

General Provisions and FAR / DFARS Flowdown Provisions for Subcontracts and Purchase Orders for Noncommercial Items Under a Cost Reimbursement U.S. Government Prime Contract

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SECTION I: GENERAL PROVISIONS

1. Formation of Contract and Terms and Conditions

- (a) This Contract is Field's offer to SELLER. SELLER's signature on the Contract, acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract. SELLER's acceptance of this Contract creates a binding Contract between Field and SELLER, which shall be governed by the provisions of this Contract.
- (b) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (c) Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment hereof are hereby objected to by Field and have no effect unless accepted in writing by Field.

2. Allowable Cost and Payment

- (a) **Invoicing.** Field shall make payments to the SELLER when requested as Work progresses, but not more often than once every two (2) weeks, in amounts determined to be allowable by Field in accordance with the terms of this Contract and Subpart 31.2 of the Federal Acquisition Regulation (FAR); and agency

supplements as appropriate, in effect on the date of this Contract. If the Contract is with an educational institution, FAR Subpart 31.3 shall apply; and if with a nonprofit organization other than an educational institution, FAR Subpart 31.7 shall apply. The SELLER may submit to the Field Purchasing Representative, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Contract.

(b) Reimbursing costs.

- (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:
 - a) Those recorded costs that, at the time of the request for reimbursement, the SELLER has paid by cash, check, or other form of actual payment for items or services purchased directly for the Contract.
 - b) When the SELLER is not delinquent in paying costs of Contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:

- (i) Materials issued from the SELLER's inventory and placed in the production process for use on the Contract;
 - (ii) Direct labor;
 - (iii) Direct travel;
 - (iv) Other direct in-house costs; and
 - (v) Properly allocable and allowable indirect costs, as shown in the records maintained by the SELLER for purposes of obtaining reimbursement under government contracts.
- c) The amount of progress payments that have been paid to the SELLER's subcontractors under similar cost standards.
- (2) SELLER contributions to any pension, profit sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes, provided that the SELLER pays the contribution to the fund within thirty (30) days after the close of the period covered.
- (3) Payments made thirty (30) days or more after the close of a period shall not be included until the SELLER actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the SELLER actually makes the payment.
- (4) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this Contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.
- (5) Except as otherwise expressly provided to the contrary in these provisions or in the schedule of this Contract, any statements in specifications or other documents incorporated in this Contract by reference designating performance of services or furnishing of materials at the SELLER's expense or at no cost to Field shall be disregarded for purposes of cost reimbursement under this clause.
- (c) **Small business concerns.** A small business concern may be paid as often as every two (2) weeks and may invoice and be paid for recorded costs for items or services purchased directly for the Contract, even though the concern has not yet paid for those items or services.
- (d) **Final indirect cost rates.** Field shall reimburse SELLER on the basis of final annual indirect cost rates and the appropriate bases established by SELLER and the government in effect for the period covered by the indirect cost rate proposal. Such rates and bases shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Contract. The rates and bases shall be deemed incorporated into this Contract upon execution.
- (e) **Billing rates.** There shall be included as allowable indirect costs such overhead rates as may be established by SELLER and the cognizant government agency in accordance with the principles of the Federal Acquisition Regulation and applicable FAR Supplement. Pending establishment of final overhead rates for any period, SELLER shall be reimbursed at billing rates approved by the cognizant government agency, which billing rates may be revised from time to time subject to such approval and subject to appropriate adjustment when the final rates for that period are established.
- (f) **Quick closeout procedures.** When the SELLER and Field agree, the quick closeout procedures of Subpart 42.7 of the FAR may be used.
- (g) **Audit.** At any time or times before final payment, Field or the government may audit the SELLER's invoices or vouchers and statements of cost. Any payment may be (1) reduced by amounts found by Field or the government not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- (h) **Final payment.**
- (1) The SELLER shall submit a completion invoice or voucher, designated as such, promptly upon completion of the Work, but no later than one (1) year (or longer, as Field may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the SELLER's compliance with all terms of this Contract, Field shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 - (2) The SELLER shall pay to Field any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the SELLER or any assignee under this Contract, to the extent that those amounts are properly allocable to costs for which the SELLER has been reimbursed by Field. Reasonable expenses incurred by the SELLER for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by Field. Before final payment under this Contract, the SELLER and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
 - (i) An assignment to Field, in form and substance satisfactory to Field, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the SELLER has been reimbursed by Field under this Contract; and
 - (ii) A release discharging Field, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Contract, except for specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known.
- (i) **Subcontracts.** No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c) (4) (i) of the FAR.

3. Applicable Laws

- (a) This Contract shall be governed by the laws of the state of Oklahoma, excluding its choice of laws rules, except that any provision in this Contract 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.

- (b) (1) SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances.
- (2) These rights and obligations shall survive the termination or completion of this Contract.
- (c) In particular, if the Work is to be shipped to or performed in the United States:
 - (1) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Field hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
 - (2) SELLER shall provide to Field with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act (OSHA) of 1970 and regulations promulgated thereunder, or the state-approved counterpart to OSHA.

4. Assignment and Subcontracting

- (a) Any assignment of SELLER's Contract rights or delegation of duties shall be void, unless prior written consent is given by Field. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if Field is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts.
- (b) Without Field's written consent, SELLER will not subcontract for the design, development, or procurement of any substantial portion of goods or services under this contract. This limitation does not apply to SELLER's purchases of standard commercial supplies or raw materials.

5. Communication with Field Customer

- (a) Field shall be solely responsible for all liaison and coordination with the Field customer, including the U.S. Government, as it affects the applicable Prime Contract, this Contract, and any related contract.
- (b) Unless otherwise directed in writing by the authorized Field Procurement Representative, all documentation requiring submittal to, or action by, the government or the Contracting Officer shall be routed to, or through, the Field Procurement Representative, or as otherwise permitted by this Contract.

6. Confidentiality

- (a) Unless otherwise addressed by a separate Confidentiality Agreement between the parties, Field and SELLER shall each keep confidential and protect from unauthorized use and disclosure for a period of three (3) years after receipt all (a) confidential, proprietary and/or trade secret information; (b) tangible items containing, conveying or embodying such information; and (c) tooling identified as being subject to this article and obtained, directly or indirectly, from the other in connection with this contract (collectively referred to as a "Proprietary Information and Materials").

