of Whistleblower Rights
- 52.203-7003 Agency Office of the Inspector General (applies to Orders over \$6M that include FAR 52.203-13)
- 52.204-7000 Disclosure of Information (applies when Seller will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public) [Change “45” to “60” in para. (b)]
- 52.204-7008 Compliance with Safeguarding Covered Defense Information Controls (applies in all contracts, including those using FAR part 12 procedures for the acquisition of commercial items, except for solicitations solely for the acquisition of commercially available off-the-shelf (“COTS”) items)
- 52.204-7009 Limitations On The Use And Disclosure Of Third Party Contractor Reported Cyber Incident Information (applies to Orders for services that include support for the Government’s activities related to safeguarding covered defense information and cyber incident reporting)
- 52.204-7012 Safeguarding Covered Defense Information And Cyber Incident Reporting (applies to Orders for operationally critical support or for which performance will involve covered defense information, except for Orders for COTS items)
- 52.204-7014 Limitations on the Use or Disclosure of Information by Litigation Support Contractors (applies if the Order involves litigation support services)
- 52.204-7015 Notice of Authorized Disclosure of Information for Litigation Support
- 52.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services
- 52.204-7019 Notice of NIST SP800-171 DoD Assessment Requirements (Not applicable to Orders for COTS items)
- 52.204-7020 NIST SP 800–171 DoD Assessment Requirements (applies to all Orders except Orders for COTS items)
- 52.204-7021 Cybersecurity Maturity Model Certification Requirements (Prior to September 30, 2025, this clause is only applicable if the requirement document or statement of work requires Seller to have a specific CMMC level. Not applicable to Orders for COTS items)
- 52.209-7004 Subcontracting With Firms That Are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism (applies to Orders over \$150,000)
- 52.211-7003 Item Unique Identification and Valuation (applies to Orders that require Items to contain unique item identification)
- 52.211-7007 Reporting of Government-Furnished Equipment in the DoD Item Unique Identification (applies if Order includes FAR 52.245-1) [“Government” does not change]
- 52.223-7002 Safety Precautions for Ammunition and Explosives (applies if Order involves furnishing of ammunition or explosives, including liquid and solid propellants)
- 52.223-7003 Change in Place of Performance –Ammunition and Explosives (applies if the Order is subject to mandatory safety requirements regarding arms, ammunition, and explosives)
- 52.223-7008 Prohibition of Hexavalent Chromium (applies to Orders for supplies, maintenance or repair services, or construction materials)
- 52.225-7001 Buy American and Balance of Payments Program (applies to the Order in lieu of FAR 52.225-1 if work contains other than domestic components) [“Government” is not changed in this clause]
- 52.225-7007 Prohibition on Acquisition of United States Munitions List Items From Communist Chinese Military Companies (applies to Orders for Items covered by the United States Munitions List)
- 52.225-7008 Restriction on Acquisition of Specialty Metals (applies if the Order exceeds the simplified acquisition threshold and requires delivery of specialty metals as end items to the Government)
- 52.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (applies if Order exceeds the simplified acquisition threshold for delivery of aircraft, missile or space systems, ships, tank or automotive items, weapon systems, or ammunition and such Items or components contain specialty metals) [Exclude paras. (d) and (e)(1)]
- 52.225-7010 Commercial Derivative Military Article–Specialty Metals Compliance Certificate (applies to solicitations expected to exceed the simplified acquisition threshold that include DFARS 252.225-7009)
- 52.225-7012 Preference for Certain Domestic Commodities
- 52.225-7021 Trade Agreements (applies in lieu of FAR 52.225-5 to Orders for end products under Buyer’s Government Contract)
- 52.225-7039 Defense Contractors Performing Private Security Functions Outside the United States (applies to Orders when private security functions will be performed outside the United States in the areas of contingency operations, combat operations, other significant military operations as designated by the Secretary of Defense, peace operations, or other military operations or military exercises when designated by the Combatant Commander)
- 52.225-7048 Export-Controlled Items
- 52.226-7001 Utilization Of Indian Organizations, Indian-Owned Economic Enterprises And Native Hawaiian Small Business Concerns (applies to Orders over \$500,000)
- 52.227-7013 Rights In Technical Data—Noncommercial Items (applies to Orders in lieu of FAR 52.227-14 when technical data from Seller is delivered to the Buyer; Alt I and/or II apply if included

