

This purchase order incorporates the following articles by reference. The revision of each article will be the one in effect on the date of the solicitation. Titles of articles are provided for reference purposes only and carry no substantive weight.

For purposes of this order, where the article says "Government", change it to read "Buyer"; where the article says "Contracting Officer", change it to read "Contracts Professional"; and where the article says "Contractor" or "Subcontractor", change it to read "Supplier".

Based on the stated provisions, Supplier is to determine what articles must be inserted in its subcontracts to implement its obligations to Buyer (as identified in the order) and the Government and must implement them in its lower-tier subcontracts.

## PART I. ARTICLES INCORPORATED BY REFERENCE

The following articles, as applicable, are incorporated by reference (except as noted):

ARTICLE	REFERENCE
BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS	FAR 52.204-21
COMBATING TRAFFICKING IN PERSONS	FAR 52.222-50
EMPLOYEE ELIGIBILITY VERIFICATION	FAR 52.222-54
ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS	FAR 52.223-15
EQUAL OPPORTUNITY	FAR 52.222-26
FACILITIES CAPITAL COST OF MONEY	FAR 52.215-16
GOVERNMENT PROPERTY (with Alt I) <ul style="list-style-type: none"> <li>Alternate I does not apply to fixed-price purchase orders awarded on the basis of submission of certified cost or pricing data, cost-reimbursement, time-and-material, or labor-hour orders</li> <li>The preamble of these provisions does not apply to this article; rather where the article says "Contractor", change it to read "Supplier"; where the article says "subcontractor", change it to read "sub-tier Supplier"; where the article says "contract", change it to read "purchase order"; where the article says "Contracting Officer", change it to read "Contracts Professional".</li> </ul>	FAR 52.245-1
INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION	DEAR 970.5223-1
LAWS, REGULATIONS, AND DOE DIRECTIVES	DEAR 970.5204-2
NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT	DFARS 252.204-7015
PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706	FAR 52.222-62
PERMITS AND RESPONSIBILITIES	FAR 52.236-7
PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL	FAR 52.204-9
PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS	FAR 52.247-64
PREFERENCE FOR U.S.-FLAG AIR CARRIERS	FAR 52.247-63
PRIVACY ACT NOTIFICATION <ul style="list-style-type: none"> <li>Applies if the purchase order requires the design, development, or operation of a system of records on individuals to accomplish work effort</li> </ul>	FAR 52.224-1
PRIVACY ACT <ul style="list-style-type: none"> <li>Applies if the purchase order requires the design, development, or operation of a system of records on individuals to accomplish work effort</li> </ul>	FAR 52.224-2
PROHIBITION OF SEGREGATED FACILITIES	FAR 52.222-21
PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS	FAR 52.203-19
PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS CONCERNS	FAR 52.232-40
RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	FAR 52.225-13
RIGHTS IN DATA GENERAL (with Alt V) <ul style="list-style-type: none"> <li>Substitute paragraphs (a) and (d)(3) from DEAR reference</li> </ul>	FAR 52.227-14 DEAR 927.409 (a)(1)
SERVICE CONTRACT LABOR STANDARDS	FAR 52.222-41
STOP WORK ORDER	FAR 52.242-15
SUBCONTRACTS FOR COMMERCIAL ITEMS	FAR 52.244-6
UTILIZATION OF SMALL BUSINESS CONCERNS	FAR 52.219-8
WAIVER OF FACILITIES CAPITAL COST OF MONEY	FAR 52.215-17

**PART II. ARTICLES INCORPORATED BY REFERENCE AT VARIOUS THRESHOLDS**

The following articles, as applicable, are incorporated by reference (except as noted):

