

## CAES

### GENERAL PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT

#### 1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- (b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
- (c) Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment hereof are hereby objected to by BUYER and have no effect unless expressly accepted in writing by BUYER.
- (d) The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.

#### 2. APPLICABLE DEFINITIONS

- (a) "BUYER" means the CAES legal entity with whom SELLER is contracting.
- (b) BUYER's "Procurement Representative" means the person authorized in the procurement organization to administer and/or execute this Contract.
- (c) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a purchase order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- (d) "Customer" means the entity with whom BUYER has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work. For purposes of paragraphs 5 (BUYER's PROPERTY) and 17 (INDEPENDENT CONTRACTOR RELATIONSHIP), "Customer" shall include any higher tier contractor(s) and, if applicable, the U.S. Government.
- (e) "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- (f) "FAR" means the Federal Acquisition Regulations, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (g) "SELLER" means the party identified on the face of this Contract with whom BUYER is contracting.
- (h) "Work" means all required labor, articles, materials, supplies, goods and services constituting the subject matter of this Contract.

#### 3. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) face of the Purchase Order and/or Task Order, release document, or schedule (including any continuation sheets), as applicable, including any special terms and conditions; (2) this General Provisions for Subcontracts/Purchase Orders; (3) any Appendix 1 FAR and DFARS Flowdown Provisions invoked in this Contract; and (4) the Statement of Work.

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#### **4. DELIVERY**

- (a) SELLER's timely performance is a critical element of this Contract.
- (b) Except in the event of Force Majeure, Seller recognizes that if delivery is not made in accordance with the contractual delivery dates Buyer shall suffer loss or damage which will be difficult to quantify. Accordingly, the Parties agree that liquidated damages are a fair and reasonable estimate of actual damages for late deliveries and are without prejudice to any other remedy that Buyer may have. The amount of liquidated damages that Seller shall pay Buyer is ten percent (10%) of the total price of the delayed Work per day. Buyer may deduct any amounts that Buyer is required to pay Seller or require Seller to pay such liquidated damages thirty (30) days from receipt of invoice.
- (c) Unless advance shipment has been authorized in writing by BUYER, BUYER may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (d) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify BUYER, in writing, giving pertinent details. This notification shall not change any Contract delivery schedule.
- (e) In the event of a termination or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by BUYER's Procurement Representative.

#### **5. FORCE MAJEURE**

Neither party shall be held responsible for any delay or failure in performance of any part of this Contract to the extent such delay or failure is caused by fire, flood, earthquake, strike, civil, governmental or military authority, act of God, or other similar causes beyond its reasonable control and without the fault or negligence of the delayed or non-performing party or its subcontractors. SELLER's liability for loss or damage to BUYER's material in SELLER's possession or control shall not be modified by this clause. SELLER shall notify BUYER in writing within ten (10) days after the beginning of any such event and provide a recovery plan. In all cases, Seller shall use reasonable efforts to avoid or minimize all such delays or failures in performance, including exercising work-around plans or obtaining the Goods from other sources. When a SELLER's delay or non-performance continues for a period of at least fifteen (15) days, BUYER may terminate, at no charge, this Contract.

#### **6. PAYMENTS, TAXES, AND DUTIES**

- (a) Unless otherwise provided, terms of payment shall be net sixty (60) days from the latest of one of the following:
  - (i) BUYER's receipt of SELLER's proper invoice;
  - (ii) scheduled delivery date of the Work; or
  - (iii) actual delivery of the Work.
- (b) Each payment made shall be subject to reduction to the extent of amounts which are found by BUYER not to have been properly payable and shall also be subject to reduction for overpayments. SELLER shall promptly notify BUYER of any such overpayments and remit the amount of the overpayment except as otherwise directed by BUYER.
- (c) BUYER shall have a right of setoff against payments due or at issue under this Contract or any other Contract between BUYER's affiliated entities and SELLER's affiliated entities.
- (d) Payment shall be deemed to have been made as of the date of mailing payment or electronic funds transfer.

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(e) Unless this Contract specifies otherwise, the price of this Contract includes, and SELLER is liable for and shall pay, all taxes, impositions, charges, customs duties or tariffs and similar fees imposed by any government on or measured by this Contract, except for applicable sales and use taxes that are separately stated on SELLER's invoice. Prices shall not include any taxes, impositions, charges or exactions for which BUYER has furnished a valid exemption certificate or other evidence of exemption. To the extent that BUYER is required to do so under applicable law or tax regulations, BUYER may deduct from any payments due to SELLER pursuant to this Contract such taxes as BUYER is required to withhold from such payments and pay such taxes to the relevant tax authorities; provided, however, that BUYER provides SELLER with relevant tax receipts or other suitable documentation evidencing the payment of such taxes promptly after such taxes are paid.

## **7. QUALITY CONTROL SYSTEM**

(a) SELLER agrees to provide and maintain a quality control system to an industry recognized quality standard and to provide access to SELLER's facilities at all reasonable times by BUYER, authorized Customer representatives, and regulatory authorities. Right of access shall include the applicable areas of all facilities, at any level of the supply chain, involved in this Contract and to all applicable records. SELLER agrees to include, and to require its subcontractors to include, the substance of this paragraph, including this sentence, in each of its subcontracts under this Contract. Further, SELLER shall be in compliance with any other specific quality requirements identified in this Contract.

(b) Records of all quality control inspection work by SELLER shall be kept complete and available to BUYER and its Customer.

(c) SELLER agrees to notify BUYER's Procurement Representative of nonconforming material that does not meet the requirements of this Contract that cannot be reworked to compliance. Written approval will be required by BUYER's Procurement Representative prior to supplier shipment of nonconforming material to BUYER.