- in Buyer's Government Contract) [Delete from para. (b)(1)(vi) "to the Contractor" and from para. (b) (1) (ix) "contract or" and "thereunder"; add "Buyer or" before "Government" in paras. (c) and (i); change the second and third occurrences of "Contracting Officer" to "Government" in para. (e) (4); add "and the Government" after "parties" in para. (h) (1); change in para. (h) (2) "sixty (60)" to "fifty (50)" days; no substitutions for "Government" are made]
- 252.227-7015 Technical Data—Commercial Items (applies if Buyer will obtain technical data related to commercial items developed in any part at private expense from Seller for delivery to the Buyer's customer)
- 252.227-7037 Validation of Restrictive Markings on Technical Data (applies if the Order includes DFARS 252.227-7013, 252.227-7014 or 252.227-7015 when the Seller will be required to deliver technical data) [In para. (b), "Contractor's" remains in the clause with a lower case "c"; insert in paras (c) and (d)(1) "hereunder" after "subcontract"; change in paras (f) and (g) (2) (i) "this contract" to "the Government contract"; change in para. (i) "a contract" to "Buyer's Government Contract"; no substitutions for "Government" or "Contracting Officer" are made]
- 252.229-7014 Taxes—Foreign Contracts in Afghanistan (applies if the Order involves performance in Afghanistan, unless DFARS 252.229-7015 is used)
- 252.229-7015 Taxes—Foreign Contracts in Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement) (applies in lieu of DFARS 252.229-7014 if the Order involves performance in Afghanistan and was awarded on behalf of the North Atlantic Treaty Organization (NATO))
- 252.232-7017 Accelerating Payments to Small Business Subcontractors Prohibition on Fees and Consideration (applies if the Order includes FAR 52.232-40, Seller is a small business concern, and Buyer is receiving accelerated payments from the Government)
- 252.239-7010 Cloud Computing Services (applies if the Order involves or may involve using cloud computing to provide services)
- 252.239-7018 Supply Chain Risk (applies if the Order involves the development or delivery of any information technology that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at DFARS 239.7301)
- 252.244-7000 Subcontracts for Commercial Items
- 252.245-7001 Tagging, Labeling, and Marking of Government-Furnished Property (applies if the Order includes FAR 52.245-1)
- 252.245-7003 Contractor Property Management System Administration (applies if the Order includes FAR 52.245-1)
- 252.246-7003 Notification of Potential Safety Issues (applies if the Order is for parts identified as critical safety items; systems and subsystems, assemblies, and subassemblies integral to a system; or repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system) ["Government" does not change]
- 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System (applies if the Order is for electronic parts or assemblies containing electronic parts)
- 252.246-7008 Sources of Electronic Parts (applies to Orders for electronic parts or assemblies containing electronic parts, unless Seller is the Original Manufacturer)
- 252.247-7023 Transportation of Supplies by Sea (applies in lieu of FAR 52.247-64 to an Order requiring the ocean transportation of supplies) [In para. (a)(5), change "prime contractor" to "Seller" and "the prime contract" to "the Order"; modify para. (c) to read "Seller and its subcontractors may request that Buyer obtain Government authorization for shipment . . ."; in para. (d), change "Contracting Officer" to "Buyer" in the second sentence; in para. (d), change "45" to "60" days; in para. (e), change "30" to "25"; in para. (e), delete "and the Maritime Administration Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street, N.W., Washington, DC 20590"; paras (f) thru (h) only apply if the Order exceeds the simplified acquisition threshold; in para. (g), delete "for the purposes of the Prompt Payment clause of this contract"; Alt I-II apply if included in Buyer's Government Contract]
- 252.249-7002 Notification of Anticipated Contract Termination or Reduction (applies if the Order is under a major defense program) [Delete para. (d)(1) and the first five words of para. (d)(2)]

### 3. NASA FAR SUPPLEMENT CLAUSES FOR COMMERCIAL ITEMS

If the Order identifies a NASA contract number, the following NFS clauses, in addition to or in lieu of FAR clauses set forth above, are hereby incorporated by reference, as applicable, and made a part of the Order. Any NFS clauses without a specified effective date are effective as of the date of the corresponding FAR clause.