<b>THRESHOLDS</b>	<b>ARTICLE</b>	<b>REFERENCE</b>
<b>Greater than \$10,000</b>	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING	FAR 52.223-18
	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT	FAR 52.222-40
<b>Greater than \$30,000</b>	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS	FAR 52.204-10
<b>Greater than \$35,000</b>	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	FAR 52.209-6
<b>Greater than \$100,000</b>	AUTHORIZATION AND CONSENT	FAR 52.227-1
	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	DEAR 970.5227-5
<b>Greater than \$150,000</b>	ANTI-KICKBACK PROCEDURES	FAR 52.203-7
	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION	FAR 52.222-4
	EMPLOYMENT REPORTS ON VETERANS	FAR 52.222-37
	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	FAR 52.203-12
<b>Greater than \$250,000</b>	AUDIT AND RECORDS - NEGOTIATION	FAR 52.215-2
	BANKRUPTCY	FAR 52.242-13
	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	FAR 52.203-17
	DEFINITIONS	FAR 52.202-1
	DUTY FREE ENTRY	FAR 52.225-8
	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS)	FAR 52.222-43
	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS - PRICE ADJUSTMENT	FAR 52.222-44
	FEDERAL, STATE AND LOCAL TAXES	FAR 52.229-3
	GRATUITIES	FAR 52.203-3
	INSURANCE – WORK ON A GOVERNMENT INSTALLATION	FAR 52.228-5
	LIMITATION OF LIABILITY – SERVICES	FAR 52.246-25
	ORGANIZATIONAL CONFLICTS OF INTEREST (with Alt I) <ul style="list-style-type: none"> <li>• <i>Applies to orders involving advisory and assistance services</i></li> <li>• <i>Modified to include a three (3) year period after completion of this purchase order in the first sentence of 1(i)</i></li> </ul>	DEAR 952.209-72
	PATENT INDEMNITY	FAR 52.227-3
	PREVENTING PERSONAL CONFLICTS OF INTEREST	FAR 52.203-16
	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	FAR 52.203-6
	SUSTAINABLE ACQUISITION PROGRAM	DEAR 952.223-78
	<b>Greater than \$500,000</b>	DISPLACED EMPLOYEE HIRING PREFERENCE
UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS		DFARS 252.226-7001
WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FY 1993		DEAR 970.5226-2
<b>Greater than \$750,000</b>	SMALL BUSINESS SUBCONTRACTING PLAN (with Alt II)	FAR 52.219-9

THRESHOLDS	ARTICLE	REFERENCE
<b>Greater than \$2,000,000</b>	ADMINISTRATION OF COST ACCOUNTING STANDARDS	FAR 52.230-6
	COST ACCOUNTING STANDARDS - <i>Delete paragraph (b)</i> <ul style="list-style-type: none"> <li><i>Applies to all negotiated subcontracts, unless Supplier claims an exemption per the Proposal Representation and Certification in accordance with 48 CFR 9903.201-1</i></li> </ul>	FAR 52.230-2
	NOTIFICATION OF OWNERSHIP CHANGES	FAR 52.215-19
	PENSION ADJUSTMENTS AND ASSET REVERSIONS	FAR 52.215-15
	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA	FAR 52.215-10
	REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS	FAR 52.215-18
	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA	FAR 52.215-12
	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA-MODIFICATIONS	FAR 52.215-13
<b>Greater than \$6,000,000</b>	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	FAR 52.203-13

**PART III. ARTICLES INCORPORATED BY REFERENCE FOR NAVY FUNDED ORDERS ONLY**

The following provisions are only applicable if the purchase order is Navy funded as identified in Section I: General Requirements of the purchase order. The following articles, as applicable, are incorporated by reference (except as noted):

THRESHOLD	ARTICLE	REFERENCE
<b>All</b>	DISCLOSURE OF INFORMATION	DFARS 252.204-7000
	LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION	DFARS 252.204-7009
	NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT	DFARS 252.204-7015
	PROHIBITION ON HEXAVALENT CHROMIUM	DFARS 252.223-7008
	REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	DFARS 252.203-7002
	SAFEGUARDING COVERED DEFENSE INFORMATION & CYBER INCIDENT REPORTING	DFARS 252.204-7012
	SOURCES OF ELECTRONIC PARTS	DFARS 252.246-7008
	SUBCONTRACTS FOR COMMERCIAL ITEMS	DFARS 252.244-7000
	SUPPLY CHAIN RISK <ul style="list-style-type: none"> <li><i>Applies if the purchase order involves the development or delivery of any information technology</i></li> </ul>	DFARS 252.239-7018
<b>Greater than \$250,000</b>	RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS	DFARS 252.225-7009
<b>Greater than \$500,000</b>	UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS	DFARS 252.226-7001

