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**STANDARD TERMS AND CONDITIONS AND FAR FLOWDOWNS
COST REIMBURSEMENT CONTRACTS FOR NON-COMMERCIAL ITEMS
UNDER FEDERAL GOVERNMENT CONTRACTS**

1. **PRODUCTS.** The term products (“Products”) as used herein shall include all Products, packaging, and containers, as well as any literature pertaining to such Products.

2. **ACCEPTANCE; ORDER CONSTITUTES ENTIRE AGREEMENT.** This Order constitutes Navistar Defense LLC’s (“Navistar Defense” and/or “Buyer”) offer to purchase Products only in accordance with the terms and conditions contained herein. Any document of Seller containing additional or different terms and conditions or any attempt by Seller to vary to any degree, any of the terms and conditions expressed in this Contract shall not operate as a rejection of this contract, but shall be deemed a material alteration thereof and this contract shall be deemed accepted by Seller without such additional or different terms and conditions. All such different and/or additional terms and conditions which may be contained in any document furnished by Seller in accepting this contract are hereby objected to and rejected and shall have no force and effect unless otherwise agreed to in writing by Buyer. This order may be accepted by Seller by the commencement of work, shipment of goods, furnishing of services or by any written confirmation or acknowledgement made by Seller, such acceptance or confirmation being expressly conditioned on these terms and conditions.

3. **PAYMENT.**
 - (A) Unless otherwise stated in this Contract, standard payment terms shall be sixty (60) days from date of receipt of a correct invoice from Seller, or the date of receipt of the Products by Buyer, whichever is later. All payments shall be made in U.S. dollars. Buyer neither guarantees nor is responsible for any liabilities incurred by any Third Party Designees under this Contract.

 - (B) **PAYMENT SPECIFIC TO TRUCK EQUIPMENT MANUFACTURERS:** Specific to Truck Equipment Manufacturers (TEMs), the payment obligations of Navistar Defense, LLC (“Navistar Defense”) shall be incurred only upon acceptance by the United States government or state, provincial, local, or foreign government of the completed Navistar Defense vehicle(s) with the TEM-provided materials and / or services. Acceptance by the United States government (or state, provincial, local or foreign government) will be demonstrated by the receipt by Navistar Defense of a Form DD250 from the United States government (or equivalent form from such other government unit) with respect to the vehicle(s). Accordingly, Navistar Defense shall have 60 days from the date of its receipt of the Form DD250 (or equivalent form from such other government unit) to pay TEMs for materials and / or services provided with respect to such vehicle(s).

4. **CHANGES.** Buyer reserves the right at any time without notice to the sureties, if any, to make changes or modifications in drawings, specifications and/or delivery schedule as to any Products, materials, or work covered by this Contract. Buyer will issue such change in writing (“Change Order”). Any increase or decrease in price or time for performance resulting from such changes shall be equitably adjusted, and the Contract shall be modified in writing accordingly. Seller must assert its right to an adjustment under this provision in writing, delivered to Buyer’s contracting

representative within fifteen (15) days from Seller's receipt of the written Change Order. Failure to agree on the adjustment shall be deemed a dispute under this Contract and such dispute will not excuse the Seller from continuing performance as changed.

5. **SHIPMENT.** Shipments of Products must equal exact quantity ordered, unless otherwise agreed to in writing. Shipping schedules may contain authorization to Seller to fabricate, within a time specified, quantities of Products under this Contract, the delivery of which has not been specified. It may also contain authorization to Seller to acquire, within a specified period of time, materials necessary to fabricate a quantity of the Products under this Contract.
6. **STOP WORK ORDER.** Buyer may at any time and by written order to Seller require the Seller to stop all, or any part of, the work being performed hereunder for a period not to exceed ninety (90) days, or for such period as the Buyer and its government customer may agree under the prime contract ("Stop Work Order"). Upon receipt of the Stop Work Order Seller will immediately comply with the terms of the Stop Work Order and will take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order. Within the ninety day period (or such other period as agreed to between Buyer and its customer) the Buyer will either (i) cancel the Stop Work Order; or (ii) terminate the work covered as provided in the Termination provisions of the Contract. If the Stop Work Order is canceled or the ninety day period expires, the Seller shall resume work and an equitable adjustment as to cost and/or schedule shall be made in accordance with the Changes provision.
7. **PRICING AND INVOICE DISPUTES.** All pricing and invoice disputes with Buyer must be identified by Seller to Buyer within six (6) months to the date of Buyer's receipt of Seller's shipment. On disputes that have not been identified to Buyer by Seller in writing within this time, Seller agrees to accept whatever payment Buyer deems appropriate.
8. **EQUIPMENT MAINTENANCE.** Unless otherwise agreed in writing, Seller shall furnish at its own expense, keep in good condition, and replace when necessary, all dies, tools, gauges, fixtures, and patterns necessary for the production of the Products ordered. Title to all property, including equipment, furnished at no charge to Seller by Buyer or the United States Government ("GFE") for Seller's performance of its obligations under this Contract, shall at all times vest in Buyer or the United States Government in the case of GFE, and Seller assumes all liability for any loss, damage, or shortage and/or for Seller's failure to return such property to Buyer on request. Seller shall promptly notify Buyer of any such loss, damage, or shortage.
9. **INSPECTION AND ACCEPTANCE OF PRODUCTS.** All Products shall be received subject to Buyer's inspection or rejection. Defective Products or Products not in accordance with Buyer's specifications will be held for Seller's instructions and at Seller's risk, and, if Seller so directs, will be returned at Seller's expense. Payment for Products prior to inspection shall not constitute an acceptance thereof. Returned Products will be deducted from total shipments.
10. **SUPPLY FAILURE.** In the event of a partial failure of Seller's sources of supply for the Products purchased, Seller will first meet all of Buyer's requirements hereunder prior to any allocation among customers under Section 2-615 of the Uniform Commercial Code.
11. **LATE DELIVERY CHARGES.** If Buyer determines that Seller's deliveries are so far behind a given schedule that Buyer requires express shipments, then Seller will pay the express charges. If Seller's deliveries are so far behind a given schedule that Buyer is compelled to use material not according to Buyer's specification, or at a higher cost, then Seller will pay whatever additional costs,

expenses, losses, or damages that Buyer sustains. The provisions of this paragraph are not intended to limit any other rights and remedies that Buyer may have against Seller.

