

*For General Dynamics Mission Systems, Inc., General Dynamics Information Technology, Inc., General Dynamics SATCOM Technologies, Inc. and General Dynamics Global Imaging Technologies, Inc.*

**GENERAL PROVISIONS FOR TIME AND MATERIALS PURCHASE  
ORDERS FOR COMMERCIAL SERVICES IN SUPPORT OF  
INDEPENDENT RESEARCH AND DEVELOPMENT OR BUSINESS  
DEVELOPMENT ACTIVITIES-**

**1.0 DEFINITIONS** As used throughout this Order, including provisions incorporated by reference, the following terms shall have the meaning set forth below:

- (a) "BUYER" means General Dynamics Mission Systems Inc., the legal entity issuing this order.
- (b) "BUYER's Supply Chain Team Member" means the authorized Purchasing Agent representing BUYER.
- (c) "Order" means the Purchase Order in which these General Provisions are incorporated.
- (d) "Government" means the Government of the United States of America.
- (e) "SELLER" means the person, firm or corporation which will furnish the Deliverables required under this Order.
- (f) "SELLER's Contract Representative" means the authorized Purchasing Agent or Contract Manager representing SELLER.
- (g) "Service" means products, supplies, engineering support, data or services (including software and software documentation) provided by SELLER.

**2.0 ACCEPTANCE OF ORDER** – Seller shall accept this Order by signing the acceptance copy and returning it promptly to Buyer or by providing to Buyer any of the Services specified herein. By Seller's acceptance of this Order, Seller agrees to the terms, conditions, and specifications of this Order. Buyer hereby objects to and rejects any terms, conditions, or specifications contained in Seller's acceptance of this Order (or any other form or paper submitted by Seller) which differ from or add to the terms, conditions, and specifications of the Order. Seller agrees that the terms, conditions, and specifications of the Order shall prevail over any inconsistent provisions in any form or other paper submitted by Seller.

**3.0 WAIVER** – Buyer's failure to enforce any provision of the Order or to protest any breach or default of the Order by Seller shall not be construed as evidence of (or evidence to interpret) the rights or obligations of the parties, or as a waiver of any Seller obligation or Buyer right provided under the Order or by law. No right or remedy of Buyer shall be deemed waived or released unless such waiver or release is in writing and signed by an authorized representative of Buyer.

**4.0 DELIVERY**

**4.1 Transportation:** Transportation shall be in accordance with the Delivery Terms specified on the front page of the Purchase Order. Buyer shall not be liable for insurance or premium transportation charges unless Buyer consents to such charges in writing.

**4.2 Risk of Loss:** Seller shall bear the risk of any loss or damage to the Services until they are delivered in conformity to the "Ship To" address on the front page of this Purchase Order .

**4.3 Title:** Except as otherwise expressly stated in this Order, title to all Services furnished under this Order shall pass to Buyer upon final acceptance, regardless of when or where Buyer takes physical possession of the result of the Service.

**4.4 Delays:** Seller understands that Buyer depends upon prompt delivery by Seller at the time specified in the schedules furnished by Buyer in order to comply with Buyer's contractual obligations to third parties. Because time is of the essence, if delivery of the Service is not made in the quantities and at the time and manner specified, Buyer shall have the right without liability, and in addition to its other rights and remedies under this Order and the law, to take any of the following actions: (1) direct expedited delivery of Services for which Seller shall bear all premium transportation charges and risk of loss; (2) direct acceleration of Services for which Seller shall bear all premium labor costs and other acceleration costs; (3) delay payment for a period of time equal to the lateness of such delivery or

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performance; and/or (4) terminate this Order by written notice effective when received by Seller as to the Services not yet delivered, and purchase substitute Services elsewhere and charge Seller with any loss incurred. Seller shall, in the event of a delay or threat of delay, due to any cause, in the production, delivery, of Services hereunder, immediately notify Buyer in writing of the delay. Seller's notice shall include all relevant information with respect to such delay or threatened delay. Seller shall be liable for any damages resulting from failure to make delivery within the time called for by this Order or by any written instructions of Buyer, except where such delay in delivery was due to causes beyond the reasonable control of Seller and Seller notifies Buyer as required by this Section 4.4. Seller agrees to add the substance of this Section 4.4 to each subcontract or purchase Order issued by Seller hereunder.

4.5 **Advanced Shipments:** If, without written authorization from Buyer, Seller ships items so as to arrive more than five business days in advance of schedule, Buyer may return the items to Seller and Seller shall be liable for transportation charges and risk of loss for the return of the items as well as for the shipment of the items. Seller shall not invoice Buyer for payment prior to the scheduled delivery date. Invoices covering items shipped in advance of the delivery schedule will not be paid until normal maturity after the specified date of delivery.

