

# ULTRA ELECTRONICS ADVANCED TACTICAL SYSTEMS

## GENERAL PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT

### **SECTION II: GENERAL TERMS AND CONDITIONS**

- |    |   |    |                                      |
|----|---|----|--------------------------------------|
| 1  | Definitions   | 30 | Liens                                |
| 2  | Complete Agreement  | 31 | Taxes                                |
| 3  | Invoice and Payment   | 32 | Over shipments                       |
| 4  | Compliance with and Applicability of Laws                   | 33 | Price Adjustment                     |
| 5  | Assignment  | 34 | Flow-Down                            |
| 6  | Subcontracting  | 35 | Governing Law                        |
| 7  | Packing and Shipping  | 36 | Incidental and Consequential Damages |
| 8  | Delivery  | 37 | SELLER Ownership Change              |
| 9  | Inspection, Acceptance, and Rejection                       | 38 | Safety and Accident Prevention       |
| 10 | Quality Control   | 39 | Non-Waiver                           |
| 11 | Changes   | 40 | Severability                         |
| 12 | Special Tools and Special Test Equipment                    | 41 | Survivability                        |
| 13 | Termination/Cancellation                                    | 42 | Restriction on Hiring Personnel      |
| 14 | Stop Work Order   | 43 | Export Control                       |
| 15 | Disputes  | 44 | Priority Rating                      |
| 16 | Record Retention/Audit                                      | 45 | Suspect Counterfeit Parts            |
| 17 | Indemnity   |    |                                      |
| 18 | Proprietary Information                                     |    |                                      |
| 19 | Intellectual Property                                       |    |                                      |
| 20 | SELLER's Data   |    |                                      |
| 21 | Patent, Copyright, Trade Secret, and Trademark<br>Indemnity |    |                                      |
| 22 | Warranty  |    |                                      |
| 23 | Price Warranty  |    |                                      |
| 24 | Title and Risk of Loss                                      |    |                                      |
| 25 | Insurance Requirements                                      |    |                                      |
| 26 | Conflict of Interest  |    |                                      |
| 27 | Status – Independent Contractor                             |    |                                      |
| 28 | Notification of Debarment/Suspension Status                 |    |                                      |
| 29 | Notice of Labor Disputes                                    |    |                                      |

### **SECTION II: FAR FLOW DOWN PROVISIONS**

- A Incorporation of FAR Clauses

## **SECTION I: GENERAL TERMS AND CONDITIONS**

### **1 DEFINITIONS:**

- a) "Items" means products, goods, supplies, materials, articles, parts, components, or assemblies described in the Order.
- b) "Order" means the instrument of contracting, including all of its documents, exhibits, and attachments referenced.
- c) "SELLER" means the party with whom ULTRA ELECTRONICS ADVANCED TACTICAL SYSTEMS ("ULTRA") is contracting and includes any reference to "vendor," "subcontractor," "contractor," "licensor," "consultant," or "supplier."
- d) "Services" means the Subcontractor's professional, engineering, scientific, technical, testing, educational, training or other efforts and conduct rendered by Subcontractor for the benefit of ULTRA other than the delivery of Items.
- e) "Ultra Procurement Representative" means a person authorized by ULTRA's procurement organization to administer and/or execute this Order.

### **2 COMPLETE AGREEMENT:**

- a) This Order integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and, together with Exhibits, Attachments and any Task Order(s) issued hereunder, constitutes the entire agreement between the parties.
- b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this contract.
- c) **Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are objected to by ULTRA and have no effect unless expressly accepted in writing by ULTRA.**

### **3 INVOICE AND PAYMENT:**

- a) ULTRA's Order number, including any amendment designation or controlling blanket agreement number, must appear on all invoices, packing lists, bills of lading, packages, containers, or correspondence processed under this Order.
- b) Unless otherwise specified, a separate invoice will be issued for each shipment or services rendered. Federal, state, and local taxes applicable to the invoiced amount (if any) shall be so identified on the face of the invoice. SELLER's right to payment is contingent upon ULTRA's approval and acceptance of Items delivered or Services rendered in accordance with the terms and specifications called for by this Order, but payment of the stipulated price is not evidence of ULTRA's final acceptance of the Items or Services called for in the Order. Discount terms of this Order (if any) and payment of the invoices will be based upon the date specified on this Order for delivery of Items or Services or the actual delivery date of such Items or Services, whichever is later.
- c) Unless freight and other charges are itemized, any discount will be taken on the full amount of the invoice. If no discount is offered, payment of the invoices will be made within forty-five (45) days after receipt and acceptance of Items or completion and acceptance of Services, or forty-five (45) days after receipt of an acceptable invoice, whichever is later.
- d) SELLER agrees that ULTRA shall have the right to set-off against any amounts which may become payable by ULTRA to SELLER under this Order any amounts which SELLER may owe to ULTRA, whether arising under this Order or others.
- e) SELLER warrants that the prices specified in this Order do not exceed the selling price for the same or substantially similar Items or Services to any other purchaser, taking into account the quantity and schedule under similar conditions of purchase; and that such prices include all applicable federal, state, local, and other taxes in effect on the date of this Order.

