

**Agreement** – This purchase order is an offer by ES3 PLG (the "**Buyer**") for work Buyer received from a third party (the "**Customer**") for the purchase of the goods (the "**Goods**") or services (the "**Services**") specified, to the party to whom the purchase order is addressed to (the "**Seller**") in accordance with and subject to these terms and conditions (the "**Terms**"; together with the terms, requirements, or referenced documents on the face of the purchase order, delivery order, subcontract, or contract, (the "**Order**")). The Order will be considered accepted by the Seller upon the first of the following to occur: (a) Seller making, signing, or delivering to Buyer any letter, form, or other writing or instrument acknowledging acceptance; (b) or performance by Seller for any part of an Order. An Order constitutes the sole and entire agreement of the parties with respect to the Order and supersedes all prior or understandings, agreements, negotiations, and communications, both written and oral, with respect to the subject matter of an Order. An Order expressly limits Seller's acceptance to the Terms of the Order. These Terms expressly exclude any of Seller's terms and conditions of sale or any other document issued by Seller in connection with an Order.

**Price and Payment** – The price of the Goods or Services is the price stated on the face of this Order (the "**Price**"). Seller shall invoice Buyer for the Order within thirty (30) days of delivery or agreed to milestones. Unless otherwise stated in the Order, Buyer shall pay all properly invoiced amounts due to Seller within thirty (30) days after receipt of invoice. Should Seller suffer undue hardship due to an increase in production costs not anticipated at Order acceptance, Seller may ask for an economic price adjustment and Buyer will make a good faith effort to ask the Customer, on Seller's behalf, for the increase of prices. The changing of pricing is wholly dependent on the Customer's approval of such change. Further payment and invoice instructions will be found on the face of the Order.

**Delivery** – Seller shall deliver the Goods and/or perform the Services at the location stated in the Order (the "**Ship-To Location**"), and on the date(s) specified in this Order (the "**Delivery Date**"), unless delay is caused by an event or circumstance that is beyond the Seller's reasonable control. Timely delivery is of the essence, the Seller will immediately notify the Buyer should there be any delay or perceived delay that may impact the current lead time of the Order. Packaging requirements, quality requirements, tolerances, and partial or early shipments will all be as stated in Order. Should the Customer issue any fees directly due to late shipments, non-conformance, or special requests needed to accommodate Seller, said fees will be flowed down to Seller and will be subtracted from Order total. At Buyer's discretion, Buyer will make a good faith effort to seek the Customer eliminate said fees. The decision to eliminate fees rests wholly on the Customer. Current fees can be seen in Attachment A.

**Cancellation/Stop Work** – Any FAR/DFAR or Prime Contract requirement regarding cancellation or mandate to stop work from the Customer to Buyer will be flowed down to Seller. Reimbursement of any monies from Buyer to Seller will be to the extent that the Customer reimburses the Buyer for the Seller's costs. At Buyer's discretion, Buyer will make a good faith effort to receive the highest reimbursement possible from the Customer. The final decision of allowable reimbursable costs rests wholly with the Customer.

**Schedule** – Delivery Dates shall be considered essential parts of this agreement and Seller shall strictly adhere to the shipment and/or delivery schedules as specified in the Order. Failure to comply with any such dates shall be considered a material breach of these Terms. If seller is delayed or has reason to believe they could be delayed then they should inform Buyer as soon as possible. The only excusable delays will be as per FAR 52.249-14 Excusable Delays. If Buyer has reason to believe the Seller is or will be delayed then they will issue a corrective action request to Seller. The Seller will have 5 days to reply with a plan to correct the delay. Should



## Basic Terms and Conditions (LGCSCI)

the plan not correct the delay in a manner Buyer finds acceptable, Seller will be found in breach of contract, and will be issued a Termination for Default. FAR 52.249-8 Default (Fixed-Price Supply and Service) will be used to determine monies owed to either party; where the clause reads "Government" the Seller shall substitute "Government or Prime Contractor", where the clause reads "Contractor" the Seller shall substitute "Subcontractor".

