



# Purchase Order Attachment 2 General Terms and Conditions

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## Purchase Order Attachment 2 General Terms and Conditions

### 1. Definitions

The following definitions apply to this Order and to any supplemental terms and conditions attached to this Order unless otherwise specifically stated:

**Buyer:** The legal entity issuing this Order.

**Buyer's Purchasing Representative:** Buyer's designated purchasing representative responsible for issuing this Order and any amendments or changes thereto.

**Seller:** The legal entity that contracts with Buyer under this Order.

**Order:** The contractual instrument of which these terms and conditions are a part.

**Government:** The United States of America, acting in its contractual capacity.

**Prime Contract:** The contract under which this Order is issued, if applicable.

**DFARS:** The Federal Acquisition Regulation (Title 48 Code of Federal Regulations Chapter 1), if applicable.

**DS:** The Department of Defense Federal Acquisition Regulation Supplement, if applicable.

**Contracting Officer:** The Government official(s) authorized to commit the Government contractually under a Government Prime Contract, or the authorized representatives of these officials acting within the scope of their authority.

**Days:** Calendar days (unless specified otherwise).

### 2. Acceptance of This Order

Seller's written acknowledgement of the Order, its commencement of any performance under the Order, or acceptance of any payment under the Order, shall constitute Seller's

unqualified and irrevocable acceptance of this Order subject solely to these terms and conditions. In the event that this Order does not state price or delivery terms, Buyer will not be bound to any prices or delivery terms to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions contained in this Order shall be void and of no effect unless specifically agreed to in writing by Buyer, regardless of whether or not such terms and conditions materially alter this Order and irrespective of any payment by Buyer hereunder.

### 3. Acceptance of Goods and Services

All goods and/or services provided by Seller under this Order shall be in accordance with the requirements of this Order, including all applicable exhibits and attachments, and shall be subject to rejection if such goods and/or services are nonconforming. No inspection or evaluation performed by Buyer (and/or Buyer's customer, if applicable) shall in any way relieve Seller or its suppliers of their obligation to furnish all required goods and/or services in strict accordance with the requirements of this Order. If any of the goods and/or services provided hereunder do not conform with the requirements of this Order, Buyer may require Seller to replace the goods or perform the work and/or services again in conformity with the applicable requirements at no cost to Buyer.



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At Buyer's sole option, any rejected items may be returned for credit or replacement at Seller's risk and expense, and all handling and transportation expenses, both ways, shall be assumed by Seller. No items returned as defective shall be replaced without written authorization from Buyer.

Acceptance of goods and/or services will be made by Buyer only in writing and through a document entitled "Final Acceptance" issued by Buyer. It is expressly agreed that payment by Buyer to Seller for goods and/or services provided under this Order shall not constitute acceptance. It is further agreed that nothing in this Order shall require Buyer to accept any goods and/or services prior to acceptance thereof by Buyer's customer, if applicable.

Acceptance shall be conclusive, except for latent defects, fraud, or gross mistakes amounting to fraud.

### 4. Independent Contractor

Seller is an independent contractor and the employees, agents, or representatives of Seller

are not employees, agents, or representatives of Buyer for any purpose including, but not limited to, federal, state, and local tax obligations, unemployment and worker's compensation obligations, social security, and any and all other benefits.

### 5. Invoices and Payment

Seller's invoices or vouchers shall contain all certifications required by Buyer and shall include the invoice date, the Order number, as well as a complete breakout of the prices by line item for the goods and/or services encompassed by the invoice or voucher.

The price for all goods and/or services provided by Seller is all-inclusive and encompasses any and all federal, state, local or foreign taxes and duties that may be applicable, and all installation, testing, debugging, warranty charges, any and all license or use fees, and any other cost of every kind and description associated with Seller's work.

Buyer shall pay Seller after receipt of Seller's proper invoices or vouchers for goods and/or services delivered and accepted, less any deductions provided for in this Order. Unless otherwise mutually agreed in writing and stated on the face of the Order, payment terms are net 45 days from receipt of invoice.

