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**1. DEFINITIONS**

As used these terms and conditions, the following terms shall have the meanings set forth below.

“Buyer” means GENERAL ATOMICS AERONAUTICAL SYSTEMS, INC., as identified on the first page of the Order.

“Buyer’s Authorized Procurement Representative” means the person(s) identified in the Order with delegated procurement authority to execute and administer the Order.

“DFARS” means Department of Defense FAR Supplement, issued as Parts 200-299 of Chapter 2 of Title 48, Code of Federal Regulations.

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

“Goods” means those products, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies, as described in the Order.

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

“Government Dispute” means a claim filed on behalf of Seller under the Prime Contract Disputes resolution procedure pursuant to Subparagraph (b) of the “Disputes” provision provided in these terms and conditions.

“Industrial Participation Obligations” means the past, present and future industrial participation, co-production and offset obligations or any similar obligations that Buyer undertakes, in order to market or sell its Goods and/or Services, and to meet other customer country national objectives.

“Order” means the instrument of contracting, issued by Buyer to Seller, to which these terms and conditions are affixed, including the Order, and all referenced documents, attachments and amendments.

“Party” means each of Buyer and Seller, and collectively “Parties.”

“Prime Contract” means the contract between Buyer and its Government customer for the acquisition of Goods and/or Services.

“Seller” means the person, firm, or corporation executing the Order with the Buyer and who will furnish the Goods and/or Services provided for in these terms and conditions. For purposes of the Independent Contractor clause in these terms and conditions, “Seller” shall also include Seller’s agents, representatives, subcontractors, and suppliers at any tier.

“Services” means Seller’s, or its subcontractors or suppliers, time and effort to perform the tasks described in the Order.

## 2. HEADINGS

- a. The division of these terms and conditions into clauses, and the insertion of headings are for convenience of reference only and shall not define, limit, or describe the scope or the intent of the Order nor shall they affect the construction or interpretation of these terms and conditions.
- b. The terms “these terms and conditions,” “hereof,” “hereunder,” and similar expressions in these terms and conditions refer to these terms and conditions and not to any particular clause, or other portion and include any terms and conditions supplemental hereto.
- c. Unless something in the subject matter or context is inconsistent therewith, references herein to clauses are to clauses of these terms and conditions.

## 3. INDEPENDENT CONTRACTOR

- a. Seller is, and shall be deemed to be, an independent contractor and not an agent or employee of Buyer either expressly or impliedly. The employees used by Seller to perform work under the Order shall be Seller's employees exclusively without any relation whatsoever to Buyer. Seller assumes full responsibility for the actions and supervision of such personnel while engaged in work under the Order, and Buyer assumes no liability for Seller’s personnel.
- b. The Order shall not constitute, create, give effect to, or imply a joint venture, teaming arrangement, partnership, formal business organization or any type of permanent relationship of any kind beyond the specific purposes stated herein. Nothing in the Order shall grant to either Party the right to make commitments of any kind for, or on behalf of, the other Party.

## 4. PACKING AND SHIPMENT

- a. Seller shall be responsible for ensuring the proper packaging of Goods hereunder without additional charge for boxing, crating, carting, or storage unless otherwise specified in the Order.
- b. Goods shall be suitably packaged to secure the lowest transportation costs and in accordance with the requirements of common carriers, and be packaged to ensure against damage from weather or transportation.
- c. Buyer’s Order number must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment showing materials. Buyer’s count or weight shall be final and conclusive on shipments not accompanied by packing lists.

## 5. INSPECTION

- a. For all Goods delivered under the Order, FAR 52.246-3, "Inspection of Supplies - Cost Reimbursement," is incorporated by reference. The term “Supplies” includes the “Goods”, the term "Contractor" means “Seller”, and the term "Government" means “Buyer,” except in paragraph (k). Paragraph (k) is removed and replaced with the following: “(k) Except as otherwise specified in the Order, the Seller's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government-owned property. The Seller’s obligation to correct or replace Buyer-furnished property shall be governed by the clause pertaining to Buyer’s property.” In paragraph (f), "6 months" is revised to read "12 months."
- b. For all services delivered under the Order, FAR 52.246-5, “Inspection of Services - Cost-Reimbursement,” is incorporated by reference. The term "Contractor" means “Seller”, and the term "Government" means “Buyer.”
- c. Without serving as a limitation on the foregoing clauses, Seller acknowledges that the following are deemed defects or non-conformances under this Inspection clause:
  - i. Design and specification defects to the extent the Goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer;

- ii. Infringement of any patent, copyright, trademark, or other proprietary right of any third party or misappropriation of any trade secret of any third party;
  - iii. The delivery of Goods subject to liens or encumbrances;
  - iv. The delivery of Goods containing any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; and
  - v. The delivery of Goods containing any third-party software (including software that may be considered free software or open source software) that: (a) may require any software to be published, accessed or otherwise made available without the consent of Buyer; or (b) may require distribution, copying or modification of any software free of charge. The Parties agree that the requirements of this Inspection clause do not limit Seller's remedies available elsewhere in the Order or at law.
- d. Whether or not inspections and design or planning reviews are performed by Buyer, Seller shall not be relieved from responsibility to perform all inspection tests and quality assurance measures to comply with the requirements of the Order.
  - e. Any Goods and/or Services which fail to meet the Order requirements may be rejected by Buyer in accordance with the Acceptance and Rejection of Goods/Services clause contained herein. If delivered to Buyer's destination, rejected Goods shall be removed promptly by Seller at Seller's expense.

## **6. DELIVERY, NOTICE OF DELAY**

- a. Timely performance is a critical element of the Order; thus failure to deliver or perform in accordance with the delivery or performance schedule under the Order, if unexcused, shall be considered a material breach of the Order. Unless otherwise noted on the Order, the date of delivery shall mean the date the goods are to be delivered at Buyer's facility, or if the Order is for Services, the date the Services are to be completed. Seller shall not deliver Goods prior to the scheduled delivery date(s) and/or perform Services prior to the scheduled completion date(s) unless authorized in writing by Buyer's Authorized Procurement Representative
- b. All deliveries of Goods shall be strictly in accordance with the applicable quantities set forth in the Order and all performance of Services shall be strictly in accordance with the performance requirements of the Order. Goods delivered in excess of the quantities specified in the Order may, at the Buyer's option, be retained by Buyer, at the agreed upon purchase price, or returned to Seller at Seller's expense.
- c. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reason(s) for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship Goods via air or other expedited routing and/or accelerate the Services, at no additional cost to Buyer, to avoid or minimize delay to the maximum extent possible.
- d. If Seller is unable to meet the required delivery or performance schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to (i) terminate the Order, (ii) fill such Order or any portion thereof, from sources other than Seller and to reduce Seller's Order accordingly at no increase in unit price, and without any penalty to Buyer, or (iii) accept late delivery and/or performance and recover from Seller any costs Buyer incurs as a result of the late delivery. This condition shall not limit Buyer's rights under the Termination for Default clause contained in these terms and conditions.