**Acceptance** – Buyer, Buyer's agents, and the Customer reserve the right to inspect the Goods at all time and places and in any event even prior to acceptance. Seller grants Buyer, Buyer's agents, and the Customer right of access to all parts of their facilities which are used in the performance of Order or work under these Terms. The Customer, as per the inspection methods and standards on the Order, may accept the goods or reject any portion of the Goods that are found to be defective or nonconforming. Any inspection or other action by Buyer or the Customer under this Section shall not affect Seller's obligations under the Order to meet all inspection and standards criteria. At Buyer's discretion, Buyer will make a good-faith effort seeking that the Customer approves delivered Goods and Services. The final approval and rejection of Goods and Services rests wholly on the Customer's final decision.

**Warranty** – Seller warrants to Buyer that all Goods, Services or Goods furnished in connection with Services will: (a) be new and free from any defects in workmanship, material and design; (b) conform to applicable specifications and standards; (c) and will not require the Customer to issue a Product Quality Deficiency Report (PQDR), should the Customer issue a PQDR then the company will do everything possible to replace or repair the item or items to working condition. These warranties survive any delivery, inspection, acceptance or payment.

**Liability** – The liability to either Party for any loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, the cost of enforcing any right or remedy, excluding lost profits arising out of or occurring in connection with an Order will be limited to the total price of the Order in question.

**Data Rights Certification** – Seller acknowledges that technical data used in performance of this Order is considered proprietary information. Seller hereby certifies that all technical data used in performance of an Order (the "Data") will; (a) only be disclosed to employees that need to know the contents of the Data, (b) will not tamper with any Data markings displayed on documents, (c) and that all Data will be destroyed and removed from all storage locations after final acceptance of Order by Customer.

**Export Compliance** – Unless different terms are found on the face of an Order, Seller agrees to comply with all aspects of export and important laws, regulations, executive orders, and/or policies of the United States Government. This includes, but is not limited to, Export Administration Regulations (EAR) of the United States Department of Commerce and the International Trade in Arms Regulations (ITAR) of the United States Department of State.

**Order of Precedence** – Should there be any incongruence between documents the agreed to order of precedence is (a) the face of an Order, (b) any attachments cited in an Order, (c) the Terms, (d) FAR and DFAR clauses, (e) any other document associated with an Order.

**Governing Law and Venue** – All matters arising out of or relating to an Order shall be governed by and construed in accordance with the laws of the State of California. Buyer and Seller agree that, in any effort to enforce the terms and obligations hereunder, the complaining party will first notify the other party in writing



## Basic Terms and Conditions (LGCSCI)

of the alleged dispute and the parties will attempt in good faith to resolve the dispute through prompt discussion and/or a meeting between representatives having decision-making authority regarding the dispute. If the dispute is not resolved by the 30<sup>th</sup> day after written notice of the dispute was first made, the parties agree to engage in binding mediation in the city of Buyer's location, using a neutral mediator mutually agreed to and paid for by the parties. If mediation does not resolve the dispute, the parties may resolve the dispute through appropriate legal action. Jurisdiction for any legal action is restricted to the state of the Buyer's physical location.

**Compliance** – Seller unconditionally accepts, warrants, and represents to Buyer that it is in compliance and shall remain in compliance, during the time in which any part of an Order is still binding to either party, with any and all contract requirements from the Customer which are MANDATORY to be flowed down by public law, statute, or regulation. FAR and DFAR clauses will be found in a document titled Attachment B – Flowdown Clauses (LGCSCI) which will accompany an Order at time of award.

**Counterfeit Prevention** - Buyer may refuse to accept materials and services delivered under a purchase order if the seller fails to comply with the purchase order assigned requirements. Seller agrees and shall ensure that Counterfeit Parts/Materials/Items/Work is not delivered to Buyer. Certificate of Conformance and Traceability may be required by CERTAIN MILITARY SPECIFICATIONS intended for use in aviation, space and defense applications. Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Work. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Work. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.

