

Plasan North America Supplemental Terms & Conditions for Project 1124007

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. ADDITIONAL DEFINITIONS

- a. "Buyer" means Plasan North America.
- b. "Deliverables" means any item, product, data, service authorized under this Contract or referenced document thereof.
- c. "Government" means the Government of the United States, unless otherwise specified.
- d. "Parties" means Buyer and Seller, and, if the context requires, their employees, officers, agents, subcontractors, wholly-owned subsidiaries, and others acting at their respective direction and control or under contract to either.
- e. "Purchase Order" or "Order" shall have the same meaning as "PO" in the General Terms and Conditions.
- f. "FAR" means the Federal Acquisition Regulation.
- g. "DFARS" means the Defense Federal Acquisition Regulation Supplement.
- h. Unless otherwise specified, Buyer's "customer" means to be read as including Buyer's direct customer and, when Buyer's direct customer is not the end user, all higher-tier contractors and the ultimate end user, including but not limited to the U.S. Government.
- i. "Day" or "Days" means calendar day(s). All periods of days referred to in this Order shall be measured in calendar days. Where a date referenced in this Order falls on a weekend or federal holiday, the date shall be deemed to fall on the next business day unless otherwise specified.

2. PACKING, SHIPPING AND DELIVERY LOCATION

- a. Seller shall pack goods in accordance with Buyer's instructions and common carrier requirements to prevent damage. Buyer may charge Seller for damage resulting from improper packing.
- b. For each shipment of goods, Seller shall provide Buyer in writing, advance warning and notices (in addition to including appropriate labels on goods, containers and packing) and agrees to comply with all applicable U. S. Department of Transportation regulations on hazardous materials and any other pertinent federal, state, or local statutes, laws, rules, or regulations.

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Seller further agrees to indemnify Buyer from any loss, damage, fine, penalty, or expense whatsoever that Buyer may suffer as a result of Seller's failure to comply with regulations on hazardous materials.

3. CHANGES

- a. Buyer's Authorized Representative may at any time, in writing, and without notice to sureties, direct changes within the general scope of this Contract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) Buyer-furnished property; (vi) terms and conditions of this Contract required to meet Buyer's obligations under its contracts; (vii) description of services to be performed; and (viii) place and time of performance of services. Seller shall comply promptly with such written direction.
- b. SELLER EXPRESSLY ACKNOWLEDGES THAT ANY SUCH DIRECTION PROVIDED BY ANYONE OTHER THAN BUYER'S AUTHORIZED REPRESENTATIVE IS OF NO FORCE AND EFFECT, AND SELLER ACCEPTS ALL RISKS OF ACCEPTING OR OTHERWISE PROCEEDING WITH SUCH UNAUTHORIZED DIRECTION.
- c. If such change increases or decreases the cost or time required to perform this Contract, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease.
- d. If Seller intends to assert a claim for a price or schedule adjustment, Seller must deliver to Buyer a notice within twelve (12) days, and deliver a fully supported proposal to Buyer within twenty-five (25) days, after Seller's receipt of Buyer's change direction.
- e. If Seller believes that conduct or circumstances other than Buyer's written change order constitutes a change, Seller must notify Buyer immediately but no later than five (5) days after it knows of such conduct or circumstances. Seller shall be entitled to a price adjustment as a result of such change only for costs incurred (i) after Seller's notification and (ii) after receipt of Buyer's Authorized Representative's written instructions to proceed. The amount of such price adjustment, as well as any schedule adjustment, shall be negotiated. Seller's failure to report alleged changes immediately but no later than five (5) days shall release Buyer from all liability for additional costs, extended performance, or changes associated with the alleged change and shall constitute a waiver by Seller to claim any additional costs or adjustment of the delivery schedule.
- f. To the extent that any change requested by Buyer derives from a change requested by Buyer's Customer under a Government Contract, any adjustment to the costs and delivery schedule shall be limited to the corresponding adjustment, if any, agreed under the Government Contract.

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- g. Buyer may, at its sole discretion, consider any claim regardless of when asserted.
- h. Seller has the burden to support any claimed adjustments in price or schedule. Further, Buyer shall have the right to verify the amount of Seller's claim in accordance with the Financial Records and Audit clause of this Contract. Failure of the Parties to agree upon any adjustment shall be handled as a Dispute and shall not excuse Seller from performing promptly in accordance with Buyer's direction.
- i. If Seller seeks the cost of property made obsolete or excess by a change, Seller is obligated to mitigate such costs, and Buyer may direct the disposition of the property.

4. TERMINATION FOR CONVENIENCE.

- a. If this Contract is terminated as a result of the termination for convenience of a U.S. Government Contract and if an applicable U.S. Government termination for convenience clause FAR 52.249-1 where the total value of the Order is not expected to exceed the Simplified Acquisition Threshold, or if greater value, then in accordance with FAR 52.249-2. The applicable U.S. Government termination for convenience clause shall be understood and applied with the following modifications: "Buyer" shall be substituted for the terms "Government" and "Contracting Officer" throughout the clause, "Seller" shall be substituted for the term "Contractor" throughout the clause, any specified deadlines applicable to Buyer (e.g., submission of a termination settlement proposal) shall be complied with by Seller in half the time permitted the prime contractor under the clause, and all references to dispute resolution shall be understood to refer to the dispute resolution provisions of this Contract. If no applicable U.S. Government termination for convenience clause is incorporated by reference into this Contract, the rights, duties, and obligations of the parties shall be determined as set forth in Section 21.2 of Plasan NA's General Terms and Conditions of Purchase.

5. TERMINATION FOR DEFAULT

- a. In addition to Section 21.1 in Plasan NA's General Terms and Conditions of Purchase, Plasan NA may, by written notice of default to Seller, terminate this Contract in whole or in part, said termination to be effective immediately if:
 - (i) It is found that gratuities or kickbacks were offered or given by Seller, or by any agent or representative of Seller, to any officer or employee of Buyer's customer or Buyer
 - (ii) Seller fails to agree upon any deletion, amendment, or addition to the Order which is required by statute, executive order, applicable regulations, or is otherwise deemed appropriate by Buyer as a result of or relating to a modification of Buyer's Government Contract;
 - (iii) Seller is sanctioned, suspended, or debarred by the Government;
 - (iv) it is found Seller has a potential, actual or apparent personal or organizational conflict of interest related to or arising out of its performance of this Contract and Buyer determines that such conflict cannot be adequately avoided or mitigated; or
- b. Buyer may withhold from any amount due under this Contract any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.

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- c. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or in equity, or under this Contract.
- d. If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as if the Contract had been terminated according to the "Termination for Convenience" clause of this Contract.

6. QUALITY CONTROL.

- a. Whenever Seller receives, either before or after shipment of goods under this Contract, notification that any goods, including any component, part, or material, is the subject of a Government-Industry Data Exchange Program ("GIDEP") alert, Seller shall promptly furnish such information to Buyer. If the value of this Contract is in excess of \$500,000, Seller shall participate in GIDEP under the latest revision of GIDEP Requirements Guide.

7. WARRANTY

- a. Seller warrants that:
 - i. Goods shall be of new manufacture and shall not contain used or reconditioned parts unless otherwise specified by Buyer;
 - ii. To the extent goods are not manufactured pursuant to Buyer-furnished detailed designs and specifications, goods shall be free from design and specification defects;
 - iii. Deliverables shall be free from liens or encumbrances and in good title;
 - iv. Deliverables shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; (d) permit unauthorized access to any software or hardware or (e) perform any other nonconforming or unauthorized process; and b. Any attempt by Seller to limit, disclaim, or restrict any such warranties or any remedies of Buyer, by acknowledgment or otherwise, in accepting or performing this Contract, shall be null, void, and ineffective.
- b. If Seller disputes the existence of a defect or nonconformity, Seller shall nevertheless promptly comply with Buyer's direction to (i) correct, replace or reperform or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If it is later determined that there was no defect or nonconformance, the Contract price shall be equitably adjusted.