### **4 COMPLIANCE WITH AND APPLICABILITY OF LAWS:**

- a) SELLER warrants that in the performance of this Order, it shall comply with all applicable federal, state and local laws including, specifically, all applicable occupational health and safety regulations. On its invoice or in other form satisfactory to ULTRA, SELLER shall certify that the Items and/or Services covered by this Order were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act (29 U.S.C. 201-219), as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof and under FAR Section 22.
- b) ULTRA is an "Equal Opportunity" employer and SELLER shall, therefore, comply with the provisions of the President's Executive Order 11246 as supplemented and all related regulations of the U.S. Department of Labor. The SELLER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. SELLER will take affirmative action to ensure that applicants are employed, and that employees are

treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship. The SELLER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- c) Utilization of Small/Small Disadvantaged/ Women-Owned Small Business and Labor Surplus Area Concerns: Consistent with the efficient performance of the Order, SELLER agrees to accomplish a maximum amount of subcontracting and purchasing to Small/Small Disadvantaged/ Women-Owned Small Business Concerns, and to use its best efforts to place subcontracts hereunder with subcontractors who will perform subcontracts substantially in or near eligible labor surplus areas when it can be done at prices no higher than are obtainable elsewhere.
- d) SELLER agrees and covenants that none of its employees or employees of its subcontractors who provide Items or Services to ULTRA pursuant to this Order are unauthorized aliens as defined in the Immigration Reform and Control Act of 1986. SELLER agrees to indemnify and hold ULTRA harmless from any liability ULTRA may suffer as a result of SELLER's violation of this Act.

#### **5 ASSIGNMENT:**

Any assignment of SELLER's rights or delegation of SELLER's duties under this Order shall be void, unless prior written consent is given by ULTRA. SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if ULTRA is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of ULTRA against SELLER. ULTRA shall have the right to make settlements and/or adjustments in price without notice to any assignee.

#### **6 SUBCONTRACTING:**

No Items or Services to be delivered under this Order (with the exception of standard commercial supplies or raw material) shall be procured by SELLER from a third party without ULTRA's prior written consent unless this purchase is being made from SELLER in its capacity as a retailer, jobber or distributor. No purchase or subcontract placed by SELLER under this Order shall be on a cost-plus-a-percentage-of-cost basis. SELLER shall select subcontractors on a competitive basis to the maximum practical extent possible.

#### **7 PACKING AND SHIPPING:**

Unless otherwise provided on the face of this Order, the following provisions shall apply to all shipments. SELLER shall: (a) prepare all Items for shipment to prevent damage or deterioration, secure lowest lawful transportation rates, and comply with carrier classifications and tariffs; (b) defray all direct charges for preparation, packing, crating, or cartage unless separately stated in the Order, (c) consolidate into one shipment all Items to be forwarded on each day by the same means of transportation; (d) number and mark each container consecutively with applicable Order and part number; (e) indicate the container and Order numbers on the applicable bill of lading; (1) place inside the No. 1 container one copy of the packing sheet showing Order number(s), and attach, also, one copy to the outside of the container; (g) forward freight collect when Items are sold F.O.B. place of shipment, except for Parcel Post, Federal Express (or equivalent), or United Parcel Service; (h) request that Shipper include on Shipper's invoice to ULTRA the appropriate Order number(s); and (i) delete any declaration concerning value of the shipment except when tariff rating is dependent upon the released or declared value, in which event, value shall be released or declared at the maximum value for the lowest rating or rate. SELLER agrees to bear the cost of insurance regardless of F.O.B. point.

#### **8 DELIVERY: TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS ORDER:**

Deliveries shall be strictly in accordance with the quantities and schedule specified in the Order. If at any time it appears SELLER may not meet such schedule, SELLER shall immediately, by verbal means (to be confirmed in writing), notify ULTRA of the reasons for and estimated duration of the delay. At ULTRA's request, SELLER shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and shipping via air or other means of fast transportation. Any additional cost caused by these requirements shall be borne by SELLER, unless the delay in delivery arises out of causes beyond the control and without the fault or negligence of SELLER or its suppliers or subcontractors. These requirements are in addition to all of ULTRA's other rights and remedies as may be provided by law or this Order.

#### **9 INSPECTION, ACCEPTANCE, AND REJECTION:**

- a) All Items or Services are subject to (a) inspection and test during work progress regardless of location; (b) inspection and test prior to completion regardless of location; and (c) final inspection, test, and acceptance at destination, regardless of the

F.O.B. point or any payment or prior inspection at source. Final inspection will be made at a reasonable time after receipt of the Items or Services. Final inspection shall be conclusive except as regards latent defects, fraud and such gross mistakes as amount to fraud. SELLER shall furnish to ULTRA, if requested, all information and data as may be reasonable by ULTRA in order to perform inspection and acceptance. Final inspection does not relieve SELLER of its obligation under any Warranties herein or as may be provided by law.