## **7. TITLE AND RISK OF LOSS**

- a. Title to Goods shall pass to Buyer upon formal acceptance, as set forth in the Acceptance and Rejection of Goods/Services clause contained herein, regardless of when or where Buyer takes physical possession, unless the Order specifically provides for earlier passage of title. Acceptance and passage of title shall not impair the right of Buyer to inspect and reject any item, and shall not relieve Seller of any other obligations under the Order.
- b. Seller shall assume and bear the risk of any loss of, or damage to, the Goods covered hereby until formal acceptance by Buyer. Seller shall also bear all risks as to rejected Goods after notice of rejection.

## **8. WARRANTY**

- a. Notwithstanding inspection and acceptance by Buyer of Goods and/or Services furnished under the Order, Seller warrants that Goods furnished under the Order will (i) be free from defects in material or workmanship, and (ii) conform to all requirements of the Order and that all Services furnished under the Order will (i) conform to all requirements of the Order, (ii) be performed by with a degree of professional skill, sound practices and judgment which is normally exercised by recognized professional firms with respect to services of a similar nature, and (iii) be performed in accordance with industry standards.
- b. Seller warrants that Goods ordered to specifications under the Order will conform to the specifications and to any drawings, samples, or other description furnished or adopted by Buyer in connection with the Order. If Goods are not ordered to such specifications, Seller warrants that they will be free from design defects.

- c. All Goods furnished hereunder are warranted to be new, merchantable, to be of good material and workmanship, and to be free from defect for a period of 1 year after delivery and acceptance by Buyer and all Services furnished hereunder are warranted to be free of defect for a period of 1 year after performance and acceptance by Buyer. If any Goods fail to comply in any respect to the warranty set forth above, Seller, at Buyer's option shall promptly repair or replace the Goods. If any Services fail to comply in any respect to the warranty set forth above, Seller, at Buyer's option shall promptly reperform or correct the Services to eliminate the defect. Transportation of replacement Goods and return of nonconforming Goods shall be at Seller's expense. If repair or replacement of Goods is not timely, Buyer may elect to return, repair, replace, or re-procure the nonconforming Goods at Seller's expense. If reperformance or correction of Services is not timely, Buyer may elect to reperform, replace, or re-procure the nonconforming Services at Seller's expense.
- d. All such warranties and guarantees, if any, shall survive inspection or test, acceptance, and payment. All statutory warranties shall apply. Warranties shall run to Buyer, its successors, assigns, and customers.
- e. Seller further warrants that all Goods and/or Services called for herein shall comply with the requirements of the Order and shall conform to the highest standards applicable to them.

## 9. SPECIAL TOOLS

- a. For purposes of this Special Tools clause, "Special Tools" are, for example, jigs, dies, fixtures, molds, patterns and manufacturing aids which may be acquired by Seller or furnished by Buyer to satisfy the requirements of the Order. If acquired by Seller, Special Tools shall be priced separately and identified as such.
- b. Title shall pass to Buyer upon payment for Special Tool, and shall be properly identified by Seller as Buyer-owned property.
- c. Seller will hold such Special Tools in good condition, except for reasonable wear and tear, and return to Buyer at the completion of the Order unless Buyer directs Seller otherwise in writing.

## 10. BUYER-FURNISHED PROPERTY AND MATERIAL

- a. If property and materials, including but not limited to drawings, tools, jigs, dies, and fixtures, are furnished by Buyer to Seller for use in performance of the Order, such property and materials shall remain the property of Buyer; and 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 without being liable for trespass or damages of any sort.
- b. Seller shall clearly mark, maintain in inventory, and keep segregated or identifiable all Buyer-furnished property. All such items shall be used only in the performance of work under the Order, unless Buyer consents otherwise in writing.
- c. Seller shall have the obligation to maintain any and all Buyer-furnished property, and all property to which Buyer acquires an interest by the Order, and shall be responsible for all loss or damage to said property except for normal wear and tear.
- d. Seller shall secure and maintain for the benefit of Buyer, insurance against any loss or damage of all property in which Buyer has an interest hereunder. Coverage will be provided on an all risk basis and value will be at replacement cost. Upon request, Seller shall provide Buyer with adequate proof of insurance against such loss or damage.

## 11. GOVERNMENT-FURNISHED PROPERTY

- a. If, in performing the Order, any Government property is furnished to Seller, Seller shall assume the risk of, and be responsible for, any loss, destruction of or damage to Government property while in Seller's possession or control, except to the extent that the Order provides otherwise.
- b. Seller shall return all Government property in a condition as good as when received except for reasonable wear and tear. Seller shall establish and maintain a system for control of Government property in accordance with FAR 52.245-1 (APR 2012), unless some other date version or equivalent FAR clause is provided elsewhere in the Order. Seller shall immediately notify Buyer if the Government determines that its Government Property System is inadequate.

## 12. PAYMENTS

- a. Payment will be made in accordance with the following clauses of the FAR, which are incorporated by reference. In each of the following clauses the term "Contractor" means "Seller", the term "Contracting Officer" means "Buyer's Authorized Procurement Representative", the term "Government" means "Buyer", and the "Disputes Clause" means the Disputes clause of these terms and conditions.
  - i. FAR 52.216-7, "Allowable Cost and Payment," except that for purposes of final indirect cost rate determinations in paragraph (d), the terms "cognizant Federal Agency official" and "appropriate Government representative" maintain their original meaning. Subparagraphs (a)(2), (b)(4), and (d)(4) and paragraph (f) are deleted. In subparagraph (h)(2)(ii)(B), the term "6 years" is deleted and replaced with the term "5 years, 9 months." The blank in paragraph (a)(3) is filled-in with the word "30th," unless otherwise specified in the Contract.
  - ii. FAR 52.216-8, "Fixed Fee," if this is a cost-plus-fixed fee contract.
  - iii. FAR 52.216-10, "Incentive Fee," if this is a cost-plus-incentive fee contract. The values to fill-in the blanks in subparagraph (e)(1) are set forth elsewhere in the Order.

- b. Each invoice shall include Buyer's Order number. Payment due date and cash discount period shall be calculated from either the date of Buyer's receipt of an accurate invoice or Buyer's acceptance of the Goods and/or Services and supporting documentation at destination, whichever occurs last.
- c. Payment shall be deemed to have been made on the date Buyer's check is mailed or payment is otherwise tendered in United States dollars. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.
- d. Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer against any amount payable by Buyer to Seller.
- e. Any payment on a cost-plus-percentage-of-cost basis is prohibited by FAR 16.102(c), and any fee payable under cost-reimbursement basis shall not exceed the fee limitations set forth in FAR 15.404-4(c).
- f. Overtime shall mean those hours worked in excess of forty (40) hours during Seller's standard work week. All such overtime must have prior written approval of Buyer's Authorized Procurement Representative.
- g. If Goods and/or Services are performed on Buyer's premises, Buyer shall not be obligated to make any payments to Seller for days designated by Buyer as holidays or shutdown periods, except for Goods and/or Services specifically authorized in writing by Buyer's Authorized Procurement Representative and performed by Seller on such days.