### 6. Shipping, Packing and Marking

Except as otherwise provided on the face of this Order, transportation charges on goods sold f.o.b. shipping point must be prepaid and invoiced to Seller. Transportation charges on goods sold f.o.b. destination must be prepaid in all cases. No insurance or premium transportation costs will be allowed unless authorized in writing by Buyer's Purchasing Representative. Risk of loss from any casualty to goods ordered hereunder, regardless of cause, shall be Seller's responsibility until the goods have been delivered in compliance with terms of transportation required by this Order. If Seller does not comply with the stated delivery schedule, Buyer may, in addition to any other rights which it may have at law or in equity, require delivery by the most expeditious way, and any charges resulting from the premium transportation shall be fully prepaid and absorbed by Seller. Title to all goods passes at Buyer's dock unless otherwise specified in this Order.

Seller shall pack, mark and ship all goods and supplies in accordance with the requirements of this Order and so as to be in compliance with all applicable transportation regulations and good commercial practice for protection



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against damage from weather and shipment, including any applicable federal, state and local laws and regulations for the packaging, labeling, transportation and shipping of hazardous materials. Seller shall secure the most advantageous transportation services and rates consistent therewith. No separate or additional charge shall be payable by Buyer for containers, crating, boxing, handling, storage or any other services unless specifically stated in this Order or otherwise agreed to by Buyer in writing.

Seller shall mark each container with the number of this Order and shall enclose a packing slip with this Order number in an envelope attached to each container. Damage resulting from improper packing or shipping will be charged to Seller.

Acceleration of delivery is not authorized unless specified in writing by the Buyer's Purchasing Representative.

Buyer reserves the right to refuse or return at Seller's risk and expense any shipments made in excess of the quantities stipulated in the Order or received in advance of the required delivery schedule, or to keep the goods received in advance of the required delivery schedule and defer payment as if the delivery was made per the required delivery schedule.

### 7. Non-US Origin Shipments

Buyer Order is being issued to Seller with the expectation that Seller will ship the order to Buyer from a location within the United States. Any shipments originating outside the customs territory of the United States, will import under the terms of sale DDP Buyer facility Incoterms 2010. Seller shall communicate its customs clearance instructions to its International Third-Party supplier prior to the product's arrival into the United States to avoid any delays in delivery to Buyer. Under no circumstances is Buyer to be listed as the importer of record (or consignee for shipments delivered via courier) on customs documents for any orders shipped directly to Buyer from a foreign location and Seller expressly agrees to accept all liability associated with said customs entries for any such orders.

### 8. Time of the Essence

Time is and shall remain a material element of this Order, and no acts of Buyer, including without limitation modifications of this Order or acceptance of late deliveries or performance, shall constitute a waiver of this provision. Seller shall notify Buyer in writing immediately of any actual or potential delay in the deliveries or performance of this Order and such notice shall include a revised schedule using the Seller's best efforts; provided, however, that Buyer's receipt of such notice shall not constitute a waiver to Buyer's rights and remedies for such late deliveries or performance. Buyer reserves the right to cancel this Order without liability to Buyer and without waiver of any other remedies of Buyer if delivery or performance is not effected as specified in the Order or on written shipping authorizations that may be furnished by the Buyer.

### 9. Inspection

Buyer (and Buyer's customer, if applicable) through any authorized representatives, has the right at all reasonable times and places to inspect and test the goods and/or services being supplied under this Order, including by Seller's suppliers. Buyer assumes no contractual obligation to perform any inspection or test unless otherwise specifically set forth in this Order. Buyer's failure to inspect or test any goods and/or services shall not relieve Seller from responsibility for any defective or nonconforming goods and/or services. If any inspection or evaluation is made by Buyer or its customer on the premises of Seller or any of Seller's suppliers, Seller or its



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suppliers shall provide at no additional charge all reasonable facilities and assistance for the safety and convenience of the personnel conducting the inspection or test.

