

Plasan North America Supplemental Terms & Conditions for Project 1124004

CONTRACT CLAUSES

The following clauses are flowed down from PNA's Contract with the Customer. The defined terms in the Plasan General Terms and Conditions of Purchase (as listed on the face of Buyer's purchase order issued to Seller) apply to this document. Some of the terms may not be consistently capitalized within this Contract. *While every effort was made to keep the capitalization consistent for the terms, the inconsistent capitalization should not affect the meaning intended for the terms.*

1. Definitions.

- A. A "**Claim**" is a formal demand or assertion by Seller seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" may also include Seller demands or assertions related to other disputes and matters in question between Customer and Seller arising out of or relating to the Contract.
- B. "**Contract**" means the Purchase Order ("PO"), issued by Plasan NA, including any modifications and/or amendments thereof.
- C. The "**Contracting Official**" or "**CO**" is the Buyer's Authorized Purchasing Representative (or their delegee or successor). Other individuals including but not limited to the Contracting Official's Technical Representative, Program Managers, and Project Managers **do not** possess the authority of the CO.
- D. "**Days**" means calendar days, unless otherwise indicated.
- E. "**Final Payment**" is made to the Seller when it has satisfied all of the deliverable requirements called for by all provisions of the Contract, including all of the required documentation.
- F. "**Intellectual Property**" shall mean any recognized protectable intellectual property, such as patents, utility models, copyrights, corporate names, trade names, trademarks, trade dress, service marks, applications for any of the foregoing, discoveries, inventions, software, firmware, trade secrets, mask works, industrial design rights, rights of priority, know how, design flows, methodologies and any and all other intangible protectable proprietary information that is legally recognized.
- G. The "**Legal Requirements**" shall mean all federal, state and local statutes, codes regulations, ordinances, rules, and orders relating to the performance of the Contract.
- H. The term "**Work Product**" shall mean any deliverable described in the Statement of Work or Contract Documents, and all written or fixed media material, ideas, concepts, discoveries, inventions, improvements, enhancements, modifications, and designs (whether or not registerable or patentable), developed, conceived or reduced to practice by Seller or its employees in connection with the performance of the Contract.

2. Product Safety Notifications.

- A. Seller shall comply with the Occupational Safety and Health Administration's Hazard Communication Regulations 29 CFR 1910.1200 and 29 CFR 1926.59 by providing or making readily available at the worksite, material safety data sheets for all chemicals, compressed gases, products containing hazardous materials, and products that may release hazardous substances (welding rods, solder, insulation materials, transit panels, gaskets, stock metal, etc.) during routine application.
- B. Seller shall notify Plasan NA immediately by telephone (followed by written confirmation within twenty-four hours) whenever Seller becomes aware that any component of the Supplies may contain a defect in design or construction which could in any way (a) become harmful to persons or property, or (b) create or present a risk to the health or safety of the public or to the environment, either by itself or when used by Plasan NA or Customer within the scope of its intended purpose.

3. Option for Additional Supplies; Spare Parts.

- A. Plasan NA, in its sole discretion and if applicable under the Contract, may order additional supplies in the quantity and at the price stated in the Contract under the "option" line item(s) and subject to the same terms and conditions specified herein. Unless provided otherwise in the Pricing Schedule (if applicable) or other Contract Documents, Buyer's Authorized Representative may exercise the option(s) by written notice to Seller no later than ten days prior to final acceptance of the Supplies.
 - B. In the event Plasan NA elects to order option supplies, Seller shall be obligated to deliver the option Supplies and to fulfill all other obligations set forth in the PO to the same extent required for the base order. Similarly, for all option orders, Plasan NA shall have the same rights, as set forth in the Contract Documents for the base order.
 - C. In consideration of Seller's furnishing each option unit of supply ordered by Plasan NA, Plasan NA shall pay Seller in accordance with the applicable Pricing Schedule upon final acceptance of each option unit of supply. Payment for the option units shall be subject to the same conditions as for the base units of Supplies.
 - D. Seller understands and agrees that the execution of the Contract does not constitute any commitment by Plasan NA, express or implied, that Plasan NA will exercise any of the options as provided in this Section, or that Seller will be awarded any follow-on contract for the manufacture or delivery of systems or devices of the type(s) covered by Seller's work hereunder or otherwise.
4. **Prices Competitive.** Seller represents that the prices specified in the Contract do not exceed the current selling price for the same or substantially similar supplies to any other purchasers, taking into account quantity and geographical

factors.