4.6 **Quantity:** Seller shall comply with the delivery schedules but shall not make material or production commitments in advance of such time as Seller reasonably believes is necessary to meet the schedules without Buyer's prior written consent. Except as otherwise expressly provided in the Order, Buyer need not accept any variation in quantity of Services provided by Seller. Buyer may return excess quantities to Seller at Seller's sole expense and risk, or retain such excess quantities at no increase in price.

**5.0 INSPECTION AND FINAL ACCEPTANCE** - Final acceptance by Buyer of any Service under this Order shall not limit or affect any warranty or right of indemnity granted by Seller herein. Except as otherwise agreed in writing, all delivery under this Order shall be subject to final inspection and acceptance by Buyer. The Parties expressly agree that any prior inspection or payment by Buyer will not constitute final acceptance. Buyer's final acceptance of the Service shall take place only after complete delivery in accord with the schedule specified herein and after final inspection by Buyer. Buyer's final acceptance shall be contingent upon agreement by Buyer that the Service conforms to the applicable contract Order requirements. Final acceptance by Buyer shall be conclusive, except for latent defects, negligent or intentional misrepresentations by Seller that a nonconformity or defect would be or had been cured, acceptance induced by false or negligent assurances of Seller or as otherwise provided in this Order or applicable law.

**6.0 FACILITIES, TOOLS, ETC** - Unless otherwise specified in this Order, Seller shall supply all necessary services, facilities, materials, and equipment (including, but not limited to, tools, test apparatus, etc.).

## **7.0 TERMINATION**

7.1 BUYER may at any time terminate all or any part of this Order by written notice to SELLER if (a) termination is in the best interest of the BUYER; (b) SELLER fails to deliver the Service within the time specified by this Order or any written extension; (c) SELLER fails to perform any other provision of this Order or fails to make progress, so as to endanger performance of this Order, and does not cure the failure within ten calendar days after receipt of notice from BUYER specifying the failure; or (d) in the event SELLER declares bankruptcy, suspension of business, or initiates any reorganization and/or arrangement for the benefit of its creditors. Seller shall continue Service not terminated.

7.2 In the event of such termination, SELLER shall immediately cease all work terminated hereunder and cause any and all of its suppliers and SELLERS to cease work. SELLER must submit all claims within sixty calendar days after the effective date of termination.

## **8.0 REPRESENTATIONS AND WARRANTIES**

8.1 Except as to any Service or materials thereof which the specifications contained herein specifically provide need not be new, Seller represents and warrants to Buyer that the Services and materials provided are new (not used or

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reconditioned), not counterfeit parts and not of such age or so deteriorated as to impair their usefulness or safety. Seller also represents and warrants to Buyer that all Services and materials furnished under the Order will comply with the requirements of this Order; be free from defects in design (except to the extent of Buyer's design), material, manufacture, and workmanship; will be free from liens and encumbrance; and, to the extent Seller knows such purpose, will be fit and sufficient for the purpose for which the item was intended. If the Services and materials furnished contain any manufacturer's warranties, Seller hereby assigns such warranties to Buyer. Seller also represents and warrants to Buyer that all labor provided hereunder shall be performed by qualified personnel, with diligence, and shall conform to the terms, specifications, and description of the Service specified by Buyer. Seller further represents and warrants to Buyer that the Services(s) provided under this Order will not infringe upon the rights of any third party. These representations and warranties extend to the future performance of the Service and shall continue for a period of twelve months (or such longer period of time as Seller may warrant similar Service to its most favored customer) following final acceptance by Buyer.

8.2 Buyer shall not be deemed to waive any defects or nonconformity by reason or approval of samples or receipt of, or payment for Service. If Buyer finds through inspection and testing or through use that any Service delivered by Seller is other than as warranted above, Seller shall promptly deliver repaired or replacement Service. Seller shall warrant repaired or replacement Service as set forth in this Article 8.0.

## **9.0 CHANGES**

9.1 BUYER's Supply Chain Team Member may, in writing, direct changes in: description of Services, place, and / or time of performance of the Services, within the general scope of this Order. If the BUYER's Supply Chain Team Member directed change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Order, whether or not changed by the directed change, SELLER must assert any claim in writing within twenty-five calendar days and deliver a fully supported proposal to BUYER's Supply Chain Team Member within sixty calendar days after SELLER's receipt of such a directed change. BUYER and SELLER shall negotiate an equitable adjustment in the price and / or schedule to reflect the increase or decrease. Failure of the Parties to agree upon any adjustment shall not excuse SELLER from performing in accordance with BUYER's direction. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the Section of this Order entitled "Disputes".