**Misc** - Seller shall not assign, transfer, or delegate any of its rights or obligations under the Order without Buyer's prior written consent. No modification, alteration or amendment of the Order shall be binding unless agreed to in writing and signed by Buyer. No failure to exercise, or delay in exercising, any rights, remedies, power or privilege arising from an Order by either party shall be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or privilege hereunder preclude any other exercise of any additional right, remedy, or privilege.

**BY SIGNING THIS DOCUMENT THE SELLER AGREES THAT ALL SUBSEQUENT ORDERS REFERENCING THESE TERMS ARE HEREBY COMPLETELY ACCEPTED WITHOUT EXCEPTION.**

Business Name:

Representative Name:

Title and Date:

Signature:

**Attachment A – FEES FOR LATE DELIVERY**

A major objective of the LG-CSCI program is to improve On-Time Delivery (OTD). As such, OTD will be tracked for every Purchase Order.

**Requirement Ratio Missed (RRM)** The RRM will be calculated by first dividing the total CLIN quantity delivered on or before the contractor proposed Production Lead Time (PLT) by the total CLIN quantity and then subtracting that amount from 1. For example, if CLIN 0001 was awarded for 100 ea. with a PLT of 75 days and the contractor delivered 80ea at the end of day 75, the RRM would equal .20. The measurement would be calculated using the following methodology:

$$RRM = 1 - \left(\frac{D}{C}\right)$$

Where:

D = Delivered by the proposed PLT

C = Total CLIN quantity

RRM = Requirement Ratio Missed

**Days Late (DL)** The DL will be calculated by subtracting the actual (calendar) days passed to deliver 100% of the CLIN quantity from the contractor proposed PLT. For example, if CLIN 0002 was awarded for 200ea with a PLT of 150 days and the contractor delivered 150ea at the end of day 150 and the remaining 50ea was delivered by the end of day 220, the DL would equal 70. The measurement would be calculated using the following methodology:

$$DL = AD - PD$$

Where:

AD = Actual days (Calendar) taken to deliver 100% of the CLIN quantity

PD = Proposed PLT

DL = Days Late

**Factors**

$$DLF = .00005 \times (DL - 15)^{2.345}$$

$$RRMF = 8 \times RRM^{1.5}$$

Where:

DLF = Days Late Factor (max value 8)

RRMF = Requirement Ratio Missed Factor (max value 8)

**Penalty Calculation**

$$Penalty = .4 \times TCP \times \frac{DLF}{100} + .6 \times TCP \times \frac{RRMF}{100}$$

Where:

TCP = Total CLIN Price

As an example of how the calculations would work, a table is included highlighting examples of potential scenarios and the resulting outcome in the formula.

Variables				Factors (as %)		Penalty	Penalty as % of Order Total
Order Value	Order Qty	Delivered On-Time Qty	Days Late Delivery Completed	Days Late	Ratio		
\$1,000,000.00	1500	1200	42	0.113637	0.715542	\$4,747.80	0.47%
\$500,000.00	750	0	0	0	0	-	0.00%
\$615,168.00	980	975	65	0.482008	0.002915	\$1,196.83	0.19%
\$250,000.00	89	40	120	2.745737	3.268128	\$7,647.93	3.06%
\$1,650,000.00	6450	5200	95	1.451162	0.68252	\$16,334.62	0.99%



## Attachment B – FLOW DOWN CLAUSES (LGCSI)

### Preamble

**All Purchase Orders issued in support of ES3 PLG Prime Contract # SPRHA1-18-D-0002 for Landing Gear Collaborative Supply Chain Integration (LG-CSCI) require compliance with the law and various Federal statutes and regulatory requirements. All Purchase Orders (“Order(s)” or “the Order(s)”) issued in support of LGCSCI must comply with the requirements as applicable and detailed below.**