(d) SELLER agrees to promptly notify BUYER's Procurement Representative in writing detailing any changes in product and/or process, changes of suppliers, and changes of manufacturing facility locations for products under contract and in process prior to making the change and, when required by BUYER, obtain written approval before proceeding with implementing such changes for work in support of the purchase order(s).

(e) SELLER shall make no changes to the products being supplied under this purchase order, or its parts, processes, suppliers used, or manufacturing locations without BUYER'S Procurement Representative prior written approval. Additionally, before accepting this purchase order, SELLER shall provide written notification to BUYER's Procurement Representative advising whether or not there have been any changes to the products being supplied, its parts, processes, suppliers used, or manufacturing locations since this hardware was last procured by BUYER's Procurement Representative. The SELLER shall identify in detail any such changes, and obtain written approval of such changes from BUYER's Procurement Representative before proceeding with work in support of the purchase order. SELLER shall indemnify BUYER for all costs, including BUYER's and BUYER'S customer costs, associated with SELLER proceeding with work prior to receiving written approval from BUYER's Procurement Representative of all such changes described herein.

## **8. INSPECTION AND ACCEPTANCE**

(a) All Work shall be subject to inspection and test at all reasonable times and places by BUYER or BUYER's customer before, during, and after performance and delivery. BUYER may require SELLER to repair, replace or reimburse the purchase price of rejected Work or BUYER may accept any Work and, upon discovery of nonconformance, may reject or keep and rework any such Work not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging, and/or re-inspection by BUYER shall be at SELLER's expense. BUYER's acceptance of Work shall not be deemed to diminish

BUYER's rights or be final or binding on BUYER if latent defects, fraud, or misrepresentation on the part of SELLER exists.

(b) If inspection and test are made on the premises of SELLER or SELLER's lower-tier subcontractors, SELLER shall furnish, without additional charge, all reasonable facilities, information, and assistance necessary for the safe and convenient inspection and tests required by BUYER inspectors in the performance of their duty.

(c) Neither BUYER's inspection nor BUYER's failure to inspect shall relieve SELLER of any responsibility to perform according to the terms of this Contract. Notwithstanding any other provision of this Contract, the risk of loss of, or damage to, nonconforming Work remains with SELLER until cure or acceptance.

## **9. 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. At BUYER's option, SELLER shall promptly repair, replace, or reperform Work that does not, in BUYER's discretion, comply with the warranty provided for in this section. Transportation of replacement Work, return of nonconforming Work, and reperformance of Work shall be at SELLER's expense. If repair, or replacement, or reperformance of Work is not timely, BUYER may elect to return, reperform, repair, replace, or reprocure the non-conforming Work at SELLER's expense. All warranties shall run to BUYER and its customers.

## **10. OBSOLESCENCE**

(a) "Obsolescence" is the occurrence of elimination of production or support of any material or product as a result of technological improvements, design changes, or infeasibility of continuance to manufacture a product or component.

(b) Seller shall maintain an obsolescence program that will (1) monitor potential obsolescence; (2) report any possible obsolescence 12 months prior to the issue arising; (3) provide an alternative material or product.

(c) SELLER shall provide BUYER with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.

## **11. PACKING AND SHIPMENT**

(a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

(b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the BUYER's Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

(c) Unless otherwise specified, delivery shall be FCA Origin.

## **12. CHANGES**

BUYER shall have the right by written notice to suspend or stop work or to make changes from time to time in the services to be rendered or the Work to be furnished by SELLER hereunder or the delivery schedule. If any written change under this section causes an increase or decrease in the estimated costs or the time required for performance of the Contract, an equitable adjustment to the Contract price and/or delivery schedule may be made and the Contract modified in writing accordingly.

Any claim by SELLER for adjustment must be asserted to BUYER within fifteen (15) days from date of CAES PRIVATE

BUYER issued change order. SELLER's claim for adjustment must be submitted in writing in the form of a complete change proposal, fully supported by factual information to BUYER's Representative within thirty (30) days from the date BUYER issued the change order. 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. If Buyer and Seller are unable to agree upon an equitable adjustment in the event of any change directed by BUYER, the matter will be resolved in accordance with the Disputes provision of this Contract. Nothing contained herein, including failure of the parties to agree upon any equitable adjustment to be made under this provision, shall excuse SELLER from proceeding without delay with the Contract as changed by BUYER's written direction.

### **13. CONTRACT DIRECTION**

- (a) Only the BUYER's Procurement Representative has authority to make changes in, to amend, or to modify this Contract on behalf of BUYER. Such changes, amendments or modifications must be in writing.
- (b) Program, operations, engineering, technical, or other personnel may from time to time render assistance, give technical advice, discuss, or exchange information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- (c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the BUYER's Procurement Representative.

