



6303 Ivy Lane • Suite 800 • Greenbelt, MD 20770 • Phone 301.837.5500

## General Terms and Conditions for Noncommercial Items Under a U.S. Government Prime Contract

### Section I – General Provisions

1) **ACCEPTANCE** – This order is not an acceptance of any offer to sell but is an offer to purchase. It may be accepted within five (5) days of the order's date only by Buyer receiving Seller's written acknowledgement or by commencement of performance by Seller. Acceptance is expressly limited to the terms and conditions of this offer. By acceptance in either manner described hereinabove, Seller expressly assents to the terms and conditions contained herein to the exclusion of all other terms and conditions, including any contained in any acknowledgement, acceptance, letter, quote, or other writing of Seller prior to, simultaneously with, or after acceptance.

Any proposal for additional or different terms or any attempt by Seller to vary, in any degree, any of terms in this offer in Seller's acceptance or acknowledgement shall not operate as a rejection of this offer, and this offer shall be deemed accepted by the Seller without said additional or different terms.

2) **ADDITIONAL OR DIFFERENT TERMS** –The terms contained in this order, with any attachments, will constitute the entire and only agreement of the parties and will supersede all prior discussions, representations, writings, oral agreements, and understandings or any language in the acknowledgement or acceptance of Seller to the contrary. Buyer objects to addition to, change, modification of, revision of, deletion, or waiver of any of the terms and conditions of this order. Irrespective of whether such different or additional terms and conditions materially alter this order, such different of additional terms and conditions will be invalid and rejected unless specifically agreed to in writing by Buyer.

3) **PACKAGING and DELIVERY** – Time is of the essence in this order, and substitutions outside of or overruns above normal accepted standards will not be accepted unless agreed upon by Buyer in writing. Goods shipped shall be at Seller's risk until no longer in possession of Seller and title has passed to Buyer. Unless otherwise specified in writing, place for delivery of goods is Buyer's business. Buyer may invoke and Seller shall pay a late delivery penalty if Seller is delinquent in meeting the delivery as agreed to on this Purchase Order. Seller shall be charged at the rate of one percent (1%) of the price of delayed item(s) per day, to a maximum of five percent (5%) of the total Purchase Order value. Any applicable Late Delivery Penalty will be deducted from future invoice payments.

4) **WARRANTY** – In addition to Seller's standard warranty, Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. All warranties shall survive inspection, test and acceptance of, and payment for, the Work. All warranties shall run to Buyer and its successors, assigns, and customers. The warranty shall extend for a period of one (1) year after Buyer's final acceptance unless a different period is set forth elsewhere in this Contract. If any nonconformity of the Work appears within that time, Seller shall promptly repair, replace, or re-perform the Work at Buyer's option. Transportation of replacement Work, return of nonconforming Work, and repeat performance of Work shall be at Seller's expense. Work required to be corrected or replaced shall be subject to this provision and the Inspection and Acceptance provision of this Contract in the same manner and to the same extent as Work originally delivered under this Contract. If repair, replacement, or re-performance of Work is not timely, Buyer may elect to return the nonconforming Work or repair, replace Work, or reprocur the Work at Seller's expense.

5) **INSPECTION and TESTS** – All goods ordered hereunder will be subject to inspection and testing by Buyer at all reasonable times and places, including Seller's facilities. It is expressly agreed that inspections and/or payments prior to, at the time of, or after delivery will not constitute a final acceptance of the goods or services.

No such inspection shall relieve Seller of its obligations to furnish all Work in accordance with the requirements of this Contract. Buyer's final inspection and acceptance shall be at destination unless otherwise specified in this Contract.

Seller shall not tender rejected work without disclosing the corrective action taken.

6) **SOURCE SURVEILLANCE** - In addition to inspections as otherwise provided in this Contract, and at no increase in Contract price, Buyer may assign product assurance representatives to Seller's facilities to conduct and maintain surveillance as necessary to ensure quality and reliability. Seller likewise shall reserve such right to Buyer with respect to Seller's lower-tier subcontractors. If such examination is made, Seller shall provide, and require its subcontractors to provide, such representatives with reasonable facilities, equipment, and unescorted access (except in areas where proprietary processes or data are located, in which case access shall be on an escorted basis) to all areas essential to the proper conduct of the above described activity.

7) **CONFIDENTIALITY** – All information, drawings, specifications or data furnished by Buyer to Seller shall be considered proprietary, and Seller shall keep confidential all such information, drawings, specifications, or data unless this requirement is waived expressly in writing by Buyer and will return the same, including copies made by or for Seller, upon request. Seller shall not in any manner advertise or publish the fact that it has furnished or contracted to furnish to Buyer the goods or services herein mentioned without prior written consent of Buyer.

8) **CHANGES** - Buyer may, at any time, by written notice and without notice to sureties or assignees, make Changes within the general scope of this Contract in any one 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; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property; and, if this Contract includes services, (vi) description of services to be performed; (vii) quantity of services (i.e., hours to be worked); (viii) time of performance (e.g., hours of the day, days of the week); and (ix) place of performance. Seller shall comply immediately with such direction.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, Buyer shall make an equitable adjustment in the Contract price or delivery schedule or both and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment.