- (b) Field and SELLER shall each use Proprietary Information and Materials of the other only in connection with this contract. However, despite any other obligations or restrictions imposed by this article, Field shall have the right to use, disclose and reproduce SELLER's Proprietary Information and Materials, and make derivative works thereof, in connection with this contract. Any such use, disclosure, reproduction or derivative work by Field shall, whenever appropriate, include a restrictive legend suitable to the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by SELLER shall apply to all materials derived by SELLER or others from Field's Proprietary Information and Materials.
- (c) Upon Field's request at any time, and in any event upon the completion, termination or cancellation of this contract, SELLER shall return to Field all of Field's Proprietary Information and Materials and all materials derived there from (except for one archival copy), unless specifically directed otherwise in writing by Field or a United States of America Government Contracting Officer.
- (d) SELLER may disclose Proprietary Information and Materials of Field to its subcontractors as required in connection with this contract program, provided that each such subcontractor first agrees in writing to substantially the same obligations imposed upon SELLER under this article relating to Proprietary Information and Materials.
- (e) The provisions of this article control in the event of a conflict with any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this contract.

7. Contract Direction

- (a) Only the Field Procurement Representative has authority to amend this Contract. Such amendments must be in writing.
- (b) Field engineering and technical personnel may render assistance or give technical advice or discuss or affect an exchange of information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the **Changes** clause of this Contract (FAR 52.243-2) and shall not be the basis for equitable adjustment.
- (c) Action or direction by any Field customer shall not be deemed to be a change under the **Changes** clause of this Contract and shall not be the basis for equitable adjustment.
- (d) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the Field Procurement Representative.

8. Definitions

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting (e.g., PO, Purchase Order, or other such designation), including all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a master agreement that provides for releases (in the form of a Purchase Order or other such document), the term

"Contract" shall also mean the release document for the Work to be performed.

- (b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (c) "Field" means ASES, LLC d/b/a Field Aerospace.
- (d) "Field Procurement Representative" means the person authorized by Field's cognizant procurement organization to administer this Contract.
- (e) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this Contract.
- (f) "SELLER" means the Party identified on the title page of the Contract, with whom Field is contracting.
- (g) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

9. Disputes

- (a) Any dispute, controversy, or claim arising out of or relating to this Contract or default, termination, or invalidity hereof, shall be settled by arbitration under the rules of the American Arbitration Association, with the following exception:
 - (1) Field may not require independent contractors to utilize arbitration to resolve any claim under Title VII of the 1964 Civil Rights Act or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or take any action to enforce any provision of an existing agreement with an independent contractor that requires the arbitration of such claims.
 - (2) SELLER agrees that it will not enter into or take any action to enforce similar arbitration agreements with respect to any employee or independent contractor performing work related to such contracts. (Effective June 17, 2010; Applicable to subcontracts in excess of \$1 million
Note: A certification to above provision is included in the Certifications Section of this document.
 - (b) The place of the arbitration shall be Oklahoma. The language to be used in the arbitral proceedings shall be English. Judgment of the arbitrators shall be final and non-appealable and may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of the enforcement. Each Party shall bear its own expenses of the arbitration, but the fees and costs of the arbitrators shall be borne equally between the Parties participating in the arbitration.
 - (c) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the requesting party with copies of documents relevant to the issues raised by any claim or counter claim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators, whose determination shall be conclusive. All discovery shall be completed within thirty (30) days following the appointment of the arbitrators.
- (d) No action at law or in equity may be commenced by Field or SELLER under or arising from this Contract unless it is brought within two years after the accrual of the cause of action upon which the claim is based, regardless of whether Field or SELLER knew or should have known of the accrual of any such cause of action.
 - (e) Notwithstanding the foregoing, in the event of a breach or threatened breach by Field or SELLER under the *Confidentiality or Intellectual Property* provisions of this Contract, Field or SELLER may forego arbitration under this provision and seek immediate judicial and equitable remedies, including, but not limited to, injunctive relief or specific performance.
 - (f) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by the Field Procurement Representative.

10. Export Control Compliance for Foreign Persons

- (a) SELLER agrees to comply fully with all applicable U.S. export control laws.
- (b) The subject Work of this Contract (together including data, services, and hardware provided hereunder, hereinafter "Controlled Technology") may be controlled for export purposes under the International Traffic in Arms Regulations (ITAR) controlled by the U.S. Department of State or the Export Administration Regulations ("EAR") controlled by the U.S. Department of Commerce. ITAR controlled technology may not be exported without prior written authorization and certain EAR technology requires a prior license depending upon its categorization, destination, end-user and end-use. SELLER shall obtain the authority of either an Export License or an applicable License Exception before permitting the export of any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered to SELLER under this Contract. SELLER shall obtain the authority of either an Export License or an applicable License Exception before assigning any foreign persons or foreign sources to perform work under this Contract or before permitting any foreign persons or foreign sources to have access to any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered SELLER under this Contract. "Foreign person" is any person who is not a citizen or national of the United States and includes individuals, foreign corporations, international organizations, and foreign governments. "Foreign source" includes vendors, subcontractors, and suppliers owned and controlled by a foreign person.
- (c) SELLER hereby certifies that all SELLER employees who have access to the Controlled Technology are U.S. citizens, have a valid green card or, have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3). Any non-citizens who do not meet one of these criteria have been authorized under export licenses to perform their work hereunder.
- (d) SELLER further certifies that all SELLER employees assigned to work on this Contract are U.S. citizens, U.S. Permanent Residents, non-immigrants authorized to work in the U.S. or non-immigrants who have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3).

- (e) SELLER agrees to notify Field if any deliverable Work under this Contract is restricted by export control laws or regulations.
- (f) SELLER shall immediately notify the Field Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency. At Field's request, SELLER will provide Field with all data Field may need to apply for and obtain an Export License or applicable License Exception.

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

11. Extras

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

12. Fee

(Applicable only if this Contract includes a fee.) Field shall pay the SELLER for performing this Contract the fee as specified in the schedule.

13. Furnished Property (Furnished and SELLER-Acquired)

- (a) Field may provide to SELLER property owned by either Field or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract. Title to Furnished Property shall be retained by Field or its customer. SELLER shall clearly mark all Furnished Property to show ownership.
- (b) SELLER-acquired property means property acquired, fabricated or otherwise provided by SELLER as part of performance under a Government-funded Field subcontract and to which the Government or Field has taken or will take title.
- (c) No less than annually and at completion of this Contract the SELLER shall submit, in an acceptable form, inventory lists of Furnished and SELLER-Acquired Property and shall deliver or make such other disposal as may be directed by Field. SELLER shall notify Field immediately when any property is lost, damaged, destroyed or stolen.
- (d) With respect to property to which the government may take title under this Contract:
 - (1) For this cost-reimbursement Contract, the clause at FAR 52.245-1 Government Property (AUG 2010) shall apply and is incorporated by reference. In FAR 52.245-1, "Government" means "Field" except in the phrases "Government-Furnished Property" and "Government Property," and in references to government title to property. "Contracting Officer" means "Field."
 - (2) If SELLER has an approved Government property system, SELLER shall provide approval documentation to Field within 5 days of contract award. SELLER shall provide to Field immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the government of its property control system.