### **14. COUNTERFEIT PARTS PREVENTION**

- (a) Definitions for purposes of this Contract:
  - i. "Counterfeit Parts" shall mean an unauthorized copy, imitation, substitute, or modified part, component, module, or assembly whose origin, material, source of manufacture, performance, or characteristics are misrepresented as a specified genuine part of an original or authorized manufacturer. Counterfeit Parts includes, but is not limited to, (A) parts that have been re-marked to disguise them or falsely represent the identity of the manufacturer, (B) the false identification of serial number, date code, documentation, or performance characteristics, (C) defective parts and/or surplus material scrapped by the original manufacturer, and (D) previously used parts pulled or reclaimed and provided as "new".
  - ii. As used herein, "authentic" shall mean (A) genuine; (B) from the legitimate source claimed or implied by the marking and design of the product offered; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.
  - iii. "Independent Distributor" shall mean a person, business, or firm that is neither authorized nor franchised by an Original Component Manufacturer ("OCM") to sell or distribute the OCM's products but which purports to sell, broker, and/or distribute such OCM products. Independent Distributors are also referred to as unfranchised distributors, unauthorized distributors, and/or brokers.
- (b) SELLER represents and warrants that only new and authentic materials are used in Work required to be delivered to BUYER and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by BUYER. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, SELLER shall only purchase authentic parts/components directly from the Original Equipment Manufacturers ("OEMs")/OCMs or through the OEM's/OCM's authorized distribution chain. SELLER must make available to BUYER, at BUYER's request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from independent distributors is not authorized unless first approved in writing by BUYER's Procurement

Representative. SELLER must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. BUYER approval of SELLER request(s) does not relieve SELLER's responsibility to comply with all Contract requirements, including the representations and warranties in this subparagraph. A breach of this paragraph/clause or any subparagraph herein shall be considered a material breach of this Contract.

(c) In the event that Work delivered under this Contract constitutes or includes Counterfeit Parts, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable and indemnify BUYER for all costs relating to the removal and replacement of Counterfeit Work, including without limitation BUYER's and higher tier customer's costs of removing Counterfeit Work of installing replacement materials and of any testing necessitated by the reinstallation of Work after Counterfeit Work have been exchanged. The remedies contained in this paragraph are in addition to any remedies BUYER may have at law, equity or under other provisions of this Contract.

(d) SELLER shall maintain a documented system (policy, procedure, or other documented approach) which includes training of personnel, inspection and testing of electronic parts, counterfeit parts proliferation, traceability, and use of OEMs/OCMs or provides for prior notification and customer approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. SELLER shall provide copies of such documentation for its system for BUYER's inspection upon BUYER request.

(e) SELLER shall flow the requirements of this clause to its subcontractors and suppliers at any tier for the performance of this Contract. If SELLER is providing electronic components/devices only, the following certification applies: Certification of Origin of Product: Acceptance of this Contract constitutes confirmation by SELLER that it is either the Original Equipment Manufacturer (OEM), Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. SELLER further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM is available upon request. If SELLER is not the OEM/OCM or a franchised or authorized distributor, SELLER confirms by acceptance of this Contract that the product(s) supplied to BUYER has been procured from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM. The supplier further warrants that OEM/OCM acquisition traceability documentation is accurate and available to BUYER upon BUYER's request. A breach of this paragraph/clause or any subparagraph herein shall be considered a material breach of this Contract.

## **15. PLACE OF PERFORMANCE**

If SELLER intends to change the place of performance of Work under this Contract from the place(s) identified in SELLER's proposal, SELLER shall provide prior written notice to BUYER. Notification of changes to the place of performance from within the United States to a location outside the United States shall be provided by SELLER to BUYER at least six months in advance.

## **16. CUSTOMER COMMUNICATION**

SELLER shall not communicate with BUYER's customer or higher tier customer in connection with this Contract, except as expressly permitted by BUYER. This clause does not prohibit SELLER from communicating with the U.S. Government with respect to (1) matters SELLER is required by law or regulation to communicate to the Government, (2) fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information, (3) any matter for which this Contract, including a FAR or FAR Supplement clause included in this Contract, provides for direct communication by SELLER to the Government, or (4) any material matter pertaining to payment or utilization.

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SELLER shall promptly notify BUYER of any communications initiated by the Customer, any higher tier contractor(s), or the U. S. Government, that affects the applicable Prime Contract, this Contract, and/or any related contract.

## **17. CONFIDENTIAL INFORMATION**

(a) The provisions of this section regarding Confidential Information (as defined herein) shall be in addition to the terms of any separate, written confidentiality agreement between the Parties. In the event of any conflict or inconsistency between the provisions of this section and the terms of any such separate agreement, the terms of the separate, written confidentiality agreement shall prevail.

(b) As used herein, "Confidential Information" means all information disclosed in connection with the Contract in any manner (including, without limitation, electronically, in writing, orally, or by inspection) such that a reasonable person would understand its confidential or proprietary nature, without any requirement that such information be marked or otherwise designated as such, including, without limitation, any ideas; business methods; prices; business, financial, marketing, development, or manpower plans; customer lists or details; computer systems and software; know-how; or any other information connected with the products or services manufactured, marketed, provided or obtained or concerning Buyer's relationships with actual or potential clients, customers or suppliers which, if disclosed, will be liable to cause harm. Notwithstanding the above, the restrictions of this section shall not apply to information that: (i) was independently developed without any use of Confidential Information; (ii) becomes known without restriction, from a third party without breach of these Terms and Conditions and who had a right to disclose it; (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Parties; or (iv) was rightfully known without restriction, at the time of disclosure.

(c) Except as otherwise specifically authorized herein, the Parties shall:

(i) Retain in strict confidence all Confidential Information;

(ii) Use Confidential Information solely in furtherance of rights and obligations under the Contract; and

(iii) Not disclose any Confidential Information to any third party other than those of Parties' affiliated entities, employees, agents, or consultants that have a bona fide need to know such Confidential Information in order to facilitate performance hereunder.

(d) If any Confidential Information is required to be disclosed by law, whether pursuant to any statute, rule, or regulation of any federal, state, or local governmental agency or any order of any federal, state, or local administrative body or court, each Party shall: (i) immediately notify the other Party of such required disclosure; and (ii) provide the other Party with the opportunity to contest or seek to limit such required disclosure, including, without limitation, using commercially reasonable efforts to aid in achieving same.