Any claim for an equitable adjustment by Seller must be submitted in writing to the Buyer Procurement Representative within thirty (30) days from the date of notice of the change unless the Parties agree in writing to a longer period.

Failure to agree to any adjustment shall be resolved in accordance with the *Disputes* clause of this Contract. However, nothing contained in this *Changes* clause shall excuse Seller from proceeding without delay in the performance of this Contract as changed.

9) **USE OF INFORMATION** – The Seller agrees that all information furnished or disclosed to Buyer by Seller in connection with this order is furnished or disclosed as part of the consideration of this order. Notwithstanding the foregoing, if Seller clearly identifies in writing information which Seller considers to be confidential or proprietary, Buyer will protect and not disclose such information except for information: (a) which is already known to Buyer through Buyer's own development prior to Buyer's first receipt of information relating to Seller's development from Seller, (b) which is or generally becomes available to the public through no fault of Buyer, or (c) which is properly obtained from a third party who has the right to make such disclosure.

10) **CONTRACT DIRECTION** - Only the Buyer Procurement Representative has authority to amend this Contract. Such amendments must be in writing.

Buyer engineering and technical personnel may render assistance or give technical advice or discuss or affect an exchange of information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the **Changes** clause of this Contract and shall not be the basis for equitable adjustment.

Action or direction by any Buyer customer shall not be deemed to be a change under the **Changes** clause of this Contract and shall not be the basis for equitable adjustment.

Except as otherwise provided herein, all notices to be furnished by the Seller shall be sent to the Buyer Procurement Representative.

11) **EQUIPMENT, BUYER'S PROPERTY** – All equipment, tools, materials, vehicles, and/or other articles required for Seller's performance of this order shall be furnished by Seller, maintained in good condition, and replaced when necessary at Seller's expense. Title to and a right of immediate possession of any property of any nature whatsoever furnished or paid for by Buyer shall remain in Buyer's possession.

12) **FURNISHED PROPERTY** – Buyer may provide to Seller property owned by either Buyer or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

Buyer or its customer shall retain title to Furnished Property. Seller shall clearly mark (if not already marked) all Furnished Property to show ownership.

Except for reasonable wear and tear, Seller assumes all risk of loss, destruction, or damage of Furnished Property while in Seller's possession, custody, or control. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall promptly notify Buyer of any loss or damage. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

13) **FORCE MAJEURE** – In the event of fire, accidents, abnormal weather conditions, governmental acts, strikes or other labor disputes, Acts of God, war, riots, and other civil disturbances, or any other conditions beyond either party's reasonable control which prevent manufacture, transportation, delivery, acceptance, or Buyer's prompt utilization of the goods or services covered by this order, the affected party may, without any liability or penalty, delay delivery, manufacture, transportation, acceptance, or utilization by written notice effective when received by the other party until such event and the consequences of such event of force majeure have terminated. Said notice of an event of force majeure shall contain the reason for any delay which the notifying party considers to be an event of force majeure under the provisions of this paragraph. An event of force majeure shall not include events within the total or partial control of the party giving notice, including, but not limited to, poor business judgment or estimates, material or labor shortages, or unanticipated engineering or technical difficulties. To be excused from performance under this clause, the affected party shall submit, within ten (10) calendar days of the start of the qualifying event, a written notice stating a complete and detailed description of such event, the date of commencement, an estimate of the probable period of delay, and explanation indicating how such event was beyond the party's control.

14) **ASSIGNMENT** – This order may not be assigned by Seller, nor may Seller delegate the performance of any of its duties hereunder without Buyer's prior written consent.

15) **SUBCONTRACTS** - If this Contract is primarily for the purpose of furnishing services, no subcontract shall be made by the Seller with any other Party for furnishing all or substantially all of the Work or services herein contracted for without the advance written approval of Buyer; however, this provision shall not be construed to require the approval of contracts of employment between the Seller and personnel assigned for services hereunder.

The Seller shall give Buyer immediate written notice of any action or suit filed and prompt notice of any claim made against the Seller by any subcontractor or vendor that, in the opinion of the Seller, may result in litigation related in any way to this Contract, with respect to which the Seller may be entitled to reimbursement from Buyer.

No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost-basis, and any fee payable under cost-reimbursement, lower-tier subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4) (formerly 15.903(d)) of the FAR.