- b) In case any Item is defective in material or workmanship, or otherwise not in strict conformity with the requirements of this Order, ULTRA shall have the right either to reject it, require its correction, or accept the Item with an equitable adjustment in price. Any Item which has been rejected or required to be corrected may be returned to and shall be replaced or corrected by and at the expense of SELLER, including transportation charges as well as including any costs incurred by ULTRA and/or any costs incurred by a third party under the control or direction of ULTRA for effort that may be required to enable SELLER to re-perform in strict conformity with the requirements of this contract, promptly after notice. If after being requested by ULTRA, SELLER fails to promptly replace or correct any defective Item within the contractual delivery schedule, ULTRA may (i) by contract or otherwise, replace or correct such Item and charge to SELLER the cost occasioned ULTRA thereby; (ii) without further notice terminate this Order for default, in accordance with Paragraph 13(b) of this Order, entitled "Cancellation- Default"; or (iii) require a reduction in price which is equitable under the circumstances.
- c) If any Services performed hereunder are not in conformity with the requirements of this Order, ULTRA shall have the right to require SELLER to perform the Services again in conformity with the requirements of the Order, at no additional increase in total Order price. SELLER shall also be responsible for any costs incurred by ULTRA and/or any costs incurred by a third party under the control or direction of ULTRA for effort that may be required to enable SELLER to re-perform in strict conformity with the requirements of this contract. When the Services to be performed are of such a nature that the defect cannot be corrected by re-performance of the Services, ULTRA shall have the right to (i) require SELLER to immediately take all necessary steps to ensure future performance of the Services in conformity with the requirements of the Order; and (ii) reduce the Order price to reflect the reduced value of the Services performed. In the event SELLER fails promptly to perform the Services again or to take necessary steps to insure future performance of the Services in conformity with the requirements of the Order, ULTRA shall have the right to either (i) by contract or otherwise have the Services performed in conformity with the Order requirements and charge to SELLER any cost occasioned to ULTRA that is directly related to the performance of such Services; or (ii) terminate this Order for default as provided in Paragraph 13(b) of this Order, entitled "Termination/Cancellation."
- d) Rejected Items or Services may not be re-tendered to ULTRA by SELLER without the prior written notice and approval of ULTRA. SELLER shall provide and maintain an inspection system in accordance with sound business practice and as otherwise provided in this Order. Records of all inspection work by SELLER shall be kept complete and available to ULTRA during the performance of this Order and for three (3) years after final payment, and in such manner as may be specified elsewhere in this Order.

## **10 QUALITY CONTROL:**

In accordance with the specific requirements of this Order, SELLER shall provide and maintain a quality control system acceptable to ULTRA covering the Items and Services hereunder. Records of all inspection work by SELLER shall be kept complete and available to ULTRA during the performance of this Order and for such longer period as SELLER may be specified elsewhere in this Order. Authorized purchasing, technical, and quality assurance representative(s) of ULTRA shall be entitled to enter the plant of SELLER at all reasonable times for the purpose of maintaining liaison between the quality control system and the program, to review SELLER's manufacturing and processing plans and records, to conduct preliminary inspection and tests of the work in process or to otherwise observe the Services of SELLER. A like provision giving ULTRA the right to enter the plants of SELLER's subcontractors, consultants and suppliers shall be included by SELLER in its subcontracts, consulting agreements, and Orders.

## **11 CHANGES:**

- a) The ULTRA Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Order in anyone or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.
- b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Order, ULTRA shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- c) SELLER must assert its right to an equitable adjustment under this paragraph within thirty (30) days from the date of receipt of the written change order. If the SELLER's proposal includes the cost of property made obsolete or excess by the change, ULTRA shall have the right to prescribe the manner of disposition of the property.
- d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" paragraph of this Order. However,

nothing contained in this "Changes" paragraph shall excuse SELLER from proceeding without delay in the performance of this Order as changed.

## **12 SPECIAL TOOLS AND SPECIAL TEST EQUIPMENT**

- a) Special tools, dies, jigs, fixtures and patterns (collectively referred to as "special tooling") and special test equipment used in the manufacture and testing of Items or in the furnishing of Services shall be furnished by and at the expense of SELLER, shall be kept in good condition, and when necessary shall be replaced by SELLER without expense to ULTRA. ULTRA may at any time reimburse SELLER for the cost of any of the special tooling and special test equipment used exclusively under this Order and become the owner and entitled to the possession of same.
- b) If the Order price includes the cost of any special tooling or special test equipment fabricated or required by SELLER for the purpose of filling this Order, such special tooling and test equipment and any related process sheets shall become ULTRA's property, and, to the extent feasible, shall be so identified by SELLER. SELLER shall, at its own expense, maintain such special tooling and test equipment in proper working condition. SELLER shall use the tooling and test equipment only for the production of Items and/or Services for ULTRA and shall follow its normal industrial practice to maintain property control records on such special tooling and test equipment. When this Order has been completed, such tooling and test equipment shall be disposed of as ULTRA directs. SELLER shall include the substance of this paragraph in all subcontracts, consulting agreements, and orders issued by it hereunder.