9.2 The SELLER shall not make any changes in the Service that do not conform to the requirements of this Order without the prior written consent of BUYER.

**10.0 RIGHTS AND USE OF BUYER'S PROPRIETARY INFORMATION AND MATERIALS** Seller, if required, shall use Seller's Proprietary Information (Intellectual Property) only in the performance of and for the purpose of performing this Order. The restrictions on disclosure or use of Proprietary Information by SELLER shall apply to all materials derived by SELLER or others from BUYER's Proprietary Information. Upon the completion, termination, or cancellation of this Order, or upon BUYER's request at any time, SELLER shall return to BUYER all of BUYER's Proprietary Information and all materials derived therefrom, unless specifically directed otherwise in writing by BUYER.

## **11.0 INTELLECTUAL PROPERTY / PROPRIETARY INFORMATION**

### **11.1 Definitions**

11.1.1 "Proprietary Information" means all information (Intellectual Property) that is identified as Proprietary Information by the disclosing Party and is disclosed by the disclosing Party under this Order. Proprietary Information does not include information that was:

- (i) published or otherwise is, or becomes, available to the public other than by breach of this Order;
- (ii) lawfully received from a third party without restriction on disclosure and without breach of this Order;
- (iii) disclosed to a third party without a similar restriction on the rights of such third party;

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- (iv) already known by the recipient and the recipient can demonstrate that the information was known without breach of this Order;
- (v) developed independently within the recipient's organization without access to or use of the Proprietary Information; or
- (vi) approved in writing by the discloser for public release or disclosure by the Recipient.

11.1.2 "Background Intellectual Property" means all intellectual property worldwide including, but not limited to, patents, copyrights, trademarks, mask works, trade secrets, know-how and all other forms of intellectual property which are owned or controlled by the disclosing Party prior to this Order, or contemporaneously with this Order but not arising from the performance of work under this Order and not embodied in deliverables under this Order.

11.1.3 "Foreground Intellectual Property" means all intellectual property worldwide including, but not limited to, patents, unpatented inventions, copyrights, trademarks, mask works, trade secrets, know-how and all other forms of intellectual property conceived or first reduced to practice, or to a tangible medium of expression, or made during the performance of work under this Order and all intellectual property embodied in deliverables under this Order.

11.2 The Parties agree to protect Proprietary Information as follows unless otherwise agreed by the Parties in a separate Nondisclosure Agreement:

11.2.1 It is agreed for a period of five years following the receipt of Proprietary Information that the receiving Party shall use such information only for the purpose of performing the Statement of Work under this Order and shall take reasonable efforts to preserve in confidence such Proprietary Information and prevent disclosure thereof to third parties. Each Party agrees that it shall use the same standard of care to protect disclosing party's Proprietary Information as it uses to protect its own information of like kind but, in any event, shall employ at least reasonable care. Disclosures of such Proprietary Information shall be restricted to those individuals of the receiving Party who are directly participating in the efforts relating to this Order, who have a need to know such information and who have been made aware of and consent in writing to abide by the restrictions contained in this Order which concern the use of such information.

11.2.2 The Parties agree that in order to identify Proprietary Information for protection under this Order, the disclosing Party shall clearly and conspicuously mark written or documentary, recorded, machine readable and other information in a tangible form using an appropriate legend. Proprietary Information stored in electronic form on disk, tape, or other storage media shall be considered to be adequately marked if a legend indicating the information is proprietary displays when the information originally runs on a computer system and when the information is printed from its data file. The disclosing Party shall identify Proprietary Information originally disclosed in some other form (e.g., orally or visually) by (a) identifying the information as proprietary at the time of original disclosure, (b) summarizing the Proprietary Information in writing sufficiently specific to enable the receiving Party to identify the information considered proprietary by the disclosing Party, (c) marking the written summary clearly and conspicuously with an appropriate proprietary legend, and (d) delivering the written summary to the receiving Party within thirty calendar days following the original disclosure.

11.3 The disclosing Party warrants that it shall not provide any Proprietary Information to the receiving Party for which the disclosing Party does not own or control the intellectual property rights, or under which disclosing Party does not have a right to grant to receiving Party a license to such intellectual property rights, and agrees to defend, indemnify and hold the receiving Party harmless from and against any cost, expenses or other liability arising from any claim or cause of action brought against receiving Party arising from the disclosing Party's breach of this warranty.