16) **DEFAULT** - If Seller's financial condition, based on reasonable and objective criteria, is found to be or becomes unsatisfactory to Buyer during the term of this contract, or if Seller fails to make reasonable progress in its performance of this contract, Buyer reserves the right, without incurring any liability to Seller, to cancel this order by written notice and terminate this contract and receive a refund of any deposits, down payments, or other advance payment (except for goods or services already delivered). Buyer also reserves the right similarly to terminate all other contracts covering purchases by Buyer of Seller's products of services whether or not Seller may otherwise be in default, and no rights shall accrue to Seller against Buyer on account of such termination. The foregoing rights of Buyer are in addition to, and not in lieu of, any rights Buyer may possess under provisions of the Uniform Commercial Code or other provisions of the law. If Seller fails to perform as specified in this order or breaches any of the terms hereof, Buyer reserves the right, without incurring any liability to Seller and, upon giving Seller written notice, to: (a) Cancel this order in whole or in part, and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach, (b) obtain the goods or services ordered herein from another source, with any excess cost resulting therefore chargeable to Seller, or (c) setoff or reduce all claims for money due or to become due to Buyer from Seller to the extent Buyer is damaged by Seller's failure to perform. The remedies herein provided shall be cumulative and in addition to any other remedies provided at law or in equity. Buyer's failure to insist on performance of any of the terms and conditions herein or to exercise any right or privilege, or Buyer's waiver of any breach hereunder, shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

17) **STOP WORK ORDER** – Seller shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from Buyer, 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 covered by this Contract during the period of Work stoppage.

Within such period, Buyer shall either terminate or continue the Work by written order to Seller. In the event of a continuation, an equitable adjustment, in accordance with the principles of the Changes clause, shall be made to price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

18) **TERMINATION for CONVENIENCE** – Buyer may terminate performance of the work under this order, in whole or in part, by written notice to Seller. Upon receipt of such notice, Seller shall immediately discontinue all work and the placing of all orders for materials, facilities, and supplies pursuant to this order. Upon termination by Buyer under this paragraph for reasons other than force majeure (as set out in 9) or certain remedies of (as set out in 11), Buyer shall negotiate payment to Seller based on Seller's non-recoverable, reasonable, and actual documented costs and expenses; in no case, however, shall payments made under this paragraph exceed the aggregate price specified in this purchase order less payments otherwise made or to be made. Nothing contained in this paragraph shall be construed to limit or affect any remedies, which Buyer may have as provided in paragraphs 12 and 14.

In no event shall Buyer be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or any sum in excess of the total Contract price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

For other than specially performed Work, Buyer may terminate part or all of the Contract for its convenience by giving written notice to Seller, and Buyer's only obligation to Seller shall be payment of a mutually agreed-upon restocking or service charge. Seller shall continue all Work not terminated.

19) **COMMUNICATION with BUYER CUSTOMER** – Buyer shall be solely responsible for all liaison and coordination with the Buyer customer, including the U.S. Government, as it affects the applicable prime contract, this Contract, and any related contract.

Unless otherwise directed in writing by the authorized Buyer Procurement Representative, all documentation requiring submittal to, or action by, the government or the Contracting Officer shall be routed to, or through, the Buyer Procurement Representative or as otherwise permitted by this Contract.

20) **COMPLIANCE WITH LAWS** – Seller agrees to comply fully with all applicable laws, ordinances, rules, regulations, and orders of all foreign nations (or governmental subdivision thereof) and all applicable domestic (United States of America) federal, state, and local laws, ordinances, rules, regulations, and orders pertaining to the production and sale of the goods or services ordered, and, upon request, Seller shall furnish Buyer certificates of compliance. These laws shall include, without limitation, the following: The Fair Labor Standards Act of 1938, as amended; Federal and State OSHA requirements; the equal opportunity clause in §202 of Executive Order #11246 as amended; Veterans Employment and Readjustment Act of 1972 (amending the Vietnam Era Veterans Readjustment Assistance Act of 1972); the rules and regulations of the Office of Federal Contract Compliance; §503 of the Rehabilitation Act, Toxic Substances Control, and The Federal Hazardous Substances Act. With specific references to the Toxic Substances Control Act, Seller warrants that each chemical substance delivered under this order shall be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to §8 of the Toxic Substances Act. If this order is placed, directly or indirectly, under a contract to which the United States or any state or other governmental authority is a party, then all terms and conditions required by law or regulation or contained in the government contract with respect to this order are incorporated herein by reference. Seller expressly agrees to indemnify and hold harmless Buyer, its successors, assigns, customers, and users of its products from any costs, losses, expenses, damages, claims, suits, fines, penalties, or any liability whatsoever, including attorney's fees, resulting from the failure of Seller to comply, in the furnishing of goods or services under this order, with all applicable foreign or domestic federal, state, or local laws, ordinances, rules, regulations, or orders as set out hereinabove.

21) **APPLICABLE LAW** – This Contract shall be governed by the laws of the state of Maryland, excluding its choice of laws rules, except that any provision in this Contract is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR), (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR, or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contracts Appeals, and quasi-judicial agencies of the federal Government.

22) **DISPUTES** – Any dispute, controversy, or claim arising out of or relating to this Contract or default, termination, or invalidity hereof, shall be settled by arbitration under the rules of the American Arbitration Association. The place of the arbitration shall be Washington, D.C. The language to be used in the arbitral proceedings shall be English. Judgment of the arbitrators shall be final and nonappealable and may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement. Each Party shall bear its own expenses of the arbitration, but the fees and costs of the arbitrators shall be borne equally between the Parties participating in the arbitration.

