
**SIERRA NEVADA CORPORATION
TERMS AND CONDITIONS-GOVERNMENT CONTRACT-COST REIMBURSABLE**

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1. ACCEPTANCE

Any of the following acts by Seller shall constitute unqualified acceptance and shall create a binding Subcontract between Seller and Buyer, which shall be governed by the terms and conditions of the Subcontract, as defined below: (i) signing and returning a copy of the Subcontract, (ii) beginning performance of the Subcontract or (iii) accepting payment. Buyer objects to, and is not bound by, any terms and conditions stated in Seller's acceptance unless accepted in writing by Buyer.

2. DEFINITIONS

The following terms have the meaning as set forth below:

(a) "Buyer" means Sierra Nevada Corporation, its divisions or subsidiaries, as represented by an authorized representative.

(b) "FAR" means the Federal Acquisition Regulation, Chapter 1 of Title 48 of the Code of Federal Regulations.

(c) "Government" means the United States Government or its authorized representatives.

(d) "Prime Contract" means the contract, if any between Buyer and Government or the contract between Buyer and a higher tier contractor.

(e) "Product" means those services, goods, supplies, materials, articles, items, parts, components or assemblies described in the Subcontract.

(f) "Subcontract" means the entire agreement between the parties, including the subcontract agreement, any statement of work and schedule, these Terms and Conditions, Buyer's specifications/drawings for the Subcontract, and any documents incorporated by reference.

(g) "Seller" means the party with whom Buyer is contracting.

(h) "Terms and Conditions" means this document.

(i) "Work" means all required articles, materials, supplies, goods and services constituting the subject matter of the Subcontract and ordered by the Subcontract.

3. PRECEDENCE

All documents in the Subcontract shall be read so as to be consistent. In the event of conflict, the order of precedence is:

- (a) The Subcontract Agreement
- (b) These Terms and Conditions
- (c) The Subcontract Schedule
- (d) The Statement of Work;
- (e) The Buyer's Specification/Drawing;
- (f) Any documents incorporated herein by reference.

4. PACKING AND SHIPPING

(applies only to goods provided under the Subcontract)

(a) Unless otherwise agreed to in writing, Seller shall pack all Products required under the Subcontract in accordance with

best available commercial practices and in compliance with transportation regulations, to ensure safe and timely delivery to destination.

(b) Seller shall provide the item description, item number, and the serial number of the Product on the Packing List.

(c) All Products shall be prepared for shipment and suitably packed to prevent damage or deterioration. Seller is solely liable for packaging design.

(d) Seller shall ship all Products to the destination specified by Buyer in the Subcontract.

(e) Each shipment must include a complete packing list.

(f) Interior and exterior containers, Bills of Lading, packing sheets, and all other shipping documents and labels shall be marked with the Subcontract number.

(g) All shipping documents, shipping labels and packing sheets must also show full and complete information as to the appropriate consignee, if any.

(h) Buyer reserves the right to specify the mode of shipment.

(i) Any expense incurred by Buyer as a result of improper preservation, packaging, packing, marking or method of shipping shall be reimbursed by Seller. Associated Seller costs shall not be recoverable under this Agreement.

(j) If any transportation charges paid by Seller are subject to reimbursement, Seller shall show such charges on its invoice as a separate line item with the freight bill receipt attached accordingly.

(k) Unless otherwise specified, Seller shall make one daily shipment of all Products by the same means of transportation.

(l) Seller will notify Buyer, before shipping, of any conflict between Buyer and carrier's packaging requirements.

5. DELIVERY

Time is of the essence. Delivery shall be strictly in accordance with the specified quantities and schedule. In the event of any anticipated or actual delay, Seller shall (i) immediately notify Buyer in writing of the reasons for the delay and the action being taken to overcome or minimize the delay; and (ii) provide Buyer with a written recovery schedule detailing how Seller will make up the time lost through delay. If, for any reason, Seller does not comply with Buyer's delivery schedule, Buyer may, at its option and without limitation of any other remedies available in law and equity, approve a revised delivery schedule, hold the Seller in default, and/or cancel the Subcontract. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. If Seller is late, Seller shall pay the added premium transportation cost, which shall not be considered an allowable cost under the Subcontract. Seller shall not deliver Products prior to the scheduled delivery date without the prior written consent of Buyer.

6. F.O.B., TITLE AND RISK OF LOSS

Unless otherwise specified, F.O.B. shall be Buyer's facility. Title to any goods covered by the Subcontract shall pass to Buyer upon final inspection and acceptance, regardless of when or where Buyer takes physical possession.

Risk of loss or damage to articles shall remain with Seller until:

(a) Delivery of the goods to an authorized carrier, if delivery is F.O.B. Origin; Note: F.O.B. Origin is not applicable for delivery of international goods. For international transactions, an appropriate term from *Incoterms® 2020* shall be selected and specified under the Order; or

(b) Final acceptance by Buyer or receipt of goods by Buyer at the destination specified in the Subcontract, whichever is later, if transportation is F.O.B. Destination.

Notwithstanding the above, the risk of loss or damage to goods that fail to conform to the Subcontract so as to give rise to a right of rejection shall remain with Seller until cure or final acceptance.

7. WARRANTY

Seller warrants all Products to be free from defect in design, materials, and workmanship and to conform strictly to the specifications, drawings or samples specified or furnished; to be new and of the most suitable grade of their respective kinds; to be suitable for the purpose intended; and to meet all of the performance requirements. Seller warrants all services provided to be performed at a level of skill consistent with best practices within the related industry. The aforesaid express warranties shall be in addition to any standard warranty or guarantee of Seller, shall be construed as conditions as well as warranties and shall not be exclusive. All warranties shall run to Buyer, its successors, assigned customers, and the users of the Products. Seller agrees to replace or to correct promptly without expense to Buyer, including transportation and handling costs, any Products not conforming to the foregoing requirements when notified by Buyer during a period of twelve (12) months after the Product is placed in service or within twenty-four (24) months of when the Product is delivered to Buyer, whichever is earlier. If Seller, upon notice of any defect, fails promptly to correct or replace Products as required herein, Buyer may, without further notice, correct or replace such Products and Seller agrees to reimburse Buyer for all costs incurred thereby. Products that have been rejected shall not thereafter be tendered for acceptance unless the former rejection and correction is identified and approved by the Buyer. Repaired or replacement Products shall be subject to the provisions of this article to the same extent as the original supplies. All warranties shall then run from the latter delivery date. Seller shall obtain from its suppliers, subcontractors, and vendors sufficient warranties to ensure that the entire Product, as delivered to Buyer, is covered by a warranty that complies with the terms of this Agreement.

Seller warrants that any price(s) specified in the Subcontract do not exceed the current selling price for the same or substantially similar supplies/services whether sold to the Government or to any other purchaser, taking into account the quantity and conditions of sale.

8. PRIORITY RATING

If the Subcontract indicates it is a "rated order" Seller agrees to follow all requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

9. SUPPLEMENTARY INFORMATION

Any specifications, drawings, notes, instructions, engineering notices or technical data referred to in the Agreement shall be deemed to be incorporated herein by reference as if wholly set forth. In case of any discrepancies or questions on any matter arising from the Agreement, Seller shall request from Buyer a decision, instruction or interpretation of such matters.

10. INDEMNITY AND REIMBURSEMENT

Seller shall indemnify, and hold Buyer harmless, from any and all liability claims and/or demands based upon, connected with or arising out of the performance of this Subcontract by or for Seller; and Seller shall defend Buyer from any and all such claims, actions and demands. Seller agrees that in the event Buyer's customer withholds, reduces, recoups, disallows and/or deletes the cost, overheads, and/or profits of Buyer due to any action or inaction on the part of Seller, Seller shall immediately repay Buyer for any such customer claim and/or loss.

11. USE OF SNC'S PURCHASING SYSTEM AND RECORD KEEPING

The Supplier agrees to utilize SNC's designated purchasing system for all transactions related to this Agreement. The Supplier acknowledges that it is their responsibility to familiarize themselves with the purchasing system's processes, procedures, and requirements.

The Supplier shall ensure that all relevant records, including but not limited to purchase orders, agreements, contracts, invoices, receipts, and delivery documentation, are accurately and promptly entered into SNC's purchasing system. The Supplier shall maintain up-to-date records in accordance with the requirements specified by SNC.

Furthermore, the Supplier shall be responsible for ensuring the accuracy and completeness of the information provided in SNC's purchasing system. This includes promptly updating any changes to their contact details, financial information, certifications, accreditations, or any other relevant data that may affect the contract's execution.

The Supplier shall cooperate with SNC in resolving any discrepancies or issues related to the records in the purchasing system. They shall promptly respond to requests for

information or clarification from SNC's designated personnel responsible for managing the purchasing system.

Failure by the Supplier to comply with the requirements outlined in this clause may result in delays, payment issues, or other adverse consequences. SNC reserves the right to take appropriate actions, including but not limited to withholding payment or terminating the contract, in the event of non-compliance.

12. QUALITY CONTROL SYSTEM

(applies only to goods provided under the Subcontract)

Seller agrees to provide and maintain a quality control system acceptable to Buyer and/or the Government, where applicable, for the work purchased under the Subcontract. Seller shall permit both Buyer and Government reasonable access to Seller's facilities to review procedures, practices, processes and related documents to determine such quality control system acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Products or Work delivered by Buyer during the period of any such violation or deviation. Seller shall maintain records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to Buyer and Government during Seller's performance under the Subcontract and for as long afterwards as Buyer requires. Seller agrees to include and to require subcontractors to include, the substance of this paragraph, including this sentence, in each of its subcontracts under the Subcontract.

13. ELECTRONIC SIGNATURE

If this Subcontract is transmitted electronically, the parties agree that neither party will contest the validity of this Subcontract, or any acknowledgement thereof, based on the fact that such Subcontract or acknowledgement contains an electronic signature or electronic image of an actual signature.

14. CONTRACTUAL DIRECTION

Sole authority to make changes in or amendments to the Subcontract and to effect deviations (by way of addition or deletion) from the work specified herein is hereby granted to Buyer's Authorized Representative identified in the Subcontract. All contractual direction, in order to be valid, must be written and signed by Buyer's Authorized Representative.

15. PROPRIETARY INFORMATION

In the event Buyer and Seller have entered into a Non-Disclosure (Proprietary Information) Agreement (NDA/PIA) for the Program which the Subcontract has been issued against and that NDA/PIA remains in effect, the NDA/PIA shall govern the treatment of proprietary information. In such an event, the parties hereby (1) extend the term of the NDA to cover the period of performance of this Agreement, inclusive

of all options and extensions; and (2) include within the purpose of the NDA or the permitted uses of information exchanged thereunder performance of this Agreement and any related prime contracts.

If no NDA has been executed or if an NDA has expired, the following terms shall govern proprietary information exchanged between the parties. Buyer and Seller anticipate that under the Subcontract it may be necessary for either to disclose to the other information of a proprietary nature. Proprietary information that may be disclosed under this Subcontract includes, but is not limited to, drawings, specifications, non-public product information, and other technical capabilities. Proprietary information shall be clearly identified by the disclosing party at the time of disclosure. All written proprietary information shall be marked as proprietary prior to disclosure.