### **13. REIMBURSEMENT LIMITATION**

- a. If the Order is fully funded, whether or not the Order provides for payment of a fee, FAR 52.232-20, "Limitation of Cost," is incorporated by reference. The term "Schedule" means the Order, the term "Contractor" means Seller, the term "Government" means Buyer, and the term "Contracting Officer" means Buyer's Authorized Procurement Representative. The word "exclusive" in the first sentence of paragraph (a) is revised to "inclusive." Paragraph (d)(1) is revised to read: "(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of (i) the estimated cost and fee specified in the Order or, (ii) if this is a cost-sharing contract, the estimated cost to Buyer specified in the Order."
- b. If the Order is incrementally funded, FAR 52.232-22, "Limitation of Funds," is incorporated by reference. The term "Schedule" means the Order, the term "Contractor" means Seller, the term "Government" means Buyer, and the term "Contracting Officer" means Buyer's Authorized Procurement Representative. The word "exclusive" in the second sentence of paragraph (b) is revised to "inclusive." Subparagraph (f)(1) is revised to read: "(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of the total amount allotted by Buyer on the Order; and...."

### **14. PERFORMANCE AND FEE**

- a. Notwithstanding any other provision herein, to the extent Seller's performance is the direct and proximate cause of Buyer losing some or all of Buyer's fee that it would have otherwise earned under its Prime Contract, Seller shall be liable to Buyer for the amount of such lost fee ("Lost Fee").
- b. Prior to Buyer taking action to recover such Lost Fee, Buyer shall provide written notice to Seller. Such notice shall set forth the basis for Buyer's assertion that Seller was responsible for the Lost Fee.
- c. Upon receipt of such notice, Seller shall have fifteen (15) business days to provide Buyer with a written response. Buyer shall then have an additional fifteen (15) business days to evaluate and consider Seller's response.
- d. In the event that the Buyer or Seller fail to reach agreement based on the foregoing procedure, the Buyer or Seller shall escalate the Lost Fee dispute to their respective management designees who shall have an additional thirty (30) days to confer to resolve the dispute.
- e. If, after such additional time, the Buyer or Seller cannot resolve the Lost Fee dispute, either Party may seek relief from a court of competent jurisdiction.
- f. If Seller and Buyer reach agreement of the amount of Seller's liability for Buyer's Lost Fee, Buyer may debit such amount against amounts owing to Seller under the Order or other orders between the Buyer or Seller.

### **15. DEFECTIVE COST OR PRICING DATA**

- a. If Seller, its subcontractor(s) or prospective subcontractor(s), fails to submit accurate, complete and current cost or pricing data, and, as a result of that failure, the Government reduces the price of Buyer's Prime Contract, pursuant to FAR 52.215-10 "Price Reduction for Defective Cost or Pricing Data" or FAR 52.215-11 "Price Reduction for Defective Cost or Pricing Data – Modifications," or any other provisions of the Prime Contract under which the Order is issued, Buyer may recover from Seller an amount equal to the price reduction of the Prime Contract.
- b. If, as a result of Seller's or its subcontractor's foregoing conduct, the Government imposes a penalty on or charges Buyer interest, Buyer may recover from Seller the amount of that interest or penalty.
- c. Seller will not raise as defenses the matters listed in FAR 52.215-10(c)(1) (AUG 2011) or FAR 52.215-11(d)(1) (AUG 2011).

### **16. ACCEPTANCE OF ORDER**

- a. The Order is Buyer's offer to Seller. Acceptance of Buyer's offer is strictly limited to the terms and conditions in the Order.
- b. Any one of the following methods will constitute acceptance of the Order by Seller: (i) acknowledgement in writing; (ii) commencement of performance, or (iii) acceptance of payment. Seller's acceptance of the Order creates a binding contract

between Buyer and Seller, which shall be governed by the provisions of the Order and the terms and conditions referenced therein.

- c. Modifications hereto, to be binding, must be in writing and signed by Buyer's Authorized Procurement Representative. The rights and obligations described in the Order shall survive completion and final payment of the Order.
- d. **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'S AUTHORIZED PROCUREMENT REPRESENTATIVE.**

#### 17. ACCEPTANCE AND REJECTION OF GOODS/SERVICES

- a. Buyer shall accept the Goods/Services or give Seller notice of rejection due to any defect or nonconformance within a reasonable time after the date of delivery or performance. No payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under the Order or impair any rights or remedies of Buyer, including revocation of acceptance. The Buyer's right of rejection contained in this "Acceptance and Rejection of Goods/Services" clause is in addition to and shall not in any way impact or replace Buyer's rights as set forth in the "Warranty" clause of these terms and conditions.
- b. If Seller delivers defective or non-conforming Goods or and/or Services, Buyer may at its option and at Seller's expense: (i) require Seller to promptly repair or replace the Goods and/or correct or reperform the Services; (ii) return all or part of the Goods for credit or refund and/or reject all or part of the Services for credit or refund;; (iii) correct, repair or modify, or have a third party correct, repair or modify, the Goods to comply with the Order and/or correct or reperform, or have a third party correct or reperform, the Services to comply with the Order, or (iv) obtain replacement Goods and/or Services from another source. Return to Seller of defective or non-conforming Goods and/or Services and redelivery to Buyer of corrected or replaced Goods and/or correction or reperformance of Services shall be at Seller's expense.
- c. Seller shall not redeliver corrected or rejected Goods and/or corrected or reperfomed Services without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement, reperformance and other correction and redelivery shall be completed as Buyer may reasonably direct.

#### 18. COUNTERFEIT GOODS

- a. Seller shall not furnish Counterfeit Goods to Buyer. The term "Counterfeit Goods" is defined as Goods or separately- identifiable items or components of Goods that:
  - i. are an unauthorized copy or substitute of an original equipment manufacturer or original component manufacturer (collectively, "OEM") item;
  - ii. are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture;
  - iii. do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design;
  - iv. have been reworked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or
  - v. have not passed successfully all OEM required testing, verification, screening, and quality control processes.
- b. Notwithstanding the foregoing, Goods or items that contain modifications, repairs, re-work, or re-marking as a result of Seller's or its subcontractor's design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked without legal right to do so, shall not be deemed Counterfeit Goods. Counterfeit Goods are deemed nonconforming to the Order.
- c. Seller shall implement an appropriate strategy to ensure that Goods furnished to Buyer under the Order are not Counterfeit Goods. Seller's strategy shall include, but not be limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-OEM suppliers, obtaining from such non-OEM suppliers appropriate certificates of conformance that provide one or more of the following: (i) the OEM's original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item's authenticity.
- d. If Seller becomes aware or suspects that it has furnished Counterfeit Goods to Buyer under the Order, Seller shall promptly notify Buyer and replace, at Seller's expense and in no case later than thirty (30) days from discovery, such Counterfeit Goods with OEM or Buyer-approved Goods that conform to the requirements of the Order. Seller shall be liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of authentic Goods after Counterfeit Goods have been replaced.
- e. Seller bears responsibility for procuring authentic Goods or items from its subcontractors, and shall ensure that all such subcontractors comply with the requirements of this Counterfeit Goods clause.