14. Gratuities and Kickbacks

15. Indemnification

Each party shall indemnify the other against all liability that may result from any claim, action, or suit based on any alleged injury to or death of any person or damage to or loss of any property to the extent that it was caused or alleged to have been caused by such party in the course of its performance of this Contract. The indemnifying party shall pay all attorneys fees and costs of defense and, if any judgment is rendered against the indemnified party in any such action or actions, the indemnifying party shall satisfy and discharge the judgment without cost or expense to the indemnified party.

16. Independent Contractor Relationship

SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively, without any relation whatsoever to Field, and shall not be entitled to participate in or receive any of Field's employee benefits.

17. Information of Field

Information provided by Field to SELLER remains the property of Field. SELLER agrees to comply with the terms of any confidential disclosure agreement with Field and to comply with all proprietary information markings and restrictive legends applied by Field to anything provided hereunder to SELLER.

SELLER agrees not to use any Field-provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of Field.

18. Information of SELLER

SELLER shall not provide any proprietary information to Field without prior execution by Field of a confidential disclosure agreement.

19. Insurance and Liability to Third Parties

- (a) In the event that SELLER, its employees, agents, or subcontractors enter Field's or its customer's premises for any reason in connection with this Contract, SELLER, as well as its subcontractors and lower-tier subcontractors, shall procure and maintain worker's compensation, comprehensive general liability, bodily injury, and property damage insurance in reasonable amounts, and such other insurance as Field may require, as stated in the contract schedule, and shall comply with all site requirements. Such insurance shall be written through a licensed carrier, with a financial rating of no less than A-, in the respective state of operation and shall meet all legal minimum requirements of same state. SELLER shall

indemnify and hold harmless Field, its officers, employees, and agents from any and all losses, costs, claims, causes of action, damages, liabilities, and expenses, including (but not limited to) attorneys' fees, all expenses of litigation and settlement, and court costs, by reason of property damage or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, to the extent that it was caused or alleged to have been caused by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier.

- (b) SELLER shall provide Field thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance. If requested, SELLER shall send a Certificate of Insurance showing SELLER's compliance with these requirements. SELLER shall name Field as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Field and is not contributory with any insurance which Field may carry.

20. Intellectual Property Infringement

- (a) SELLER represents that to the best of its knowledge the SELLER's patents, copyrights, trademarks, trade secrets or similar rights relating to the maintenance, sale or use of goods furnished, or relating to, or used in, the work performed, pursuant to this contract do not infringe on any existing patents, copyrights, trade secrets or other intellectual property and proprietary rights of any third party nor has any claim (whether or not embodied in action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against SELLER.
- (b) In the event of a breach of this representation, SELLER shall defend, at SELLER's own responsibility and expense, Field and Field's customer from any suit or claim against Field or Field's customer and SELLER shall indemnify and hold harmless Field and Field's customer from and against any and all claims, liabilities, losses, damages, and expenses provided Field (a) notifies SELLER promptly in writing of such claim; (b) allows SELLER to control the defense of such claims; and (c) reasonably cooperates with SELLER to defend such claim.
- (c) SELLER will have no obligation under this article with regard to any infringement arising from (a) SELLER's compliance with formal drawings or specifications issued by Field or U.S. Government where infringement could not be avoided in complying with such drawings or specifications or (b) use or sale of products in combination with other items when such infringement would not have occurred from the use or sale of those products solely for the purpose for which they were designed or sold by SELLER.
- (d) SELLER will have no obligation under this article with regard to any infringement authorized by the Authorization and Consent clause in clause of the contract, provided SELLER complies with the Authorization and Consent and the Notice and Assistance Regarding Patent and Copyright Infringement clauses in clause.

21. Language and Standards

All reports, correspondence, drawings, notices, markings, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing, all documentation and work shall use the units of U.S. standard weights and measures.

22. Limitation of Funds

(Applicable if this Contract is incrementally funded.)

- (a) The Parties estimate that performance of this Contract will not cost Field more than the estimated cost specified in the Schedule. The SELLER agrees to use its best efforts to perform the Work specified in the Schedule and all obligations under this Contract within the estimated cost.
- (b) The Schedule specifies the amount presently available for payment by Field and allotted to this Contract, the items covered, and the period of performance that the allotted amount is estimated to cover. The Parties contemplate that Field will from time to time allot additional funds to the Contract up to the full estimated cost specified in the Schedule, inclusive of any fee. The SELLER agrees to perform, or have performed, Work on the Contract up to the point at which the total amount, including fee, paid and payable by Field under the Contract approximates but does not exceed the total amount actually allotted by Field to the Contract.
- (c) The SELLER shall notify Field in writing whenever it has reason to believe that the costs it expects to incur under this Contract plus allocable fee in the next sixty (60) days, when added to all costs previously incurred, and allocable fee, will exceed seventy-five percent (75%) of the total amount then allotted to the Contract. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.
- (d) Sixty (60) days before the end of the period specified in the Schedule, the SELLER shall notify Field in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.
- (e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the SELLER's written request, Field will terminate this Contract on that date in accordance with the provisions of the **Termination** clause of this Contract (FAR 52.249-6). If the SELLER estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and Field, in its discretion, may terminate this Contract on that later date.
- (f) Except as required by other provisions of this Contract, specifically cited and stated to be an exception to this clause:
 - (1) Field is not obligated to reimburse the SELLER for costs incurred plus allocable fee in excess of the total amount allotted to this Contract; or, if no allotment of funds is set forth in this Contract, the estimated cost and fee set forth in the Schedule; and

(2) The SELLER is not obligated to continue performance under this Contract (including actions under the **Termination** clause of this Contract (FAR 52.249-6)) or otherwise incur costs plus allocable fee in excess of the amount then allotted to the Contract, until Field notifies the SELLER in writing that the amount allotted or the estimated amount has been increased and specifies an increased amount, which shall then constitute the total amount allotted to or estimated for this Contract.

- (g) The estimated cost shall be increased to the extent that the amount allotted to the Contract exceeds the estimated cost specified in the Schedule.
- (h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Field Purchasing Representative, shall affect the amount allotted to this Contract. In the absence of the specified notice, Field is not obligated to reimburse the SELLER for any costs or allocable fee in excess of the total amount allotted by Field to this Contract, whether incurred during the course of the Contract or as a result of termination.
- (i) When and to the extent that the amount allotted to the Contract is increased, any costs plus allocable fee the SELLER incurs before the increase that are in excess of the amount previously allotted shall be allowable to the same extent as if incurred afterward, unless Field issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (j) Change orders shall not be considered an authorization to exceed the amount allotted specified in the Schedule, unless they contain a statement increasing the amount allotted.
- (k) Nothing in this clause shall affect the right of Field to terminate this Contract. If this Contract is terminated, Field and the SELLER shall negotiate an equitable distribution of all property produced or purchased under the Contract, based on the share of costs incurred by each.
- (l) If Field does not allot sufficient funds to allow completion of the Work, the SELLER shall be entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the Work contemplated by this Contract, not to exceed the funds in fact allotted to the Contract.
- (m) At the time that the total funds allotted under this Contract equal the full estimated cost inclusive of fee specified in the Schedule, this *Limitations of Funds* clause no longer shall apply, but then the *Limitation of Cost* clause of this Contract (FAR 52.232-20) shall apply.