Each of the parties agrees to use the same reasonable efforts to protect such information as is used to protect its own proprietary information, but in no case less than reasonable care. Disclosures of such information shall be restricted to those individuals who have a need to know and are directly participating in Subcontract efforts.

Neither party shall make any reproduction, disclosure, or use of such proprietary information, except as follows:

- (a) Such information furnished by Buyer may be used by Seller in performing its obligations under the Subcontract.
- (b) Such information furnished by Seller may be used by Buyer in performing its obligations under the Subcontract and in performing its obligations under Buyer's Prime Contract. Buyer's use of Seller's information to perform Buyer's obligations under Buyer's Prime Contract expressly includes delivering information furnished by Seller to Buyer's customers. Under such circumstances, Buyer will affix appropriate restrictive legends to the extent that Seller specifically requests and that such legends are permitted by the Prime Contractor's requirements.
- (c) Such information may also be used in accordance with any written authorization received from the disclosing party.
- (d) The limitations on reproduction, disclosure, or use of proprietary information shall not apply to, and neither party shall be liable for, reproduction, disclosure, or use of proprietary information with respect to any of the following conditions:
- (e) If, prior to the receipt thereof under the Subcontract, the information has been developed independently by the party receiving it, or was lawfully known to the party receiving it, or has been lawfully received from other sources, including the Government (provided such other source did not receive it due to a breach of

this clause) or was in the public domain prior to disclosure hereunder.

- (f) If, subsequent to receipt thereof under the Subcontract, (i) the information is published by the party furnishing it or is disclosed by the party furnishing it to others without restriction; or (ii) it has been lawfully obtained by the party receiving it from other sources, including the Government, provided such other source did not receive it due to a breach of this clause; or (iii) if such information otherwise comes within the public knowledge or becomes generally known to the public.
- (g) If any part of the proprietary information has been or hereafter shall be disclosed in a United States patent issued to the party furnishing the proprietary information hereunder, then, after the issuance of said patent, the limitations on such proprietary information as disclosed in the patent shall be only that afforded by United States patent laws.
- (h) If the proprietary information is furnished orally, unless such proprietary information was identified as proprietary at the time of disclosure and reduced to writing and marked proprietary within fifteen (15) days of original disclosure and such writing is forwarded to the receiving party and actually received within fifteen (15) days of original disclosure.
- (i) If such proprietary information is obligated to be disclosed under order of a court of competent jurisdiction so long as prompt notice of the order is given to the other party.
- (j) If such proprietary information is disclosed with the written approval of the originating party.

The furnishing of any proprietary information by either party shall not be construed as granting to the other party either expressly, by implication, estoppel, or otherwise, any ownership or license right (other than the limited license to use the information internally for the purpose for which it was provided) under any invention, patent, trade secret, trademark, or copyright now or hereafter owned or controlled by the party furnishing same. The foregoing shall not impact any license or ownership right in information identified and set forth elsewhere in this document.

Seller shall upon Buyer's request or upon completion of this Subcontract, whichever occurs first, promptly at its option: (1) destroy all proprietary information furnished in connection with the Subcontract and certify such destruction; or (2) return all proprietary information furnished in connection with the Subcontract, together with all copies or reprints then in Seller's possession and control, and Seller shall thereafter make no further use of nor disclose to others any such data or documents or any information derived therefrom without Buyer's prior written consent

Notwithstanding anything to the contrary elsewhere in this Agreement (inclusive of this provision) or an associated NDA, nothing in this Agreement or in an associated NDA restricts,

limits, or otherwise impacts any rights, licenses, or conveyances granted to Buyer elsewhere in this Agreement. To the extent that language in this Agreement or an associated NDA could be interpreted as creating such a restriction, limitation, or impact, the language pertaining to the granted rights, licenses, or conveyances shall govern.

16. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY

Seller shall defend, indemnify, and hold Buyer, Buyer's officers, agents, employees, and customers harmless against all claims suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fee and/or costs), liabilities, damages, costs, and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacturing, sale or use of products by either Buyer or its customer delivered under the Subcontract. Buyer and/or its customer will duly notify Seller of any claims, suits or actions; and Seller shall, at its own expense, fully defend such claims, suit or action on behalf of indemnities, obtain such licenses as are necessary to remove such infringement, or replace the infringing Product.

In the event that a court of law, administrative body, or other entity convened for the purpose of resolving such a matter, including through the use of alternative dispute resolution, determines that Seller has violated the protections afforded to a third party's intellectual property under statute, regulation, or contract, Seller shall use all reasonable efforts to obtain a license for Buyer that permits Buyer's use of any intellectual property included in a deliverable or otherwise necessary to the performance of the Subcontract. If Seller is unable to obtain such a license, Seller shall, at its own expense, modify performance of this Subcontract to eliminate the need for the infringing intellectual property. If Seller becomes responsible for modifying performance under this provision, Seller shall first propose an alternate method of performance that is at least as beneficial to Buyer and Buyer's customers and/or the Government as the method of performance originally contemplated in the Subcontract. Such a Seller proposal shall be first approved by Buyer prior to Seller commencing its effort to modify performance.

17. RIGHTS IN INTELLECTUAL PROPERTY

Unless prohibited by law and / or U.S. Government prime contract provisions, Seller hereby assigns to Buyer all rights in, title to, and ownership of patents, trade secrets, technical data, and other intellectual property created, conceived, or first reduced to practice under this Subcontract. This specifically includes, but is not limited to, original works of authorship fixed in any tangible form, including software and software improvements, enhancements, derivative works and mask

works, whether specially ordered or commissioned, made by Seller alone or jointly with others in connection with the Subcontract are hereby assigned to Buyer.

In instances where the above allocation of rights is prohibited by law or U.S. Government prime contract term, Seller hereby grants to Buyer a royalty-free, perpetual, worldwide, non-exclusive, irrevocable, transferrable, sublicensable and otherwise unlimited license to sell, disclose, distribute, or otherwise use all delivered data, software, or other intellectual property to support Buyer's customer under the relevant prime contract as well as related and/or follow-on contracts, to make use of any delivered goods, services, or intellectual property (including data), and/or to otherwise comply with Buyer's contractual obligations under the relevant prime contract and/or related or follow-on contracts. In instances where Seller retains ownership of data or intellectual property first created, conceived, or first reduced to practice under this Subcontract, Seller hereby agrees to comply with (and take all actions necessary to support Buyer's compliance with) all applicable notice, administration, and reporting requirements set forth in statutes and regulations relevant to United States Government contracting.

Seller further warrants that it will obtain from all employees, vendors, and/or subcontractors such the rights and title necessary to comply with the requirements of this section., on Buyer's behalf, from all employees or subcontractors in a way that facilitates Seller's transfer of such rights and title to Buyer or Buyer's assigns. Seller shall not incorporate any data or other intellectual property which was not first produced in the performance of the Subcontract into Products delivered under the Subcontract unless Seller: (1) arranges for and provides to Buyer and Buyer's customers at any tier a non-exclusive, irrevocable license for unlimited use and disclosure of the data or other intellectual property sufficient to allow Buyer to comply with its obligations to its Customer rights consistent with those that Buyer would receive had the data or intellectual property been created, conceived, or first reduced to practice under this Subcontract; or (2) receives prior approval from Buyer to incorporate such data or intellectual property.

Seller recognizes that this Subcontract is issued under a Government Prime Contract. Accordingly, the Government is entitled to certain intellectual property rights associated with Subcontract Work. For additional information on intellectual property rights, please review FAR Part 27, DFARS Part 227, similar provisions of relevant agency FAR supplements, and the clauses associated with each of the aforementioned sections. Seller hereby provides the Government with all intellectual property rights, including license rights, required by the FAR and DFARS.

Buyer-Provided Intellectual Property: Any intellectual property, technical data, or other information owned by or provided by Buyer to Seller under this Agreement shall remain the exclusive property of Buyer. Seller shall treat this Buyer-

provided or Buyer-owned intellectual property, technical data, and other information in accordance with the terms of the applicable non-disclosure agreement or Agreement provision concerning proprietary information. If there is no non-disclosure agreement or Agreement provision concerning proprietary information, Seller shall receive a limited, nonexclusive, revocable, non-transferrable, non-sublicensable license to this Buyer-provided or Buyer-owned intellectual property, technical data, and other information only for the period of performance of this Agreement and only permitting the intellectual property, technical data, and other information to be used to perform this Agreement.

Buyer Name, Trademarks, and Images: Nothing in this Agreement permits Seller to use publicly or with any third parties SNC's name, trademarks or Buyer-owned images. Seller can only receive the right to use such names, trademarks, or images through a separate agreement with SNC. If Seller receives such a right to use SNC names, trademarks, or images, such use must be consistent with SNC's usage guidelines, which will be provided if and when Seller is permitted to use Buyer names, trademarks, or images.

18. RESERVED

19. BUYER PROPERTY

Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all Buyer property and all property to which Buyer acquires an interest by virtue of the Subcontract. Except for ordinary wear and tear, Seller assumes all risk of loss, destruction, or damage to such property while in Seller's possession, custody, or control, and will not use such property other than in performance of the Subcontract without Buyer's written consent. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller will notify Buyer if Buyer property is lost, damaged, or destroyed. As directed by Buyer, upon completion, termination, or cancellation of the Subcontract, Seller shall deliver such property, to the extent not incorporated in delivered end products, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this article limits Seller's use, in its direct contracts with the Government, of property in which the Government maintains title. At the request of Buyer, Seller shall execute any documents, including but not limited to financial statements, required by Buyer to protect its interest in this property. Seller agrees that all dies, tools, jigs, fixtures, designs, drawings, patterns and other special items, which are furnished by Buyer without charge, shall be the Property of Buyer.

20. RESERVED

21. RESERVED

22. INSURANCE

Seller, its subcontractors, and lower-tier subcontractors, agree to procure and maintain worker's compensation, comprehensive general liability, bodily injury, and property

damage insurance in reasonable amounts that are consistent with industry practice and the specific loss potential related to performance of this Subcontract, and such other insurance as Buyer may require. Seller shall provide Buyer thirty (30) calendar days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's insurance under this provision. Seller shall provide Buyer with a "Certificate of Insurance" evidencing Seller's compliance with this provision. Seller shall name Buyer as an additional insured for the duration of the Subcontract. Insurance maintained under this provision shall be considered primary with respect to the interest of Buyer and is not contributory with any insurance Buyer may carry.

23. SITE REQUIREMENTS

In the event that Seller, its employees, agents, or subcontractors enter Buyer's, Buyer's customer's and/or the Government's premises for any reason in connection with the Subcontract, Seller shall comply with all applicable security requirements.