**19. CONFLICT MINERALS**

Goods delivered to Buyer shall be free of any known conflict minerals, as defined by the Securities and Exchange Commission (“SEC”) at [17 CFR PARTS 240 and 249b](#), (Dodd-Frank Act Section 1502). If Seller is a registrant with the SEC, Seller shall comply with all the conflict minerals reporting requirements, and perform appropriate due diligence on its supply chain in order to fulfill the reporting obligations of the conflict minerals rule.

**20. DIMINISHING MANUFACTURING SOURCES**

- a. The Parties recognize that components become obsolete or suppliers at times discontinue or reduce manufacture of components. In the event a component is no longer to be stocked or manufactured as part of Seller’s product or product line, Seller shall notify Buyer’s Authorized Procurement Representative in writing of any pending future action as soon as Seller is aware of any obsolescence issue or has made such decision and no later than one hundred eighty (180) days in advance, whichever occurs first.
- b. Seller shall provide Buyer with a “Last Time Buy Notice” to allow Buyer the opportunity to purchase additional quantities of components, and shall take all reasonable steps to investigate an alternate part.

**21. CHANGES**

- a. Buyer’s Authorized Procurement Representative may, at any time issue written directions to Seller requiring changes within the general scope of this Order, including but not limited to, changes to: (i) drawings, designs, specifications, planning, and/or other technical documents; (ii) description of Services; (iii) method of shipment, packaging, or packing; (iv) place of inspection, acceptance or delivery; (v) quantities or delivery schedules or both; or (vi) place of performance. Seller shall proceed with the work as directed.
- b. If any such direction results in a material change in the amount or character of the work under the Order, an equitable adjustment in the Order price and other such provisions of the Order as may be affected shall be made and the Order shall be modified in writing accordingly. Any claim by Seller for an adjustment under the Changes clause must be (i) asserted in writing, and delivered to Buyer, within 15 days from the date of receipt by Seller of the notification of change, and (ii) a fully supported proposal delivered to Buyer within 45 days after Seller’s receipt of such direction. Buyer reserves the right to examine any of Seller’s pertinent books and records for the purpose of verifying Seller’s claim.
- c. Whether made pursuant to the Changes clause or by mutual agreement, changes shall not be binding upon Buyer until agreed to in writing, as set forth in the Writings Required clause herein.
- d. The issuance of information, advice, approvals, assistance or instructions by Buyer’s technical personnel or other representatives shall be deemed expressions of personal opinions only and no such action shall be deemed to be a change under this Changes clause, and shall not be the basis for any equitable adjustment. Furthermore, such expressions of personal opinions shall not affect Buyer’s and Seller’s rights and obligations hereunder unless the same is in writing and signed by Buyer’s Authorized Procurement Representative, and which will expressly state that it constitutes a modification or change to the Order.
- e. Failure to agree to any adjustment shall be a dispute within the meaning of the Disputes clause herein.

**22. QUALITY CONTROL**

- a. Seller shall have a quality management system acceptable to Buyer, and shall comply with the quality clauses specified in the Order and/or any other specific quality requirements identified in the Order for the Goods and/or Services purchased. The quality and/or inspection system for Goods and/or Services are subject to review, verification and analysis by representatives of Buyer’s Quality organization.
- b. Seller shall permit Buyer and regulatory authorities access to its facilities at all reasonable times to review procedures, practices, processes and related documents to determine such acceptability.
- c. Seller shall have a continuing obligation to promptly notify Buyer of any known or reasonably suspected violation of or deviation from Seller’s approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Goods and/or Services delivered to Buyer that may be affected.
- d. Seller agrees to identify processes for selecting, qualifying and managing its subcontractors or suppliers, managing product and processes, flowing down applicable requirements to its subcontractors or suppliers, and assessing its subcontractors or suppliers capabilities for compliance.

**23. WRITINGS REQUIRED**

- a. No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall bind either Party unless provided in writing.
- b. No oral statement of any person whatsoever shall in any manner or degree modify or otherwise affect the terms of the Order.
- c. No extra charge of any kind, or change in the price or schedule of the Order will be allowed unless specifically agreed to in writing and signed by Buyer’s Authorized Procurement Representative and an authorized representative of Seller.

**24. RECORDS**

- a. Unless a longer period is specified in the Order or by law or regulation, Seller shall retain all records related to the Order for 5 years from the date of final payment received by Seller.
- b. Records related to the Order shall date back to the time the Order was issued, and shall include, but are not limited to, financial, proposal, catalogs, price lists, invoices, and underlying data, and basis for cost estimates, procurement, specifications, production, inventory records, inspection, test, quality, shipping and export, certifications, and receipt records. Buyer shall have the right to examine, reproduce and audit all Seller records related to pricing, incurred costs and proposed costs associated with any proposals (prior to or after contract award), invoices or claims.
- c. Buyer shall have access to such records, and any other records Seller is required to maintain under the Order, for the purpose of audit during normal business hours, upon reasonable notice for as long as such records are required to be retained. Audit rights shall be available to Buyer, at no additional cost, 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 Defense Contract Audit Agency (DCAA) representative, or a third party auditor selected by mutual agreement from a nationally recognized firm of certified public accountants.

**25. STOP WORK ORDER**

- a. Buyer's Authorized Procurement Representative may, at any time, by written notice to Seller issue a Stop Work Order (SWO) requiring Seller to stop all or part of the work called for by the Order. Seller shall immediately comply with the SWO, and take all reasonable steps to minimize incurring costs allocable to the Goods and/or Services covered by the SWO during the period of work stoppage.
- b. Within one hundred eighty (180) days after the SWO is delivered to Seller, Buyer shall either: (i) extend the SWO, (ii) withdraw the notice and direct Seller to resume work, or (iii) terminate the work and the Order, or part thereof, pursuant to the appropriate provision of the Order.
- c. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if: (i) the Order is not canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Order delivery and/or performance schedule; and (iii) Seller submits a claim for adjustment within thirty (30) days after the end of the period of work stoppage; however, Seller shall not be entitled to any equitable adjustment for any SWO issued due to Seller's performance problems under the Order.