5. Confidentiality.

- A. Seller agrees that all information furnished or disclosed by Seller to Plasan NA in connection with the performance of the PO: (i) is furnished or disclosed as part of consideration of the PO; (ii) shall not, unless otherwise agreed in writing by the CO, be treated as confidential or proprietary information of Seller; and (iii) subject to third party copyright restrictions, may be used, modified, copied, or disclosed by Customer for any purpose. Generally, routine deliverables provided by the Seller to Plasan NA will not be considered confidential. Seller expressly waives any and all Claims against Plasan NA and Customer and releases Plasan NA and Customer from any and all Claims relating to the use, modification, copying or disclosure of such information by Plasan NA and Customer, their assigns, or intended beneficiaries. No employee, agent, or representative of Plasan NA or Customer, other than the CO, is authorized to accept any information which Seller considers to be proprietary or confidential. Only the CO has authority to enter into an agreement, which shall be in writing, to provide for the confidential treatment of, or limit disclosure of, information furnished or disclosed by Seller, its employees, agents or representatives.
- B. Seller shall: (i) hold Plasan NA's and Customer's Confidential Information in trust and confidence and not disclose or release any Confidential Information to any other person or entity; and (ii) not use the Confidential Information of Customer for any purpose whatsoever except as set forth in the Contract Documents or herein. Seller shall disclose Plasan NA's and Customer's Confidential Information only to those of its employees, independent Sellers, permitted subcontractors (including their employees and independent Sellers) having a need to know such Confidential Information, provided that such persons and entities are bound by obligations of confidentiality and non-use no less restrictive than those contained herein. Upon completion or termination of the PO, or as otherwise requested by Plasan NA, Seller shall immediately return all such items and information to Plasan NA or make other disposition thereof as directed by Plasan NA.
- C. Seller acknowledges that disclosure or use of Plasan NA's or Customer's Confidential Information without express written consent of Plasan NA violates the Uniform Trade Secrets Act and federal Defend Trade Secrets Act. Seller agrees not to improperly disclose third-party trade secrets or confidential information to Plasan NA.
- D. Seller agrees that, in the event any Confidential Information of Plasan NA or of Customer is sought by subpoena, required by law or order of a court of competent jurisdiction or regulatory authority, or other process to the extent allowed by applicable law, Seller shall notify Plasan NA and/or Customer in writing as soon as practicable or within three (3) days of receipt of notice of such required disclosure in order to enable Plasan NA and/or Customer to seek an appropriate protective order. Further, to the extent allowed by applicable law, Seller shall reasonably cooperate and assist Plasan NA and/or Customer

in obtaining a protective order or other appropriate protection of its Confidential Information. If, nonetheless, the Confidential Information is ordered to be disclosed, Seller shall furnish only that portion of the Confidential Information that is required legally to be disclosed, and any portion of such Confidential Information required to be disclosed shall be used only for the purposes for which a court issues an order, or for other such purposes required by law.

- E. Seller agrees that, in the event any of Seller's Confidential Information in Plasan NA's and/or Customer's possession is disclosed to a third party pursuant to a lawful subpoena, is required to be disclosed by law (e.g. FOIA) or order of a court of competent jurisdiction or regulatory authority, or other process to the extent allowed by applicable law, Seller shall hold Plasan NA and/or Customer harmless for such release.
- F. This Confidentiality Section shall survive the termination or expiration of the Contract.

5. Intellectual Property Rights.

- A. Trademarks. Seller shall not use Customer's name, trade name, logo, trademarks, or service marks in any context in connection with any advertising, publicity, product, equipment, promotion, or publication without the prior written consent of Customer. Seller agrees to comply with Customer instructions regarding trade dress, packaging, trade names, trademarks, service marks or other indicia of origin which shall appear on any items to be delivered under the Contract. Seller further agrees that, after delivery of said items to Customer, Customer may modify the trade dress or packaging thereof, and/or replace, modify, or supplement any indicia of origin appearing thereon, to identify Customer as the source of said items.
- B. Work Product and Intellectual Property. Customer shall own any: (i) Intellectual Property developed or acquired by or on behalf of Customer; and (ii) any modifications, improvements or derivative works, developed by or for Seller, of any Intellectual Property described in subsection (a) above, that is used or incorporated in Work Product provided under the Contract ("Seller Modifications"); and (iii) Intellectual Property developed jointly by the parties under the Contract unless separate agreements are made before development ("Joint IP"). Seller hereby assigns to Customer all its rights, title and interests in any Seller Modifications and any Joint IP. Seller acquires no other right to use Intellectual Property owned by Customer and does not acquire any ownership rights, title or interest to it. The parties intend that all Work Product shall be considered "work made for hire" under U.S. Copyright Act, 17 U.S.C. §101 et seq, and any foreign equivalent thereof, or any other applicable federal copyright laws to the extent it qualifies as such under applicable law. To the extent that any specific Work Product provided by Seller is not, automatically upon creation thereof, owned by Customer, Seller hereby assigns to Customer the entire right, title and interest in, to and under all Work Product. At Customer's request and expense, during and after the term of the Contract, Seller shall execute and/or cause its

employee to execute, at no cost to Plasan NA and/or Customer, all lawful documents and take further acts reasonably requested by Customer to assist Customer with obtaining and perfecting patent, copyright, trade secret, and other legal protection for applicable Work Product. Customer will have sole and full control over whether to file and/or prosecute any and all applications for patent application, trademark application, copyright registration or other legal protection of the Work Product. Seller shall promptly disclose to Customer in writing any Intellectual Property provided under this Section made by or for Seller.