## **13 TERMINATION/CANCELLATION**

- a) Termination-Convenience. Regardless of whether this is a Government or Commercial Order, the performance of work under this Order may be terminated, in whole or in part, by ULTRA for ULTRA's convenience in accordance with the "Termination for Convenience of the Government" clause in FAR 52.249-2 or "Termination (Cost-Reimbursement)" clause in 52.249-6, as applicable, incorporated herein by reference. "ULTRA" shall be substituted for the terms "Government" and "Contracting Officer" throughout the clause, "180 days" shall be substituted for "1 year" in paragraph (d), and paragraph (i) of the clause shall be deleted in its entirety.
- b) Cancellation-Default. ULTRA may, by written notice of default to SELLER, terminate the whole or any part of this Order if SELLER fails to (i) make delivery of any Items or to perform any Services within the time specified herein, or any extension thereof by change order or amendment; or (ii) replace or correct defective Items or re-perform Services in accordance with the provisions of subparagraphs (b) and (c) of the paragraph hereof entitled "INSPECTION, ACCEPTANCE, AND REJECTION"; or (iii) perform any of the other provisions of the Order or so fails to make progress as to endanger performance of this Order in accordance with its terms and, in either of the circumstances specified in subparagraph (c), does not cure such failure within a period of ten (10) days (or such longer period as ULTRA may authorize in writing) after receipt of notice from ULTRA specifying such failure. In the event of termination pursuant to this clause, ULTRA may procure upon such terms and in such manner as ULTRA may deem appropriate, Items or Services similar to those so terminated and SELLER shall be liable to ULTRA thereby; provided, that SELLER shall continue the performance of this Order to the extent not terminated under the provisions of this clause. If after termination under this subparagraph (b), it is determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.
- c) Other: By written notice to SELLER, ULTRA may cancel the whole or part of this Order in the event of suspension of SELLER's business, insolvency of SELLER, institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against SELLER, appointment of a trustee or receiver for SELLER's property or business, any assignment by SELLER for the benefit of creditors or for any failure by SELLER to provide adequate assurances (as provided for in Uniform Commercial Code, section 2-609) of its ability or willingness to perform its obligations under this Order. Such cancellation shall be deemed "for default" in accordance with subparagraph (b) of this "Termination/ Cancellation" paragraph.

## **14 STOP WORK ORDER**

- a) SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from ULTRA, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs

allocable to the Work during the period of Work stoppage.

- b) Within such period, ULTRA shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" paragraph shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

#### **15 DISPUTES:**

Either party may only litigate any dispute arising under or relating to this Order before any court of competent jurisdiction in the State of Texas and SELLER consents to this jurisdiction. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance. SELLER's performance shall be in accordance with ULTRA's written instructions.

#### **16 RECORD RETENTION/AUDIT:**

- a) SELLER agrees to maintain books, documents, papers, accounting records, and other evidence pertaining to costs incurred by SELLER and, where relevant to method of payment, to make such material available at its office at reasonable times during the contract period, and for three (3) years from the date of final payment under the Order for inspection by ULTRA or its authorized representative.
- b) If ULTRA deems an audit of SELLER's books and records is needed to review cost or pricing data, to price changes, terminations, or otherwise, an audit may be conducted by an independent certified public accounting firm chosen by ULTRA. SELLER agrees that the amount of any sustained audit exceptions resulting from any subsequent audit (so authorized by the Order) made after final payment will be refunded to ULTRA.

#### **17 INDEMNITY:**

SELLER hereby indemnifies and shall defend and hold harmless ULTRA, and its officers, employees, authorized representatives, ULTRA's customers, and any subsequent seller or user of the Items or Services from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, losses, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature asserted by employees of SELLER or any other third party (including employees of ULTRA) arising out of the death or injury to any person, property damage or loss, or economic injury during, or after completion of the work hereunder and in any matter directly or indirectly caused, occasioned by, or claimed to be caused, occasioned by reason of any negligent act, omission, or fault whether active or passive of SELLER, its subcontractors, vendors, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Order; except that SELLER's aforesaid indemnity and hold harmless requirements shall not be applicable to any liability caused by the negligence or willful misconduct of ULTRA. In case a claim should be brought or an action filed with respect to the subject hold harmless and indemnity herein, SELLER agrees that ULTRA shall have the right to approve attorneys employed by SELLER in the defense of any claim or action filed with respect to the subject hold harmless and indemnity herein. ULTRA agrees, that such approval will not be unreasonably withheld. SELLER further agrees that ULTRA may employ attorneys of its own selection to appear and assist in the defense of the claim or action on behalf of ULTRA. SELLER agrees to cooperate with such attorneys employed by ULTRA. In the event of such a defense by the SELLER, ULTRA shall have the right to approve any compromise or settlement of any claims or actions against ULTRA; such approval shall not be unreasonably withheld.

#### **18 PROPRIETARY INFORMATION:**

SELLER agrees not to disclose to any person outside of its employ, and not to use for any purpose other than to fulfill its obligations under this Order, any information received from ULTRA pursuant to this Order which has been disclosed to SELLER by ULTRA in confidence, and which is not otherwise publicly available. Upon termination of the Order, SELLER agrees to return to ULTRA upon request all drawings, blueprints, descriptions or other material received from ULTRA and all materials containing said proprietary information. The obligation of SELLER concerning confidentiality shall survive any termination, including expiration, of this Order. Upon completion or termination of this Order, SELLER shall, at its own expense, dispose all such information, and items as may be subsequently directed by ULTRA.

#### **19 INTELLECTUAL PROPERTY:**

- a) ULTRA is hereby given exclusive ownership of all Data generated under this Order subject to the rights of ULTRA's contract with its client (if any).
- b) "Data," as used in paragraphs 19 and 20 of this Order, means any knowledge, information, drawings, designs, technical

information, computer programs or computer software documentation that SELLER discloses to ULTRA in connection with Order.