24. RESERVED

25. INSPECTION

- (a) Seller shall perform all examinations, inspections and tests, or assume responsibility for others to do so, necessary to ensure that the Products furnished are in complete conformity with all requirements of the Agreement.
- (b) All Products entering into the performance of the Agreement may be inspected and tested at all times and places, before, during or after manufacture, by representatives of Buyer, its customer, and/or the Government. If inspection and/or test is made on the premises of Seller or its supplier, Seller shall furnish without additional charge all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests shall be performed in such a manner as not to unduly delay the work. Final inspections shall be on Buyer's premises unless Buyer directs otherwise in writing.
- (c) In case any of the Products are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of the Agreement, Buyer shall have the right to reject the same or require that such Products be corrected or replaced promptly. Nonconforming Products shall be identified by Seller and removed from normal production flow until correction or replacement is complete. Only Buyer may authorize deviations from control documents and such deviations must be authorized in writing by Buyer. Products rejected, as not conforming to the Agreement shall be returned at Seller's expense including but not limited to packaging, transportation, handling, warranty, and all repair or replacement costs necessary to provide conforming goods. If Buyer rejects the Products or if Seller, when requested by Buyer, fails to proceed promptly with the replacement or correction thereof, Buyer either may terminate the Agreement for default or may replace or correct such Products and in either event may charge Seller the cost or damages

occasioned by Products which do not conform to the requirements of the Agreement, including delivery schedule. Seller's liability shall include any reduction in value of non-conforming Products and any other incidental or consequential damages which Buyer may suffer on account of Seller's failure to conform with the requirements of the Agreement. If Buyer elects to accept such non-conforming Products, the parties will negotiate in good faith for a downward equitable adjustment in price and payments will be withheld during the pendency of such negotiations.

- (d) Seller shall provide and maintain an inspection system in accordance with sound business practice and as otherwise specified in the Agreement. Records of all inspection work by Seller shall be kept complete and available to Buyer during the performance of the Agreement and for three (3) years after final payment or in such manner as may be specified elsewhere in the Agreement.
- (e) The methods of inspecting and testing for purposes of Buyer's acceptance of the Products shall be determined in Buyer's sole discretion and shall include statistical sampling methods. Acceptance of any Products shall not waive, modify, limit or constitute compliance with any of the warranty obligations imposed herein on Seller.
- (f) Seller acknowledges that the nature of Buyer's business requires Buyer to reserve the right to terminate the Agreement for default if Seller fails in any respect to meet the entire requirement of the Agreement. Buyer shall have the right, at its election, to cancel the Agreement in its entirety for any late delivery, cancel the remaining portion of the Agreement for default because of said late delivery, or both. Buyer may determine which units are acceptable and which are not, in which event Buyer shall have the right to charge and deduct from the price otherwise due Seller all of Buyer's direct costs associated with handling and testing the units to the extent those costs exceed the testing costs originally contemplated by Buyer, together with a reasonable allowance for overhead, unless Buyer elects to reject all or any part of a lot. Whenever any commercial unit within such lot (or installment) fails acceptance testing, and regardless of whether Seller offers to cure any nonconformity, Buyer shall have the right to cancel the remainder of the Agreement for default.

26. BUYER APPROVALS AND REVIEWS

The review or approval by Buyer of any work hereunder or of any designs, drawings, specifications or documents prepared hereunder shall not relieve Seller of any of its obligations under the Subcontract, nor excuse or constitute a waiver of any defects or nonconformities in any articles furnished under the Subcontract, nor change, modify, or otherwise affect any of the provisions of the Subcontract, including but not limited to, the prices and delivery schedules contained herein.

27. PARTS OBSOLESCENCE

Buyer may wish to place additional orders for Products purchased under this Subcontract. Seller agrees to provide Buyer with a "Last Opportunity to Buy Notice" at least twelve

(12) months before any action to discontinue any Products purchased under the Subcontract.

28. CHANGES

(a) Buyer's Authorized Representative may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Subcontract to any one or more of the following:

1. Drawings, designs, or specifications
2. Method of shipment or packing.
3. Place of delivery, inspection or acceptance
4. Description of services to be performed
5. Time of performance
6. Place of performance
7. Delivery schedule

(b) Seller shall comply immediately with such direction. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of work under this Subcontract, Seller may request an equitable adjustment in the:

1. estimated cost, the delivery or completion schedule, or both
2. amount of any fixed fee
3. other affected terms and the Subcontract shall be modified accordingly.

(c) Seller must submit any "proposal for adjustment" (hereinafter referred to as "proposal") under this clause within twenty (20) days from the date of receipt of the written order. However, if Buyer decides that the facts justify it, Buyer may receive and act upon a proposal submitted before final payment of the order.

(d) If Seller's proposal includes the cost of property made obsolete or in excess by the change, Buyer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse Seller from proceeding with the order as changed.

(f) Notwithstanding the terms and conditions of parts (a) and (b) above, the estimated cost of this Subcontract and, if this Subcontract is incrementally funded, the funds allotted for the performance of this Subcontract shall not be increased or considered to be increased except by specific written modification of the Subcontract indicating the new Subcontract estimated cost and, if this Subcontract is to be incrementally funded, the new amount allotted to the Subcontract. Until this modification is made, Seller shall not be obligated to continue performance or incur costs beyond the original estimated cost of the Subcontract and, if this Subcontract is incrementally funded, beyond the amount of funds originally allotted for the performance of this Subcontract.

When costs are a factor in any determination of an equitable adjustment, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation as in effect on the date of the Subcontract(h) Seller is required to notify buyer of changes in product and/or process definition impacting the quality of products or processes being supplied. Buyer and/or buyer's affected customer representative must review and approve proposed process changes prior to implementation.

29. STOP WORK

Buyer may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by the Subcontract for a period of ninety (90) days after the order is delivered to Seller, and for any further period to which the parties may agree. Upon receipt of such an order, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Seller, or within any extension of that period which the parties shall have agreed, Buyer shall either;

- (a) Cancel the Stop Work Order, or
- (b) Terminate the work covered by such order as provided in the "Termination/Cancellation" clause of this Subcontract.

If a Stop Work Order issued under this clause is canceled or the period of the order or any extension thereof expires, Seller shall resume work. Seller may request an equitable adjustment in the delivery schedule, or the Subcontract price, or both, and modify the Subcontract in writing accordingly, if

- (a) The Stop Work Order results in an increase in the time required for, or in Seller's cost properly allocable to the performance of any of the Subcontract; and
- (b) Seller asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if Buyer decides the facts justify such action, Buyer may receive and act upon a proposal submitted at any time before to final payment under the Subcontract.

If a Stop Work Order is not canceled and the work covered by the order is terminated for default, Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the Stop Work Order.

If a Stop Work Order is not canceled and the work covered by such order is terminated for the convenience of Buyer, Buyer shall allow all reasonable costs already incurred in performance of the work cancelled, resulting from the Stop Work Order in arriving at the termination settlement.

If a Stop Work concludes with Buyer issuing to Seller a termination for cause, Seller shall not be entitled to any compensation or reimbursement of costs under this clause.

This is in addition to any rights or remedies that Buyer may have elsewhere in the document.

30. TERMINATION/CANCELLATION

Termination for Cause - Performance of work under the Subcontract may be terminated by Buyer, in whole or in part, if, within ten days of Buyer's notice to Seller, Seller fails to: (1) cure any material failure to perform, discharge or fulfill its obligations under the Subcontract including, but not limited to failure to observe or comply with any of the other instructions, terms, conditions, or warranties applicable to the Subcontract, (2) fails to make progress so as to endanger performance of the Subcontract, or (3) fails to provide adequate assurance of future performance. Additionally, Buyer may terminate the Subcontract immediately if Seller fails to deliver according to the Schedule or violates any Federal, state, local, or law pertaining to performance of the Subcontract. Default involving delivery schedule delays shall not be subject to cure provisions. Buyer shall not be liable for any work not accepted prior to termination. Buyer may require Seller to deliver to Buyer any supplies and materials, manufacturing materials, and manufacturing drawings Seller has specifically produced or acquired for the terminated portion of the Subcontract. Seller shall continue all work not terminated.

Without Cause - For work not specially performed under the Subcontract, Buyer may terminate in whole or in part the Subcontract for its convenience by giving written notice to Seller and Buyer's only obligation to Seller shall be payment of mutually agreed upon restocking or service charges. For work specially performed for Buyer, Buyer may terminate in whole or in part the Subcontract for its convenience by giving written notice to Seller. Seller shall be entitled to its costs already incurred in the performance of the work canceled, plus a reasonable profit on such costs (unless Seller would have sustained a loss on the entire Subcontract had it been completed), which together may not exceed the contract price or not-to-exceed amount for the work canceled. Buyer is not liable for work performed or costs incurred by Seller after notice of termination, which reasonably could have been avoided. In no event shall Buyer be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Subcontract price or not-to-exceed amount. Seller's termination claim shall be submitted within ninety (90) calendar days from the effective date of the written notice of termination. Seller shall continue all work not terminated. The amount of any payments made by Buyer to Seller under this clause shall be determined in conformity with the policies and principles set forth in Part 49 and related sections of Part 31 of the FAR in effect at the date of this Subcontract, unless inconsistent with the express terms of this Subcontract.

31. SURVIVABILITY

If the Subcontract expires, is completed, or is terminated, Seller is not relieved of the obligations contained in the following clauses:

Proprietary Information
Patent, Trademark & Copyright Indemnity
Warranty
Disputes/Arbitration
Termination/Cancellation
Independent Contractor Relationship
Counterfeit or Suspect Parts
Record Retention
Defective Cost or Pricing Data
Indemnity and Reimbursement
Choice of Law
Compliance with Laws
Rights & Remedies
Allowable Cost and Payment
Those U.S. Government flowdown provisions that, by their nature, should survive.

32. BANKRUPTCY

In addition to the rights set forth in the Termination/Cancellation clause above, Buyer may terminate the Subcontract for default, in whole or in part, by written notice to Seller if (i) Seller becomes insolvent or makes a general assignment for the benefit of creditors or (ii) a petition under any bankruptcy act or similar statute is filed by or against Seller and not vacated within ten days after it is filed.

33. INDEPENDENT CONTRACTOR RELATIONSHIP

Seller is an independent contractor in all its operations and activities under this Subcontract. Seller shall be responsible for any costs or 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 the Subcontract.

34. ASSIGNMENTS AND SUBCONTRACTING

Neither the Subcontract, nor any interest herein, nor any claim hereunder, may be assigned or delegated by Seller, nor may Seller further subcontract all or substantially all of the Subcontract without the prior written consent of Buyer. Buyer's consent shall not be deemed to relieve Seller of its obligations to comply fully with the requirements hereof.

If Seller has relied on the statement that no further subcontracting opportunities exist under this Agreement as a reason for not submitting to Buyer a small business subcontracting plan, Seller shall notify Buyer of any subcontracting that occurs under this Agreement. If requested, Seller shall provide to Buyer a small business-subcontracting plan under such circumstances.

Without Buyer's written consent, Seller shall not subcontract for the design, development, or procurement of any substantial portion of goods or services under the Subcontract. This limitation does not apply to Seller's purchase of standard commercial supplies or raw material.