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8. COUNTERFEIT GOODS

- a. Seller shall not furnish Counterfeit goods to Buyer, defined as goods or separately-identifiable items or components of goods that (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been reworked, re-marked, relabeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Notwithstanding the foregoing, goods or items that contain modifications, repairs, re-work, or re-marking as a result of Seller's or its subcontractor's design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked without legal right to do so, shall not be deemed Counterfeit. Counterfeit goods shall be deemed nonconforming to this Contract.
- b. Seller shall implement an appropriate strategy to ensure that goods furnished to Buyer under this Contract are not Counterfeit nor contain Counterfeit goods. Seller's strategy shall include, but is not limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from nonauthorized suppliers, obtaining from such non-authorized suppliers appropriate certificates of conformance that provide one or more of the following: (i) the OEM's original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item's authenticity.
- c. If Seller becomes aware or suspects that it has furnished Counterfeit goods to Buyer under this Contract, Seller promptly, but in no case later than ten (10) days from discovery, shall notify Buyer and replace, at Seller's expense, such Counterfeit goods with OEM or Buyer-approved goods that conform to the requirements of this Contract. For confirmed Counterfeit goods, GIDEP notification shall also be made no later than 25 (25) days after discovery. Seller shall be liable for all costs related to the replacement of Counterfeit goods, including the removal and replacement of Counterfeit components from higher level assemblies, and any testing or validation necessitated by the installation of authentic goods after Counterfeit goods have been replaced.
- d. Seller bears responsibility for procuring authentic goods or items from its subcontractors and shall ensure that all such lower-tier subcontractors comply with the requirements of this clause. Seller shall include paragraphs (a) and (b) and paragraph (d) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be sold to Buyer.

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9. FINANCIAL RECORDS AND AUDIT

(a) Seller shall retain all financial records and documents pertaining to the performance of this Contract for no less than three years after final payment. Such records and documents shall date back to the time this Contract was issued and shall include without limitation, catalogs, price lists, invoices, underlying data and basis for cost estimates, and inventory records. Buyer shall have the right to examine, reproduce and audit all Seller records related to pricing, incurred costs and proposed costs associated with any proposals (prior to or after contract award), invoices or claims.

(b) Buyer and Buyer's Customer, including the Government and regulatory authorities, if Buyer agrees with the customer's request to audit Seller's records or Buyer is otherwise obligated to grant the customer access to records, shall have the right to audit and reproduce Seller's records including, but not limited to: (i) in the event of cancellation, termination, or default; (ii) in connection with any equitable adjustment request; (iii) all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract; (iv) where the terms of this Order, law and regulation, or applicable standard, otherwise entitle Buyer and/or its Customer to audit Seller's records and/or facilities, including the records and/or facilities of Seller's assignees or subcontractors, if any; (v) in connection with internal investigations of alleged violations of law including, but not limited to, the U.S. Foreign Corrupt Practices Act; or (vi) any type of litigation. Seller shall keep reasonably detailed records of all costs of the performance of this Order for a period of no less than five (5) years from the date of final payment or termination of any warranty or Item support under this Order, whichever is later. Seller shall provide Buyer, Buyer's Customer and regulatory authorities access to all facilities involved in the Order and to all applicable records.

10. DEFECTIVE COST OR PRICING DATA

- a. If this Contract is a subcontract under a U.S. Government contract to which the Truth in Negotiations Act applies, and if Seller, its subcontractor, or prospective subcontractor fails to submit accurate, complete and current cost or pricing data, and, as a result of that failure, Buyer incurs a price reduction from its customer, Buyer may recover from Seller an amount equal to the price reduction.
- b. If, as a result of Seller's or its subcontractor's foregoing conduct, Buyer must pay a penalty or interest, Buyer may recover from Seller the amount of that penalty and interest.

11. CONFIDENTIAL, PROPRIETARY, AND TRADE SECRET INFORMATION AND MATERIALS

- a. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary and/or trade secret information, including Buyer-provided specifications and Buyer-provided information pertaining to qualification, certification, manufacturing, and quality testing and procedures; (ii) tangible items and software containing, conveying or embodying such information; and (iii) tooling identified as being subject to this clause that is obtained, directly or indirectly, from the other in connection with this Contract or other agreement, including Buyer's contract with its customer, if any, (collectively referred to as "Proprietary Information and Materials"). Proprietary Information and Materials shall not include information that is, as evidenced by competent records provided by the receiving Party,

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lawfully in the public domain, lawfully disclosed to or known by the receiving Party without restriction, generally known in the relevant trade or industry prior to disclosure hereunder, or developed by the receiving Party independently without use of or reference to the disclosing Party's Proprietary Information and Materials.

- b. Buyer and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this Contract, other contracts between the Parties, and Buyer's contract with its customer, if any. However, despite any other obligations or restrictions imposed by this clause or any prior agreement, Buyer shall have the right to use and reproduce Seller's Proprietary Information and Materials internal to Buyer, regardless of when disclosed. Buyer shall further have the right to, use, disclose, reproduce and make derivative works of Seller's Proprietary Information and Materials (i) to fulfill Buyer's obligations under, and (ii) for the purposes of testing, certification, use, sale or support of any goods delivered under, this Contract, other contracts with Seller and Buyer's contract with its customer, if any. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials shall apply to all materials derived by the receiving Party or others on its behalf from the disclosing Party's Proprietary Information and Materials. In addition to disclosures permitted hereunder, a receiving Party may disclose received Proprietary Information and Materials in response to a subpoena or court order duly issued in a judicial or legislative process, provided that the receiving Party has used reasonable efforts to give the disclosing Party advance written notice of any such disclosure requirement and to reasonably cooperate with the disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing its scope.
- c. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Contract, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer's Authorized Representative. Seller shall not at any time (i) dispose of (as scrap or otherwise) any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer without the prior written authorization of Buyer's Authorized Representative or (ii) make, use, or sell any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer without notifying Buyer in writing before any such planned making, using, or selling activity and executing an agreement between the Parties requiring payment by Seller of a reasonable license fee to Buyer as consideration for each use of such Proprietary Information and Materials of Buyer, unless Buyer's Authorized Representative has provided prior written authorization to Seller. Prior to disposing of such goods, parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this clause.
- d. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees in writing to obligations no less restrictive than those imposed upon Seller under this clause. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.
- e. The provisions of this clause are effective notwithstanding the application of any restrictive

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legends or notices to Proprietary Information and Materials. The provisions of this clause shall survive the performance, completion, termination or cancellation of this Contract.

- f. Seller agrees that any technical data and computer software furnished to Buyer as a required deliverable under this Contract will be free from confidential, proprietary, or restrictive-use markings that are not expressly permitted by applicable FAR or other U.S. Government agency FAR supplement clauses incorporated in this Contract (“Nonconforming Markings”). Buyer may notify Seller of a Nonconforming Marking, and if Seller fails to remove or correct such marking within sixty (60) days after such notification, Buyer may, at Seller’s expense, correct any such Nonconforming Marking.
- g. In the event Buyer and Seller previously executed a nondisclosure agreement, such prior nondisclosure agreement shall remain in effect, except that information exchanged for purposes of executing this Contract shall be governed by this clause 21 (“Confidential, Proprietary, And Trade Secret Information And Materials”) as well as the other provisions of this Contract.