- C. Pre-existing Materials of Seller. Seller hereby grants to Plasan NA and Customer a non-exclusive, irrevocable, perpetual, worldwide, fully paid-up license to use, execute, reproduce, modify, display, transfer, distribute copies of and prepare derivative works based on materials and intellectual property embodied therein, including any and all modifications thereto, owned and developed independently by Seller prior to the preparation of its proposal used to provide Supplies under the Contract. Seller shall retain its ownership interest in such pre-existing materials.
- D. Indemnity for Third Party Infringement Claims. Seller hereby represents and warrants that: (i) materials that it uses in its performance under the Contract; (ii) the Work Product, including deliverables; and (iii) the use of any Work Product and deliverables shall not infringe or misappropriate any U.S. or foreign patent, copyright, trade secret or other intellectual property right of a third party. If any claim is made against Plasan NA and/or Customer claiming that its use of the Work Product, deliverable, or other materials provided by Seller hereunder infringes any third party intellectual property right, including but not limited to infringement of patent, copyright, royalty, trademark, service mark, proprietary right, misappropriation or wrongful use of trade secret, or confidential information (“Third-Party Infringement Claim”), Seller shall, at its own expense, defend, indemnify, and hold harmless Plasan NA, Customer, and their respective Affiliates (including directors, officers, employees, agents, subsidiaries, and assigns) (“the “Indemnified Parties”) from and against any and all claims, damages, fees, losses, liabilities, penalties, and costs (including costs of defense and attorneys’ fees) (“Losses”). In the event that a Third-Party Infringement Claim is asserted or sought against an Indemnified Party, the Indemnified Party shall notify the Seller in writing in respect of such Third-Party Infringement Claim (a “Notice of Infringement Claim”) as promptly as practicable; provided, however, that a failure or delay by the Indemnified Party to provide a Notice of Infringement Claim as promptly as practicable shall not affect the rights or obligations of such Indemnified Party unless the Seller shall have been actually prejudiced as a result of such failure or delay. The Indemnified Party shall enclose with the Notice of Infringement Claim a copy of all papers served with respect to such Third-Party Infringement Claim, if any, and any other documents evidencing such Third-Party Infringement Claim. Seller shall have the

obligation to assume the defense or prosecution of such Third-Party Infringement Claim and any litigation resulting therefrom with counsel of its choice (which counsel shall be reasonably satisfactory to the Indemnified Party) and at its sole cost and expense (a “Third-Party Infringement Defense”), but only if the Seller provides written notice of such assumption to the Indemnified Party within sixty (60) days following delivery of the Notice of Infringement Claim and acknowledges in writing in such notice that any Losses that may be assessed against the Indemnified Party in connection with such Third-Party Infringement Claim constitute Losses for which the Indemnified Party shall be indemnified pursuant to this Section.

Notwithstanding the foregoing, the Seller shall not have the right to assume the defense of such Third-Party Infringement Claim, if: (i) the Indemnified Party shall have been advised by counsel that there are one or more legal or equitable defenses available to it which are different from or in addition to those available to the Seller, and, in the reasonable opinion of the Indemnified Party, counsel for the Seller could not adequately represent the interests of the Indemnified Party because such interests could be in conflict with those of the Seller; or (ii) the Seller shall not have assumed the defense of such Third-Party Infringement Claim in a timely fashion. If the Seller assumes the Third-Party Defense in accordance with this Section: (i) Seller shall diligently defend such Third-Party Infringement Claim; (ii) the Indemnified Party shall have the right, but not the obligation, to participate in any such Third-Party Defense and to retain separate co-counsel at the sole cost and expense of Seller; (iii) the Indemnified Party will not file any papers or consent to the entry of any judgment or enter into any settlement with respect to the Third-Party Infringement Claim without the prior written consent of the Seller; and (iv) the Seller will not consent to the entry of any judgment or enter into any settlement with respect to the Third-Party Infringement Claim: (a) to the extent such judgment or settlement provides for equitable or injunctive relief without the prior written consent of the Indemnified Party; (b) if such settlement does not include as a term thereof the giving by the third party asserting such claim to the Indemnified Party a release from all liability with respect to such claim underlying such judgment or settlement; or (c) if such settlement or judgment contains any admission or statement suggesting any wrongdoing or liability on behalf of the Indemnified Party. The Parties will use their commercially reasonable efforts to minimize Losses from Third-Party Infringement Claims and will act in good faith in responding to, defending against, settling or otherwise dealing with such claims. The Parties will also cooperate in any such defense and give each other reasonable access to all information relevant thereto.

- E. Corrective Actions. If Plasan NA’s and/or Customer’s use of Work Product or deliverables is enjoined, or if the Seller’s performance of its obligations under this Contract are materially impaired by reason of such Third-Party Infringement Claim, Seller shall use commercially reasonable efforts, at its expense, to continue its performance hereunder, including without limitation, at its own elections: (i) to substitute an allegedly infringing item or

process with a non-infringing item or process of at least the same functionality; (ii) to modify the allegedly infringing item or process so that it no longer infringes but remains at least functionally equivalent; or (iii) to obtain for Plasan NA, Customer, and their respective Affiliates the right to continue using such allegedly infringing item or process.