**PART III. ARTICLES INCORPORATED BY REFERENCE FOR FIXED PRICE CONTRACTS ONLY**

The following articles, as applicable, are incorporated by reference (except as noted):

ARTICLE	REFERENCE
CHANGES – FIXED-PRICE <ul style="list-style-type: none"> <li><i>Delete paragraph (e)</i></li> </ul>	FAR 52.243-1
DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) <ul style="list-style-type: none"> <li><i>Delete reference to Disputes clause in paragraph (f)</i></li> </ul>	FAR 52.249-8
INSPECTION OF SERVICES – FIXED-PRICE	FAR 52.246-4

ARTICLE	REFERENCE
SERVICE CONTRACT REPORTING REQUIREMENTS <ul style="list-style-type: none"> <li>Applies to orders greater than \$500,000</li> </ul>	FAR 52.204-14
TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SERVICES) (SHORT FORM) <ul style="list-style-type: none"> <li>Applies to orders less than \$250,000.</li> </ul>	FAR 52.249-4
TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) <ul style="list-style-type: none"> <li>Delete reference to Disputes clause in paragraph (j)</li> <li>Applies to orders greater than \$250,000.</li> </ul>	FAR 52.249-2
WARRANTY OF SERVICES <ul style="list-style-type: none"> <li>Reference paragraph (b): notice will be made by Buyer within 90 calendar days from the date of performance of the service.</li> </ul>	FAR 52.246-20

**PART IV. ARTICLES INCORPORATED BY REFERENCE FOR TIME & MATERIAL OR LABOR HOUR CONTRACTS ONLY**

The following articles, as applicable, are incorporated by reference (except as noted):

ARTICLE	REFERENCE
CHANGES – TIME-AND-MATERIAL OR LABOR-HOUR <ul style="list-style-type: none"> <li>Delete paragraph (d)</li> </ul>	FAR 52.243-3
EXCUSABLE DELAYS	FAR 52.249-14
INSPECTION – TIME-AND-MATERIAL AND LABOR-HOUR <ul style="list-style-type: none"> <li>Delete paragraph (g)(2)</li> </ul>	FAR 52.246-6
MATERIAL REQUIREMENTS <ul style="list-style-type: none"> <li>Applies to all non-commercial materials</li> </ul>	FAR 52.211-5
PAYMENT UNDER TIME AND MATERIAL AND LABOR HOUR CONTRACTS <ul style="list-style-type: none"> <li>Delete reference to Disputes clause in paragraph (a)(8)</li> </ul>	FAR 52.232-7
SERVICE CONTRACT REPORTING REQUIREMENTS <ul style="list-style-type: none"> <li>Applies to orders greater than \$250,000</li> </ul>	FAR 52.204-14
TERMINATION (COST REIMBURSEMENT) (with Alt IV) <ul style="list-style-type: none"> <li>Delete reference to Disputes clause in paragraph (j)</li> </ul>	FAR 52.249-6

**PART V. ARTICLES INCORPORATED IN FULL TEXT**

The following articles, as applicable, are incorporated by full text:

**PUBLIC RELEASE OF INFORMATION**

Information, data, photographs, sketches, advertising, displays, promotional brochures, or other materials related to work under this order, which Supplier desires to publish, display, or release internally, to other contractors, to government agencies, or to the public, shall be submitted to the Buyer for approval at least eight weeks prior to the desired printing or release date. This includes descriptive or promotional material which links or relates, directly or indirectly, Supplier's product line, manufacturing facilities, or manufacturing capabilities to performance of naval nuclear propulsion work. As part of the approval request, Supplier shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases, regardless of tier of supplier, must have the prior approval of Buyer.

