



Purchase Order Supplement 1C

Purchase Order Terms and Conditions for

Procurement of NON-Commercial Items and Services Under a Government Prime Contract

PURCHASE ORDER NO: _____

DATE: _____

1. Definitions

- **Buyer** means VSE Corporation.
- **Customer** means the United States Government.
- **Government** means the United States Government
- **Order** means this Purchase Order, including all attachments, supplements, exhibits, and terms and conditions incorporated by reference.
- **Party** means each of Buyer and Seller/Subcontractor.
- **Parties** means both Buyer and Seller/Subcontractor.
- **Prime Contract** means the contract issued by the U.S. Government to Buyer.
- **Products** means the articles, materials, supplies and/or goods supplied to Buyer in performance of Order.
- **Seller/Subcontractor** mean the individual or entity identified on the face of Order who is contracting with Buyer.
- **Services** mean the labor and/or services tendered to Buyer in performance of Order.

2. **Binding Contract.** This Order becomes a binding contract when accepted by acknowledgment or commencement of performance.

3. **Entire Agreement, Changes.** This Order sets forth the entire agreement between Buyer and Seller/Subcontractor. No change or modification to this Order shall be valid unless approved in writing by either Buyer's designated Point of Contact ("POC") for this Order or such alternate point of contact as the POC may identify in writing ("Alternate POC"). In the event that any representative of Buyer other than the POC or Alternate POC requests any change or takes any action which could affect the price or delivery schedule, Seller/Subcontractor agrees to notify the POC in writing immediately. Buyer's POC or Alternate POC may direct in writing a change in the description, delivery or performance of the Products or Services to be tendered under the Order. If, within 30 days after Buyer directs the change, Seller/Subcontractor asserts its right to an adjustment in accordance with the Request for Equitable Adjustment (REA) clause herein, and If in Buyer's reasonable judgment, the change directly results in an increase in time required for, or cost allocable to, performance of the Order, Buyer shall make an equitable adjustment in the delivery schedule or price or both, as Buyer deems appropriate.

4. **Request for Equitable Adjustment.** The amount of any REA to the terms of the Order shall accurately and fairly reflect the adjustment for which Seller/Subcontractor believes Buyer is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations and Seller/Subcontractor's approved cost accounting system. The REA shall include all relevant data, including actual cost data and data supporting estimated costs



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- 5. Delivery, Inspection and Acceptance.** Seller/Subcontractor shall tender for acceptance only Products and Services that conform to the requirements of this Order. Buyer reserves the right to inspect and or test any Products or Services tendered for acceptance under this Order. Buyer and the Government shall be permitted to visit Seller/Subcontractor's facilities to observe performance of work under this Order, provided that reasonable advance notice is given to Seller/Subcontractor. Buyer may, at its discretion, require repair or replacement of nonconforming Products, or re-performance of nonconforming Services, at no increase in price; or may reduce payment to reflect the reduced value of the services performed. Seller/Subcontractor understands that final inspection and acceptance may require up to thirty (30) days (or up to ninety (90) days for software Products). Acceptance by Buyer under this Order shall not release Seller/Subcontractor from any other obligation under this Order, or limit the rights of Buyer in any way.
- 6. Schedule.** Time is of the essence for this Order. Full compliance with the delivery schedule is required, and any deviation from the schedule shall constitute a default on the part of Seller/Subcontractor. In the event of an anticipated or known deviation, Seller/Subcontractor shall notify Buyer in writing at least thirty (30) days prior to the scheduled delivery date. If at any time Seller/Subcontractor otherwise has reason to believe that any requirement of this Order will not be completed on schedule, Seller/Subcontractor shall immediately notify the POC in writing. Failure by Seller/Subcontractor to furnish a written notice of anticipated delay shall waive any notice requirement applicable to a termination action by Buyer hereunder.
- 7. Title & Responsibility for Products.**

 - A.** Title to Products furnished under the Order shall pass to Buyer upon formal acceptance, regardless of when or where Buyer takes physical possession, unless the Order specifically provides for earlier passage of title.
Title to Products delivered directly from Seller/Subcontractor to the Government shall be governed by the Government Property clause of this Supplement.
 - B.** Unless the Order specifically provides otherwise, risk of loss of or damage to Products shall remain with Seller/Subcontractor until, and shall pass to Buyer upon the later of acceptance by the Buyer or delivery of the Products to the Buyer at the destination specified in the Order.
 - C.** Paragraph (B) shall not apply to Products that so fail to conform to Order requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming Orders remains with Seller/Subcontractor until cure or acceptance. After cure or acceptance, Paragraph (B) applies.
- 8. Assignment.** Seller/Subcontractor may not assign, in whole or in part, this Order, its obligations under this Order, or any sums payable for performance hereunder, to any third party without Buyer's prior written permission.
- 9. Extras.** Products and Services shall not be supplied in excess of the quantities required under this Order. Seller/Subcontractor shall be liable for the cost of any excess Services, as well as any handling charges and/or return shipment costs for any excess Product quantities.
- 10. Gratuities/Kickbacks.** No gratuities (entertainment, gifts, or otherwise) shall be offered or given by Seller/Subcontractor (or any of its officers, employees, agents, or subcontractors) to Buyer or Customer (or



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any of Buyer's or Customer's officers, employees, agents, or subcontractors) for the purpose of obtaining or rewarding favorable treatment as a supplier. Seller/Subcontractor shall not offer or give any kickback(s) to any officer, employee, agent, or subcontractors of Buyer or Customer.

- 11. Resolution of Disputes, Choice of Law.** Both parties shall make all reasonable efforts to settle any disputes on an amicable basis. In the event that agreement cannot be reached, then the following provisions shall apply.
- A.** In the event of any dispute that concerns Seller/Subcontractor's compliance with requirements flowing down from the Prime Contract, or any task order thereunder, and that arises from an interpretation, act or omission of Customer or concerns Seller/Subcontractor's compliance with the this Order or any associated Statement of Work, the dispute will be resolved solely by resort to the procedures specified in FAR 52.233-1, Disputes. In such case, Seller/Subcontractor shall prepare and submit a certified claim to Buyer in the form and manner required by FAR 52.233-1. Buyer shall pass the Seller/Subcontractor's claim through to Customer, provided Buyer determines that it can, in good faith, certify the claim in the manner required by the Prime Contract. If Seller/Subcontractor's claim is denied by Customer's Contracting Officer, Buyer, at Seller/Subcontractor's sole expense (including, but not limited to, attorney's fees and related litigation costs), may, on Seller/Subcontractor's behalf, pursue an appeal to the cognizant Board of Contract Appeals, or litigation in a Federal court having subject matter jurisdiction. Seller/Subcontractor shall be bound by the terms of any final decision by Customer's Contracting Officer and by any decision of the Board of Contract Appeals or court having jurisdiction over the subject matter to the same extent as Buyer.
- B.** In the event of any dispute that is not covered by the preceding paragraph, the Parties will cooperate in seeking an amicable resolution through mutually agreeable alternative dispute resolution procedures. If the Parties have not resolved the dispute by agreement within ninety (90) calendar days after either Party requests, in writing, alternative dispute resolution from the other, then either party shall have the right to pursue resolution of the dispute in the Circuit Court of Alexandria, Virginia, or the United States District Court for the Eastern District of Virginia (Alexandria Division). The courts identified in the preceding sentence shall be the exclusive venue for the purposes of this Section.
- 12. Invoicing & Payment.** See Appendix "Invoicing & Payment" at the end of this document.
- 13. Packing and Shipment.** Seller/Subcontractor shall deliver all Products under this Order in accordance with good commercial packing and shipment practices. A complete packing list shall be enclosed with all shipments, and Seller/Subcontractor shall mark all containers or packages with any necessary lifting, loading, handling, and shipping information, to include Buyer's Purchase Order number as identified above. Bills of Lading shall also include the Purchase Order number. Unless otherwise specified on the face of this Order, all deliveries shall be FOB Destination.
- 14. Quality Control.** Seller/Subcontractor shall provide and maintain a quality control system, to an industry-recognized quality standard and in compliance with any other specific quality requirements identified in this Order. Seller/Subcontractor shall keep complete records of all quality control inspections and make such records available as necessary to Buyer and Customer.



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15. Options.