23. Limitation of Liability

- (a) In no event shall either SELLER or Field be liable to the other for any indirect, incidental or consequential damages arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss.

- (b) Each Party shall indemnify and hold harmless the other, its officers, directors, employees and agents, against and from any liability, loss, damage, cost and expense (including attorneys' fees and costs of litigation) arising out of or in connection with any claim or action which any third party may file or threaten to file against either Party or its officers, directors, employees or agents arising out of, or resulting directly from, the negligent acts or omissions or the willful misconduct of it or its employees, directors, officers, representatives, and agents in the course of its performance of its obligations under this Agreement. The indemnification provided herein shall survive the termination of this Agreement.

24. New Materials

The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5 (not used, reconditioned, remanufactured, or of such age as to impair usefulness or safety).

25. Offset Credit and Cooperation

All offset or countertrade credit value resulting from this Contract shall accrue solely to the benefit of Field. SELLER agrees to cooperate with Field in the fulfillment of any foreign offset or countertrade obligations.

26. Packing and Shipment

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice to prevent damage and deterioration during shipping, handling, and storage.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the Field contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- (c) For Work shipped within the United States, unless otherwise specified, delivery shall be FOB Destination. For Work imported into the United States, unless otherwise specified, delivery shall be DDP Field's facility indicated on the title page of the Contract in accordance with *INCOTERMS 1990*.

27. Parts Obsolescence

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

28. Payments, Taxes, and Duties

- (a) Unless otherwise provided, terms of payment shall be net forty five (45) days from the latest of the following: (i) Field's receipt of the SELLER's proper invoice; (ii) Scheduled delivery date of the Work (SELLER's proper invoice required); or (iii) Actual delivery of the Work (SELLER's proper invoice required).
- (b) Payment shall be deemed to have been made as of the date of Field's mailed payment or electronic funds transfer.

- (c) Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. Prices shall not include any taxes, impositions, charges or exactions for which Field has furnished a valid exemption certificate or other evidence of exemption.
- (d) All taxes, assessments and similar charges levied with respect to or upon any such products or Work owned by Field while in SELLER's possession or control, and for which no exemption is available, shall be borne by SELLER.
- (e) For cost reimbursement subcontracts with provisional billing rates, the SELLER agrees to adjust interim vouchers within 90 days after receipt of revised provisional billing rates and to certify on all invoices that such invoices incorporate the most current provisional billing rates.
- (f) The prices stated in the contract are firm, fixed prices in United States dollars.

29. Precedence

Any inconsistencies in this Contract shall be resolved in accordance with the following (in descending order of precedence): (1) face of the Purchase Order, release document or schedule (which may include continuation sheets), as applicable, including any special terms and conditions; (2) any master agreement, such as corporate, sector, or blanket agreements; (3) these General Provisions; and (4) Statement of Work.

30. Priority Rating

If so identified, this Contract is a "rated order," certified for national defense use, and the SELLER shall follow all the requirements of the *Defense Priorities and Allocation System Regulation* (15 C.F.R. Part 700).

31. Quality Control System

Unless this Contract contains other specific quality requirements,

- (a) SELLER shall provide and maintain a quality control system to an industry-recognized quality standard for the Work covered by this Contract.
- (b) Records of all quality control inspection work by SELLER shall be kept complete and made available to Field and its customers during the performance of this Contract and for such longer periods as may be specified.
- (c) Field, customer, and regulatory authorities will have access to all quality management system documentation upon request.
- (d) The supplier may be required to submit to initial and follow-up audits of their quality management system by Field or regulatory authorities to become, or remain, an approved supplier.
- (e) For suppliers manufacturing items to Field or customer-provided design data or suppliers providing Aerospace related products/services, the following requirements shall apply, where appropriate:

- (1) If the supplier determines during production the product (intended for use or delivery to Field) does not conform to requirements, this product shall be identified and controlled. The supplier shall provide timely notification to Field regarding the nonconforming product.
- (2) If the supplier determines at any time after delivery of product to Field the product does not conform to requirements, the Seller shall notify Field within 24 hours of the nonconforming product.
- (3) If the supplier determines during inspection the product (intended for use or delivery to Field) does not conform to requirements, this product shall be identified and controlled. The supplier shall hold the product until dispositioned and approved by Field.
- (4) Supplier shall provide notification to Field of any change in product design, materials, or production processes from those originally specified or quoted.
- (5) Supplier shall provide notification to Field of changes in product and/or process, changes of suppliers, changes of manufacturing facility location and, where required, obtain Field approval.
- (6) Supplier shall provide access to Field, Field customers, and all applicable regulatory authorities to applicable areas of all facilities, at any level of the supply chain, involved in the order and to all applicable records.
- (7) Supplier shall flow down to the supply chain the applicable requirements including customer requirements and key characteristics.

- (f) Where a supplier is designing hardware, Field shall participate in all design review activities and reserves the right to approve preliminary designs prior to proceeding to detailed design and final designs prior to proceeding to fabrication.
- (g) For design, development, or manufacturing work affecting high-value, safety critical systems, Field may require that the supplier be certified to AS9100, ISO 9001, or an FAA certificated quality system under FAR Part 145 or FAR Part 21.
- (h) Field shall participate in any technical interchange meetings where the supplier is presenting information to our customers.

32. Release of Information

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

33. Source Surveillance

In addition to inspections as otherwise provided in this Contract, and at no increase in Contract price, Field may assign product assurance representatives to SELLER's facilities to conduct and maintain surveillance as necessary to ensure quality and reliability. SELLER likewise shall reserve such right to Field with respect to SELLER's lower-tier subcontractors. If such examination is made, SELLER shall provide, and require its subcontractors to provide, such representatives with reasonable facilities, equipment, and

unescorted access (except in areas where proprietary processes or data are located, in which case access shall be on an escorted basis) to all areas essential to the proper conduct of the above described activity.

34. Subcontracts

- (a) If this Contract is primarily for the purpose of furnishing services, no subcontract shall be made by the SELLER with any other Party for furnishing all or substantially all of the Work or services herein contracted for without the advance written approval of Field; however, this provision shall not be construed to require the approval of contracts of employment between the SELLER and personnel assigned for services hereunder.
- (b) The SELLER shall give Field immediate written notice of any action or suit filed and prompt notice of any claim made against the SELLER by any subcontractor or vendor that, in the opinion of the SELLER, may result in litigation related in any way to this Contract, with respect to which the SELLER may be entitled to reimbursement from Field.
- (c) No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost-basis, and any fee payable under cost-reimbursement, lower-tier subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4) (formerly 15.903(d)) of the FAR.