(e) All Confidential Information disclosed hereunder shall remain the property of the disclosing Party.

(f) Buyer shall protect Confidential Information from disclosure to third parties with at least the same degree of care with which each Party guards its own confidential information, but in no event with less than reasonable care.

## **18. INFORMATION ASSURANCE**

(a) Information provided by BUYER to SELLER remains the property of BUYER. SELLER shall not use any BUYER provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of BUYER. SELLER shall maintain data protection processes and systems sufficient to adequately protect BUYER provided information and comply with any law or regulation applicable to such information.

(b) If SELLER becomes aware of any compromise of information used in the performance of this Contract or provided by BUYER to SELLER, its officers, employees, agents, suppliers, or subcontractors (an "Incident"), SELLER shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including notification within seventy-two (72) hours to BUYER after learning of the Incident. As used in this clause, "compromise" means that information has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the Work. SELLER shall provide reasonable cooperation to BUYER in conducting any investigation regarding the nature and scope of any Incident. Any costs incurred in investigating or remedying Incidents shall be borne by SELLER.

(c) Any BUYER provided information identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) if transmitted via the Internet, or (ii) during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users.

(d) The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.

(e) DFARS 252.204-7012 applies to covered defense information if said clause is included in this Contract

## **19. INTELLECTUAL PROPERTY**

(a) SELLER warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Except to the extent that the U.S. Government assumes liability therefor, SELLER shall defend, indemnify, and hold harmless BUYER, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

(b) SELLER's obligations under paragraph (a) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to BUYER's Prime Contract for infringement of a U.S. patent and BUYER and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorney's fees by a third party.

(c) In addition to the Government's rights in data and inventions, SELLER agrees that BUYER, in the performance of its prime or higher tier contract obligations, shall have an unlimited, irrevocable, paid-up, royalty-free right to (1) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, transfer computer software to the Government and the Government's end customer, and prepare derivative works, as well as any and all, inventions, discoveries, improvements, maskworks and patents as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, generated or delivered in performance of this Contract, and (2) authorize others to do any, some or all of the foregoing.

(d) Items delivered under this Contract such as operation and maintenance manuals shall be delivered with the right to copy for internal use and/or copy and deliver with the right to use to BUYER's customers.

(e) The tangible medium storing copies of all reports, memoranda or other materials in written form including machine readable form, prepared by SELLER and furnished to BUYER pursuant to this Contract shall become the sole property of BUYER. Nothing in this paragraph (e) assigns ownership of SELLER's



intellectual property included on such medium to BUYER.

(f) If applicable, information, technical data, and computer software provided by BUYER to SELLER remains the property of the BUYER. SELLER shall have the right to use the information provided by BUYER only to the extent needed to perform its contractual obligations to BUYER under this Contract. SELLER shall not reverse engineer any information, technical data, or computer software provided by BUYER to SELLER.

(g) No other provision in this Contract, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties under this clause.

## **20. INSURANCE/ENTRY ON BUYER OR CUSTOMER PROPERTY**

(a) SELLER shall maintain the following insurances: 1) worker's compensation (with a waiver of subrogation in favor of BUYER), 2) product liability, 3) automobile liability, 4) comprehensive general liability (bodily injury and property damage) insurance in amounts reasonably acceptable to BUYER, and such other insurance as BUYER may reasonably require. SELLER shall provide BUYER thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name BUYER as an additional insured for the duration of this Contract. Insurance maintained pursuant to this section shall be considered primary as respects the interest of BUYER and is not contributory with any insurance that BUYER may carry. "Subcontractor" as used in this section shall include SELLER's subcontractors at any tier.

(b) SELLER shall ensure that personnel assigned to work on BUYER's or Customer's premises comply with any on-premises guidelines. Unless otherwise authorized in writing by BUYER, SELLER's personnel assigned to work on BUYER's or Customer's premises shall, while on BUYER's or Customer's premises, (i) not bring weapons of any kind; (ii) not manufacture, sell, distribute, possess, use, or be under the influence of controlled substances or alcoholic beverages; (iii) not possess hazardous materials of any kind; (iv) remain in authorized areas only; and (v) not solicit BUYER employees for employment.

(c) All SELLER personnel, property, and vehicles entering or leaving BUYER's or Customer's premises are subject to search.

(d) SELLER shall promptly notify BUYER and provide a report of any and all physical altercations, assaults or harassment, and accidents or security incidents involving death, personal injury or loss of or misuse of or damage to BUYER's or Customer's property, while on BUYER or its Customer's premises.

(e) BUYER may, at its sole discretion, remove or require SELLER to remove any specified employee of SELLER from BUYER's or Customer's premises and request that such employee not be reassigned to any BUYER or Customer premises under this Contract. Any costs arising from or related to removal of SELLER's employee shall be borne solely by SELLER and not charged to this Contract.

## **21. INDEPENDENT CONTRACTOR RELATIONSHIP**

(a) SELLER's relationship to BUYER shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between BUYER and SELLER or BUYER and SELLER personnel. SELLER personnel engaged in performing Work under this Contract shall be deemed employees of SELLER and shall not for any purposes be considered employees or agents of, BUYER. SELLER assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. BUYER assumes no liability for SELLER personnel.

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(b) Nothing contained in this Contract shall be construed as granting to SELLER or any personnel of SELLER rights under any BUYER benefit plan.