- c) All intellectual property rights, including copyrights, trademarks, and other publication rights, in the reports and other documents prepared by SELLER in connection with this Order shall vest in ULTRA. SELLER shall not publish any of the results of the work provided for hereunder without the express written consent of ULTRA.
- d) Patentable discoveries, inventions, or copyrights resulting from the work performed by SELLER under this Order are hereby transferred to and, all of SELLER's rights accruing from such discoveries, inventions, or copyrights are hereby transferred to and shall solely vest in ULTRA as its property subject to the provisions of Ultra's contract with its customer.

## **20 SELLER'S DATA:**

- a) For Commercial Orders: Any Data which SELLER may disclose to ULTRA shall not be deemed to be confidential or proprietary information and shall be acquired by ULTRA free from any restrictions to use or disclosure thereof.
- b) For Government Orders: Data SELLER has not pre-determined to be proprietary with the prior written approval of ULTRA pursuant to DFARS 252.227-7013 or FAR 52.227-14 (or other applicable Government procurement regulations) and has not marked with a Limited or Restricted Rights legend, in accordance with DFARS 252.227-7013 or FAR 52.227-14 (or other applicable Government procurement regulations), shall not be considered as proprietary to SELLER nor in any way restrict ULTRA's or the Government's use of such Data.

## **21 PATENT, COPYRIGHT, TRADE SECRET, AND TRADEMARK INDEMNITY:**

SELLER hereby indemnifies and shall defend and hold harmless ULTRA, and its officers, employees, authorized representative, ULTRA's customers, and any subsequent seller or user of the Items or Services from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, losses, liabilities, interest, attorney's fees, costs, and expenses of whatsoever kind or nature incurred by ULTRA as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any United States or foreign patent, copyright, trade secret, or trademark and arising out of the use of the Items or Services furnished under the Order by SELLER, or out of the processes or actions employed by, or used on behalf of SELLER in connection with the performance of the Order, provided SELLER is reasonably notified of such claims or proceedings. SELLER's obligation shall not apply to Items manufactured pursuant to detailed designs developed and furnished by ULTRA nor to any infringement arising from the use or sale of Items in combination with items not delivered by SELLER if such infringement would not have occurred from the use or sale of such Items solely for the purpose for which they were designed or sold to ULTRA. SELLER's obligation shall extend to the U.S. Government only if and to the extent ULTRA or its customers and subsequent sellers/users have agreed or are required to indemnify the U.S. Government. The same defenses of ULTRA provisions set out in the last three sentences of Paragraph 17, "INDEMNITY," also apply to this Paragraph 21, "PATENT, COPYRIGHT, TRADE SECRET AND TRADEMARK INDEMNITY"

## **22 WARRANTY:**

SELLER will perform the work in accordance with reasonable and customary engineering practices prevailing at the time and at the place where performed. If, during the ninety (90) day period immediately following completion of performance of the Order, it is determined that there is a substantial and material error in SELLER's performance as a result of reasonable and customary engineering practices not having been met, SELLER shall take such corrective action as may reasonably be necessary, within the applicable Statement of Work, to substantially remedy the error.

## **23 PRICE WARRANTY:**

SELLER warrants that the prices specified in this Order do not exceed the selling price for the same or substantially similar Items or Services to any other purchaser, taking into account the quantity and schedule under similar conditions of purchase; and that such prices include all applicable federal, state, local, and other taxes in effect on the date of this Order.

## **24 TITLE AND RISK OF LOSS:**

- a) Unless otherwise specified, title to and risk of any loss of or damage to the Items shall pass from SELLER to ULTRA F.O.B. ULTRA's plant. Passing of title upon such delivery shall not constitute acceptance of the Items by ULTRA or relieve SELLER of any of its obligations. SELLER shall be responsible for and shall bear any and all risk of loss or damage to all materials furnished, loaned, or rented by ULTRA to SELLER until completion and final acceptance of this Order.
- b) Risk of loss for property, inventory, goods, work-in-process, tooling, etc., in SELLER's custody or control shall be assumed.

## **25 INSURANCE REQUIREMENTS:**

- a) In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of ULTRA or its customers for any

reason in connection with this Order, then SELLER and its subcontractors shall procure and maintain for the performance of this Order worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as ULTRA may require. In addition, SELLER and its subcontractors shall comply with all site requirements. SELLER shall provide ULTRA thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER's of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name ULTRA as an additional insured for the duration of this Order. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of ULTRA and is not contributory with any insurance, which ULTRA may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Order.

- b) **SELLER shall indemnify and hold harmless ULTRA, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors.**

## **26 CONFLICT OF INTEREST:**

- a) SELLER warrants that, to the best of his knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest as defined in FAR Subpart 9.5 and as stated herein. An "organizational conflict of interest" exists when the nature of the work to be performed under this Order may, without some restriction on future activities, (a) result in an unfair competitive advantage to the SELLER or (b) impair SELLER's objectivity in performing the work under this Order.
- b) SELLER agrees that if an actual or potential organizational conflict of interest is discovered, he will make full disclosure in writing to the ULTRA Procurement Representative. This disclosure shall include a description of actions which SELLER has taken or proposed to take, after consultation with the Ultra Procurement Representative, to avoid, mitigate, or neutralize the actual or potential conflict.
- c) Remedies - ULTRA may terminate this Order for convenience, in whole or in part, if it deems necessary to avoid an organizational conflict of interest. If SELLER was aware of a potential organizational conflict of interest before award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to ULTRA, ULTRA may terminate the Order for default, or pursue such other remedies as may be permitted by law or this Order.
- d) SELLER further agrees to insert in any subcontract, order, or consultant agreement hereunder, provisions which shall conform substantially to the language of this clause, including this subparagraph (d).