- A. Option to Extend Services.** By written notice to Seller/Subcontractor, Buyer may require continued performance of any services within the limits and at the rates specified in the Order. These rates may be adjusted only as a result of revisions to prevailing labor rates issued by the Secretary of Labor.
- B. Option to Extend the Term of the Order.** Buyer may extend the term of the Order by written notice to the Seller/Subcontractor.
- C. Priced Options.** Buyer may exercise any priced option in the Order by written notice to the Seller/Subcontractor.

16. Stop Work Order (SWO). Buyer may, at any time, by means of a written SWO, require Seller/Subcontractor to stop all, or any part, of the work called for by the Order for a period of 90 days after the SWO is delivered to Seller/Subcontractor, and for any further period agreed to by the Parties. Upon receipt of the SWO, Seller/Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO during the period of work stoppage. Within a period of 90 days after an SWO is delivered to Seller/Subcontractor, or within any extension agreed to by the Parties, Buyer shall either cancel the SWO or terminate the work covered by the SWO as provided in the termination clauses below.

If the SWO is canceled or the period of the SWO expires, Seller/Subcontractor shall resume work. If in Buyer's reasonable judgment, the SWO results in an increase in time required for, or cost allocable to, performance of any part of the Order and Seller/Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage in accordance with the Request for Equitable Adjustment clause herein, Buyer shall make an equitable adjustment in the delivery schedule or price, or both.

If the SWO is not canceled and the work covered by the SWO is terminated for convenience, Buyer shall allow reasonable costs resulting from the SWO in arriving at the termination settlement.

17. Termination for Convenience (of Buyer or Customer). Buyer reserves the right to terminate this Order, or any part hereof, for its sole convenience, or that of Customer. Subject to the terms of this Order, Seller/Subcontractor shall be paid a percentage of the Order price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that Seller/Subcontractor can demonstrate (to the satisfaction of Buyer and Customer, and using Seller/Subcontractor's standard record keeping system) have resulted from the termination. Seller/Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

18. Buyer's Options in the Event of Default (including Default Termination). If Seller/Subcontractor fails to prosecute the work required under this Order with reasonable diligence and promptness, fails to provide Buyer adequate assurances of future performance upon request, or otherwise defaults in the performance of any material provision of this Order, Buyer may exercise any or all of the following rights:

- A.** Buyer may make an equitable deduction from any sums due to Seller/Subcontractor to compensate Buyer for the default;



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- B. Buyer may recover from Seller/Subcontractor either the estimated or actual cost to Buyer for correcting the default;
- C. Buyer may recover from Seller/Subcontractor all other damages sustained by Buyer as a result of any of Seller/Subcontractor's defaults not covered herein;
- D. Buyer may withhold payments otherwise due to Seller/Subcontractor while Seller/Subcontractor remains in default;
- E. Buyer may terminate this Order for default by giving seven (7) calendar days written notice to Seller/Subcontractor specifying the date, reason for default and the effective date of termination, without prejudice to other rights or remedies provided by law or by this Order, and may take possession of all or any part of the materials or equipment delivered or in transit and finish work by whatever method it may deem expedient.

If, after termination, it is determined pursuant to the Resolution of Disputes provision above that Seller/Subcontractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if Buyer had exercised a termination for Buyer's convenience, without prejudice to Buyer's rights and remedies under law.

- 19. Procedures Following Termination.** Upon receipt of notice of termination, either for default or convenience, Seller/Subcontractor shall immediately discontinue work under this Order and shall, if requested by Buyer, make every reasonable effort to cancel all existing orders, contracts or lower-tier subcontracts upon terms satisfactory to Buyer, and shall thereafter do only such work as may be necessary to preserve and protect work completed or in progress. Following such termination, all claims by Seller/Subcontractor shall be given in writing to, and must be received by, Buyer within sixty (60) days of termination notice as dated by Buyer. If the Government terminates the prime Contract, then FAR 52.249-2, Termination for Convenience of the Government (Fixed-Price) and FAR 52.249-8, Default (Fixed-Price Supply and Service) shall govern the termination and shall supersede any inconsistent terms contained in this Order. The following changes shall apply to FAR 52.249-2: the period for submitting termination inventory schedules shall be 60 days rather than 120 days; the period for submitting a final termination settlement proposal, 6 months rather than 1 year; and, in the case of a partial termination, the period for submitting a proposal for equitable adjustment shall be 45 days rather than 90 days.
- 20. Compliance with Laws, Rights of Buyer.** Seller/Subcontractor shall comply with all applicable local, state and federal laws, orders, rules, regulations, and ordinances. Seller/Subcontractor agrees to pay the cost(s) of any fees, license, permits, and/or other required charges, and comply with the guidelines and directives of any local, state, or federal government authority. Seller/Subcontractor agrees to indemnify Buyer against any loss, liability, expense, cost, or damage by reason of Seller/Subcontractor's violation thereof, either actual or alleged. This provision shall not be construed to limit or replace any other indemnity provided herein, and shall not act as a waiver or limitation of any of the rights or remedies available to Buyer at law or in equity.
- 21. Warranties–Services.** Seller/Subcontractor warrants that the Services rendered to Buyer under this Order shall be free from defects in design, material, and workmanship, and shall be performed with the degree of



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skill and judgment normally exercised by recognized professional firms performing services of the same or substantially similar nature; this warranty constitutes the standards by which the performance of the services are to be measured. If any Services delivered hereunder are identified as non-conforming within the warranty period, Seller/Subcontractor, at Buyer's option, and in response to written notice of warranty claim by Buyer, shall either (a) promptly repair, replace, or re-perform the Services to the warranted standard, or (b) refund to Buyer amounts paid for non-conforming Services. This shall not limit any other remedies or rights of Buyer, or obligations of Seller/Subcontractor, provided for in this Order.

- 22. Warranties-Products.** Seller/Subcontractor warrants to Buyer that any Products delivered to Buyer under this Order are fit for use, merchantable, and free of design, material, and/or workmanship defects. Seller/Subcontractor further warrants that all Products tendered have a standard manufacturer's warranty that shall be transferred (at no cost) to Buyer and/or Customer.
- 23. Intellectual Property Warranty and Indemnification.** Seller/Subcontractor warrants that the Products and Services delivered under this Order will not infringe or otherwise violate the intellectual property rights of any party in the United States or any foreign country. Seller/Subcontractor agrees to defend, indemnify, and hold harmless Buyer and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action or allegation by any party claiming that Products or Services delivered under this contract infringe or otherwise violate the intellectual property rights (to include patents, trademarks, copyrights, and service marks) of any party, or misappropriate any party's trade secrets, or violate rights of privacy or publicity, or contain libelous or other unlawful matter.
- 24. Confidential Relationship.** Except as required by law, Seller/Subcontractor shall make no public release, confirmation of, or denial of any information regarding this Order, its subject matter, or any of the Products or Services delivered hereunder for marketing, advertising, or any other purpose –without first obtaining Buyer's written consent. This prohibition includes, but is not limited to, statements made by Buyer's personnel regarding Seller/Subcontractor's performance under this Order.
- 25. Proprietary and Other Information of Buyer.** Any and all information provided to Seller/Subcontractor by Buyer remains the sole property of Buyer. Seller/Subcontractor (a) shall use information supplied by Buyer only to accomplish the work required under this Order, (b) agrees not to use such information for any other purpose, and (c) agrees not to disclose any information provided by Buyer to any third party without the prior written agreement of Buyer. Seller/Subcontractor shall maintain data protection processes and systems sufficient to adequately protect the information of Buyer. All copies of information provided by Buyer under this Order which Buyer has designated as being proprietary ("Proprietary Information"), whether provided orally, in writing, or as recorded on other media, shall be kept confidential by Seller/Subcontractor and not disclosed to any third party. Seller/Subcontractor shall return all "Proprietary Information" to Buyer following completion or termination of the Order, to include any and all copies made (in any form) of such information. Should Seller/Subcontractor be compelled by law to disclose any part of Buyer's Proprietary Information, Seller/Subcontractor shall, before making any disclosure, give Buyer such reasonable notice of the intended disclosure and afford Buyer the opportunity to protect its interests.