12. **WARRANTY.** In addition to fully complying with Buyer's published basic and componentry warranty, Seller agrees to warrant the Products against all defects in design, material, workmanship, and assembly for the period referenced above.
13. **ACCESS TO PREMISES.** Buyer shall have access to Seller's premises and records prior or subsequent to payment to verify any charges.
14. **NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA).** Seller will provide annually to Buyer by the specified due date, an accurate and complete NAFTA Certificate of Origin for those parts that qualify for NAFTA and an accurate and complete Country of Origin affidavit for all parts. The NAFTA Certificate of Origin must be completed in accordance with regulations published by the U.S. Department of Treasury in 19 C.F.R. Sec. 181.11 et seq. and any amendments thereto, and in accordance with instructions issued annually to Seller by Buyer. In the event that Seller fails to comply with this requirement, Buyer will charge back to Seller and Seller will promptly reimburse Buyer for all import duties, penalties, and taxes paid by the Buyer as a result of Seller's non-compliance. Buyer reserves the right to charge Seller a U.S. \$250 non-compliance per Product part number charge.
15. **SUPPLIER DIVERSITY PROGRAM.** Seller agrees to utilize "Small Business Concerns, Small Disadvantaged-Owned Business Concerns, Minority-Owned Business Concerns, Women-Owned Business Concerns, Veteran-Owned Business Concerns, Service Disabled-Owned Veteran Business Concerns, and HUB zone-Located Business Concerns" as required by Federal Laws, 97-507, 99-661, 100-355, 105-135, and 106-50. Seller will use all reasonable efforts to achieve the goals as have been disclosed to it and which are applicable to the goals set forth in the prime contract under which this Order is issued.

Seller also agrees to report its accomplishment toward the above goals on a quarterly basis in the Buyer's Navistar electronic second-tier reporting system located at www.registration.international.com. Buyer acknowledges and agrees that, for purposes of satisfying the foregoing goals: (i) such goals apply only to those goods and services purchased by Seller in the United States; and (ii) a purchases of goods and services may be entitled to credit toward more than one of the foregoing goals depending on the status of the subcontractor—e.g., a subcontract with a "Minority Owned Business Concern" may also qualify as a subcontract with a "Small Disadvantaged-Owned Business Concern" and/or a "Women-Owned Business Concern".

16. **ELECTRONIC DATA INTERCHANGE (EDI).** Seller agrees to comply with all EDI requirements of Buyer. These basic requirements include Release and Receiving Suite documents. These conditions are subject to change and Seller will be given notice of new requirements. If Seller is unable to meet all the implementation requirements, then the Contract is subject to either termination by the Buyer, or a daily assessment of US\$50, at Buyer's option, until the requirements have been met. If Seller is unable to meet any of the EDI transaction requirements (ASN), Seller is subject to a US\$500 per occurrence charge. Seller agrees that any EDI will be deemed sufficient for enforceability under any state's statute of frauds or similar law
17. **MATERIAL SAFETY DATA SHEETS (MSDS).** Seller will properly classify, describe, package, mark, label, and provide MSDS for approval by Buyer prior to shipment of all Products. Seller will prepare all such Products for transportation, accompanied by an approved MSDS, in accordance with all applicable local, state, and federal laws, ordinances, or regulations. Seller will defend, indemnify,

and hold harmless Buyer from any claims, penalties, or damages incurred by Buyer as a result of any Products received from Seller not in accordance herewith.