Notwithstanding the above, Seller may, without Buyer's consent, assign monies due or to become due hereunder provided Buyer shall continue to have the right to exercise any and all of its rights hereunder, settle any and all claims arising out of, and enter into amendments to the Subcontract, without notice to or consent of the assignee. Buyer shall be given written notice of any assignment and all invoices shall refer to the assignment.

35. CUSTOMERS COMMUNICATION, NEWS AND PUBLIC STATEMENTS OR RELEASES

Buyer shall be solely responsible for all communication with Buyer's customer, including the U.S. Government, as it affects the applicable Prime Contract, and the Order. This section shall not restrict any Seller communications that, by law or regulation, must go directly to the U.S. Government (i.e., that cannot by law or regulation be accomplished by communicating with the U.S. Government through the Buyer).

Seller shall not make, deny or confirm any public statements, news releases, advertisement, media interviews or public announcements (collectively, "Public Release") concerning the Order, the subject matter of the Order or any phase of the program hereunder unless Buyer, in its sole and absolute discretion, provides Seller with advance written approval of such Public Release. In furtherance of the foregoing, Seller shall submit the requested Public Release and detailed information concerning the applicable forum, publication or media outlet in writing to Buyer no later than fifteen (15) business days prior to the requested release date. Buyer's approval of a specific Public Release hereunder shall not operate or be construed as an approval of any previous or subsequent Public Release by Seller. This provision shall not apply to any disclosure deemed by a Seller's legal counsel to be required by law or by regulation of any federal, state or local government agency.

36. REPORTING OF CYBER INCIDENTS

(applies only to agreements that contain the clause at DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting)

When the Seller discovers a cyber incident that affects a covered information system, covered defense information in the system, or that affects the seller's ability to perform the requirements of the contract, the Seller shall,

- a) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered seller information system(s) that were part of the cyber incident, as well as other information systems on the Seller's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Seller's ability to provide operationally critical support; and

b) Rapidly report cyber incidents (within 72 hours of discovery) to DoD at <http://dibnet.dod.mil>, and

- c) Send an email to reporttosecurity@sncorp.com containing the following information:
 1. Incident Report Number (assigned by DoD via the dibnet reporting link above)
 2. Company name
 3. Facility CAGE code
 4. Technical or Security Point of Contact (address, position, office and cell phone numbers, email).

d) The following information must be provided to SNC as soon as practicable. Transmittal instructions for this information will be provided by SNC following initial notification in previous section.

1. Data Universal Numbering System (DUNS) Number
2. Contract number(s) or other type of agreement affected or potentially affected
3. Contracting Officer or other type of agreement point of contact (address, position, telephone, email)
4. Contract or other type of agreement clearance level (Unclassified, Confidential, Secret, Top Secret, Not applicable)
5. Facility Clearance Level (Unclassified, Confidential, Secret, Top Secret, Not applicable)
6. Impact to Covered Defense Information
7. Ability to provide operationally critical support
8. Date incident discovered
9. Location(s) of compromise
10. Incident location CAGE code
11. DoD programs, platforms or systems involved
12. Type of compromise (unauthorized access, unauthorized release (includes inadvertent release), unknown, not applicable)
13. Description of technique or method used in cyber incident
14. Incident outcome (successful compromise, failed attempt, unknown)
15. Incident/Compromise narrative
16. Any additional information

e) In accordance with best practice, contain and isolate impacted resources (hardware and/or software)

f) Investigate and collect additional evidence to identify and mitigate root cause of incident. Additional evidence collection and investigative procedures also include the following:

1. Understanding how the incident occurred and what led to the compromise.
2. Reviewing all necessary documentation.
3. Interviewing personnel as needed.
4. Examining any third-party providers and their respective products and services that are utilized within Sierra Nevada Corporation's network architecture.

- g) Keep SNC abreast of the overall status of the incident, such as response and resolution initiatives.
- h) Advise SNC when remediation and/or mitigation for the incident is completed.

Supplier is required to flow down the content of this clause to all lower tier suppliers where the activity includes the use of Controlled Defense Information as defined in DFARS 252.204-7012(a).

37. RESERVED

38. DEFECTIVE COST OR PRICING DATA

This Subcontract incorporates FAR 52.215-10 “Price Reduction for Defective Certified Cost or Pricing Data.” In addition to any other remedies provided by law or under the Subcontract, if Buyer is subjected to any liability as the result of Seller or its lower tier subcontractor’s failure to comply with the requirement of FAR 52.215-10, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense resulting from such failure.

This Subcontract incorporates FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications. In addition to any other remedies provided by law or under the Subcontract, if Buyer is subjected to any liability as the result of Seller or its lower-tier subcontractors’ failure to comply with the requirements of FAR 52.215-11, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense resulting from such failure.

If Seller is required to submit cost or pricing data, Seller must provide the Certificate of Current Cost and Pricing Data required by FAR 15.406-2, substituting Buyer’s name for “Contracting Officer.”

39. TAXES

Seller shall provide Buyer with the appropriate IRS Form W-8 (e.g., W-8BEN, W-8BEN-E, W-8IMY, etc.) if the Seller is a non-US entity or IRS Form W-9 if the Seller is a US entity. If Seller fails to provide one of these forms, Buyer may be required under by the Internal Revenue Code to withhold a portion of the amounts due to the Seller. If Buyer is required by law or regulation to make such a withholding, Seller hereby consents to the withholding and agrees that it shall not constitute a breach of this Agreement.

40. RESERVED

41. COMPLIANCE WITH LAWS

Seller warrants that it shall comply with all Federal, State, local, and international laws, including, but not limited to, any statute, rule, regulation, judgment, decree, order or permit requirement applicable to its performance under the Subcontract, including those pertaining to United States Export Controls.

The foregoing paragraph expressly includes compliance with the Foreign Corrupt Practices Act and similar anti-corruption laws and regulations. To the extent that Buyer has a

reasonable belief that Seller has violated such laws, Buyer may immediately suspend performance of this Agreement and subsequently terminate this Agreement for cause if Seller fails to demonstrate compliance with the relevant anti-corruption laws and regulations.

Buyer may make a reduction in the price, costs and/or fee of the Subcontract, and/or may demand payment of corresponding amounts if: (i) Buyer’s contract price or fee is reduced; (ii) Buyer’s costs are determined to be unallowable; (iii) any fines, penalties 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. Seller shall promptly pay any amounts demanded under this provision.

42. COUNTERFEIT AND SUSPECT PARTS

Seller agrees to obtain all parts incorporated into Products delivered under this Subcontract directly from the original component manufacturer or original equipment manufacturer unless Seller obtains advance written approval from Buyer to acquire parts from an independent distributor. Seller will not provide any Products which contain material known to be suspect or counterfeit. This includes any material labeled or marked in a misrepresentative manner. Seller will immediately notify Buyer if it becomes aware or suspects any parts furnished under the Subcontract are counterfeit. If suspect or counterfeit parts are discovered in Products furnished by Seller under this Subcontract, Seller shall promptly replace such parts with parts acceptable to Buyer. Seller is liable for any costs associated with the removal and replacement of any suspect or counterfeit parts it provides under the Subcontract.

43. RECORD RETENTION

Seller agrees to retain all documents and records associated with performance under this Agreement for the time periods designated in FAR Part 4.700 or a longer period if specified elsewhere in this Agreement or directed by the Buyer. Seller will provide timely access to these records, at no cost, upon request.

44. CHOICE OF LAW

The Subcontract shall be governed by and construed and enforced in accordance with the law of the State of Nevada, excluding choice of law rules. Notwithstanding the above, any provision in the Subcontract that is (i) incorporated in full text or by reference from the FAR or (ii) incorporated in full text or by reference from any agency regulations that implement or supplement the FAR or (iii) substantially based on any such agency regulation or FAR provision, shall be interpreted according to the federal common law of government contracts as construed by federal judicial bodies, Boards of Contract Appeals, and quasi-judicial agencies of the federal Government.

45. DISPUTES/ARBITRATION

The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement, or any alleged breach of this Agreement, by mediation. If the matter has not been resolved through mediation, or if either party will not participate in a mediation, such controversy or claim shall be resolved by means of binding arbitration before a single neutral arbitrator in accordance with the then existing Commercial Arbitration Rules of the American Arbitration Association, including the Optional Rules for Emergency Measures of Protection. The parties shall mutually agree upon the individual who shall act as arbitrator. If the parties are unable to agree upon a neutral arbitrator, a list of potential arbitrators (no more than 10) shall be obtained by Buyer from the American Arbitration Association. The parties, starting with Buyer, will alternately strike names from the list until only one name remains; the remaining person shall be the arbitrator.

No demand for arbitration may be made after the date when the institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitation. The arbitration shall be held in Washoe County, Nevada or any other place agreed upon at the time by the parties. The arbitrator shall issue a reasoned award. Judgment upon the arbitrator's award may be entered in any court having jurisdiction. The arbitrator is not authorized to award punitive or other damages not measured by the prevailing party's actual damages. An award of damages shall include pre-award interest at the legal rate of interest from the time of the act or acts giving rise to the award.

A party may apply to the arbitrator for injunctive relief until an arbitration award is rendered or the dispute is otherwise resolved. A party also may, without waiving any other remedy, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party pending the arbitrator's appointment or decision on the merits of the dispute. The arbitrator's compensation and costs shall be shared equally by the parties.

The arbitrator shall require exchange by the parties of (i) the name and, if known, address and telephone number of each person likely to have knowledge of relevant information, identifying the subjects of the information, and (ii) non-privileged documents, including those in electronic form, that are relevant to the issues raised by any claim, defense or counterclaim or on which the producing party may rely in support of or in opposition to any claim, defense or counterclaim. The arbitrator shall limit such production based on considerations of unreasonable expense, duplication and undue burden. These discovery exchanges shall occur no later than a specified date within 60 days following the appointment of the arbitrator. At the request of a party, the arbitrator may at his or her discretion order the deposition of witnesses. Depositions shall be limited to a maximum of three depositions per party, each of a maximum of four hours duration, unless the arbitrator otherwise determines. The arbitrator may allow such other discovery as he or she

determines is reasonably necessary for a fair determination of the dispute. Any dispute or objections regarding discovery or the relevance of evidence shall be determined by the arbitrator. All discovery shall be completed within 120 days following the appointment of the arbitrator, unless the arbitrator otherwise determines.

The prevailing party in any such arbitration shall be entitled to recover its reasonable attorney fees and costs incurred in such proceeding from the non-prevailing party.

Until final resolution of any dispute hereunder, Seller shall diligently proceed with performance of the Order as directed by Buyer.

Except as may be expressly set forth in these terms and conditions with the Government contracting officer's express consent, Seller shall not acquire any direct claim or direct course of action against the Government.

46. RESERVED

47. RIGHTS AND REMEDIES

Except as otherwise limited in the Subcontract, the rights and remedies of the parties set forth in the Subcontract are cumulative and in addition to any other rights or remedies in law or equity. When multiple remedies are available to Buyer under the Subcontract, or otherwise, Buyer has the option to choose which remedy or remedies to pursue.

