

# REMARK MRAS-M64

REVISION August 24, 2020  
TERMS AND CONDITIONS OF PURCHASE

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## **ARTICLE 1 - DEFINITIONS.** As used throughout this Agreement:

- (a) "Affiliate" means any entity controlling, controlled by, or under common control of a party to this Agreement.
- (b) "Agreement" means these terms and conditions ("Supply Agreement"), purchase orders or purchase agreements issued to Seller referencing this Supply Agreement ("Order(s)"), and any pricing agreements, specifications, statements of work, or other papers referenced in such Orders.
- (c) "Direct Procurement" means the purchase of any Good or Service that is incorporated into or performed on an aircraft or part there of, or is otherwise provided to Purchaser's customer.
- (d) "Goods" means all products contracted for and supplied by Seller under this Agreement, including all components, raw materials, chemicals, finished goods, intermediate assemblies and associated packaging thereof.
- (e) "Indirect Procurement" means the purchase of any Good or Service that is *not* incorporated into or performed on an aircraft or part there of, and is not otherwise provided to Purchaser's customer.

- (f) "Intellectual Property" means data, notes, reports, specifications, designs, drawings, computer software including source code and object code, methods, processes, techniques, know-how, ideas, inventions, and discoveries.
- (g) "Intellectual Property Rights" means patents, patent applications, trade secrets, copyrights, trademarks, maskworks, database rights, industrial property rights, and other similar rights.
- (h) "Prime Contract" means a contract defined by a government contract number printed on Orders issued pursuant to this Agreement.
- (i) "Proprietary Information" means with respect to either party, all information and data, identified either orally or in writing as "Proprietary", "Confidential", or a similar designation, whether technical or non-technical, in any medium, furnished or made available directly or indirectly by one party to the other party.
- (j) "Purchaser" means the party contracting with Seller for Goods and/or Services and identified as the purchasing entity on the Order.
- (k) "Seller" means the party contracting with Purchaser to perform the work hereunder.
- (l) "Services" means those services contracted for and supplied by Seller under this Agreement and as may further be described in Orders, statements of work, specifications, or other papers included in this Agreement.

**ARTICLE 2 - TERMS AND CONDITIONS.** Either Seller's written acknowledgement or Seller's full or partial performance, whichever occurs first, will constitute acceptance of the Orders or any amendment thereto. Any acceptance of this Supply Agreement by Seller is limited to acceptance of the express terms of the offer set forth in this Supply Agreement. Any proposal for additional or different terms and conditions (whether included in Seller's quote, acknowledgement, or any other document) is rejected unless accepted in writing by the Purchaser.

**ARTICLE 3 - PAYMENT TERMS.**

- (a) Standard Terms. Purchaser shall initiate payment for approved invoices on the 90<sup>th</sup> day following the Payment Start Date (the "Net Date"). Seller agrees to accept the invoice amount discounted by two and one-half percent (2.5%) in exchange for Purchaser's initiation of payment on the fifteenth (15th) day following the Payment Start Date (2.5% 15 net 90). The Payment Start Date shall be the later of (a) the date performance is requested by Purchaser (e.g., in a part schedules report (Goods) or statement of work (Services)), (b) the material received date, as identified in Purchaser's computer system, or (c) the invoice approval date (which shall not be earlier than the date of complete performance). If the early payment discount date or the Net Date, as applicable, falls on a weekend or a holiday, Purchaser will initiate payment to Seller on the next business day.
- (b) Invoicing. Settlement and invoicing must be paperless and in a format acceptable to Purchaser. Options acceptable to Purchaser may include Web Invoicing, Evaluated Receipt Settlement and Electronic Data Interchange. Seller must provide banking information to establish electronic funds transfer for U.S. suppliers and wire transfer for non-U.S. suppliers.  
  
Seller shall invoice Purchaser not later than ninety (90) days after delivery of the Goods and/or completion of the Services ("Due Date"), unless otherwise specified in the applicable Purchase Order. Purchaser shall deem any invoice invalid that is received more than ninety (90) days after the Due Date, unless specific terms to the contrary are acknowledged by Purchaser in writing.
- (c) Taxes. All sums payable under this Agreement shall be exclusive of VAT or other sales tax, which shall (if applicable) be payable by the Purchaser under a separate assessment and transaction.
- (d) Set-off. Purchaser shall be entitled to set off any amount owing from Seller to Purchaser or to any of Purchaser's Affiliated companies against any amount payable under this Agreement.

**ARTICLE 4 - TRANSPORTATION AND DELIVERY.**

- (a) Unless otherwise stipulated on the face of the Order, the applicable shipping and delivery Incoterms will be FCA (named place) Incoterms 2010. In any event, title to Goods shall pass to Purchaser upon delivery. Purchaser insures all Goods for which it accepts risk of loss while such Goods are in transit. Therefore, Seller shall not declare any insurance value on such Goods shipped via Purchaser's carrier.
- (b) Seller shall release rail or truck shipments at the lowest released valuation permitted in the governing tariff or classification. Purchaser will pay no charges for unauthorized transportation. Any unauthorized shipment, which results in excess transportation charges, must be fully prepaid by the Seller. If Seller does not comply with the

stated delivery schedule, Purchaser shall require delivery by the fastest way. The charges resulting from this mode of transportation must be fully prepaid and the Seller must absorb the full cost of the shipment.

- (c) Seller's non-U.S. locations involved with the manufacture, warehousing, shipment, or delivery to U.S. agree to (1) review and use commercial reasonable efforts to comply with "Customs-Trade Partnership Against Terrorism (C-TPAT) Supply Chain Security Guidelines for International Suppliers/Shippers" develop and implement security procedures ("Security Plan") consistent with appropriate C-TPAT, AEO, or similar program criteria, and (3) provide, upon Purchaser's request, (i) a copy of the Security Plan; (ii) the current contact information of a supply chain security company point of contact; (iii) the certification number if Seller is certified by a supply chain security program (e.g., C-TPAT Status Verification Interface or SVI); (iv) any changes to its certification status; and (v) the completion of a supply chain security questionnaire (if not certified by a supply chain security program)
- (d) Seller agrees to contact Purchaser upon knowledge of any known or suspected security breach affecting the Goods (contraband, smuggling, threatening or suspicious activities detected, tampered container, trailer, lock or seal including a seal broken during a customs inspection).
- (e) Upon Purchaser's request, all shipment containers for Goods shall be labeled in accordance with Purchaser's Bar Code Shipping Label Instructions. Seller shall designate an individual responsible for compliance with said instructions and shall act as the Seller's contact for issues concerning bar code labels. If Seller uses Purchaser's supplier collaboration portal, Seller shall not print bar code shipping labels more than twenty-four hours prior to transit of Goods to Purchaser.
- (f) Seller agrees to use Purchaser's defined supplier collaboration portal, and agrees to meet the requirements set forth in that system. For the avoidance of doubt, lead times for all Goods and Services shall be those established at the time an Order is initially placed, whether by (i) such lead time being input into Purchaser's supplier collaboration portal and having such lead time approved by Purchaser or (ii) otherwise in an agreed writing. Any changes to the established lead time, and the date that such change will take effect, must be mutually agreed. Should Purchaser request Seller to deliver Goods in a time period less than the established lead time, Seller shall use commercially reasonable efforts to meet such delivery requirements and the remedies set forth in Article 4(g)(ii) and (iii) below shall not apply.
- (g) Delivery Delays.
  - i) For all deliveries made pursuant to this Agreement, the Parties agree and acknowledge that time is of the essence. In the event Seller for any reason anticipates any difficulty in complying with the required delivery date or any of the other requirements of this Agreement, Seller shall promptly notify Purchaser in writing, and upon request, provide Purchaser adequate assurance of performance.
  - ii) Any delay that is attributable to Seller will result in Purchaser, at its sole discretion, to assess: i) liquidated damages to cover Purchaser's internal costs, at one half of one percent (.5%) of the total ship set price for each calendar day that Seller's delivery is delayed up to a maximum of thirty percent (30%) of the total ship set price of the Goods and ii) any damages Purchaser owes its customer as a result of Seller's failure to timely deliver conforming Goods/Services ((i) and (ii) together, "Delivery Damages"). The Parties agree that such Delivery Damages, if assessed, are a reasonable pre-estimate of the damages Purchaser will suffer because of delay based on circumstances existing at the time the Order was established; and are to be assessed as liquidated damages for such delay and not as a penalty.
  - iii) Further, if Seller is more than thirty (30) days delinquent in delivery, then Purchaser may (1) reduce the market share percentages (if applicable) for the specific delayed Goods until such time as Seller is no longer delinquent and/or (2) consider the delay a material default of this Agreement exclusive of delays resulting from force majeure and delays directly caused by the Purchaser, giving rise to termination rights as set forth in Article 5 of this Agreement. Purchaser's remedies are cumulative and Purchaser shall be entitled to pursue any and all remedies available at law or equity.

#### **ARTICLE 5 -TERMINATION.**

- (a) Delay and Default. In the event Seller for any reason anticipates any difficulty in complying with the required delivery date or any of the other requirements of this Agreement, Seller shall promptly notify Purchaser in writing, and upon request, provide Purchaser adequate assurance of performance pursuant to Article 23. (n). In the event of a delivery delay, non-delivery or any other default by Seller in meeting its obligations under this

Agreement, Purchaser may terminate all or any part of this Agreement without further compensation to Seller, and Purchaser's rights will be (i) for Goods, as specified in the New York Uniform Commercial Code (or if Seller is located outside the U.S., Article 45 of the United Nations Convention on Contracts for the International Sale of Goods); (ii) for Services, Purchaser may procure, upon such terms and from any source or service provider as it shall deem appropriate, supplies or services similar to those terminated. In each case, Seller shall continue performance of such Agreement to the extent not terminated and shall be liable to Purchaser for any excess costs for Purchaser's procurement of such similar supplies or services. If Purchaser has made any progress payments under this Agreement, Seller shall refund to Purchaser any such payments immediately upon termination.

- (b) Termination for Convenience. Purchaser may terminate all or any part of this Agreement for convenience at any time after notice specifying the extent of termination and the effective date. After receipt of notice of termination, unless otherwise directed by Purchaser, Seller shall immediately: (1) stop work as directed in the notice; (2) place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Agreement; and (3) terminate all subcontracts to the extent they relate to work terminated. Seller shall submit a final termination settlement to Purchaser in the form prescribed by Purchaser within ninety (90) days from the effective date of the termination. In no event shall Purchaser be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Agreement price. In the event that Purchaser wrongfully terminates this Agreement under paragraph (a), in whole or in part, such termination becomes a termination for convenience under this paragraph (b).

#### **ARTICLE 6 - DISPUTE RESOLUTION.**

- (a) Arbitration. If a dispute arises under or relating to this Agreement in any way, the parties will endeavor to resolve the dispute amicably, including by designating senior managers who will meet and use commercially reasonable efforts to resolve any such dispute. If the parties' senior managers do not resolve the dispute within sixty (60) days of first written request, either party may request that the dispute be settled and finally determined by binding arbitration. The arbitration will be conducted in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association by one or more arbitrators appointed in accordance with the applicable rules. The seat of the arbitration shall be New York, New York, and any hearings shall take place at a mutually agreed location or as the arbitrator(s) order. The arbitrator(s) will have no authority to award punitive damages, attorney's fees and related costs or any other damages not measured by the prevailing party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Agreement and applicable law. The award of the arbitrator(s) will be final, binding and not appealable to the greatest extent the law permits, and judgment may be entered thereon in any court of competent jurisdiction. All statements made or materials produced in connection with this dispute resolution process and arbitration are confidential and will not be disclosed to any third party except as required by law or subpoena. Except as specified in paragraph (c) below, the parties intend that the dispute resolution process set forth in this Article will be their exclusive remedy for any dispute arising under or relating to this Agreement or its subject matter. Any claim against Purchaser shall be barred unless Seller has requested that it be resolved by arbitration in accordance with this Article within one year of the dispute, which shall be the effective date of termination if the dispute is related to termination.
- (b) If Seller is located outside of the United States, the terms set forth in paragraph (a) above apply, except the seat of the arbitration shall be London, England, and disputes shall be conducted in accordance with the rules of the International Chamber of Commerce.
- (c) Exception. Either party may at any time, without inconsistency with paragraph (a) above, seek from a court of competent jurisdiction any equitable, interim, or provisional relief to avoid irreparable harm or injury. Paragraph (a) above will not apply to and will not bar litigation regarding claims related to a party's Proprietary Information or Intellectual Property, nor will paragraph (a) above be construed to modify or displace the ability of the parties to effectuate any termination contemplated by this Agreement.

#### **ARTICLE 7 - PURCHASER'S PROPERTY.**

- (a) Property includes equipment, materials, bailed materials, samples, parts, tooling, tooling drawings, and software ("Property"). Purchaser's Property includes Property furnished to Seller by Purchaser or on behalf of Purchaser or paid for by Purchaser ("Purchaser's Property"). Purchaser's Property is the property of Purchaser.