12. INDEMNITY FOR INTELLECTUAL PROPERTY INFRINGEMENT

- (a) Seller warrants that the Items and Services performed and delivered under this Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. For Items and Services delivered hereunder, Seller shall be liable for, defend, indemnify and hold harmless Buyer, and each subsequent purchaser or user thereof, from all loss or damage of any kind (including all costs and expenses including attorneys’ fees) arising out of any and all allegations, actions, proceedings, claims, or awards for any infringement, misappropriation, or wrongful use suit or action, including, without limitation, any proceeding under 28 U.S.C. § 1498, alleging that manufacture, use or sale infringes any patent, trademark, copyright, trade secret, mask work right or other proprietary or intellectual property right (collectively “Infringement Claim(s)”) in connection with any Items, software or data furnished hereunder, whether such are provided alone or in combination with other Items, software or processes. Seller hereby agrees to defend any and all such actions, at Seller’s expense, if requested to do so by Buyer. If, however, the Infringement Claim arises as a necessary consequence of Seller’s compliance with Buyer’s drawings and specification, which describe that aspect of the Items and Services upon which the Infringement Claim is based, Seller shall have no obligation to indemnify Buyer.
- (b) Seller and Buyer agree to notify each other in writing as soon as they become aware of a challenge of infringement or wrongful use in connection with any such Items, software or data furnished hereunder. Seller, if required to indemnify Buyer under this Article, shall promptly assume and diligently conduct the entire defense of such Infringement Claim at its own expense. Buyer shall have the right to reasonably reject counsel selected by Seller and the right to reject any settlement that would negatively impact Buyer as determined solely by Buyer. Buyer shall have the right, but not the obligation, to participate with Seller in determining the strategy to defend any such suit or action, and shall have the right, but not the obligation, with the permission of the court, to intervene in any such Infringement Claim.
- (c) Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such Infringement Claim and thereafter to assume and conduct the same according to Buyer’s sole discretion. Upon Buyer’s election, Seller

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shall be released from its obligation to pay for attorney's fees and court costs. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged Infringement Claim.

- (d) If the use or sale of Items or Services, in respect to which Seller indemnifies Buyer, is enjoined as a result of such Infringement Claims, Seller, at no expense to Buyer, shall obtain for Buyer and its customers, the right to use and sell said Items or Services or shall substitute equivalent Items or Services acceptable to Buyer and extend this patent indemnity with respect to such equivalent Items or Services. In the event that Seller is unable to secure such right of use for Buyer or its customer or to secure equivalent Items or Services as a substitute, Seller will indemnify Buyer and its customer for any and all losses or damages sustained by reason of such injunction.
- (e) Seller's obligation to defend, indemnify, and hold harmless Buyer and its customers under this Article shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to Buyer's Government Contract for infringement of a U.S. patent and Buyer and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorney's fees by a third party.

13. INTELLECTUAL PROPERTY

a) Definitions:

- (i) **Intellectual Property.** Intellectual Property means inventions, discoveries and improvements, know-how, works of authorship, technical data, drawings, specifications, process information, reports and documented information, and computer software.
- (ii) **Background Intellectual Property.** Background Intellectual Property means Intellectual Property that is (i) in existence prior to the effective date of this Order or (ii) is designed, developed or licensed after the effective date of this Order independently of both the work undertaken or in connection with this Order, and the proprietary information and Intellectual Property of the other party to this Order.
- (iii) **Foreground Intellectual Property.** Foreground intellectual property means intellectual property conceived, created, acquired, developed, derived from or based on development performed under this Order or information supplied by Buyer, or first actually reduced to practice by Seller in connection with this Order.

- b) **Foreground Intellectual Property.** Unless otherwise expressly agreed in writing to the contrary and subject to this Article 23 paragraph (d) below, all Foreground Intellectual Property developed exclusively with Buyer monies (i.e., development was accomplished entirely with monies paid by Buyer to Seller that are not subject to recovery by Buyer under a government contract) and not subject to this Article 23 paragraph (c) below is hereby assigned to Buyer and shall be proprietary to Buyer, shall be used by Seller only for purposes of providing Items or Services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer's express written consent. All such Foreground Intellectual Property shall be promptly provided to Buyer on request or upon completion of this Order. Any work performed pursuant to this Order which includes any copyright interest shall be considered a "work made for hire." The tangible medium storing copies

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of all reports, memoranda, or other materials in written form, including machine-readable form, prepared by Seller and furnished to Buyer pursuant to this Order shall become the sole property of Buyer.

- c) Buyer-Owned Intellectual Property. Buyer shall retain ownership of all Buyer Intellectual Property provided hereunder and of any Foreground Intellectual Property assigned to Buyer pursuant to this Article paragraph (b) above (collectively, "Buyer-Owned Intellectual Property"). Buyer grants to Seller a non-exclusive, royalty-free right during the term of this Order to use, reproduce, modify, practice and prepare derivative works of any Buyer-Owned Intellectual Property solely as necessary for Seller to perform its obligations under this Order. Seller shall not, without Buyer's prior written consent, use Buyer-Owned Intellectual Property or any derivative works of any of the Buyer-Owned Intellectual Property in any manner not authorized under this Order, including, but not limited to, developing, manufacturing, offering for sale or selling any item or service which utilizes or is enabled by Buyer-Owned Intellectual Property.
- d) Nothing in this Article 23 shall modify or alter any rights that the U.S. Government may have in any items or services, including technical data or computer software deliverables to the U.S. Government. Applicable Government procurement regulations incorporated into this Order dealing with subcontractors rights in Intellectual Property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between the Parties.

14. THIRD-PARTY SOFTWARE DISCLOSURE.

- a. Third party software means any software used, embedded, delivered with, or otherwise provided with the Deliverables that is licensed, owned, or controlled by a party other than the Seller. Such third party software includes, without limitation, open source, freeware, shareware, commercial, or other proprietary software.
- b. The Seller shall identify in advance any third party software it intends to use, embed, deliver, or otherwise provide to the Buyer in connection with the Seller's goods and make available to the Seller any license agreements pertaining to such third party software.
- c. Deliverables shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; (d) permit unauthorized access to any software or hardware or (e) perform any other nonconforming or unauthorized process; and b. Any attempt by Seller to limit, disclaim, or restrict any such warranties or any remedies of Buyer, by acknowledgment or otherwise, in accepting or performing this Contract, shall be null, void, and ineffective.

15. OPEN SOURCE SOFTWARE RESTRICTIONS AND WARRANTY

- a. Seller warrants that it has accurately identified and described for all Open Source Code that is contained in, distributed with, or used in the development of the Seller's Deliverables or from which any part of any Seller's Deliverables are derived,
 - i. the applicable license terms for such Open Source Code, and

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- ii. Seller's Deliverables to which such Open Source Code relates.
- b. Seller warrants that it will not use, embed, deliver, or otherwise provide to the Buyer, in whole or in part, any software that is subject to the provision of any open source or other type of license agreement or distribution model that:
 - i. requires the distribution or making available of the source code for any software,
 - ii. prohibits or limits the Seller or Buyer from charging a fee or receiving consideration in connection with sublicensing, incorporation or distribution of any Deliverable,
 - iii. prohibits the use of such software in connection with a defense article or project, iv. grants any right to any person or otherwise allows any such person to decompile, disassemble or otherwise reverse-engineer any software or other intellectual property, or
 - v. requires the licensing of any intellectual property for the purpose of making derivative works.
- c. Seller further warrants that no software used, embedded, delivered, or otherwise provided to the Buyer is subject to such licenses, nor constitutes a derivative work of, or is dynamically linked with, or is otherwise designed to interact with any software subject to any of the licenses or restrictions identified in paragraph b of this clause.