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- 26. Information of Seller/Subcontractor.** Seller/Subcontractor shall not provide any information it considers proprietary to Buyer without prior execution of a proprietary information agreement between the Parties. Notwithstanding this, unless otherwise expressly set forth in this Order, Buyer shall have the rights to use, for any purpose, information concerning Seller/Subcontractor's products, manufacturing methods or processes that Seller/Subcontractor may disclose to Buyer during the performance of this Order, if such information is disclosed without restriction on further disclosure or use.
- 27. Order of Precedence.** All provisions of the Order are intended to be read and construed in harmony with each other. In the event that provisions cannot be reconciled, inconsistencies shall be resolved by giving precedence in the following order:
- A. FAR/DFARS Flowdown Clauses (PUR-61)
 - B. Purchase Order, inclusive of associated Terms and Conditions
 - C. Statement of Work
- 28. Severability.** If any provision of this Order is held unenforceable, then such provision will be modified to reflect the Parties' intent. All remaining provisions of this Order shall remain in full force and effect.
- 29. Survivability.** In the event this Order is terminated, the Parties shall remain bound by the content of the following provisions, which shall survive termination: Compliance with Laws, Rights of Buyer; Assignment; Resolution of Disputes, Choice of Law; Warranties-Services; Warranties-Products; Intellectual Property Warranty and Indemnification; Confidential Relationship; Proprietary and Other Information of Buyer; Independent Contractor Relationship; Indemnification (General); Limitation of Liability.
- 30. Non-Waiver.** The failure by Buyer to require performance of any provision shall not affect Buyer's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Order constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
- 31. Independent Contractor Relationship.** Nothing in this Order shall grant to either Party the right to make commitments of any kind for or on behalf of the other Party. Each Party to this Order is an independent contractor; this Order shall not constitute a teaming agreement, joint venture or partnership between the Parties. The employees used by Seller/Subcontractor to perform work under this Order shall be Seller/Subcontractor's employees exclusively, without any relation whatsoever to Buyer.
- 32. Indemnification (General).** Seller/Subcontractor agrees to indemnify and hold harmless Buyer and its customers from and against any and all losses, costs, claims, causes of action, damages, liabilities and expenses, including attorneys' fees, all expenses of litigation, settlement, alternative dispute resolution, and court costs, arising from any act or omission of Seller/Subcontractor, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Order. In no event shall obligations hereunder be limited to the extent of insurance available to, carried by, Seller/Subcontractor or any of its subcontractors, suppliers or agents.
- 33. Maintenance of Records.** Seller/Subcontractor shall maintain complete and accurate records in accordance with generally accepted accounting principles to substantiate Seller/Subcontractor's charges hereunder.



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Such records shall include, but not be limited to, applicable time sheets, job summaries, receipts, invoices, warranties, certifications, and applicable calibration/repair/maintenance records for machinery.

Seller/Subcontractor shall retain such records for three (3) years from final payment under this Order.

34. Limitation of Liability. Buyer shall not be liable to Seller/Subcontractor for any lost revenue, or any indirect, punitive, exemplary, special, or consequential damages, even if Buyer has been advised as to the possibility of such damages, and regardless of whether the claim for such damages is asserted under a theory of breach of contract, tort, or any other theory of liability. Any claim to such damages is expressly waived by Seller/Subcontractor upon acceptance of this Order. Except for instances involving personal injury, in no event shall Buyer be liable to Seller/Subcontractor for any amount in excess of amounts paid under this Order.

35. Lower Tier Subcontracting. Seller/Subcontractor may not utilize lower-tier subcontractors, vendors or suppliers in the performance of work under this Order without prior written approval from Buyer. In addition, by entering into this Agreement, Seller/Subcontractor acknowledges that prior written approval of Customer, which is beyond Buyer's control, may also be required.

Where lower-tier subcontracting is approved:

- A. Seller/Subcontractor shall include all applicable FAR/DFARS clauses into any lower-tier subcontract.
- B. Seller/Subcontractor shall charge Buyer no more than the amount charged to Seller/Subcontractor by the lower-tier subcontractor for goods and/or services.
- C. Payment from Buyer to Seller/Subcontractor for goods or services rendered by approved lower-tier subcontractors shall be made only after Seller/Subcontractor submits such subcontractors' furnished invoices and other supporting documentation for review by Buyer.

36. Export Control Compliance. By accepting this Order, Seller/Subcontractor agrees that in all work performed and all actions taken under this Order, Seller/Subcontractor and its agents, assignees, and/or lower-tier Subcontractors, shall abide by The U.S. Arms Export Control Act (AECA), 22 U.S.C. §§ 2751-2794, including The International Traffic in Arms Regulations (ITAR), 22 C.F.R. §120, et seq., and the Export Administration Act (EAA), 50 U.S.C. App. §§2401-2420, including The Export Administration Regulations (EAR), 15 C.F.R. §§730-744, as well as the requirement for obtaining any export license or agreement, if applicable. Seller/Subcontractor and Buyer will work together in good faith to comply with such export requirements, including jointly submitting and entering into any Technical Assistance Agreements or other licensing documents with the U.S. Department of State and/or the U.S. Department of Commerce necessary for performing work under this Order. Seller/Subcontractor will work with the Buyer to identify areas of technical support and the citizenship of its Third Country National (TCN) employees working or planning to work on this Order. Each party will be responsible for its own costs in preparing such documentation. Seller/Subcontractor acknowledges that Seller/Subcontractor's work under this Order may be delayed or reduced as necessary to comply with U.S. Export Laws.

37. Counterfeit Parts Prevention, Detection, and Avoidance. Seller/Subcontractor agrees to sell only parts or materials and components as specified by the description of this purchase order/subcontract and only as



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original, new, and non-counterfeit. No substitutes, or used parts, materials or components shall be acceptable in replacement unless authorized by the buyer in writing. Seller/Subcontractor agrees that all parts, materials, or components procured shall be only purchased from, and traceable to the original equipment manufacturer, or authorized distributor, or trusted independent distributors. All parts, components or materials shall be provided in original packaging with original labels unless authorized by the buyer. For those parts, components or materials provided as repackaged or re-labeled, or re-surfaced or re-marked, seller/subcontractor shall obtain in writing approval by the buyer in advance of shipment or delivery. All parts, components or materials purchased from trusted independent distributors shall have adequate documentation, available to buyer upon request that provides evidence of OEM documentation, that, in the buyer's judgment authenticates the traceability of the parts, materials and components. For those components that cannot be procured from the OEM or authorized sources without documentation of traceability from brokers or any other sources Seller/Subcontractor must obtain prior approval from the buyer in writing, or such sources shall not be authorized under this purchase order/subcontract. Any request made by Seller/Subcontractor to waive any part or all of this clause must be made in writing and with supporting documentation that provides complete and compelling support for its request and describing actions taken to ensure that those parts, materials and components to be provided are legitimate. Further, Seller/Subcontractor agrees to provide documentation of traceability at any time to the buyer if requested.

38. Conflict Minerals and Prohibited Materials. The following Conflict Minerals are prohibited under this Purchase Order/Subcontract when procured or originating from: The Democratic Republic of Congo (DRC) and/or The Sudan, Uganda, Central Africa Republic, Congo Republic, Angola, Zambia, Tanzania, Rwanda and Burundi:

Conflict Minerals: Cassiterite, Columbite-Tantalite, Wolframite and Gold. These minerals are found in the production of and final product of tin, tantalum, tungsten, used in products such as solder, plated steel, alloys (bronze, brass, Babbitt, valves, fittings, piping, bearing surfaces, packaging, capacitors, resistors, active semiconductors, communication equipment and systems, speakers, cameras, heat shielding, medical instruments, wires, wiring, electrodes, electrical contacts, resistive heating elements, weld wire, incandescent light bulbs, carbide tools, electric plating, integrated circuits.

39. Compliance with Buy American Act & Berry Amendment. Seller/Subcontractor shall advise Buyer in writing before delivering any items that are not domestic end products as defined in DFARS 252.225-7001, Buy American Act and Balance of Payments Program, or domestic commodities as provided in DFARS 252.225-7012, Preference for Certain Domestic Commodities. Seller/Subcontractor shall advise Buyer in writing before delivering any items containing specialty metals that have not been melted or produced in the United States, or in a qualifying country as defined in DFARS 225.003, Definitions. If Seller/Subcontractor is delivering hand or measuring tools under this Order, the tools must be produced in the United States.

40. Prohibited and Embargoed Countries. Seller/Subcontractor shall ensure that no subcontracted labor or employed Third Country National from any of the countries listed in 22 CFR 126.1, including those who hold dual or third country citizenship, work at any facilities under this subcontract at any tier.