(c) SELLER personnel: (i) will not remove BUYER or its Customer's assets from BUYER's or Customer's premises without BUYER's authorization; (ii) will use BUYER or Customer assets only for purposes of this Contract; (iii) will only connect with, interact with or use BUYER's computer networks and equipment, communications resources, programs, tools or routines as BUYER agrees, all at SELLER's risk and expense, and then only in compliance with applicable policies; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. BUYER may monitor any communications made over or data stored in BUYER's computer networks and equipment or communications resources.

## **22. INDEMNITY AGAINST CLAIMS**

(a) SELLER shall keep Work supplied by it hereunder and BUYER premises free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance of this Contract by SELLER or by any of its vendors or subcontractors. SELLER may be required by BUYER to provide a satisfactory release of liens as a condition of final payment.

(b) SELLER shall defend, indemnify, and hold harmless BUYER, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

## **23. APPLICABLE LAWS**

(a) This Contract and any matter arising out of or related to this Contract shall be governed by the laws of the state of New York, without regard to its conflicts of laws provisions, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal government.

(b) SELLER, in the performance of this Contract, shall comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state and/or federal governmental authority. SELLER, at its expense, shall provide reasonable cooperation to BUYER in conducting any investigation regarding the nature and scope of any failure by SELLER or its personnel to comply with applicable local, state, and federal laws, orders, rules, regulations, and ordinances that may affect the performance of SELLER's obligations under this Contract.

(c)(1) If: (i) BUYER's contract price or fee is reduced; (ii) BUYER's costs are determined to be unallowable; (iii) any fines, penalties, withholdings, or interest are assessed on BUYER; or (iv) BUYER incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, BUYER may proceed as provided for in (3) below.

(2) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors: (i) submit and/or certify cost or  
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pricing data that are defective; (ii) with notice of applicable cutoff dates and upon BUYER's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on BUYER's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or, if (v) the U.S. Government alleges any of the foregoing; and, as a result, (A) BUYER's contract price or fee is reduced; (B) BUYER's costs are determined to be unallowable; (C) any fines, penalties, withholdings, or interest are assessed on BUYER; or (D) BUYER incurs any other costs or damages; BUYER may proceed as provided for in (3) below.

(3) Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraphs (1) and (2) above, BUYER may make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded. In the case of withholding(s), BUYER may withhold the same amount from SELLER under this contract.

(d) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to BUYER hereunder is, as applicable, on the Toxic Substances Control Act (TSCA) Chemical Substances inventory compiled by the United States the Environmental Protection Agency pursuant to TSCA (15 U.S.C. Sec. 2607(b)) as amended and implemented in 40 CFR Part 710; and is designated as "active" pursuant to the TSCA Inventory Notification Rule (codified by amendments to 40 CFR Part 710 effective August 11, 2017). SELLER shall make available to BUYER all Safety Data Sheets for any material provided to BUYER, or brought or delivered to BUYER or its customer's premises in the performance of this Contract, as required by applicable law such as the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

(e) Work delivered by SELLER under this Contract may be incorporated into deliverable goods for use in the European Economic Area (EEA) and subject to the European Union Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH); the Classification, Labeling and Packaging Regulation (EC) No. 1272/2008 (CLP); and the Biocidal Products Regulation (EU) 528/2012 (BPR). (1) SELLER represents and warrants that the Work and any substances contained therein are not prohibited or restricted by, and are supplied in compliance with REACH, CLP, and BPR, and that no current requirement in REACH, CLP, or BPR prevents the sale or transport of SELLER's Work or substances in SELLER's Work in the EEA, and that all such Work and substances have been pre-registered, registered, reported, approved, and/or authorized as and to the extent required by REACH, CLP, and BPR. (2) SELLER shall timely respond to any request from BUYER with all relevant information on the Work so that the intents of REACH, CLP, and BPR are met for communicating with downstream users (e.g., as defined in article 3(13) of REACH [any person established in the EEA using substances in the course of that person's industrial or professional activities; the definition does not include the manufacturer, importer, distributor, or consumer]), and in any case, SELLER shall provide all information necessary for BUYER and/or any downstream user to timely and accurately fulfill their obligations under REACH, CLP, and BPR. (3) SELLER shall bear all costs, charges and expenses related to pre-registration, registration, evaluation, authorization, reporting, and approval under REACH, CLP, and BPR.

(f) Equal Opportunity for Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) Protected Veterans. (1) The clause at 41 CFR 60-300.5(a) is incorporated herein by reference. The clause applies if this Contract is valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA. As used in the clause, "contractor" means "SELLER." This clause applies in addition to FAR 52.222-35 if included in this Contract. (2) BUYER and SELLER 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.

(g) Equal Opportunity for Workers with Disabilities. (1) The clause at 41 CFR 60-741.5 is incorporated herein by reference. The clause applies if this Contract is in excess of the threshold specified in FAR 22.1408(a) on the date of subcontract award unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended. As used in the clause, "contractor" means "SELLER." This clause applies in addition to FAR 52.222-36 if included in this Contract. (2) BUYER and SELLER shall abide by the requirements of 41 CFR 60- 741.5(a). This regulation prohibits discrimination against qualified 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.

## **24. DISPUTES/JURY WAIVER**

(a) All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. **Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Contract.**

(b) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by BUYER.

## **25. ASSIGNMENT**

Any assignment of SELLER's Contract rights or delegation of SELLER's duties shall be void, unless prior written consent is given by BUYER. A direct or indirect change of control of SELLER shall be considered an assignment for purposes of this clause. Prior to a potential change in control of SELLER and at least ninety (90) days prior to the proposed effectiveness of such change in control, SELLER will promptly notify BUYER in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as BUYER may request, consistent with applicable law and confidentiality restrictions.