## **27 STATUS - INDEPENDENT CONTRACTOR:**

During the term of this Order, SELLER shall furnish Items and Services as an independent contractor and SELLER shall not, without express written authority, act for or bind ULTRA in any manner. SELLER shall not under any circumstances be considered an employee of ULTRA. ULTRA shall not have any right to direct or control SELLER in the method of performance or means of accomplishing the desired result except to the extent that a particular method is specified or any specifications and requirements which are made a part hereof. SELLER shall, however be responsible for the quality of the work done and materials used, and warrants that the Services and materials will be first class in every respect. All contracts, agreements, or negotiations completed without ULTRA's express written consent shall be subject to ULTRA's written approval.

## **28 NOTIFICATION OF DEBARMENT/ SUSPENSION STATUS:**

SELLER shall provide immediate notice to ULTRA in the event of being suspended, debarred or declared ineligible by any Local, State or U.S. Government Agency, or upon receipt of a notice of proposed debarment or suspension. SELLER shall not subcontract with or purchase from firms so suspended or debarred.

## **29 NOTICE OF LABOR DISPUTES:**

Whenever SELLER has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, SELLER shall immediately give written notice thereof, including all relevant information with respect thereto to ULTRA. SELLER agrees to insert the substance of this clause in any subcontract or Order hereunder.

## **30 LIENS:**

If a lien is filed against the Items by any entity which has supplied material or services at the request of SELLER, its



subcontractors, or suppliers, SELLER shall at its expense, take all necessary action to cause such lien to be released or discharged immediately. Upon request of ULTRA, SELLER shall furnish affidavits, releases or other evidence ULTRA may require to satisfy ULTRA that all claims, liens, demands, liabilities, costs, expenses, losses, and damages, have been paid and discharged. SELLER's failure to comply with the requirements of this clause shall be construed as authorization for ULTRA to act on SELLER's behalf to facilitate compliance. SELLER agrees that any and all costs incurred by ULTRA while acting on SELLER's behalf will be the sole responsibility of SELLER and will be paid upon demand.

**31 TAXES:**

SELLER shall pay all taxes, levies, duties, and assessments of every nature including any sales, use or other taxes payable at source and due in connection with any work under the Order and hereby indemnifies and holds harmless ULTRA from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

**32 OVERSHIPMENTS:**

SELLER is instructed to ship only the quantity(ies) specified in this Order. However, any deviation caused by conditions of loading, shipping, packing, or allowances in manufacturing processes may be accepted by ULTRA according to the overshipment allowance indicated on the face of the Order. If no allowance is shown, it shall be zero percent. ULTRA reserves the right to return any over shipment in excess of the allowance at SELLER's expense.

**33 PRICE ADJUSTMENT:**

ULTRA will not accept shipment at any increase in price above that indicated on this order. Any general price decrease announced by SELLER in classification of equipment/materials and/or services similar to the Items or Services described on this Order shall automatically reduce the price thereof by a comparable percentage.

**34 FLOW-DOWN:**

SELLER agrees that the pertinent and applicable clauses contained in this Order shall be passed to SELLER's subcontractors and vendors under this Order.

**35 GOVERNING LAW:**

The order shall be interpreted, construed and governed under the laws of the state of Texas as if executed and performed wholly within the state of Texas, exclusive of its choice of law provisions. Where not modified by the terms herein, the provisions of the Texas enactment of Article 2 of the Uniform Commercial Code shall apply to this transaction. To the extent that the federal common law of government contracts is dispositive under Government Contracts, this Order will be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government.

**36 INCIDENTAL AND CONSEQUENTIAL DAMAGES:**

ULTRA shall not be liable to SELLER for any incidental and/or consequential damages arising out of or related to the performance of this Order.

**37 SELLER OWNERSHIP CHANGE:**

SELLER is required to submit in writing to ULTRA notification on the following change conditions:

- i. Acquisition by or merger with any foreign interest;
- ii. Majority or controlling interest obtained by a foreign interest.

**38 SAFETY AND ACCIDENT PREVENTION:**

In performing any work under this Order on premises which are under the control of ULTRA or the U.S. Government, the SELLER shall conform to all safety rules and requirements prescribed by ULTRA or the Government. SELLER agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of SELLER, ULTRA, and Government personnel performing or in any way coming in contact with the performance of this Order. Any violation of such rules and requirements, unless promptly corrected, as directed by ULTRA shall be grounds for termination of the Order in accordance with the default provisions hereof.

**39 NON-WAIVER:**

Any failure at any time of either party to enforce any provisions of this Order shall not constitute a waiver of such provision or prejudice such party's right to enforce such provision at any subsequent time.