F. This Intellectual Property Rights Section shall survive expiration or termination of the Contract for any reason.

6. Ethical Business Practices.

A. Seller, or any employee, agent or representative of Seller, agrees that it shall neither solicit nor accept any cash, gift, entertainment, commission, or kickback from a vendor, subcontractor or any other person or entity for the purpose of securing favorable treatment with regard to award or performance of any subcontract or contract issued in connection with the Contract.

B. Seller agrees that it shall direct any officer, employee, agent, or representative of Seller (“Seller Agents”) to comply with the obligations stated in the foregoing subsection (A). Seller further agrees that Seller shall be responsible for ensuring compliance by Seller Agents.

C. Violation of this Section shall be considered cause for termination of the Contract for Default.

7. Organizational Conflict of Interest. “Organizational Conflict of Interest” means that because of other activities or relationships with other persons or entities: (i) a person or entity is unable to render impartial assistance or advice to Customer, (ii) the person’s or entity’s objectivity in performing the Contract is or might be otherwise impaired, or (iii) the person or entity has, or attempts to create, an unfair competitive advantage. Seller agrees not to engage in activities, or initiate or maintain relationships with persons or entities where such activities or relationships create an Organizational Conflict of Interest. Seller shall use its best efforts to identify and prevent potential subcontractor Organizational Conflicts of Interest. Seller shall inform Customer of any activity or relationship that Seller has reason to believe may create an Organizational Conflict of Interest. Seller represents that it is not a party to any existing agreement which would prevent Seller from entering into and performing this Contract.

8. Seller Personnel.

A. Seller warrants, represents, and covenants that it will not assign or delegate any work to be performed under the Contract to any individual who is not authorized to work in the United States pursuant to the U.S. Immigration Reform and Control Act of 1986, as amended, or its implementing regulations.

B. The parties agree that, during the term of the Contract and for one (1) year thereafter, Seller shall not, either directly or indirectly, on its own behalf or on

behalf of others, solicit, or recruit any person to terminate such person's employment with Plasan NA or Customer. This provision shall not restrict either party from hiring any employee of the other who responds to regular employment solicitation efforts, such as newspaper advertisements, employment agencies, open house or job fair events, or widely distributed announcements of job openings, or who makes a direct inquiry as to employment with Plasan NA, Customer, or Seller.

- C. Seller shall not assign individuals to perform work, directly or indirectly, on the Contract, who were employed by Plasan NA or Customer during the Contract term or twelve months prior nor shall Seller assign former Customer employees to manage, supervise, or perform substantial work on a Customer project if the former Plasan NA or Customer employees managed, supervised, or performed substantial work on the same project while employed by Plasan NA or Customer.

9. Seller Representations and Warranties.

- A. Seller warrants that: (i) it has the authority to enter into the Contract without breaching any contractual obligation or statutory duty owed to another; (ii) it shall perform the work with promptness, diligence, and in accordance with the highest professional standards in the industry; (iii) it shall comply with all requirements of the Contract and Legal Requirements; (iv) all deliverables to be provided hereunder shall be technically correct and based upon the Statement of Work and Contract Documents and any other information or documents mutually agreed upon by the parties; and (v) in performing the Contract, it shall use adequate numbers of qualified individuals with suitable training, education, experience and skills, and that it shall perform Contract in a manner consistent with the required level of quality and performance. These warranties are in addition to all other express, implied or statutory warranties.
- B. Laws, Regulations, and Permits. Seller warrants that it shall comply with the Legal Requirements in the performance of the Contract. Seller shall, without additional cost to Plasan NA, obtain all necessary permits or licenses required for the performance of the Contract. Failure of the Seller to do so shall not extend the period of performance, and the Seller shall not be entitled to an increase in the Compensation and termination of the contract.
- C. The warranties of Seller set forth in this Section shall not be deemed to limit any other rights or remedies of Plasan NA under the Contract Documents or at law and shall survive acceptance, payment and termination or expiration of the Contract. The warranties shall run to Plasan NA and any intended beneficiaries of the Contract.

10. Federal Funding, Audit, and Inspection. (Applies to POs of \$100,000 or more)

- A. Seller hereby acknowledges and accepts that: (1) federal funds may be expended to it

in connection with the tasks, assignments or duties which it performs pursuant to this Contract, and (2) the federal False Claims Act, 31 U.S.C. § 3729 et seq. may apply in connection with applications for payment, claims, requests for equitable adjustment or other requests for payment which Seller submits to Plasan NA under, or in connection with, this Contract.