- (b) Seller may use Purchaser's Property for the sole purpose of performing its obligations under this Agreement. Nothing in this Article or elsewhere in this Agreement shall be interpreted as being an implied license or a license by estoppel to Intellectual Property Rights in Purchaser's Property.
- (c) Seller shall: plainly mark or otherwise adequately identify Purchaser's Property as being the property of Purchaser, where practical; safely store Purchaser's Property apart from other Property; hold Purchaser's Property at Seller's risk and insured for replacement cost with loss payable to Purchaser while in Seller's custody or control; maintain Purchaser's Property; and upon Purchaser's written request, remove and deliver Purchaser's Property to Purchaser in the same condition as originally received by Seller, except for reasonable wear and tear.
- (d) Seller shall not analyze, have analyzed, or cause to be analyzed Purchaser's Property to determine its chemical composition, physical properties, or for reverse engineering.
- (e) Seller may not use, disclose to others or reproduce Purchaser's Property for any other purpose, including, but not limited to, (1) the design, manufacture, or repair of parts, or to obtain FAA or any other governmental approval to do so; or (2) to provide any part by sale or otherwise, to any person or entity other than Purchaser.
- (f) If Seller, without Purchaser's prior written approval, designs or manufactures for sale to any person or entity other than Purchaser or Purchaser's Affiliate any hardware that is substantially similar to or can replace or repair any Purchaser designed product or system or any part for MRAS, or obtains FAA or other governmental approval for such hardware or repair, Seller shall be required to establish by clear and convincing evidence in any adjudication involving Purchaser's Property that neither Seller nor any of its employees, sub-contractors or agents used, directly or indirectly any of Purchaser's Property in such design or manufacture or in obtaining FAA or other governmental approval.
- (g) Government Contracts. If Property under this Agreement is furnished or paid for under a government subcontract (as defined in Appendix 1, below) that includes ownership of Property by the government, the government shall retain ownership of such Property. Seller hereby grants to Purchaser an irrevocable, fully paid up, perpetual license to use such Property.

**ARTICLE 8 - INTELLECTUAL PROPERTY.**

(a) Background Intellectual Property

- i) Intellectual Property developed or acquired by either party before or outside the scope of this Agreement is considered Background Intellectual Property ("Background Intellectual Property").
- ii) Nothing in this Agreement shall entitle a party to ownership rights in any Background Intellectual Property of the other party.
- iii) Seller grants to Purchaser a non-exclusive, perpetual, irrevocable, fully paid-up, worldwide license to use, copy, and make derivative works of Seller's Background Intellectual Property and to disclose Seller's Background Intellectual Property to Purchaser's customers, partners, Affiliates, and contractors in connection with the sale, test, qualification, adaptation, modification, servicing, or repair of Goods and/or Services, including where such Goods and/or Services are incorporated into a higher tier assembly. The license granted herein shall supersede any restrictions stated in any Proprietary Information Agreement and shall take precedence over any restrictive or proprietary markings contained on the face of any Goods and/or Services documentation and/or data deliverables pursuant to an Order. To the extent Purchaser discloses Seller Proprietary Information under this paragraph, such disclosure will be subject to the confidentiality terms consistent with those set forth in Article 9(c).

(b) Foreground Intellectual Property

- i) Intellectual Property developed by Seller when performing its obligations under this Agreement is considered Foreground Intellectual Property ("Foreground Intellectual Property").
- ii) Purchaser shall own all Foreground Intellectual Property along with any Intellectual Property Rights thereto. As required under the terms of an Order or at Purchaser's request, Seller shall deliver all such Foreground Intellectual Property to Purchaser.

- iii) Seller hereby assigns and agrees to assign all rights in Foreground Intellectual Property to Purchaser. In addition, Seller, will provide reasonable, timely assistance to Purchaser (at Purchaser's expense) to enable Purchaser to secure Intellectual Property Rights in Foreground Intellectual Property.
  - iv) When an Order includes line items for Goods and/or Services or an adaption or improvement to existing Goods and/or Services, Intellectual Property relating to such line items shall be considered Foreground Intellectual Property unless Seller establishes by documented evidence that such Intellectual Property was developed wholly outside of the scope of this Agreement, and without use of Purchaser's funds, Purchaser's Property, and Purchaser's Background Intellectual Property.
  - v) All Foreground Intellectual Property that is considered "Work Made for Hire" as defined in in Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and used in 17 U.S.C. § 201 (or relevant EU legislation and the UK Copyright, Design and Patents Act 1988, c. 48, as amended), shall be deemed a "work made for hire" under this Agreement, with all right, title and interest in such Foreground Intellectual Property vesting with Purchaser.
  - vi) Seller will procure from its employees and subcontractors at Seller's sole expense (including any compensation due Seller's employees), all Intellectual Property Rights in Foreground Intellectual Property. Further, Seller will secure from Seller's employees and subcontractors the execution of all patent applications, assignments, and other instruments necessary for procuring Intellectual Property Rights and vesting title in Foreground Intellectual Property for Purchaser.
- (c) Government Contracts. If the Goods or Services under this Agreement are being delivered pursuant to a government subcontract (as defined in Appendix 1, below) that includes retention of ownership of Foreground Intellectual Property by the Seller, provision (b) above shall not apply, and Seller shall retain ownership of such Foreground Intellectual Property ("Seller's Foreground Intellectual Property"). Seller hereby grants to Purchaser a perpetual, irrevocable, fully paid up, worldwide license to use, copy, and make derivative works of Seller's Foreground Intellectual Property, with the right to sublicense, and to disclose Seller's Foreground Intellectual Property to Purchaser's customers, partners, Affiliates, and contractors in connection with the sale, test, qualification, adaptation, modification, servicing, or repair of Goods and/or Services, including where such Goods and/or Services are incorporated into a higher tier assembly. Purchaser, Purchaser's customers, suppliers, partners, Affiliates, regulators, auditors, and inspectors shall not use Seller's Foreground Intellectual Property for the purposes of manufacturing the Goods and/or Services or procuring the Goods and/or Services from sources other than Seller, without Seller's written approval. The license granted in this Article 8(c) shall supersede use restrictions stated in any Proprietary Information Agreement, provided that to the extent Seller's Foreground Intellectual Property is considered Seller's Proprietary Information, such Seller's Foreground Intellectual Property will be subject to the confidentiality terms of Article 9.
- (d) Patent Markings. If Purchaser notifies Seller that Goods ordered under this Agreement are patented, Seller agrees to mark such Goods with any patent numbers or other markings designated by Purchaser, including updates to such numbers or markings.
- (e) Intellectual Property Representations and Warranties. Seller represents and warrants:
- i) It is not the proprietor of any Intellectual Property Rights that would impair or restrict the freedom of Purchaser, Purchaser's Affiliates, and their respective vendors and customers to make use of the Goods and/or Services;
  - ii) Goods and/or Services shall not infringe any Intellectual Property Rights of any third party;
  - iii) Seller will not assert any Intellectual Property Rights against Purchaser, Purchaser's Affiliates, and their respective vendors and customers based on their use of the Goods and/or Services or their use, copying, and making derivative works of Seller's Background Intellectual Property; and
  - iv) Seller will obtain the same warranties and commitment contained in this article running in favor of Purchaser, Purchaser's Affiliates, and their respective vendors and customers from each of Seller's subcontractors.

**ARTICLE 9 - CONFIDENTIALITY AND DATA PROTECTION.**

- (a) Each party's Proprietary Information shall remain the property of that party except as expressly provided otherwise by the other provisions of this Agreement.

- (b) All Purchaser's Property, Purchaser's Background Intellectual Property, Foreground Intellectual Property, and Orders shall be deemed Purchaser's Proprietary Information.
- (c) Seller shall not disclose Purchaser's Proprietary Information to any third party or use Purchaser's Proprietary Information for the benefit of any third party without Purchaser's consent. Seller shall protect Purchaser's Proprietary Information against unauthorized use or disclosure using at least those measures that it takes to protect its own Proprietary Information of a similar nature, but no less than reasonable care. Seller will permit access to Purchaser's Proprietary Information to only Seller's personnel who have a need to know for the purpose of performing Seller's obligations under this Agreement. In the event that Seller is required by applicable law or regulation to disclose Purchaser's Proprietary Information, Seller shall provide Purchaser with prompt notice thereof and a reasonable opportunity to comment or undertake protective measures prior to such disclosure. Seller may disclose only the information that is required by such law or regulation to be disclosed without liability under this Agreement.
- (d) Notwithstanding the restrictions in this Article, Seller may disclose Purchaser's tooling and tooling drawings to Seller's sub-contractors for the sole purpose of assisting Seller in performing its obligations under this Agreement, provided that Seller's sub-contractors agree in writing to obligations of confidentiality at least as restrictive as those set forth in this Agreement for Purchaser's benefit.
- (e) Seller shall be liable to Purchaser for any unauthorized use or disclosure by Seller's personnel or any third party to which Seller discloses Purchaser's Proprietary Information.
- (f) Seller shall comply with the "MRAS Privacy and Data Protection Appendix (applicable to contracts/POs , which is incorporated into this Agreement.

**ARTICLE 10 -CHANGES.**

- (a) Purchaser reserves the right at any time to make changes within the general scope of this Agreement. Such changes may include: (1) drawings, designs or specifications; (2) technical clarifications; (3) artwork; (4) quantity; (5) method of shipment or packing; (6) quality; (7) place or time of delivery; or (8) amount of Purchaser's furnished property.
  - i) If any change causes a significant impact on the cost of, or the time required for, performance of any work under this Agreement, an equitable adjustment shall be made in the price or delivery schedule, or both as applicable, in writing. Any Seller claim for adjustment under this article shall be deemed waived unless asserted in writing within twenty (20) days after receipt by Seller of the notice to make the change and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change.
  - ii) Seller shall not proceed to implement any change for which Seller will seek an equitable adjustment until Purchaser provides for such change in writing.
  - iii) Nothing in this section, including any disagreement with Purchaser as to the equitable adjustment to be made, shall excuse Seller from proceeding with the change provided that Purchaser pays Seller all undisputed amounts pursuant to this Agreement.
- (b) Seller shall notify Purchaser in writing in advance of any and all: (1) changes to the Goods and/or Services, their specifications and/or composition; (2) process changes; (3) plant and/or equipment/tooling changes or moves; (4) transfer of any work hereunder to another site; and/or (5) sub-supplier changes, to permit Purchaser to identify any quality, regulatory or other reporting requirements that may arise from such change, including, but not limited to, FAR, DFARs, and FAA requirements, and no such change shall occur until Purchaser has had the opportunity to conduct such audits, surveys and/or testing necessary to determine the impact of such change on the Goods and/or Services and has approved such change in writing.
  - i) Seller shall be responsible for obtaining, completing and submitting proper documentation regarding any and all changes, including complying with any written change procedures issued by Purchaser.
  - ii) For Goods that require Purchaser's source approval, Seller agrees to provide a minimum advance notice of 180-days to Purchaser of any changes to significant processes, including, but not limited to physical relocation of any manufacturing or quality operations. Within fourteen (14) days of such notice, Seller will generate a Critical Process Control plan, which is subject to Purchaser's review and approval.

**ARTICLE 11 - ANTICIPATION OF DELIVERY SCHEDULE.** It is Seller's responsibility to comply with its scheduled lead times, but not to anticipate Purchaser's requirements. Any material commitments or production arrangements made by Seller in excess of the amount or in advance of the time necessary to meet schedules that are within lead time shall be at Seller's sole risk and expense. Goods shipped to Purchaser in advance of Purchaser's requirements may be returned to Seller at Seller's expense.

**ARTICLE 12 - ASSIGNMENT AND CHANGE IN OWNERSHIP.**

- (a) **Assignment.** Any assignment or attempt to assign or subcontract Seller's obligations under this Agreement without the advance written consent of Purchaser shall be null and void and shall give Purchaser the right to terminate this Agreement for default.
- (b) **Change in Ownership.** If a third party submits a solicited or unsolicited offer (whether or not binding or part of a process lead by Seller) to Seller that would result in a Change of Ownership or Control of Seller, as defined below, Seller shall give notice of such offer, including the identity of the offeror, to Purchaser as early as commercially practical following Seller's receipt of the offer. Before Seller accepts the offer or enters into definitive documentation with respect to a Change of Ownership or Control, it shall give Purchaser an opportunity, within a reasonable time, to advise Seller of its impact on performance of this Agreement. If the Change in Ownership or Control occurs, Purchaser has the right at its discretion to terminate this Agreement. In the event of such termination, Seller agrees to render full cooperation to Purchaser in order to minimize disruption to the Purchaser's program. Pending termination or in lieu of termination, Purchaser may require Seller to provide adequate assurance of performance, including, but not limited to the institution of special controls regarding the protection of Purchaser's Property, Purchaser's Background and Foreground Intellectual Property, and Proprietary Information.

For purposes of this sub-paragraph (b), the terms "Change in Ownership or Control" shall mean any of the following in each case, either directly or indirectly: (1) the sale of equity shares controlling 20% or more of the voting rights in Seller or Seller's ultimate parent, (2) the sale, lease, transfer or other disposition of substantially all of the assets of Seller or Seller's ultimate parent, (3) a merger, reorganization, consolidation, share exchange, recapitalization, business combination, liquidation or dissolution or similar transaction involving Seller or Seller's ultimate parent, (4) a tender offer or exchange offer for any of the outstanding shares of capital stock of Seller or Seller's ultimate parent, (5) a sale by Seller of the assets relating to the product Seller produces or will produce for Purchaser, or (6) any public disclosure of a proposal or plan or intention to do any of the foregoing.