#### 11.4 Ownership of Intellectual Property

11.4.1 Seller shall assign and transfer, and does hereby assign and transfer to Buyer the entire right, title and interest, worldwide, in all Foreground intellectual property including but not limited to all copyrights, inventions, and patents,

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including copyright renewal rights, and such Foreground Intellectual Property shall from time of creation be and shall remain the sole and exclusive property of Buyer and its nominees throughout the world, whether or not patented or copyrighted, and without regard to any expiration or termination of this Order. Seller agrees to exercise reasonable care to avoid making any Foreground Intellectual Property assigned to Buyer available to any third party. Seller is liable to the Buyer for all damages, including reasonable attorneys' fees, in the event any Foreground Intellectual Property is made available to third parties by the Seller in any manner not authorized by the Buyer.

11.4.2 Seller shall communicate in writing to Buyer promptly and describe fully all Foreground Intellectual Property whether made solely by Seller or jointly with others. On the first business day of every calendar quarter after execution of this Order, Seller shall submit a written report to Buyer reporting the Foreground Intellectual Property conceived, reduced to practice or to a tangible medium of expression, or made by Seller during the previous quarter and any previously unreported items. The written report shall contain a description of the Foreground Intellectual Property and those responsible for it. Buyer shall have the right to audit annually the Seller to determine whether the Seller has disclosed to Buyer all of the Foreground Intellectual Property in accordance with this Section 6.4.2.

11.4.3 Seller, at Buyer's request and expense, shall assist Buyer and its nominees in every reasonable way during and subsequent to the Period of Performance of this Order to obtain for Buyer or its nominees' benefit, patents, copyrights, or other forms of legal protection on such Foreground Intellectual Property throughout the world.

#### 11.5 Intellectual Property Indemnity

11.5.1 Seller agrees not to knowingly incorporate Seller or third party intellectual property, excluding commercial computer software acquired with Buyer's written consent into the work product of this Order.

11.5.2 Seller agrees to indemnify, defend and hold harmless Buyer, its affiliates, its parent, its parent's subsidiaries and their respective customers, subsidiaries, directors, officers, employees and agents from all claims, suits, actions, awards, liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right and arising out of the Services performed by Seller. Buyer and/or its customer shall notify Seller of any such claim, suit or action; and Seller shall, at its own expense, fully defend such claim, suit or action on behalf of indemnities.

11.5.3 Seller shall have no liability under this article with regard to any infringement to the extent arising from (a) Seller's compliance with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) Buyer's use or sale of Services in combination with other items when such infringement would not have occurred from the use or sale of those Services solely for the purpose for which they were designed or sold by Seller.

11.5.4 For purposes of this Article 7.0 only, the term Buyer shall include the General Dynamics Corporation, all of its subsidiaries, all officers, agents, and employees of Buyer.

## 12.0 TITLE TO INVENTIONS AND WORK PRODUCT

12.1 Subject to the limitations of Buyer's use of Seller's Background Intellectual Property as stated in Section 12.2 below, all data, designs, drawings, tracings, plans, layouts, programs, flow charts, specifications, software, documentation, work product and any and all other memoranda, including but not limited to any and all written information which may be or has been furnished to Seller or which may be produced, prepared, or designed by Seller in connection with the Services hereunder, shall be, become, and remain the exclusive property of Buyer, and shall be available to Buyer at all times. Such materials shall be subject to the provision of Section 6.2 above or such other non-disclosure terms executed by the parties hereto. Upon the termination or completion of the Services performed hereunder, any and all material referred to in this Section 12.1, together with all copies and reprints in Seller's possession, custody, or control, shall be promptly transferred and delivered to Buyer and Seller shall thereafter make no further use, either directly or indirectly, of such material.



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12.2 Seller grants and agrees to grant to Buyer a non-exclusive, transferable, royalty-free, paid-up, worldwide license without right of sublicense, under all of Seller's Background Intellectual Property necessary to use and freely exploit Foreground Intellectual Property without restriction, including but not limited to rights under Seller's patents, copyrights and know-how, for Buyer to make, have made, use, copy, modify, sell, lease or otherwise market and dispose of products and services and to practice processes or methods related thereto. If Seller's Background Intellectual Property includes computer software, Seller grants and agrees to grant to Buyer the right to sublicense Seller's computer software to its sublicensees under the same rights as granted to Buyer when the Seller's software is necessary to be used in conjunction with the Foreground Intellectual Property conceived during the performance of the Services under this Order.