16. PUBLICITY AND CUSTOMER COMMUNICATION

- a. Without Buyer's Authorized Representative's prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or any other statement regarding this Contract or the Deliverables or program to which it pertains. Seller shall be responsible to Buyer for any breach of such obligation by any subcontractor.
- b. Except as otherwise expressly provided in this Contract, Buyer shall be responsible for all coordination and communication with Buyer's customer regarding this Contract or the Deliverables or program to which it pertains. Seller shall have no communications regarding the foregoing with Buyer's customer without Buyer's Authorized Representative's advance written approval and coordination.

17. PROPERTY MANAGEMENT

- a. Buyer's Property. Seller shall clearly mark (if not already marked), maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer or the Government acquires an interest by virtue of this Contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this Contract without Buyer's Authorized Representative's prior written consent. Seller shall notify Buyer if Buyer's property is lost, damaged or destroyed. If directed by Buyer, upon completion, termination or cancellation of this Contract, Seller shall deliver such property, to the extent not incorporated in delivered goods, to Buyer in good condition subject

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to ordinary wear and tear and normal manufacturing losses. Nothing in this clause limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest

- b. Government-Owned Property and Special Tooling. To the extent that Seller, including any subcontractor thereof, uses U.S. Government property or special tooling, either furnished to or acquired by Seller under this Contract, in the performance of this Contract, Seller shall manage such property in accordance with FAR 52.245-1, including any clauses incorporated by reference into this Contract. Seller shall provide to Buyer immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of its property control system.
- c. If any designs, sketches, drawings, blueprints, patterns, dies, molds, models, tools, gauges, equipment or special appliances should be made or procured by Seller especially for producing the Items covered by this Order, then immediately upon manufacture or procurement they shall become the property of Buyer or Buyer's customer.

18. UTILIZATION OF SMALL BUSINESS CONCERNS

If this Contract is a subcontract under a U.S. Government contract, Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned small business concerns to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of this Contract. Seller is referred to FAR 52.219-8 for applicable definitions and further explanation and instruction for implementing these requirements.

19. COMPLIANCE WITH LAWS, GRATUITIES AND SUBCONTRACTING

- a. Seller and the goods shall comply with all applicable statutes and government rules, regulations and orders. Without acting as a limitation, Seller shall comply with (i) all applicable country laws relating to anti-corruption, anti-bribery, and combating trafficking in persons including, but not limited to, legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" (the "OECD Convention"); and (ii) the requirements of the Foreign Corrupt Practices Act, as amended, ("FCPA") (15 U.S.C. §§78dd-1, *et. seq.*), regardless of whether Seller is within the jurisdiction of the United States, and Seller shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.
- b. If this Contract is issued pursuant to a U.S. Government prime contract or higher-tier subcontract under a U.S. Government prime contract, the Contract is within the jurisdiction of the U.S. Government and its laws. Any knowing and willful act to falsify, conceal, or alter a material fact, or any false, fraudulent or fictitious statement or representation in connection with the performance of work under this Contract may be punishable in accordance with applicable federal statutes, including the statute against making false statements and the False Claims Act.

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- c. Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this Contract or securing favorable treatment under this Contract.
- d. Seller agrees that no subcontract placed under this Contract will provide for payment on a cost plus- a-percentage-of-cost basis.
- e. Seller warrants that it is not presently suspended, debarred, or otherwise declared ineligible by agent agency of Federal, state, or local government. Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any agency of Federal, state, or local government, or upon receipt of a notice of proposed debarment or suspension. Seller shall not subcontract with or purchase from lower-tier subcontractors so suspended or debarred, or proposed for suspension or debarment. Seller shall certify to FAR 52.209-6 when applicable, by signing and returning Purchase Order to Buyer that states the following:
“Any representations and certifications submitted resulting in award of this Subcontract are hereby incorporated either in full text or by reference, and any updated representations and certifications submitted thereafter are incorporated by reference and made a part of this Subcontract with the same force and effect as if they were incorporated by full text. By signing this Subcontract, the Subcontractor hereby certifies and discloses that as of the time of award of this Subcontract: (1) the Subcontractor, or its principals, is not debarred, suspended or proposed for debarment or declared ineligible for award by any Federal agency; (2) no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with awarding the contract or this Subcontract; and (3) no changes have occurred to any other representations and certifications made by the Subcontractor resulting in award of this subcontract. The Subcontractor agrees to promptly notify the Elbit Buyer of any changes occurring at any time during performance of this Subcontract to any representations and certifications submitted by the Subcontractor.”
- f. Seller warrants that it is not aware of any facts or circumstances regarding Seller's other contracts or activities that could give rise to an organizational conflict of interest as defined in FAR Part 9.5 and thereby jeopardize Buyer's status as a seller to the U.S. Government.
- g. Seller agrees to indemnify Buyer against any loss, cost, liability, fine, penalty, or damage, including all associated attorney's fees, incurred by Buyer by reason of Seller's violation of any applicable laws or regulations, or by breach of the warranties in this clause.

20. CONFLICT MINERALS

“Conflict Minerals” means, most commonly, tin, tantalum, tungsten, and gold (3TG) and any other mineral or its derivatives determined by the U.S. Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.

Seller shall provide any additional information requested by Buyer (in sufficient detail), with written certifications thereof, to enable Buyer to timely comply with all of Buyer's and Buyer's customer's due diligence, disclosure and audit requirements under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") and Rule 13p-1 and Form SD under the

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Securities Exchange Act of 1934, and all similar, applicable statutes and regulations, including due inquiry of Seller's supply chain (and certifications by such suppliers) identifying conflict minerals (as defined in Section 1502(e)(4) of the Dodd-Frank Act) contained in each product and the country of origin of such conflict minerals (or, following due inquiry, why such country of origin cannot be determined).

Noncompliance with any element of this section is a default for purposes of the Termination for Default article of this Contract.

21. SELLER'S FACILITY AND PLACE OF PERFORMANCE

Seller shall provide Buyer written notice of any proposed plans for moving Seller's manufacturing location for the goods or moving tooling or other equipment utilized in the manufacture of the goods to another facility. In no event shall Seller proceed with implementing such plans prior to obtaining Buyer's Authorized Representative's prior written approval.

Seller represents that it now has or can readily procure without the assistance of Buyer or the Government all facilities necessary for the performance of this Order.

22. ACCESS TO PLANTS AND PROPERTIES

Where Seller is either entering or performing work at premises owned or controlled by Buyer or Buyer's customer or obtaining access electronically to Buyer systems or information, Seller shall comply with: (i) all the rules and regulations established by Buyer or Buyer's customer for access to and activities in and around premises controlled by Buyer or Buyer's customer; and (ii) Buyer requests for information and documentation to validate citizenship or immigration status of Seller's personnel or subcontractor personnel. In addition, Seller acknowledges that Buyer may perform routine background checks on Seller personnel.

Seller shall advise Buyer of any unauthorized direction or course of conduct. Seller shall immediately report to Buyer all emergencies and non-emergencies affecting the work. Seller shall provide Buyer with a copy of reports or incidents Seller makes to the government authorities pertaining to this Contract.

Seller shall include the substance of this clause, including this flow down requirement, in all subcontracts awarded by Seller for work under this Contract.

23. IMPORT AND EXPORT TRADE CONTROL COMPLIANCE

- a. Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Contract in compliance with all applicable Trade Control Regulations. Seller shall not transfer (to include transfer, both within and outside the United States, to foreign persons employed by or associated with, or under contract to Seller, or Seller's sub-tier suppliers or Seller's non-U.S. subsidiaries) any export controlled item, data or services, without providing advance notice to Buyer and obtaining the requisite export and/or import authority.
- b. Upon Buyer's request, Seller shall provide Buyer with the export control classification of any Deliverable.
- c. Seller represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Regulations. A copy of process control documents

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and other documents reasonably requested by Buyer related to Seller's compliance with applicable Trade Control Regulations shall be made available to Buyer upon request.