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- 41. Safeguarding of Unclassified Controlled Technical Information.** Seller/Subcontractor shall ensure that adequate security to safeguard unclassified controlled information technology, as defined in DFARS 252.227-7013, in accordance with the requirements DFARS 252.204-7012 incorporated herein. Safeguarding and reporting requirements shall include implementation of appropriate information technology systems that meet the minimum requirements set forth in NIST SP800-17r1, or a written explanation of how required security control identified in the Table 1 at DFARS 252.204-7012 is not applicable or an alternative control/protective measure is used to achieve the same level of security. All requirements of this paragraph and DFARS 252.204-7012 shall be incorporated in all tiers of subcontracts, including the substance of DFARS 252.204-7012, including subcontracts for commercial items.
- 42. Government Property**
- A.** For fixed price orders without submission of cost or pricing data, FAR 52.245-1, Government Property and Alternate I apply to all Government Property utilized by Seller/Subcontractor in the course of performing the Order. FAR 52.245-1 is hereby incorporated in full with the exception of paragraph (h)(1). Paragraph (h)(1) as specified in Alternate I is incorporated into this Order and reads as follows:
(h)(1) The Seller/Subcontractor assumes the risk of, and shall be responsible for, any loss of Government property upon its delivery to the Seller/Subcontractor as Government-furnished property. However, the Seller/Subcontractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.
- B.** For cost-reimbursement orders, time-and-materials orders, labor hour orders and fixed price orders for which cost or pricing data has been submitted, Seller/Subcontractor is prohibited from including any costs of insuring Government Property in the costs or pricing of this Order. If Seller/Subcontractor includes any such cost, Alternate I to FAR 52.245-1 shall apply to this Order. If Seller/Subcontractor excludes all costs of insuring Government Property from the costs and pricing of the Order, FAR 52.245-1, Government Property shall apply to the Order.
- 43. Order Closeout**
- A. Final Invoice & Assignment and Release of Claims.** The final invoice and supporting documentation, including an Assignment and Release of Claims if required by the Payment clause of the Order, shall be submitted by Seller/Subcontractor as promptly as practicable following completion of the work under the Order, but no later than 3 months after the date of completion; provided that if Seller/Subcontractor cannot submit the final invoice until settlement of its final indirect cost rates, the final invoice and supporting documentation must be submitted no later than 1 year after the date of Order completion. If Seller/Subcontractor fails to submit an adequate final indirect cost rate proposal within the 6-month period following the expiration of each of its fiscal years, or within any extension granted in writing by the Seller/Subcontractor's Administrative Contracting Officer, Buyer shall decrement the indirect costs otherwise payable under the Order by 50%.
- B. Patent Reporting.** If the Order covers experimental, developmental, or research work, Seller/Subcontractor shall submit a final patent report within 3 months after completion of the Order, listing all subject inventions or stating that there were none, and listing all subcontracts at any tier containing a patent rights clause or stating that there were none.



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C. Property Closeout

- (1) Seller/Subcontractor shall promptly perform property closeout after Order completion or termination, including reporting, investigating and securing closure of all loss, damage, destruction, or theft cases and physically inventorying all property.
- (2) Seller/Subcontractor shall submit inventory disposal schedules to Buyer no later than: (a) 30 days following Seller/Subcontractor's determination that a Government property item is no longer required for performance of the Order; and (b) 60 days following completion or termination of the Order.

- 44. Bankruptcy.** In the event Seller/Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Seller/Subcontractor agrees to furnish written notification of the bankruptcy to Buyer within five days after initiation of such proceedings.
- 45. Taxes.** Buyer shall not be liable to Seller/Subcontractor, or any officer, employee, agent, lower-tier subcontractor or consultant of Seller/Subcontractor, for any taxes, customs, or assessments in connection with this Order, except such as are expressly set forth herein. In the event the goods or services purchased under this Order are exempt from taxes, such exemption will be stipulated in the body of this agreement, and the applicable Tax Exemption Number will be made available upon reasonable request.
- 46. U.S. Foreign Corrupt Practices Act.** Seller/Subcontractor acknowledges that the U.S. Foreign Corrupt Practices Act (FCPA) makes it unlawful to offer, pay, promise or authorize to pay any money, gift or anything of value, including but not limited to bribes, entertainment, kickbacks or any benefit, directly or indirectly, (i) to any foreign official or any foreign political party or (ii) to any person while knowing or suspecting that the payment or gift will be passed on to a foreign official, in connection with any business activity of Seller/Subcontractor. For the purpose of this Agreement, a "foreign official" means any employee or officer of a government of a foreign country, including an employee or officer of any national, regional or local subdivision, department, agency, or enterprise owned or controlled by such foreign government, any official of a foreign political party, any official or employee of a public international organization, any person acting in an official capacity for, or on behalf of, any such entity, or any candidate for foreign political office.

The Parties covenant and agree with as follows:

The Parties have not, and will not, in connection with any transaction contemplated by this Agreement or in connection with any other business transaction involving Buyer or Seller/Subcontractor, make, promise or offer any payment or transfer of anything of value, directly or indirectly: (A) to any foreign official (as defined above) or to an intermediary for payment to any foreign official; (B) to any political party in any foreign country; or (C) to any other person, firm, or organization that would violate the FCPA. It is the intent of the Parties that no payment or transfer of anything of value shall be made that has or may have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks or any other unlawful or improper means of obtaining business. This subsection shall not, however, prohibit reasonable and customary business entertainment or the giving of business mementos of nominal value in connection with Seller/Subcontractor's and Buyer's performance under



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this Agreement so long as such actions do not violate the laws of the U.S. or the country in which the work is being performed.

If at any time during the term of this Agreement either Party learns of: (A) any payment, offer, or agreement to make a payment or to provide anything of value to a foreign official or foreign political party for the purpose of obtaining or retaining business or securing any advantage for the Buyer or Seller/Subcontractor under this Agreement or otherwise, except to the extent permitted by this clause, or (B) any other development during the term of this Agreement that in any way renders inaccurate or incomplete the representations, warranties, agreements or covenants of the Parties hereunder, each of the Parties will immediately advise the other in writing of all relevant facts and circumstances pertaining thereto and will cooperate with the other Party in taking such remedial action, including but not limited to reporting such facts and circumstances to the appropriate authorities, as either Party may reasonably direct.

47. Organizational Conflict of Interest

- A. Definition.** “Organizational conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to Buyer and the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. (See FAR Subpart 9.5)
- B. Warranty.** Seller/Subcontractor warrants that, to the best of its knowledge and belief, (a) Seller/Subcontractor has no organizational conflicts of interest with regard to any work to be performed under the Order, or (b) Seller/Subcontractor has disclosed all such relevant information in writing to Buyer.

Seller/Subcontractor agrees that if an actual or potential conflict of interest is discovered after award, Seller/Subcontractor will make full disclosure in writing to Buyer no later than three working days after discovery. This disclosure shall include a description of actions Seller/Subcontractor has taken or proposes to take, after consultation with Buyer, to avoid, mitigate, or neutralize the actual or potential conflict. The Government may direct Buyer to terminate the Order, in whole or in part, if it deems such termination necessary to avoid organizational conflicts of interest. If Seller/Subcontractor was aware, or should have been aware, of a potential conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to Buyer, the Government may: direct Buyer to terminate the Agreement, debar Seller/Subcontractor from further Government contracting, and/or pursue other remedies.

- C. Flowdown.** Seller/Subcontractor agrees to insert provisions that conform substantially to the language of this provision in any lower-tier subcontract issued under the Order in accordance with the Lower-Tier Subcontracting provision herein. .

48. Insurance

- A. Requirements for Seller/Subcontractor’s Insurance Generally.** When required by Buyer and before commencing work, Seller/Subcontractor shall procure and maintain insurance of the kinds and limits enumerated hereunder and on terms and with an insurance carrier satisfactory to Buyer. All



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certifications of insurance shall (a) name VSE Corporation as the holder of the certificate and (b) name VSE Corporation as "Additional Insured" on Seller/Subcontractor's policy. Any insurance policy required to be held by Seller/Subcontractor shall be maintained with an insurance carrier having a financial rating of A++, A+, A, or A-, and at a minimum of \$50,000,000 in policy holders surplus. Seller/Subcontractor shall provide evidence of renewed coverage, as applicable under this Order, on an annual basis. Finally, Seller/Subcontractor shall waive all rights to subrogate against VSE. Certificates of such insurance issued by Seller/Subcontractor's insurance carrier shall be filed with Buyer before the commencement of work under this Order. Within 10 calendar days of receipt of this Order, Seller/Subcontractor shall furnish to Buyer a certificate of the above required insurance.