**13.0 ASSIGNMENT, TRANSFER, DELEGATION, AND SUBCONTRACTING** No right or interest of SELLER or BUYER hereunder or arising out of this Order may be assigned or transferred, whether by operation of law or otherwise, and/or all or substantially all of its performance of this Order without the prior written consent of BUYER or SELLER, respectively, which shall not be unreasonably withheld. Notwithstanding the foregoing, BUYER may assign this Order without SELLER's consent to a successor company resulting from a restructuring, consolidation, merger or other combination within General Dynamics. SELLER shall not delegate any of its duties or obligations under this Order. SELLER may assign its right to monies due or to become due. No assignment, transfer, delegation or Ordering by SELLER, with or without BUYER's consent, shall relieve SELLER of any of its obligations under this Order or prejudice any of BUYER's rights against SELLER whether arising before or after the date of any assignment or transfer. Any unauthorized assignment, transfer or delegation is void. This Section does not limit SELLER's ability to purchase standard commercial supplies or raw materials.

**14.0 GOVERNING LAW AND VENUE**

14.1 The Parties agree that this Order shall be governed by and construed in accordance with the laws of the State of New York and without regard to its conflict of laws rules.

14.2 All claims or disputes arising under or in any way related to this Order shall be resolved through good faith negotiations between authorized representatives of each Party. In the event that such negotiations do not lead to a written settlement signed by a duly authorized representative of each Party within thirty calendar days or such longer period of time as may be mutual agreed, then either Party may elect to resolve the matter through the state or federal courts. Venue for any action brought under or relating to this Order shall exclusively be in the State of New York. The Parties hereby irrevocably waive any right to challenge such venue on the basis of forum non conveniens or otherwise. **THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS ORDER.**

14.3 The Parties further agree and consent to accept service of process by certified or registered United States mail, return receipt requested, addressed as provided herein. In the event that legal action is commenced by either Party, the substantially prevailing Party shall be entitled to recover its costs and attorneys' fees from the other Party.

**15.0 SEVERABILITY** If a court of competent jurisdiction determines one or more provisions of this Order illegal or invalid, that determination shall not affect the enforceability of the remaining provisions to the extent they can be given effect without the illegal or invalid provision. In the event that any provision of this Order is held invalid or unenforceable, the Parties shall make every effort to mutually agree to a new provision in regard to the same subject.

**16.0 COMPLIANCE WITH APPLICABLE LAWS**

16.1 Federal, State, and Local SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority.

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16.2 Export SELLER shall not export, directly or indirectly, any hardware, software, technology, information or technical data disclosed under this Order to any individual or country for which the U.S. Government requires an export license or other government approval, without first obtaining such license or approval.

SELLER further understands that BUYER is a defense contractor providing work for the United States Government, and as such, is under certain mandatory security obligations with regard to access to its facilities and technology. Due to the fact that disclosure of certain information to any individual may be deemed an export, SELLER agrees that it will not assign any worker to perform services under this Order (including but not limited to accessing SELLER's web based portal for the applicable program) unless that person either receives a license for the export at issue or qualifies as a "U.S. person," defined as:

- i. U.S citizen;
- ii. U.S. nationals, including an alien lawfully admitted for permanent resident (those possessing a valid Form I-551"); or
- iii. Asylee or refugee as defined in 8 U.S.C. 1324(b)(a)(3).

16.3 Employment Verification In addition to the foregoing requirements, SELLER will comply with the Immigration Reform and Control Act of 1986 ("IRCA") and in particular, have all of its workers fill out an I-9 form, verifying their authorization to work in the United States.

16.4 Compliance with Office of Federal Contract Compliance Programs ("OFCCP") Rules

To the extent applicable:

**The SELLER and its Subcontractors shall abide by the requirements of 41 CFR 60–300.5(a) and 60–741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and Subcontractor to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.**

**17.0 INSURANCE** Unless otherwise specified by Buyer in writing, Seller shall maintain and cause Seller's subcontractors to maintain during the term of this Order (a) workers' compensation insurance as prescribed by the law of the state or nation in which the Service is performed; (b) employer's liability insurance with limits of at least \$500,000 for each occurrence; (c) automobile liability insurance if the use of motor vehicles is required hereunder, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence; and (d) Commercial General Liability ("CGL") insurance, ISO 1988 or later occurrence form of insurance, including, without limitation, Blanket Contractual Liability and Broad Form Property Damage, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence. All CGL and automobile liability insurance shall designate Buyer, its affiliates, and its directors, officers, and employees (all referred to as "Buyer") as additional insured. All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. If specifically requested by Buyer, Seller and Seller's subcontractors shall furnish, prior to the start of Service, certificates or adequate proof of the foregoing insurance, including, without limitation, endorsements and policies. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interest of Buyer or Buyer's Customer shall not be effective (1) for such period as the laws of the State in which this Order is to be performed prescribe or (2) until thirty calendar days after the insurer or Seller gives written notice to Buyer, whichever period is longer. Any other coverage available to Buyer shall apply on an excess basis. Seller agrees that Seller, Seller's insurer(s) and anyone claiming by, through, under or in Seller's behalf shall have no claim, right of action or right of subrogation against Buyer and Buyer's Customer based on any loss or liability insured against under the foregoing insurance. Insurance companies providing coverage under this Order must be rated by A. M. Best with at least an A-rating. Seller's obligation to obtain the foregoing insurance does not waive or release Seller's liabilities or duties to indemnify under this Order..