- 1852.204-75 Security Classification Requirements (applies if work to be performed under an Order requires a security clearance)
- 1852.204-76 Security Requirements for Unclassified Information Technology Resources (applies if the Order requires contractors to have physical or electronic access to NASA's computer systems, networks, IT infrastructure or use information systems to generate store, process, or exchange data with NASA)
- 1852.223-70 Safety and Health Measures and Mishap Reporting (applies if the Order exceeds the simplified acquisition threshold and the work will be conducted completely or partly on federally controlled facilities)
- 1852.223-71 Authorization for Radio Frequency Use (applies when radio frequency equipment authorization is required for a device involved in contract performance)
- 1852.223-72 Safety and Health (Short Form) (applies if the Order exceeds the simplified acquisition threshold and work will be conducted completely or partly on a federally controlled facility)
- 1852.223-73 Safety and Health Plan (applies if the Order exceeds the simplified acquisition threshold, the work will be conducted completely or partly on a federally-controlled facility, and the safety and health plan will be evaluated in source selection as approved by the source selection authority)
- 1852.225-70 Export Licenses (not applicable to Orders with foreign entities)
- 1852.228-76 Cross-Waiver of International Space Station Activities (applies if the Order involves Protected Space Operations relating to the International Space Station and the value is above the simplified acquisition threshold)



- 1852.228-78 Cross-Waiver of Liability for Science or Space Exploration Activities Unrelated to International Space Station (applies if the Order involves launches for science or space exploration activities unrelated to the International Space Station and the value is above the simplified acquisition threshold)
- 1852.237-70 Emergency Evacuation Procedures (applies if the Order involves on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornadoes, earthquakes or other emergencies)
- 1852.237-71 Pension Portability (applies to a service Order if the prime contract requires pension portability)
- 1852.237-72 Access to Sensitive Information (applies if the Order involves access to sensitive information)
- 1852.237-73 Release of Sensitive Information (applies to Order that may involve access to sensitive information)
- 1852.246-72 Material Inspection and Receiving Report (applies if the Order that provides for separate and distinct deliverables, even if the deliverables are not separately priced)

- 1852.247-71 Protection of the Florida Manatee (applies if the Order involves deliveries or vessel operations, dockside work, or disassembly functions that involve the use of waterways inhabited by manatees)

**SECTION 3 – FAA AMS CLAUSES FOR COMMERCIAL ITEMS**  
**APPLICABLE IF THE ORDER IS PLACED UNDER BUYER CONTRACT CONTAINING SUCH CLAUSES**

In addition to the clauses of Section 1 (Articles Applicable to All Orders), the following Federal Aviation Administration (“FAA”) Acquisition Management System (“AMS”) clauses shall apply to the Order as required by the terms of Buyer’s Government Contract, by operation of law or regulation, or by the terms of the specific clauses. These FAA AMS clauses are hereby incorporated by reference, as applicable, and in the manner set forth below, including any parenthetical information regarding applicability and bracketed information regarding modifications to the FAA AMS clauses. For certain FAA AMS clauses, Buyer has provided parenthetical language describing the circumstances in which the FAA AMS clauses apply to the Order. This parenthetical language may not encompass all situations where the FAA AMS clauses apply and Seller is responsible for confirming whether the FAA AMS clauses are applicable to the Order.