35. Survivability

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

- (a) Allowable Cost and Payment
Applicable Laws
Export Control Compliance
Independent Contractor Relationship
Confidentiality
Insurance and Liability to Third Parties
Intellectual Property Infringement
Limitation of Liability
Release of Information
Warranty
- (b) Those U.S. Government flowdown provisions that, by their nature, should survive.

36. Timely Performance

- (a) Time is of the essence in this Contract. SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by Field, Field may store, at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall promptly notify Field, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless Field has given prior written consent.

37. Waiver and Approval

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

38. Warranty

- (a) In addition to SELLER's standard warranty, SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. All warranties shall survive inspection, test and acceptance of, and payment for, the Work. All warranties shall run to Field and its successors, assigns, and customers. The warranty shall extend for a period of one (1) year after Field's final acceptance unless a different period is set forth elsewhere in this Contract. If any nonconformity with the Work appears within that time, at Field's option, SELLER shall promptly repair, replace, or reperform the Work. Transportation of replacement Work and return of nonconforming Work and repeat performance of Work shall be at SELLER's expense. Work required to be corrected or replaced shall be subject to this provision and the **Inspection and Acceptance** provision of this Contract (FAR 52.246-3 and 52.246-5) in the same manner and to the same extent as Work originally delivered under this Contract. If repair or replacement or reperformance of Work is not timely, Field may elect to return the nonconforming Work or repair, replace Work, or reprocur the Work at SELLER's expense.
- (b) SELLER further warrants that all software, firmware, and hardware (products) provided by SELLER, having date-dependent functionality containing or calling on a calendar function to process date and time data, will accurately process the date and time data (including, but not limited to, inputting, storing, manipulating, comparing, calculating, updating, displaying, outputting, and transforming such dates and data).
 - (1) In the event of a discovery of any date-dependent functionality noncompliance, the discovering party shall notify the other party within five (5) business days. At Field's option, the noncompliant products shall be repaired or replaced by SELLER within ten (10) business days of such notice at no cost to Field. The date-dependent functionality warranty shall run to Field and its successors, assigns, and customers, and shall extend indefinitely after Field's final acceptance.
 - (2) Nothing in this provision shall be construed to limit any other rights under this Contract, at law or in equity that Field may have with respect to date-dependent functionality compliance.

39. Suspect/Counterfeit Items

(a) Seller represents and warrants that Item(s) supplied by Seller are not "Suspect/Counterfeit". Seller's warranty against counterfeit items shall survive any termination or expiration of this Contract, Agreement or Order.

(b) A "Counterfeit" item is an item, or any component thereof, produced, altered or otherwise misrepresented to resemble another item, or any part thereof, without authority or right to do so; including but not limited to, any item that is produced or altered to result in Buyer being misled or defrauded through the presentation to Buyer of such item as original, new, genuine or otherwise from a source other than the actual source of such item. Counterfeit items also include items that have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but are represented as OEM authentic or as new or any parts that are designated as suspect by the U.S. Government, such as parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP).

(c) If Buyer, in its sole discretion, determines that any items or components received from Seller are, or may be, Suspect/Counterfeit ("Suspected Counterfeit Parts"), Buyer shall notify Seller in writing of such determination. Seller agrees that within ten (10) days after Seller's receipt of such notice, Seller shall remit to Buyer all payments previously made to Seller for such Suspected Counterfeit Parts. Alternatively, the Buyer may elect to have the Seller offer a replacement item in lieu of remitting all previous payments associated with Suspect/Counterfeit items.

(d) Seller further agrees that it shall indemnify, defend, and hold harmless Buyer from and against any claims, actions, proceedings, judgments, penalties, fines and/or other losses of any kind arising out of or in connection with any such Suspected Counterfeit Parts. Seller shall be liable for all costs incurred by Buyer to remove and replace the suspect/counterfeit parts, including without limitation Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of replacement goods after counterfeit parts have been replaced.

(e) Prior to Seller's acquisition of any items, or components thereof, that will be included in any transaction between Seller and Buyer, Seller shall flow down the requirements of this Article to all entities from which it receives such items, or components thereof, and shall be fully liable to Buyer for all such entities' compliance with such requirements.

40. Equal Opportunity

- (a) The requirements of 41 CFR 60-300.5 are incorporated herein by reference and apply to any PO/Subcontract that exceeds \$100,000.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

- (b) The requirements of 41 CFR 60-741.5 are incorporated herein by reference and apply to any PO/Subcontract that exceeds \$10,000.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

SECTION II: FAR AND DFARS FLOWDOWN PROVISIONS

A. Incorporation of FAR and DFARS Clauses

The Federal Acquisition Regulation (FAR) clauses and Defense Federal Acquisition Regulation Supplement (DFARS) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, during the performance of this Contract. The effective date of each clause incorporated herein shall be that in effect as of the effective date of the subcontract or purchase order, unless a previous version of a clause is specifically referenced in Field's prime contract with the Government.

B. Government Subcontract

This Contract is entered into by the Parties in support of a U.S. Government contract.

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

1. "CONTRACTOR" means the SELLER, as defined previously in the **Definitions** provision of this document, acting as the immediate (first-tier) subcontractor to Field.
2. "Prime Contract" means the contract between Field and the U.S. Government or between Field and its higher-tier contractor who has a contract with the U.S. Government.
3. "Contract" means this Contract.
4. "Subcontract" means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

C. Notes

1. Substitute "Field" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "Field Procurement Representative" for "Contracting Officer," "Administrative Contracting Officer," and "ACO" throughout this clause.
3. Insert "and Field" after "Government" or "Contracting Officer," as appropriate, throughout this clause.
4. Insert "or Field" after "Government" throughout this clause.
5. Communication or notification required under this clause from or to the CONTRACTOR, and to or from the Contracting Officer shall be through Field.
6. "Contracting Officer" shall mean the U.S. Government Contracting Officer for Field's government Prime Contract under which this Contract is entered.

D. Amendments Required by Prime Contract

CONTRACTOR agrees that upon the request of Field it will negotiate in good faith with Field relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as Field may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an

increase or decrease in the estimated cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the **Changes** clause of this Contract.