### Compliance with Law

(a) Compliance with Laws. Seller warrants that the goods to be furnished and the services to be rendered under this Purchase Order shall be manufactured, sold, used and rendered in compliance with all relevant federal, state, local law, orders, rules, ordinances, and regulations, including but not limited to:

1. all U.S. laws and regulations;
2. the laws and regulations of Seller’s place of performance;
3. the United States Foreign Corrupt Practices Act, 15 U.S.C. § 78 et seq. (the “FCPA”), and other Anti-Corruption Requirements as defined in paragraph 19(b), below;
4. applicable international prohibitions on child labor;
5. the Fair Labor Standards Act of 1938, as amended (the “FLSA”), and of regulations and orders of the United States Department of Labor under the FLSA;
6. the Anti-Kickback Act of 1986;
7. the latest Occupational Safety and Health Act of 1970 (OSHA) requirements; and
8. U.S. Department of Transportation regulations on hazardous materials and any other pertinent federal, state, or local statutes, laws, rules, or regulations.

(b) Anti-Corruption Requirements. Seller acknowledges that its actions may subject it and Buyer to liability under the United States Foreign Corrupt Practices Act, 15 U.S.C. § 78 et seq. (the “FCPA”), the UK Bribery Act 2010, the anti-corruption laws, regulations, and policies of the home country of any supplier to this Purchase Order, the United States of America, and/or the anti-corruption laws, regulations, and policies of any other country with jurisdiction over the activities performed pursuant to this Purchase Order (together and individually hereinafter referred to as the “Anti-Corruption Requirements”).

(c) Anti-Corruption Representation and Warranty. Seller represents and warrants to, and covenants and agrees with, Buyer that:

1. Seller is familiar with the prohibitions under the Anti-Corruption Requirements, and, in particular, it is familiar with the requirements described in clause 19(c)(3).
2. No compensation payable hereunder has been used, nor will be used, for any activity or purpose where a reasonable belief exists that the Anti-Corruption Requirements would be violated or that Seller or Buyer would be exposed to liability under the Anti-Corruption Requirements.

3. In connection with its performance of this Purchase Order, Seller has not, and has not either agreed to or directly or indirectly, offered, paid, given, promised to pay or give, or authorized the payment or giving of any money, gift, loan, fee, reward, advantage or anything of value, and will not either agree to or directly or indirectly, offer, pay, give, promise to pay or give, or authorize the payment or giving of any money, gift, loan, fee, reward, advantage, or anything of value to:
  - (i) (A) any officer or employee of a foreign government or any department or agency thereof, whether at the national, regional, or local level, (B) any officer or employee of any entity, enterprise or organization that is owned or controlled by a foreign government or any department or agency thereof; (C) any officer or employee of a public international organization, (D) any person acting in an official capacity for or on behalf of any such government or department, agency, entity, enterprise, or organization, or (E) any member of a political party or candidate for public office in a foreign country (together and individually hereinafter referred to as "Government Official");
  - (ii) any customer, or any officer, director, employee of a customer, or any shareholder or beneficial owner of shares in a customer or any affiliate of a customer or any person who has or exercises control over the customer or any affiliate of the customer (together and individually hereinafter referred to as "Customer Personnel").
  - (iii) any person while knowing or having reason to know that all or a portion of such money, gift, loan, fee, reward, advantage, or thing of value will be offered, paid, given or promised, directly or indirectly, to any Government Official or Customer Personnel ("Restricted Person"); or any relative, close associate, agent or representative of a Government Official, Customer Personnel, or Restricted Person, for the purpose of: (A) influencing or attempting to influence any act or decision of any Government Official, Customer Personnel, or Restricted Person acting in an official capacity, or influencing or attempting to influence any Government Official, Customer Personnel, or Restricted Person to do or omit to do any act in violation of his, her or its lawful duty, obligation or responsibility; (B) inducing or attempting to induce a Government Official, Customer Personnel or Restricted Person to use his, her, or its influence to affect or influence any act or decision of a customer, a foreign government, a foreign agency, a public international organization or department thereof, or any entity, enterprise or organization controlled by a foreign government, a foreign agency or a public international organization (C) rewarding a Government Official, Customer Personnel, or Restricted Person for doing or forbearing to do anything in respect of any matter or transaction; or (D) assisting Seller or Buyer in obtaining or retaining business, improving profitability or revenues of Buyer or Seller, or receiving any improper advantage by securing business, or directing business for, with, or to any person.
4. None of Seller's principals, consultants, subcontractors, officers, directors, shareholders, employees, or agents is a Government Official, Customer Personnel, or Restricted Person unless approved by Buyer. Neither Seller nor any of its principals, consultants, subcontractors, shareholders, directors, officers, employees or agents has performed or will