**ARTICLE 13 - QUALITY ASSURANCE, INSPECTION AND TEST.**

- (a) Seller shall be responsible for the specific quality, performance, productivity provisions, and documentation requirements, if any, set forth in this Agreement. In addition, Seller shall be responsible for imposing the applicable quality assurance requirements on its subcontractors. Purchaser and Purchaser's customer, shall each have the right, at no charge to Purchaser or Purchaser's customer, to access the sites where the work under this Agreement is performed and to receive Seller data, in order to (1) conduct quality audits, (2) perform or witness inspections or tests of the Goods or Services furnished hereunder at Seller's facility (or elsewhere), (3) assess conformance with Purchaser's specifications, (4) assess part performance, (5) assess conformance with Seller's covenants under this Agreement and (6) optimize follow on processes and production. In accordance with 14 CFR 145.223 and 14 CFR 21.140, any Seller that accepts parts, which are regulated by the Federal Aviation Administration (FAA), or those regulated by EASA, DAOS or other regulator, must provide facility access to that regulator for surveillance of these parts.
- (b) The Seller agrees to use only experienced, trained and qualified employees in the performance of its obligations under this Agreement and all Services performed must be of first class quality and workmanship.
- (c) Notwithstanding Purchaser's right to audit in paragraph (a) above, all Goods and Services supplied under this Agreement shall be received subject to Purchaser's right of inspection, count, testing, acceptance and/or rejection per the technical specifications. Payment for Goods and/or Services delivered hereunder shall not constitute acceptance thereof, and all payments against documents shall be made with a reservation of rights by Purchaser for defects in Goods and/or Services, including, without limitation, defects apparent on the face thereof. The making of, or failure to make, any inspection or acceptance of the Goods or Services shall in no way impair Purchaser's right to reject nonconforming Goods or Services or to avail Purchaser of any other remedies to which it may be entitled.



- (d) Seller certifies that it shall provide and maintain quality control, inspection, and process control systems in accordance with the most current specification revision located on Purchaser's document management system for supplier quality product requirements, as applicable (M-1000, M-1002, M-1200, ) and other quality requirements as specified). For clarity, MRAS approval of Seller's process, quality and control processes does not release Seller from its responsibility to fulfill Purchaser's specifications and maintain such quality and process control systems. Seller will maintain Objective Evidence of its conformance with this paragraph. Objective Evidence means any statement of fact pertaining to the quality of a product or service based on observations, measurements or tests that can be fully verified. Evidence must be expressed in terms of specific quality requirements or characteristics. These characteristics are identified in drawings, specifications, and other documents that describe the item, process, or procedure. Product leave seller's facility is under the MRAS acceptance agreement M1100, DQR who verifies the objective evidence of released product against prescribed engineering requirements
- (e) For Direct Procurements of Goods built to Purchaser's drawings, Seller shall have Adobe PDF reader version 11 or later with JavaScript enabled and Siemens PLM software (NX9).
- (f) Counterfeit Goods. For purposes of this Article, Goods consist of those parts deliverable under this Agreement that are the lowest level of separately identifiable items (e.g., articles, components, goods and assemblies). "Counterfeit Goods" means Goods that have been misrepresented as having been designed and/or produced under an approved system or other acceptable method. Counterfeit Goods include, but are not limited to: (i) Goods that are an illegal or unauthorized copy or substitute of an Original Equipment Manufacturer (OEM) item; (ii) Goods that do not contain the proper internal or external materials or components or are not manufactured in accordance with the OEM design; (iii) Goods that are used, refurbished, or reclaimed but that Seller represents as being new; (iv) Goods that have not successfully passed all OEM required testing, verification, screening, and quality control but that Seller represents as having met those requirements; (v) Goods with a label or other marking intended, or reasonably likely, to mislead a reasonable person into believing a non-OEM Good is a genuine Good when it is not, and (vi) Goods that are an unauthorized copy or substitute that have been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source.
- i) Seller warrants and certifies that Goods delivered pursuant to this Agreement, unless otherwise specifically stated on the face of the Order, shall (i) be new, (ii) be and only contain materials obtained from the OEM or an authorized OEM reseller or distributor, (iii) not be or contain any Counterfeit Goods, and (iv) contain only authentic, unaltered OEM labels and other markings. Seller shall provide to Purchaser the OEM's certificate of conformance for any Goods acquired from an authorized OEM reseller or distributor. Goods shall not be acquired from independent distributors or brokers unless specifically authorized in writing by Purchaser.
- ii) Seller shall maintain a method of item traceability that ensures tracking of the supply chain back to the manufacturer of all Electrical, Electronic, and Electromechanical (EEE) parts included in assemblies and subassemblies being delivered per this Agreement. This traceability method shall clearly identify the name and location of all of the supply chain intermediaries from the manufacturer to the direct source of the product for Seller, and shall include the manufacturer's batch identification for the item(s) such as date codes, lot codes, serializations, or other batch identifications. When requested by Purchaser, Seller shall provide OEM documentation that authenticates traceability of the affected items to the applicable OEM.
- iii) Seller shall immediately notify Purchaser and the GIDEP system if it knows or suspects that it has provided Counterfeit Goods.
- iv) In the event Goods delivered under this Agreement constitute Counterfeit Goods, Seller shall at its expense promptly replace such Goods with genuine Goods conforming to the requirements of this Agreement. Notwithstanding any other provision of this Agreement, Seller shall be liable for all costs relating to the removal or replacement of Counterfeit Goods, including without limitation Purchaser's or Purchaser's customer's costs of removing such Counterfeit Goods, reinserting genuine Goods, and any testing necessitated by the reinstallation of any Goods after Counterfeit Goods have been exchanged. Purchaser reserves the right to turn over suspected Counterfeit Goods to US Governmental authorities (Office of Inspector General, Defense Criminal Investigative Service, Federal Bureau of investigation, etc.) for investigation and reserves the right to withhold payment for the suspect items pending the results of the investigation. The remedies available under this Article are in addition to any other remedies Purchaser may have available to it in law or in equity, or in any other provisions in this Agreement.

- v) This paragraph (f) applies in addition to any other quality provision, specification, or statement of work included in this Agreement addressing the authenticity of Goods and Services. To the extent such provisions conflict with this paragraph (f), this paragraph prevails.
- vi) Seller shall flow the requirements of this paragraph 13(f) to its subcontractors and suppliers at any tier for the performance of this contract.

**ARTICLE 14 - NON-CONFORMING GOODS.**

- (a) Seller agrees that, notwithstanding the provisions of any warranties, expressed or otherwise, negotiated with respect to Goods purchased from Seller by Purchaser or Purchaser's customer, Seller shall reimburse Purchaser for labor and material cost, including overhead and general and administrative expense reasonably incurred by Purchaser in connection with:
  - i) Failure of Goods or Services to conform to the requirements of this Agreement or defective material, workmanship or design; or
  - ii) Any removal of Goods at Seller's request; or
  - iii) Any removal of Goods required due to any previously required changes to said Goods that Seller has failed to incorporate.
- (b) Purchaser may charge Seller a fixed amount for each nonconforming good as a "Quality Administrative Cost" at the discretion of the Purchaser, for any nonconforming product submitted to the Purchaser, where the Quality Administration Cost is not to exceed 50% of the part cost, or \$3000 USD (Three Thousand Dollars), whichever is lower. The Purchaser reserves the rights to seek reimbursement for any and all costs associated with a Notice of Quality Escape that results in any impact to the airframer or airline customer(s). The Quality Administration Cost may be charged to Seller as a debit memo issued to Seller's account. For the avoidance of doubt, the Parties agree that the Quality Administration Cost is only intended to compensate Purchaser for its administrative costs for disposition of the Supplier MRB.
- (c) Remedies in this Section are not exclusive and shall not be in lieu of any other remedy available at law, in equity or under this Agreement.

**ARTICLE 15 - INDEMNITY AND INSURANCE.**

- (a) General Indemnification. Seller shall defend, indemnify, and hold harmless the Purchaser, its directors, officers, employees, agents, representatives, successors and assigns (each an "Indemnified Party"), whether acting in the course of their employment or otherwise, from and against any and all loss, cost, expense, damage, claim, demand or liability (including reasonable attorney and professional fees and costs) arising from Seller's negligence, willful misconduct or breach of Agreement. An Indemnified Party shall have the right to participate in the selection of counsel and Seller shall not enter into any settlement agreement that contains any admission of liability on the part of Purchaser and/or any other Indemnified Party.
- (b) Intellectual Property Indemnification. Seller shall indemnify, defend, and hold harmless an Indemnified Party, from and against any and all loss, cost, expense, damage, claim, demand or liability (including reasonable attorney and professional fees and costs) arising out of any claim that the manufacture, use, sale, or furnishing of Goods and/or Services constitutes infringement of any Intellectual Property Rights, or for a breach of any of the representations and warranties contained in Article 8, above. If an injunction should issue, Seller shall
  - i) Procure for Purchaser and Purchaser's subsidiaries and Affiliates, and their respective vendors and customers, the rights to continue using said Goods and/or Services; or
  - ii) At the election and with written approval of Purchaser, (x) modify the Goods and/or Services in a manner acceptable to Purchaser so they become non-infringing; (y) remove and replace the Goods with non-infringing Goods; or (z) remove the Goods and/or discontinue the Services, refund the purchase price and reimburse Purchaser for all damages and costs associated with obtaining and installing a non-infringing alternative.
- (c) Insurance. Seller shall obtain and keep in force for the benefit of the Seller and Purchaser the following insurance to be issued by insurance carriers with a minimum A.M. Best's rating of A-: VII, or S&P A, or better and licensed to provide insurance in the jurisdiction in which work is to be performed, with minimum limits as set forth below:

- i) Comprehensive General Liability – \$5,000,000 combined single limit per occurrence;
  - ii) Aviation Products Liability - \$5,000,000 minimum per occurrence (Aviation Direct Procurements only);
  - iii) Comprehensive Automobile Liability – Bodily injury/property damage covering all vehicles used in connection with the Goods in the amount of \$1,000,000 combined single limit each occurrence;
  - iv) Statutory Workers' Compensation and or Employer's Liability as required by state or country law.
- (d) Seller shall provide Purchaser with a certificate of insurance evidencing that the required minimum coverage is in effect and that Purchaser is named as an additional insured, provide a waiver of subrogation clause in favor of the Purchaser, and provide that all coverage provided by the Seller shall be primary. Such insurance shall not exclude the actions of any subcontractor that Seller may utilize under this Agreement. The insurance provided by Seller hereunder shall have no effect on any obligations imposed upon Seller under this Agreement.

#### **ARTICLE 16 - SELLER'S REPRESENTATIONS.**

- (a) Compliance with Laws. Seller represents and warrants that it shall perform all activities required under this Agreement in compliance with all applicable international, national, state and local laws.
- (b) Release of Information. Seller shall not release any information concerning this Agreement or its business relationship with Purchaser, to any third party, except as required by applicable law, rule, injunction or administrative order, without Purchaser's prior written consent. Seller shall not use Purchaser's name, photographs, logo, trademark, or other identifying characteristics or that of any of its subsidiaries or Affiliates without Purchaser's prior written approval.
- (c) International Electrotechnical Commission ("IEC") Standards. If the Goods contain software, Seller represents and warrants that it will adopt policies and establish systems to comply with IEC 62443-4-1 on or before it is adopted as an international standard and will provide data regarding Seller's compliance to Purchaser upon request. If the Services involve Industrial Automation Control Systems (as defined by the IEC), Seller represents and warrants that it has adopted policies and systems to comply with IEC 62443-2-4 and will provide data regarding Seller's compliance to Purchaser upon request.

#### **ARTICLE 17 -SELLER'S EMPLOYEES**

- (a) Seller's personnel performing services under this Agreement shall remain employees of Seller subject to its right of direction, control and discipline and by virtue of this Agreement, shall neither become employees of Purchaser nor be entitled to any rights, benefits or privileges of Purchaser employees. As appropriate, Purchaser shall give direction as to the ultimate objective of the project to the Seller. The Seller shall ensure that its personnel adhere to the terms and policies in this Agreement and that they have the requisite knowledge, training and ability to perform work under this Agreement competently and in accordance with applicable laws and regulations.
- (b) Seller's employees are not authorized to enter into any agreements or to make any commitments financial or otherwise on behalf of Purchaser. Specifically, no employee of Seller shall make contact with any government official regarding the continuation, renewal, amendment or modification of a Prime Contract.

#### **ARTICLE 18 - RECORD RETENTION REQUIREMENTS.**

- (a) Record Retention. For U.S. Government subcontracts, Seller shall maintain complete and accurate records in connection with its performance under this Agreement for seven (7) years after completion of performance under this Agreement, including but not limited to, Orders, memoranda of negotiations showing the principal elements of price negotiations, and records substantiating charges for labor or services, including proper time clock cards, time vouchers, or other similar records. For quality documents, Seller will maintain such records according to the applicable supplier quality specification or other quality requirements as specified), or seven (7) years, whichever is longer.
- (b) Classified Information. Upon completion of work by Seller under this Agreement, Seller shall return to Purchaser any classified information furnished by Purchaser, including all reproductions thereof, and Seller shall surrender classified information or materials developed by Seller in connection with this Agreement, unless the information has been destroyed, or the retention of the information is authorized in writing, by Purchaser or the government.