- 18. NON DISCRIMINATION.** If this Contract is subject to Executive Order 11246 pertaining to nondiscrimination and nonsegregation, Seller certifies that it (1) is in compliance with Sec. 202 of Executive Order 11246, as amended by Executive Order 11375, and subsequent Executive Orders and the Rules and Regulations set forth by the Secretary of Labor in effect as of the date of this Executive Order; (2) does not and will not provide or maintain at any of its establishments, nor permit its employees to perform their services at any location under its control where there are maintained segregated facilities; and (3) agrees that a breach of this Certification violates the Equal Employment clause of Executive Order 11246. "Segregated Facilities" means facilities which are in fact segregated on a basis of race, color, creed, religion, or national origin. Seller agrees to (1) obtain an identical certification from proposed subcontractors prior to the award of subcontracts exceeding US\$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and (2) maintain such certifications in its files. The penalty for making a false representation is prescribed under 18 U.S.C. 1001 and any such false representation shall be a material breach of this Contract.
- 19. INDEMNIFICATION BY SELLER.** Seller agrees to protect, defend, hold harmless, and indemnify Buyer against all claims, actions, liabilities, losses, costs, and expenses, including, without limitation, reasonable legal cost and fees, punitive damages, consequential damages, and penalties arising out of any actual or alleged death of, or injury to, any person and/or damage to any property, by whosoever suffered, resulting or claimed to result, in whole or in part, from any actual or alleged defect in the supplied Products, including actual or alleged improper design, manufacture, or assembly of such Products, or arising out of any actual or alleged violation by such Products, or their manufacture, possession, use or sale, or any law, statute, or ordinance, or any governmental administrative order, rule, or regulation.
- 20. INTELLECTUAL PROPERTY INDEMNIFICATION.** Seller agrees to defend, at its expense, any claim or suit against Buyer or Buyer's customers, or either of their officers, directors, employees, agents, and affiliates based on an assertion or claim that the Products furnished by Seller to Buyer hereunder or the sale or the use by Buyer or its customers in the manner contemplated by this Contract infringes any patent or copyright or other intellectual property right or is a wrongful use of third-party trade secret or proprietary information, and further agrees to indemnify and hold Buyer, or their officers, directors, employees, agents, and affiliates harmless from any losses, including attorneys' fees, settlements associated with said claim, or any losses, including attorneys' fees or costs, finally awarded in any such claim. If the use or sale of the Product furnished pursuant to the Contract is enjoined as a result of such suit, Seller, at its option and at no expense to Buyer, shall obtain for Buyer and its customers the right to use and sell the Product or shall substitute an equivalent Product acceptable to Buyer and extend this indemnity thereto. This indemnity does not extend to any claim or suit based on any infringement of any patent by the combination of the Product furnished by Seller with other components added thereto by Buyer, except when the Product is a material part of the invention of an asserted patent and the components furnished by Buyer to complete the claimed combination, such as an engine, sensor, or vehicle frame, are not novel within the meaning of the patent or are specified or approved by Seller. This indemnity does not extend to any infringement or alleged infringement arising solely out of Seller's compliance with Buyer-required specifications, designs, or instructions that (i) are created solely by Buyer, and (ii) are thereafter furnished to Seller in writing.
- 21. INSURANCE.** Seller will purchase and maintain commercial general liability insurance in the amount of at least US\$5,000,000 and provide Buyer with a Certificate of Insurance identifying Buyer as an additional insured. Failure to provide such certificate of insurance shall void this Contract, at

Buyer's sole option. Seller will notify Buyer of any changes in coverage or Notice of Cancellation of such coverage

- 22. BUYER IDENTITY REMOVAL.** At its own expense, Seller agrees to destroy or remove to Buyer's complete satisfaction, Buyer's corporate name, addresses, trademarks, patent numbers, and all other reference to Buyer from all Products rejected or canceled by Buyer, or purchased or produced by Seller in excess of quantities specified by Buyer, whether such Products are completed or partially completed, delivered, tendered for delivery, or undelivered, prior to disposition of such Products to parties other than Buyer; or to destroy such Products. Seller acknowledges that any sale of Products bearing Buyer's trade name and/or trademarks to any person or entity other than Buyer is an infringement of Buyer's proprietary rights in its trade name and/or trademarks and is an attempt by Seller to "pass off" Products of others as the Products of Buyer. Without first obtaining the written consent of Buyer, Seller agrees that it shall not in any manner make known the fact that Seller has furnished, or contracted to furnish, to Buyer the Products covered by this Contract, or use the name of Buyer or any of its trademarks or trade names in Seller's advertising or other promotional material.
- 23. CONFIDENTIAL INFORMATION.** Seller agrees not to disclose to any third party, or use, except in connection with the furnishing of the Product or service under this Contract, any confidential information relating to Buyer's business, including business and marketing plans, processes, products, equipment, or trade secrets, as well as confidential information resulting from the performance of this Contract. Any information not available to the public shall be considered confidential for the purposes of this Contract; but should any of this information be published or otherwise made available by the public by Buyer or by third parties without breach of this Contract, Seller shall be free to use for its own purposes only that information which is actually publicly available. Confidential information that is owned by the U.S. Government or in which the U.S. has the right to use and which is provided to Seller either by Buyer or by the U.S. Government under this Contract and unless otherwise directed in writing, shall be used by Seller only in performance of its obligations pursuant to this Contract. All rights title and interest in said confidential information shall remain with and vest in the U.S. Government. Seller will have no ownership rights in said confidential information nor shall Seller have any right to license or sublicense such confidential information without the expressed prior permission of the U.S. Government.
- 24. OWNERSHIP OF MATERIALS.** All materials, including without limitation, documents, drawings, models, sketches, designs, software, computer tapes and disks, and lists furnished to Seller by Buyer or by the U.S. Government, shall remain the property of Buyer or the U.S. Government as the case may be and shall be returned promptly upon completion of the assigned project, or at any time upon written request of Buyer or the U.S. Government. Seller agrees not to make any copies of any such materials without Buyer's permission and to return any copies authorized with the original materials.
- 25. TERMINATION.** Buyer may terminate Contract, either in whole or in part, by written notice to Seller in the event (i) Buyer determines that a termination is in the Buyer's interest ("Termination for Convenience"), or (ii) the Seller defaults in performing this contract and fails to cure the default within ten (10) days (unless a longer period is agreed to between Buyer and Seller) after receiving written notice specifying the default ("Default"). Default includes Seller's failure to make progress in the work so as to endanger performance. Buyer will terminate this contract by delivering to Seller written notice ("Termination Notice") clearly stating whether the termination is a Termination for Convenience or a Termination for Default, the extent of the termination and the effective date. If after Termination for Default it is determined that the Seller was not in default or that such default was due to causes beyond the Seller's reasonable control and without fault or negligence, the rights and obligations of the parties will be the same as if the termination was for the convenience of Buyer.