Effective Date: 11 September 2018

- perform any act which Buyer could reasonably believe would constitute a violation of the Anti-Corruption Requirements or which Buyer could reasonably believe would cause Buyer to be in violation of the Anti-Corruption Requirements, or present a credible risk, as determined by Buyer, of a violation of the Anti-Corruption Requirements.
5. If at any time Seller becomes aware of information or circumstances that suggest any of the representations, warranties, and covenants referenced in this Section 19 may not be accurate, it shall notify Buyer immediately in writing, but not more than seven (7) days after becoming aware of such circumstances.
  6. No Government Official, Customer Personnel, or Restricted Person has a right to share directly or indirectly in any compensation payable under this Purchase Order. No payment will be made hereunder to any person other than Seller; and no payment will be made to Seller under this Purchase Order other than the payment of the compensation in accordance with the terms hereof.
  7. In connection with this Purchase Order Seller shall maintain books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and asset dispositions of Seller and allow Buyer to maintain accurate books and records and comply with the requirements for internal management controls set forth in the Anti-Corruption Requirements as well as relevant U.S. laws and regulations.
  8. Any modification or amendment to this Purchase Order shall be deemed a re-certification of the accuracy and truthfulness of the foregoing representations and warranties of this Section.
  9. Seller's price quotations and invoice prices shall accurately and fairly reflect the commensurate value of the goods and services provided under this Purchase Order.
  10. Seller shall cooperate with, and provide assistance to, Buyer in implementing adequate due diligence procedures in connection with the selection and retention of consultants and subcontractors by Buyer or Seller.

### Compliance with Federal Requirements

For Purchase Orders placed in support of and charged to a U.S. Government ("Government") prime contract or higher-tier subcontract, the following provisions and clauses set forth in the Federal Acquisition Regulations (FAR) or the Defense Federal Acquisition Regulation Supplement (DFARS) shall apply. The version of each FAR and DFARS provision or clause shall be the version in effect as of the date of the prime contract (11 September 2018). Such FAR and DFARS provisions and clauses are incorporated herein in either Full text, the Substance of the clause, or By Reference, unless made inapplicable by a corresponding note in this section, with the same force and effect as if given in full text. The full text of the FAR or DFARS provision(s) or clause(s) may be accessed electronically at these addresses: <https://www.acquisition.gov/>, <http://farsite.hill.af.mil/> or <http://www.acq.osd.mil/dpap/sitemap.html>.

In all clauses listed herein, terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer and to the Government; and to enable Buyer to meet its obligations under its prime contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean "Buyer", the term "Contracting Officer" shall mean "Buyer's Purchasing Representative", the term "Contractor" or "Offeror" shall mean "Seller", "Subcontractor" shall mean "Seller's Subcontractor" under this Purchase Order, and the term "Contract"





shall mean this "Purchase Order". For the avoidance of doubt, 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. Nothing in this Purchase Order grants Seller a direct right of action against the Government. Seller shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR and DFARS clauses in accordance with the flow down requirements specified in such clauses.

The clauses listed in the section below are Mandatory and apply to all Orders issued under this agreement.

#### **52.204-21 Basic Safeguarding of Covered Contractor Information Systems.**

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.