Except as may be expressly set forth in this document with the Government Contracting Officer's express consent, Seller shall not acquire any direct claim or direct course of action against the U.S. Government.

48. NON-WAIVER

Any failure at any time of a party to enforce any provision of the Subcontract shall not constitute a waiver of such provision or prejudice the right that party to enforce such provision at any subsequent time, including any technical requirements, specifications or drawings or a waiver of a default provision.

49. PARTIAL INVALIDITY

If any provision of the Subcontract is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

50. GRATUITIES/KICKBACKS

Seller warrants and certifies that neither it nor any of its employees, agents or representatives has offered or given any gratuities of any kind, nature or amount, to Buyer's employees, agents or representatives for the purposes of securing the Subcontract or securing favorable treatment with respect thereto. By accepting the Subcontract, Seller certifies and represents that it has not and will not make or solicit kickbacks in violation of FAR 52.203-7. "Anti-Kickback Procedures", or the Anti-Kickback Act of 1986 (41 U.S.C. §§51-58), both of which are incorporated herein by reference.

51. EXPORT CONTROLS

Seller agrees to comply with all applicable U.S. export control laws and regulations, including, but not limited to, the Arms Export Control Act, 22 U.S.C. §§ 2751-2799, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. §§ 120-130, the Export Administration Act, 50 U.S.C. §§ 2401-2420, and the Export Administration Regulations (EAR), 15 C.F.R. §§ 730-744. In addition, Seller agrees that it will not transfer any export controlled items, data, or services, to include the transfer to a foreign person employed by or associated with Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption/exception. Seller agrees to notify the Buyer's Authorized Representative if any Product under this Order is restricted under export control laws or regulations, if Seller becomes listed on any restricted party list including, but not limited to, the Denied Persons List, Unverified List, Entity List, Specially Designated Nationals List and Debarred List, or if Seller has any export privileges denied, suspended, or revoked by the government. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any violation of the above laws and regulations, or breach by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, of the obligations under this clause.

52. ALLOWABLE COST AND PAYMENT

Invoicing - Buyer shall make payments to Seller when requested as work progresses, but (except for Small Business Concerns) not more often than once every two weeks, in amounts determined to be allowable by Buyer in accordance with the terms of the Subcontract and Part 31 of the FAR, and agency supplements as appropriate in effect on the date of the Subcontract. If the Contract is with an educational institution, FAR Subpart 31.3 shall apply; and if with a non-profit organization other than an educational institution, FAR Subpart 31.7 shall apply. Seller may submit to the remittal address shown on the Subcontract, an invoice or voucher supported by a statement of the claimed allowable cost for performing the Subcontract. A separate invoice should be submitted for travel expenses.

(a) Reimbursing costs -

(1) For the purpose of reimbursing allowable costs, the term "costs" includes only:

(i) Those recorded costs that, at the time of the request for reimbursement, Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for the Subcontract;

(ii) When Seller is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Work purchased directly for the Contract and associated financing payments to subcontractors, provided payments determined due will be made—

(1) In accordance with the terms and conditions of a subcontract;

(B) Materials issued from Seller's inventory and placed in the production process for use on the Subcontract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by Seller for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to Seller's subcontractors.

(2) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under the Subcontract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(b) Final indirect cost rates. Buyer shall reimburse Seller on the basis of final annual indirect cost rates and the appropriate bases established by Seller and approved by Buyer and/or the Government in effect for the period covered by the indirect cost rate proposal. Such rates and bases shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in the Subcontract. The rates and bases shall be deemed incorporated into the Subcontract upon execution.

(c) Billing Rates - There shall be included as allowable indirect costs such overhead rates as may be established by Seller and approved by Buyer and/or the cognizant Government agency in accordance with the principles of the FAR and applicable FAR supplement. Pending establishment of final indirect overhead rates for any period, Seller shall be reimbursed at billing rates approved by the Buyer and/or the cognizant Government agency, which billing rates may be revised from time to time subject to such approval and subject to appropriate adjustment when the final rates for that period are established.

(d) Quick-closeout procedure - When Seller and Buyer agree, quick-closeout procedures of Subpart 42.7 of the FAR may be used.

(e) Audit - At any time or times before Prime Contract closeout, Buyer or the Contracting Officer may have Seller's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(f) Final payment.

(1) Seller shall submit a completion invoice or voucher, designated as such, promptly upon completion of the Work,

but no later than one year (or longer, as Buyer may approve in writing) from the completion date. Upon approval of that completion invoice or voucher and upon Seller's compliance with all terms of the Subcontract, Buyer shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) Seller shall pay to Buyer any refunds, rebates, credits, or other amounts (including interest, if applicable under the Subcontract) to the extent that those amounts are properly allocable to costs for which Seller has been reimbursed by Buyer. Reasonable expenses incurred by Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by Buyer. Before final payment under the Subcontract, Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

(i) An assignment to Buyer, in form and substance satisfactory to Buyer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which Seller has been reimbursed by Buyer under the Subcontract; and

(ii) A release discharging Buyer, the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under the Subcontract, except:

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of Seller to third parties arising out of the performance of the Subcontract; provided, that the claims are not known to Seller on the date of the execution of the release, and that Seller gives notice of the claims in writing to Buyer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(iii) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by Seller under the patent clauses of the Subcontract, excluding, however, any expenses arising from Seller's indemnification of Buyer and the Government against patent liability.

(g) Subcontracts - No subcontract placed under the Subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursements type subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c) of the FAR.

(h) Notwithstanding anything else contained herein, Buyer's receipt of payment under the prime contract is an express condition precedent to Buyer's obligation to make payment to Seller under this Agreement. If Buyer makes any payments to Seller prior to receipt of final payment under the corresponding prime contract, those payments by Buyer shall be considered interim in nature and subject to adjustment if the prime contractor determines that Buyer is not entitled to the full amount requested under the prime contract.

53. CONFLICT MINERALS

In compliance with Dodd-Frank Act Section 1502, Seller recognizes the potential applicability of the SEC Reporting Requirements for Issuers Using Conflict Minerals, and shall provide Buyer with any and all information designated, identified or otherwise delineated in such rules within forty-five (45) days of Buyer's written request for such information. "Conflict minerals" are: columbite-tantalite (coltan), cassiterite, wolframite, and gold, or their derivatives tantalum, tin, and tungsten.

54. NOTICES AND DESIGNATION OF RESPONSIBLE INDIVIDUALS

Notices given under the Subcontract must be in writing signed by an authorized officer of Buyer or of Seller and will be effective upon receipt if sent by certified mail return receipt requested, by email, by facsimile transmission, or by a nationally recognized courier providing receipted delivery. Notices to be given under the Subcontract shall be addressed to the parties' addresses set forth within the Subcontract or to such other addresses as a party may properly, by written notice, designate.

55. ENTIRE AGREEMENT

The terms set forth within the Subcontract constitute the entire agreement of the parties and supersede all previous verbal or written representations, agreements, and conditions with respect to the subject matter hereof. No modification of the requirements of the Subcontract, and no communications which vary from or add to any terms of the Subcontract will be binding unless in writing and signed by an authorized representative of Buyer.

56. AFFIRMATIVE ACTION

Seller acknowledges that as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal opportunity and affirmative action which may also be applicable to Seller. Accordingly, Seller shall, to the extent they apply, abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

57. FAR AND DFARS FLOWDOWN PROVISIONS

The Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were provided in full text, and are applicable, including any notes following the clause

citation, to this Agreement. The DFARS clauses below are applicable only to contracts entered into under United States Department of Defense contracts. If the substance of any of the clauses listed below is different from the substance of the clause actually incorporated in the Prime Contract, the substance of the clause incorporated by said Prime Contract shall apply instead. Any reference to a “Disputes” clause shall mean the “Disputes” clause of this Agreement.

The FAR and DFARS clauses referenced below shall be those in effect as of the date of this Agreement.

Where necessary in the context of these clauses applicable to this Agreement, the words “Government”, “Contracting Officer”, and equivalent phrases shall mean Buyer, the words “Contractor” shall mean Seller, and the term “Contract” shall mean this Agreement except in this instance where regulations or sense of the clause dictates otherwise. For example, the words “Government” and “Contracting Officer” do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2, and (2) when title to property is to be transferred directly to the Government. “Subcontractor” shall mean “Seller’s Subcontractor” under this Agreement.

Seller shall include in each lower-tier subcontract the appropriate flow down clauses as required by FAR and DFARS. Seller agrees that upon Buyer’s request Seller will negotiate in good faith with Buyer to amend this Agreement to incorporate any additional provisions or make changes to provisions which Buyer may reasonably deem necessary in order to comply with the provisions of the Prime Contract and any amendments thereto. If any such amendment to this Agreement results in an increase or decrease in the price of, or the time required for, performance of any part of the Work under the Agreement, an equitable adjustment shall be made pursuant to the “Changes” clause of the Agreement.

(a) The following FAR clauses apply to the Agreement:

52.203-3 GRATUITIES

52.203-5 COVENANT AGAINST CONTINGENT FEES

52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS

52.204-14 SERVICE CONTRACT REPORTING REQUIREMENTS

52.204-15 SERVICE CONTRACT REPORTING REQUIREMENTS FOR INDEFINITE-DELIVERY CONTRACTS

52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (*Applicable if Federal contract information resides in or transits through an information system*)

(a) Definitions. As used in this clause—

Covered contractor information system means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

Federal contract information means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public websites) or simple transactional information, such as necessary to process payments. Information means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009). Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

Safeguarding means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) Other requirements. This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial products or commercial services, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system

52.204-23-PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES

(a) Definitions. As used in this clause--

Covered article means any hardware, software, or service that--

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means--

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from--

- (1) Providing any covered article that the Government will use

on or after October 1, 2018; and

(2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) Reporting requirement.

(1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at

<https://dibnet.dod.mil/> [and to

reporttosecurity@sncorp.com]. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil/> [and to reporttosecurity@sncorp.com].