### 10. Warranty

Seller warrants to Buyer, its successors and assigns, that all goods provided hereunder shall be (i) merchantable, (ii) free from defects in material and workmanship, (iii) with regard to goods designed by Seller, free from defects in design, (iv) suitable for the purposes intended whether expressed or reasonably implied, and (v) in compliance with all applicable specifications, drawings, and performance requirements; and that all services provided hereunder shall be (i) free from defects in workmanship, (ii) suitable for the purposes intended whether expressed or reasonably implied, (iii) performed in a professional and workmanlike manner, and (iv) in compliance with all applicable specifications, drawings, and performance requirements. If any nonconformity under this warranty appears within one (1) year after final acceptance of the goods and/or services, Seller shall promptly and diligently repair, replace or correct (by re-performance or otherwise) such nonconformity at no cost to Buyer (including any transportation costs associated therewith). If repair, replacement or correction is not made in a timely manner to Buyer's satisfaction, then the Buyer may, at its election and in addition to any other remedies available to Buyer at law or in equity, correct or have corrected such nonconformity at Seller's expense.

### 11. Proprietary Information

Unless otherwise expressly agreed by Buyer in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller under this Order, whether or not marked with any restrictive or proprietary designations, shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction in any way in the conduct of its business. Seller's sole rights with respect to use of such information by Buyer, its successors, subsidiaries, licensees, affiliates, or parents shall be determined only by any valid pre-existing patent rights of Seller as related to the manufacture, use, or sale of goods and/or services covered by this Order. Seller agrees to promptly notify Buyer in writing of any such pre-existing patents or any other similar form of protection which Seller may hold or know of which relates to the goods and/or services to be provided under this Order.

If any pre-existing patents, inventions, copyrights, technology, designs, works of authorship, mask works, technical information, computer software, or other information or data of Seller (hereinafter "Seller's Intellectual Property") are used, included, or contained in the goods and/or services provided hereunder, the Seller grants Buyer an irrevocable, transferable, nonexclusive, world-wide, royalty-free license to use Seller's Intellectual Property with such goods and/or services.

Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller and paid for by Buyer under this Order, shall be the exclusive property of Buyer, shall be maintained by Seller as proprietary to Buyer, shall be used only for purposes of providing goods and/or services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer shall be promptly returned to Buyer on request or upon completion or earlier termination of this Order.

### 12. Buyer's Property

All information as well as all drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by Buyer shall be and remain the sole property of Buyer, and Buyer shall have the right to enter Seller's premises



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and remove any such property and Seller's records with respect thereto at any time without being liable for trespass or for damages of any sort.

All such items shall be used only in the performance of work under this Order unless Buyer consents otherwise in writing.

Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Buyer's prior written consent.

Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and shall be responsible for all loss or damage to the property except for normal wear and tear.

### **13. Release of Information**

Seller shall not publish any information developed under this Order nor distribute it nor make any news release about the existence or subject matter of this Order without Buyer's prior written consent.

### **14. Intellectual Property**

Seller warrants that the sale, use or incorporation into manufactured products of any machines, parts, components, services, devices, material, software, and rights furnished or licensed hereunder (collectively "goods") which are not of Buyer's design, composition or manufacture shall be free and clear of infringement or misappropriation of any valid patent, copyright, trademark or other third party intellectual property rights. Seller shall indemnify, defend and save Buyer and its customers harmless from any and all expenses, liability and loss of any kind (including all costs and expenses including attorneys' fees) arising out of claims, suits or actions alleging such infringement or misappropriation, including proceedings under 28 U.S.C. § 1498, which claims, suits or actions Seller agrees to defend with counsel acceptable to Buyer. The Buyer agrees to give the Seller written notice of any such suit or action promptly after notice is received by the Buyer and the Seller agrees to conduct, at its own expense, the entire defense thereof; provided, however, that the Buyer may, at its own election and expense, at any time supersede the Seller in any such defense in which event the Seller shall thereby be released from its obligation under this Article with respect to the particular suit or action involved.