**26. TERMINATION/CANCELLATION**

- a. The Buyer or Seller agree to incorporate by reference FAR 52.249-6, "Termination (Cost Reimbursement)," except that the term "Government" means "Buyer," the term "Contracting Officer" means "Buyer's Authorized Procurement Representative," the phrase "1 year" is deleted each place it occurs and replaced by the term "six months," paragraphs (e) and (j) are deleted, and subparagraph (a)(2) is deleted in its entirety and replaced with the following:

"(2) Buyer may cancel the whole or any part of the Order in the event of:

  - (i) Seller's default ("default" includes failure to make progress in the work so as to endanger performance) of any or all of the requirements of the Order and within 10 days after receipt of notice from Buyer specifying the failure does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such 10 days and such plan is acceptable to Buyer's Authorized Procurement Representative; or
  - (ii) in the event of suspension of Seller's business, insolvency of Seller, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business or any assignment, reorganization or arrangement by Seller for the benefit of creditors."
- b. Subparagraph (b) is deleted in its entirety and replaced with the following:

"(b) Buyer's Authorized Procurement Representative shall terminate or cancel the Order in accordance with paragraph (a) of this 52.249-6 clause by delivering to Seller a "Notice of Termination" or "Notice of Cancellation" specifying whether termination or cancellation is pursuant to subparagraphs (a)(1) or (a)(2), the extent of the termination or cancellation, and the effective date. If, after cancellation under subparagraph (a)(2)(i), it is determined that Seller was not in default or that Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of Seller as set forth in the Force Majeure clause, the rights and obligations of the Buyer or Seller will be the same as if the termination was for the convenience of Buyer."
- c. Subparagraph (h)(4) is deleted in its entirety and replaced with the following:

"(4) A portion of the fee payable under the Order, determined as follows:

  - (i) If the Order is terminated under subparagraph (a)(1) of this 52.249-6 clause, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the Order, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.



- (ii) If the Order is cancelled under subparagraph (a)(2) of this 52.249-6 clause, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the Order.”

## 27. PROPRIETARY INFORMATION

This Proprietary Information clause applies to the Order unless the Parties have executed a “Non-Disclosure Agreement” or other contemporaneous or subsequent writing covering the protection of each other’s proprietary information, except for Paragraphs (f), (g), and (h) below, which supersedes any other agreement.

- a. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure, during the term of the Order, and for a period of 10 years thereafter all
  - (i) confidential, proprietary and/or trade secret information, including Buyer-provided specifications and Buyer-provided information pertaining to qualification, certification, manufacturing, and/or quality testing and procedures;
  - (ii) tangible items and software containing, conveying or embodying such information; and
  - (iii) tooling identified as being subject to this clause that is obtained, directly or indirectly, from the other in connection with the Order or other agreement, including Buyer’s contract with its customer, if any, (collectively referred to as “Proprietary Information and Materials”).
- b. Buyer and Seller shall not disclose to anyone (other than to persons the Buyer or Seller may designate in writing) or, except in the performance of the Order, make use of information or knowledge relating to details of the business or any other confidential or proprietary information of the Buyer or Seller or its affiliates, suppliers, or customers which the Buyer or Seller shall have obtained because of the Order; whether such information was provided in a written medium or conveyed orally or visually and identified as confidential or proprietary at the time the information was disclosed.
- c. Buyer and Seller shall each use “Proprietary Information and Materials” of the other only in the performance of and for the purpose of the Order and Buyer’s Prime Contract with its Government customer. Buyer and Seller shall take all reasonable measures to protect each other’s “Proprietary Information and Materials,” which measures shall be at least equal to those with which the Buyer or Seller use to protect its own confidential or proprietary information.
- d. All proprietary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by Buyer under the Order are reserved to Buyer and its use is restricted to the work to be performed under the Order. Seller agrees to retain in confidence and, upon request, return to Buyer on completion, termination or cancellation of the Order, all designs, drawings, specifications, and technical information of every kind belonging to Buyer and furnished to Seller in connection with the Order, unless specifically directed otherwise in writing by Buyer.
- e. Notwithstanding the foregoing subparagraph (a), Seller shall have no obligation with respect to any confidential or proprietary information which the Seller can demonstrate (i) was in Seller’s rightful possession free of any obligation of confidence prior to its first receipt from Buyer, (ii) is publicly known through no fault of Seller, (iii) is obtained from a third person who had a right to disclose it, or (iv) was independently developed without access to any confidential or proprietary information of Buyer.
- f. Seller grants to Buyer a non-exclusive, irrevocable, worldwide, right and license to copy, modify, use and disclose to the Government, any information received from Seller, including Proprietary Information and Materials, for the performance of the Order.
- g. Seller agrees that any technical data and computer software furnished to Buyer as a required deliverable under the Order will be free from confidential, proprietary, or restrictive-use markings that are not expressly permitted by applicable FAR or other Government agency FAR supplement clauses incorporated in the Order (“Nonconforming Markings”). Buyer may notify Seller of a Nonconforming Marking, and if Seller fails to remove or correct such marking within sixty (60) days after such notification, Buyer may, at Seller’s expense, correct any such Nonconforming Marking.
- h. Notwithstanding, the foregoing, nothing in this clause is intended to affect the rights or exercise of rights, if any, obtained by the Government under the —Rights in Technical Data” clause DFARS 252.227-7013 and —Rights in Computer Software” clause DFARS 252.227-7014, or any similar or successor clauses, or other clauses that may be contained in any contracts or subcontracts between Buyer and Seller and any customer.

## 28. INTELLECTUAL PROPERTY

- a. Intellectual Property (“IP”) - IP means inventions, discoveries and improvements; know-how; technical data, drawings, specifications, process information, reports and documented information; and computer software. IP includes all worldwide common law and statutory rights to the foregoing, including but not limited to, patents, industrial designs, trade secrets, copyrights, mask work registrations, and the like.
- b. Background IP - Seller shall retain ownership of all IP owned or developed by Seller prior to the effective date of or outside the scope of the Order (“Background IP”). Seller grants to Buyer an irrevocable, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license (i) to use, reproduce, distribute, modify, and prepare derivative works of such Background IP and (ii) to use, make, have made, offer for sale, sell, distribute and import products and services that incorporate or embody such Background IP, in each case solely as necessary for the purpose of exploiting Buyer’s rights in the Goods or Foreground IP. Seller grants to Buyer such license rights for any purpose in the event Buyer cancels all or part

of the Order for Seller default in accordance with the “Termination/Cancellation” Article of the Order or in the event Buyer, in its own judgment, must provide Seller with design, manufacturing, or on-site support substantially in excess of what is required of Buyer under the Order in order for Seller to comply with the Order.