## **26. TERMINATION FOR CONVENIENCE**

(a) BUYER may, by written notice, terminate this Contract for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default. In the event of partial termination, SELLER is not excused from performance of the non-terminated balance of work under this Contract.

(b) In the event of termination for convenience by BUYER, SELLER shall be reimbursed for actual, reasonable, substantiated and allocable costs, plus a reasonable profit for work performed to the date of termination. Any termination settlement proposal shall be submitted to BUYER promptly, but no later than thirty (30) days from the effective date of the termination. In no event shall the amount of any settlement be in excess of this Contract value. BUYER may take immediate possession of all Work, complete or incomplete, upon written notice of termination to SELLER.

## **27. TERMINATION FOR DEFAULT**

(a) BUYER may, by notice in writing, terminate this Contract in whole or in part at any time for SELLER's (i) breach of any one or more of its terms, (ii) failure to deliver Work within the time specified by this Contract or any written extension, (iii) failure to make progress so as to endanger performance of this Contract, or (iv) failure to provide adequate assurance of future performance. BUYER may also terminate this Contract in whole or in part in the event of SELLER's suspension of CAES PRIVATE

business, insolvency, appointment of a receiver for SELLER's property or business, or any assignment, reorganization or arrangement by SELLER for the benefit of its creditors. In the event of partial termination, SELLER is not excused from performance of the non-terminated balance of work under this Contract.

(b) In the event of SELLER'S default hereunder, BUYER may exercise any or all rights and remedies accruing to it, both at law or in equity.

(c) If this Contract is terminated for default, BUYER may require SELLER to transfer title to, and deliver to BUYER, as directed by BUYER, any (1) completed Work, and (2) partially completed Work and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that SELLER has specifically produced or acquired for the terminated portion of this Contract. Upon direction of BUYER, SELLER shall also protect and preserve property in its possession in which BUYER has an interest.

## **28. EXPORT CONTROL**

(a) SELLER warrants and represents that it shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the International Traffic in Arms Regulation (ITAR), 22 CFR 120 et seq., and the Export Administration Regulations (EAR), 15 CFR 730-774. SELLER shall obtain all required export licenses or agreements necessary to perform SELLER's Work, as applicable.

(b) Without limiting the foregoing, SELLER shall not transfer any export-controlled item, data or services, to include transfer to a person who is not a "U.S. Person" as defined in the ITAR (22 CFR. 120.15), without an approved authorization from the United States Government. The restrictions on the transfer of export-controlled data apply equally to data furnished by BUYER and to any such data incorporated in documents generated by a Subcontractor. Additionally, no disclosure of data furnished by BUYER can be made unless and until BUYER has considered the request and provided its written approval through contractually authorized channels. All Subcontractors will strictly comply with the conditions in any such approval and in the export license or other Government authorization for such disclosure.

(c) Further, a United States Government authorization shall be obtained by SELLER prior to the transfer of any export-controlled item, data or services to any U.S. Person that is employed by any "Foreign person" within the meaning of 22 CFR 120.16.

(d) SELLER shall notify BUYER if any use, sale, import or export by BUYER of Work to be delivered under this Contract is restricted by any export control laws or regulations applicable to SELLER.

(e) SELLER shall immediately notify BUYER's Procurement Representative if SELLER is listed on any Restricted Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.

(f) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it maintains an effective export/import compliance program in accordance with the ITAR & EAR and it is registered with the United States Department of State, Office of Defense Trade Controls as required by the ITAR. SELLER agrees to furnish proof of such registration if requested.

(g) SELLER is responsible for determining the applicable Export Control Classification Numbers (ECCN) or United States Munitions List (USML) categories for products delivered under this contract. SELLER agrees to include all applicable ECCN or USML categories on all Sales and Shipping documents or provide such information upon request from BUYER.

(h) SELLER is responsible for determining the applicable Harmonized Tariff Schedule (HTS) or Schedule B, and the Country of Origin (COO) for products delivered under this contract. SELLER agrees to include all applicable HTS or Schedule B categories, as well as applicable COO's on all

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Sales and Shipping documents and provide such information upon request from BUYER. SELLER can furnish this information on the Supplier Export Questionnaire.

(i) Where SELLER is a signatory under a BUYER export license or export agreement (e.g. TAA, MLA), SELLER shall provide prompt notification to BUYER's Procurement Representative in the event of changed circumstances affecting said license or agreement.

(j) SELLER shall indemnify, hold harmless and, at BUYER's election, defend BUYER, its directors, officers, employees, and agents from and against all losses, costs, claims, causes of action, damages, liabilities and expense, including, but not limited to, reasonable attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from or related to any act or omission of SELLER, its directors, officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this paragraph 26. SELLER shall include the requirements of this paragraph 26 in all agreements with lower tier subcontractors and suppliers. (i) Failure of the United States Government or any other government to issue any required export or import license, or withdrawal/termination of a required export or import license by the United States Government or any other government, shall relieve BUYER of its obligations under this Contract. Provided SELLER has diligently pursued obtaining such license and, through no fault of SELLER, such license has been denied, withdrawn, or terminated, SELLER shall also be relieved of its obligation under this Contract. In either event, this Contract may be terminated by BUYER without additional cost or other liability.