B. Specific Policy Requirements by Type

- (1) **Workers' Compensation and Employees Liability Insurance.** In accordance with such laws as may be applicable to the work to be performed, but not less than \$100,000 and covering Seller/Subcontractor's employees, agents and consultants.
- (2) **Workers' Compensation Insurance (Defense Base Act)** Public work means any project involving construction, alteration, removal or repair for the public use of the United States or its allies, including but not limited to projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project.

If the order covers public work performed outside the continental U.S. Seller/Subcontractor shall provide, before commencing performance under this contract, such workers' compensation insurance or security as the Defense Base Act (42 U.S.C. 1651-1654) requires and continue to maintain it until performance is completed.

Flowdown. In all subcontracts approved under the Lower-Tier Subcontracting clause herein to which the Defense Base Act applies, Seller/Subcontractor shall insert a clause, similar to this clause, imposing upon those subcontractors this requirement to comply with the Defense Base Act.

(3) General Liability Insurance

Bodily Injury	\$500,000 - per occurrence
Property Damage	\$500,000 – per occurrence

(4) Comprehensive Automobile Liability Insurance

Bodily Injury	\$500,000 - per person
	\$500,000 - per occurrence
Property Damage	\$500,000 - per occurrence

- C. Changes to Insurance Coverage.** The foregoing insurance coverage shall not be terminated or canceled unless Buyer is given thirty (30) days prior written notice by the insurance carrier, and Seller/Subcontractor obtains the same minimum limits of coverage from another insurance carrier



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effective upon termination of prior policy, as demonstrated by a certificate of insurance satisfactory to Buyer. Any changes made by Seller/Subcontractor to its insurance policies without notice that are adverse to Buyer, or are otherwise in violation of the terms of this Order, will be considered a breach of this Agreement.

- 49. Technical Specifications.** All Technical Specifications, Standards, etc. listed are by default the current revision, unless otherwise documented
- 50. Reporting Executive Compensation.** The subcontractor reporting requirements of FAR 52.204-10, Reporting Executive Compensation, apply if Seller/Subcontractor received at least 80% of its gross revenue and at least \$25,000,000 in gross revenue from Federal contracts, during its most recently completed fiscal year and Seller/Subcontractor is not a publicly traded company subject to SEC filing requirements.
- 51. Recovery Act. - RESERVED**
- 52. FAR & DFARS Clauses Incorporated by Reference.** This Order is issued under U.S. Government Prime Contract Number referenced on the face of this purchase order. The Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses listed below and those listed in VSE FAR/DFARS Flowdown Clauses (PUR-61) are hereby incorporated by reference; with the same force and effect as if they were set forth in full. To read the regulations in full text, refer to <https://www.acquisition.gov/browsefar>.

In each clause incorporated below, substitute “Buyer” for “Government” and “Contracting Agency” and “Buyer’s Point of Contact” for “Contracting Officer”, “Order” for “Contract”, and “Resolution of Disputes Clause” for “Disputes, Contract Disputes Act” or “52.233-1” unless otherwise specified or clearly inappropriate.

FEDERAL ACQUISITION REGULATION CLAUSES INCORPORATED HEREIN BY REFERENCE:

- 52.203-13 - Contractor Code of Business Ethics and Conduct. [Applicable only if Order exceeds \$5M & period of performances exceeds 120 days.]
- 52.203-15 - Whistleblower Protections under American Recovery and Reinvestment Act of 2009
- 52.219-8 - Utilization of Small Business Concerns
- *FAR 52.222-26, 35 & 36 apply unless all work under Order is performed outside U.S. by employees not recruited or hired in U.S.
- 52.222-26 - Equal Opportunity
- 52.222-35 - Equal Opportunity for Veterans
- 52.222-36 - Affirmative Action for Workers with Disabilities
- 52.222-40 - Notification of Employee Rights under the National Labor Relations Act [If Order exceeds \$10,000 & at least some work will be performed in U.S.]
- 52.222-50 - Combating Trafficking in Persons
- 52.222-54 - Employment Eligibility Verification. Seller will provide a copy to the Buyer of its Maintain Vendor Page from the Homeland Security Web site (<https://www.e-verify.gov>) within 10 calendar days of receipt of this order. [applicable if order exceeds \$10,000, includes work performed in U.S. and



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covers services or construction (unless order covers no construction and no services other than those incidental to the purchase of a COTS item provided by the subcontractor that are normally performed for the COTS item]

- 52.223-3 - Hazardous Material Identification and Material Safety Data [applicable if delivering items defined as hazardous by Federal Standard No. 313a]
- 52.227-3 - Patent Indemnity
- 252.247-64 - Preference for Privately Owned U.S.-Flag Commercial Vessels. (See para. (e)(4) of clause to determine applicability)
- 252.204-7008 - Compliance with Safeguarding Covered Defense Information Controls
- 252.204-7009 - Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information
- 252.204-7010 - Requirement for Contractor to Notify DOD if the Contractor's Activities are Subject to Reporting under the U.S.-International Atomic Energy Agency Additional Protocol
- 252.204-7012 - Safeguarding Covered Defense Information and Cyber Incident Reporting
- 252.204-7015 - Notice OF Authorized Disclosure OF Information FOR Litigation Support
- 252.223-7001 - Hazard Warning Label
- 252.225-7009 - Restriction on Acquisition of Certain Articles Containing Specialty Metals
- 252.227-7015 - Technical Data—Commercial Items, [Applicable when delivering technical data]
- 252.227-7037 - Validation of Restrictive Markings on Technical Data [Applicable when delivering technical data]
- 252.236-7013 - Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers [if order/subcontract involves the acquisition of steel as a construction material]
- 252.246-7003 - Notification of Potential Safety Issues [If delivering or servicing (i)parts identified as critical safety items or systems or (ii) subsystems, assemblies or subassemblies integral to item or system]
- 252.247-7023 - Transportation of Supplies by Sea (See para. (b)(2)(ii)(B) of clause for applicability)

ALL CLAUSES NOT LISTED ABOVE THAT THE TERMS OF THE PRIME CONTRACT OR PUBLIC LAW REQUIRE BUYER TO INCLUDE IN THE ORDER ARE HEREBY INCORPORATED BY REFERENCE.



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APPENDIX
INVOICING & PAYMENT

I. FIXED-PRICE ORDERS

II. TIME-AND-MATERIALS (T&M) AND LABOR-HOUR ORDERS

III. COST-REIMBURSEMENT ORDERS

I. FIXED-PRICE ORDERS

- A. Pricing.** Seller/Subcontractor agrees and warrants that the price offered to Buyer is equal to or lower than the price offered to his most favored customers in like circumstances, and Seller/Subcontractor further warrants that Buyer may truthfully certify the same.
- B. Invoicing.** Seller/Subcontractor shall submit an original invoice (or electronic invoice, if authorized) to the address designated in the Order to receive invoices. An invoice must include the following:
- Name and Address of Seller;
 - Invoice Date and Number;
 - Order Number, Order Line Item Number and any other information specified on the face of the Order under “invoices”;
 - Description, Quantity, Unit of Measure, Unit Price and Extended Price of the Products or Services delivered;
 - Shipping Method and Bill of Lading/Tracking Number or Manifest Number;
 - Terms of any discount for prompt payment offered;
 - Name and address of official to whom payment is to be sent;
 - Name, title, and phone number of person to notify in event of defective invoice.

Seller/Subcontractor may submit only *one invoice per month* unless more frequent submission is explicitly authorized elsewhere in the Order.

- C. Payment.** Unless otherwise stipulated on the face of the Order, Seller/Subcontractor shall be paid Net 30 upon submission of each properly prepared invoice for Products and/or Services accepted by Buyer at the destination set forth in the Order, less any deductions specified elsewhere in the Order. Payment shall be considered to have been made on the date appearing on the payment check, or in the case of an electronic funds transfer, on the date of the transfer.

If Seller/Subcontractor becomes aware that Buyer has paid twice, or otherwise overpaid, Seller/Subcontractor shall immediately notify Buyer and request instructions.



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The basis of any cash discount calculation will be the later of the date the articles are accepted by Buyer or the date an acceptable invoice is received by Buyer. Discounts will be made based upon the gross amount of an invoice.