- c. Employee Agreements - Seller shall obtain agreements with its personnel to enable the grant of rights to which Buyer is entitled under this clause.
- d. Third Party IP - To the extent Seller incorporates third-party IP into any contract deliverable, Seller shall obtain for Buyer at least the license rights granted in paragraph b of this Article in such third-party IP, at no additional cost to Buyer
- e. Foreground IP - The following subparagraphs shall not apply to: (i) commercial off-the-shelf Goods except to the extent such Goods are modified or redesigned pursuant to the Order; or (ii) any Goods to the extent their development was funded by the Government.
  - (i) All IP conceived, developed, or first reduced to practice by, for, or with Seller, either alone or with others, in performance of the Order (collectively, “Foreground IP”) shall be the exclusive property of Buyer. To the extent Foreground IP consists of works of authorship, such works shall be works made for hire with the copyrights vesting in Buyer. Seller hereby transfers, conveys, and assigns all right, title and interest in such Foreground IP free of charge to Buyer. Seller hereby irrevocably transfers, conveys, and assigns all right, title and interest in any other Foreground IP not considered a work made for hire free of charge to Buyer. Seller shall protect Foreground IP that is Proprietary Information and Materials as required by the Order and shall mark documents or portions of documents containing Foreground IP as “GA-ASI Proprietary” information or as otherwise directed by Buyer in writing.
  - (ii) Seller will, within 2 months after conception or first actual reduction to practice of any invention and prior to Order completion, disclose in writing to Buyer all inventions, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all written instruments, and assist as Buyer reasonably directs in order to file, acquire, prosecute, maintain, enforce and assign Buyer’s Foreground IP rights. Seller hereby irrevocably appoints Buyer and any of Buyer’s officers and agents as Seller’s attorney in fact to act on Seller’s behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such written instruments.
  - (iii) Buyer grants to Seller a non-exclusive, royalty-free right during the term of the Order to use, reproduce, modify, practice and prepare derivative works of any Foreground IP solely as necessary for Seller to perform its obligations under the Order, except that, notwithstanding the foregoing, Seller may use and disclose Proprietary Information and Materials as permitted under the Order. Seller shall not, without Buyer’s prior written consent, use Foreground IP or such derivative works in any manner not authorized under the Order, including, but not limited to, developing, manufacturing, obtaining a certification to manufacture, offering for sale or selling any product, equipment, or service which utilizes or is enabled by Foreground IP.

## 29. ADVERTISING, USE OF NAME

- a. Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer the Goods and/or Services provided for in the Order. Seller shall require that its subcontractors at any tier adhere to this same policy, and shall be responsible for any breach of such obligation by any of its subcontractors.
- b. Seller agrees that it shall not use the Buyer’s name or logo, nor any adaptation or variation thereof, in any manner whatsoever (including, but not limited to, website(s), press releases, reference lists, or similar public announcements concerning the Order or projects contemplated by the Order), without the Buyer’s prior written consent in each instance.

## 30. CONFLICT OF INTEREST

- a. Seller shall exercise reasonable care and diligence during the term of the Order to prevent any action or condition which could result in the appearance of, or an actual, conflict of interest with those of Buyer. This obligation shall include the activities of the employees or agents of Seller and its family members in their interactions with the employees of Buyer and its family members, or Buyer’s customer representatives, vendors, or subcontractors.
- b. Seller warrants that Seller’s performance of work under the Order will not give rise to an organizational conflict of interest, as defined in FAR subpart 9.5 and DFARS Subpart 209.5.
- c. If Seller identifies an actual or potential organizational conflict of interest during the performance of the Order, Seller will immediately make full disclosure in writing to the Buyer.
- d. During the term of the Order, Seller agrees to not enter into contracts with the Government either as a prime or as a subcontractor that will give rise to an organizational conflict of interest as a result of Seller’s performance of work under the Order. A breach of this clause will authorize Buyer to terminate the Order for default.

**31. INSURANCE AND PRECAUTIONS**

This clause applies only if Seller will be entering any Buyer or Government customer's premises for any reason.

- a. **Insurance:** Seller shall procure and maintain during the term of the Order, and at its expense, insurance in sufficient amounts to ensure its obligations and liabilities hereunder. Such insurance shall include at a minimum the following:
  - (i) Automobile liability insurance protecting the Seller from automobile bodily injury and property damage liability with limits of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage.
  - (ii) Comprehensive general liability insurance which includes broad form contractual, property damage, products/completed operations, personal injury, premises-operations, independent contractors and subcontractors and fire legal liability. Coverage will be on a per occurrence basis with limits of liability no lower than \$1,000,000 per occurrence and \$1,000,000 aggregate combined single limit, personal injury, bodily injury and property damage.
  - (iii) Such insurance of employees as may be required by any workers' compensation act or other law, regulation or ordinance which may apply in the circumstances.
- b. For (a) above, such policies shall name Buyer as additional insured when requested by Buyer.
- c. **Certificates of Insurance:** Upon request of Buyer, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller. The certificates will provide that Buyer shall receive 30 days prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under the Order.
- d. **Self-Assumption:** Any self-insured retention, deductibles and exclusions in coverage in the policies required under this Insurance and Precautions clause shall be assumed by, for the account of and at the sole risk of Seller or its subcontractor which provides the insurance and, to the extent applicable, shall be paid by Seller or its subcontractor. In no event shall the liability of Seller or any of its subcontractors thereof be limited to the extent of any of the minimum limits of insurance required herein.
- e. **Protection of Property:** If Seller's work under the Order involves operations by Seller on Buyer's premises, Seller agrees to comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's customer, and take all proper precautions in its operations against the occurrence of injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with this Insurance and Precautions clause.

**32. INDEMNIFICATION**

- a. Seller agrees to indemnify, defend, and hold harmless Buyer, Buyer's officers, agents, employees, and customers against all suits or actions, claims and liabilities, including costs and expenses, attorney's fees and cost of litigation, judgments, liens, and awards for: (i) any asserted trademark, copyright, or patent infringement or other intellectual property right of third parties arising from the manufacture, use, or sale of any Goods and/or Services furnished to Buyer under the Order, except where such Goods and/or Services are in accordance with Buyer's detailed design or specification and Seller gives prompt notice to Buyer of such claims which come to Seller's attention; (ii) any breach of representations, certifications, and warranty of Seller hereunder, and (iii) damages of any kind and nature whatsoever incurred by Buyer or any third party for property damage, personal injury or death (including without limitation injury to or death of employees of Seller or any subcontractor thereof), as a result of, arising out of or in any way related to Seller's performance of the Order.
- b. Buyer shall notify Seller in writing of such claim and Buyer shall provide Seller with reasonable information and assistance, at Seller's expense, for the defense thereof.