(k) If the technical data required to perform this Contract is subject to the ITAR, SELLER shall comply with the following: (1) The technical data shall be used only in performance of Work required by this Contract; (2) The data shall not be disclosed to any other person, including lower-tier subcontractors, unless said person is expressly authorized pursuant to an export license or export agreement. The restrictions on the disclosure of export-controlled data apply to both data furnished by BUYER and to any such data incorporated in documents generated by a Subcontractor; (3) Any rights in the data may not be acquired by SELLER or any other Non-U.S. Person; and (4) SELLER shall return, or at BUYER's direction, destroy all of the technical data exported to SELLER pursuant to this Contract upon fulfillment of its terms; (5) Unless otherwise expressly directed by BUYER, SELLER shall deliver the Work only to BUYER or to an agency of the U.S. Government.

## **29. GOVERNMENT CONTRACTS**

In the event that the Work or Services being acquired hereunder are for ultimate sale to the United States Government, then BUYER's Appendix 1: FEDERAL ACQUISITION REGULATION (FAR) AND DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) FEDERAL ACQUISITION REGULATION (FAR) AND DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) FLOWDOWN PROVISIONS FOR FIXED PRICE SUBCONTRACTS/PURCHASE ORDERS FOR NON-COMMERCIAL ITEMS UNDER A UNITED STATES DEPARTMENT OF DEFENSE PRIME CONTRACT are incorporated in this Contract.

## **30. PRIORITY RATING**

If this Contract contains a DPAS rating, this Contract is a "rated order" certified for national defense, emergency preparedness, and energy program use, and SELLER shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 C.F.R. Part 700).

## **31. BUYER'S PROPERTY**

(a) All drawings, tools, jigs, dies, fixtures, materials, and other property supplied or paid for by BUYER (BUYER's Property) shall be and remain the property of BUYER. If SELLER fails to return such 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 trespass or damages of any sort. Unless previously authorized in writing by BUYER's Procurement Representative, BUYER's Property shall be used only for the performance of this Contract.

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(b) Title to BUYER's Property shall remain with BUYER or its Customer as applicable. SELLER shall clearly mark (if not so marked) all BUYER's Property to show its ownership.

(c) All property furnished by BUYER to SELLER shall be supplied in "as-is" condition unless otherwise expressly agreed in writing. SELLER shall have the obligation to maintain any and all property furnished by BUYER to SELLER and all property to which BUYER acquires an interest by this Contract. Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify BUYER of, any loss or damage to BUYER's Property while in SELLER's care, custody, or control. Without additional charge, SELLER shall manage, maintain, and preserve BUYER's Property in accordance with good commercial practices.

(d) SELLER shall maintain adequate insurance as is custom in the industry to cover BUYER's Property against all loss or damage. Upon request, SELLER shall provide BUYER with adequate proof of insurance against such risk of loss or damage.

(e) Work made in accordance with BUYER's specifications and drawings shall not be furnished or quoted by SELLER to any other person, company, or concern without BUYER's prior written consent.

(f) SELLER shall clearly mark, maintain in inventory, and keep segregated or identifiable all of BUYER's property. At BUYER's request, and/or upon completion of this Contract SELLER shall submit, in an acceptable form, inventory lists of BUYER's Property and shall deliver or make such other disposal as may be directed by BUYER.

(g) The Government Property clause FAR 52.245-1 Alt 1 shall apply and govern with respect to U.S. Government furnished property, or property to which the U.S. Government may take title under this Contract.

### **32. MAINTENANCE OF RECORDS**

(a) SELLER shall maintain complete and accurate records in accordance with generally accepted accounting principles and good commercial practices to substantiate SELLER's performance hereunder. SELLER shall retain such records for ten (10) years from final payment of this Contract, unless another period is specified under this Contract.

(b) BUYER shall have access to such records, and any other records SELLER is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for so long as such records are required to be retained. Audit rights shall be available to BUYER on all performance related reports and other records, except records pertaining to proprietary indirect cost data. Audit of any proprietary indirect cost data may be accomplished through the responsible DCAA representative or a mutually agreeable third party auditor from a nationally recognized firm of certified public accountants.

### **33. ELECTRONIC CONTRACTING**

BUYER and SELLER agree that if this Contract, or any Purchase Order, ancillary agreement, or correspondence is transmitted electronically, neither BUYER nor SELLER shall contest the validity thereof, on the basis that this Contract, or the Purchase Order, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature or it was generated automatically, without human intervention by a system intended for the purposes of generating same.

### **34. RELEASE OF INFORMATION**

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

### **35. SELLER BUSINESS SYSTEMS**

"SELLER Business Systems" as used in this clause means SELLER's material management and accounting system, cost estimating system, accounting system, earned value management system, property management system, and purchasing system. If SELLER's Business Systems are reviewed and approved by a Government agency, SELLER shall provide prompt notice to BUYER whenever there is a material change in the status of the Government's approval or determination of adequacy of any of SELLER's Business Systems.

### **36. RESPONSIBLE SUPPLY CHAIN MANAGEMENT**

The SELLER recognizes its operations and activities have social, economic, and environmental impacts across its value chain, in wider society and the environment in general. A responsible supply chain management approach applies to all the supply chain activities and represents a journey of continuous improvement towards creating an economically, socially, and environmentally responsible and sustainable supply chain.