- B. Seller acknowledges and agrees that Plasan NA, Customer, and Customer's Office of Inspector General (OIG) may inspect, copy and/or audit Seller's data and records (in hard copy and/or electronic format) related in any way to the Contract, including without limitation, all data and records relating to: (1) support for any proposal, change order, or request for equitable adjustment submitted to Plasan NA by Seller; (2) Contract compliance and performance, including any work or deliverables in progress; (3) compliance with applicable provisions of Customer's federal grant, regulations and statutes; and (4) support for all direct and indirect costs or prices charged to Plasan NA. Seller agrees to maintain all such data and records throughout the term of the Contract and until three (3) years after final payment under the Contract, and agrees to cooperate with all audit activities.
- C. In connection with audit and inspection activities, Plasan NA, Customer, and Customer OIG shall be afforded, upon request, (1) access to Seller's facilities and to Contract work or deliverables in progress, (2) the opportunity to interview Seller's employees concerning any matter relating to the Contract, and (3) adequate and appropriate workspace.
- D. Seller agrees to reimburse Plasan NA and/or Customer, within sixty (60) calendar days after receipt of a written request, the full amount of any undisputed audit findings or questioned costs, unless otherwise agreed by Plasan NA and/or Customer in the course of post-audit negotiations with Seller.
- E. Seller shall include the provisions of this clause in every subcontract or purchase order exceeding \$100,000, as well as a provision requiring all subcontractors to include these provisions in any lower tier subcontracts or purchase orders exceeding \$100,000. Seller shall be responsible for subcontractors' or lower tier subcontractors' compliance with this clause.
- F. Nothing in this Contract shall be construed to limit the rights, obligations, authority, or responsibilities of Customer's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

11. Indemnification.

- A. Seller agrees to defend, indemnify and hold harmless the Indemnified Parties, including the Customer and Prime Contractor, irrespective of any negligence or fault on the part of the Indemnified Parties, from and against any Indemnified Claims which any of the Indemnified Parties may hereafter incur, be responsible for or pay as a result of

injuries (including death) to any of Seller's employees, agents or subcontractors.

- B. The indemnification obligations under this Section shall not be limited by the existence of any insurance policy procured or maintained by Seller or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Seller or any subcontractor and shall survive the termination of the Contract.

12. Subcontracting.

- A. Seller shall flow down all such terms and conditions from this agreement, as necessary, that will require subcontractors performing any portion of the work to be bound to Seller and to assume toward Seller all the obligations and responsibilities which Seller, by the Contract Documents, assumes toward Plasan NA. Each subcontract agreement shall preserve and protect the rights of Plasan NA under the Contract Documents with respect to the work to be performed by the subcontractors so that subcontracting thereof will not prejudice such rights. Seller shall make available to each proposed subcontractors, prior to the execution of the subcontract agreement, copies of the applicable sections of the Contract Documents to which subcontractors will be bound, as appropriate. subcontractors shall similarly make copies of applicable portions of such documents available to their proposed sub-subcontractors.
- B. Nothing contained in the Contract or in any agreement between Seller and a subcontractor or vendor shall create: (i) any contractual relationship between Plasan NA and any subcontractor or vendor at any tier; or (ii) any third-party beneficiary rights in any subcontractor or vendor at any tier or in any other person or entity.
- C. Seller shall at all times be responsible for the work and conduct of its subcontractor at any tier while performing pursuant to the Contract and shall ensure that they comply with all applicable terms and conditions of the Contract, other Contract Documents and the Legal Requirements.
- D. All subcontracts shall provide that in the event of termination of the Contract between Plasan NA and Seller, the subcontract shall, at Plasan NA's option, be assigned to Plasan NA.
- E. Any specific requirement in the Contract that the responsibilities or obligations of Seller also apply to a subcontractors is hereby deemed to include a subcontractors of any tier. The omission of a reference to a subcontractors in connection with any of Seller's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a subcontractor of any tier under the Contract Documents or the applicable subcontract.
- F. Seller agrees to award subcontracts competitively to the maximum extent practicable. Subcontracting any portion of the Contract requires advance

written approval from the Contracting Official. Substitution of subcontractors from those listed in Seller's proposal or initially awarded subcontract work requires advance written approval from the Contracting Official.

13. Contracting with Disadvantaged Business Enterprises and Participation of Small, Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms.

- A. For purposes of this Section, the following definitions apply:
1. **Disadvantaged Business Enterprise (DBE)** means a small business concern that is at least fifty- one percent owned by one or more socially and economically disadvantaged individuals (including women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other groups of individuals specified in 49 CFR Part 26) and whose management and daily business operations are controlled by one or more of such individuals.
 2. **Labor Surplus Area (LSA)** means a civil jurisdiction that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states during the same 24-month reference period.
 3. **Labor Surplus Area Firm (LSAF)** means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.
 4. **Minority Business** means a company that is at least 51 percent owned and operated by an individual who is a U.S. citizen and is at least 25 percent African American, Asian American, Pacific Islander, Latinx or Hispanic, or Native American descent.
 5. **Small Business concern** means with respect to firms seeking to participate as DBEs in DOT- assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).
 6. **Women's Business Enterprise** means a business or businesses owned by a woman or a group of women; or the establishment, maintenance, or development of a business or businesses by a woman or a group of women.

B. Customer has established a corporate goal of awarding at least ten percent of the total dollars it spends on goods and services each year to small businesses generally and five percent to DBEs.

C. *(Applicable to contracts between \$10,000 and \$249,999)* In an effort to assist Customer in meeting its corporate goal, Seller agrees to use its best efforts, which shall include the affirmative steps set forth at E.2 below, to include the participation of DBEs in the performance of this Contract. If Seller utilizes any DBE subcontractors in the performance of this Contract, then Seller shall disclose such information to Plasan NA and Customer by completing NRPC 1483 (Customer Disadvantaged Business Enterprise Utilization Report for Vendors) and returning it to Plasan NA on a monthly basis ensuring that it is received by the last day of each calendar month.