Consistent with the expedited nature of arbitration, each Party will, upon the written request of the other Party, promptly provide the requesting party with copies of documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery or the relevance or scope thereof, shall be determined by the arbitrators, whose determination shall be conclusive. All discovery shall be completed within thirty (30) days following the appointment of the arbitrators.

No action at law or in equity may be commenced by Seller under or arising from this Contract unless it is brought within one year after the accrual of the cause of action upon which the claim is based, regardless of whether Seller knew or should have known of the accrual of any such cause of action.

Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by the Buyer Procurement Representative.

23) **DEFINITIONS** – The following terms shall have the meanings set forth below:

“Contract” means the instrument of contracting (e.g., PO, Purchase Order, or other such designation), including all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a master agreement that provides for releases (in the form of a Purchase Order or other such document), the term “Contract” shall also mean the release document for the Work to be performed.

“FAR” means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of the Federal Regulations.

“Buyer” means ASRC Federal Holding Company.

“Buyer Procurement Representative” means the person authorized by Buyer's cognizant procurement organization to administer this Contract.

“PO” or “Purchase Order” as used in any document constituting a part of this Contract shall mean this Contract.

“Seller” means the Party identified on the title page of the Contract, with whom Buyer is contracting.

“Work” means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

24) **EXPORT CONTROL** - Seller agrees to comply fully with all applicable U.S. export control laws and regulations as they may apply to any hardware, software, information, or direct product of such information furnished to Seller under this Contract. Seller agrees that it will not permit the re-export of any the above—including to foreign nationals employed by, associated with, or under contract to Seller or Seller’s lower-tier suppliers—without the authority of an Export License or applicable License Exception.

Seller agrees to notify Buyer if export control laws or regulations restrict any deliverable Work under this Contract.

Seller shall immediately notify the Buyer Procurement Representative if Seller is 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. At Buyer’s request, Seller will provide Buyer with all data Buyer may need to apply for and obtain an Export License or applicable License Exception.

25) **GRATUITIES and KICKBACKS** – No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given Seller to any employee of Buyer with a view toward securing favorable treatment as a supplier.

By accepting this Contract, Seller certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c) (1) of FAR 52.203-7 shall not apply.

26) **INDEMNIFICATION** – Except to the extent that any injury or damage is due solely and directly to Buyer’s negligence, Seller agrees to indemnify and hold harmless Buyer, its successors, assigns, customers, and users of its products against all suits at law or in equity and from all damages, claims and demands arising out of death of or injury to any person or damage to any property alleged to have resulted from the goods or services hereby ordered and, upon the tendering of any suit or claim to Seller, to defend the same at Seller’s expense as to all costs, losses, expenses, damages, claims, suits, or any liability whatsoever, including attorney’s fees. The foregoing indemnification shall apply whether the death, injury, or property damage is caused by the sole or concurrent negligence of Seller. To the extent that Seller’s agents, employees, or subcontractors enter upon the premises of Buyer, Seller shall take all necessary precautions to prevent injury or death to any persons or damage to property arising out of acts or omissions of such agents, employees, or subcontractor and, except to the extent that any such injury or damage is due solely and directly to Buyer’s negligence, shall indemnify, defend, and hold Buyer, its officers, employees, and agents, harmless from any and all costs, losses, expenses, damages, claims, suits, or any liability whatsoever, including attorney’s fees, arising out of any act or omission of Seller, its agents, employees, or subcontractors. Seller shall maintain and require its subcontractors to maintain: (a) Public liability and property damage insurance (including contractual liability), both general and vehicle, in amounts sufficient to cover obligations set forth above, and (b) worker’s compensation and employer’s liability insurance covering all employees engaged in the performance of this order. Seller shall furnish, upon Buyer’s request, certificates evidencing such insurance.

Unless otherwise specified in this Contract, commercial off-the-shelf software delivered hereunder shall be the most recent revision issued by Seller. If Seller issues a new version within 120 days after delivery to Buyer, Seller shall provide to Buyer, at no additional charge, a usable copy of the new version and an equivalent license.

27) **NEW MATERIALS** – The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5 (not used, reconditioned, remanufactured, or of such age as to impair usefulness or safety).

Unless otherwise specified, all Work is to be packed in accordance with good commercial practice to prevent damage and deterioration during shipping, handling, and storage.

A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the AFHC Purchase Order number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Purchase Order number.

28) **PATENT AND INTELLECTUAL PROPERTY RIGHT INDEMNIFICATION** – Seller shall indemnify and save harmless Buyer, its successors, assigns, customers or users of its products, or Buyer’s officers, employees, and agents, from and against all costs, losses, expenses, damages, claims, suits, or any liability whatsoever, including attorney’s fees, resulting from any claim that the manufacture, use sale or resale of any goods or services supplied under this order infringe any patent, copyright, trademark or other intellectual property rights; and Seller, when notified, shall, at Buyer’s sole option, either defend any action or claim of such infringement at its own expense, or reimburse Buyer’s expenses, attorney’s fees, and other costs defending such action or claim.