E. FAR Flowdown Clauses

REFERENCE TITLE

1. The following FAR clauses apply to this Contract:

- (a) 52.211-5 Material Requirements (See Note 2.)
- (b) 52.219-8 Utilization of Small Business Concerns
- (c) 52.222-2 Payment for Overtime Premiums (Insert ZERO in the blank. See Notes 2 and 3)
- (d) 52.222-21 Prohibition of Segregated Facilities
- (e) 52.222-26 Equal Opportunity
- (f) 52.222-50 Combating Trafficking in Persons
- (g) 52.223-11 Ozone-Depleting Substances (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
- (h) 52.225-13 Restrictions on Certain Foreign Purchases (In paragraph (a), see Notes 5 and 6)
- (i) 52.227-14 Rights in Data—General
- (j) 52.232-20 Limitation of Cost (Applicable when this Contract becomes fully funded. See Notes 1 and 2)
- (k) 52.232-22 Limitation of Funds (Applicable if this Contract is incrementally funded. When the Contract becomes fully funded FAR 52.232-20 shall apply in lieu of this clause. See Notes 1 and 2)
- (l) 52.234-1 Industrial Resources Developed Under Defense Production Act Title III (See Note 2.)
- (m) 52.242-13 Bankruptcy (See Note 2.)
- (n) 52.242-15 Stop-Work Order (See Notes 1 and 2.)
- (o) 52.243-2 Changes – Cost Reimbursement (See Notes 1 and 2; delete the reference to the "Disputes" clause in subparagraph (d).)
- (p) 52.244-6 Subcontracts for Commercial Items
- (q) 52.245-1 Government Property
- (r) 52.245-9 Use and Charges
- (s) 52.246-3 Inspection of Supplies – Cost Reimbursement (See Note 1 except in subparagraphs (b), (c), and (d) where Note 3 applies, and in paragraph (k) where the term "Government" is unchanged. In subparagraph (e) change "60 days" to "120 days and in subparagraph (f) change "6 months" to "12 months.")
- (t) 52.246-5 Inspection of Services - Cost Reimbursement (See Note 3 in subparagraphs (b) and (c). See Note 1 in subparagraph (d) and (e).

- (u) 52.246-6 Inspection – Time-and-Material and Labor Hour
- (v) 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (See Note 2.)
- (w) 52.249-6 Termination (Cost-Reimbursement) (See Notes 1 and 2. Substitute "90 days" for "120 days" and "90-day" for "120-day" in subparagraph (d). Substitute "180 days" for "1 year" in subparagraph (f). Delete subparagraph (j). Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)
- (x) 52.249-8 Default (Fixed-Price Supply and Service) (Applicable only for fixed-price contracts. See Notes 1 and 2, except Note 1 is not applicable to paragraph (e). Timely performance is a material element of this Contract.)
- (y) 52.249-14 Excusable Delays (See Note 2)

2. The following FAR clauses apply to this Contract if the value of this Contract exceeds \$15,000:

- (a) 52.222-36 Affirmative Action for Workers with Disabilities

3. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:

- (a) 52.222-35 Equal Opportunity for Veterans
- (b) 52.222-37 Employment Reports Veterans

4. The following FAR clauses apply to this Contract if the value of this Contract exceeds \$150,000:

- (a) 52.203-6 Restrictions on Subcontractor Sales to the Government
- (b) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (see Note 5.)
- (c) 52.215-2 Audit and Records-Negotiation (Insert "and the Field Purchasing Representative" after "the Contracting Officer or representatives of the Contracting Officer" or after "... representatives of the Contracting Officer who are employees of the government," where indicated throughout the clause.)
- (d) 52.215-14 Integrity of Unit Prices (Delete paragraph (b) of the clause.)
- (e) 52.227-1 Authorization and Consent (Applicable only if the Prime Contract contains this clause. In the clause, in paragraph (a) (1), see Note 4, and in paragraph (a) (2) (ii) see Note 2.)
- (f) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (See Notes 2 and 4.)
- (g) 52.248-1 Value Engineering (See Note 1, except in subparagraphs (c) (5) and (m), see Note 3.)

5. The following FAR clause applies to this Contract if the value of this Contract exceeds \$650,000:

- (a) 52.219-9 Small Business Subcontracting Plan (Applicable if the CONTRACTOR is not a small business; see Notes 1 and 2, applicable to subparagraph (c) only; the CONTRACTOR's subcontracting plan is incorporated herein by reference.)
6. **The following FAR clauses apply to this Contract if the value of this Contract exceeds \$700,000:**
- (a) 52.215-12 Subcontractor Certified Cost or Pricing Data (Applicable if not otherwise exempt under FAR 15.403.)
- (b) 52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications (Applicable for modifications if not otherwise exempt under FAR 15.403.)
7. **The following FAR clauses apply to this Contract only if the stipulation in the relevant parenthetical applies:**
- (a) 52.203-13 Contractor Code of Business Ethics and Conduct (Applicable in all subcontracts at all tiers that have a value in excess of \$5,000,000 and a performance period more than 120 days)
- (b) 52.203-14 Display of Hotline Posters (Applicable to all subcontracts that exceed \$5,000,000 except for commercial items OR subcontracts performed entirely outside the United States)
- (c) 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Applicable if funded in whole or part with Recovery Act funds)
- (d) 52.203-16 Preventing Personal Conflicts of Interest (Applicable if subcontract exceeds \$150,000 AND subcontractor employees will perform acquisition functions closely associated with inherently governmental functions)
- (e) 52.204-2 Security Requirements (Applicable if the Work requires access to classified information; delete paragraph (c) of the clause.)
- (f) 52.204-9 Personal Identity Verification of Contractor Personnel (Applicable in subcontracts at all tiers where subcontractor is required to have routine access to a federally-controlled facility and/or federally-controlled information system)
- (g) 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Applicable if this award is 25K or above)
- (h) 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Applicable to subcontracts at all tiers that (1) exceeds \$30,000 and (2) are not subcontracts for commercial items)
- (i) 52.215-10 Price Reduction for Defective Certified Cost or Pricing Data (Applicable if FAR 52.215-12 applies to this Contract. See Notes 2 and 4. Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)
- (j) 52.215-11 Price Reduction for Defective Certified Cost or Pricing Data – Modifications (Applicable if FAR 52.215-13 applies to this Contract, and FAR 52.215-10 is not applicable. See Notes 2 and 4. Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)
- (k) 52.215-15 Pension Adjustments and Asset Reversions (Applicable if this Contract meets the applicability requirements of FAR 15.408(g); see Note 5.)
- (l) 52.215-16 Facilities Capital Cost of Money (Applicable only if the Contract is subject to the cost principles at FAR Subpart 31.2 and the CONTRACTOR proposed facilities capital cost of money in its offer.)
- (m) 52.215-17 Waiver of Facilities Capital Cost of Money (Applicable only if the Contract is subject to the cost principles at FAR Subpart 31.2 for Contracts with commercial organizations, and the CONTRACTOR did not propose facilities capital cost of money in its offer.)
- (n) 52.215-18 Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions (Applicable if this Contract meets the applicability requirements of FAR 15.408(j); see Note 5.)
- (o) 52.215-19 Notification of Ownership Changes (Applicable if this Contract meets the applicability requirements of FAR 15.408(k); See Note 2.)
- (p) 52.215-20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data (See Note 2)
- (q) 52.215-21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications (See Note 2.)
- (r) 52.222-3 Convict Labor (Applicable when performance is in the U.S., Puerto Rico, Northern Mariana Islands, American Samoa Guam or the U.S. Virgin Islands, unless subject to the Walsh-Healey Public Contracts Act purchase is from Federal Prisons Industries, In., or purchase is from any State prison of finished supplies that may be secured in the open market/existing stocks as distinguished from supplies requiring special fabrication, and exceeds the micro-purchase threshold.)
- (s) 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (Applicable as prescribed at FAR 22.305.)
- (t) 52.222-40 Notification of Employee Rights under the National Labor Relations Act (applicable to all subcontracts at all tiers that exceed \$10,000 and will be performed wholly or partially in the US unless exempted by rules, regulations or

orders of the Secretary of Labor pursuant to Section 3 of Exec Order 13496.