D. In addition to the foregoing, the following provision shall apply:

1. Seller shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps must include:
 - (a) Placing qualified small and minority businesses, and women's business enterprises on solicitation lists;
 - (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

E. Plasan NA and Customer reserve the right to monitor compliance with this provision using procedures that may include, but shall not be limited to, visits or telephone audits; consideration of requests for substitutions, additions, deletions, or change orders; and review and verification of payments to subcontractors as documented by subcontractor monthly reports.

F. Seller shall pay subcontractors within thirty (30) days after the subcontractor's work is satisfactorily completed. If this Contract does not provide for retainage, Seller shall not withhold retainage from any DBE or other subcontractor subject to this provision.

14. Fair Employment Practices/Equal Opportunity.

- A. Seller agrees to abide by Customer's policy and practice to ensure that all business organizations receive fair and equal consideration and treatment without regard to race, color, religion, sex, gender identity, sexual orientation, disability, veteran status or national origin of the owners or principals of the business organization. In addition, Seller agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, veteran status or national origin and that it will comply in all respects with the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*
- B. Seller will take affirmative action to ensure that applicants and employees are treated fairly without regard to their race, color, religion, sex, gender identity, sexual orientation, disability, veteran status or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination Section.
- C. Seller will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of Seller's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contract may be canceled, terminated, or suspended in whole or in part for breach based on Contactor's failure to comply with this Section.
- E. Seller will include the provisions of this Section in subcontracts involving the delivery of Supplies to be furnished under the Contract, unless exempted by rules, regulations, or orders of the U.S. Secretary of Labor.

15. Environmental Compliance.

- A. Seller shall comply with all Legal Requirements concerning the environment and/or waste disposal.
- B. Seller shall dispose of any wastes, including hazardous wastes, generated by Seller, its subcontractors or agents (either accidentally or purposefully) in connection with its performance of the Contract in accordance with applicable Legal Requirements, at its sole expense, using its own EPA generator number. In no event shall Plasan NA or Customer be identified as the generator of any such wastes. Plasan NA reserves the right to require Seller to provide a copy of the results of any tests conducted by or for

Seller on any such wastes and, at Customer's expense, to perform additional tests or examinations of any such wastes prior to disposal.

C. Seller shall include, and enforce, this Environmental Compliance Section in all subcontracts or lower tier purchasing agreements.

16. **Survival of Rights and Obligations.** All rights and obligations under the Contract for the benefit of Plasan NA and/or the Customer, including without limitation, those pertaining to: Confidentiality; Intellectual Property Rights; Representations; Compliance with the Legal Requirements; Permits, Warranties; Environmental Compliance; Federal Funding; Audit and Inspection; and/or Indemnification, shall survive the termination of the Contract and/or the completion of the work.

17. **Cybersecurity.** Seller shall follow the National Institute of Technology (NIST) Cybersecurity Framework (CSF) to maintain and enforce digital data protection, safety and physical security procedures with respect to the access, use, and possession of Plasan NA's and Customer's Confidential Information and data, when providing supplies or services that are: (i) at least equal to industry standards and in compliance with all applicable laws; and (ii) which provide reasonably appropriate technical and organizational safeguards to protect Customer against the accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access of such information, data or systems. Seller shall take all reasonable measures to secure and defend its location and equipment against hackers and others who may seek, without authorization, to modify or access Seller's systems, Plasan NA's systems, Customer's systems, or the information or data found therein and shall immediately report to Plasan NA any breaches of security or unauthorized access to Plasan NA's or Customer's Confidential Information or data. Seller shall use diligent efforts to remedy breaches in a timely manner and deliver to Plasan NA a root cause assessment and future incident mitigation plan with regard to any breach of security.

18. **Headings.** The headings contained herein are inserted for convenience of reference only and in no way define, limit or extend the scope or intent of the Contract or any provision hereof.

19. **Labor Disputes.** Whenever an actual or potential labor dispute threatens to delay the performance of the work, Seller shall notify Plasan NA immediately in writing and furnish all relevant information. Seller recognizes it is imperative that the work proceed uninterrupted and shall endeavor to prevent and promptly cure any work stoppage or strike caused by any labor or jurisdictional disputes arising out of the work to be performed by Seller or its subcontractors. Seller shall be responsible for all delays and damage in the event of a strike, work stoppage or other labor disturbance unless Seller can affirmatively demonstrate that such disturbance and resulting disruption to the work was beyond the control and without the fault or negligence of Seller. Seller shall include the substance of this clause in all subcontracts.