Payment shall be due solely from funds actually received by Buyer from the Government in payment of work done by Seller/Subcontractor pursuant to this Order. Buyer shall not be obligated to pay interest or interest penalties to Seller/Subcontractor except to the extent that Buyer receives actual payment of interest or interest penalties from the Government as a result of late payment of an invoice submitted by Buyer which includes an amount invoiced by Seller/Subcontractor.

- D. Final Payment.** The final invoice and supporting documentation shall be submitted by Seller/Subcontractor as promptly as practicable following completion of the work under the Order, but in no event later than 3 months after the date of completion.

II. TIME-AND-MATERIALS (T&M) AND LABOR-HOUR ORDERS

- A. Invoicing.** Seller/Subcontractor shall submit an original invoice (or electronic invoice, if authorized) to the address designated in the Order to receive invoices. An invoice must include the following:

- Name and address of Seller/Subcontractor;
- Invoice date and number;
- Order number, Order Line Item Number and, if applicable, any other information specified on the face of the Order under “invoices”;
- Shipping method and bill of lading/tracking number or manifest number;
- Terms of any discount for prompt payment offered;
- Name and address of official to whom payment is to be sent; and
- Name, title, and phone number of person to notify in event of defective invoice.

1. For Labor also include:

- Description of Work Performed,
- Labor Categories,
- Hourly Rates,
- Number of Hours in Each Labor Category,
- Daily Job Timekeeping Records and,
- Records Verifying that the Employees Meet the Qualifications for the Labor Categories.

2. For Materials also include:

- Description,
- Quantity,
- A Detailed Statement of the Claimed Allowable Cost in Compliance with FAR and DFARS Cost Principles (FAR Subpart 31.2; DFARS Subpart 231.2), and



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- A Statement Certifying that no profit has been added to Material Cost by Seller/Subcontractor except in accordance with FAR 52.232-7(b)(2) or FAR 31.205-26(e).
- B. Frequency of Invoicing.** Seller/Subcontractor may submit only one invoice per month unless more frequent submission is explicitly authorized elsewhere in the Order or approved in writing by the Buyer's POC.
- C. Payment**
- 1. Labor.** Buyer will pay each substantiated invoice within 30 days after receipt except as otherwise provided in the Order and subject to the terms of Paragraph (D).
 - 2. Materials.** Buyer will pay each substantiated invoice within 30 days after receipt, except as otherwise provided in the Order and subject to the terms of Paragraph (E), in the amounts determined by Buyer to be allowable under FAR Subpart 31.2, DFARS Subpart 231.2 and all other terms of the Order. Interim payments for materials made prior to final payment under the Order are financing payments. In the event that Buyer requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the Order, Buyer is not compelled to make payment by the specified due date.
 - 3. Discounts.** The basis of any cash discount calculation will be the later of the date the labor and materials are accepted by Buyer or the date an acceptable invoice is received by Buyer. Discounts shall be made based upon the gross amount of an invoice. Payment shall be considered to have been made on the date appearing on the payment check, or, in the case of an electronic funds transfer, the date of the transfer.
 - 4. Overpayment.** If Seller/Subcontractor becomes aware that Buyer has overpaid any interim or final invoice, Seller/Subcontractor shall immediately notify Buyer and request instructions for repayment.
 - 5. Government Payment.** Payment shall be due solely from funds actually received by Buyer from the Government in payment of work done by Seller/Subcontractor pursuant to this Order. Buyer shall not be obligated to pay interest or interest penalties to Seller/Subcontractor except to the extent that Buyer receives payment of interest or interest penalties from the Government on the portion of Buyer's invoice representing costs invoiced by Seller/Subcontractor.
- D. Labor**
- 1.** Hourly rate means the rate(s) prescribed in the Order for payment for labor that meets the labor category qualifications of a labor category specified in the Order that are performed by Seller/Subcontractor; transferred between divisions, subsidiaries, or affiliated of Seller/Subcontractor under a common control; or performed by Seller/Subcontractor's subcontractors, provided the subcontractors are approved in advance by Buyer in accordance with the Lower Tier Subcontracting clause in the Order.



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Seller/Subcontractor agrees and warrants that the hourly rates offered to Buyer is equal to or lower than the rates offered to its most favored customers in like circumstances, and Seller/Subcontractor further warrants that Buyer may truthfully certify the same.

2. The amounts shall be computed by multiplying the appropriate hourly rates prescribed elsewhere in the Order by the number of direct labor hours performed.
3. The hourly rates shall be paid for all labor performed on the Order that meets the labor qualifications specified in the Order. Labor hours incurred to perform tasks for which labor qualifications are specified in the Order will not be paid if the work is performed by employees who do not meet the specified qualifications.
4. The hourly rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.
5. Seller/Subcontractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by records that verify the labor is performed by individuals who meet the qualifications for the labor categories specified in the contract; and individual daily job timekeeping records or other substantiation approved by Buyer,
6. Buyer may unilaterally issue an Order revision requiring Seller/Subcontractor to withhold amounts from its billings until a reserve is set aside in an amount Buyer considers necessary to protect Buyer's interests. Buyer may require a withholding of 5% of the amounts due, but the total amount withheld for the Order shall not exceed \$50,000. The amounts withheld shall be retained until Seller/Subcontractor executes and delivers the Release of Claims required by Paragraph (N) of this Appendix.
7. Unless the Order prescribes otherwise, the hourly rates identified in the Order shall not be varied by virtue of Seller/Subcontractor having performed work on an overtime basis. If no overtime rates are provided in the Order and overtime work is approved in advance by Buyer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Resolution of Disputes clause of the Order. If the Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent overtime is approved by Buyer.

E. Materials. [If the Order is Labor-Hour, Paragraph (E) is deleted from the clause]

1. Definitions

- **Direct materials** means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
- **Materials means:**
 - Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of Seller/Subcontractor under a common control;



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- Subcontracts for supplies and incidental services for which there is not a labor category specified in the Order, provided the subcontracts are approved in advance in accordance with the Lower Tier Subcontracting clause of the Order.
 - Other direct costs (e.g., incidental services for which there is not a labor category specified in the Order, travel, computer usage charges, etc.); and
 - Applicable indirect costs.
- 2. Prices & Rebates.** Seller/Subcontractor shall obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, Seller/Subcontractor shall promptly notify Buyer and give the reasons. Seller/Subcontractor shall give credit to Buyer for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of Seller/Subcontractor, or would have accrued except for the fault or negligence of Seller/Subcontractor.
- 3. Seller/Subcontractor's Commercial Materials.** If Seller/Subcontractor furnishes its own materials that meet the definition of a Commercial Item in FAR 2.101, the price to be paid for such materials shall not exceed Seller/Subcontractor's established catalog or market price, adjusted to reflect the quantities being acquired and actual cost of any modification necessary because of Order requirements.
- 4. Allowable Costs.** Any material and indirect costs billed by Seller/Subcontractor must comply with FAR Subpart 31.2 and DFARS Subpart 231.2 in effect on the date of the Order, and all other terms of the Order.
- 5. Indirect Costs**
- a. Seller/Subcontractor shall not apply any indirect costs to subcontracts that are paid at the hourly rates established in the Order.
 - b. Except as provided in subparagraph (a) above, Seller/Subcontractor may include allocable indirect costs to the extent they are comprised only of costs that are clearly excluded from the hourly rate; and allocated in accordance with Seller/Subcontractor's approved accounting practices, as shown in the records maintained by Seller/Subcontractor for purposes of obtaining reimbursement under Government contracts and subcontracts, and allowable under FAR 31.2 and DFARS 231.2; and compliant with Cost Accounting Standards, if the Order is CAS-covered.

Indirect costs payable under this Order shall be obtained by applying indirect cost rates established in accordance with the Final indirect cost rates and Billing rates provisions below.
 - c. Billing rates. Until final annual indirect cost rates are established for any period, Buyer shall reimburse Seller/Subcontractor at billing rates established by the ACO or the cognizant federal auditor, or by Buyer, subject to adjustment when final rates are established. These billing rates



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shall be the anticipated final rates and may be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

d. Final Indirect Cost Rates

- (1) FAR 42.7: Final annual indirect cost rates and the appropriate bases shall be established in accordance with FAR Subpart 42.7 in effect for the period covered by the indirect cost rate proposal.
- (2) Final Indirect Cost Rate Proposal: Seller/Subcontractor shall submit an adequate final indirect cost rate proposal within the 6-month period following the expiration of each of its fiscal years. If Seller/Subcontractor performs as a prime contractor on other flexibly priced government contracts, the proposal shall be submitted to the Seller/Subcontractor's Administrative Contracting Officer (or cognizant Federal agency official) and its DCAA auditor (or cognizant federal auditor.) Otherwise, the proposal shall be submitted to Buyer. Seller/Subcontractor shall support its proposal with adequate supporting data.