29) **PAYMENTS, TAXES and DUTIES** - Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) Buyer’s receipt of the Seller’s proper invoice, (ii) scheduled delivery date of the Work, or (iii) actual delivery of the Work. Buyer shall have a right of setoff against payments due or at issue under this Contract or any other Contract between the Parties.

Unless otherwise specified, prices include all applicable federal, state, and local taxes, as well as duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. Prices shall not include any taxes, impositions, charges, or exactions for which BUYER has furnished a valid exemption certificate or other evidence of exemption.

30) **ALLOWABLE COST AND PAYMENT** (applies to cost-reimbursable agreements only)

- (a) **Invoicing.** Buyer shall make payments to the Seller when requested as Work progresses, but not more often than once every two (2) weeks, in amounts determined to be allowable by Buyer in accordance with the terms of this Contract and Subpart 31.2 of the Federal Acquisition Regulation (FAR) and agency supplements as appropriate, in effect on the date of this Contract. If the Contract is with an educational institution, FAR Subpart 31.3 shall apply; if with a nonprofit organization other than an educational institution, FAR Subpart 31.7 shall apply. The Seller may submit to the Buyer Purchasing Representative, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Contract.
- (b) **Reimbursing costs.**

- (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:
  - a) Those recorded costs that, at the time of the request for reimbursement, the Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for the Contract.
  - b) When the Seller is not delinquent in paying costs of Contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
    - (i) Materials issued from the Seller's inventory and placed in the production process for use on the Contract
    - (ii) Direct labor
    - (iii) Direct travel
    - (iv) Other direct in-house costs, and
    - (v) Properly allocable and allowable indirect costs, as shown in the records maintained by the Seller for purposes of obtaining reimbursement under government contracts.
  - c) The amount of progress payments that have been paid to the Seller's subcontractors under similar cost standards.
- (2) Seller contributions to any pension, profit sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes, provided that the Seller pays the contribution to the fund within thirty (30) days after the close of the period covered.
- (3) Payments made thirty (30) days or more after the close of a period shall not be included until the Seller actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Seller actually makes the payment.
- (4) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this Contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.
- (5) Except as otherwise expressly provided to the contrary in these provisions or in the schedule of this Contract, any statements in specifications or other documents incorporated in this Contract by reference designating performance of services or furnishing of materials at the Seller's expense or at no cost to Buyer shall be disregarded for purposes of cost reimbursement under this clause.
- (c) **Small business concerns.** A small business concern may be paid as often as every two (2) weeks and may invoice and be paid for recorded costs for items or services purchased directly for the Contract even though the concern has not yet paid for those items or services.
- (d) **Final indirect cost rates.** Buyer shall reimburse Seller on the basis of final annual indirect cost rates and the appropriate bases established by Seller and the government in effect for the period covered by the indirect cost rate proposal. Such rates and bases shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Contract. The rates and bases shall be deemed incorporated into this Contract upon execution.
- (e) **Billing rates.** There shall be included as allowable indirect costs such overhead rates as may be established by Seller and the cognizant government agency in accordance with the principles of the Federal Acquisition Regulation and applicable FAR Supplement. Pending establishment of final overhead rates for any period, Seller shall be reimbursed at billing rates approved by the cognizant government agency, which may be revised from time to time subject to approval and subject to appropriate adjustment when the final rates for that period are established.
- (f) **Quick closeout procedures.** When the Seller and Buyer agree, the quick closeout procedures of Subpart 42.7 of the FAR may be used.
- (g) **Audit.** At any time or times before final payment, Buyer or the government may audit the Seller's invoices or vouchers and statements of cost. Any payment may be (1) reduced by amounts found by Buyer or the government not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- (h) **Final payment.**
  - (1) The Seller shall submit a completion invoice or voucher, designated as such, promptly upon completion of the Work, but no later than one (1) year (or longer, as Buyer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Seller's compliance with all terms of this Contract, Buyer shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
  - (2) The Seller shall pay to Buyer any refunds, rebates, credits, or other amounts (including interest if any) accruing to or received by the Seller or any assignee under this Contract to the extent that those amounts are properly allocable to costs for which the Seller has been reimbursed by Buyer. Reasonable expenses incurred by the Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by Buyer. Before final payment under this Contract, the Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
    - (i) An assignment to Buyer, in form and substance satisfactory to Buyer, of refunds, rebates, credits, or other amounts (including interest if any) properly allocable to costs for which the Seller has been reimbursed by Buyer under this Contract and
    - (ii) A release discharging Buyer, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Contract, except for specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known.
- (i) **Subcontracts.** No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4)(i) of the FAR.
- 31) **LIMITATION OF FUNDS** (Applicable if this Contract is incrementally funded.)
  - (a) The Parties estimate that performance of this Contract will not cost Buyer more than the estimated cost specified in the Schedule. The Seller agrees to use its best efforts to perform the Work specified in the Schedule and all obligations under this Contract within the estimated cost.
  - (b) The Schedule specifies the amount presently available for payment by Buyer and allotted to this Contract, the items covered, and the period of performance that the allotted amount is estimated to cover. The Parties contemplate that Buyer will, from time to time, allot additional funds to the Contract up to the full estimated cost specified in the Schedule, inclusive of any fee. The Seller agrees to perform, or have performed, Work on the Contract up to the point at which the total amount, including fee, paid and payable by Buyer under the Contract approximates but does not exceed the total amount actually allotted by Buyer to the Contract.
  - (c) The Seller shall notify Buyer in writing whenever it has reason to believe that the costs it expects to incur under this Contract plus allocable fee in the next sixty (60) days, when added to all costs previously incurred and allocable fee, will exceed seventy-five percent (75%) of the total amount then allotted to the Contract. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