#### **ARTICLE 19 - EXPORT CONTROL REQUIREMENTS.**

For Non-U.S. Sellers or Sellers intending to Conduct Work Outside of the U.S., the following clauses apply:

- (a) Compliance with Export Laws. Seller agrees to comply with all applicable government export control laws and regulations, including but not limited to the International Traffic in Arms Regulations ("ITAR," 22 CFR Part 120-130) and the Export Administration Regulations ("EAR," 15 CFR Parts 730-774).
- (b) Export Licenses. Seller agrees to obtain the required export licenses, unless otherwise agreed to by Purchaser.
- (c) For items subject to the ITAR ONLY: In the event the Goods or Services are subject to the U.S. Department of State (as defined in Sections 120.6 and 120.9 of the ITAR), Seller agrees to maintain a valid and current Directorate of Defense Trade Controls ("DDTC") registration and agrees to provide confirmation of such registration if requested by Purchaser.
  - i) With respect to such defense articles and/or defense services, Seller represents and warrants that it has not and will not pay or offer to pay for the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of an international organization or non-U.S. Country any fees, commissions or political contributions as described under Part 130 of the ITAR without prior notice to Purchaser.
  - ii) In such event, Seller shall provide to the Purchaser, not later than 20 days after such an event, full disclosure of all information necessary for the Purchaser to comply fully with Sections 130.9 and 130.10 of the ITAR.).
- (d) Prohibited Goods and Services. The U.S. prohibits the importation of Goods or the purchase of Services from certain countries, entities, or individuals. Therefore, no Goods or Services from prohibited countries, entities, or individuals may be used directly or indirectly in the activities covered by this Agreement. The list of prohibited countries can change from time to time and it is Seller's responsibility to ensure compliance with such list at all times (located inter alia, <http://www.treas.gov/ofac>, <http://www.bis.doc.gov> and <http://pmdrtc.state.gov>).

#### **ARTICLE 20 - CUSTOMS REQUIREMENTS.**

For Non-U.S. Sellers or Sellers intending to Conduct Work Outside of the U.S., the following clauses apply:

- (a) Importer of Record.
  - i) Seller must show proper notification on all shipping waybills. In addition, shipping cartons and documentation must meet all U.S. customs country of origin marking and invoicing requirements. Seller will be responsible for any fines or liabilities resulting from insufficient, improper or negligent invoicing or marking of shipments.
  - ii) For ocean shipments ONLY, Seller accepts and shall implement sufficient procedures to enable Purchaser to comply with U.S. Customs and Border Protection's (CBP) Importer Security Filing (ISF) requirements Seller shall provide the following required data elements: (1) Seller or Seller's ultimate owner's registered name and address, (2) Manufacturer's name and address, (3) Purchaser's name and address, (4) Ship-to name and address of final destination, (5) Container stuffing location name and address, (6) Consolidator or stuffer name and address, (7) Importer of Record's name and U.S. Internal Revenue Service (IRS) or tax identification number, (8) Consignee name(s) and U.S. IRS or tax identification number, (9) Country of origin – the country where goods are manufactured or produced, and (10) Six-digit harmonized tariff code; such information shall be provided to the designated Purchaser ISF agent within 72 hours prior to the shipping vessel sailing. Seller or its agents shall communicate ISF requirements, including the ISF pre-alert form (by electronic mail) to Purchaser's ISF agent at least 72 hours prior to the shipping vessel sailing. Seller or its agents shall not load container onto vessel prior to receipt of ISF acceptance from Purchaser's ISF agent.
  - iii) In addition to any other rights and remedies Purchaser may have in law or in equity, Purchaser may deduct from the price of Goods any penalties, fines or assessments that U.S. Customs and Border Protection imposes on Purchaser for late or inaccurate or incomplete ISF filings caused by Seller non-compliance. Additional deductions may be taken for late deliveries, demurrage or expenses incurred due to Seller's failure to comply with ISF requirements
- (b) Anti-Dumping. Seller warrants that all sales made hereunder are or will be made at not less than fair value under the U.S. Anti-Dumping law (19 U.S.C. sec 1673 et. seq.), and Seller will indemnify, defend and hold

Purchaser harmless from and against any costs or expenses (including but not limited to any anti-dumping duties which may be imposed) arising out of or in connection with any breach of this warranty.

**ARTICLE 21 - WORK ON PURCHASER'S OR ITS CUSTOMER'S PREMISES.** If Seller's work under this Agreement involves operations by Seller on the premises of Purchaser or Purchaser's customer or access to Purchaser's systems or its computers, then:

- (a) Seller shall comply with all of Purchaser's safety and security procedures and shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work.
- (b) Seller represents and warrants that all of its employees who will perform work under this Agreement on Purchaser's or its customer's premises have been tested and are free from illegal drugs. The term "illegal drugs" does not include the use of a controlled substance pursuant to a valid prescription. The prescription medication must not prevent the employee from performing competent and safe work.

OR to be used in circumstances where Seller does not have the right to conduct routine drug testing:

- (b) Seller represents and warrants that it will use reasonable endeavors to ensure that all of its employees who will perform work under this Agreement on Purchaser's or its customer's premises are free from illegal drugs. In the event that Seller has reason to suspect that any employee performing work under this Agreement on Purchaser's or its customer's premises is using illegal drugs, Seller agrees to take immediate steps to remove such employee from Purchaser's or its customer's premises and ensure that the employee does not continue to perform work under this Agreement. The term "illegal drugs" does not include the use of a controlled substance pursuant to a valid prescription. The prescription medication must not prevent the employee from performing competent and safe work.
- (c) As permitted by applicable law, Seller represents and warrants that it will conduct a criminal convictions records investigation of its employees through the use of an approved third-party background check vendor before they are assigned to work on any Order that requires that employee to enter Purchaser's or its customer's premises. Where Seller is located in the UK, such investigation shall, at a minimum, take the form of a Criminal Record Check (CRC) and be in accordance with the UK Rehabilitation of Offenders Act (1974) and Seller shall provide Purchaser with a copy of the CRC completed prior to assigning any employee to work on any Order that requires that employee to enter Purchaser's or its customer's premises requesting unescorted visitor access.
- (d) Seller shall include this provision in any subcontract placed pursuant to this Agreement where the subcontractor will perform work on Purchaser's or its customer's premises.
- (e) As permitted by applicable law, Purchaser reserves the right to deny any of Seller's employees, agents or subcontractors access to its or its customer's premises and/or systems for any reason in Purchaser's sole discretion, including but not limited to such individual being a former employee of Purchaser who received layoff benefits or Special Early Retirement Option (SERO) benefits from Purchaser within the prior three years or whose last performance rating as an employee of Purchaser was less than satisfactory.

**ARTICLE 22 - ENVIRONMENTAL MATTERS.**

- (a) Seller covenants that the Goods (1) comply with all laws governing the management, handling, shipping, import, export, notification, registration or authorization of chemical substances such as the Montreal Protocol, the Stockholm Convention on Persistent Organic Pollutants, the US the Toxic Substances Control Act, the European Union's Restrictions on Hazardous Substances and REACH legislation and other comparable chemical regulations (collectively "Chemicals Legislation"); and (2) can be used as contemplated by Purchaser in full compliance with the Chemicals Legislation.
- (b) Unless Purchaser has expressly agreed otherwise in writing, Seller covenants that the Goods do not contain (1) any chemicals that are restricted or otherwise banned under Chemicals Legislation and/or (2) contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), polybrominated diphenyl ethers (PBDE), arsenic, asbestos, benzene, polychlorinated biphenyls, carbon tetrachloride, beryllium or radioactive materials. Seller shall notify Purchaser in writing of the presence of any engineered nanoscale material contained in the Goods or used in Seller's operations. Upon request Seller shall provide, subject to reasonable protection of Seller's confidential business information, the chemical composition of the Goods and any other relevant information regarding the Goods, including without limitation, test data and safe use and hazard information.
- (c) Unless specifically defined as a requirement by Purchaser's engineering drawings or specifications, the use of cadmium plating or nickel cadmium plating is strictly prohibited in the manufacture of Goods. The use of

cadmium plating or nickel cadmium plating is strictly prohibited on all tooling, fixtures, and test equipment that is used for manufacturing, assembly, test, or material handling of the Goods unless Seller has notified Purchaser in advance and has obtained its prior written consent to such use.

- (d) If Seller is located outside of the U.S. and is shipping Goods into the U.S., regardless of which party is the importer of record, Seller agrees to comply with the import restrictions contained in section 13 of the Toxic Substance Control Act (TSCA) 15 U.S.C. 2601 et seq., provide the appropriate TSCA Certification required under 19 CFR 12.121, and be responsible for any fines or liabilities resulting from breaches of this provision.
- (e) Seller covenants that it has included requirements substantially similar to the covenants in this Agreement in all sub-contracts it enters into related to the fulfillment of this Agreement.
- (f) When Seller ships Goods to Purchaser, Seller shall provide with the Goods, in the language(s) of the location(s) where the goods are delivered to Purchaser or Purchaser's designee: (1) safe use instructions; (2) hazard communication, safe transport and labelling information; (3) compliance and certification documentation; and (4) for chemical substance and mixtures, safety data sheets (MSDS/SDS). For each such material, identification shall reference the stock or part number of the delivered Goods.

#### **ARTICLE 23 - MISCELLANEOUS.**

- (a) English Language. Except as the parties may otherwise agree, this Agreement, Orders, data, notices, shipping invoices, correspondence and all other writings shall be in the English language. In the event of any inconsistency between any terms of this Agreement and any translation thereof into another language, the English language meaning shall control.
- (b) Governing Law. All disputes between the Parties shall be governed by the laws of the state of New York, notwithstanding its conflict of laws rules. The application of the United Nations Convention on the International Sale of Goods is hereby excluded.
- (c) Waiver. Any failure or delay in the exercise of rights or remedies under this Agreement will not operate to waive or impair such rights or remedies. Any waiver given will not be construed to require future or further waivers.
- (d) Modifications. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding upon either party unless in a subsequent writing signed by the duly authorized representative of the party intended to be bound thereby.
- (e) Severability. If any portion of this Agreement is determined to be contrary to any controlling law, rule or regulation, such portion will be revised or deleted from this Agreement, but the balance of this Agreement will remain in full force and effect.
- (f) Reports. Upon request, Seller shall provide progress reports pertaining to the status of the work being performed under this Agreement. Such reports shall be in a form acceptable to Purchaser.
- (g) Business Continuity Plan. Upon request, Seller shall provide written business continuity plans and/or crisis management protocol, to Purchaser (or a third party identified by Purchaser).
- (h) Financial Records. Upon request, Seller will provide financial records, such as income statements, balance sheets, and cash flow statements, to Purchaser (or a third party identified by Purchaser) to enable Purchaser to evaluate the financial health of Seller. If Seller purchases MRAS-directed raw material, Seller agrees that the supplier of such raw material may provide Purchaser information regarding Seller's accounts.
- (i) Labor Disputes. The Seller shall notify Purchaser of all impending or existing labor complaints, troubles, disputes or controversies that may affect Seller's ability to perform its obligations under this Agreement. Purchaser shall have no liability or bargaining obligations under any collective bargaining agreement between Seller and its employees. Seller agrees to give Purchaser prompt notice of any union organization with respect to its employees.
- (j) Security Interest. If items are bailed to Seller or progress payments made, Seller grants Purchaser a security interest in equipment, machinery, contract rights, inventory, goods, merchandise and raw materials, whether now existing or hereafter arising, and any replacements, improvements, substitutions, attachments, accessories and accessions thereto or thereon provided by Purchaser or purchased by Seller with progress payments or advances made by Purchaser and to be used by Seller in manufacturing products ordered by Purchaser under this Agreement. Seller agrees to execute and deliver all documents requested by Purchaser to protect and maintain Purchaser's security interest.

- (k) Offset Requirements. All offset or countertrade credit value resulting from this Agreement shall accrue solely to the benefit of Purchaser. Seller agrees to cooperate with Purchaser in the fulfillment of any foreign offset/countertrade obligations. Purchaser considers its future and current offset/countertrade obligations as a factor in all Purchaser transactions.
- (l) Audit Rights. Purchaser shall have the right to audit all pertinent books and records and systems of Seller, receive answers to reasonable information requests to Seller, and to make reasonable inspections of Seller's facilities to verify compliance with this Agreement. In the event of non-compliance, Purchaser may take appropriate actions, up to and including termination pursuant to Article 5(a).
- (m) Survival. All rights, duties and obligations which by nature should apply beyond the term of the Agreement will remain in force after the complete performance of the Agreement.
- (n) Assurance of Performance. If Purchaser determines, at any time, that it is not sufficiently assured of Seller's full, timely and continuing performance under an Order, Purchaser may request, by notice to Seller, written assurance (hereafter an "Assurance of Performance") with respect to any specific matters affecting Seller's performance hereunder, that Seller is capable of and will perform all of its respective obligations under any Order as specified herein. Each Assurance of Performance shall be delivered by Seller to Purchaser in writing, as promptly as possible, but in any event no later than ten (10) calendar days following Purchaser's request and each Assurance of Performance shall be accompanied by any information as Purchaser may reasonably request. Except for payment of Good's, Purchaser may suspend all or any part of Purchaser's performance hereunder until Purchaser receives an Assurance of Performance from Seller acceptable to Purchaser.
- (o) Acceptance of this Order by Seller is in part based on Purchaser's reliance on Seller's ability, expertise and understanding of the intended use of the Goods and Services provided hereunder. Seller agrees that Purchaser and its customers may rely on Seller as an expert with respect to the Goods, and Seller will not deny any responsibility or obligation hereunder on the basis that Purchaser or its customers provided suggestions or assistance or approval of the work involved in designing, developing, producing or supporting the Goods, including but not limited to Purchaser's review, approval, acceptance of specifications, test data or the Goods.