**18.0 INDEMNIFICATION** SELLER agrees to indemnify, defend and hold harmless BUYER, its affiliates, subsidiaries, directors, officers, employees and agents from and against any and all actions, causes of action, liabilities, claims, expenses (including reasonable attorney's fees and court costs, losses, damages, penalties, fines, forfeitures,

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suits, judgments, liens, awards and damages of any kind and nature whatsoever for (a) property damage, (b) personal injury, including any death, and (c) all violations of applicable laws which arise out of, or are in any way related to SELLER's or any of its suppliers' (1) breach of obligations or responsibilities arising from this Order, or (2) failure to comply with all applicable Federal, state and local laws and regulations in the performance of this Order. SELLER's obligation hereunder is not limited to insurance available to or provided by SELLER or any of its suppliers. SELLER expressly waives any immunity under industrial insurance, whether arising out of statute or common law, to the extent of the indemnity set forth in this Section.

**19.0 CERTIFICATIONS AND REPRESENTATIONS** All certifications and representations, which the SELLER submitted to BUYER in connection with the award of this Order, are incorporated herein and made a part hereof and BUYER has relied such upon in issuing this Order. The SELLER shall promptly advise BUYER should there be any change in SELLER's status with respect to these certifications and representations.

**20.0 PUBLICITY** Neither Party shall issue any press release or make any other public statement relating to this Order, any work done under this Order or any of the transactions contemplated by this Order without obtaining the prior written approval of the other Party as to the contents and the manner of presentation and publication of such press release or public statement. This restriction applies to all releases of information to the public, industry, or Government organizations except (a) information for actual or potential Orders or vendors necessary for the SELLER to accomplish this Program, (b) information to be supplied to a duly authorized representative of BUYER project office, and (c) information necessary for BUYER to provide to its Government customer.

**21.0 GRATUITIES** SELLER warrants that neither it nor any of its employees, agents or representatives have offered or given, or will offer or give, any gratuities to BUYER's employees, agents or representatives for the purpose of securing this Order or securing favorable treatment under this Order.

**22.0 PROTECTION OF PROPERTY** At all times SELLER shall, and ensure that any of SELLER's suppliers shall, use suitable precautions to prevent damage to BUYER's property. If any such property is damaged by the fault or negligence of SELLER or any SELLER thereof, SELLER shall, at no cost to BUYER, promptly and equitably reimburse BUYER for such damage or repair or otherwise make good such property to BUYER's satisfaction. If SELLER fails to do so, BUYER may perform the repairs and recover from SELLER the cost thereof.

**23.0 INDEPENDENT CONTRACTOR** It is the intention of BUYER and SELLER that for all purposes SELLER is and shall be an independent contractor and the sole employer and/or principal of any and all persons assigned by SELLER to provide Services under this Order. SELLER is obligated to perform all requirements of an employer under federal, state, and local laws and ordinances (or foreign law, if applicable). Such compliance shall include, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers' compensation insurance. SELLER, not BUYER, is the "common law employer" within the meaning of Treas. Reg. § 31.3401(c)-1(c) of employees of all persons assigned by subcontractor to provide Services under this Order. Under no circumstances shall SELLER or its employees or agents be construed to be employees, representatives, or agents of BUYER for any purpose, including but not limited to record keeping obligations under state or federal OSHA and Worker's Compensation Laws. SELLER's employees and agents shall not be entitled to participate in the profit sharing, pension, or other plans established for the benefit of BUYER's employees. If required by federal or state law, SELLER agrees to comply with the Family and Medical Leave Act ("FMLA") for its employees and agrees that with regard to such employees, it is the primary employer as defined by the FMLA regulations.

**24.0 USE OF FREE AND OPEN SOURCE SOFTWARE (FOSS)** *(This clause only applies to Service that includes the delivery of software (including software residing on hardware)).*

H.24.1 SELLER shall disclose to BUYER in writing any FOSS that will be used or delivered in connection with this Order and shall obtain BUYER's prior written consent before using or delivering such FOSS in connection with this Order. BUYER may withhold such consent in its sole discretion.