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

52.204-24 REPRESENTATIONS REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

52.204-26 COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES-REPRESENTATION

52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION

52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS

52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS

52.211-5 MATERIAL REQUIREMENTS (*Applicable if materials are delivered*)

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS

52.222-2 PAYMENT FOR OVERTIME PREMIUMS

52.222-21 PROHIBITION OF SEGREGATED FACILITIES

52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

52.222-25 AFFIRMATIVE ACTION COMPLIANCE

52.222-26 EQUAL OPPORTUNITY

52.222-50 COMBATING TRAFFICKING IN PERSONS

52.223-6 DRUG FREE WORKPLACE

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

52.227-1 AUTHORIZATION AND CONSENT

52.227-14 RIGHTS IN DATA—GENERAL

52.232-20 LIMITATION OF COST

52.232-22 LIMITATION OF FUNDS (*Applicable if the Subcontract is incrementally funded. When the Contract becomes fully funded 52.232-20 shall apply in lieu of this clause.*)

52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III

52.242-13 BANKRUPTCY

52.242-15 STOP-WORK ORDER

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS

52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS

52.249-14 EXCUSABLE DELAYS

(b) The following FAR clause applies if the value of the Agreement exceeds \$3,500:

52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION

(c) The following FAR clause applies if the value of the Agreement exceeds \$10,000:

52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT

52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

(d) The following FAR clause applies if the value of the Agreement exceeds \$15,000:

52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES

(e) The following FAR clause applies if the value of the Agreement equals or exceeds \$30,000 and if Buyer is identified as the prime contractor:

52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS

(f) The following FAR clause applies if the value of the Agreement exceeds \$35,000:

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT

(g) The following FAR clauses apply if the value of the Agreement equals or exceeds \$150,000:

52.203-7 ANTI-KICKBACK PROCEDURES (*excluding subparagraph (c)(1)*)(see FAR 3.502-2(i))

52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTION

52.222-35 EQUAL OPPORTUNITY FOR VETERANS

52.222-37 EMPLOYMENT REPORTS ON VETERANS

(h) The following FAR clauses apply if the value of the Agreement exceeds the Simplified Acquisition Threshold, as defined in FAR 2.101:

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT

52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY

52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY

52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS

52.215-2 AUDIT AND RECORDS—NEGOTIATION (*If this is a contract with an educational institution or other non-profit organization, ALT II applies*)

52.215-14 INTEGRITY OF UNIT PRICES

52.203-16 PREVENTING PERSONAL CONFLICTS OF INTEREST (*Applicable if subcontractor employees will perform acquisition functions closely associated with inherently governmental functions*)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

52.248-1 VALUE ENGINEERING

(i) The following FAR clause applies if the value of the Agreement exceeds \$750,000:

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (*Not applicable if Seller is a small business concern*)

(j) The following FAR clauses apply if the value of the Agreement exceeds \$2,000,000, unless otherwise specified in the prime contract:

52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (*Applicable only if not otherwise exempt under FAR 15.403*)

52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA—MODIFICATIONS (*Applicable only if not otherwise exempt under FAR 15.403*)

(k) The following FAR clauses apply if the value of the Agreement exceeds \$6,000,000:

52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (*Applicable if the period of performance is more than 120 days.*)

52.203-14 DISPLAY OF HOTLINE POSTER(S)

(l) The following FAR clause applies if the value of the Agreement Exceeds \$10,000,000:

52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION

(m) The following FAR clauses apply to the Agreement as indicated:

52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (*Applicable to the Subcontract if funded in whole or in part by the American Recovery and Reinvestment Act of 2009*)

52.204-2 SECURITY REQUIREMENTS (*Applicable if access to classified information is required*)

52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (*Applicable if Seller will*

have routine physical access to a federally-controlled facility or routine access to a federally controlled information system)

52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA *(Applicable to any subcontract or order involving a major helium requirement (typically greater than 200,000 standard cubic feet))*

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS *(Applicable if the Subcontract is rated under DPAS)*

52.215-10 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA *(Applicable if the submission of certified cost or pricing data is required)*

52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA—MODIFICATIONS *(Applicable if the submission of certified cost or pricing data is required for modifications)*

52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS *(Applicable if the submission of certified cost or pricing data is required or if any pre-award or post-award cost determination is subject to FAR Part 31)*

52.215-16 FACILITIES CAPITAL COST OF MONEY *(Applicable only if the Subcontract is subject to the Cost Principles at FAR Subpart 31.2 and Seller proposed facilities capital cost of money in its offer)*

52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY *(Applicable only if the Subcontract is subject to the Cost Principles at FAR Subpart 31.2 and Seller did not propose facilities capital cost of money in its offer)*

52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS *(Applicable if the Subcontract meets the applicability requirements of FAR 15.408(j))*

52.215-19 NOTIFICATION OF OWNERSHIP CHANGES *(Applicable if the Subcontract meets the applicability requirements of FAR 15.408(k))*

52.215-20 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA *(Applicable if the submission of certified cost or pricing data is required)*

52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS *(Applicable if the submission of certified cost or pricing data is required)*

52.215-22 LIMITATIONS ON PASS-THROUGH CHARGES- IDENTIFICATION OF SUBCONTRACT EFFORT *(Unless otherwise specified in the prime contract: If the prime contract is not with the Department of Defense, this clause is applicable if the Subcontract exceeds \$250,000. If the prime contract is with the Department of Defense, this*

clause applies only if the Subcontract exceeds \$2,000,000 and does not meet the criteria of FAR 15.408(n)(2)(i)(B)(2))

52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES *(Unless otherwise specified in the prime contract: If the prime contract is not with the Department of Defense, this clause is applicable if the Subcontract exceeds \$250,000. If the prime contract is with the Department of Defense, this clause applies only if the Subcontract exceeds \$2,000,000 and does not meet the criteria of FAR 15.408(n)(2)(i)(B)(2))*

52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION *(Applicable if this Contract may require or involve the employment of laborers and mechanics)*

52.222-20 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT *(Applicable if the prime contract is subject to the Walsh-Healey Public Contracts Act)*

52.222-41 SERVICE CONTRACT LABOR STANDARDS *(Applicable if this Contract is subject to the Service Contract Labor Standards statute)*

52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 *(Applicable to subcontracts that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements statute if work is to be performed, in whole or in part, in the United States)*

52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 *(Applicable to subcontracts that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements statute if work is to be performed, in whole or in part, in the United States)*

52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA *(Applicable if the Subcontract involves hazardous material)*

52.223-7 NOTICE OF RADIOACTIVE MATERIALS *(Applicable to Work containing covered radioactive material. In the blank insert "30")*

52.223-11 OZONE-DEPLETING SUBSTANCES *(Applicable if the Work was manufactured with or contains ozone-depleting substances)*

52.224-3 PRIVACY ACT *(Applies when the subcontractor's employees have access to a system of records, create collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information, or design, develop, maintain, or operate a system of records)*

52.225-1 BUY AMERICAN ACT—SUPPLIES *(Applicable if the Subcontract indicates the Buy American Act applies)*

52.225-5 TRADE AGREEMENTS *(Applicable if the Subcontract indicates the Trade Agreements Act applies)*

52.225-8 DUTY-FREE ENTRY *(Applicable if supplies will be imported into the Customs Territory of the United States)*

52.225-19 CONTRACTOR PERSONNEL IN A DESIGNATED OPERATIONAL AREA OR SUPPORTING A DIPLOMATIC OR CONSULAR MISSION OUTSIDE THE UNITED STATES *(Applies if Seller will be performing or traveling outside the U.S. under the Agreement)*

52.225-26 CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES *(Applicable to DoD subcontracts performed in an area of contingency operations outside the United States or to non-DoD contracts in combat operations or other significant military operations)*

52.227-9 REFUND OF ROYALTIES *(Applicable when reported royalty exceeds \$250)*

52.227-10 FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER *(Applicable if the Work or any patent application involves classified material)*

52.227-11 PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR

52.227-13 PATENT RIGHTS-OWNERSHIP BY THE GOVERNMENT *(Applicable to subcontracts for experimental, developmental, or research work)*

52.228-3 WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT) *(Applicable if subcontract is subject to the Defense Base Act)*

52.228-4 WORKERS' COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS *(Applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to workers' compensation insurance under the Defense Base Act)*

52.228-5 INSURANCE—WORK ON A GOVERNMENT INSTALLATION *(Applicable if the Subcontract involves work on a Government installation)*

52.230-2 COST ACCOUNTING STANDARDS *(Applies if the Agreement is subject to full CAS coverage)*

52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES *(Applies if the Agreement is subject to modified CAS coverage)*

52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS *(Applies if FAR 52.230-2 or FAR 52.230-3 applies)*

52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS *(Applicable to small business subcontractors)*

52.233-3 PROTEST AFTER AWARD *(In the event Buyer's customer has directed Buyer to stop performance of the Work under the Prime Contract under which the Subcontract is issued pursuant to FAR 33.1, Buyer may, by written order to Seller, direct Seller to stop performance of*

the Work called for by this Subcontract. Substitute 20 days for the referenced 30 days in paragraph (b)(2))

52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION *(Applicable if Work is performed on a Government installation)*

52.239-1 PRIVACY OR SECURITY SAFEGUARDS *(Applies if this Agreement is for information technology which requires security of information technology or is for the design, development, or operation of a system of records using commercial information technology services or support services)*

52.243-6 CHANGE ORDER ACCOUNTING *(Applicable if indicated in the Subcontract)*

52.245-1 GOVERNMENT PROPERTY *(Applicable if Government will provide Government property)*

52.245-9 USE AND CHARGES *(Applies when FAR 52.245-1 applies)*

52.246-11 HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT *(Applies when a quality standard is included in paragraph (a) of this clause, and Seller is performing any subcontract for critical and complex items (see 46.203(b) and (c)); or (2) When the technical requirements of a subcontract require either; (i) Control of such things as design, work operations, in-process control, testing, and inspection; or (ii) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology)*

52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS *(Applicable if the Subcontract involves international air transportation)*

52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT *(Applicable when Seller is a first-tier supplier and transportation will be reimbursed as a direct charge to the Contract. Delete subparagraph (a)(2))*

58. DFARS FLOWDOWN CLAUSES

(a) The following DFARS clauses apply to the Agreement:

252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS

252.204-7009 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION

252.204-7014 LIMITATIONS ON THE USE OR DISCLOSURE OF INFORMATION BY LITIGATION SUPPORT CONTRACTORS

252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT

252.204-7016 COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES-REPRESENTATION

252.204-7017 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES—REPRESENTATION

252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES

252.204-7019 NOTICE OF NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS

252.204-7020 NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS

252.204-7021 CONTRACTOR COMPLIANCE WITH THE CYBERSECURITY MATURITY MODEL CERTIFICATION LEVEL REQUIREMENT

252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM

252.225-7008 RESTRICTION ON ACQUISITION OF SPECIALTY METALS (*Applicable if specialty metals are to be delivered*)

252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (*Applicable if the Work to be furnished contains specialty metals*)

252.225-7048 EXPORT-CONTROLLED ITEMS

252.227-7013 RIGHTS IN TECHNICAL DATA—NONCOMMERCIAL ITEMS

252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION

252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION

252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE

252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS

252.227-7026 DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE

252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE

252.227-7028 TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT

252.227-7030 TECHNICAL DATA—WITHHOLDING OF PAYMENT

252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA

252.227-7039 PATENTS—REPORTING OF SUBJECT INVENTIONS

252.228-7001 GROUND AND FLIGHT RISK

252.228-7005 ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES

252.231-7000 SUPPLEMENTAL COST PRINCIPLES

252.243-7001 PRICING OF CONTRACT MODIFICATIONS

252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS

252.246-7001 WARRANTY OF DATA

(b) The following DFARS clause applies if the value of the Agreement Exceeds the Simplified Acquisition Threshold, as defined in FAR 2.101:

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES

252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY

252.215-7010 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA

252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES

(c) The following DFARS clause applies if the value of the Agreement Exceeds \$500,000:

252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS

(d) The following DFARS clauses apply if the value of the Agreement equals or exceeds the threshold in DFARS 249.7003(c)(1):

252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION

(e) The following DFARS clause applies if the value of the Agreement Exceeds \$1,000,000:

252.222-7006 RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS

(f) The following DFARS clauses apply if the value of the Agreement Exceeds \$6,000,000:

252.203-7003 AGENCY OFFICE OF THE INSPECTOR GENERAL

252.203-7004 DISPLAY OF HOTLINE POSTER(S)
(Applicable in lieu of FAR 52.203-14)

(g) The following DFARS clauses apply to the Agreement as indicated:

252.204-7000 DISCLOSURE OF INFORMATION
(Applicable when Seller will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public)

252.204-7004 ANTITERRORISM AWARENESS FOR CONTRACTORS (Applicable when the subcontractor performance requires routine physical access to a Federally-controlled facility or military installation)

252.204-7010 REQUIREMENT FOR CONTRACTOR TO NOTIFY DOD IF THE CONTRACTOR'S ACTIVITIES ARE SUBJECT TO REPORTING UNDER THE U.S.-INTERNATIONAL ATOMIC ENERGY AGENCY ADDITIONAL PROTOCOL (Applies if Seller's Agreement is subject to the provisions of the U.S.-International Atomic Energy Agency Additional Protocol (U.S.-IAEA AP))

252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (Applicable if Seller's performance of this Agreement will involve Covered Defense Information, as described in DFARS 252.204-7012 and the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>.)