- d. Seller shall promptly notify Buyer if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any Governmental entity.
- e. Seller shall timely inform Buyer of any actual or alleged violations of any applicable Trade Control Regulations, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations, in Seller's performance under this Contract and shall comply with all reasonable requests from Buyer for information regarding any such violations.
- f. Seller shall incorporate into any contracts with its sub-tier suppliers obligations no less restrictive than those set forth in this clause requiring compliance with all applicable Trade Control Regulations.

24. DISPUTES

- a. This section 24 is in addition to Section 25 of Plasan NA's General Terms and Conditions.
- b. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Contract.
- c. If this Contract is a subcontract under a U.S. Government Contract, and if the Contracting Officer of the Government Contract by a final decision interprets any provision or requirement that applies to Buyer, and the same or substantially similar provision or requirement is contained in this Contract, such interpretation shall be binding between Buyer and Seller; provided that Buyer affords Seller the opportunity to appeal such decision as a "Sponsored Claim," and provided further that Seller provides to Buyer any and all information requested by Buyer to justify Buyer's verifying, supporting, or providing any and all certificates required by the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq. Any such appeal brought by Seller shall be at the sole expense of Seller, who shall be solely responsible for the prosecution of such appeal. Seller shall, upon Buyer's written request, provide to Buyer advance copies of papers to be filed in such appeal and such other information, consultation, and opportunity to participate in the appeal as Buyer may request. A Sponsored Claim shall include any and all proceedings taken by Seller under this provision before any board of contract appeals or federal courts. Buyer shall be responsible for payment to Seller under such a Sponsored Claim brought by Seller only to the extent Buyer receives payment from the U.S. Government.
- d. If Seller asserts against Buyer a claim for either damages or an equitable adjustment in a situation where the facts constituting such claim would also support a claim by Buyer against Buyer's customer, prior to initiating any action or suit on such claim against Buyer in any court, if

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Buyer so authorizes, Seller shall pursue, to exhaustion of its administrative and judicial remedies, such claim in Buyer's name and at Seller's cost against Buyer's customer.

25. NO WAIVER; RIGHTS AND REMEDIES

- a. Any failures, delays or forbearances of either Party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, such provisions, rights and remedies shall remain in full force and effect.
- b. Except as expressly and affirmatively disclaimed in writing in this Contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity. If any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable. Seller acknowledges and agrees that money damages would not be an adequate remedy for any actual, anticipatory or threatened breach of this Contract by Seller with respect to its delivery of the Deliverables to Buyer.
- c. Buyer approvals of Seller's technical and quality specifications, drawings, plans, procedures, reports, and other submissions shall not relieve Seller from its obligations to perform all requirements of this Contract.
- d. Buyer may at any time deduct or set-off Seller's claims for money due or to become due from Buyer against any claims that Buyer has or may have arising out of this Contract or other transactions between Buyer and Seller.
- e. All covenants, indemnities, guarantees, and warranties by Seller shall survive the termination or expiration of this Contract unless otherwise specified.

26. INSURANCE AND RULES

- a. Seller shall maintain, and cause its subcontractors to maintain, the insurance coverages that the higher of those specified in the purchase order or any other attachment to this Contract or the following: Statutory Workers' Compensation coverage and Employers' Liability with a limit of \$500,000; Commercial General Liability (including bodily injury and property damage, products / completed operations coverage and contractual liability coverage) with a limit of \$2,000,000 per occurrence. When applicable to Seller's performance of the Contract, Seller shall also maintain, and cause its subcontractors to maintain, (i) Automobile Liability coverage with a limit of \$2,000,000 per accident; and (ii) Professional Liability covering the services provided by Seller. Upon Buyer's request, Seller shall (i) provide Buyer with certificates of insurance evidencing required insurance, (ii) arrange for a waiver of subrogation in favor of Buyer and (iii) in the case of the Commercial General Liability and Automobile Liability policies direct that Buyer be added as an additional insured.

27. INDEMNIFICATION

Seller shall, at its own expense, defend, indemnify and hold harmless Buyer and its customer and their respective officers, directors, employees and agents from and against all claims, demands, suits, liabilities, prosecutions, penalties, settlements, losses, and damages of any kind (including claims under Workers' Compensation or similar laws) and resulting costs and expenses (including attorney fees) which arise from personal injury or death, or property loss or damage, attributed to

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or caused by the Deliverables or any act or omission of Seller, its subcontractors, any third party under Seller's control, or their respective employees. Such indemnity shall survive the termination or expiration of this Contract.

28. CODE OF BUSINESS ETHICS AND CONDUCT

Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Buyer's expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically under this contract, Seller shall report such behavior to appropriate Buyer Points of Contact ("POCs"). Seller's employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities.

Seller shall not participate in any personal business, or investment activity that may be defined as a conflict of interest, whether real or perceived. As a material obligation hereunder, Seller must immediately notify Buyer if, at any time during the term of this Order, Seller becomes aware that it has an actual or potential conflict of interest, as defined by FAR 9.5 and DFAR 252.209-7009, including without limitation a relationship of any nature which may affect or which may reasonably appear to affect Seller's objectivity or ability to perform the Work ("Conflict of Interest").

Seller Compliance: In performing its obligations under this Order, Seller will not use child labor as defined by local law, will not use forced or compulsory labor, will not physically abuse labor and will respect employees' rights to choose whether to be represented by third parties and to bargain collectively in accordance with local law. In addition, in all wage and benefit, working hours and overtime and health, safety and environmental matters, Seller will comply with all applicable laws and regulations. Seller further agrees that, if requested by Buyer, it shall demonstrate, to the satisfaction of Buyer, compliance with all requirements in this paragraph. Buyer shall have the right to inspect any site of Seller involved in work for Buyer, and failure to comply with the obligations in this paragraph shall be cause for immediate termination without penalty or further liability to Buyer.

29. ORDER OF PRECEDENCE

All documents and provisions in this Contract shall be read so as to be consistent to the fullest extent possible. In the event of a conflict or inconsistency between the documents or provisions as incorporated into or attached to the Contract, the documents or provisions shall prevail in the order listed below, with the first document or provision listed having the highest precedence:

Document Title/Description:

- a. The purchase order document and any specific terms on that order
- b. Plasan NA's General Provisions Terms and Conditions (which are incorporated by references in any Purchase Order issued thereunder);
- c. Master agreement (e.g., blanket ordering agreement, IDIQ contract, long-term purchasing agreement, etc.) duly executed between the parties, if any.
- d. Statement of Work, Specifications or Requirements (the most recently agreed to and issued version)

In the event of a conflict between the documents referenced in Section 42 and applicable FAR/DFARS clauses, the FAR/DFARS clauses shall control to the extent necessary for Buyer to comply with Buyer's Government Contract. No other documents supersede FAR and DFARS clauses applicable to Buyer's Government Contract when the prime contract is with the Government.

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30. SEVERABILITY

If any part, term, or provision of this Order shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Order, the validity of the remaining portions of provisions shall not be affected thereby. In the event that any part, term or provision of this Order is held void, illegal, unenforceable, or in conflict with any law of the federal, state, or local government having jurisdiction over this Order, Seller agrees to negotiate a replacement provision, construed to accomplish its originally intended effect, that does not violate such law or regulation.

FAR/DFARS FLOWDOWN PROVISIONS FOR NONCOMMERCIAL ITEMS UNDER A UNITED STATES GOVERNMENT CONTRACT

In addition to the clauses of the General and Supplemental Terms and Conditions, the following provisions shall apply to the Order as required by the terms of Buyer's Contract, by operation of law or regulation, or by the terms of the specific clauses. Buyer is flowing down to Seller certain provisions and clauses from the Federal Acquisition Regulation (FAR) and Department of Defense FAR Supplement (DFARS) (all herein "USG Clauses").