Should any information described above be requested, subpoenaed, or otherwise sought by a court or other judicial or administrative authority, this should be promptly brought to the attention of Buyer to permit appropriate measures to be taken to protect the information. Under no circumstances should this information be released to such authority without prior notification and agreement of the Buyer.

Supplier agrees that this requirement of prior Buyer approval of any release shall survive the purchase order and that Supplier shall not for a period of twenty years after issuance of this purchase order, either directly or indirectly issue any such release without requisite approval of Buyer, its successor or assignee.

Supplier shall include all provisions of this article including this sentence in all lower tier contracts under this order.

**ANTI-VIRUS WARRANTY**

Software and hardware provided by Supplier under this purchase order shall not contain computer viruses or other malicious software. In fulfilling the terms of this purchase order, Supplier agrees to take precautions to avoid conveying computer viruses or other malicious software to Buyer. Specifically, all computer files, disks, memories or other media provided by Supplier to Buyer (other than third party

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Supplier software in its original, unopened packaging materials) will be checked by Supplier prior to delivery to Buyer to detect and remove any computer virus or other malicious software. The virus check that is performed by Supplier will include checks with current, up-to-date anti-virus software and any virus problems that are found during the check (or later found by Buyer) will be fixed by Supplier.

#### **ASSIGNMENT AND SET-OFF**

Performance of this order shall not be assigned or transferred by Supplier, except as expressly authorized in writing by Buyer. This order may be assigned by Buyer to the Government or any designee of the Government, provided that written notice thereof is given to Supplier. Buyer shall be entitled at all times to set off against any amount payable at any time by Buyer under this order, any amount owing at any time from Supplier to Buyer whether arising under this order or other purchase orders or orders with Supplier.

#### **CHOICE OF LAW**

This order and any and all matters of disputes between the parties to this order whether arising from the order itself or from alleged extra contractual facts, during or subsequent to the contract shall be governed by construed, and enforced in accordance with the law of U.S. Government contracts as set forth by statute and applicable regulations, and decisions by the appropriate courts and Board of Contract Appeals. To the extent that the law referred to in the foregoing sentence is not determinative on an issue, the issue shall be resolved in accordance with the laws of Idaho or New York or Pennsylvania depending on the state in which the work is performed.

#### **DISPUTES**

Supplier shall not be entitled to claim and Buyer shall not be liable to Supplier or its Suppliers or Suppliers of any tier in tort (including negligence), or purchase order except as specifically provided in this purchase order. Any claim arising out of or attributable to the interpretation or performance of this order which cannot be resolved by negotiation shall be considered a dispute within the meaning of this clause. If for any reason Supplier and Buyer are unable to resolve a claim for an adjustment, Supplier or Buyer shall notify the other party in writing that a dispute exists and request or provide a final determination regarding the claim. Any such request by Supplier shall clearly reference this clause and shall summarize the facts in dispute and Supplier's proposed resolution of the dispute.

Buyer shall, within 60 calendar days of any request by Supplier, provide a written final determination setting forth the contractual basis for its decision and defining what purchase order adjustments it considers equitable. Upon Supplier's written acceptance of Buyer's determination the purchase order will be modified and the determination implemented accordingly. If Buyer's final determination is not accepted by Supplier, the matter shall, within 30 calendar days, be referred to senior executives of the parties who shall have designated authority to settle the dispute. The parties shall promptly prepare and exchange memoranda stating the issues in dispute and their respective positions, summarizing the negotiations that have taken place and attaching relevant documents.

The senior executives will meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within 30 days of the commencement of such negotiations, the parties agree to consider resolution of the dispute through some form of Alternative Dispute Resolution (ADR) process which is mutually acceptable to the parties. Should the parties agree to pursue an ADR process each party will be responsible for its own expenses incurred to resolve the dispute during the ADR process. If the parties do not agree to an ADR process or are unable to resolve the dispute through ADR, either party shall then have the right to pursue any legal remedy consistent with other terms of the purchase order. Pending final resolution of any performance issue, request for equitable adjustment, claim or dispute regarding this order, the Supplier shall proceed diligently with the performance of this order.