**33. TAXES**

- a. Unless Buyer furnishes a valid certificate of tax exemption or other similar evidence of exemption for the taxing jurisdiction in question, Buyer will bear all timely and applicable sales, use, or similar taxes now or hereafter properly imposed on Buyer in respect to the Order or transaction.
- b. Seller agrees to notify Buyer promptly of any proposed or contemplated assessment of additional taxes to be borne by Buyer under subparagraph (a) of this Taxes clause as the result of an audit or other tax review by an applicable governmental agency, prior to payment of such proposed additional taxes. Buyer's obligation to pay such additional tax is subject to such notification permitting Buyer to review the findings of the alleged tax increase prior to payment.
- c. Seller further agrees to take all steps necessary (as requested by Buyer, on account of Buyer, and in cooperation with Buyer) to secure any applicable refunds of any such taxes borne by Buyer under subparagraph (a) of this Taxes clause when such taxes paid by Buyer in whole or in part are subsequently deemed inapplicable.

**34. SUBCONTRACTING**

- a. Seller will notify Buyer before subcontracting 30% or more of the Order.
- b. This is not a restriction on authorized distributors, dealers, wholesaler or industrial suppliers; the purchase of raw materials or standard commercial articles is not a subcontract within the meaning of this Subcontracting clause.
- c. Seller shall require that its subcontractors adhere to this same requirement.

**35. CYBER SECURITY**

Buyer is enhancing its cyber security defenses to minimize cyber-attacks. Seller will support this effort by employing appropriate tools and practices, at Sellers expense, to protect Buyer-provided data, and will notify Buyer within 2 days if a cyber-attack has been detected which may have compromised Buyer's data.

**36. FORCE MAJEURE**

- a. Neither Seller nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to any cause beyond their reasonable control and without their fault or negligence. Such causes include, but are not limited to: (i) acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, or unusually severe weather affecting either party; or (ii) similar causes beyond their control and which are not foreseeable or causes beyond the reasonable control of their subcontractors which are not foreseeable.
- b. The Party whose performance is so affected shall notify the other Party in writing within 10 days after the beginning of any such cause(s). In all cases, Buyer or Seller shall use reasonable efforts to avoid or minimize all such failures or delay in performing their obligations hereunder, including exercising work-around plans or obtaining the Goods and/or Services from other sources.

**37. COMPLIANCE WITH LAWS**

Seller agrees that in performing its duties under the Order, Seller shall comply with all applicable Federal, State and local laws, statutes, ordinances, and regulations in effect on the date of the Order, including any applicable Federal Acquisition Regulation (FAR) and/or Defense FAR Supplements (e.g., DFARS) (or other Agency-specific) flowdown from any Government Prime Contract(s) that may be awarded to Buyer subsequent to award of the Order.

**38. EXPORT CONTROLS**

- a. Information exchanged pursuant to the Order may include the use of, or access to, Technical Data or Defense Services (as defined in the Export Regulations defined herein) that is subject to export controls under 22 Code of Federal Regulations 120–130 (International Traffic in Arms Regulations) or 15 Code of Federal Regulations 768-799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as "Export Regulations").
- b. U.S. Law prohibits the transfer or export of Technical Data or Defense Services without an export license to any employee or other person who is not a United States Citizen or Permanent Resident Alien, as well as to corporations or to any other entity, organization or group that is not incorporated or otherwise organized to do business in the United States.
- c. Seller shall comply with all "Export Regulations" of the United States Government and the Government of any country in which the Buyer or Seller conduct business pursuant to the Order.
- d. In the event that any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary, significant delay in obtaining them), Seller shall immediately notify Buyer's Authorized Procurement Representative.
- e. Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorney fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with all applicable "Export Regulations" of the United States. Any failure of Seller to comply with the provisions of this Export Controls clause shall be a material breach of the Order.
- f. Seller acknowledges that it will be responsible for ensuring that all U.S. Government export control requirements will be conveyed to all sub-tier suppliers or subcontractors that will be provided or may have access to Technical Data or Defense Services provided under the Order.

**39. INDUSTRIAL PARTICIPATION OBLIGATIONS**

- a. Notwithstanding that the Order may or may not be issued in direct support of a foreign sale, Seller agrees to support Buyer's Industrial Participation Obligations.
- b. To the exclusion of all others, Seller agrees that Buyer, its subsidiaries, affiliates or its designees may use the value of the Order to satisfy Industrial Participation Obligations that Buyer may have with Seller's country. Seller shall provide documentation or information which Buyer or its assignees may reasonably request to substantiate claims for industrial benefits or Industrial Participation Obligations credits.

- c. Seller agrees to identify and retain for Buyer's use any Industrial Participation Obligations credits generated from the content of Goods and/or Services which Seller either produces itself and/or procures from suppliers for work arising out of or related to the Order. Promptly after selection of a non-U.S. supplier for work under the Order, Seller shall notify Buyer of the name, address, supplier point of contact (including telephone number) and dollar value of the subcontract. To the exclusion of all others, Seller agrees that Buyer, its subsidiaries, affiliates or its designees may use the value of such credits to satisfy Industrial Participation Obligations that Buyer may have.
- d. Buyer reserves the right to assign Industrial Participation Obligation credits generated through Seller's efforts under the Order to third parties.
- e. Seller shall include the substance of this "Industrial Participation Obligations" clause, in favor of Buyer, in its subcontracts issued at all tiers in support of the Order.

#### 40. COMMUNICATIONS

- a. Except as required by law, Buyer shall be solely responsible for all liaison and coordination with Buyer's customer, including the Government, as it affects the Prime Contract, the Order, and any other related contract. Notwithstanding the foregoing, Seller may, in the normal course of business, communicate with the cognizant DCMA and DCAA liaison as required by federal acquisition regulations, agency supplements, and directives. Seller shall immediately notify Buyer of any such communication and include a brief summary of the issues discussed as related to the Order.
- b. Seller shall not communicate with Buyer's customer with respect to any dispute between Seller and Buyer.

#### 41. ASSIGNMENTS, CHANGES TO NAME OR PLACE OF MANUFACTURE

- a. Seller will not assign, novate or transfer the Order, including by operation of law, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of Buyer. In the event written consent is granted, Seller shall promptly supply Buyer with documentation supporting any such assignment or novation.
- b. Payment to an assignee of any claim hereunder shall be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.
- c. Seller shall provide prior written notice to Buyer of any proposed name changes, mergers or acquisitions affecting the Order.
- d. Seller shall not change the location of manufacture of the Goods or performance of Services to be provided to Buyer under the Order without Buyer's prior written consent.