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 APPENDIX I: THE FOLLOWING PROVISIONS ARE APPLICABLE TO ALL U.S. GOVERNMENT SUBCONTRACTS

- 01. If deliveries of Goods including data under this Agreement are to be made directly to the U.S. Government, Seller agrees to prepare and distribute the DOD form 250, "Material Inspection and Receiving Report", as set forth in part 53 of DFARS. Seller shall include a similar provision in any subcontract issued under this Agreement if the subcontractor will be making deliveries directly to the U.S. Government.
- 02. **Seller shall abide by the requirements of 41 CFR 60-1.4, 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Additionally, these regulations prohibit employers from discharging, or otherwise discriminating against, employees or applicants who inquire about, discuss, or disclose their compensation or the compensation of other employees or applicants. Moreover, these regulations require that Seller take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.**
- 03. Seller shall include in each lower-tier subcontract the appropriate flowdown clauses as required by the FAR and DFARS.
- 04. Whenever necessary to make the context of the clauses applicable to this Order, the terms "Government", "Contracting Officer", and similar terms shall mean Purchaser, the term "Contractor" and similar terms shall mean Seller, and the term "Contract" shall mean this Order. However, the terms "Government" and "Contracting Officer" do not change (1) when modifying "Property" (e.g. "Government Property"), (2) in the patent clauses incorporated herein, (3) when a right, act, authorization or obligation can only be granted or performed by the Government or Contracting Officer, (4) when title to property is to be transferred directly to the Government, (5) when access to proprietary financial information or other proprietary data is required, except as otherwise provided herein, and (6) where specifically modified herein.

05. The information in parentheses below is provided for informational purposes and to assist in determining applicability, and does not relieve any party from their contractual duties when the provision or clause applies pursuant to the requirements of each individual provision or clause. The full text of a clause may be accessed electronically at <http://farsite.hill.af.mil> or <http://www.acq.osd.mil/dpap/>

**FEDERAL ACQUISITION REGULATION (FAR) CLAUSES**

- 52.202-1 DEFINITIONS
- 52.203-3 GRATUITIES (Applies when the Order exceeds the Simplified Acquisition Threshold (“SAT”))
- 52.203-5 COVENANT AGAINST CONTINGENT FEES (Applies when the Order exceeds the SAT)
- 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (Applies when the Order exceeds the SAT)
- 52.203-7 ANTI-KICKBACK PROCEDURES (Applies when the Order exceeds the SAT; Note: Paragraph (c)(1) is excluded; In paragraph (c)(4) replace “The contracting officer may” with “To the extent the Contracting Officer has made an offset and directed Purchaser to withhold an amount, Purchaser may...”)
- 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (Applies when the Order exceeds the SAT)
- 52.203-12<sup>1</sup> LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (Applies when the Order exceeds \$150,000)
- 52.203-13<sup>1</sup> CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (Applies when the Order exceeds \$5,000,000 and the period of performance exceeds 120 days)
- 52.203-14<sup>2</sup> DISPLAY OF HOTLINE POSTER(S) (Applies when the Order exceeds \$5,500,000)
- 52.203-17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights.
- 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS
- 52.204-2 SECURITY REQUIREMENTS (Applies when the Order involves access to classified information)
- 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (Applies when Seller’s employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system)
- 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST TIER SUBCONTRACT AWARDS (Note: Seller agrees to timely provide information requested by Purchaser pursuant to this clause, and acknowledges that such information will be made publicly available)
- 52.204-21<sup>1</sup> BASIC SAFEGUARDING OF CONTRACTOR INFORMATION SYSTEMS
- 52.209-6 PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (Applies when the Order exceeds \$30,000)
- 52.211-5 MATERIAL REQUIREMENTS
- 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (Applies when the Order is rated, see Remark 218)
- 52.212-4<sup>1</sup> CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (Applies when Purchaser has notified Seller in writing that the Goods or Services are a commercial item as defined in 2.101; Note: only paragraph (l) applies)
- 52.215-2 AUDIT AND RECORDS—NEGOTIATION (Applies when the Order exceeds the SAT)
- 52.215-10 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (Applies when certified cost or pricing data is required)
- 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (Applies when certified cost or pricing data is required)
- 52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS (Applies when certified cost or pricing data is required)
- 52.215-14 INTEGRITY OF UNIT PRICES (Applies when the Order exceeds the SAT)
- 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (Applies when certified cost or pricing data is required)
- 52-215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (Applies when certified cost or pricing data is required)
- 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (Applies when certified cost or pricing data is required)
- 52.215-20 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA
- 52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS



52.215-22	LIMITATIONS ON PASS-THROUGH CHARGES – IDENTIFICATION OF SUBCONTRACT EFFORT (Applies when certified cost or pricing data is required)
52.215-23	LIMITATIONS ON PASS-THROUGH CHARGES (Applies when certified cost or pricing data is required)
52.219-8 <sup>1&amp;2</sup>	UTILIZATION OF SMALL BUSINESS CONCERNS (Applies when the Order exceeds the SAT)
52.219-9 <sup>2</sup>	SMALL BUSINESS CONTRACTING PLAN (Applies when the Order exceeds \$700,000)
52.222-4 <sup>2</sup>	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (Applies when the Order exceeds \$150,000 and may require or involve the employment of laborers or mechanics)
52.222-17 <sup>1</sup>	NONDISPLACEMENT OF QUALIFIED WORKERS (Applies when the Order exceeds the SAT and is (1) a service contract, as defined in 22.001, (2) that succeeds a contract for performance of the same or similar work at the same location, and (3) is not exempted by 22.1203-2 or waived in accordance with 22.1203-3)
52.222-19	CHILD LABOR – COOPERATION WITH AUTHORITIES AND REMEDIES
52.222-20 <sup>2</sup>	WALSH-HEALEY PUBLIC CONTRACTS ACT (Applies when the Order exceeds \$15,000)
52.222-21	PROHIBITION OF SEGREGATED FACILITIES (Applies when 52.222-26 is applicable)
52.222-26 <sup>1&amp;2</sup>	EQUAL OPPORTUNITY (Applies when the Order exceeds \$15,000 unless an exemption applies)
52.222-35 <sup>1&amp;2</sup>	EQUAL OPPORTUNITY FOR VETERANS (Applies when the Order exceeds \$150,000)
52.222-36 <sup>1&amp;2</sup>	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (Applies when the Order exceeds \$15,000)
52.222-37 <sup>1</sup>	EMPLOYMENT REPORTS ON VETERANS (Applies when the Order exceeds \$150,000)
52.222-40 <sup>1&amp;2</sup>	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (Applies when the Order exceeds \$10,000)
52.222-41 <sup>1&amp;2</sup>	SERVICE CONTRACT LABOR STANDARDS (For each Order subject to the SCLS, Purchaser shall include a remark signifying SCLS applicability. Seller shall submit any required wage classifications to the Purchaser for submission to the Contracting Officer and shall not commence performance until receipt of the final wage determination from Purchaser)
52.222-50 <sup>1</sup>	COMBATTING TRAFFICKING IN PERSONS (Paragraph (h) <i>Compliance Plan</i> , applies to any portion of the contract that: (i) is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and (ii) has an estimated value that exceeds \$500,000. The Seller shall also report the information required in paragraph (d)(1-2) to Purchaser.)
52.222-54 <sup>1&amp;2</sup>	EMPLOYMENT ELIGIBILITY VERIFICATION (Applies when the Order is for Services)
52.222-55 <sup>1&amp;2</sup>	MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (Applies when 52.222-41 is applicable; Seller shall indemnify Purchaser in the event Purchaser is held liable under paragraph (j))
52.222-56 <sup>1</sup>	CERTIFICATION REGARDING TRAFFICKING IN PERSONS COMPLIANCE PLAN (Applies if it is possible that at least \$500,000 of the value of the contract may be performed outside the United States and the acquisition is not entirely for commercially available off-the-shelf items)
52.222-62	PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706
52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (Applies when Seller is delivering hazardous materials)
52.223-15	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (Applies when products listed in the ENERGY STAR® Program or FEMP will be provided to Purchaser)
52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING
52.224-3	PRIVACY TRAINING
52.225-1	BUY-AMERICAN ACT-SUPPLIES
52.225-2	BUY AMERICAN ACT CERTIFICATE (Applies when 52.225-1 applies)
52.225-5	TRADE AGREEMENTS
52.225-8	DUTY-FREE ENTRY (Applies when Goods will be imported into the Customs Territory of the United States)
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
52.227-1	AUTHORIZATION AND CONSENT (Applies when the Order exceeds the SAT)
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (Applies when the Order exceeds the SAT)
52.227-9	REFUND OF ROYALTIES
52.227-10	FILING OF PATENT APPLICATIONS--CLASSIFIED SUBJECT MATTER (Applies when the Order covers or is likely to cover classified subject matter)
52.227-11	PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR
52.227-13	PATENT RIGHTS-OWNERSHIP BY THE GOVERNMENT
52.228-3	WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT) (Applies when the Order requires performance on a U.S. military base outside the US)
52.228-4	WORKER'S COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS (Applies when the Order requires performance on a U.S. military base outside the US and the Secretary of Labor waives the applicability of the Defense Base Act applies)

- 52.228-5 INSURANCE – WORK ON A GOVERNMENT INSTALLATION (Applies when the Order exceeds the SAT and the Order will require work on a Government installation)
- 52.230-2 COST ACCOUNTING STANDARDS (Applies when the Order is subject to CAS)
- 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (Applies when the Order is subject to CAS)
- 52.230-4 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES – FOREIGN CONCERNS (Applies when the Order is subject to CAS and Seller is located outside of the U.S.)
- 52.230-5 COST ACCOUNTING STANDARDS – EDUCATIONAL INSTITUTIONS (Applies when the Order is subject to CAS and Seller is an Educational Institution)
- 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (Applies when the Order is subject to CAS)
- 52.232-16 PROGRESS PAYMENTS (Applies when the Order provides for progress payments to Seller)
- 52.232-40<sup>1</sup> PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (Applies when Seller subcontracts with small business subcontractors and Seller receives accelerated payments from Purchaser)
- 52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTIONS ACT TITLE III
- 52.242-15 STOP-WORK ORDER
- 52.244-5 COMPETITION IN SUBCONTRACTING
- 52.244-6<sup>1</sup> SUBCONTRACTS FOR COMMERCIAL ITEMS
- 52.245-1 GOVERNMENT PROPERTY (Note: All Government Property shall be controlled and accounted for in accordance with Purchaser's Tooling Supplement, Remark E21)
- 52.245-9 USE AND CHARGES (Note: Seller shall request authorization to use Government Property in support of efforts under a contract number other than the contract number to which it is assigned, by submitting such request in the form prescribed by Purchaser)
- 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (Applies when the Order requires shipment to be made directly to the US Government and Seller has been authorized to ship on a Commercial Bill of Lading)
- 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (Applies when the Order involves international air transportation of personnel or property)
- 52.247-64<sup>1</sup> PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (Applies when Goods are to be shipped by ocean vessel unless exempted under paragraph (e)(4))
- 52.248-1 VALUE ENGINEERING (Applies when the Order exceeds \$150,000)
- 52.249-2 TERMINATION FOR CONVENIENCE (Applies in lieu of the Termination for Convenience clause in the body of this Agreement) (In paragraph (c) change "120 days" to "60 days," and in paragraph (e) change "90 days" to "45 days")
- 52.249-5 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (Applies when Seller is an educational or other non-profit institution and in lieu of the Termination for Convenience clause in the body of this Agreement) (Delete paragraph (h), in paragraph (c) change "120 days" to "60 days", and in paragraph (d) change "1 year" to "60 days")
- 52.249-8 TERMINATION FOR DEFAULT (Applies in lieu of the Termination for Default clause in the body of this Agreement) (In paragraph (a)(2) change "10 days" to "7 days")

**IF AN ORDER IS PLACED UNDER A DEPARTMENT OF DEFENSE (DOD) CONTRACT, THE FOLLOWING DOD FAR SUPPLEMENT CLAUSES APPLY IN ADDITION TO (OR IN LIEU OF WHERE NOTED) THE FAR CLAUSES ABOVE:**

- 252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (Applies when the Order exceeds the SAT)
- 252.203-7002<sup>1</sup> REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS
- 252.203-7003<sup>1</sup> AGENCY OFFICE OF THE INSPECTOR GENERAL (As referenced in FAR 52.203-13)
- 252.203-7004<sup>2</sup> DISPLAY OF HOTLINE POSTERS (Applies when the Order exceeds \$5,500,000 in lieu of FAR 52.203-14)
- 252.204-7000 DISCLOSURE OF INFORMATION
- 252.204-7008 COMPLIANCE WITH SAFEGUARDING COVERED DEFENSE CONTROLS
- 252.204-7012<sup>1</sup> SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (Applies when the Seller has Covered Defense Information resident on or transiting through Seller's unclassified information systems. Seller shall also send to Purchaser all required notifications to the U.S. Government)
- DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT CONTRACTORS
- 252.204-7015<sup>1</sup>
- 252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY
- 252.211-7000 ACQUISITION STREAMLINING (Applies when the Order is a systems acquisition program, or exceeds \$1,500,000)