(5), see Note 1. Delete paragraph (b) of the clause.)

- (u) 52.222-54 Employment Eligibility Verification Applicable to subcontract for (1) Commercial or non-commercial services (except for commercial services that are part of the purchase of a COTS item or item that would be a COTS item, but for minor modifications, performed by a COTS provider, and normally provided for that COTS item), or construction; (2) Has a value of more than \$3,000, and (3) Includes work performed in the U. S. This clause is effective only for subcontracts under prime contracts which contain this clause.
- (v) 52.223-3 Hazardous Material Identification and Material Safety Data (Applicable if the Contract involves hazardous material. See Notes 2 and 3)
- (w) 52.223-7 Notice of Radioactive Materials (Applicable to Work containing covered radioactive material. Insert "30" in the blank; see Notes 1 and 2.)
- (x) 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Applicable to all subcontracts at all tiers that exceed the micro-purchase threshold)
- (y) 52.225-1 Buy American Act – Supplies (Applicable if the Work contains other than domestic components.)
- (z) 52.225-8 Duty-Free Entry (Applicable if supplies will be imported into the Customs Territory of the United States. In paragraph (c) (1), the notice provision shall be 45 days. (See Notes 3, 5, and 6)
- (aa) 52.227-9 Refund of Royalties (Applicable when reported royalty exceeds \$250; see Notes 1 and 2.)
- (bb) 52.227-10 Filing of Patent Applications – Classified Subject Matter (Applicable if the Work or any patent application may cover classified subject matter.)
- (cc) 52.227-11 Patent Rights – Ownership by the Contractor (Short Form) (Applicable if CONTRACTOR is a small business or nonprofit organization performing experimental or research and development (R&D) work.)
- (dd) 52.228-3 Workers' Compensation Insurance (Defense Base Act)
- (ee) 52.228-4 Workers' Compensation and War-Hazard Insurance Overseas
- (ff) 52.228-5 Insurance – Work on a Government Installation (Applicable if Work performed on government installation. See Note 2)
- (gg) 52.230-2 Cost Accounting Standards (When referenced in the Contract, full CAS coverage applies. In subparagraph (a) (4) (ii) and (a)

- (hh)52.230-3 Disclosure and Consistency of Cost Accounting Practices (When referenced in the Contract, modified CAS coverage applies. In subparagraphs (a) (3) (ii) and (a)(4), see Note 1. Delete paragraph (b) of the clause.)
- (ii) 52.230-6 Administration of Cost Accounting Standards (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)
- (jj) 52.233-3 Protest After Award (In the event Field's customer has directed Field to stop performance of the work under the Prime Contract under which this Contract is issued pursuant to FAR 33.1, Field may, by written order to SELLER, direct SELLER to stop performance of the Work called for by this Contract; "30 days" means "20 days" in paragraph (b)(2); Note 1 applies, except the first time it appears in paragraph (f); in paragraph (f) add "and recovers those costs from Field" after "33.104(h)(1)"; See Note 2.)
- (kk) 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (Applicable if Work performed on government installation. See Note 2)
- (ll) 52.243-6 Change Order Accounting (Applicable only if Prime Contract requires change order accounting. See Note 2; delete reference to the "Disputes" clause in the last sentence)
- (mm) 52.247-63 Preference for U.S.-Flag Air Carriers (Applicable if this Contract involves international air transportation.)
- (nn) 52.252-2 Clauses Incorporated by Reference (Feb 1998) If contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. The full text may be accessed electronically at these addresses:
<http://www.acquisition.gov/far>

F. DFARS Flowdown Clauses

If this Contract is placed under a U.S. Government Department of Defense (DoD) contract, the following additional DFARS clauses apply.

REFERENCE

TITLE

1. The following DFARS clauses apply to this Contract:

- (a) 252.225-7013 Duty-Free Entry
- (b) 252.227-7013 Rights in Technical Data – Non-Commercial Items
- (c) 252.227-7014 Rights in Non-Commercial Computer Software and Non-Commercial Computer Software Documentation