20. Export Controls.

- A. When and where applicable, the Seller shall apply (and the Seller shall require that any subcontractor applies) to the relevant customs authority and/or other government agency or authority to ensure that all reliefs available for the import, export or re-import of any Goods (if any) are obtained.
- B. Each party will reasonably cooperate with the other in making the appropriate filings with any governmental authority and will, to the fullest extent permitted by law, provide any information, certificates or documents as are reasonably requested.
- C. Seller undertakes to import, export and re-import any items which are subject to customs procedures (if any) in such a way as to enable maximum advantage (in terms of reducing administrative effort and applicable taxes and duties on export and (re-)import) of customs procedures.
- D. Seller shall be accountable and liable for compliance with customs procedures based on being a customs authorized trader who is in possession (not ownership) of the items subject to customs procedures at any given time. Seller shall be respectively accountable and liable with respect to items in the possession of subcontractors.
- E. Seller shall pay and make payment at such times when due and payable, all import or export taxes (including for the avoidance of doubt, duties) on Goods. Seller is responsible for ensuring that Seller and all subcontractors hold the necessary import and export authorizations issued by the relevant authorities prior to the commencement of Contract performance.
- F. In performing under the Contract, Seller warrants and represents that it shall not employ or make use of any non-U.S. person who is a citizen of country that has been designated by the U.S. Government as a “terrorist supporting country” (*see* Country Group E at Supplement No. 1 to Export Administration Regulations Part 740).
- G. With the exception of commodities, software or technologies that are controlled solely for “antiterrorism” reasons under the Export Administration Regulations (“EAR”), Seller represents and warrants that the deliverables shall not contain any export controlled technology or technical data under the export control laws or regulations unless approved by Contracting Official in writing. At least sixty (60) days prior to the earlier of the delivery, installation or provision of a deliverable containing any controlled technology or technical data, Seller shall inform Contracting Official in writing of the EAR Export Control Classification Number(s) (“ECCN”) or the International Traffic in Arms Regulations (“ITAR”) U.S. Munitions List Classification (“MLC”) numbers applicable to such deliverable. In addition, upon delivering or otherwise providing a deliverable with a ECCN or MLC numbers, Seller shall place the following legend, or substantially similar one, as applicable on technical data and/or

deliverable documentation:

“WARNING – INFORMATION SUBJECT TO EXPORT CONTROL LAWS. This document or software contains information subject to the Export Administration Regulations (“EAR”) [or the International Traffic in Arms Regulations (“ITAR”)]. This information may not be exported, released, or disclosed to foreign persons, whether within or outside the United States without first complying with the export license requirements of EAR [or ITAR]. Include this notice with any reproduced portion of this document. The EAR Export Control Classification Number(s) (“ECCN”) is/are [or the ITAR U.S. Munitions List Classification(s)]: _____.”

- H. If the work under the Contract includes the maintenance or servicing of a Product, Seller shall be responsible for promptly informing Customer’s CO of any changes in the ECCN or MCL status of such Product until expiration or termination of the maintenance or serving period for that Product.
- I. If Seller is provided, or provided access to, any technology or technical data by or through Plasan NA that is restricted under the export control laws or regulations, Seller shall fully comply with any and all restrictions imposed by Plasan NA at no additional costs.
- J. Seller is fully responsible for compliance of the provisions herein on behalf of itself and its employees, agents and Sellers and those of its subcontractors, at any tier level, and their respective employees, agents and Sellers.

21. Custom Duties.

- A. Seller agrees that, if the Supplies are shipped F.O.B. (Free on Board) destination or D.D.P. (Delivered Duty Paid), Seller will be the importer of record for all articles that enter into the United States in connection with the Contract. Seller will be liable for all duties, fees, and taxes attaching on importation of such articles, including anti-dumping and countervailing duties, if any.
- B. Seller agrees that, if the Supplies are shipped F.O.B. origin, C.I.F. (Cost, Insurance & Freight) or F.C.A. (Free Carrier), Plasan NA will specify the customs broker and will be the importer of record for all articles that enter into the United States in connection with the Contract.
- C. Plasan NA will not pay on behalf of Seller or reimburse Seller for any anti-dumping or countervailing duties for which Seller may be liable.

- 22. Security Requirements.** Seller hereby agrees to comply fully with any security requirements imposed by Plasan NA. The specific requirements may include: conducting of background investigations on Seller personnel who meet certain criteria; participation in security training; wearing of appropriate identification;

and barring from Plasan NA property of Seller personnel for specific reasons, including but not limited to, personnel who have been convicted or found not guilty by reason of insanity of certain disqualifying criminal offenses.

23. **Successors**. The Contract shall be binding on, and inure to the benefit of, the respective successors, permitted assigns, and legal representatives of the parties, except to the extent of any contrary provision in the Contract

24. **Equal Employment Opportunity**. Seller shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Seller shall prohibit discrimination based on race, color, religion, national origin, sex (including gender identity), disability, or age.

25. **Byrd Anti-Lobbying Amendment**. Sellers with a Purchase Order (PO) with a total value of \$100,000 or more shall complete the required certification at 49 CFR Part 20 by completing and returning the "Amtrak Certification Regarding Lobbying". Each tier Seller certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier Seller shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Prime Contractor.

26. **Debarment And Suspension**. Seller shall certify to Plasan NA and the Prime Seller that Seller is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 and 12689, "Debarment and Suspension". SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549. Seller shall comply and cause its subcontractors to comply with U.S. DOT regulations, 2 CFR Part 180 and 2 CFR Part 1200, "Nonprocurement Suspension and Debarment," Seller shall execute the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" set forth in Appendix B. Seller agrees to obtain the same such certification on debarment and suspension from its subcontractors and lower tier subcontractors.