252.211-7003 <sup>1</sup>	ITEM IDENTIFICATION AND VALUATION (Applies when the Order involves Goods for which unique item identification is required in accordance with paragraph (c)(1))
252.215-7000	PRICING ADJUSTMENTS
252.219-7003 <sup>2</sup>	SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (Applies when FAR 52.219-9 applies)
252.222-7006	RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS
252.222-7007 <sup>1</sup>	REPRESENTATION REGARDING COMBATTING TRAFFICKING IN PERSONS
252.223-7008 <sup>1</sup>	PROHIBITION OF HEXAVALENT CHROMIUM (Applies when the Order is for supplies, maintenance or repair services)
252.225-7000	BUY AMERICAN – BALANCE OF PAYMENTS PROGRAM CERTIFICATE (Applies in lieu of FAR 52.225-2)
252.225-7001	BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (Applies in lieu of FAR 52.225-1)
252.225-7002	QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS
252.225.7007	PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (Applies when the Order involves Goods covered by the U.S. Munitions List)
252.225-7009 <sup>1</sup>	RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (Applies when the Goods contain specialty metals; Note: Use of exceptions not permitted without advance Seller notification and prior Purchaser approval. Paragraph (d) of this clause is excluded)
252.225-7013	DUTY-FREE ENTRY (Applies in lieu of 52.225-8)
252.225-7015	RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS (Applies when the Order exceeds the SAT and requires delivery of hand or measuring tools)
252.225-7016 <sup>1</sup>	RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (Applies when the Order requires Seller to provide a ball and roller bearing that that is not incorporated into a higher level assembly)
252.225-7020	TRADE AGREEMENTS CERTIFICATE (Applies when DFARS 252.225-7021 applies)
252.225-7021	TRADE AGREEMENTS (Applies in lieu of FAR 52.225-5)
252.225-7025	RESTRICTION ON ACQUISITION OF FORGINGS
252.225-7028 <sup>1</sup>	EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS
252.225-7030	RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL PLATE
252.225-7032	WAIVER OF UNITED KINGDOM LEVIES - EVALUATION OF OFFERS
252.225-7033	WAIVER OF UNITED KINGDOM LEVIES
252.225-7035	BUY AMERICAN ACT- FREE TRADE AGREEMENT - BALANCE OF PAYMENTS (Applies when DFARS 252.225-7036 applies and in lieu of FAR 52.225-4)
252.225-7036	BUY AMERICAN ACT- FREE TRADE AGREEMENT - BALANCE OF PAYMENTS (Applies in lieu of FAR 52.225-3)
252.225-7037	EVALUATION OF OFFERS FOR AIR CIRCUIT BREAKERS
252.225-7038 <sup>1</sup>	RESTRICTION ON ACQUISITION OF AIR CIRCUIT BREAKERS
252.225-7048	EXPORT-CONTROLLED ITEMS
252.226-7001 <sup>1</sup>	UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (Applies when the Order exceeds \$500,000)
252.227-7013 <sup>1</sup>	RIGHTS IN TECHNICAL DATA-NONCOMMERCIAL ITEMS (Applies when technical data is specified to be delivered under the Order)
252.227-7014	RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (Applies when Seller is required to deliver computer software or computer software documentation)
252.227-7015 <sup>1</sup>	TECHNICAL DATA—COMMERCIAL ITEMS
252.227-7016	RIGHTS IN BID OR PROPOSAL INFORMATION
252.227-7017	IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS
252.227-7018	RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE--SMALL BUSINESS INNOVATIVE RESEARCH (SBIR) PROGRAM
252.227-7019	VALIDATION OF ASSERTED RESTRICTIONS – COMPUTER SOFTWARE
252.227-7020	RIGHTS IN SPECIAL WORKS
252.227-7021	RIGHTS IN DATA--EXISTING WORKS
252.227-7025	LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS
252.227-7026	DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE
252.227-7027	DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE
252.227-7028	TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT
252.227-7030	TECHNICAL DATA—WITHHOLDING OF PAYMENT (Applies when technical data is specified to be delivered under the Order)
252.227-7032	RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (FOREIGN)

252.227-7037 <sup>1</sup>	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (Applies when technical data is specified to be delivered under the Agreement)
252.227-7038	PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS)
252.227-7039	PATENTS--REPORTING OF SUBJECT INVENTIONS
252.232-7004	DOD PROGRESS PAYMENT RATES
252.234-7002	EARNED VALUE MANAGEMENT SYSTEM (Applies in lieu of FAR 52.234-4)
252.235-7003	FREQUENCY AUTHORIZATION
252.236-7013	REQUIREMENT FOR COMPETITION OPPORTUNITY FOR AMERICAN STEEL PRODUCERS, FABRICATORS, AND MANUFACTURERS
252.239-7010	CLOUD COMPUTING SERVICES
252.239-7018 <sup>1</sup>	SUPPLY CHAIN RISK
252.243-7001	PRICING OF CONTRACT MODIFICATIONS
252.244-7000 <sup>1</sup>	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS)
252.246-7001	WARRANTY OF DATA (Applies when technical data is specified to be delivered under the Order)
252.246-7003 <sup>1</sup>	NOTIFICATION OF POTENTIAL SAFETY ISSUES
252.246-7007 <sup>1</sup>	CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM
252.246-7008 <sup>1</sup>	SOURCES OF ELECTRONIC PARTS
252.247-7003 <sup>1</sup>	PASS THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT TO COST BEARER
252.247-7023 <sup>1</sup>	TRANSPORTATION OF SUPPLIES BY SEA
252.247-7024 <sup>1</sup>	NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA
252.249-7002	NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION

**IF AN ORDER IS PLACED UNDER A NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA) PRIME CONTRACT, THE FOLLOWING NASA FAR SUPPLEMENT CLAUSES APPLY IN ADDITION TO THE FAR CLAUSES:**

1852.204-76	SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES
1852.208-81	RESTRICTIONS ON PRINTING AND DUPLICATING
1852.217-70	PROPERTY ADMINISTRATION AND REPORTING
1852.219-74	USE OF RURAL AREA SMALL BUSINESSES
1852.219-75	SMALL BUSINESS SUBCONTRACTING REPORTING
1852.219-76	NASA 8 PERCENT GOAL
1852.223-70	SAFETY AND HEALTH
1852.227-11	PATENT RIGHTS-RETENTION BY THE CONTRACTOR (SHORT FORM)
1852.227-14	RIGHTS IN DATA – GENERAL
1852.227-70	NEW TECHNOLOGY
1852.227-71	REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS
1852.227-72	DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE
1852.227-85	INVENTION REPORTING AND RIGHTS – FOREIGN
1852.242-73	NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING
1852.244-70	GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM
1852.245-73	FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS

**IF AN ORDER IS PLACED UNDER A DEPARTMENT OF HOMELAND SECURITY (HSAR) PRIME CONTRACT, THE FOLLOWING HSAR FAR SUPPLEMENTAL CLAUSES APPLY IN ADDITION TO THE FAR CLAUSES:**

3052.219-70	SMALL BUSINESS SUBCONTRACTING PROGRAM REPORTING
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<sup>1</sup> If Purchaser has notified Seller in writing that the Goods or Services are a commercial item as defined in 2.101, then only these clauses apply.

<sup>2</sup> The clause does not apply to international suppliers when work is performed outside the United States and its possessions.

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**APPENDIX II: SUPPLEMENTARY TERMS AND CONDITIONS FOR COST REIMBURSEMENT ORDERS**

This Appendix II supplements Appendix I and applies only to cost-reimbursement purchase orders awarded under a prime or higher tier U.S. Government contract.

THE FOLLOWING CLAUSES APPLY IN ADDITION TO THOSE SET FORTH IN APPENDIX I:

- 52.215-22 LIMITATIONS ON PASS-THROUGH CHARGES – IDENTIFICATION OF SUBCONTRACT EFFORT (Applies when the Order exceeds the SAT for non-DOD Orders)
- 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (Applies when the Order exceeds the SAT for non-DOD Orders)
- 52.216-7 ALLOWABLE COST AND PAYMENT
- 52.216-8 FIXED FEE
- 52.216-10 INCENTIVE FEE
- 52.232-20 LIMITATION OF COST
- 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS
- 52.242-15 STOP WORK ORDER (Alt 1 applies)
- 52.246-8 INSPECTION OF RESEARCH AND DEVELOPMENT – COST REIMBURSEMENT
- 52.249-14 EXCUSABLE DELAYS
- 52.228-7 INSURANCE-LIABILITY TO THIRD PERSONS
- 52.232-22 LIMITATION OF FUNDS

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APPENDIX III: MRAS Privacy and Data Protection

This Appendix governs whenever a Supplier Processes MRAS Data, including Personal Data, Sensitive Personal Data, or MRAS Restricted Data, or has access to a MRAS Information System in connection with the relevant Contract Document (as those terms are defined below). In the event of any inconsistency or conflict between this Appendix and the Contract Document with respect to a subject covered by this Appendix, the provision requiring the higher level of protection for MRAS Data shall prevail. The requirements in this Appendix are in addition to any confidentiality obligations between MRAS and the Supplier under the Contract Document.

Part A: Definitions

- (i) Affiliate, if not defined in the Contract Document, with respect to either party, shall mean any entity (including but not limited to, joint ventures, corporations, limited liability companies, partnerships, limited partnerships, business trusts or other entities, subsidiaries, businesses, operating divisions, units thereof) that is directly or indirectly in control of, controlled by, or under common control with such party whether now existing, or subsequently created or acquired during the Term of the Contract Document.
- (ii) Contract Document, as used in this Appendix, means the relevant contract, agreement, statement of work, task order or purchase order governing the provision of services and/or deliverables by Supplier to MRAS.
- (iii) Controlled Data is technical information with distribution and/or handling requirements proscribed by law or regulation, including but not limited to sensitive but unclassified government data and license required export controlled data. Controlled Data shall be subject to the same controls specified below for MRAS Restricted Data.
- (iv) MRAS means the MRA Systems, LLC. Company, a MRA Systems, LLC. Company operating unit, or a MRA Systems, LLC. Company Affiliate signing the Contract Document with Supplier.
- (v) MRAS Data is any MRAS or its Affiliate's Confidential Information, as defined in the Contract Document, that is Processed in connection with performance of the Contract Document. For clarity, Personal Data, Sensitive Personal Data, Controlled Data and MRAS Restricted Data are MRAS Data.
- (vi) MRAS Information System(s) means any systems and/or computers managed by MRAS, which includes laptops and network devices.
- (vii) MRAS Restricted Data is information that MRAS or its Affiliate identifies as 'restricted data' in the Contract Document, or at the time of disclosure that MRAS identifies as "Restricted," "Highly Confidential," or similar in connection with performance of the Contract Document. MRAS Restricted Data, includes, but is not limited to:
  - Critical business information, including details of mergers, acquisitions or dispositions; financial results prior to public reporting; and security vulnerability information relating to MRAS Information Systems and/or products, and
  - Critical technical information, including computer source code non-public invention disclosure and/or patent data.

(viii) Highly Privileged Accounts, or HPAs, are accounts with system level administrative or super-user access to devices, applications or databases, administration of accounts and passwords on a system, or ability to override system or application controls.

(ix) Mobile Devices means tablets and smartphones running mobile operating systems (e.g., iOS, Blackberry OS, Android, or Windows Mobile operating systems). Laptops are not considered to be Mobile Devices.

(x) Personal Data is a category of MRAS Data that includes any information that relates to an identified or identifiable natural person (Data Subject), as such relation is defined under applicable law or regulation. Legal entities are Data Subjects where required by law or regulation.

(xi) Process or Processing means to perform any operation or set of operations upon MRAS Data, whether or not by automatic means, including but not limited to, collecting, recording, organizing, storing, adapting or altering, retrieving, accessing, consulting, using, disclosing by transmission, disseminating, or otherwise making available, aligning or combining, blocking, erasing, or destroying.

(xii) Security Incident is any actual or suspected event in which MRAS Data is or may have been lost, stolen, improperly altered, improperly destroyed, used for a purpose not permitted under the Contract Document or this Appendix, or accessed by any person other than Supplier Personnel pursuant to the Contract Document or this Appendix.

(xiii) Security Notices are any written communications, notices, filings, press releases, or reports related to any Security Incident.

(xiv) Sensitive Personal Data is a category of Personal Data considered to be especially sensitive and includes medical records and other personal health information, including protected health information (PHI) subject to the U.S. Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated under that Act (collectively, HIPAA), and/or any medical, demographic, visual or descriptive information that can be used to identify a particular patient/individual under HIPAA or other similar law and regulations; personal bank account and payment card information and other financial account information; customer bank account and payment card information; national identifiers; and special data categories of data under applicable data protection law (such as race, nationality, political opinions, trade union membership, home life, and sexual orientation). Sensitive Personal Data shall be subject to the same controls specified below for MRAS Restricted Data.

(xv) Supplier is the entity that is a party to the Contract Document.

(xvi) Supplier Information System(s) means any Supplier systems and/or computers used to Process MRAS Data pursuant to the Contract Document, which includes laptops and network devices.

(xvii) Supplier Personnel means Supplier's employees, as well as its permitted affiliates, suppliers, subcontractors, and agents and their respective employees.

Parts B-E and I-K apply to all Suppliers that Process any MRAS Data.

#### Part B: Collecting, Processing and Sharing MRAS Data

Supplier shall implement appropriate organizational, technical, and physical measures and controls to protect and ensure the security and confidentiality of MRAS Data to prevent accidental, unauthorized or unlawful destruction, alteration, unauthorized disclosure or access, modification or loss of MRAS Data; misuse of MRAS Data; and unlawful Processing of MRAS Data. Supplier is responsible for compliance with all terms of the Contract Document and this Appendix by Supplier Personnel and for following MRAS or the applicable MRAS Affiliate's instructions concerning the Processing of MRAS Data.