The effective version of the FAA AMS clauses shall be the version in effect as of the date the Order is issued, unless a different version appears in Buyer’s Government Contract, in which case the version in Buyer’s Government Contract applies. The Parties hereby agree to amend this Section 3 (FAA AMS Clauses) to include any additional or revised FAA AMS clauses incorporated in Buyer’s Government Contract that are applicable to the performance of the Order. Seller shall flow down to its lower-tier subcontractors all applicable FAA AMS clauses and any other requirements of the Order and applicable law so to enable and ensure that Buyer and Seller comply with all applicable requirements of Buyer’s Government Contract.

In interpreting and applying FAA AMS clauses flowed down to Seller, and as context requires, the terms “Contractor” and “Offeror” shall mean Seller, the term “Contract” shall mean the Order, and the term “Government”, “Contracting Officer” and equivalent phrases shall mean Buyer and/or Buyer Representative. However, as an exception to the foregoing, the terms “Government” and “Contracting Officer” do not change in the following circumstances:

- (a) in the phrases “Government Property,” “Government-Furnished Property,” and “Government-Owned Property;” in the Patent Rights clauses incorporated therein, if any; when a right, act, authorization or
- (b) obligation can be granted or performed only by the Government or a Contracting Officer or his/her duly-authorized representative;
- (c) when title to property is to be transferred directly to the Government;
- (d) when access to proprietary financial information or other proprietary data is required, except as otherwise provided in the Order; and
- (e)

(f) where specifically modified in the Order.

**1. FAA AMS CLAUSES FOR COMMERCIAL ITEMS**

The following FAA AMS Clauses are hereby incorporated by reference, as applicable, and made a part of the Order:

- 3.1.7-2 Organizational Conflicts of Interest
- 3.1.7-5 Disclosure of Conflicts of Interest
- 3.1.7-6 Disclosure of Certain Employee Relationships
- 3.2.2.3-29 Integrity of Unit Prices [delete paragraph (c)]
- 3.2.2.3-39 Requirements for Certified Cost or Pricing Data or Other Information – Modifications (applicable to contracts that require either cost or pricing data or an exception to cost and pricing data)
- 3.2.2.3-54 Preventing Accidents
- 3.2.2.3-60 Specifications, Drawings, and Material Submittals
- 3.2.5-5 Anti-Kickback Procedures (applicable to Orders over \$150,000)
- 3.2.5-6 Restrictions on Subcontractor Sales to the FAA
- 3.2.5-7 Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to Orders over \$150,000)
- 3.2.5-13 Contractor Code of Business Ethics and Conduct (applicable to Orders over \$5M with a performance period of more than 120 days)
- 3.3.1-20 Providing Accelerated Payments to Small Business Subcontractors (applicable to Orders with small businesses)
- 3.5-1 Authorization and Consent (applicable to Orders over \$100,000)
- 3.5-2 Notice and Assistance Regarding Patent and Copyright Infringement (applicable to Orders over \$150,000)
- 3.6.2-9 Equal Opportunity
- 3.6.2-12 Equal Opportunity for Veterans (applicable to Orders over \$100,000)



- 3.6.2-13 Affirmative Action for Workers with Disabilities (applicable to Orders over \$10,000)
- 3.6.2-39 Trafficking in Persons
- 3.6.4-22 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment
- 3.6.4-23 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
- 3.7-2 Privacy Act
- 3.10.1-9 Stop Work Order (applicable to Orders for supplies, services, or research and development)
- 3.10.2-6 Subcontracts for Commercial Items and Commercial Components
- 3.10.3-2 Government Property – Basic Clause (Alt I applies if included in Buyer’s Government Contract)
- 3.10.4-2 Inspection of Supplies
- 3.14-1 Security Requirements – Classified Contracts (applicable to Orders that require access to classified information)
- 3.14-4 Access to FAA Facilities, Systems, Government Property, and Sensitive Information (applicable to Orders that require access to FAA facilities, sensitive information including PII and Sensitive Unclassified Information (SUI), and/or resources)
- 3.17-3 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (applicable to Orders funded in whole or in part with Recovery Act funds)