After receipt of the Termination Notice the Seller will immediately (i) stop work on as specified in the Termination Notice, (ii) place no further subcontracts or orders; (iii) terminate all subcontracts to the extent they relate to the terminated work; (iv) assign to Buyer and as so directed, all right, title and interest of the Seller under the subcontracts terminated in which cast, the Buyer will have the right to settle or pay any termination settlement proposal arising out of those terminations; (v) with Buyer's prior expressed approval, settle all outstanding liabilities and termination settlement proposals arising from the termination of the subcontracts; (vi) transfer title and deliver to the Buyer (a) all fabricated or un-fabricated Products, work in process, completed work, supplies and other material produced or acquired for the work terminated; (b) the completed or partially completed plans, drawings, information and other property that will enable Buyer to complete fabrication or manufacture of the Products; and (c) all jugs, dies, fixtures and other special tools and tooling acquired or manufactured for this Contract; and (vii) Seller will continue performance on the un-terminated portion of this Contract; (viii) with Buyer's direction and concurrence, take any action that may be necessary to protect and preserve the property relating to the Product that is in Seller's possession; and (ix) with Buyer's direction and concurrence, sell any property related to the Products, provided, however, that Seller is not required to extend credit to any subsequent buyer. The proceeds of any such sale will be applied to reduce any payments that Buyer may make under this termination provision.

Within forty-five (45) days following receipt of the termination notice, Seller will prepare and submit to Buyer, Seller's termination inventory schedules. The disposition of, but not limited to, inventory, work in process and finished goods of the terminated work will be at the direction of the Buyer. Further, Seller shall use all reasonable efforts as directed by Buyer, to sell, use or otherwise dispose of all goods or materials remaining in inventory the proceeds of which, will be applied to reduce any payments to be made by the Buyer under this Contract. Within ninety (90) days of receipt of the termination notice, or as may be extended by mutual agreement between the parties, the Seller will submit to Buyer its complete termination inventory schedules to Buyer. Following any applicable plant clearance period (as defined in FAR Part 49) Seller will submit within ten (10) days a detailed list of all inventory certified as to quantity and quality, of termination inventory not previously disposed of.

Within six (6) months following termination, Seller will submit to Buyer its final termination settlement proposal in the form so prescribed by Buyer's contract representative. Should Seller fail to provide such final settlement proposal within the prescribed timeframe, Buyer may determine the amount, if any, to be paid as a settlement utilizing the information available to Buyer.

Subject to the foregoing Seller and Buyer representatives may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this sub-paragraph may not exceed the total contract price as reduced by (i) the amount of payments previously made and (ii) the contract price of work not terminated. This Contract shall be so modified, and the Seller shall be paid the agreed amount. This sub-paragraph shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

If the Seller and the Buyer fail to agree on the amount to be paid because of the termination of work, the Buyer shall determine on the basis of the information available to it, to pay the Seller the amounts, but without duplication of any amounts agreed on above, (i) the reimbursable costs under the Contract not previously paid for prior to the effective date of termination, (ii) the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this Contract to the extent such right has not be assumed by Buyer as set forth above, (iii) the reasonable costs of settlement of the terminated work including (a) accounting, legal,

clerical and other expenses reasonably necessary for the preparation of the termination settlement proposals; (b) the termination and settlement of subcontracts as directed by Buyer (excluding the amounts of such settlements); and (c) storage, transportation and other cost incurred, reasonably necessary for the preservation, protection and disposition of the termination inventory, and a portion of the fee payable under the contract as determined by FAR 52.249-6 (4)(i) and (ii), unless Buyer would have sustained a loss if this Contract not be terminated.

- 26. RIGHTS AND REMEDIES.** The provisions of each paragraph of this Contract are not intended to limit any rights and remedies of Seller or Buyer. No modifications of, or additions to, the provisions or conditions of this Contract will become a part of it until accepted in writing by Buyer. The foregoing notwithstanding, in no event shall Seller acquire any direct claim or direct course of action against the United States Government relating to or in any way arising out of the subject matter of this Contract.
- 27. FORCE MAJEURE.** Neither Buyer nor Seller shall be responsible for delays or defaults due to causes beyond their respective reasonable control and without fault or negligence of the party claiming delay. Should Seller at any time have reason to believe that deliveries will not be made as scheduled or has incurred a delay, prompt written notice must be delivered to Buyer's contracting representative setting forth the facts of the delay and the anticipated duration and its cause. Such delays shall include acts of God or of the public enemy, acts of the U.S. government in either in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes and unusually severe weather.
- 28. ITAR COMPLIANCE.** Some Products are controlled by the International Traffic in Arms Regulations (ITAR). To ensure Buyer and Seller's compliance with the ITAR and to avoid imposition export licensing requirements, Seller will ensure that each person with access to Technical Data, as defined in 22 CFR Section 120.10, Defense Services as defined in 22 CFR Section 120.9, and Defense Articles as defined in 22 CFR Section 120.6 (collectively "ITAR Materials") is eligible to be granted access to such ITAR Materials pursuant to 22 CFR Section 120.1(c) or is a U.S. Person as defined in 22 CFR Section 120.15. In instances where Foreign Persons, as defined in 22 CFR Section 120.16 have access to ITAR Materials, the Seller shall immediately provide Buyer with a copy of the license or approval at the time that Seller provides such Foreign Person with access to the ITAR Materials. For those instances where Seller employs, retains, or contracts with any Foreign Persons without a license or approval described above, Seller shall immediately notify Buyer and if requested, provide Buyer with a detailed explanation of the steps undertaken to ensure that these persons are not gaining access to the ITAR Materials.
- 29. APPLICABLE LAW AND JURISDICTION.** This Contract and all conflicts, disputes or actions arising out of or as a result of the respective rights and obligations of the parties as herein contained, shall be governed by the laws of the State of Illinois except its choice of law provisions. All disputes and actions shall be brought before a State or Federal court of competence located in the State of Illinois. The Seller consents to the venue and jurisdiction of a State or Federal court located in the State of Illinois and waives any claim of forum nonconveniens and a trial by jury.
- 30. ASSIGNMENT.** This Contract nor the rights and obligations of the Seller as contained herein, will not be assigned without the express prior permission of Buyer.
- 31. ENTIRE AGREEMENT** These terms and conditions and those contained on the purchase order into which these terms and conditions are incorporated by reference, contain the entire agreement and understandings of the parties and supersedes all prior understandings or agreements or the parties,

whether written or oral. No modification or amendment to this Contract will be made without the prior written consent of the duly authorized representatives of both the Buyer and Seller.