#### **(a) Ethics:**

(1) Gratuities/Kickbacks: SELLER represents and warrants that SELLER, its affiliates, and their respective directors, officers, employees, agents, and any other persons associated with or acting on behalf of SELLER directly or indirectly, shall not, with regard to any aspect of SELLER's performance under this Contract: (i) violate any provisions of the Foreign Corrupt Practices Acts of the United States or similar statute in the United Kingdom (the "Principal ABAC Statutes"); (ii) violate any applicable anti-bribery or anti-corruption law or regulation enacted in any jurisdiction, whether in connection with or arising from the OECD Convention Combating Bribery of Foreign Public Officials in International Business Transactions or otherwise; or (iii) make, or offer to make, promise to make or authorize the payment of or giving of, directly or indirectly, any bribe, rebate, payoff, influence payment, facilitation payment, kickback or other unlawful payment or gift of money, or anything of value prohibited under any applicable law or regulation (any such payment, a "Prohibited Payment"). SELLER further agrees not to make or authorize the making of any gift or payment to any third person if SELLER knows or has reason to suspect that all or any portions of such gift or payment will be used for any Prohibited Payment. 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.

(2) Basic Working Conditions and Human Rights. SELLER represents and warrants that it provides a safe and secure working environment and protects and advances basic human rights in its worldwide operations.

(3) SELLER represents and warrants that it will comply with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and to use commercially reasonable efforts to i) identify whether such Work contain tantalum, tin, tungsten or gold; ii) conduct a reasonable country of origin inquiry regarding the origin of such minerals in such Work; iii) determine whether such minerals originated in Covered Countries, as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and iv) If such minerals originated in Covered Countries, conduct due diligence on the chain of custody of the source of such minerals; and v) assist BUYER in conducting due diligence concerning the smelters of such minerals. SELLER shall promptly notify BUYER of all such findings, identifying all such Work in sufficient detail as BUYER may reasonably request to allow BUYER to meet its customer commitments. SELLER shall include the substance of this in any agreement between SELLER and its lower tier sellers and provide BUYER with reasonable documentation of SELLER's and its lower tier sellers' due diligence efforts.

(b) Environmental Health and Safety Performance. SELLER acknowledges and accepts full and sole



responsibility to maintain an environment, health and safety management system ("EMS") appropriate for its business throughout the performance of this Contract.

(c) Community:

(1) Small Business Concerns: SELLER agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned small business concerns to participate in its subcontracts. SELLER awards to the fullest extent consistent with the efficient performance of this Contract.

### **37. OFFSET CREDIT/COOPERATION**

All offset or countertrade credit value resulting from this Contract, and any lower tier subcontracts, shall accrue solely to the benefit of BUYER. SELLER shall cooperate with BUYER in the fulfillment of any foreign offset/countertrade obligations.

### **38. OPEN SOURCE SOFTWARE**

- (a) This clause only applies to Work that includes the delivery of software (including software residing on hardware).
- (b) SELLER shall disclose to BUYER in writing any Free, Libre, and Open Source Software (FLOSS) that will be used or delivered in connection with this Contract and shall BUYER's prior written consent before using or delivering such FLOSS in connection with this Contract. BUYER may withhold such consent in its sole discretion.
- (c) As used herein, "FLOSS License" means the General Public License (GPL), Lesser/Library GPL, (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution (BSD) license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."
- (d) As used herein, "FLOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a FLOSS License, or (3) software provided under a license that (a) subjects the delivered software to any FLOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates BUYER to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.
- (e) SELLER shall defend, indemnify, and hold harmless BUYER, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney's fees, relating to use in connection with this Contract or the delivery of FLOSS. No other provision in this Contract, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties for the use of FLOSS in connection with this Contract or for the delivery of FLOSS under this Contract.

### **39. DELIVERABLE TECHNICAL DATA AND COMPUTER SOFTWARE**

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(a) This clause applies only to technical data or computer software delivered by SELLER to BUYER under this Contract.

(b) As used in this clause "Nonconforming Marking" means any confidential, proprietary, or other restrictive-use markings that are not expressly permitted by applicable FAR, DFARS, NASA FAR Supplement or other applicable U.S. Government agency acquisition clauses incorporated into this Contract. SELLER shall not deliver technical data or computer software that contains Nonconforming Markings. On behalf of the Government, BUYER may notify SELLER of such a Nonconforming Marking. If SELLER fails to remove or correct such marking within sixty (60) days after such notification, BUYER may, notwithstanding any other provision of this Contract, ignore or, at SELLER's expense, remove or obliterate any such Nonconforming Marking as may be on technical data or computer software delivered by SELLER.

#### **40. EXTRAS**

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

#### **41. RIGHT OF ACCESS**

(a) SELLER, without additional charge, shall permit reasonable access by representatives of BUYER, BUYER's customers and applicable regulatory agencies to SELLER's premises (and the premises of SELLER's subcontractors and supplier(s)) for the purpose of examining SELLER's facilities, processes, goods, and records relating to this Contract. Such examination may include inspection and testing of equipment, materials, parts, items (including software and licensed materials) to be furnished and services to be rendered, manufacturing and assembly processes, testing and quality procedures, and all applicable records relating to the manufacture, inspection, testing, and sale of such items and the furnishing of such services. Access to proprietary financial data shall be restricted to the U.S. Government or a mutually agreed upon independent third party.

(b) If requested by BUYER, SELLER shall provide at its facility, without additional charge, suitable and convenient office space for representatives of BUYER and/or representatives of BUYER's customers, as reasonably required. The office shall be properly lighted and heated and maintained in a clean condition and have telephones and Internet access.

#### **42. SEVERABILITY**

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

#### **43. SURVIVABILITY**

All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Contract, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of intellectual property and proprietary information), and product support obligations shall survive the expiration or termination of this Contract.

#### **44. WAIVER, APPROVAL AND REMEDIES**

(a) Failure by BUYER to enforce any provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of BUYER thereafter to enforce each and every such provision(s).

(b) BUYER's approval of documents shall not relieve SELLER from complying with all requirements of this Contract.

(c) The rights and remedies of BUYER in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.