The proposed rates shall be based on Seller/Subcontractor's actual cost experience for that period. Seller/Subcontractor and the ACO, FAO, or Buyer, as applicable, shall establish the final indirect cost rates as promptly as practical after receipt of Seller/Subcontractor's proposal.

If Seller/Subcontractor fails to submit an adequate final indirect cost rate proposal within the 6-month period following the expiration of each of its fiscal years, or within any extension granted in writing by the Seller/Subcontractor's Administrative Contracting Officer, Buyer shall decrement the indirect costs otherwise payable under the Order by 50%.

- (3) Final indirect cost rate agreement: Seller/Subcontractor and the ACO, FAO or Buyer, as applicable, shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify the agreed-upon final annual indirect cost rates; the bases to which the rates apply; the periods for which the rates apply; any specific indirect cost items treated as direct costs in the settlement; and the affected contracts and subcontracts, identifying any with advance agreements or special terms and the applicable rates.

The understanding shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in the Order. The understanding shall be considered incorporated into the Order upon execution.

When Seller/Subcontractor and Buyer are negotiating rates, failure by the parties to agree on final indirect cost rates shall be a dispute within the meaning of the Resolution of Disputes clause.

When Seller/Subcontractor negotiates rates with the ACO or FAO rather than Buyer, Seller/Subcontractor shall immediately advise Buyer upon settlement of final rates for the entire period of Order performance.



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F. Consent to Subcontract. If Seller/Subcontractor enters into any subcontract without obtaining consent in accordance with the Lower Tier Subcontracting clause in the Order, Buyer is not required to reimburse Seller/Subcontractor for any costs incurred under the subcontract prior to the date Seller/Subcontractor obtains the required consent.

G. Total Cost. It is estimated that the total cost to Buyer for the performance of the Order will not exceed the ceiling price, and Seller/Subcontractor agrees to use its best efforts to perform the specified work and all other obligations under the Order within the ceiling price, including all indirect costs allocable to the Order.

If at any time Seller/Subcontractor has reason to believe that the hourly rate payments and material costs that will accrue in performing the Order over the next 30 days, if added to all other payments and costs previously accrued, will exceed 85% of the ceiling price, Seller/Subcontractor shall notify Buyer, giving a revised estimate of the total price for performing this Order with supporting reasons and documentation.

If at any time Seller/Subcontractor has reason to believe that the total price to Buyer for performing this Order will be substantially greater or less than the then stated ceiling price, Seller/Subcontractor shall notify Buyer, giving a revised estimate of the total price for performing this Order, with supporting documentation for any increase.

H. Ceiling Price. Buyer will not be obligated to pay Seller/Subcontractor any amount in excess of the ceiling price, and Seller/Subcontractor shall not be obligated to continue performance if to do so would exceed the ceiling price, unless and until Buyer notifies Seller/Subcontractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under the Order. When and to the extent that the ceiling price has been increased, any hours expended and material costs incurred by Seller/Subcontractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

I. Timing of Reimbursement. For the purpose of reimbursing allowable material costs, the term “costs” includes only:

1. Those recorded costs that, at the time of the request for reimbursement, Seller/Subcontractor has paid by cash, check, or other form of actual payment;
2. When Seller/Subcontractor is not delinquent in paying costs of Order performance in the ordinary course of business, costs incurred, but not necessarily paid, for --
 - a. Materials purchased directly for the Order, provided payments determined due will be made in accordance with the terms and conditions of a subcontract or invoice, and ordinarily within 30 days of the submission of Seller/Subcontractor’s payment request to Buyer; and



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b. Properly allocable and allowable indirect costs, as shown in the records maintained by Seller/Subcontractor for purposes of obtaining reimbursement under Government contracts and subcontracts, but only if Seller/Subcontractor has an approved cost accounting system. Allowable indirect costs under this Order shall be obtained by applying indirect cost rates established in accordance with the Billing rates and Final indirect cost rates provisions of this clause.

J. NO PROFIT OR FEE. Buyer will not pay profit or fee to Seller/Subcontractor on materials.

Furthermore, the price charged to Buyer for materials, supplies and services obtained from subcontractors or suppliers who are under a common control with Seller/Subcontractor shall be limited to cost incurred unless

1. It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of Seller/Subcontractor and all divisions, subsidiaries and affiliates of Seller/Subcontractor under a common control; and
2. The item being transferred qualifies for an exception to cost or pricing data requirements (FAR 15.403-1(b)) and Buyer has not determined the price to be unreasonable.

K. Audit. At any time before final payment under the Order, Buyer may audit invoices and supporting documentation. Each payment previously made shall be subject to reduction for overpayments and for amounts found not to have been properly payable. Seller/Subcontractor agrees to permit Buyer and/or the Government to audit Seller/Subcontractor's cost records relating to materials purchased under the Order, and to access to such records at Seller/Subcontractor's facilities provided that Buyer gives Seller/Subcontractor reasonable advance notice of any such visit.

L. Final Invoice. The final invoice and supporting documentation shall be submitted by Seller/Subcontractor as promptly as practicable following completion of the work under the Order, but no later than 3 months after completion if indirect costs are not included in the cost of materials or are billed at the fixed rate identified in the Order, and in no event later than 120 days after settlement of the final indirect cost rates for all years of a physically complete Order. If billing rates exceeded final rates, Seller/Subcontractor shall submit a refund payment to Seller/Subcontractor together with the final invoice and release and assignment documents.

M. Final Payment

1. If Seller/Subcontractor fails to submit a final invoice within the time specified in Paragraph (L), Buyer may determine the amounts due to Seller/Subcontractor under the Order and record this determination in a unilateral revision to the Order.
2. Otherwise, upon approval of the final invoice and upon compliance by Seller/Subcontractor with all terms of this Order (including, without limitation, terms relating to patents and the terms of Paragraph (N) below, Buyer shall promptly pay any balance of allowable costs.



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- N. Assignment and Release of Claims.** Seller/Subcontractor shall execute and deliver, at the time of and as a condition precedent to final payment under the Order, a release discharging Buyer, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Order, subject only to the following exceptions:
1. Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by Seller/Subcontractor.
 2. Claims, together with reasonable incidental expenses, based upon the liabilities of Seller/Subcontractor to third parties arising out of performing this Order, that are not known, and could not reasonably have been known, to Seller/Subcontractor on the date of the execution of the release, and of which Seller/Subcontractor gives notice in writing to Buyer not more than 6 years after the date of the release or the date of any notice to Seller/Subcontractor that Buyer is prepared to make final payment, whichever is earlier.
 3. Claims for reimbursement of costs, including reasonable incidental expenses, incurred by Seller/Subcontractor under the patent clauses of the Order, excluding, however, any expenses arising from Seller/Subcontractor's indemnification of Buyer against patent liability.
- O. Royalty Report.** If the price or cost for the Order includes royalties, Seller/Subcontractor shall execute and deliver, at the time of and as a condition precedent to final payment under the Order, a statement of royalties paid or required to be paid in connection with performing the Order, explaining why the payment of royalties was necessary.

III. COST-REIMBURSEMENT ORDERS

- A. Invoicing.** Seller/Subcontractor shall submit an original invoice (or electronic invoice, if authorized) to the address designated in the Order to receive invoices. An invoice must include the following:
- Name and address of Seller/Subcontractor;
 - Invoice date and number;
 - Order number, Order line item number and, if applicable, any other information specified on the face of the Order under "invoices";
 - Description of the Products and/or Services delivered, unit of measure, quantity and a detailed statement of the claimed allowable cost in compliance with FAR and DFARS cost principles (FAR Subpart 31.2; DFARS Subpart 231.2)
 - Shipping method and bill of lading/tracking number or manifest number;
 - Terms of any discount for prompt payment offered;
 - Name and address of official to whom payment is to be sent; and
 - Name, title, and phone number of person to notify in event of defective invoice.
- B. Interim Payment.** Buyer will make payments to Seller/Subcontractor as work progresses, but Seller/Subcontractor may submit only one invoice per month unless more frequent submission is



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explicitly authorized elsewhere in the Order or approved in writing by the Buyer's POC. Payment will be made in the amounts determined by Buyer to be allowable in accordance with FAR Subpart 31.2 and DFARS Subpart 231.2 in effect on the date of the Order and all other terms of the Order.