- 32. ADVERTISING.** Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer with the Products as described herein.
- 33. ORDER OF PRECEDENCE.** Conflicting provisions hereof, if any shall prevail in the following descending order of precedence; (1) provisions on the face of the issued purchase order; (2) Buyer's purchase order attachments, including these terms and conditions and the provisions and clause referenced and incorporated in this document; (3) other specifications or documents incorporated by reference; (4) the statement of work referenced by the purchase order.
- 34. GOVERNMENTAL REQUIREMENTS.** Seller agrees to comply with all applicable statutes, regulations, laws, and other Government requirements, including but not limited to those reflected in contract clauses set forth in 48 C.F.R. Sections 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008); 52.219-8, Utilization of Small Business Concerns (May 2004); 52.222-26, Equal Opportunity (Mar 2007); 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006); 52.222-36 Affirmative Action for Workers with Disabilities, (Jun 1998); 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004); 52.222-41 Service Contract Act of 1965 (Nov 2007); and 52.247-64 Preference for Privately Owned U.S.- Flag Commercial Vessels (Feb 2006) and provide evidence of such compliance to Buyer upon Buyer's request. The term "Contractor" and similar terms used in such FAR provisions shall be construed to mean Seller for the purposes of this Contract.

The following FAR and DFAR provisions referenced below are incorporated herein by reference with the same force and effect as if they were given in full text and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.

Seller shall include in each lower-tier subcontract the appropriate flow-down clauses as required by FAR and DFARs.

GOVERNMENT SUBCONTRACT

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

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

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this contract.
3. "Contracting Officer" shall mean the U.S. Government Contracting Officer for PRIME CONTRACTOR's government prime contract under which this Contract is entered.
4. "Contractor" and "Offeror" means the SELLER, as defined in this Contract, acting as the immediate (first tier) subcontractor to PRIME CONTRACTOR.
5. "Prime Contract" means the contract between PRIME CONTRACTOR and the U.S. Government or between PRIME CONTRACTOR and its higher-tier contractor who has a contract with the U.S. Government.
6. "Subcontract" means any contract placed by the contractor or lower-tier subcontractors under this Contract.

B. NOTES

1. Substitute “PRIME CONTRACTOR” for “Government” or “United States” throughout this clause.
2. Substitute “PRIME CONTRACTOR Procurement Representative” for “Contracting Officer”, “Administrative Contracting Officer”, and “ACO” throughout this clause.
3. Insert “and PRIME CONTRACTOR” after “Government” throughout this clause.
4. Insert “or PRIME CONTRACTOR” after “Government” throughout this clause.
5. Communication/notification required under this clause from/to the Contractor to/from the Contracting Officer shall be through PRIME CONTRACTOR.
6. Insert “and PRIME CONTRACTOR” after “Contracting Officer” throughout the clause.
7. Insert “or PRIME CONTRACTOR PROCUREMENT REPRESENTATIVE” after “Contracting Officer” throughout the clause.
8. Insert “and PRIME CONTRACTOR” after “agency head” throughout the clause.
9. Insert “and PRIME CONTRACTOR’S RIGHTS” after “Government’s rights” throughout the clause.

C. MODIFICATIONS REQUIRED BY PRIME CONTRACT

Contractor agrees that upon the request of PRIME CONTRACTOR it will negotiate in good faith with PRIME CONTRACTOR relative to modifications to this Contract to incorporate additional provisions herein or to change provisions hereof, as PRIME CONTRACTOR may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of modifications to such Prime Contract. If any such modification to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the “Changes” clause of this Contract.

D. PRESERVATION OF THE GOVERNMENT’S RIGHTS

If PRIME CONTRACTOR furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (“Furnished Items”) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that PRIME CONTRACTOR, acting on its own behalf, may modify or limit any rights the Government may have to authorize the Contractor’s use of such Furnished Items in support of other U. S. Government prime contracts.

52.202-1	Definitions	Jul 2004
52.203-3	Gratuities (n.8 and 3 apply to paragraph (d))	Apr 1984
52.203-5	Covenant Against Contingent Fees (n.1 applies)	Apr 1984

52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (n.1 applies)	Jan 1997
52.203-10	Price of Fee Adjustment for Illegal or Improper Activity (n.1 applies)	Jan 1997
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	Sep 2007
52.204-2	Security Requirements (n.2 applies)(Applicable to subcontracts at all tiers that involve access to classified information; exclude reference to the Changes clause)	Aug 1996
52.204-9	Personal Identity Verification of Contractor Personnel (Applicable to subcontractors who have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system)	Sep 2007
52.208-8	Required Sources for Helium and Helium Usage Data (n. 5 and 6 apply)(Applicable where subcontracts or orders at all tiers that involve a major helium requirement)	Apr 2002
52.211-5	Material Requirements (n. 5 and 6 apply)	Aug 2000
52.211-15	Defense Priority and Allocation Requirements (Applicable to subcontracts that are rated orders certified for national defense, emergency preparedness, and energy program use)	Apr 2008
52.216-7	Allowable Cost and Payment (n. 1 applies except to paragraph (a)(3) where n. 4 applies. n. 2 applies except to paragraph (g) where not 7 applies; paragraph (f) is deleted; and paragraphs (d) and (e) shall remain unchanged)	Dec 2002
52.217-9	Option to Extend the Term of the Contract	Mar 2000
52.222-1	Notice of Government Labor Disputes (n. 1 applies)	Feb 1997
52.222-3	Convict Labor	Jul 1990
52.222-18	Certification Regarding Knowledge of Child Labor for Listed Products (n.1 applies)	Feb 2008
52.222-19	Child Labor-Cooperation with Authorities and Remedies	Feb 2008
52.222-20	Walsh-Healy Public Contracts Act	Dec 1996
52.222-21	Prohibition of Segregated Facilities (Applicable to subcontracts subject to the Equal Opportunity clause, § 52.222-26)	Feb 1999