#### **EQUAL OPPORTUNITY FOR VETERANS (FAR 52.222-35 JUN 2020)** - *Applies to purchase orders greater than \$150,000*

- (a) As used in this clause, "Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at FAR 22.1301.
- (b) Supplier shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by Supplier to employ and advance in employment qualified protected veterans.
- (c) Supplier shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. Supplier shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

#### **EMPLOYEE CONCERNS PROGRAM**

An Employee Concern is defined as a good faith expression by a concerned individual that (1) an activity, policy, or practice including but not limited to, the environment, safety, health, security, quality, and management of DOE facilities and/or operations, should be improved, modified, or terminated or (2) an employee has been subjected to harassment, intimidation, retaliation/reprisal, or discrimination for raising an Employee Concern.

An Employee Concern should not be a minor grievance or suggestion that can be informally addressed, but rather should be interpreted as a formal concern submitted, orally or in writing, when in the employee's judgement, attempts at resolution through the employee/management dialogue process have been or would be unsuccessful.

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The Supplier is required to maintain an Employee Concerns Program (ECP) in compliance with the following and to flow down these requirements to subcontractors at all tiers to the extent necessary to ensure compliance.

1. Establish and maintain an ECP suitable to accept, process and resolve employee concerns in a timely manner.
2. Provide means to inform Supplier employees regarding their rights and responsibilities to raise any employee concern related, but not limited to, the environment, safety, health, security, quality, and management of DOE facilities and operations, as well as harassment, intimidation, retaliation/reprisal, or discrimination, to the ECP.
3. Cooperate with and assist in (i) assessments of Supplier's ECP program, and (ii) the processing of Supplier employee concerns that are submitted including, but not limited to, responding to the allegations in the employee concern, and making pertinent information, including relevant documentation, available as necessary to address the submitted concern.
4. Implement corrective actions as directed.
5. Notify the Buyer when the Supplier becomes aware that an employee has filed a formal complaint of retaliation/reprisal, including a complaint submitted pursuant to 10 CFR part 708, DOE Contractor Employee Protection Program; 41 USC § 4712, Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information, or a complaint filed with the U.S. Department of Labor under 29 CFR part 24, Procedures for Handling Retaliation Complaints.
6. Notify the Buyer if a valid employee concern associated with the work performed under this purchase order is reported.
7. As a means of establishing an effective program, the Supplier's ECP should utilize ECP best practices, which may include, but are not limited to:
  - a. Ensuring that there is an ECP Manager who reports to a designated executive in the Supplier's management chain;
  - b. Establishing a case-file system of documentation and records for concerns raised;
  - c. Establishing a process that provides anonymity and confidentiality for employees who raise concerns unless Supplier is legally compelled to disclose such information;
  - d. Providing avenues for informal resolution of concerns;
  - e. Allowing for the use of alternate dispute resolution;
  - f. Referring concerns to other appropriate organizations to investigate a concern; and
  - g. Documenting acceptance or dismissal of a concern, including "closure" of a concern after an investigation into its merits.

**EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (FAR 52.222-36 JUN 2020)** - *Applies to purchase orders greater than \$15,000*

- (a) Supplier shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by Supplier to employ and advance in employment qualified individuals with disabilities.
- (b) Supplier shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. Supplier shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