- (d) Sixty (60) days before the end of the period specified in the Schedule, the Seller shall notify Buyer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Contract or for any further period specified in the Schedule or otherwise agreed upon and when the funds will be required.
- (e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Seller's written request, Buyer will terminate this Contract on that date in accordance with the provisions of the **Termination** clause of this Contract (FAR 52.249-6).

32) **PRECEDENCE** – Any inconsistencies in this Contract shall be resolved in accordance with the following (in descending order of precedence): (1) face of the Purchase Order, release document, or schedule (which shall include continuation sheets), as applicable, including any special terms and conditions; (2) any master agreement, such as corporate, sector, or blanket agreements; (3) these General Provisions; and (4) Statement of Work.

33) **CAPTIONS** – The captions appearing at the beginning of each paragraph of these terms and conditions are for convenience only and are not to be construed as a substantive part of said terms and conditions.

34) **SEVERABILITY** – The terms and conditions of this order are severable, and if any terms and conditions or portions of any terms and conditions herein are stricken or declared illegal, invalid, or unenforceable for any reason whatsoever, the legality, validity, or enforceability of the remaining terms and conditions shall not be affected thereby.

## **Section II: FAR Flowdown Provisions**

### **A. Incorporation of FAR Clauses**

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

### **B. Government Subcontract**

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

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

1. "Contract" means this Contract.
2. "Contractor" means the Seller, as defined previously in the "Definitions" provision of this document, acting as the immediate (first-tier) subcontractor to Buyer.
3. "Prime Contract" means the Contract between Buyer and the U.S. Government or between Buyer and its higher-tier contractor who has a contract with the U.S. Government.
4. "Subcontract" means any Contract placed by the Contractor or lower-tier subcontractors under this Contract.

### **C. Notes**

1. Substitute "Buyer" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "Buyer Procurement Representative" for "Contracting Officer," "Administrative Contracting Officer," and "ACO" throughout this clause.
3. Insert "and Buyer" after "Government" or "Contracting Officer", as appropriate, throughout this clause.
4. Insert "or Buyer" after "Government" throughout this clause.
5. Communication and notification required under this clause from or to the Contractor and to or from the Contracting Officer shall be through Buyer.
6. "Contracting Officer" shall mean the U.S. Government Contracting Officer for Buyer's government Prime Contract under which this Contract is entered.

### **D. Amendments Required by Prime Contract**

Contractor agrees that upon the request of Buyer it will negotiate in good faith with Buyer relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the applicable prime contract or with the provisions of amendments to such prime contract. If any such amendment to this Contract causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

### **E. FAR Flowdown Clauses**

**REFERENCE**      **TITLE**

**1. The following FAR clauses apply to this Contract:**

- (a) 52.211-5      Material Requirements (August 2000) (See Note 2.)
- (b) 52.219-8      Utilization of Small Business Concerns (October 2000)
- (c) 52.222-2      Payment for Overtime Premiums (July 1990) (Insert ZERO in the blank. See Notes 2 and 3.)
- (d) 52.222-21      Prohibition of Segregated Facilities (February 1999)
- (e) 52.222-26      Equal Opportunity (February 1999) (Only subparagraphs (b)(1)–(11) apply.)
- (f) 52.223-11      Ozone-Depleting Substances (May 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
- (g) 52.225-13      Restrictions on Certain Foreign Purchases (July 2000) (In paragraph (a), see Notes 5 and 6.)
- (h) 52.227-14      Rights in Data—General (June 1987)
- (i) 52.232-20      Limitation of Cost (April 1984) (Applicable when this Contract becomes fully funded. See Notes 1 and 2.)
- (j) 52.232-22      Limitation of Funds (April 1984) (Applicable if this Contract is incrementally funded. When the Contract becomes fully funded FAR 52.232-20 shall apply in lieu of this clause. See Notes 1 and 2.)
- (k) 52.234-1      Industrial Resources Developed Under Defense Production Act Title III (December 1994) (See Note 2.)
- (l) 52.242-13      Bankruptcy (July 1995) (See Note 2.)
- (m) 52.242-15      Stop-Work Order (August 1989) (See Notes 1 and 2.)
- (n) 52.243-2      Changes – Cost Reimbursement (August 1987) (See Notes 1 and 2; delete the reference to the “Disputes” clause in subparagraph (d).)
- (o) 52.244-6      Subcontracts for Commercial Items (May 2001)
- (p) 52.246-3      Inspection of Supplies – Cost Reimbursement (January 2001) (See Note 1 except in subparagraphs (b), (c), and (d) where Note 3 applies, and in paragraph (k) where the term “Government” is unchanged. In subparagraph (e), change “60 days” to “120 days,” and in subparagraph (f) change “6 months” to “12 months.”)
- (q) 52.246-5      Inspection of Services – Cost Reimbursement (April 1984) (See Note 3 in subparagraphs (b) and (c). See Note 1 in subparagraph (d) and (e).)
- (r) 52.246-6      Inspection – Time-and-Material and Labor Hour (May 2001)
- (s) 52.249-6      Termination (Cost-Reimbursement) (September 1996) (See Notes 1 and 2. Substitute “90 days” for “120 days” and “90-day” for “120-day” in subparagraph (d). Substitute “180 days” for “1 year” in subparagraph (f). Delete subparagraph (j). Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)
- (t) 52.249-8      Default (Fixed-Price Supply and Service) (April 1984) (Applicable only for fixed-price contracts. See Notes 1 and 2, except Note 1 is not applicable to paragraph (e). Timely performance is a material element of this Contract.)