52.222-22	Previous Contracts and Compliance Reports (Applicable to subcontracts subject to the Equal Opportunity clause, § 52.222-26)	Feb 1999
52.222-26	Equal Opportunity (n.3, 5 and 7 apply)(Applies to all subcontracts that are not exempt by the Secretary of Labor under Executive Order 11246)	Mar 2007
52.222-41	Service Contract Act of 1965, as Amended (Applicable to all subcontracts subject to the Act, 41 U.S.C. 351, et seq.)	Nov 2007
52.222-50	Combating Trafficking in Persons	Aug 2007
52.222-51	Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration or Repair of Certain Equipment—Requirements (Applicable to subcontracts at all tiers for exempt services under the Service Contract Act, 41 U.S.C. 351, et seq.)	Nov 2007
52.222-53	Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Applicable to subcontracts at all tiers for exempt services under the Service Contract Act, 41 U.S.C. 351, et seq.)	Nov 2007
52.223-1	Biobased Product Certification	Dec 2007
52.223-3	Hazardous Material Identification and Material Safety Data (n. 4, 5, 6 and 9 apply)	Jan 1997
52.223-4	Recovered Material Certification	May 2008
52.223-7	Notice of Radioactive Material (n.5 and 6 apply)(Applicable to subcontracts at all tiers involving radioactive material)	May 2008
52.223-11	Ozone-Depleting Substances	Mar 2001
52.223-15	Energy Efficiency in Energy-Consuming Products (n.5 and 7 apply)	Dec 2007
52.224-2	Privacy Act (Applicable to subcontracts at all tiers which require the design, development or operation of a system of records on individuals to accomplish an agency function)	Apr 1994
52.225-1	Buy American Act – Supplies (n.2 applies)	Jun 2003
52.225-8	Duty-Free Entry (n.3, 5 and 6 apply)(Applicable to subcontracts if (1) supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or (2) other foreign supplies in excess of \$10,000 may be imported in the customs territory of the United States)	Feb 2000
52.225-13	Restrictions on Certain Foreign Purchases (Applicable to	Jun 2008

subcontracts at all tiers)

52.225-19	Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States (n.5 and 6 apply)(Applicable to subcontracts at any tier that require subcontractor personnel to perform outside the United States in certain designated operational areas or in support of certain diplomatic or consular missions; does not apply to personal service subcontracts with individuals)	Mar 2008
52.227-9	Refund of Royalties (n. 3, 5 and 6 apply)(Applicable to subcontracts at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250)	Apr 1984
52.227-10	Filing of Patent Applications—Classified Subject Matter (n. 5 and 6 apply)(Applicable to subcontracts at any tier that cover or likely to cover a classified subject matter)	Dec 2007
52.227-11	Patent Rights—Ownership by the Contractor (Short Form) (Applicable to subcontracts at any tier for experimental, developmental, or research work (see paragraph (k) for detailed requirements))	Dec 2007
52.227-13	Patent Rights—Ownership by the Government (Applicable to subcontracts at any tier for experimental, developmental, or research work (see paragraph (i) for detailed requirements))	Dec 2007
52.227-14	Rights in Data—General (n.5 applies) (Applicable to subcontracts at any tier unless the government contracting officer authorizes otherwise)	Dec 2007
52.227-16	Additional Data Requirements (n.2 applies)	Jun 1987
52.227-17	Rights in Data—Special Works (n. 3, 5 and 6 apply)	Dec 2007
52.227-18	Rights in Data—Existing Works (n.3 applies)(Applicable to subcontractors at any tier)	Dec 2007
52.227-19	Commercial Computer Software License (n.3 applies)(Applicable to subcontractors at any tier)	Dec 2007
52.227-20	Rights in Data—SBIR Program (n.3 applies)(Applicable to subcontracts at any tier unless the government contracting officer authorizes otherwise)	Dec 2007
52.227-21	Technical Data Declaration, Revision, and Withholding of Payment—Major Systems (n.1 and 2 apply)(Applicable to subcontractors at any tier)	Dec 2007
52.227-22	Major System—Minimum Rights (n.3 applies)(Applicable to subcontractors at any tier)	June 1987