#### **40 SEVERABILITY:**

The invalidity or unenforceability of any provision of this Order shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Order to the extent of its invalidity or unenforceability, and this Order shall be construed and enforced as if the Order did not contain that particular provision to the extent of its invalidity or unenforceability.

#### **41 SURVIVABILITY:**

All covenants, indemnities, guarantees, and warranties by SELLER shall survive the termination or expiration of this Order.

#### **42 RESTRICTION ON HIRING PERSONNEL:**

SELLER understands that ULTRA has incurred the expense of recruitment, selection, and training of its personnel as well as other expenses. Therefore, SELLER agrees not to interfere with the employment relationship between ULTRA and any of their personnel who direct the work under this Order and will not employ such personnel for a period of at least one year from the termination, completion, or final payment of this Order, whichever is later.

#### **43 EXPORT CONTROL:**

- a) SELLER agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2778, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, without the authority of a U.S. export license, export agreement (e.g., TAA, MLA), or an applicable exemption or exception.
- b) SELLER agrees to notify ULTRA if any deliverable under this Contract is restricted by export control laws or regulations.
- c) SELLER shall immediately notify the ULTRA Procurement Representative 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 U.S. Government entity or agency.
- d) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- e) Where SELLER is a signatory under an ULTRA export license or export agreement SELLER shall provide prompt notification to the ULTRA Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the SELLER's performance under this Contract.
- f) **SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.**

#### **44 PRIORITY RATING**

If this Order is identified as a "rated order," certified for national defense use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulations (15 C.F.R. Part 700).

#### **45 SUSPECT COUNTERFEIT PARTS**

1). "Suspect/Counterfeit Parts" are parts that may be of new manufacture but labeled to represent a different class of parts or used and/or refurbished parts with false labeling representing them as new parts or a manufacturer other than the actual manufacturer. Examples of suspect/counterfeit parts that have been prominent include: (a). Fasteners, including bolts and nuts, made of carbon steel (designated as grade five or grade eight) or stainless steel, with head marks or stamps shown on the head mark list prepared by the United States Customs Service (see latest revision)(b).electrical or electronic parts and components that are falsely identified and/or labeled, or properly identified, but passed as acceptable product when it is known to be nonconforming to specified OEM requirements(c). Piping, valves and flanges bearing labels that falsely indicate that the items meet recognized ASME, ASTM, or other consensus standards, or falsely bear independent testing laboratory markings; and,(d). Used or refurbished molded-case electrical circuit breakers or similar type switch gear

2). Supplies furnished to ULTRA under this contract shall not include suspect/counterfeit parts nor shall such parts be used in performing any work under this contract whether on or off the facility site.

3). If suspect/counterfeit parts are furnished under this purchase order and are found in any of the goods delivered hereunder, such items will be impounded by appropriate ULTRA personnel. Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer and the Seller shall be liable for any and all costs relating to the removal and replacement of said parts, including without limitation Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's goods after counterfeit parts

have been exchanged. Seller shall be fully liable for all such costs, even if such cost might be considered indirect, special or consequential damages. Seller's liability for suspect/counterfeit parts shall not expire until the product is found to be in satisfactory operation after delivery for its implied warranty only if the product is used for non-space application (e.g., ground or airborne). At Buyer's request, Seller shall return any removed counterfeit parts to Buyer in order that Buyer may turn such parts over to its Government customer for further investigation. Seller agrees that any Government or quasi-Government directive, such as a GIDEP alert, DOE, or a directive from ULTRA indicating that such parts are counterfeit, shall be deemed definitive evidence that Seller's parts contain counterfeit parts and such reports may be referred to the Department of Justice.

## **SECTION II: FAR FLOWDOWN PROVISIONS**

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## **FAR/DFARS FLOWDOWN PROVISIONS FOR FIXED PRICE PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A UNITED STATES GOVERNMENT CONTRACT**

In addition to the clauses of General Provisions, the following provisions shall apply to the Order as required by the terms of Buyer's Government 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 both (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 Provisions. 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 clause, that version shall apply to this Contract. Buyer will provide the applicable dates upon receipt of a written request from Seller.

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 (OCT 2020)
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (Feb 2021)
52.236-13	ACCIDENT PREVENTION (NOV 1991)
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2020)

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 (JUN 2016) (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) (Applies if Buyer notifies SELLER that it must submit certified cost or pricing data)
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 (NOV 2020)
- (Applies if this Contract is for services subject to the Service Contract Act.)

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 (JAN 2021) (Applies if the Work contains other than domestic components, and is performed for a non-DOD prime contract.)
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.)
52.227-14	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 (DEC 2013) (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.)
52.245-1	GOVERNMENT PROPERTY (ALTERNATE I) (JAN 2017) (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 (FEB 2006) (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 (OCT 2015) (*) (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.)
52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (June 2020)

The following FAR clause applies if this Contract exceeds \$10,000

52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (*)
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The following FAR clause applies if this Contract exceeds \$15,000

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

The following FAR clause applies 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](http://www.sam.gov). All information posted will be available to the general public.)

The following FAR clause applies if this Contract exceeds \$35,000

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (June 2020)  
(Applies unless this Contract is for COTS items. Any notices required by SELLER under this clause shall be provided to Buyer.)