Organizational security controls shall include the following at a minimum:

1. Supplier and Supplier Personnel shall Process MRAS Data, and access and use MRAS Information Systems, only on a need-to-know basis and only to the extent necessary to perform services under the Contract Document or as otherwise instructed by MRAS or the applicable MRAS Affiliate in writing.

2. Prior to providing access to any MRAS Data to any Supplier Personnel, Supplier must obligate them to comply with the level of security required in the Contract Document and this Appendix and verify such compliance through an appropriate due diligence process. Unless otherwise agreed upon in the Contract Document, Supplier must obtain MRAS's

prior written approval to provide access to any MRAS Data to any of its own suppliers or subcontractors or agents that were not pre-qualified by or otherwise disclosed to MRAS in writing prior to Supplier's performance of services under the Contract Document. Supplier shall take reasonable steps to ensure continuing compliance by such Supplier Personnel, with this Appendix and shall remain responsible at all times for their compliance.

3. Supplier must maintain formal written policies and procedures for the administration of information security throughout its organization consistent with the requirements of this Appendix.

4. Supplier Personnel with access to MRAS Data must participate in appropriate information security awareness training provided by the Supplier prior to obtaining access to MRAS Data and thereafter on at least an annual basis while such personnel have access to MRAS Data.

5. Supplier shall maintain a current inventory of Supplier Information Systems.

6. Supplier must ensure each account (including MRAS assigned accounts) through which MRAS Data may be accessed is attributable to a single individual with a unique ID (not shared) and each account must require authentication (e.g., password) prior to accessing MRAS Data.

7. Supplier shall undertake reasonable measures to terminate Supplier Personnel access to MRAS Data, whether physical or logical, no later than the date of personnel separation or personnel transfer to a role no longer requiring access to MRAS Data; where Supplier Personnel have been assigned MRAS credentials, Supplier must notify MRAS of any such separation or transfer no later than the day of that event.

8. MRAS Data shall not be Processed on personal accounts (e.g., individual email or cloud services accounts (e.g., Gmail, Yahoo, Dropbox, Google Drive)) or on personally-owned computers, devices or media.

9. Unless prohibited by applicable law or regulation, Supplier shall notify MRAS promptly and act only upon MRAS's instruction concerning any request by a third party, including without limitation law enforcement, governmental authority, or in connection with litigation or other court process for disclosure of MRAS Data or for information concerning the Processing of MRAS Data in connection with the Contract Document or this Appendix, as well as any request received from an individual concerning his/her Personal Data.

Technical security controls on Supplier Information Systems shall include the following at a minimum:

10. Supplier must use strong passwords consistent with technology industry practices, including minimum password length, lockout, expiration period, complexity, encryption, changing of default passwords, and usage of temporary passwords. User account credentials (e.g., login ID, password) must not be shared.

11. Supplier must implement and maintain controls to detect and prevent unauthorized access, intrusions and computer viruses and other malware. At a minimum such controls must include network layer security devices (e.g. firewalls and intrusion detection/prevention systems), client and server-side antivirus programs that include up-to-date antivirus definitions, and installation into production of all critical patches or security updates as soon as possible, but not later than thirty (30) days from the release of any such updates or patches.

12. Supplier must maintain documented change management procedures that provide a consistent approach for controlling, implementing and documenting changes (including emergency changes) for Supplier Information Systems that includes appropriate segregation of duties.

13. Unless otherwise expressly agreed in the Contract Document, development and testing environments must be physically and/or logically separated from production environments and must not contain MRAS Data unless specified in the Contract Document. Production changes must be approved by the Supplier's appropriate system owner, as such person is designated in the Contract Document, and such changes must not be made by any Supplier developers.

14. Any back-up media containing MRAS Data stored at Supplier's site must be kept in a secure location (e.g., locked office or locked file cabinet) and be encrypted to a standard consistent with industry practice. If off-site media storage is used, Supplier must have a media check-in/check-out process with locked storage for transportation. Back-up information must be given the same level of physical and environmental protection as the level of control applied at the main site.

15. Workstations must not be left authenticated when unattended and must be password or PIN protected when not in use. An inactivity lock must be implemented on workstations.
16. Network layer security devices must allow only authorized connections and rule sets must be reviewed at minimum semi-annually.
17. Mobile Devices used to Process MRAS Data (including emails) must have strong mobile device security controls, including required passcode, minimum passcode length, inactivity lock, and a process in place to immediately remotely wipe lost or stolen devices.

Physical security controls shall include the following at a minimum on all Supplier facilities where MRAS Data may be Processed:

18. Physically secure perimeters and external entry points must be suitably protected against unauthorized access (e.g. barriers such as walls, card controlled entry gates). Access to all locations must be limited to Supplier Personnel and authorized visitors only. Reception areas must be manned or have other means to control physical access.
19. Visitors must be required to sign a visitors register (maintained for at least one year) and be escorted or observed at all times, upon each entry to and exit from the premises.
20. A clear desk policy must be enforced throughout the Supplier facilities. Documents that contain MRAS Data must be kept secured (e.g. locked office or file cabinet) when not in use.

#### Part C: Security Incidents

1. Security Incidents on Suppliers Information Systems must be logged, reviewed on a periodic basis (minimum quarterly), secured, and maintained for a minimum of twelve (12) months.
2. Supplier must develop and maintain an up-to-date incident management plan designed to promptly identify, prevent, investigate, and mitigate any Security Incidents and perform any required recovery actions to remedy the impact.
3. Supplier shall notify MRAS within a reasonable period, in no event to exceed seventy-two (72) hours after discovery, or shorter if required by applicable law or regulation, of any Security Incident experienced by Supplier involving any MRAS Data. Supplier shall report any Security Incidents to MRAS's Cognizant Buyer or at such contact information communicated to Supplier from time to time. Supplier shall reasonably cooperate with MRAS in its investigation of an incident, whether discovered by Supplier, MRAS, or a third party, which shall include providing MRAS a detailed description of the Security Incident, the type of data that was the subject of the Security Incident, the identity of each affected person, and any other information MRAS reasonably may request concerning such affected persons and the details of the Security Incident, as soon as such information can be collected or otherwise becomes available. Supplier shall designate an individual responsible for management of the Security Incident, and shall identify such individual to MRAS promptly.
4. If requested by MRAS, and at MRAS's direction, Supplier shall send Security Notices regarding a Security Incident. Unless prohibited by applicable law or regulation, Supplier shall provide MRAS with reasonable notice of, and the opportunity to comment on and approve, the content of such Security Notices prior to any publication or communication thereof to any third party, except MRAS shall not have the right to reject any content in a Security Notice that must be included in order to comply with applicable law or regulation. Should MRAS elect to send a Security Notice regarding a Security Incident, Supplier shall provide all reasonable and timely information relating to the content and distribution of that Security Notice as permitted by applicable law or regulation pursuant to the Security Notice.
5. Other than approved Security Notices, or to law enforcement or as otherwise required by law or regulation, Supplier may not make or permit any public statements concerning MRAS's involvement with any such Security Incident to any third-party without the explicit written authorization of MRAS's Legal Department.

#### Part D: Audits

Supplier responsibilities:



1. Supplier shall monitor the effectiveness of its security program by conducting self-audits and risk assessments of Supplier Information Systems against the requirements of written policies and procedures maintained as required by this Appendix no less frequently than every twelve (12) months. Supplier shall be responsible for ensuring consistency of its security operations, including proactive monitoring and mitigation of all vulnerabilities across all of its sites.

2. Upon request, Supplier must provide to MRAS formal reports of any audits and assessments conducted on Supplier Information Systems, which shall include, at a minimum, the scope of the audit and/or assessment and any vulnerabilities /issues /findings /concerns /recommendations in so far as they impact MRAS Data. Such formal reports provided by Supplier to MRAS shall be treated as confidential.

3. Supplier must use commercially reasonable efforts to remediate within thirty (30) days any items rated as high or critical (or similar rating indicating similar risk) in any audits or assessments of Supplier Information Systems.

#### MRAS audit rights:

4. Upon request, with reasonable advance notice and conducted in such a manner not to unduly interfere with Supplier's operations, MRAS reserves the right to conduct an audit of Supplier's compliance with the requirements in this Appendix relating to MRAS Data including but not limited to: (i) a review of Supplier's applicable policies, processes, and procedures, (ii) a review of the results of Supplier's most recent vulnerability assessment (e.g., application vulnerability scanning, penetration testing, and similar testing results) and accompanying remediation plans, and (iii) on-site assessments of Supplier's physical security arrangements and Supplier Information Systems during Supplier's regular working hours that will not unreasonably interfere with Supplier's operations, pursuant to a mutually agreeable audit plan. MRAS reserves the right to conduct an onsite audit of Supplier on thirty (30) days prior written notice during regular business hours. This right shall survive termination or expiration of the Contract Document so long as Supplier Processes MRAS Data provided under the Contract Document. Supplier agrees to cooperate fully with MRAS or its designee during such audits and shall provide access to facilities, appropriate resources, provide applicable supporting documentation to MRAS, and complete security assessment questionnaires that may be requested.

5. MRAS acknowledges and agrees that nothing in Section D4 above shall oblige Supplier to divulge any information relating to its other customers to MRAS in such a manner that may put Supplier in breach of its obligations of confidentiality to such customers or any other legal requirements.

6. Subject to the confidentiality provisions of the Contract Document, MRAS or its representative may review, audit, monitor, intercept, access and, disclose any information provided by Supplier that is Processed or stored on MRAS Information Systems or on MRAS Mobile Devices accessing the MRAS network.

#### Part E: Regulatory Requirements

In the event Supplier Processes MRAS Data that is subject to additional regulatory requirements, or in a manner subject to additional regulatory requirements, Supplier agrees to cooperate with MRAS to comply with such requirements. Such cooperation may include, without limitation:

1. Execution of additional agreements required by applicable law or regulation.

2. Implementation of additional security controls required by applicable law (e.g. Department of Defense FAR Supplement (cross referencing NIST), U.S. Federal Information Security Management Act (FISMA), HIPAA, US Sarbanes-Oxley Act, U.S. Gramm-Leach-Bliley Financial Services Modernization Act (GLBA) Section 501(b) Standards for Securing Customer Information, Payment Card Industry Data Security Standards (PCI DSS) security requirements, Federal Financial Institutions Examination Council (FFIEC) guidance).

3. Completion of regulatory filings applicable to Supplier (e.g. EU data protection authority filings).

4. Completion of required regulatory audits (e.g., U.S. Food and Drug Administration (FDA), central banks such as the U.S. Federal Reserve).

#### Part F applies to any Supplier that Processes Personal Data

(including Sensitive Personal Data)

## Part F: Personal Data

1. Unless and except to the extent expressly provided in the Contract Document, Supplier must, in each case, seek and obtain MRAS's prior written approval regarding the scope of any Personal Data to be collected directly by Supplier, as well as any notices to be provided and any consent language to be used when collecting such information from a Data Subject. In the case of Personal Data collected directly from Data Subjects by Supplier, Supplier shall comply with applicable data privacy laws and regulations, including those concerning notice, consent, access and correction/deletion.

2. Supplier acknowledges and understands that certain MRAS businesses and business processes are certified to the US-EU and US-Swiss Safe Harbor Frameworks (Safe Harbor). Supplier also acknowledges and understands that, as Safe Harbor-certified entities, the relevant MRAS businesses are obligated to require Supplier to provide at least the same level of privacy protection for Personal Data as is required by the relevant Safe Harbor principles. This Appendix is designed and intended to satisfy this requirement of the Safe Harbor and, therefore, Supplier agrees to comply with this Appendix in its entirety.

3. Supplier warrants and represents that it shall comply with all applicable laws and regulations applicable to Supplier's activities concerning Personal Data governed by this Appendix,

including those concerning notice and consent, onward transfer to a third party, and international transfer, and shall act only on MRAS's written instruction concerning any such transfers. Supplier must receive approval from MRAS prior to (i) moving Personal Data from its MRAS-approved hosting jurisdiction to a different hosting jurisdiction; or (ii) provisioning remote access to such Personal Data from any location other than the hosting jurisdiction or other MRAS-approved jurisdiction.

4. Encryption must be implemented in any of the following instances: (i) any computers, devices or media (e.g., laptop computers, phones/PDAs, USB drives, back-up tapes) containing Personal Data must be encrypted at rest; and/or (ii) transferring Personal Data over public networks (such as the Internet). In either case, Supplier must maintain cryptographic and hashing algorithm types, strength, and key management processes consistent with industry practices.

5. In the event Supplier Processes Personal Data that is subject to additional regulatory requirements, or in a manner subject to additional regulatory requirements, Supplier agrees to cooperate with MRAS to comply with such requirements. Such cooperation may include, without limitation: a) Entry into U.S. Protected Health Information Agreement, where Supplier will Process any PHI. b) Where applicable, certification that the Supplier meets the requirements of the US-EU or US-Swiss Safe Harbor and is properly listed on the US Department of Commerce Safe Harbor list with respect to the data accessed and services provided under the relevant Contract Documents. If Supplier's Safe Harbor certification lapses for any reason during the term, Supplier shall promptly notify MRAS and shall timely agree with MRAS upon alternative means of satisfying the associated legal requirements concerning adequacy of international data transfers.