52.227-23	Rights to Proposal Data (n.3 applies)(Applicable to subcontractors at any tier)	Jun 1987
52.228-3	Worker's Compensation Insurance (Defense Base Act) (Applicable to subcontracts at any tier covered by the Defense Base Act)	Apr 1984
52.228-4	Worker's Compensation and War-Hazard Insurance Overseas (Applicable to subcontracts at any tier when the Defense Base Act applicability has been waived by the Secretary of Labor)	Apr 1984
52.228-5	Insurance—Work on a Government Installation	Jan 1997
52.229-3	Federal, State, and Local Taxes (n.2 and 5 apply)	Apr 2003
52.229-4	Federal, State, and Local Taxes - State and Local Adjustments (n.2 and 5 apply)	Apr 2003
52.229-8	Taxes—Foreign Cost Reimbursement Contracts (n.2 and 5 apply)	Mar 1990
52.229-9	Taxes—Cost-Reimbursement Contracts with Foreign Governments	Jan 1991
52.229-10	State of New Mexico Gross Receipts and Compensating Tax (Applicable to subcontracts at any tier for cost-reimbursement contracts for services to performed in whole or in part in the State of New Mexico, the contract authorizes the acquisition of tangible property as a direct cost, and title to such property passes directly to and vests directly in the United States upon delivery of the property by the vendor)	Apr 2003
52.232-17	Interest (n.1 applies)	Jun 1996
52.233-3	Protest After Award (n.1 and 2 apply)	Aug 1996
52.234-1	Industrial Resources Developed Under Defense Production Act Title III (n.5 applies)(Applicable flow down to subcontracts at any tier)	Dec 1994
52.237-3	Continuity of Services (note 2 applies) (recommend flowing down clause to subcontracts at all tiers)	Jan 1991
52.242-1	Notice of Intent to Disallow Costs (n.5 and 7 apply)(Applicable to cost reimbursement subcontracts at all tiers)	Apr 1984
52.242-15	Stop-Work Order (n.2 applies)(Applicable to subcontracts at any tiers)	Aug 1989
52.243-2	Changes—Cost Reimbursement (n.2 applies)(Applicable to subcontracts at any tiers)	Aug 1987

52.244-6	Subcontracts for Commercial Items and Commercial Components (Applicable to subcontractors at any tier)	Mar 2007
52.245-1	Government Property (n.2 and 5 apply)(Applicable to subcontracts at any tier)	Jun 2007
52.245-2	Government Property Installation Operation Services (n.5 applies)	Jun 2007
52.245-9	Use and Charges (n.5 applies)	Jun 2007
52.246-3	Inspection of Supplies—Cost-Reimbursement (n.3 and 5 apply)	May 2001
52.246-5	Inspection of Services—Cost-Reimbursement (n.3 and 5 apply)	Apr 1984
52.246-8	Inspection of Research and Development—Cost-Reimbursement (n.3 and 5 apply)(Applicable to R&D activities only and then, flow down clause to subcontracts at all tiers)	May 2001
52.246-9	Inspection of Research and Development (Short Form) (n.3 and 5 apply)Applicable to R&D activities only and then, flow down clause to subcontracts at all tiers)	Apr 1984
52.247-63	Preference for U.S.-Flag Air Carriers	Jun 2003
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels (Applicable to subcontracts at all tiers)	Feb 2006
52.249-6	Termination for Convenience of the Government (Cost Reimbursement) (n.1 and 2 apply)	May 2004
52.250-1	Indemnification Under Public Law 85-804 (Requires the Government Contracting Officer's prior written approval to flow down this clause to a subcontract)	Apr 1984

FAR Requirements for Subcontracts That Exceed \$10,000

52.222-36	Affirmative Action for Workers with Disabilities (Applicable unless exempted by rules, regulations or orders of the Secretary of Labor)	Jun 1998
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FAR Requirements for Subcontracts That Exceed \$30,000

52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (n.5 applies)	Jun 2005
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FAR Requirements for Subcontracts That Exceed \$55,000

52.248-3	Value Engineering—Construction (n.2 and 5 apply, n.3 applies)	Sep 2006
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only to paragraphs (g), (h) and (i))

FAR Requirements for Subcontracts That Exceed \$100,000

52.203-6	Restrictions on Subcontractor Sales to Government (Applicable clause required in subcontracts at all tiers which exceed the simplified acquisition threshold, \$100,000)	Sep 2006
52.203-7	Anti-Kickback Procedures (Applicable to subcontracts at all tiers, excluding paragraph (c)(1))	Jul 1995
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Applicable to subcontracts at any tiers)	Sep 2007
52.215-2	Audit and Records—Negotiation (Applicable to subcontracts at any tier that exceed the simplified acquisition threshold, if one or more of the following applies: (1) the subcontract is cost reimbursement, incentive, time and material, labor hour, or price re-determinable type or some combination of these; (2) cost or pricing data was required; or (3) subcontractor was required to furnish reports discussed in paragraph (e) of the clause)	Jun 1999
52.215-14	Integrity of Unit Prices (n.2 applies)(Applicable excluding paragraph (b), except for subcontracts for construction or engineer services under FAR § 36, utility services under FAR § 41; services where supplies are not required, and petroleum products)	Oct 1997
52.219-8	Utilization of Small Business Concerns	May 2004
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (n.3 applies)(Applicable unless exempted by rules, regulations or orders of the Secretary of Labor)	Sep 2006
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans (Applicable unless exempted by rules, regulations or orders of the Secretary of Labor)	Sep 2006
52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees (Applicable unless exempted by the Department of Labor)	Dec 2004
52.222-54	Employment Eligibility Verification (Applicable if subcontract meets the criteria at paragraph (e))	Jan 2009
52.223-14	Toxic Chemical Release Reports (n.2 applies)	Dec 2007
52.227-1	Authorization and Consent (subcontractor liability to the U.S. government for the infringement of a U.S. patent shall be determined solely by the indemnity clause, if any, included in this Contract (see 52.227-3)) (Applicable to subcontracts at any tier if the supplies and	Dec 2007

services are expected to exceed the simplified acquisition threshold; clause does not apply if both performance and delivery are outside the United States)

- 52.227-2** **Notice and Assistance Regarding Patent and Copyright Infringement** (n.5 applies)(Applicable to subcontracts at any tier) **Aug 1996**
- 52.227-3** **Patent Indemnity** (n.1 and 2 apply)(Applicable to subcontracts at any tier covering certain communications services and facilities that exceed the simplified acquisition threshold (see Alternate III, Jul 1995)) **Apr 1984**
- 52.248-1** **Value Engineering** (n.2, 3 and 5 apply) **Feb 2000**