The Federal Acquisition Regulation (FAR) and Department of Defense (DOD) FAR Supplement (DFARS) clauses provided in this document are incorporated by reference, modified as indicated, with the same force and effect as if provided in full text. The following words in the FAR and DFARS clauses are to be understood as follows, except (a) in those clauses where the terms should retain their original meaning due to authority vested in the U.S. Government, in which case Buyer retains such rights as are needed to perform this clause under its contract with Buyer's Customer and (b) where the context reasonably requires otherwise:

- "Contract" is the contract between Buyer and Seller as defined in the General Provisions incorporated by reference into the Purchase Order issued by Buyer.
- "Contractor" and "Offeror" mean Seller.
- "Subcontractor" means Seller's subcontractors.
- "Government" usually means Buyer, but can also mean both the Government and/or Buyer when the context reasonable requires that constructions (e.g., the right to inspect).
- "Contracting Officer" means Buyer's Authorized Representative, except for those specific clauses where the context refers to rights, acts authorizations or obligations that are uniquely performed or granted by the U.S. Government.

The listed clauses that are not applicable due to monetary threshold, place, performance, type of effort or contract shall be treated as self-deleting.

These clauses do not establish privity between Seller and Buyer's Customer. Notwithstanding any provision to the contrary, Seller shall have no right to pursue a claim or any other relief directly against the U.S. Government. The Contract Disputes Act shall not be applicable to the Contract. Any reference to a "Disputes" clause shall mean the Disputes clause of the Contract as set forth in the General Terms and Conditions. Any communication or notification required under these clauses to or from Seller to or from the Buyer's Customer shall be made through Buyer.

If the contract between Buyer and Buyer's Customer incorporates a preceding version of any such clause, that version shall apply to this Contract. Buyer will provide the applicable dates upon receipt of a written request from Seller.

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Seller shall indemnify and hold Buyer harmless from and against any price reduction in Buyer's Government Contract, as well as Buyer's reasonable attorney fees and other direct costs to defend Government Contract claims when said reduction is attributable to the failure of Seller or Seller's subcontractors to properly discharge applicable duties under the Truth in Negotiation Act and Cost Accounting Standards clauses incorporated by reference in accordance with this provision.

If Seller is an international contractor, clauses marked with an asterisk (*) apply to this Contract only if work under the Contract will be performed in the United States or Seller is recruiting employees in the United States to work on the Contract.

A. PRESERVATION OF THE GOVERNMENT'S RIGHTS

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

B. PROVISIONS OF THE FEDERAL ACQUISITION REGULATION (FAR) INCORPORATED BY REFERENCE

The following FAR clauses apply to this Contract:

FAR Reference	Title
52.202-1	DEFINITIONS (JUNE 2020)
52.203-3	GRATUITIES (APR 1984)
52.203-19	PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)
52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (*)
52.222-26	EQUAL OPPORTUNITY (SEP 2016) (*)
52.222-50	COMBATING TRAFFICKING IN PERSONS (NOV 2021)
52.223-6	DRUG-FREE WORKPLACE (MAY 2001)
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2021)
52.227-3	PATENT INDEMNITY (APR 1984)
52.236-13	ACCIDENT PREVENTION (NOV 1991)
52.242-13	BANKRUPTCY (JUL 1995)
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (JAN 2022)

The following FAR clauses apply to this Contract subject to the parenthetical notes:

52.204-2	SECURITY REQUIREMENTS (MARCH 2021) (Applies if the work requires access to classified information.)
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011) (Applies where SELLER will have physical access to a federally-controlled facility or access to a Federal information system.)
52.204-21	BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021) (Applies where SELLER has "Federal contract information" residing in or transiting through its information system).
52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008) (Applies if a rating is listed on the cover page of this Contract)
52.215-12	SUBCONTRACTOR COST OR PRICING DATA (JUNE 2020) (Applies if Buyer notifies SELLER that it must submit certified cost or pricing data)
52.215-13	SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (JUNE 2020)

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- 52.215-15 (Applies if Buyer notifies SELLER that it must submit certified cost or pricing data)
PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010)
(Applies if this Contract meets the applicability requirements of FAR 15.408(g))
- 52.215-16 FACILITIES CAPITAL COST OF MONEY (JUN 2003)
(Applies only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and SELLER proposed facilities capital cost of money in its offer.)
- 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)
(Applies only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and SELLER did not propose facilities capital cost of money in its offer.)
- 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)
(Applicable if this Contract meets the applicability requirements of FAR 15.408(j).)
- 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)
(Applies if this Contract meets the applicability requirements of FAR 15.408(k).)
- 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018) (*)
(Applies if SELLER is an other-than-small business concern and Purchase Contract/Subcontract will offer further lower-tier subcontracting opportunities)
- 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (MARCH 2018) (*)
(Applies if the work requires or involves the employment of laborers or mechanics.)
- 52.222-41 SERVICE CONTRACT LABOR STANDARDS (AUG 2018) (*)
(Applies if this Contract is for services subject to the Service Contract Act.)
- 52.222-51 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT-REQUIREMENTS (MAY 2014)
(Applies if this Contract is for services subject to the Service Contract Act.)
- 52.222-53 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR CERTAIN SERVICES-REQUIREMENTS (MAY 2014)
(Applies if this Contract is for services subject to the Service Contract Act.)
- 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (JAN 2022)
(Applies if this Contract is for services subject to the Service Contract Act.)
- 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)
(Applies to work containing covered radioactive material. In the blank at paragraph (a) insert "30".)
- 52.223-11 OZONE-DEPLETING SUBSTANCES (JUN 2016)
(Applies if the work was manufactured with or contains ozone-depleting substances.)
- 52.225-1 BUY AMERICAN ACT – SUPPLIES (NOV 2021)
(Applies if the work contains other than domestic components, and is performed for a non-DOD prime contract.)
- 52.225-2 BUY AMERICAN CERTIFICATE (FEB 2021)
(Applies on an annual basis for acquisitions exceeding the micro-purchase threshold.)
- 52.225-5 TRADE AGREEMENTS (OCT 2019)
(Applies if the work contains other than U.S. made or designated country end products as specified in the clause, and is for a non-DOD prime contract.)
- 52.225-8 DUTY-FREE ENTRY (OCT 2010)
(Applies if work will be imported into the Customs Territory of the United States for a non-DOD prime contract.)
- 52.227-9 REFUND OF ROYALTIES (APR 1984)
(Applies if work involves reported royalties in excess of \$250.)
- 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (DEC 2007)
(Applies if the work or any patent application may cover classified subject matter.)