(3) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph, in subcontracts under this contract (including subcontracts for the acquisition of commercial items, 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**

*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—

- a. (1) Providing any covered article that the Government will use on or after October 1, 2018; and
- b. (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...

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

**252.204-7015 Notice of Authorized Disclosure of Information for Litigation Support.**

*Notice of authorized disclosures.* Notwithstanding any other provision of this solicitation or contract, the Government may disclose to a litigation support contractor, for the sole purpose of litigation support activities, any information, including sensitive information, received—

- (1) Within or in connection with a quotation or offer; or
- (2) In the performance of or in connection with a contract.

*Flowdown.* Include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items.

*The following subset of clauses are also Mandatory and apply to all Orders issued under this agreement.*

FAR Clause	Clause Description
52.203-3	Gratuities.
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
52.204-19	Incorporation by Reference of Representations and Certifications. DEC 2014
52.209-10	Prohibition on Contracting With Inverted Domestic Corporations.
52.211-15	Defense Priority and Allocation Requirements.
52.222-50	Combating Trafficking in Persons.
52.225-13	Restrictions on Certain Foreign Purchases.
52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS
52.233-3	Protest after Award.
52.244-6	Subcontracts for Commercial Items.
252.203-7000	REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS

252.203-7002	REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS
252.225-7048	EXPORT-CONTROLLED ITEMS
52.204-18	Commercial and Government Entity Code Maintenance.
252.203-7003	AGENCY OFFICE OF THE INSPECTOR GENERAL
252.225-7002	Qualifying Country Sources As Subcontractors (Dec 2012)
52.222-26	Equal Opportunity.
52.233-1	Disputes.
252.247-7023	TRANSPORTATION OF SUPPLIES BY SEA

*In addition to the preceding Mandatory clauses, the following clauses are contract specific and also apply to all Orders issued under this agreement.*

**252.223-7006 Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials.**

In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing, treating, or disposing of toxic or hazardous materials not owned by DoD on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense. A charge may be assessed for any storage or disposal authorized under any of the exceptions to 10 U.S.C. 2692. If a charge is to be assessed, then such assessment shall be identified elsewhere in the contract with payment to the Government on a reimbursable cost basis.

The Contractor shall include the substance of this clause, including this paragraph, in all subcontracts that require, may require, or permit a subcontractor access to a DoD installation, at any subcontract tier.

**252.225-7013 Duty-Free Entry.**

Except as provided in paragraph (i) of this clause, or unless supplies were imported into the customs territory of the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.- made end products to be delivered under this contract; or

(3) Other supplies for which the Contractor estimates that duty will exceed \$300 per shipment into the customs territory of the United States.

The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed \$200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—

(i) The name and address of the ACO for this contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

**52.224-3 Privacy Training.**

The Contractor shall ensure that initial privacy training, and annual privacy training thereafter, is completed by contractor employees who-

- a. (1) Have access to a system of records;
- b. (2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information on behalf of an agency; or
- c. (3) Design, develop, maintain, or operate a system of records (see also FAR subpart [24.3](#) and [39.105](#)).

“Privacy training shall address the key elements necessary for ensuring the safeguarding of personally identifiable information or a system of records. The training shall be role-based, provide foundational as well as more advanced levels of training, and have measures in place to test the knowledge level of users.

The substance of this clause, including this paragraph (f), shall be included in all subcontracts under this contract, when subcontractor employees will-

- a. (1) Have access to a system of records;
- b. (2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or
- c. (3) Design, develop, maintain, or operate a system of records.

FAR Clause	Clause Description
52.211-5	Material Requirements.
52.211-11	Liquidated Damages—Supplies, Services, or Research and Development.
52.216-2	Economic Price Adjustment—Standard Supplies.
52.243-1	Changes—Fixed-Price.
252.243-7001	PRICING OF CONTRACT MODIFICATIONS
52.216-3	Economic Price Adjustment—Semistandard Supplies. IAW FAR 16.203-4(b)(1))
252.244-7000	SUBCONTRACTS FOR COMMERCIAL ITEMS
52.209-3	First Article Approval—Contractor Testing.
52.209-4	First Article Approval—Government Testing.
52.216-19	Order Limitations. IAW FAR 16.506(b)
52.216-22	Indefinite Quantity.