27. **Domestic Buying Preference/Buy American Act**. In accordance with 2 C.F.R. §200.322, as appropriate and to the extent consistent with law, Seller shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The

requirements of this section must be included in all subcontracts and purchase orders for work or products under this Contract.

- A. For the purposes of this Section:
- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- 28. Cargo Preference--Use Of United States-Flag Vessels.** As required by U.S. DOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 CFR Part 381, if equipment, materials or commodities may be transported by ocean vessel in carrying out the activities funded under this Contract, Seller agrees:
- A. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates.
 - B. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "On-Board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to Customer (through the prime Seller in the case of subcontractors bills-of-lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590, marked with appropriate identification.
 - C. To insert the substance of the provisions of this Section in all subcontracts issued pursuant to this Contract.
- 29. Drug-Free Work Place.** Seller agrees to comply with U.S. DOT regulations, "Government-wide Requirements for Drug-Free Workplace (Grants)", 49 CFR Part 32, and FRA regulations, "Control of Alcohol and Drug Use", 49 CFR Part 219.
- 30. Participation By Small Business Concerns Owned and Controlled By Socially And Economically Disadvantaged Individuals.** Seller is encouraged to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined in 49 CFR Part 26 in carrying out activities funded under this Contract.

31. Record Retention And Access.

- A. Seller shall retain financial records, supporting documents, statistical records and all other Seller records pertinent to this Contract for a period of three years after contract closeout as set forth in 2 CFR 200.333-200.337.
- B. Authorized representatives of the Federal Railroad Administration, Inspectors General, and the Comptroller General of the United States shall have access to and the right to examine, audit and copy any of Seller's directly pertinent books, documents, papers, or other records involving transactions related to this Contract as long as the records are retained.
- C. In cases where litigation, a claim, or an audit is initiated prior to the expiration of the three-year period, records must be retained until completion of the action and resolution of the issues or the end of the three-year period, whichever is later.
- D. In accordance with the May 2013 Executive Order on Making an Open and Machine Readable the New Default for Government Information, the Seller shall, whenever practicable, collect, transmit, and store Contract-related information in open and machine readable formats rather than in closed formats or on paper.

32. Environmental Protection. *This section applies if the Contract exceeds \$150,000.*

Seller will conduct work under this Contract, and will require that work that is conducted as a result of this Contract be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and all regulations issued thereunder. Where applicable, Seller shall comply with the **Wild and Scenic Rivers Act** of 1968 (16 U.S.C. 1271 *et seq.*).

33. Application To Lower-Tier subcontractors. Seller shall insert in each subcontract the provisions set forth in these Supplementary General Provisions and also a provision requiring the subcontractors to include these provisions in any lower tier subcontracts. Seller shall be responsible for compliance by any subcontractors or lower tier subcontractors with the provisions set forth herein. Seller shall also include in each subcontract that exceeds \$250,000, and cause its subcontractors to include in each lower tier subcontract that exceeds \$250,000 provisions that allow administrative, contractual or legal remedies in instances which a Seller or subcontractors violates or breaches contract terms.

34. Contract Termination Provisions. All subcontracts in excess of \$10,000 shall address termination for cause and termination for convenience, including the manner by which termination will be effected and the basis for settlement.

35. Allowable Costs. Seller's expenditures will be reimbursed only if they conform with Federal guidelines or regulations and Federal cost principles as set forth in Federal

Acquisition Regulation, 48 CFR Chapter I, Subpart 31.2, “Contracts with Commercial Organizations”, which herein by reference. If any costs are disallowed, as determined by an audit by Customer or the Federal Government, Seller agrees to reimburse Customer for such disallowed costs within sixty (60) days of advice to Seller of the determination of disallowance.

- 36. Americans With Disabilities Act.** Seller shall comply and cause its subcontractors and lower tier subcontractors the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 *et seq.*), the Rehabilitation Act of 1973, as amended (29 U.S.C. 794 *et seq.*) and the implementing Department of Transportation regulations at 49 CFR Parts 27, 37 and 38.
- 37. Capital Acquisition.** The FY 2016 Appropriations Act requires Customer to include a statement in any contract for a capital acquisition that exceeds \$10,000,000 in life cycle costs that funding for the acquisition is subject to the availability of funds appropriated by Congress in an Appropriations Act, even though Customer is not subject to the Anti-Deficiency Act, does not receive appropriations directly from Congress, and possesses other sources of revenue that may fund the capital acquisition.
- 38. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** Seller shall provide no equipment, services, or systems under the Contract that causes Plasan NA or Customer to in violation §200.216 (Prohibition on certain telecommunications and video surveillance services or equipment). As of the effective date of 2 CFR §200.216, companies that may this provision are: Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Seller shall include this provision in all subcontracts it issues.
- 39. Application of Federal Laws and Regulations.** Seller understands that Federal laws, regulations, policies, and related administrative practices may be modified from time to time. Seller agrees that the most recent of such Federal requirements will govern this Contract at any particular time, except if there is sufficient evidence in this Contract of a contrary intent.