**EXPORT CONTROL**

- A. Supplier agrees to comply with all applicable United States export control laws and regulations, specifically the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations 15 C.F.R., including the requirement for obtaining any export license, if applicable.
- B. Supplier agrees that it will not transfer any export controlled item, data, or services, to foreign persons employed by, or associated with, or under purchase order to Supplier or Supplier's lower-tier Suppliers, without the authority of an export license or applicable license exemption. If Supplier determines that an export license is required, Supplier shall notify Buyer prior to applying for said license.
- C. Supplier agrees to notify the Buyer if any deliverable under this purchase order is restricted by export control laws or regulations.
- D. Supplier shall immediately notify the Buyer if Supplier is or becomes listed in any Denied Parties List, or if Supplier's export privileges are otherwise denied, suspended, or revoked in whole or in part by any United States Government entity or agency.
- E. Supplier shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expenses, including attorney's fees, all expense of litigation and/or settlement, and court costs arising from any act or omission of the Supplier, its officers, employees, agents, Suppliers, or subcontractors at any tier, in the performance of any of its obligations under this provision.

**INDEPENDENT CONTRACTOR RELATIONSHIP AND SUPPLIER PERSONNEL**

1. Supplier's relationship to Buyer shall be that of an Independent Contractor and this purchase order does not create an agency, partnership, or joint venture relationship between Buyer and Supplier or Buyer and Supplier personnel. Personnel supplied by

Supplier hereunder shall be deemed employees of Supplier and shall not for any purposes be considered employees or agents of Buyer. Supplier assumes full responsibility for the actions and supervision of such personnel while performing services under this purchase order. Buyer assumes no liability for Supplier personnel.

2. Supplier shall inform Buyer if a former employee of Buyer will be assigned Work under this purchase order, and any such assignment shall be subject to Buyer approval.
3. Nothing contained in this purchase order shall be construed as granting to Supplier or any personnel of Supplier rights under any benefit plan of Buyer or its parent.
4. All persons, property, and vehicles entering or leaving Buyer's or Government's premises are subject to search.
5. Supplier will promptly notify Buyer and provide a report of any accidents or security incidents involving loss of or misuse or damage to Buyer's or Government's intellectual or physical assets, and all physical altercations, assaults, or harassment involving Supplier's personnel performing work under this purchase order.
6. Supplier personnel: (i) will not remove Buyer or Government assets from Buyer's or Government's premises without Buyer authorization; (ii) will use Buyer or Government assets only for purposes of this purchase order; (iii) will only connect with, interact with or use computer resources, networks, programs, tools or routines that Buyer agrees are needed to provide services; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. Buyer may periodically audit Supplier's data residing on Buyer or Government's information assets.
7. Supplier shall indemnify and hold harmless Buyer from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which Buyer may sustain or incur in consequence of (i) Supplier's failure to pay any employee for the Work rendered under this purchase order, or (ii) any claims made by Supplier's personnel against Buyer.
8. Supplier will verify all purchase order workers that it provides to Buyer are authorized to work in the United States.
9. Supplier will take appropriate action to remove its employees working on this purchase order who are later discovered not to be legally authorized to work in the United States and/or whose identity is in question.
10. Supplier indemnifies Buyer from any and all liability, loss or damage the Buyer may suffer as a result of claims, demands, costs or judgments against it arising out of or resulting from the purchase order.

#### **LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS**

If the EFT information changes after submission of correct EFT information, Buyer shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, Supplier may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment, Supplier's request for suspension shall extend the due date for payment by the number of days of the suspension.

If an uncompleted or erroneous transfer occurs because Buyer used the Supplier EFT information incorrectly, Buyer remains responsible for making a correct payment and recovering any erroneously directed funds.

If an uncompleted or erroneous transfer occurs because the Supplier EFT information was incorrect, or was revised within 30 days of Buyer release of the EFT payment transaction instruction to the Federal Reserve System, and-

- If the funds are no longer under the control of the payment office, Buyer is deemed to have made payment and Supplier is responsible for recovery of any erroneously directed funds; or
- If the funds remain under the control of the payment office, Buyer shall not make payment and the provisions of the first paragraph shall apply.