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H.24.2 As used herein, "FOSS License" means, but is not limited to, the General Public License ("GPL"), Lesser/Library GPL, (LGPL), the Affero GPL (APL), the Apache license, the Berkeley Software Distribution ("BSD") license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License(MPL), or variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."

H.24.3 As used herein, "FOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a FOSS License, or (3) software provided under a license that (a) subjects the delivered software to any FOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates BUYER to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

H.24.4 SELLER agrees to defend, indemnify, and hold harmless BUYER, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney's fees, relating to use in connection with this Order or the delivery of FOSS.

## **25.0 LIMITATION OF LIABILITY**

IN ADDITION TO ANY OTHER LIMITATIONS ON BUYER'S LIABILITY SET FORTH HEREIN, IN NO EVENT SHALL BUYER, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE, BY REASON OF BUYER'S BREACH OR TERMINATION OF THIS ORDER OR BY REASON OF ANY ACTS OR OMISSIONS IN CONNECTION WITH THIS ORDER, FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, SERVICE INTERRUPTION, INCREASED COST OF SERVICES, OR ANY CLAIMS OR DEMANDS AGAINST SELLER BY ANY OTHER ENTITY, WHETHER SUCH REMEDY IS SOUGHT IN ORDER, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. IN NO EVENT SHALL BUYER'S LIABILITY FOR DIRECT DAMAGES IN ANY CIRCUMSTANCES SET FORTH IN THIS CLAUSE EXCEED THE PRICE PAYABLE FOR THE DELIVERABLE TO BE PROVIDED BY SELLER UNDER THIS ORDER. THIS ORDER SHALL NOT CREATE FOR NOR GIVE TO ANY THIRD PARTY ANY CLAIM OR RIGHT OF ACTION AGAINST BUYER WHICH WOULD NOT ARISE WITHOUT THIS ORDER..

## **26.0 FURNISHED PROPERTY**

26.1 Buyer may furnish Seller property owned by Buyer and required by Seller for the performance of the Service under this Order, or have Seller acquire property for Buyer's account (hereafter referred to as "Furnished Property"). This may include, without limitation, tools, equipment or material of every description, and any replacement thereof or any material affixed or attached thereto.

26.2 Title to Furnished Property shall not vest in Seller. Title thereto shall not be affected by the incorporation or attachment thereto of any property not owned by Buyer; nor shall any Furnished Property or any part thereof, be or become a fixture or lose its identity because it is affixed to any realty. Seller shall maintain property control records of Furnished Property consistent with good business practice and as may be prescribed by Buyer. Seller shall issue such reports as Buyer may require. Seller shall cause all Furnished Property to be clearly marked (if not so marked) to show that it is property of Buyer.

26.3 Except as may be authorized by Buyer in writing, Furnished Property shall be used only for the performance of this Order.

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26.4 Seller shall, in accordance with sound industrial practice, maintain in operating condition, repair, protect, and preserve Furnished Property until disposed of by Seller in accordance with this clause.

26.5 Seller assumes the risk of, and shall be responsible for any loss of or damage to Furnished Property in Seller's possession except for reasonable wear and tear resulting from performance of this Order.

26.6 Buyer shall at all times have access to the premises wherein any Furnished Property is located.

26.7 Upon the completion of this Order, Seller shall submit, in a form acceptable to Buyer, inventory schedules covering all items of Furnished Property not consumed in the performance of this Order (including any scrap). Seller shall hold the same at no charge for sixty (60) days. After this, Seller shall dismantle, prepare for shipment and, at Buyer's direction, store or deliver said property (at Buyer's expense), or make such other disposal of Furnished Property as directed by Buyer. The net proceeds of any such disposal shall be credited to the price of the Order or shall be paid over as Buyer may direct.

26.8 Seller shall cooperate with Buyer in executing such documents as Buyer deems appropriate to protect the security interests of Buyer in such Furnished Property.

**27.0 SECURITY AND ACCESS TO BUYER'S FACILITIES WHILE VISITING OR WORKING AT BUYER'S FACILITIES.**

27.1 SELLER agrees that, while visiting or working at BUYER's facilities, SELLER and its personnel shall comply with all facility rules and regulations of which they have notice, including, but not limited to, the security and safety requirements and shall take all precautions required by any of these or otherwise necessary to prevent the occurrence of any injury to person or property during the term of this Order.

**27.2 Facility Access**

27.2.1 SELLER and SELLER's personnel shall be granted access to BUYER facilities only during BUYER's normally scheduled business hours or as otherwise specifically agreed in writing between the Parties.