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- 52.227-11 PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR (MAY 2014)
(Applies if this Contract includes, at any tier, experimental, developmental, or research work and SELLER is a small business concern or domestic nonprofit organization. Reports required by this clause shall be filed with the agency identified in this Contract. If no agency is identified, contact the Buyer's Procurement Representative. FAR 52.227-13 applies in lieu of this clause if SELLER is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government.)
- 52.227-13 PATENT RIGHTS - OWNERSHIP BY THE GOVERNMENT (DEC 2007)
(Applies if this Contract is for experimental, developmental or research work and SELLER is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government. Paragraph (g) is deleted. If not otherwise included in this Contract, the name and address of the contracting officer may be obtained from Buyer's Procurement Representative.)
- 52.227-14 RIGHTS IN DATA – GENERAL (MAY 2014)
(Applies where work supports non-DOD prime contract)
- 52.227-19 COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007)
(Applies where SELLER is providing commercial computer software to be delivered to the Government).
- 52.228-3 WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT) (JUL 2014)
(Applies if Contract is subject to the Defense Base Act)
- 52.228-4 WORKERS COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS (APR 1984)
(Applies if Contract is subject to the War Hazards Compensation Act)
- 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (NOV 2021)
(Applies if SELLER is a small business concern. This clause does not apply if Buyer does not receive accelerated payments under the prime contract. Not all agencies provide accelerated payments.)
- 52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER TITLE III, DEFENSE PRODUCTION ACT (SEP 2016)
(Applies if Title III industrial resources are developed under the Buyer's prime contract)
- 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (APR 1984)
(Applies if work is performed on a Government installation.)
- 52.245-1 GOVERNMENT PROPERTY (ALTERNATE I) (SEP 2021)
(The following is added as paragraph (n) "SELLER shall provide to Buyer immediate notice if the Government or other customers (i) revokes its assumption of loss under any direct contracts with Seller, or (ii) makes a determination that SELLER's property management practices are inadequate, and/or present an undue risk, or that SELLER has failed to take corrective action when required.")
- 52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS (JUNE 2003)
(Applies when air transport of either supplies or personnel will be involved.)
- 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (NOV 2021)
(Applies when ocean transport of either supplies or personnel will be involved.)

The following FAR clauses apply if this Contract exceeds \$3,500

- 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (NOV 2021) (*)
(Applies except for commercial services that are part of the purchase of a commercial-off-the-shelf ("COTS") item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item.)

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52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (JUNE 2020)

The following FAR clauses apply if this Contract exceeds \$10,000

52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (*)

The following FAR clauses apply if this Contract exceeds \$15,000

52.222-20 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (JUNE 2020)

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 2020) (*)

The following FAR clauses apply if this Contract exceeds \$30,000

52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUNE 2020)
(SELLER shall report required executive compensation by posting the information to the System for Award Management (“SAM”) at www.sam.gov. All information posted will be available to the general public.)

The following FAR clauses apply if this Contract exceeds \$35,000

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (NOV 2021) (Applies unless this Contract is for COTS items. Any notices required by SELLER under this clause shall be provided to Buyer.) See section E (4) for further instruction.

The following FAR clauses apply if this Contract exceeds \$150,000

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUNE 2020)

52.203-7 ANTI-KICKBACK PROCEDURES (JUNE 2020)

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUNE 2020)

52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (JUNE 2020)

52.215-2 AUDIT AND RECORDS – NEGOTIATION (JUNE 2020)
(Applies if Buyer notifies SELLER that it must submit certified cost or pricing data)

52.215-14 INTEGRITY OF UNIT PRICES (NOV 2021)

52.215-23 LIMITATION ON PASS-THROUGH CHARGES (JUNE 2020)

(ALT I applies if in Buyer’s Government Contract)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (JUNE 2020)

52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUNE 2020) (*)

52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUNE 2020) (*)

52.227-1 AUTHORIZATION AND CONSENT (JUNE 2020)

52.248-1 VALUE ENGINEERING (JUNE 2020)

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The following FAR clauses apply if this Contract exceeds \$700,000

- 52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (SEP 2021) (Does not apply if SELLER is a small business concern)

The following FAR clauses apply if this Contract exceeds \$750,000

- 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2021) (Does not apply if SELLER is a small business concern)
- 52.214-26 AUDIT AND RECORDS- SEALED BIDDING (JUNE 2020)
- 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (NOV 2021)
- 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (NOV 2021)
- 52.230-2 COST ACCOUNTING STANDARDS (JUNE 2020)
(Applies only when referenced in this Contract that full CAS coverage applies. Delete paragraph (b) of the clause.)
- 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (JUNE 2020)
(Applies only when referenced in this Contract that modified CAS coverage applies. Delete paragraph (b) of the clause.)
- 52.230-4 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES – FOREIGN CONCERNS (JUNE 2020)
(Applies if Vendor is a foreign concern subject to Cost Accounting Standards)
- 52.230-5 COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTIONS (JUNE 2020)
(Applies only when referenced in this Contract that this CAS clause applies. Delete paragraph (b) of the clause.)
- 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)
(Applies if FAR 52.230-2, FAR 52.230-3, FAR 52.230-4 or FAR 52.230-5 applies.)

The following FAR clauses apply if this Contract exceeds \$5,500,000

- 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (NOV 2021)
(Applies if this Contract if the period of performance is more than 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)
- 52.203-14 DISPLAY OF HOTLINE POSTER(S) (NOV 2021)
(Applies is work is for a non-DOD prime contract)

C. PROVISIONS OF THE DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) INCORPORATED BY REFERENCE

The following DFARS clauses also apply to this Contract, subject to the parenthetical notes below:

- | DFARS Reference | Title |
|-----------------|---|
| 252.203-7002 | REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013) |
| 252.204-7000 | DISCLOSURE OF INFORMATION (OCT 2016)
(SELLER shall submit all required requests through Buyer) |

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252.204-7012	SAFEGUARDING OF UNCLASSIFIED CONTROLLED TECHNICAL INFORMATION (DEC 2019) (Reports required under this clause shall be made through Buyer within 72 hours of discovery of any cyber incident).
252.204-7009	LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016)
252.204-7015	DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT CONTRACTORS (MAY 2016)
252.208-7000	INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (DEC 1991) (Applies if Contract requires items containing precious metals)
252.211-7003	ITEM IDENTIFICATION AND VALUATION (MARCH 2016) (Applies if this Contract requires the work to contain unique item identification. All reports required to be submitted under this clause shall be submitted to Buyer at a location to be provided; delete paragraph (g) and insert the following in lieu thereof: "(g) Lower-Tier Subcontracts. SELLER shall include this clause, including this paragraph (g), in all lower tier subcontracts issued under this Subcontract for the acquisition of components identified herein as requiring UID.)
252.211-7007	REPORTING OF GOVERNMENT-FURNISHED PROPERTY (AUG 2012) (Applies if SELLER is in possession of government-furnished property in support of this Contract.)
252.222-7006	RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEC 2010) (Certification pursuant to paragraph (b)(2) applies to both SELLER in its own capacity and to SELLER's covered subcontractors.)
252.223-7001	HAZARD WARNING LABELS (DEC 1991) (Applies if this Contract requires the delivery of hazardous materials.)
252.223-7002	SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994) (Applies only if the articles furnished under this Contract contain ammunition or explosives, including liquid and solid propellants.)
252.223-7003	CHANGE IN PLACE OF PERFORMANCE - AMMUNITION AND EXPLOSIVES (DEC 1991) (Applies if 252.223-7002 applies to this Contract.)
252.223-7007	SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999) (Applies if this Contract is for the development, production, manufacture, or purchase of arms, ammunition, and explosives or when arms, ammunition, and explosives will be provided to SELLER as Government Furnished Property.)
252.223-7008	PROHIBITION OF HEXAVALENT CHROMIUM (JUN 2013)
252.225-7001	BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM (DEC 2017) (Applies if the work contains other than domestic components.)
252.225-7007	PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (DEC 2018) (Applies if SELLER is supplying items on the U.S. Munitions list.)