FAR Requirements for Subcontracts That Exceed \$550,000

- 52.219-9** **Small Business Subcontracting Plan** (n.2 applies)(Applicable to subcontracts that exceed \$550,000 except the threshold is \$1,000,000 for subcontracts for construction of any public facility with further subcontracting possibilities but does not apply to small business concerns) **Apr 2008**
- 52.219-16** **Liquidated Damages – Subcontracting Plan** (n.1 and 2 apply) **Jan 1999**

FAR Requirements for Subcontracts That Exceed \$650,000

- 52.215-10** **Price Reduction for Defective Cost or Pricing Data** (n.1 and 6 apply) **Oct 1997**
- 52.215-11** **Price Reduction for Defective Cost or Pricing Data Modifications** (Applicable to subcontracts at all tiers) **Oct 1997**
- 52.215-12** **Subcontractor Cost or Pricing Data** (clause is modified at paragraph (a) to state "...the Contractor shall submit and require the subcontractor to submit cost or pricing data..." and modified at paragraph (b) to state "The Contractor shall certify and require the subcontractor to certify in substantially the form prescribed in subsection 15.406-2 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.") (Applicable to subcontracts at all tiers) **Oct 1997**
- 52.215-13** **Subcontractor Cost or Pricing Data – Modifications** (Applicable to all subcontracts expected to exceed the threshold in FAR § 15.403-4(a)(1) for the submission of cost or pricing data on the date of price agreement or the date of award, whichever is later. Clause becomes operative only for modifications to this subcontract that exceed the threshold for submission of cost or pricing data at FAR § 15-403-4) **Oct 1997**

52.215-15	Termination of Defined Benefit Pension Plans (n.1,5 and 6 apply)(Applicable to all subcontracts that are either (1) expected to exceed the threshold in FAR § 15.403-4 for the submission of cost or pricing data; or (2) expected to be subject to pre-award or post award cost determinations subject to FAR § 31)	Oct 2004
52.215-18	Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions (n.1, 5 and 6 apply)(Applicable to all subcontracts that are either (1) expected to exceed the threshold in FAR § 15.403-4(a)(1) for the submission of cost or pricing data; or (2) expected to be subject to pre-award or post award cost determinations subject to FAR § 31)	Jul 2005
52.215-19	Notification of Ownership Changes (n.5 and 6 apply)(Applicable to subcontracts that are either (1) expected to exceed the threshold in FAR § 15.403-4(a)(1) for the submission of cost or pricing data; or (2) expected to be subject to preaward or postaward cost determinations subject to FAR § 31)	Oct 1997
52.230-2	Cost Accounting Standards (note 1 applies except to paragraph (a)(1) and note 5 applies) (paragraph (b) is deleted; paragraph (a)(4)(i) and (iii) are modified to state "...equitable adjustment as provided in this contract..." and paragraph (d) is modified to state "...This requirement shall apply only to negotiated subcontracts in excess of <u>\$650,000...</u> ") (Applicable to <u>negotiated</u> subcontracts at any tier not exempt from the Cost Accounting Standards as specified in 48 C.F.R. § 9903.201-1 and where the business unit is required to comply with all the Cost Accounting Standards ("CAS") at 48 C.F.R. § 9904)	Apr 1998
52.230-3	Disclosure and Consistency of Cost Accounting Practices (note 1 applies except to paragraph (a)(2) and note 5 applies) (paragraph (b) is deleted; paragraph (a)(3)(ii) is modified to state "...equitable adjustment as provided in this contract..."; and paragraph (d)(2) is modified to state "...This requirement shall apply only to negotiated subcontracts in excess of <u>\$650,000...</u> ") (Applicable to <u>negotiated</u> subcontracts at any tier that are not exempt from the Cost Accounting Standards as specified in 48 C.F.R. § 9903.201-1 and where the business unit is required to comply with CAS 401, 402, 405 and 406)	Apr 1998
52.230-5	Cost Accounting Standards—Educational Institution (note 1 applies except to paragraph (a)(1) and note 5 applies) (paragraph (b) is deleted; paragraphs (a)(4)(i), (iii) and (iv) are modified to state "...equitable adjustment as provided in this contract..."; and paragraph (d)(2) is modified to state "...This requirement shall apply only to negotiated subcontracts in excess of <u>\$650,000...</u> ") (Applicable to <u>negotiated</u> subcontracts at any tier required to comply with CAS at 48 C.F.R. § 9905 and that are not exempt from the Cost Accounting Standards as specified in 48 C.F.R. §§ 9903.201-1 and 9903.201-2)	Aug 1992

52.230-6 Administration of Cost Accounting Standards (n.5 and 6 Mar 2008
apply)Applicable to subcontracts at any tier which contain FAR §§
52.230-2, 52.230-3, and 52.230-5)

FAR Requirements for Subcontracts That Exceed \$5,000,000

52.203-13 Contractor Code of Business Ethics and Conduct (note 2 applies) Dec 2007
(Applicable to subcontracts at all tiers unless the subcontract has
been awarded to a small business concern; this clause is only
applicable to subcontracts with a performance period of more than
120 days; this clause is not applicable if the subcontract is a
commercial item or performed entirely outside the United States)

Applicable DFAR Provisions

252.209-7001	Prohibition on Persons Convicted of Fraud or other Defense Contract Related Felonies	Dec 2008
252.204-7000	Disclosure of Information	Dec 1991
252.225-7013	Duty-free Entry	Oct 2006
252.226-7001	Utilization of Indian Organizations and Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	Sep 2004
252.247-7023	Transportation of Supplies by Sea	May 2002
252.247-7024	Notification of Transportation of Supplies by Sea (Applicable to subcontracts where a negative response To the inquiry at 252.247-7022.)	Mar 2000

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