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)  
52.222-35 EQUAL OPPORTUNITY FOR VETERANS (June 2020) (\*)  
52.222-37 EMPLOYMENT REPORTS ON VETERANS (June 2020) (\*)  
52.227-1 AUTHORIZATION AND CONSENT (June 2020)

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

52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (March 2020)  
(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 (June 2020)  
(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 (OCT 2010)  
52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (June 2020)  
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)

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

52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015) (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) (OCT 2015)

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

The following DFARS clauses apply to this Contract if Buyer's prime contract is with the Department of Defense:

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)
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 this 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.)
252.223-7001	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. Applies in lieu of FAR 52.225-1.)
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.)
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)
252.225-7021	TRADE AGREEMENTS (SEPT 2019) (Applies if the Work contains other than U.S.-made, qualifying country, or designated country end products. Applies in lieu of FAR 52.225-5.)
252.225-7028	EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (APR 2003)
252.225-7048	EXPORT-CONTROLLED ITEMS (JUNE 2013)
252.227-7013	RIGHTS IN TECHNICAL DATA - NON-COMMERCIAL ITEMS (FEB 2014) (Applies in lieu of FAR 52.227-14. 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) (Applies in lieu of FAR 52.227-14.)
252.227-7015	TECHNICAL DATA - COMMERCIAL ITEMS (FEB 2014)
252.227-7019	VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE (SEP 2016)
252.227-7037	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 2016)
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.)
252.244-7000	SUBCONTRACTS FOR COMMERCIAL ITEMS OCT 2020)
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 lieu of FAR 52.247-64 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 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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#### **E. CERTIFICATIONS AND REPRESENTATIONS**

SELLER acknowledges that Buyer will rely upon SELLER certifications and representations contained in this clause 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 made at the request of Buyer, and SELLER makes those 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)**

(Applicable 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. 11

(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).**

(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.

(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 Ultra 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, Ultra may terminate this contract for default.

#### **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.

**FAR/DFARS FLOWDOWN PROVISIONS FOR FIXED PRICE PURCHASE ORDERS  
FOR NONCOMMERCIAL ITEMS  
UNDER A UNITED STATES GOVERNMENT CONTRACT**

In addition to the clauses of General Provisions, the following provisions shall apply to the Order as required by the terms of Buyer's Government 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 Provisions. 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.

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 (OCT 2020)
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 (NOV 2020)

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 (JUN 2016) (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) (Applies if Buyer notifies SELLER that it must submit certified cost or pricing data)
52.215-15	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 (NOV 2020) (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 (JAN 2021) (Applies if the work contains other than domestic components, and is performed for a non-DOD prime contract.)
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.)
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 (DEC 2013) (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) (JAN 2017) (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 (FEB 2006) (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 (OCT 2015) (*) (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.)
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) (*)
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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

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|-----------|---|
| 52.204-10 | REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUNE 2020)<br>(SELLER shall report required executive compensation by posting the information to the System for Award Management ("SAM") at <a href="http://www.sam.gov">www.sam.gov</a> . All information posted will be available to the general public.) |
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The following FAR clauses apply if this Contract exceeds \$35,000

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| 52.209-6 | PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUNE 2020) (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. |
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The following FAR clauses apply if this Contract exceeds \$150,000

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| 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)<br>(Applies if Buyer notifies SELLER that it must submit certified cost or pricing data) |
| 52.215-14 | INTEGRITY OF UNIT PRICES (JUNE 2020)  |
| 52.215-23 | LIMITATION ON PASS-THROUGH CHARGES (JUNE 2020)<br>(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)   |

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

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| 52.219-16 | LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999) (Does not apply if SELLER is a small business concern) |
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The following FAR clauses apply if this Contract exceeds \$750,000

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|-----------|---|
| 52.219-9  | SMALL BUSINESS SUBCONTRACTING PLAN (JUNE 2020) (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 (OCT 2010)

52.215-21	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (JUNE 2020)
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 (OCT 2015) (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) (OCT 2015) (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 apply to this Contract if Buyer's prime contract is with the Department of Defense, 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)
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.)
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.)
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. 11

(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).**

(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.

(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 Ultra 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, Ultra 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**

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 Ultra which is then retained to the procurement file to demonstrate compliance with these two requirements.

Ultra requires the supplier to sign the following statement on the Purchase Order or relevant document and return to Ultra 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 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 Ultra 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.

## **CERTIFICATIONS AND REPRESENTATIONS**

1. This clause contains certifications and representations that are material representations of fact upon which ULTRA will rely in making awards to SELLER. By submitting its written offer, or providing oral offers/quotations at the request of ULTRA, or accepting any Order, SELLER certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any subcontract, agreement, other contractual document, or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by ULTRA. SELLER shall immediately notify ULTRA of any change of status with regard to these certifications and representations.
  - (a) **FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.**
    1. SELLER certifies that, to the best of its knowledge and belief, that SELLER and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.
    2. SELLER shall provide immediate written notice to ULTRA if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
  - (b) **FAR 52.222-22 Previous Contracts and Compliance Reports.** SELLER represents that if SELLER has participated in a previous contract or subcontract subject to Equal Opportunity clause (FAR 52.222-26):
    - (i) SELLER has filed all required compliance reports, and (ii) representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.
  - (c) **FAR 52.222-25 Affirmative Action Compliance.** SELLER represents: (i) 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 (ii) 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 Order.