Part G applies to Suppliers that Process Sensitive Personal Data, Controlled Data, and/or MRAS Restricted Data. The requirements of this Part G are in addition to all other applicable requirements of Parts A through F above. References to MRAS Restricted Data in this Part G shall be deemed to also refer to Sensitive Personal Data and/or Controlled Data as the context requires.

### Part G: Protecting MRAS Restricted Data, Controlled Data, and

#### Sensitive Personal Data

1. Supplier must have an IT security organization with clearly defined information security roles, responsibilities and accountability.

2. Supplier must perform vulnerability assessments on Supplier Information Systems at least annually. For Supplier Information Systems that are internet facing, Supplier must engage an independent external party to perform the vulnerability assessment and shall remediate as required in Part D.3.

3. Supplier Information Systems consisting of networks used to access or store MRAS Restricted Data must have security controls that can detect and prevent attacks by use of network layer firewalls and intrusion detection/prevention Systems (IDS/IPS) in a risk based manner (e.g., between the Internet and DMZ, and between DMZ and internal servers containing MRAS Restricted Data). IDS/IPS high and critical priority alerts must be continuously monitored and responded to as soon as reasonably practicable.

4. Any Supplier Personnel accessing Supplier's internal network remotely must be authenticated using a minimum two-factor authentication method and such transmissions must be encrypted at a level consistent with industry standards.
5. Supplier must have or implement hardening and configuration requirements consistent with industry practices.
6. Supplier must have or implement appropriate data loss prevention (DLP) controls (e.g., disabling of USB ports, DLP software, URL/Web filtering) to detect and prevent unauthorized removal of MRAS Restricted Data from Supplier Information Systems.
7. Supplier must implement processes to support the secure creation, modification, and deletion of these accounts and any HPAs. Supplier must review and update access rights at least annually, and at least quarterly for HPAs. HPA usage must be reviewed at minimum weekly. All HPA access must be established using encrypted mechanisms (e.g., secure shell).
8. Supplier must use an auditable process (e.g., certification of destruction) to remove MRAS Restricted Data from Supplier Information Systems prior to disposal or re-use in a manner that ensures that the MRAS Restricted Data may not be accessed or readable.
9. Encryption must be implemented in any of the following instances: (i) any computers, devices or media (e.g., laptop computers, phones/PDAs, USB drives, back-up tapes) containing MRAS Restricted Data must be encrypted at rest; (ii) where technically feasible, MRAS Restricted Data must be stored in encrypted form, except where encryption is mandatory in such cases as set forth above; and/or (iii) transferring MRAS Restricted Data over public networks (such as the Internet).
10. Where encryption is required, Supplier must maintain cryptographic and hashing algorithm types, strength, and key management processes consistent with industry practices.
11. Supplier Information Systems consisting of servers and/or network equipment used to store or access MRAS Restricted Data must be kept in a secure room containing additional access control mechanisms, located on the interior of the building with no windows unless safeguards are in place to prevent shattering and unauthorized entry. Telecommunications equipment, cabling and relays receiving data or supporting services must be protected from interception or damage.
12. Physical access must be monitored, recorded and controlled with physical access rights reviewed at minimum annually. Physical access logs detailing access must be stored for a period of one (1) year unless prohibited by local law. If not staffed 24x7, alarms and entry point security cameras must be installed for off-hours access monitoring with recordings retained for at least thirty (30) days.
13. Supplier must receive approval from MRAS prior to moving MRAS Restricted Data from its MRAS-approved physical location or jurisdiction to a different physical location or jurisdiction.

Unless otherwise provided for in the Contract Document, Part H applies to any Supplier Information System(s) (i) that Processes MRAS Restricted Data, Controlled Data, and/or Sensitive Personal Data, and/or (ii) where an outage of the Supplier Information System(s), as identified in the Contract Document, is likely to significantly adversely impact MRAS or overall MRAS operations, financial position, regulatory compliance, and/or reputation.

#### Part H: Disaster Recovery

Unless a disaster recovery (DR) program is otherwise set forth in more detail elsewhere in the Contract Document, Supplier must maintain a DR program for all Supplier Information Systems and facilities used to provide services under the Contract Document to MRAS. The DR program must be designed to ensure that Supplier has a methodology by which a system can continue to function through an operational interruption or disaster. At a minimum, the DR program should include the following elements:

1. Supplier's operational procedures must verify the successful completion of backups and the backup media must be tested regularly (at minimum quarterly) to ensure that it will operate in the event of an emergency.
2. For rooms containing Supplier Information Systems consisting of servers and/or network equipment used to provide services to MRAS, controls must be implemented to mitigate the risk of power failures (e.g., surge protectors, uninterruptible power supplies, and generators), and environmental conditions (e.g., temperature and humidity).

3. Supplier must maintain inventories that list all critical Supplier Information Systems. The inventories must be updated at minimum annually.

4. DR plans must be developed for all Supplier Information Systems and facilities that are used to provide services to MRAS and reviewed/approved at minimum annually.

5. Supplier must conduct full scale DR tests annually against DR plans (unless otherwise agreed with MRAS) for Supplier Information Systems that Supplier reasonably believes are critical for providing services to MRAS to ensure that such Supplier Information Systems can be recovered in a manner that meets the contractual service levels specified in the Contract Document. DR results must be documented and provided to MRAS upon request.

#### Part I: Termination

1. Subject to Part I.2 below and to any provision of the Contract Document to the contrary, Supplier shall within 30 (thirty) days of termination of the Contract Document, or if requested during the term of the Contract Document, cease all Processing of MRAS Data and shall return to MRAS all copies and reproductions of such MRAS Data. In lieu of returning copies and reproductions, MRAS may, at its sole discretion, require Supplier to destroy, using agreed upon methods to ensure such MRAS Data is not recoverable, all copies and reproductions of MRAS Data provided to, developed by, or used by Supplier in the performance of services under the Contract Document and certify to such destruction.

2. MRAS acknowledges that due to its standard back-up procedures and/or a requirement of certain laws/regulations to which Supplier is subject, Supplier may be required to maintain copies and/or back-up copies of MRAS Data (including as part of records, documents or broader data sets) beyond the period described in Part I.1. In such cases, notwithstanding the requirements of Part I.1, MRAS agrees that Supplier may continue to retain such MRAS Data in copies and/or back-up copies beyond the period prescribed in Part I.1 provided that (i) Supplier notifies MRAS prior to the Contract Document's effective date of termination or expiration (whichever the case may be) and the specific laws/regulations mandating such retention; (ii) Supplier has a documented retention period and secure deletion procedure for such copies and back-up copies, with back-up copies retained no longer than 6 (six) months from the date on which they were captured, and legally required copies retained only to the end of their legally required retention period; (iii) such copies and back-up copies shall be deleted in accordance with such documented procedure; (iv) Supplier shall perform no Processing of MRAS Data other than that necessitated by retaining or deleting the relevant copies and back-up copies; and (v) Supplier shall continue to comply with all the requirements of this Appendix in relation to any such retained MRAS Data until the same is securely deleted.

3. Termination or expiration of the Contract Document, for any reason, shall not relieve the Supplier from obligations to continue to protect MRAS Data against the impermissible disclosure in accordance with the terms of the Contract Document and this Appendix.

#### Part J: Material Breach

1. Notwithstanding anything to the contrary herein or in the Contract Document, Supplier's (including Supplier Personnel) failure to comply with the obligations set forth in this Appendix also constitutes a material breach of the Contract Document, with such rights and remedies set forth therein or under applicable law and regulation.

2. MRAS or the applicable MRAS Affiliate owning any of the MRAS Data being accessed pursuant to the Contract Document may enforce the terms of this Appendix as permitted or required by applicable law and regulation.

3. Supplier shall pay for or reimburse MRAS or the applicable MRAS Affiliate for all costs, losses and expenses relating to any Security Incident experienced by Supplier, including without limitation, costs of forensic assessments, Security Notices, credit monitoring or other fraud alert services, and all other remedies either required by applicable law and regulation or which are customary in the industry or required under MRAS's then-current policies or contractual commitments.

#### Part K: Miscellaneous

1. Supplier understands and agrees that MRAS or its Affiliate may require Supplier to provide certain personal information such as the name, address, telephone number, and e-mail address of Supplier's representatives in transactions to facilitate the performance of the Contract Document, and that MRAS, its Affiliates, and its contractors may store such data in databases located and accessible globally by their personnel and use it for necessary purposes in connection with the performance of the Contract Document, including but not limited to Supplier payment administration. MRAS or the applicable MRAS Affiliate will be



**Security and Control of Container and Trailer Seals:** For ocean containers and truck trailers fully loaded at international supplier/shipper facilities the supplier or shipper must affix a high security seal to all fully loaded ocean containers or truck trailers bound for the U.S., have documented procedures to control and record use of high security bolt seals, recognize and report compromised seals, containers or trailers, designate a limited number of employees to access/apply seals for security purposes and keep a documented inventory of all seals.

**Physical Access Controls:** Access controls prevent unauthorized entry to facilities, maintain control of employees and visitors, and protect company assets. Access controls must include the positive identification of all employees, visitors, and vendors at all points of entry.

**Employees/Access Devices:** Systems are required for positive identification and access control of employees and visitors. Employees should only have access to secure areas based on their duties. Company management or security personnel must control the issuance and removal of employee, visitor and vendor identification badges. Procedures for the issuance, removal and changing of access devices (e.g. keys, key cards, etc.) must be documented.

**Visitors and Deliveries (including mail):** Visitors must present photo identification for documentation purposes upon arrival. All visitors should be escorted and should visibly display temporary identification. Proper vendor ID and/or photo identification must be presented for documentation purposes upon arrival by all vendors. Arriving packages and mail should be periodically screened before being disseminated.

**Challenging and Removing Unauthorized Persons:** Procedures must be in place to identify, challenge and address unauthorized/unidentified persons.

**Personnel Security:** Screening prospective employees and periodic checks of current employees is required.

**Pre-Employment Verification, Background Checks/Investigations:** Application information like employment history and references must be verified before employment. Consistent with foreign regulations, background checks and investigations should be conducted for prospective employees. Once employed, periodic checks and reinvestigations should be performed based on cause, and/or the sensitivity of the employee's position.

**Personnel Termination Procedures:** Companies must have procedures in place to remove identification, facility, and system access for terminated employees.

**Physical Security:** Supplier/Shipper facilities must have physical security deterrents to protect from unauthorized access. Physical security deterrents used by international suppliers/shippers may include:

**Fencing, Gates/Entries & Guards:** Perimeter fencing or walls should enclose facilities where other controls are not in place to prevent unauthorized access. Fencing and walls should be inspected & maintained. Shipping

& receiving areas should have fencing, locking doors, access controls or CCTV. Entry and exit points for vehicles and/or personnel must be controlled. The number of gates should be kept to the minimum necessary for proper access and safety controls. Guards or access controls should be in place to ensure that unauthorized personnel do not enter the facility or gain access to MRAS shipments.

**Parking & Lighting Controls:** Private passenger vehicles should be prohibited from parking in or adjacent to shipping and receiving areas to prevent unauthorized materials from being introduced into shipments or conveyance vehicles. Adequate lighting must be provided inside and outside facilities to prevent unauthorized access.

**Locking Devices, Key Controls:** External & internal windows, gates, and doors to access the facility or cargo storage areas must be secured with locking devices. Management or security personnel control issuance of all locks and keys.

**Alarms Systems and Video Surveillance Cameras:** Suppliers and shippers should use alarm systems and video surveillance cameras, as appropriate, to monitor premises and prevent unauthorized access to cargo handling and storage areas.

**Information Technology (IT) Security:** Security measures must be in place to ensure automated systems are protected from unauthorized access.

Password Protection & Accountability: Automated systems should use individually assigned accounts that require a periodic change of password. IT security policies, procedures and standards should be in place and provided to employees in the form of training. A system should be in place to identify the abuse of IT including improper access, tampering or the altering of business data. All system violators should be subject to appropriate disciplinary actions for abuse.

Procedural Security: Documented security procedures must be communicated to employees to ensure security measures are followed. Upon MRAS's request, the supplier or shipper shall provide evidence of documented procedures like physical, personnel and IT security, access controls, reporting of security incidents, ocean container or truck trailer seal and inspection controls.

Shipment Documentation and Manifesting Procedures: Procedures must ensure accurate and timely information is received from partners. Invoice, packing list, bill of lading and other records to manifest and clear cargo with Customs will be legible, complete, accurate, and protected from exchange, loss or erroneous information. Controls must include securing computer access and information.

Packing, Shipping and Receiving Security Procedures: Documented procedures must control access to shipping & receiving areas. Packaged shipments must be controlled to prevent unauthorized access and contraband. Departing cargo must be verified against purchase or delivery orders with accurate package and unit quantities weight and part numbers and verification that contraband is not present. Drivers picking up cargo should be positively identified before cargo is released. Procedures should track the timely movement of incoming and outgoing goods.

Cargo Discrepancy and Security Breach Reporting: All shortages, overages, and other significant discrepancies or anomalies must be resolved and/or investigated appropriately. Contact the MRAS BUYER upon knowledge of any security breach affecting MRAS goods. Notify Customs and/or other law enforcement agencies as appropriate when contraband, smuggling or threatening suspicious activities are detected. Contact your MRAS representative with any questions.

Security Training: A security training program must be in place to educate and build employee awareness of proper security procedures as outlined in these security guidelines including training on the threat posed by terrorists and contraband smugglers at each point in the supply chain, training on ethical conduct, avoidance of corruption, fraud and exploitation. Additional training on effective supply chain security controls should be given to employees in the shipping and receiving areas.

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