#### 42. DISPUTES

- a. In the event of a dispute between Buyer and Seller (other than a Government Dispute described in paragraph b. below), with respect to the rights, duties, or obligations of the Buyer or Seller hereunder, the dispute shall be submitted in writing for resolution to ascending levels of management of the respective Buyer or Seller up to the executive level.
  - (i) If the parties' ascending levels of management are unable, after good faith efforts, to settle the dispute to the mutual satisfaction of both Buyer or Seller within 60 calendar days after the dispute is submitted in writing, or such later date as the Buyer or Seller may have agreed in writing, either Party may submit the dispute to a court of competent jurisdiction located in the Southern District of California. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES TO WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.** Notwithstanding the above, either Party may seek injunctive or other equitable relief, at any time, in any court of competent jurisdiction within the State the Order was issued.
  - (ii) Pending final resolution of any dispute, Seller shall proceed with performance under the Order unless otherwise instructed by Buyer.
- b. Notwithstanding subparagraph (a) above, the following process applies for Government Disputes:
  - (i) A Government Dispute will be resolved pursuant to the Prime Contract's "Disputes" clause. For any Government Dispute, Seller may submit a detailed claim to Buyer including, for any claim in excess of \$100,000, an appropriate Seller certification that: (1) the claim is made in good faith, (2) the supporting data are accurate to the best of Seller's knowledge and belief, (3) the amount requested accurately reflects the Order adjustment for which Seller believes the Government is liable, and (4) the certifying official is duly authorized to certify the claim on behalf of Seller. Buyer shall, upon receipt of adequate information from Seller, submit an appropriate corresponding claim to the Government Contracting Officer pursuant to the "Disputes" clause of the Prime Contract.
  - (ii) If a decision on a question of fact or law is issued by the Government Contracting Officer under the Prime Contract "Disputes" clause, whether or not based on a claim submitted by Buyer, and the decision relates to the Order, said decision, if binding upon Buyer under the Prime Contract, shall also be binding upon Buyer and Seller with respect to the Order. However, if Seller is adversely affected by such decision and if Buyer elects not to appeal such decision or bring suit under the "Disputes" clause of the Prime Contract, Buyer shall notify Seller promptly. After receipt of such notice by Buyer, if Seller submits a timely request to Buyer to appeal such decision or bring suit, Buyer shall file an appeal or bring suit. If Buyer appeals such decision or brings suit, whether at its election or at Seller's request, any decision on such appeal or suit, if binding upon Buyer under the Prime Contract, shall be binding on Buyer and Seller as relates to the Order.

- (iii) To the extent any such appeal or suit is taken or brought by Buyer at Seller's request, and to the extent requested by Buyer, Seller shall prosecute for Buyer the appeal or suit. In such event and to such extent, Seller shall select litigation counsel, which must be experienced in government contracts litigation; and Seller shall pay all costs and expenses of the litigation brought on Seller's behalf, including attorney's fees. Litigation counsel so selected by Seller will represent Buyer in the suit or appeal, but Buyer agrees that Seller may direct the litigation to the extent related to Seller's claim or interest, subject to the overall supervision of the litigation and ultimate decision-making in the case by Buyer. Buyer also may select counsel to advise Buyer on, or to monitor, any appeal or suit taken or brought by Buyer at Seller's request, in which event Seller agrees to pay the reasonable costs of such counsel. Buyer shall reasonably assist Seller in any appeal or suit being directed by Seller pursuant to this paragraph, and Seller shall reimburse Buyer for its costs incurred in assisting Seller.
- (iv) During the pendency of any Government Dispute or any appeal or suit under the Contract Disputes Act, any monies due or becoming due to Seller under the Order that are in question may be withheld by Buyer until the dispute is finally resolved. If, as a result of any decision or judgment which is binding upon Buyer, Buyer is unable to obtain payment or reimbursement from the Government under the Prime Contract for, or is required to refund or credit to the Government any amount with respect to any item of cost or fee for which Buyer has paid or reimbursed Seller, Seller shall, upon demand, promptly repay such amount to Buyer.
- (v) The Buyer or Seller agree to accept the relief as to a time extension or additional compensation obtained from the Government, if any, as well as all other aspects of the final decision under the Contract Disputes Act following appeal or the expiration of the time for appeal as full and final resolution of any Government Dispute.
- (vi) Buyer's maximum liability to Seller arising from or relating to a Government Dispute or an appeal or suit brought under the Contract Disputes Act shall not exceed the amount of Buyer's actual recovery from the Government.
- (vii) If the Order is issued by Buyer under a subcontract held by Buyer, and if Buyer has the right under such subcontract to appeal a decision made by the Contracting Officer under the prime contract in the name of the prime contractor, and said decision is also related to the Order, this disputes clause shall also apply to Seller to the extent allowable and in a manner consistent with its intent and similar to its application had the Order been issued by Buyer under a Prime Contract with the Government.
- (viii) Nothing said or written in the prosecution of any claim against the Government shall constitute or be regarded as admissions or declarations against interest of either Party in any litigation between Buyer and Seller.
- (ix) Pending resolution of any dispute, Seller shall proceed as directed by Buyer in writing.
- (x) The rights and obligations of this clause shall survive completion of and final payment under the Order.

#### **43. APPLICABLE LAWS**

- a. The Order and any dispute arising hereunder shall be governed by the substantive law of federal procurement and, to the extent there is no applicable federal procurement law and procedural laws of the State of California, excluding California's choice of law; except that any provision in the Order that is: (i) incorporated directly from or by express reference to the FAR or FAR supplements, (ii) contract provisions that have been flowed-down from a prime contract with the Government, and (iii) the Changes clause and the Termination/Cancellation clause (excluding subparagraph (a)(2)), shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government.
- b. The 1980 U.N. Convention on Contracts for the International Sale of Goods shall not apply to any sales transactions governed by these terms and conditions.

#### **44. ATTORNEY FEES**

If it is necessary for either Party to obtain legal representation to enforce any part of the Order, the non-prevailing Party agrees to bear the court costs and the attorney fees of the prevailing Party.

#### **45. PRECEDENCE**

If any of the provisions of the Order are in conflict, the following will be the order of precedence:

- (i) full text provisions contained within the Order;
  - (ii) terms and conditions contained herein and referred to as TC-04;
  - (iii) statement of work (the most recently agreed to and issued version of statement of work shall control, and Buyer's
  - (iv) statement of work will prevail over any subsidiary documents referenced therein);
  - (v) specifications attached or incorporated by reference (the most recently agreed to and issued version of specifications shall control, and Buyer's specifications will prevail over any subsidiary documents referenced therein), and
  - (vi) other documents, exhibits, or appendices attached to or incorporated by reference into the Order.
- In the event of any conflicting provisions, Seller shall promptly notify Buyer thereof.

**46. NON-WAIVER**

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

**47. ENTIRE AGREEMENT**

- a. These terms and conditions, along with any full text FAR or FAR Agency supplement clauses, and those referenced on the face of the Order to which this form is attached, including other specifications or documents incorporated by reference, constitute the complete and exclusive agreement between Buyer and Seller, and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings, whether written or oral, between the Parties related to the subject matter of the Order.
- b. No course of prior dealings between the Buyer or Seller, and no usage of trade, shall be relevant to supplement or explain any term used in the Order.
- c. No agreement or understanding varying or extending the terms or conditions of the Order will be binding unless executed in writing by Buyer's Authorized Procurement Representative.
- d. If any provision of the Order is declared to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder of the provisions in the Order shall remain valid, enforceable and in full force and effect, and the Parties will negotiate in good faith to substitute a provision of like economic intent and effect.