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252.225-7009	RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (DEC 2019) (Applies if the work to be furnished contains specialty metals.)
252.225-7012	PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2017)
252.225-7013	DUTY-FREE ENTRY (APRIL 2020) (Applies if Contract requires import of Qualifying country components or nonqualifying country components which exceed \$200 per unit).
252.225-7016	RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (JUN 2011) (Applies if work supplied under this Contract contains ball or roller bearings.)
252.225-7021	TRADE AGREEMENTS (SEPT 2019) (Applies if the work contains other than U.S.-made, qualifying country, or designated country end products.)
252.225-7028	EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (APR 2003)
252.225-7033	WAIVER OF UNITED KINGDOM LEVIES (APR 2003) (Applies if SELLER anticipates awarding a lower-tier subcontract in excess of \$1,000,000 with a United Kingdom firm.)
252.225-7043	ANTI-TERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUL 2015) (Applies where SELLER will be performing or traveling outside the U.S. under this Contract.)
252.225-7048	EXPORT-CONTROLLED ITEMS (JUNE 2013)
252.227-7013	RIGHTS IN TECHNICAL DATA - NON-COMMERCIAL ITEMS (FEB 2014) (Applies to the extent specified in DFARS 252.227-7015.)
252.227-7014	RIGHTS IN NON-COMMERCIAL COMPUTER SOFTWARE AND NON-COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (FEB 2014)
252.227-7015	TECHNICAL DATA - COMMERCIAL ITEMS (FEB 2014)
252.227-7016	RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2011) (SELLER must flow down this clause to all lower-tier subcontractors.)
252.227-7019	VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE (SEP 2016)
252.227-7025	LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (MAY 2013)
252.227-7026	DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988)
252.227-7027	DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988)
252.227-7028	TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995)
252.227-7037	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 2016)
252.227-7038	PATENT RIGHTS - OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (JUN 2012) (Applies if (1) SELLER is not small business or nonprofit organization subject to FAR 52.227-11, and (2) the Contract is for experimental, developmental, or research work.)
252.228-7005	MISHAP REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (NOV 2019)
252.231-7000	SUPPLEMENTAL COST PRINCIPLES (DEC 1991)
252.235-7003	FREQUENCY AUTHORIZATION (MAY 2014) (Applies if work requires developing, producing, constructing, testing, or operating a device requiring a frequency authorization.)

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252.239-7018	SUPPLY CHAIN RISK (FEB 2019) (Applies if the work involves the development or delivery of any information technology, whether acquired as a service or as a supply.)
252.245-7001	TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY (APR 2012) (Applies if work requires government-furnished property.)
252.245-7002	REPORTING LOSS OF GOVERNMENT PROPERTY (JAN 2021) (Applies if work requires government-furnished property.)
252.245-7003	CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (APR 2012) (Applies if work requires government-furnished property.)
252.245-7004	REPORTING, REUTILIZATION, AND DISPOSAL (DEC 2017) (Applies if work requires government-furnished property.)
252.246-7003	NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013) (Applies if this Contract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system. Contractor shall provide notifications to Buyer and the contracting officer identified to SELLER.)
252.246-7007	CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION and AVOIDANCE SYSTEM (AUG 2016)
252.246-7008	SOURCES OF ELECTRONIC PARTS (MAY 2018) (Applies when SELLER is providing electronic parts or assemblies containing electronic parts, unless SELLER is the original manufacturer).
252.247-7023	TRANSPORTATION OF SUPPLIES BY SEA (FEB 2019) (Applies in all Contracts for ocean transportation of supplies. In the first sentence of paragraph (g), insert a period after "Contractor" and delete the balance of the sentence. Paragraph (f) and (g) shall not apply if this Contract is at or below \$150,000.)

The following DFARS clauses apply if this Contract exceeds \$150,000

252.203-7001	PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES (DEC 2008) (In paragraph (e), the remedies described in subparagraphs (2) and (3) are available to Buyer not the Government.)
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The following DFARS clause applies if this Contract exceeds \$500,000

252.226-7001	UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (APRIL 2019) (Buyer shall have no liability to Seller for any incentive payment under this clause unless and until the Government provides said incentive payment to Buyer)
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The following DFARS clauses apply if this Contract exceeds \$700,000

252.249-7002	NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (JUNE 2020)
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The following DFARS clauses apply if this Contract exceeds \$750,000

252.219-7003	SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (DEC 2019) (Applies if FAR 52.219-9 applies to this Contract.)
252.219-7004	SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (MAY 2019) (Applies if SELLER is participating in the DoD Small Business Subcontracting Test Program.)

The following DFARS clauses apply if this Contract exceeds \$5,500,000

252.203-7004	DISPLAY OF FRAUD HOTLINE POSTER(S) (AUG 2019)
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E. CERTIFICATIONS AND REPRESENTATIONS

SELLER acknowledges that Buyer will rely upon SELLER certifications and representations contained in this clause (below) and in any written offer, proposal or quote, or company profile submission, which results in award of a contract to SELLER. By entering into such contract, SELLER republishes the certifications and representations submitted with its written offer, including company profile information and oral offers/quotations, and additionally SELLER makes the certifications and representations set forth below. SELLER shall immediately notify Buyer of any change of status regarding any certification or representation.

1. FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (SEP 2007)

(Applies if this Contract exceeds \$150,000)

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

"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).

The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12). (b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) Certification. SELLER hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract. (d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, SELLER shall complete and submit, with its offer to Buyer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. SELLER need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

2. FAR 52.203-18 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation (JAN 2017).

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(a) *Definition.*

“Internal confidentiality agreement or statement,” “subcontract”, and “subcontractor”, as used in this provision, are defined in the clause at 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.

(b) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use funds appropriated (or otherwise made available) for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(c) The prohibition in paragraph (b) of this provision does not contravene requirements applicable to

Standard Form 312, (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d) *Representation.* By submission of its offer, the SELLER represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

3. FAR 52.209-5 Certification Regarding Responsibility Matters (AUG 2020)

(a)(1) SELLER certifies, to the best of its knowledge and belief, that--

(i) SELLER and/or any of its Principals--

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and (D) Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$10,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

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(2) Examples.

- (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
 - (ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to 12 further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
 - (iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.
 - (iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).
- (ii) SELLER has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
- (2) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment; and similar positions).
- (b) SELLER shall provide immediate written notice to Elbit Systems of America if, at any time prior to contract award, SELLER learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that SELLER knowingly rendered an erroneous certification, in addition to other remedies available, Elbit Systems of America may terminate this contract for default.

4. FAR 52.209-6 (c) PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (NOV 2021)

Requires an “as of time of award debarment disclosure” for procurements above \$35,000 (for the 2015 thru current version of the clause) unless acquiring COTS items as defined in FAR 2.101. Recommendation is to include the below disclosure and certification language in all subcontract/order/bilateral modification templates and ensuring the supplier signs (and dates) the award and returns it to Elbit which is then retained to the procurement file to demonstrate compliance with these two requirements.

ESA requires the supplier to sign the following statement on the Purchase Order or relevant document and return to ESA Buyer when applicable:

“Any representations and certifications submitted resulting in award of this Subcontract are hereby incorporated either in full text or by reference, and any updated representations and certifications submitted thereafter are incorporated by reference and made a part of this Subcontract with the same force and effect

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as if they were incorporated by full text. By signing this Subcontract, the Subcontractor hereby certifies and discloses that as of the time of award of this Subcontract: (1) the Subcontractor, or its principals, is not debarred, suspended or proposed for debarment or declared ineligible for award by any Federal agency; (2) no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with awarding the contract or this Subcontract; and (3) no changes have occurred to any other representations and certifications made by the Subcontractor resulting in award of this subcontract. The Subcontractor agrees to promptly notify the Elbit Buyer of any changes occurring at any time during performance of this Subcontract to any representations and certifications submitted by the Subcontractor.”

4. FAR 52.222-22 Previous Contracts and Compliance Reports (FEB 1999)

(a) SELLER represents that if SELLER has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26): (a) SELLER has filed all required compliance reports and (b) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

5. FAR 52.222-25 Affirmative Action Compliance (APR 1984)

(a) SELLER represents: (a) that SELLER has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

- If (b) that in the event such a program does not presently exist, SELLER will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.