#### **MEMORY BEARING COMPONENTS**

A memory bearing component is computer memory that can retain the stored information even when not powered. Examples include, but are not limited to, read-only memory, flash memory, most types of magnetic computer storage devices (e.g. hard disks, floppy disks, magnetic tape), optical discs, and early computer storage methods (e.g. paper tape, punched cards). A memory bearing component shall not be removed from Buyer site following delivery unless Buyer can conclude that the component is free from any classified or sensitive data and removal of the component is approved by Buyer. Magnetic media is subject to Buyer Security Regulations and will not be allowed to be removed from Buyer sites. Memory bearing components retained by Buyer, in accordance with Buyer Security Requirements, shall be charged to Buyer at Supplier's cost. Supplier shall invoice for reimbursement for each part replaced or repaired.

#### **SUPPLIER LIABILITIES AND INDEMNIFICATIONS**

This purchase order does not bind nor purport to bind the United States Government, its officers, employees, or agents. As to the Work to be done, or services to be performed by Supplier on Buyer premises, Government premises, or the premises of other Buyer Suppliers, Supplier assumes entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury or alleged injury (including death), or damage or alleged damage to property, sustained or alleged to have been sustained in connection with or to have arisen out of performance of the Work. Supplier will indemnify and save harmless the Government and Buyer, or other Buyer Suppliers, from and against any and all claims, demands, actions, causes of actions, suits,

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damages, expenses (including attorneys' fees) and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property which may occur or be alleged to have occurred as a result of or in connection with the performance of this purchase order. Supplier further agrees to indemnify Buyer and the Government against, and to save and hold harmless Buyer and the Government from any and all liability, and expense with respect to claims against Buyer or the Government which may result from the failure or alleged failure of Supplier or any of its lower-tier Suppliers to comply with the requirements of this purchase order.

**TITLE AND ADMINISTRATION**

All site work performed in furtherance of this purchase order will be on real property owned by the U.S. Government. Title and all property rights and interests resulting from this purchase order shall pass directly from Supplier to the Government, upon acceptance, regardless of when or where the Government takes physical possession. Payments under this purchase order will be made by Buyer from funds advanced by the Government, not from Buyer's own assets. Administration of this purchase order may be transferred to DOE or its designee, and in case of such transfer and notice thereof to Supplier, Buyer shall have no further responsibilities hereunder.

**USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD PARTY SERVICES**

- (a) Acquisition of Information Technology. The Buyer may provide information technology equipment, existing computer software (as described in 48 CFR 27.405), and third party services for the Supplier's use in the performance of the order; and the Buyer may provide guidance to the Supplier regarding usage of such equipment, existing computer software, and third party services. Supplier is not authorized to acquire (lease or purchase) information technology equipment, existing computer software, or third party services at the Buyer's direct expense without prior written approval of the Buyer. Should the Supplier propose to acquire information technology equipment, existing computer software, or third party services, the Supplier shall provide to the Buyer justification for the need, including a complete description of the equipment, existing computer software, or third party services to be acquired, and a lease versus purchase analysis if appropriate.
- (b) Supplier shall immediately provide written notice to the Buyer when an employee of the Supplier no longer requires access to Buyer information technology systems.
- (c) Supplier shall not violate any software licensing agreement, or cause the Buyer to violate any licensing agreement.
- (d) Supplier agrees that its employees will not use, copy, disclose, modify, or reverse engineer existing computer software provided to it by the Buyer except as permitted by the license agreement or any other terms and conditions under which the software is made available to the Supplier.
- (e) If at any time during the performance of this order the Supplier has reason to believe that its utilization of Buyer furnished existing computer software may involve or result in a violation of the software licensing agreement, the Supplier shall promptly notify the Buyer, in writing, of the pertinent facts and circumstances. Pending direction from the Buyer, the Supplier shall continue performance of the work required under this contract without utilizing the software.
- (f) Supplier agrees to include the requirements of this clause in all subcontracts at any tier.
- (g) Supplier shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the order pursuant to DEAR 970.5204-2, Laws, Regulations and DOE Directives.

**WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEAR 952.203-70 DEC 2000)**

- (a) Supplier shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.
- (b) Supplier shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.