27.2.2 SELLER shall be required to provide information concerning citizenship or immigrant status of SELLER's personnel entering the premises of BUYER. SELLER agrees to furnish this information before commencement of work and at any time thereafter before substituting or adding new personnel to work on BUYER's premises. Information submitted by SELLER shall be certified by an authorized representative of SELLER as being true and correct. SELLER shall comply with all the rules and regulations established by BUYER for access to and activities in and around premises controlled by BUYER or BUYER's customer.

27.3 Safety SELLER agrees to comply with the federal Occupational Safety and Health Act (OSHA), all applicable OSHA regulations or standards, and all BUYER's safety rules of which SELLER has notice, regarding the performance of Services under this Order.

**27.4 Hazardous Substances**

27.4.1 BUYER uses a number of "hazardous substances", as defined in 29 C.F.R. 1910.1200, and some of these substances are used in work areas where SELLER may perform Services. The Material Safety Data Sheet ("MSDSs") kept on file by BUYER for any hazardous substances which are present in such work areas shall be made available for review by SELLER upon request.

27.4.2 SELLER agrees not to deliver or transport any hazardous substances or materials, as defined in 29 C.F.R. Section 1910.1200, onto BUYER's property without having first obtained prior written approval from the BUYER's

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Environmental, Health and Safety Department, and SELLER agrees to comply with any instructions from such Department regarding such substances and materials.

27.4.3 SELLER agrees to immediately report any known spill of hazardous materials, hazardous substances, or hazardous wastes on BUYER's property whether caused or not by SELLER. In addition, for spills of hazardous materials, hazardous substances, or hazardous wastes which are owned or controlled by SELLER, SELLER agrees that containment and cleanup shall be at the sole expense of SELLER and shall be performed to the satisfaction of BUYER's Environmental, Health and Safety Department.

27.5 Emergency Medical Aid SELLER authorizes BUYER to administer minor first aid to SELLER or SELLER's agents or employees for injuries incurred on BUYER's property. In the event of a serious injury or if immediate emergency care is believed necessary for an illness, SELLER authorizes BUYER to arrange for emergency response services at SELLER's expense.

27.6 Use of BUYER's Computers or Computer Networks *(If applicable)*

In the event SELLER's personnel require access to BUYER's computer networks for the purposes of performing work under this Order, SELLER and SELLER's personnel agree to comply with the requirements set forth in the Statement of Work.

## **28.0 PAYMENT**

28.1 Allowable Costs. Buyer shall pay Seller as follows upon the submission of invoices or vouchers approved by BUYER's Supply Chain Team Member:

- (a) Hourly rate.
  - (1) The amounts shall be computed by multiplying the appropriate hourly rates described in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month to BUYER. Seller shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by BUYER's Supply Chain Team Member.
  - (2) BUYER may withhold five percent (5%) of the amounts due under this paragraph (a) until completion of work by Seller.
  - (3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent that the overtime is approved in advance by BUYER's Supply Chain Team Member.
- (b) Materials and subcontracts
  - (1) Reasonable and allocable costs of direct materials and (to the extent that they are clearly excluded from the hourly rate) material handling costs comprising, where appropriate, general and administrative expenses allocated by direct materials in accordance with Seller's usual accounting practices; provided, however, Seller regularly sells such materials to members of the general public in the normal course of its business, Seller shall invoice BUYER at no higher than its established catalog price, less discounts to its most favored customer.
  - (2) The cost of subcontracts that are authorized under the subcontracts clause hereof shall be reimbursable costs under this clause.
  - (3) To the extent able, Seller shall:
    - (i) obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and
    - (ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commission, and other benefits.

28.2 Total Cost and Ceiling Price.

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- (a) If at any time Seller has reason to believe that the Allowable Costs that will accrue in performing this subcontract/PO in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, Seller shall notify BUYER's Buyer giving a revised estimate of the total price to BUYER for performing the contract with supporting reasons and documentation.
  - (b) BUYER shall not be obligated to pay Seller any amount in excess of the ceiling price in the Schedule, and Seller shall not be obligated to continue performance, if to do so would exceed such ceiling price, unless and until BUYER's Supply Chain Team Member shall have specified in writing a revised ceiling price.
- 28.3 Audit. At any time before final payment, BUYER's Supply Chain Team Member may conduct either directly or have an agents audit the invoices or vouchers and substantiating material.

**29.0 WITHHOLDING** In addition to all other remedies provided by law and stated in this Order, BUYER may withhold payment of an invoice if SELLER has not complied with any of its obligations under this Order and BUYER shall not be required to make any payment until SELLER completely satisfies the obligation(s) at issue. SELLER is not entitled to interest on any withheld payments.

**30.0 HEADINGS** The headings used in this Order are inserted for the convenience of the Parties and shall not define, limit, or describe the scope or the intent of the provisions of this Order.