Effective Date: 11 September 2018

52.223-5	Pollution Prevention and Right-to-Know Information.
52.223-11	Ozone-Depleting Substances.
52.223-20	AEROSOLS (JUN 2016) (IAW FAR 23.804(a)(3))
52.223-21	FOAMS (JUN 2016) (IAW FAR 23.804(a)(4))
52.253-1	Computer Generated Forms.
252.204-7003	CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT
252.204-7012	SAFEGUARDING OF UNCLASSIFIED CONTROLLED TECHNICAL INFORMATION
252.211-7003	ITEM UNIQUE IDENTIFICATION AND VALUATION
252.216-7006	ORDERING (MAY 2011) (IAW DFARS 216.506(a))
252.223-7008	PROHIBITION OF HEXAVALENT CHROMIUM
252.247-7028	APPLICATION FOR U.S. GOVERNMENT SHIPPING DOCUMENTATION/INSTRUCTIONS (JUN 2012) (IAW DFARS 247.207)
5352.223-9001	HEALTH AND SAFETY ON GOVERNMENT INSTALLATIONS
5352.242-9000	CONTRACTOR ACCESS TO AIR FORCE INSTALLATIONS
5352.242-9001	COMMON ACCESS CARDS (CAC) FOR CONTRACTOR PERSONNEL
252.211-7006	PASSIVE RADIO FREQUENCY IDENTIFICATION (MAR 2018) (IAW DFARS 211.275-3, DFARS 212.301(f)(xiii))
5352.223-9000	Elimination Of Use Of Class I Ozone Depleting Substances (ODS)
52.232-16	Progress Payments.

**Clauses by Threshold:**

If any of the following FAR or DFARS clauses do not apply to this Purchase Order (e.g. the PO dollar value does not meet or exceed a dollar threshold listed below), such clauses are considered to be self-deleting.

FAR Clause	Clause Description
<b>Applicable to DO's Less Than \$10,000</b>	
252.225-7013	DUTY-FREE ENTRY
252.232-7009	MANDATORY PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (MAY 2018) (IAW DFARS 232.1110)



In addition to the preceding mandatory clauses, the following clauses apply to all Orders equal to or greater than \$10,000.

**52.222-40 Notification of Employee Rights Under the National Labor Relations Act.**

During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR471.2 (d) and (f).

**Subcontracts.**

- (1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.
- (2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.
- (3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.
- (4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

Applicable to DO's Equal to or Greater Than \$10,000	
52.222-21	Prohibition of Segregated Facilities.
52.222-19	Child Labor—Cooperation with Authorities and Remedies.
252.211-7005	Substitutions for Military or Federal Specifications and Standards (Nov 2005)
52.223-18	Contractor Policy to Ban Text Messaging While Driving.
252.232-7010	LEVIES ON CONTRACT PAYMENTS

In addition to all the preceding mandatory clauses and clauses exceeding the previous threshold, the following clauses also apply if the Order is equal to or greater than \$15,000.

Applicable to DO's Equal to or Greater Than \$15,000	
52.222-20	CONTRACTS FOR MATERIALS, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (MAY 2014) (IAW FAR 22.610)
52.222-36	Affirmative Action for Workers with Disabilities.



*In addition to all the preceding mandatory clauses and clauses exceeding the previous thresholds, the following clauses also apply if the Order is equal to or greater than \$30,000.*

Applicable to DO's Equal to or Greater Than \$30,000	
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards.