**2. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:**

- (a) 52.222-35      Affirmative Action for Disabled Veterans and Vietnam Era Veterans (April 1998)
- (b) 52.222-36      Affirmative Action for Workers with Disabilities (June 1998)
- (c) 52.222-37      Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (January 1999)

**3. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:**

- (a) 52.203-6 Restrictions on Subcontractor Sales to the Government (July 1995)
- (b) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (June 1997) (see Note 5.)
- (c) 52.215-2 Audit and Records-Negotiation (June 1999) (Insert “and the BUYER Purchasing Representative” after “the Contracting Officer or representatives of the Contracting Officer” or after “... representatives of the Contracting Officer who are employees of the government,” where indicated throughout the clause.)
- (d) 52.215-14 Integrity of Unit Prices (October 1997) (Delete paragraph (b) of the clause.)
- (e) 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (September 2000) (Applicable as prescribed at FAR 22.305.)
- (f) 52.223-14 Toxic Chemical Release Reporting (October 2000) (See Notes 2 and 5; delete subparagraph (e).)
- (g) 52.227-1 Authorization and Consent (July 1995) (Applicable only if the Prime Contract contains this clause. In the clause, in paragraph (a)(1), see Note 4, and in paragraph (a)(2)(ii) see Note 2.)
- (h) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (August 1996) (See Notes 2 and 4.)
- (i) 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (June 2000) (See Note 2.)
- (j) 52.248-1 Value Engineering (February 2000) (See Note 1, except in subparagraphs (c)(5) and (m), see Note 3.)

**4. The following FAR clause applies to this Contract if the value of this Contract equals or exceeds \$500,000:**

- (a) 52.219-9 Small Business Subcontracting Plan (October 2000) (Applicable if the CONTRACTOR is not a small business; see Notes 1 and 2, applicable to subparagraph (c) only; the CONTRACTOR’s subcontracting plan is incorporated herein by reference.)

**5. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$550,000:**

- (a) 52.215-12 Subcontractor Cost or Pricing Data (October 1997) (Applicable if not otherwise exempt under FAR 15.403.)
- (b) 52.215-13 Subcontractor Cost or Pricing Data – Modifications (October 1997) (Applicable for modifications if not otherwise exempt under FAR 15.403.)

**6. The following FAR clauses apply to this Contract only if the stipulation in the relevant parenthetical applies:**

- (a) 52.204-2 Security Requirements (August 1996) (Applicable if the Work requires access to classified information; delete paragraph (c) of the clause.)
- (b) 52.215-10 Price Reduction for Defective Cost or Pricing Data (October 1997) (Applicable if FAR 52.215-12 applies to this Contract. See Notes 2 and 4. Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)
- (c) 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modifications (October 1997) (Applicable if FAR 52.215-13 applies to this Contract, and FAR 52.215-10 is not applicable. See Notes 2 and 4. Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)
- (d) 52.215-15 Pension Adjustments and Asset Reversions (December 1998) (Applicable if this Contract meets the applicability requirements of FAR 15.408(g); see Note 5.)
- (e) 52.215-16 Facilities Capital Cost of Money (October 1997) (Applicable only if the Contract is subject to the cost principles at FAR Subpart 31.2 and the CONTRACTOR proposed facilities capital cost of money in its offer.)
- (f) 52.215-17 Waiver of Facilities Capital Cost of Money (October 1997) (Applicable only if the Contract is subject to the cost principles at FAR Subpart 31.2 for Contracts with commercial organizations, and the CONTRACTOR did not propose facilities capital cost of money in its offer.)
- (g) 52.215-18 Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions (October 1997) (Applicable if this Contract meets the applicability requirements of FAR 15.408(j); see Note 5.)
- (h) 52.215-19 Notification of Ownership Changes (October 1997) (Applicable if this Contract meets the applicability requirements of FAR 15.408(k); See Note 2.)
- (i) 52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (October 1997) (See Note 2.)
- (j) 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (October 1997) (See Note 2.)
- (k) 52.223-3 Hazardous Material Identification and Material Safety Data (January 1997) (Applicable if the Contract involves hazardous material. See Notes 2 and 3.)
- (l) 52.223-7 Notice of Radioactive Materials (January 1997) (Applicable to Work containing covered radioactive material. Insert “30” in the blank; see Notes 1 and 2.)