- (d) 252.227-7016 Rights in Bid or Proposal Information
 - (e) 252.227-7019 Validation of Asserted Restrictions – Computer Software
 - (f) 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (For subparagraph (c) (1), see Note 3.)
 - (g) 252.227-7026 Deferred Delivery of Technical Data or Computer Software (See Note 1.)
 - (h) 252.227-7027 Deferred Ordering of Technical Data or Computer Software (See Note 4.)
 - (i) 252.227-7028 Technical Data or Computer Software Previously Delivered to the Government (In this clause, the terms “contract” and “subcontract” shall not change in meaning.)
 - (j) 252.227-7030 Technical Data – Withholding of Payment (See Notes 1 and 2.)
 - (k) 252.227-7037 Validation of Restrictive Markings on Technical Data
 - (l) 252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (In subparagraph (a), see Note 5; in subparagraph (b), see Note 3.)
 - (m) 252.231-7000 Supplemental Cost Principles
 - (n) 252.243-7001 Pricing of Contract Modifications
 - (o) 252.247-7023 Transportation of Supplies by Sea (Substitute the DFARS clause for FAR clause 52.247-64 in all contracts for ocean transportation of supplies. In paragraph (f), delete the reference to the “Prompt Payment” clause; see Notes 1 and 2, except for paragraph (c) of the clause, which shall retain its original meaning.)
 - (p) 252.247-7024 Notification of Transportation of Supplies by Sea (See Note 2.)
2. **The following DFARS clause applies to this Contract if the value of this Contract exceeds \$100,000:**
- (a) 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (In this clause, the terms “contract,” “contractor,” and “subcontract” shall not change in meaning; delete paragraph g; see Note 2.)
3. **The following DFARS clauses apply to this Contract if the value of this Contract equals or exceeds \$550,000:**
- (a) 252.249-7002 Notification of Anticipated Contract Termination or Reduction (See Note 1.)
4. **The following DFARS clause applies to this Contract if the value of this Contract equals or exceeds \$1,000,000:**
- (a) 252.211-7000 Acquisition Streamlining
5. **The following DFARS clauses apply to this Contract only if the stipulation in the relevant parenthetical applies:**
- (a) 252.204-7008 Requirements for Contracts Involving Export-Controlled Items-(Applicable if DFAR 252.204-7008 is in Field prime contract and export-controlled items (hardware, software, or technical data) are involved in performance of the subcontract)
 - (b) 252.211-7007 Reporting of Government Furnished Equipment in the DoD Item Unique Identification (IUID) Registry (Applicable if 52.245-1 applies)
 - (c) 252.215-7000 Pricing Adjustments (Applicable if FAR 52.215-12 or 52.215-13 applies to this Contract.)
 - (d) 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (Applicable if FAR 52.219-9 applies to this Contract; delete subparagraph (g).)
 - (e) 252.223-7001 Hazard Warning Labels (Applies if this Contract requires submission of hazardous material data sheets; see FAR 23.302(c).)
 - (f) 252.223-7002 Safety Precautions for Ammunition and Explosives (Applicable only if the articles furnished under the Contract contain ammunition or explosives, including liquid and solid propellants. See Notes 1, 3, and 5)
 - (g) 252.223-7003 Change in Place of Performance – Ammunition and Explosives (Applicable if DFARS 252.223-7002 applies to this Contract. See Notes 2 and 4)
 - (h) 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives Only applicable if this contract involves arms, ammunition, and explosives.)
 - (i) 252.225-7001 Buy American Act and Balance of Payments Program (Substitute the DFARS clause for FAR clause 52.225-3 in all Contracts for supplies; applicable if the Work contains other than domestic components as defined by this clause.)
 - (j) 252.225-7008 Restriction on Acquisition of Specialty Metals (Applicable if Field award exceeds Simplified Acquisition Level and requires delivery of specialty metals as end items)
 - (k) 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (Applicable if Field award exceeds Simplified Acquisition Level and requires delivery of items @ (2)(i)(ii) of DFAR 225.7003-5)
 - (l) 252.225-7012 Preference for Certain Domestic Commodities (Applicable if Field award exceeds Simplified Acquisition Level)

- (m) 252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (Applicable if Field award exceeds Simplified Acquisition Level and requires delivery of hand tools)
- (n) 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (Applicable if items supplied under this Contract contain ball or roller bearings. See Note 2)
- (o) 252.225-7032 Waiver of United Kingdom Levies – Evaluation of Offers (Applicable if this Contract exceeds \$1 million and is with a United Kingdom firm. See Note 2)
- (p) 252.225-7043 Anti-Terrorism/Force Protection for Defense Contractors Outside the United States (Applies where CONTRACTOR will be performing or traveling outside the United States under this Contract.)
- (q) 252.235-7003 Frequency Authorization (Applicable if this Contract requires developing, producing, constructing, testing, or operating a device requiring a frequency authorization. See Note 2)
- (r) 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System. (Applicable if Contract is subject to Cost Accounting Standards {CAS}).

“Limitation on Payments to Influence Certain Federal Transactions” (52.203-12).

(2) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled “Limitation on Payments to Influence Certain Federal Transactions” (52.203-12) are hereby incorporated by reference in this provision.

(3) *Certification.* CONTRACTOR certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(4) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(5) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

G. Certifications and Representations

1. The clauses listed below contain certifications and representations that are material representations of fact upon which Field will rely in making awards to CONTRACTOR. By submitting its written offer, providing oral offers or quotations at the request of Field, or accepting any Contract, CONTRACTOR certifies to the representations and certifications as set forth in each of the clauses listed below. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), or request for proposal or solicitation (oral or written), issued by Field. CONTRACTOR shall immediately notify Field of any change of status with regard to these certifications and representations.
2. The following clauses of the FAR are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to any order, agreement, or subcontract. In each clause incorporated below, substitute “FIELD” for “Government” and “Contracting Agency” and “FIELD Procurement Representative” for “Contracting Officer” throughout.
 - (a) **FAR 52.203-11, “Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions”.** (Applicable to solicitations and contracts exceeding \$100,000.)
 - (1) *Definitions.* As used in this provision—“Lobbying contact” has the meaning provided at 2 U.S.C. 1602(8). The terms “agency,” “influencing or attempting to influence,” “officer or employee of an agency,” “person,” “reasonable compensation,” and “regularly employed” are defined in the FAR clause of this solicitation entitled

- (b) **The following FAR clauses apply to this Contract if the value of this Contract exceeds \$5,000,000 and the period of performance is more than 120 days:**

(1) 52.203-13 Contractor Code of Business Ethics and Conduct

(2) 52.203-14 Display of Hotline Posters (applies regardless of performance period)

By signing a contract or performing against a contract in which FAR 52.203-13 is applicable:

The contractor hereby certifies that they will comply with all elements of FAR 52.203-13 including timely disclosure, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, and the cognizant Field Procurement Representative whenever, in connection with the award, performance, or closeout of this contract or any subcontract there under, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity

violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

The contractor also certifies that, within 30 days of signing a contract or performing against a contract in which FAR 52.203-13 is applicable, they will establish a written code of business ethics and conduct and will make a copy of the code available to each employee engaged in performance of the contract.

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

(d) FAR 52.222-22, "Previous Contracts and Compliance Reports"

(e) FAR 52.222-25, "Affirmative Action Compliance" .

3. Conflict of Interest

To the best of the Offeror/SELLER's knowledge and belief, there is no actual or potential conflict of interest with respect to the performance of work under this contract or agreement; or, the Offeror/SELLER has notified Field in writing of such a conflict of interest and received written authorization from Field to continue in pursuit of a contract or agreement. If in the performance of a contract or agreement with Field the Offeror/SELLER becomes aware of an actual or potential conflict of interest, the Offeror/SELLER will immediately notify the Procurement Representative responsible for the contract or agreement in question.

4. Disputes

In accordance with the 2010 Department of Defense Appropriations Act, Public Law No. 111-118, Section 8116, SELLER certifies that it will not enter into or take any action to enforce arbitration agreements with any employee or independent contractor performing work related to subcontracts covered by these General Terms, for claims under Title VII of the 1964 Civil Rights Act or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.(Effective June 17, 2010; Applicable to subcontracts in excess of \$1 million)

5. Anti-Corruption Compliance

SELLER agrees that neither it nor any related person shall, in the name of, on behalf of, or for the benefit of Field or any of its officers, directors or employees, offer, pay, promise to pay, or authorize the payment of any money, or offer, give, promise to give, or authorize the giving of anything of value to anyone while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly to such person for the purposes of: (i) influencing any act or decision; (ii) inducing such person to use his or its influence with a third party thereof to affect or influence any act or decision of such third party, in order to assist the obtaining or retaining of business for or with, or directing business to Field or (iii) securing any improper advantage.