*In addition to all the preceding mandatory clauses and clauses exceeding the previous thresholds, the following clauses also apply if the Order is equal to or greater than \$35,000.*

Applicable to DO's Equal to or Greater Than \$35,000	
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

*In addition to all the preceding mandatory clauses and clauses exceeding the previous threshold, the following clauses also apply if the Order is equal to or greater than \$150,000.*

**52.203-7 Anti-Kickback Procedures.**

41 U.S.C. chapter 87, Kickbacks, prohibits any person from-

- a. Providing or attempting to provide or offering to provide any kickback;
- b. Soliciting, accepting, or attempting to accept any kickback; or
- c. Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision(c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision(c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

*Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence

an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with [31 U.S.C. 1352](#) the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

*Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees.*

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern-

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services.*

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.



(iii) As used in paragraph (c)(2) of this clause, “professional and technical services” are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR [3.803\(a\)\(2\)\(iii\)](#)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

*Disclosure.*

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

*Penalties.*

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by [31 U.S.C. 1352](#). An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

*Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

*Subcontracts.*

(1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$150,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$150,000.

**52.215-14 Integrity of Unit Prices.**



Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of certified cost or pricing data not otherwise required by law or regulation.

**52.222-37 Employment Reports on Veterans.**

Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on-

- (1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);
- (2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and
- (3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

The Contractor shall report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>).

The Contractor shall submit VETS-4212 Reports no later than September 30 of each year.

Applicable to DO's Equal to or Greater Than \$150,000	
52.219-14	Limitations on Subcontracting.
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
252.209-7004	SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY

In addition to all the preceding mandatory clauses and clauses exceeding the previous thresholds, the following clauses also apply if the Order is equal to or greater than \$250,000.

**52.203-6 Restrictions on Subcontractor Sales to the Government.**

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

Applicable to DO's Equal to or Greater Than \$250,000	
52.202-1	Definitions.
52.203-5	Covenant Against Contingent Fees.
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.
52.215-2	Audit and Records—Negotiation.
52.219-8	Utilization of Small Business Concerns.
52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT
52.223-6	Drug-Free Workplace.
52.227-1	Authorization and Consent.
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement.
52.229-3	Federal, State, and Local Taxes.
52.232-17	Interest.
52.242-13	Bankruptcy.
52.244-5	Competition in Subcontracting.
52.246-23	Limitation of Liability.
52.249-2	Termination for Convenience of the Government (Fixed-Price).
52.249-8	Default (Fixed-Price Supply and Service).
252.203-7001	PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES
252.225-7012	PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES
252.243-7002	REQUESTS FOR EQUITABLE ADJUSTMENT

*In addition to all the preceding mandatory clauses and clauses exceeding the previous thresholds, the following clauses also apply if the Order is equal to or greater than \$500,000.*

**252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.**

The Contractor shall use its best efforts to give Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the contract.

The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.



Effective Date: 11 September 2018

The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding \$500,000.

In addition to all the preceding mandatory clauses and clauses exceeding the previous thresholds, the following clauses also apply if the Order is equal to or greater than \$550,000.

<b>Applicable to DO's Equal to or Greater Than \$550,000</b>	
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters.

In addition to all the preceding mandatory clauses and clauses exceeding the previous thresholds, the following clauses also apply if the Order is equal to or greater than \$1,000,000.

<b>Applicable to DO's Equal to or Greater Than \$1,000,000</b>	
252.205-7000	PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS
252.222-7006	RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS

In addition to all the preceding mandatory clauses and clauses exceeding the previous thresholds, the following clauses also apply if the Order is equal to or greater than \$5,500,000.

<b>Applicable to DO's Equal to or Greater Than \$5,500,000</b>	
52.210-1	MARKET RESEARCH
252.203-7004	DISPLAY OF FRAUD HOTLINE POSTER(S)

In addition to all the preceding mandatory clauses and clauses exceeding the previous thresholds, the following clauses also apply if the Order is equal to or greater than \$13,500,000.

<b>Applicable to DO's Equal to or Greater Than \$13,500,000</b>	
252.225-7004	REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA -- SUBMISSION AFTER AWARD