252.208-7000 INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (Applies if Seller's product contains precious metals)

252.211-7003 ITEM IDENTIFICATION AND VALUATION (Applicable if the Subcontract requires the Work to contain unique item identification)

252.211-7007 REPORTING OF GOVERNMENT-FURNISHED PROPERTY (Applicable if the Subcontract requires Government property in Seller's possession to contain unique item identification)

252.215-7002 COST ESTIMATING SYSTEM REQUIREMENTS (Applicable if FAR 52.215-12 or 52.215-13 applies to the Subcontract)

252.219-7004 SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (Applicable if the Subcontractor participates in the Test Program described in DFARS 219.702-70, if the subcontract is expected to exceed the applicable threshold specified in Federal Acquisition Regulation 19.702(a), and is expected to have further subcontracting opportunities.)

252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (Applicable if FAR 52.219-9 applies to the Subcontract)

252.223-7001 HAZARD WARNING LABELS
(Applicable if the Subcontract requires the delivery of hazardous materials)

252.223-7002 SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (Applicable only if the articles furnished under the Subcontract contain ammunition or explosives, including liquid and solid propellants)

252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (Applicable if the Subcontract requires, or may require or permit, contract performance on a DoD installation)

252.223-7007 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (Applicable if the Subcontract is for the development, production, manufacture, or purchase of arms, ammunition, and explosives or when arms, ammunition, and explosives will be provided to Seller as Government Furnished Property)

252.225-7001 BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (Applicable if the Subcontract indicates the Buy American Act applies)

252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (Jun 2012)

252.225-7007 PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (Applicable if Seller is supplying items on the U.S. Munitions List or the 600 series of the Commerce Control List)

252.225-7016 RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (Applicable if Work supplied under the Subcontract contains ball or roller bearings)

252.225-7021 TRADE AGREEMENTS (Applicable if the Subcontract indicates the Trade Agreements Act applies)

252.225-7025 RESTRICTION ON ACQUISITION OF FORGINGS (Applies if Seller's deliverable contains forging items or other items which contain forging items)

252.225-7013 DUTY-FREE ENTRY (Applicable in lieu of FAR 52-225-8)

252.225-7033 WAIVER OF UNITED KINGDOM LEVIES (Applies if the Agreement is with a United Kingdom firm)

252.225-7039 DEFENSE CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (Applicable when private security functions will be performed outside the United States in areas of: contingency operations; combat operations; other significant military operations as designated by the Secretary of Defense; peace operations; or other military operations or military exercises when designated by the Combatant Commander)

252.225-7040 CONTRACTOR PERSONNEL SUPPORTING U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES *(Applicable to subcontracts to support U.S. Armed Forces deployed outside the U.S. in contingency operations; humanitarian assistance operations; peace operations or other military operations or military exercises, when designated by the Combatant Commander; or as directed by the Secretary of Defense)*

252.225-7043 ANTI-TERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES *(Applicable where Seller will be performing or traveling outside the U.S. under the Subcontract)*

252.225-7052 RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS AND TUNGSTEN *(Applicable where Seller will be providing something containing a covered material ((1) Samarium-cobalt magnets; (2) Neodymium-iron-boron magnets; (3) Tungsten metal powder; and/or (4) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy)*

252.227-7015 TECHNICAL DATA—COMMERCIAL ITEMS *(Applicable if Seller will deliver commercial items)*

252.227-7038 PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) *(Applicable if (1) Seller is not small business or nonprofit organization subject to FAR 52.227-11, and (2) the contract is for experimental, developmental, or research work)*

252.235-7003 FREQUENCY AUTHORIZATION *(Applicable if the Subcontract requires developing, producing, constructing, testing, or operating a device requiring a radio frequency authorization.)*

252.235-7004 PROTECTION OF HUMAN SUBJECTS *(Applies if Seller's effort includes research involving human subjects in accordance with 32 CFR Part 219, DoD Directive 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b). This clause does not apply to subcontracts that involve only the use of cadaver materials.)*

252.236-7013 REQUIREMENT FOR COMPETITION OPPORTUNITY FOR AMERICAN STEEL PRODUCERS, FABRICATORS, AND MANUFACTURERS *(Applicable if the Subcontract uses funds appropriated by Title I of the Military Construction and Veterans Affairs Appropriations Act of 2009 and the Seller will deliver steel as a construction material)*

252.237-7010 PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL *(Applies when Seller personnel may be required to interact with detainees in the course of their duties)*

252.237-7019 TRAINING FOR CONTRACTOR PERSONNEL INTERACTING WITH DETAINEES *(Applies when Seller personnel may be required to interact with detainees in the course of their duties)*

252.237-7023 CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES *(Applies if the Seller's work is deemed essential services)*

252.239-7010 CLOUD COMPUTING SERVICES *(Applies when the subcontract may involve cloud services)*

252.239-7016 TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES, AND SERVICES *(Applies if Seller's performance requires securing telecommunications)*

252.239-7018 SUPPLY CHAIN RISK *(Applicable if the Subcontract involves the development or delivery of any information technology.)*

252.246-7007 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM *(Applies when the subcontractor provides electronic parts or assemblies containing electronic parts)*

252.246-7008 SOURCES OF ELECTRONIC PARTS *(Applies when the subcontractor provides electronic parts or assemblies containing electronic parts)*

252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES *(Applicable if the Subcontract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system. Seller shall provide notifications to Buyer and the contracting officer identified to Seller)*

252.247-7003 PASS-THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT TO THE COST BEARER *(Applies if the subcontractor is a motor carrier, broker, or freight forwarder)*

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA *(Applicable in lieu of FAR 52.247-64 in all Contracts requiring the ocean transportation of supplies)*

(h) The following DFARS clauses in full text apply to the Agreement:

252.225-7993 PROHIBITION ON PROVIDING FUNDS TO THE ENEMY (DEVIATION 2020-O0022)

(a) The Contractor shall—

(1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this contract are provided directly or indirectly (including through subcontracts) to a person or entity who is actively opposing United States or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(2) Check the list of prohibited/restricted sources in the System for Award Management (SAM) at www.sam.gov —

(i) Prior to subcontract award; and

(ii) At least on a monthly basis; and

(3) Terminate or void in whole or in part any subcontract with a person or entity listed in SAM as a prohibited or restricted source pursuant to section 841 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), as amended, unless the Contracting Officer provides to the Contractor written approval of the Head of the Contracting Activity to continue the subcontract.

(b) The Head of the Contracting Activity has the authority to—

(1) Terminate this contract for default, in whole or in part, if the Head of the Contracting Activity determines in writing that the contractor failed to exercise due diligence as required by paragraph (a) of this clause; or

(2)(i) Void this contract, in whole or in part, if the Head of the Contracting Activity determines in writing that any funds received under this contract have been provided directly or indirectly to a person or entity who is actively opposing United States or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(ii) When voided in whole or in part, a contract is unenforceable as contrary to public policy, either in its entirety or with regard to a segregable task or effort under the contract, respectively.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts, including subcontracts for commercial items, under this contract that have an estimated value over \$50,000 and will be performed outside the United States and its outlying areas.

(End of clause)

252.225-7975 ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS (DEVIATION 2020-00022)

(a) In addition to any other existing examination-of-records authority, the Government is authorized to examine any records of the Contractor and its subcontractors to the extent necessary to ensure that funds, including supplies and services, available under this contract are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(b) The substance of this clause, including this paragraph (b), is required to be included in subcontracts, including subcontracts for commercial items, under this contract that have an estimated value over \$50,000 and will be performed outside the United States and its outlying areas.

(End of clause)

252.225-7995 CONTRACTOR PERSONNEL PERFORMING IN THE UNITED STATES CENTRAL COMMAND AREA OF RESPONSIBILITY. (DEVIATION 2017-00004)

(Applies in lieu of the clause at Defense Federal Acquisition Regulation Supplement 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in solicitations and contracts that will require contractor personnel to perform in the United States Central Command area of responsibility)

(a) Definitions. As used in this clause-

"Combatant Commander" means the Commander of the United States Central Command Area of Responsibility.

"Contractors authorized to accompany the Force," or "CAAF," means contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany U.S. Armed Forces in applicable operations and have been afforded CAAF status through a letter of authorization. CAAF generally include all U.S. citizen and third-country national employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. Armed Forces and who routinely are collocated with the U.S. Armed Forces (especially in non-permissive environments). Personnel collocated with U.S. Armed Forces shall be afforded CAAF status through a letter of authorization. In some cases, Combatant Commander subordinate commanders may designate mission-essential host nation or local national contractor employees (e.g., interpreters) as CAAF. CAAF includes contractors previously identified as contractors deploying with the U.S. Armed Forces. CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

"Designated reception site" means the designated place for the reception, staging, integration, and onward movement of contractors deploying during a contingency. The designated reception site includes assigned joint reception centers and other Service or private reception sites.

"Law of war" means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

"Non-CAAF" means personnel who are not designated as CAAF, such as local national (LN) employees and non-LN employees who are permanent residents in the operational area or third-country nationals not routinely residing with U.S. Armed Forces (and third-country national expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. Armed Forces. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing

Contractor Personnel Performing in the United States Central Command Area of Responsibility their jobs in the direct vicinity of U.S. Armed Forces. Non-CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

"Subordinate joint force commander" means a sub-unified commander or joint task force commander.

(b) General.

(1) This clause applies to both CAAF and non-CAAF when performing in the United States Central Command (USCENTCOM) Area of Responsibility (AOR).

(2) Contract performance in USCENTCOM AOR may require work in dangerous or austere conditions.

Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) When authorized in accordance with paragraph (j) of this clause to carry arms for personal protection, contractor personnel are only authorized to use force for individual self-defense.

(4) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(5) Service performed by contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) Support.

(1)(i) The Combatant Commander will develop a security plan for protection of contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because-

(A) The Contractor cannot obtain effective security services;

(B) Effective security services are unavailable at a reasonable cost; or

(C) Threat conditions necessitate security through military means.

(ii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, CAAF will be afforded emergency medical and dental care if injured while supporting applicable operations. Additionally, non-CAAF employees who are injured while in the vicinity of U. S. Armed Forces will normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides emergency medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized.

(3) Contractor personnel must have a Synchronized Pre-deployment and Operational Tracker

(SPOT)-generated letter of authorization signed by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the USCENTCOM AOR. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract. Contractor personnel who are issued a letter of authorization shall carry it with them at all times while deployed.

(4) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the USCENTCOM AOR under this contract.

(d) Compliance with laws and regulations.

(1) The Contractor shall comply with, and shall ensure that its personnel performing in the USCENTCOM AOR are familiar with and comply with, all applicable-

(i) United States, host country, and third country national laws;

(ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;

(iii) United States regulations, directives, instructions, policies, and procedures; and

(iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(3) The Contractor shall ensure that CAAF and non-CAAF are aware-

(i) Of the DoD definition of "sexual assault" in DoDD 6495.01, Sexual

Assault Prevention and Response Program;

(ii) That the offenses addressed by the definition are covered under the Uniform Code of Military

Justice (see paragraph (e)(2)(iv) of this clause). Other sexual misconduct may constitute offenses under the Uniform Code of Military Justice, or another Federal law, such as the Military Extraterritorial Jurisdiction Act, or host nation laws; and

(iii) That the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences to the contractor employees (see paragraph (h)(1) of this clause).

(4) The Contractor shall report to the appropriate investigative authorities, identified in paragraph (d)(6) of this clause, any alleged offenses under-

(i) The Uniform Code of Military Justice (chapter 47 of title 10, United States Code) (applicable to contractors serving with or accompanying an armed force in the field during a declared war or contingency operations); or

(ii) The Military Extraterritorial Jurisdiction Act (chapter 212 of title 18, United States Code).

(5) The Contractor shall provide to all contractor personnel who will perform work on a contract in the deployed area, before beginning such work, information on the following:

(i) How and where to report an alleged crime described in paragraph (d)(4) of this clause.

(ii) Where to seek victim and witness protection and assistance available to contractor personnel in connection with an alleged offense described in paragraph (d)(4) of this clause.

(iii) This section does not create any rights or privileges that are not authorized by law or DoD policy.

(6) The appropriate investigative authorities to which suspected crimes shall be reported include the following-

- (i) US Army Criminal Investigation Command at <http://www.cid.army.mil/index.html>;
 - (ii) Air Force Office of Special Investigations at <http://www.osi.af.mil>;
 - (iii) Navy Criminal Investigative Service at <http://www.ncis.navv.mil/>;
 - (iv) Defense Criminal Investigative Service at <http://www.dodig.mil/HOTLINE/index.html>;
 - (v) Any command of any supported military element or the command of any base.
- (7) Personnel seeking whistleblower protection from reprisals for reporting criminal acts shall seek guidance through the DoD Inspector General hotline at 800- 424-9098 or www.dodig.mil/HOTLINE/index.html. Personnel seeking other forms of victim or witness protections should contact the nearest military law enforcement office.

(8) The Contractor shall ensure that Contractor employees supporting the U.S. Armed Forces deployed outside the United States are aware of their rights to-

- (i) Hold their own identity or immigration documents, such as passport or driver's license;
- (ii) Receive agreed upon wages on time;
- (iii) Take lunch and work-breaks;
- (iv) Elect to terminate employment at any time;
- (v) Identify grievances without fear of reprisal;
- (vi) Have a copy of their employment contract in a language they understand;
- (vii) Receive wages that are not below the legal in-country minimum wage;
- (viii) Be notified of their rights, wages, and prohibited activities prior to signing their employment contract; and
- (ix) If housing is provided, live in housing that meets host-country housing and safety standards.

(e) Preliminary personnel requirements.

(1) The Contractor shall ensure that the following requirements are met prior to deploying CAAF (specific requirements for each category will be specified in the statement of work or elsewhere in the contract):

- (i) All required security and background checks are complete and acceptable.
- (ii) All CAAF deploying in support of an applicable operation-
 - (A) Are medically, dentally, and psychologically fit for deployment and performance of their contracted duties;
 - (B) Meet the minimum medical screening requirements, including theater-specific medical qualifications as established by the geographic Combatant Commander (as posted to the Geographic Combatant Commander's website or other venue); and
 - (C) Have received all required immunizations as specified in the contract.

(1) During pre-deployment processing, the Government will provide, at no cost to the Contractor, any military-specific

immunizations and/or medications not available to the general public.

(2) All other immunizations shall be obtained prior to arrival at the deployment center.

(3) All CAAF and, as specified in the statement of work, select non-CAAF shall bring to the USCENTCOM AOR a copy of the U.S. Centers for Disease Control and Prevention (CDC) Form 731, International Certificate of Vaccination or Prophylaxis as approved by the World Health Organization, (also known as "shot record" or "Yellow Card") that shows vaccinations are current.

(iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit the USCENTCOM AOR and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center.

(iv) Special area, country, and theater clearance is obtained for all personnel deploying.

Clearance requirements are in DoD Directive 4500.54E, DoD Foreign Clearance Program. For this purpose, CAAF are considered non-DoD contractor personnel traveling under DoD sponsorship.

(v) All deploying personnel have received personal security training. At a minimum, the training shall-

- (A) Cover safety and security issues facing employees overseas;
- (B) Identify safety and security contingency planning activities; and
- (C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all CAAF. The basic training will be provided through-

- (1) A military-run training center; or
- (2) A web-based source, if specified in the contract or approved by the Contracting Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261, et seq.);

(3) The Contractor shall notify all personnel that-

(i) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime.

(ii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)) or non-U.S. nationals who commit crimes against U.S. nationals in those places; and

(iii) In time of declared war or a contingency operation, CAAF are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10).

(iv) Such employees are required to report offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

(v) Such employees will be provided victim and witness protection and assistance.

(f) Processing and departure points. CAAF shall-

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(l) of this clause.

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a designated reception site (DRS) upon arrival at the deployed location. The DRS will validate personnel accountability, ensure that specific USCENTCOM AOR entrance requirements are met, and brief contractor personnel on theater-specific policies and procedures.

(g) Contractor Accountability and Personnel Data.

The Synchronized Pre-deployment and Operational Tracker (SPOT) is the joint web-based database to assist the Combatant Commanders in maintaining awareness of the nature, extent, and potential risks and capabilities associated with contracted support for contingency operations, humanitarian assistance and peacekeeping operations, or military exercises designated by USCENTCOM.

(1) Contractors shall account for all CAAF and non-CAAF personnel in SPOT by name.

(2) Registration. The Contractor shall comply with SPOT registration requirements.

(i) Contractor appointed company administrators for unclassified contracts shall register for a SPOT account at <https://spot.dmdc.mil>. For classified contracts, users shall access SPOT at <https://spot.dmdc.osd.smil.mil>.

(ii) Register in SPOT using one of the following log-in methods-

(A) A Common Access Card (CAC) or a SPOT-approved digital certificate; or

(B) A Government-sponsored SPOT user ID and password. This type of log-in method is only allowed for those individuals who are not authorized to obtain a CAC or an external digital certificate and requires SPOT Program Management Office approval.

(iii) The SPOT Customer Support Team must validate user need. This process may take 2 business days. Contractor representatives will be contacted to validate contractor administrator account requests and determine the appropriate level of user access.

(iv) Refer to the OSD Program Support website at

<http://www.acg.osd.mil/log/PS/spot.html> for the SPOT Business Rules, additional training resources, documentation regarding registration, and use of SPOT.

(3) Compliance with SPOT.

(i) The Contractor shall comply with the SPOT Business Rules located at <http://www.acg.osd.mil/log/PS/spot.html>.

(A) The Contractor shall enter into the SPOT web-based system the required information on Contractor personnel prior to deployment to the designated operational area and shall continue to use the SPOT web-based system to maintain accurate, up-to-date information throughout the deployment for applicable Contractor personnel.

(B) The Contractor shall ensure the in-theater arrival date (ITAD), deployment closeout dates and changes to the status of individual Contractor personnel relating to their ITAD and their duty location, to include closing out the deployment with their proper status (e.g., mission complete, killed, wounded) are updated in the system in accordance with the processes and timelines established in the SPOT business rules.

(ii) SPOT non-compliance and deficiencies will be relevant to past performance evaluations for future contract opportunities in accordance with FAR subpart 42.15, Contractor Performance Information.

(h) Contractor personnel.

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall identify all personnel who occupy a position designated as mission essential and ensure the continuity of essential Contractor services during designated operations, unless, after consultation with the Contracting Officer, Contracting Officer's representative, or local commander, the Contracting Officer directs withdrawal due to security conditions.

(3) The Contractor shall ensure that contractor personnel follow the guidance at paragraph (e)(2)(v) of this clause and any specific Combatant Commander guidance on reporting offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

(4) Contractor personnel shall return all U.S. Government-issued identification, to include the Common Access Card, to appropriate U.S. Government authorities at the end of their deployment (or, for non-CAAF, at the end of their employment under this contract).

(i) Military clothing and protective equipment.

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, contractor personnel must-

(i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and

(ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) Weapons.

(1) If the Contractor requests that its personnel performing in the USCENTCOM AOR be authorized to carry weapons for individual self-defense, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41. The Combatant Commander will determine whether to authorize in-theater contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If contractor personnel are authorized to carry weapons in accordance with paragraph (j)(1) of this clause, the Contracting Officer will notify the Contractor what weapons and ammunition are authorized.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons-

(i) Are adequately trained to carry and use them-

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922;

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition.

(iv) Comply with applicable Combatant Commander and local commander force-protection policies; and

(v) Understand that the inappropriate use of force could subject them to U.S. or host-nation prosecution and civil liability.

(4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(5) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) Vehicle or equipment licenses. Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the USCENTCOM AOR.

(1) Purchase of scarce goods and services. If the Combatant Commander has established an organization for the USCENTCOM AOR whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as

scarce, in accordance with instructions provided by the Contracting Officer.

(m) Evacuation.

(1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available to United States and third country national contractor personnel.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(n) Next of kin notification and personnel recovery.

(1) The Contractor shall be responsible for notification of the employee- designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.

(2) The Government will assist in personnel recovery actions in accordance with DoD Directive 3002.01E, Personnel Recovery in the Department of Defense.

(o) Mortuary affairs. Contractor personnel who die while in support of the U.S. Armed Forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22, Mortuary Affairs Policy, and DoD Instruction 3020.41, Operational Contractor Support.

(p) Changes. In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government- furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

(q) Subcontracts. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are performing in the USCENTCOM AOR.

(End of clause)