Interim payments made prior to final payment under the Order are financing payments. In the event that Buyer requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the Order, Buyer is not compelled to make payment by the specified due date.

C. Indirect Costs

- 1. General:** Seller/Subcontractor may include indirect costs to the extent they are allocated in accordance with Seller/Subcontractor's approved accounting practices, as shown in the records maintained by Seller/Subcontractor for purposes of obtaining reimbursement under Government contracts and subcontracts, allowable under FAR 31.2 and DFARS 231.2; and compliant with Cost Accounting Standards, if the Order is CAS-covered.

Indirect costs payable under this Order shall be obtained by applying indirect cost rates established in accordance with the Billing rates and Final indirect cost rates provisions of this clause.

- 2. Billing rates.** Until final annual indirect cost rates are established for any period, Buyer shall reimburse Seller/Subcontractor at billing rates established by the ACO or the cognizant federal auditor, or by Buyer, subject to adjustment when final rates are established. These billing rates shall be the anticipated final rates and may be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- 3. Final indirect cost rates.** Final annual indirect cost rates and the appropriate bases shall be established in accordance with FAR Subpart 42.7 in effect for the period covered by the indirect cost rate proposal.
- 4. Final indirect cost rate proposal.** Seller/Subcontractor shall submit an adequate final indirect cost rate proposal within the 6-month period following the expiration of each of its fiscal years. If Seller/Subcontractor performs as a prime contractor on other flexibly priced government contracts, the proposal shall be submitted to the Seller/Subcontractor's Administrative Contracting Officer (or cognizant Federal agency official) and its DCAA auditor (or cognizant federal auditor.) Otherwise, the proposal shall be submitted to Buyer. Seller/Subcontractor shall support its proposal with adequate supporting data.

The proposed rates shall be based on Seller/Subcontractor's actual cost experience for that period. Seller/Subcontractor and the ACO, FAO, or Buyer, as applicable, shall establish the final indirect cost rates as promptly as practical after receipt of Seller/Subcontractor's proposal.

If Seller/Subcontractor fails to submit an adequate final indirect cost rate proposal within the 6-month period following the expiration of each of its fiscal years, or within any extension granted in writing by the Seller/Subcontractor's Administrative Contracting Officer, Buyer shall decrement the indirect costs otherwise payable under the Order by 50%.



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5. Final indirect cost rate agreement. Seller/Subcontractor and the ACO, FAO or Buyer, as applicable, shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify the agreed-upon final annual indirect cost rates; the bases to which the rates apply; the periods for which the rates apply; any specific indirect cost items treated as direct costs in the settlement; and the affected contracts and subcontracts, identifying any with advance agreements or special terms and the applicable rates.

The understanding shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in the Order. The understanding shall be considered incorporated into the Order upon execution.

When Seller/Subcontractor and Buyer are negotiating rates, failure by the parties to agree on final indirect cost rates shall be a dispute within the meaning of the Resolution of Disputes clause.

When Seller/Subcontractor negotiates rates with the ACO or FAO rather than Buyer, Seller/Subcontractor shall immediately advise Buyer upon settlement of final rates for the entire period of Order performance.

- D. Fixed Fee.** Payment of the fixed fee shall be made as specified elsewhere in the Order; provided that after payment of 85% of the fixed fee, Buyer may withhold further payment of fee until a reserve is set aside in an amount considered necessary to protect Buyer's interest. Provided that Seller/Subcontractor has satisfied all other Order terms and conditions, including submission of the final patent and royalty reports, and is not delinquent in submitting final invoices on prior years' settlements, Buyer shall release 75% of all fee withholds under the Order after receipt of an adequate and properly certified final indirect cost rate proposal covering the year of physical completion of the Order, or notification that an adequate proposal has been received by the cognizant ACO,
- E. Discounts.** The basis of any cash discount calculation will be the date Buyer receives an invoice compliant with paragraph (A), above. Discounts will be calculated upon the gross amount of an invoice. Payment shall be considered to have been made by Buyer if by check, on the date appearing on the payment check and if by electronic funds transfer, on the date of the transfer.
- F. Overpayment.** If Seller/Subcontractor becomes aware that Buyer has overpaid any interim or final invoice, Seller/Subcontractor shall immediately notify Buyer and request instructions.
- G. Government Payment.** Payment shall be due solely from funds received by Buyer from the Government in payment of costs incurred by Seller/Subcontractor under the Order. Buyer shall not be obligated to pay interest or interest penalties to Seller/Subcontractor except to the extent that Buyer receives payment of interest or interest penalties from the Government on the portion of Buyer's invoice representing costs invoiced by Seller/Subcontractor.
- H. Timing of reimbursement** For the purpose of reimbursing allowable costs, the term "costs" includes only --



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1. Those recorded costs that, at the time of the request for reimbursement, Seller/Subcontractor has paid by cash, check, or other form of actual payment;
 2. When Seller/Subcontractor is not delinquent in paying costs of Order performance in the ordinary course of business, costs incurred, but not necessarily paid, for --
 - a. products and services purchased directly for the Order, provided payments will be made in accordance with the terms and conditions of a subcontract or invoice, and ordinarily within 30 days of the submission of Seller/Subcontractor's payment request to Buyer;
 - b. Materials issued from Seller/Subcontractor's inventory and placed in the production process for use on the Order;
 - c. Direct labor;
 - d. Direct travel;
 - e. Other direct in-house costs; and
 - f. Indirect costs specified in Paragraph (C), above.
- I. Audit.** At any time or times before final payment, Buyer may audit Seller/Subcontractor's invoices and statements of cost. Any payment may be reduced by amounts found by Buyer not to constitute allowable costs, and adjusted for prior overpayments. Seller/Subcontractor agrees to permit Buyer and/or the Government to audit Seller/Subcontractor's cost records relating to Products and Services provided under the Order, and to access such records at Seller/Subcontractor's facilities provided that Buyer gives Seller/Subcontractor reasonable advance notice of such visits.
- J. Final Invoice.** The final invoice and supporting documentation shall be submitted by Seller/Subcontractor as promptly as practicable following completion of the work under the Order, but no later than **3 months** after completion if indirect costs are not included in the cost of materials or are billed at the fixed rate identified in the Order, and in no event later than 120 days after settlement of the final indirect cost rates for all years of a physically complete Order. If billing rates exceeded final rates, Seller/Subcontractor shall submit a refund payment to Seller/Subcontractor together with the final invoice and release and assignment documents,
- K. Final Payment.** If Seller/Subcontractor fails to submit a final invoice within the time specified in Paragraph (J), Buyer may determine the amounts due to Seller/Subcontractor under the Order and record this determination in a unilateral revision to the Order. Otherwise, upon approval of the final invoice and upon compliance by Seller/Subcontractor with all terms of this Order (including, without limitation, terms relating to patents and the terms of Paragraph (L) below, Buyer shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
- L. Assignment and Release of Claims.** Seller/Subcontractor shall execute and deliver, at the time of and as a condition precedent to final payment under the Order, a release discharging Buyer, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Order, subject only to the following exceptions:



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1. Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by Seller/Subcontractor.
 2. Claims, together with reasonable incidental expenses, based upon the liabilities of Seller/Subcontractor to third parties arising out of performing this Order, that are not known, and could not reasonably have been known, to Seller/Subcontractor on the date of the execution of the release, and of which Seller/Subcontractor gives notice in writing to Buyer not more than 6 years after the date of the release or the date of any notice to Seller/Subcontractor that Buyer is prepared to make final payment, whichever is earlier.
 3. Claims for reimbursement of costs, including reasonable incidental expenses, incurred by Seller/Subcontractor under the patent clauses of the Order, excluding, however, any expenses arising from Seller/Subcontractor's indemnification of Buyer against patent liability.
- M. Royalty Report:** If the price or cost for the Order includes royalties, Seller/Subcontractor shall execute and deliver, at the time of and as a condition precedent to final payment under the Order, a statement of royalties paid or required to be paid in connection with performing the Order, explaining why the payment of royalties was necessary.