- (m) 52.225-1 Buy American Act – Balance of Payments Program – Supplies (February 2000) (Applicable if the Work contains other than domestic components.)
- (n) 52.225-8 Duty-Free Entry (February 2000) (Applicable if supplies will be imported into the Customs Territory of the United States. In paragraph (c)(1), the notice provision shall be 45 days. See Notes 3, 5, and 6.)
- (o) 52.227-9 Refund of Royalties (April 1984) (Applicable when reported royalty exceeds \$250; see Notes 1 and 2.)
- (p) 52.227-10 Filing of Patent Applications – Classified Subject Matter (April 1984) (Applicable if the Work or any patent application may cover classified subject matter.)
- (q) 52.227-11 Patent Rights – Retention by the Contractor (Short Form) (June 1997) (Applicable if CONTRACTOR is a small business or nonprofit organization performing experimental or research and development (R&D) work.)
- (r) 52.227-12 Patent Rights – Retention by the Contractor (Long Form) (January 1997) (Applicable to other than a small business or nonprofit organization performing experimental or R&D work.)
- (s) 52.228-5 Insurance – Work on a Government Installation (January 1997) (Applicable if Work performed on government installation. See Note 2.)
- (t) 52.230-2 Cost Accounting Standards (April 1998) (When referenced in the Contract, full CAS coverage applies. In subparagraph (a)(4)(ii) and (a)(5), see Note 1. Delete paragraph (b) of the clause.)
- (u) 52.230-3 Disclosure and Consistency of Cost Accounting Practices (April 1998) (When referenced in the Contract, modified CAS coverage applies. In subparagraphs (a)(3)(ii) and (a)(4), see Note 1. Delete paragraph (b) of the clause.)
- (v) 52.230-6 Administration of Cost Accounting Standards (November 1999) (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)
- (w) 52.233-3 Protest After Award (August 1996) (In the event BUYER’s customer has directed BUYER to stop performance of the work under the Prime Contract under which this Contract is issued pursuant to FAR 33.1, BUYER may, by written order to SELLER, direct SELLER to stop performance of the Work called for by this Contract; “30 days” means “20 days” in paragraph (b)(2); Note 1 applies, except the first time it appears in paragraph (f); in paragraph (f) add “and recovers those costs from BUYER” after “33.104(h)(1)”; See Note 2.)
- (x) 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (April 1984) (Applicable if Work performed on government installation. See Note 2.)
- (y) 52.243-6 Change Order Accounting (April 1984) (Applicable only if Prime Contract requires change order accounting. See Note 2; delete reference to the “Disputes” clause in the last sentence.)
- (z) 52.245-18 Special Test Equipment (February 1993) (Applicable if this Contract involves the acquisition or fabrication of special test equipment. Notice to acquire shall be through BUYER. See Notes 4, 5, and 6.)
- (aa) 52.247-63 Preference for U.S.-Flag Air Carriers (January 1997) (Applicable if this Contract involves international air transportation.)

## **F. Certifications and Representations**

1. The clauses listed below contain certifications and representations that are material representations of fact upon which Buyer will rely in making awards to Contractor. By submitting its written offer, providing oral offers or quotations at the request of Buyer, or accepting any Contract, Contractor certifies to the representations and certifications as set forth in each of the clauses listed below. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), or request for proposal or solicitation (oral or written), issued by Buyer. Contractor shall immediately notify Buyer of any change of status with regard to these certifications and representations.
2. The following clauses of the FAR are incorporated herein by reference with the same force and effect as if they were given in full text, and are applicable to any order, agreement, or subcontract. In each clause incorporated below, substitute “Buyer” for “Government” and “Contracting Agency” and “Buyer Procurement Representative” for “Contracting Officer” throughout.
  - (a) FAR 52.203-11, “Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions” (April 1991). (Applicable to solicitations and contracts exceeding \$100,000.)
  - (1) The definitions and prohibitions contained in the clause at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, are hereby incorporated by reference in paragraph (b) of this certification.
  - (2) Contractor certifies to the best of its knowledge and belief that on and after December 23, 1989--
    - (a) 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 his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement;
    - (b) If any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) 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 his or her behalf in connection with a solicitation or order, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, in accordance with its instructions, and

- (c) Contractor shall include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (3) Submission of this certification and disclosure is a prerequisite for making or entering into a contract as imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision, or who fails to file or amend the disclosure form 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.
- (b) **FAR 52.209-5, "Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters" (April 2001).**
- (c) **FAR 52.222-22, "Previous Contracts and Compliance Reports" (February 1999).**
- (d) **FAR 52.222-25, "Affirmative Action Compliance" (April 1984).**
- (e) **FAR 52.223-13, "Certification Of Toxic Chemical Release Reporting" (October 2000). (Applicable to competitive solicitations and POs that exceed \$100,000.)**