Seller further agrees to indemnify, hold harmless and defend, at Seller's own expense, Buyer against all liens, security interests, and/or encumbrances whatsoever asserted against such goods, including claims to said merchandise, asserted by others. To the extent that the goods delivered hereunder are manufactured pursuant to the designs originated by Buyer, the Seller hereby assigns to Buyer, without reservation, all patent rights, copyrights and trademark rights relating to the goods and all related documents, models, computer drawings and other electronic expression, photographs, related documents, models, computer drawings and other electronic expression, photographs, drawings, specifications or other materials ("Protected Materials"). Buyer, in turn, grants to Seller a non-exclusive, non-transferable license to reproduce the Protected Materials for purposes related solely and directly to the Seller's performance of its obligations to Buyer hereunder. No other Protected Materials may be reproduced for any other purpose without the express written permission of Buyer. This non-exclusive license shall terminate immediately upon termination of the Order.

Seller may replace or modify infringing goods with comparable goods acceptable to Buyer of substantially the same form, fit and function so as to remove the source of infringement and shall extend this provision to such comparable goods. If the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Seller, at no expense to Buyer, shall obtain for Buyer and Buyer's customers the right to use and sell the items.



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Any invention or intellectual property first made, developed or conceived by Seller in the performance of this Order or which is derived from, relies upon, or is based on the use of information or intellectual property supplied by Buyer, in whole or in part, alone or with others, shall be the sole property of Buyer, and Seller hereby conveys, transfers and assigns to Buyer all rights, title and interest in and to any such invention or intellectual property. Any original works of authorship created by Seller hereunder are considered "works made for hire" under U.S. Copyright Law (17 U.S.C. §101). This Order shall operate as an irrevocable assignment from Seller to Buyer of all rights to such inventions or intellectual property including all rights, title and interest throughout the world.

### **15. Changes**

Buyer shall have the right at any time to (i) suspend all or any portion of Seller's work, and/or (ii) make changes within the general scope of this Order that affect any one or more of the following: drawings, designs, specifications, or quantities of goods and/or services to be provided hereunder; the statement of work or description of services; method of shipment or packing; the time or place of performance, inspection, delivery, or acceptance of goods and/or services; and the amount of Buyer-furnished or customer-furnished property or facilities.

If any such suspension or change causes a change in the cost of, and/or the time required for, performance of this Order, an equitable adjustment shall be made in the price or delivery schedule or both, and this Order shall be modified in writing accordingly. Any claim by Seller for such an adjustment must be made in writing within twenty days from the date of receipt of a written order from Buyer's Purchasing Representative directing such a suspension or change.

Nothing in this clause, including any disagreement with Buyer as to any equitable adjustment, shall excuse Seller from proceeding with this Order as changed. Any disagreement between the parties arising out of this clause shall be resolved in accordance with the clause entitled "Disputes Under This Order."

If this Order is placed under a Government Prime Contract, the pricing of any equitable adjustment hereunder, or of any other adjustment under this Order, shall be in accordance with the cost principles enunciated in Part 31 of the Federal Acquisition Regulation in effect on the date of this Order.

No constructive changes: Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in a writing which is signed by Buyer's Purchasing Representative and which states that it constitutes an amendment or change to this Order.

### **16. Access to Records**

Buyer shall have access to all records of Seller's performance hereunder.

### **17. Termination for Convenience**

Buyer, by written notice, may terminate this Order at any time, in whole or in part, without cause and/or for Buyer's convenience, prior to final delivery of goods and/or completion of services, and such termination shall not constitute a default. In such event, Buyer shall have all rights and obligations accruing both at law and in equity, including Buyer's rights to title and possession of any goods paid for. Seller shall be reimbursed for actual, reasonable, substantiated and allowable costs, plus a reasonable profit for work performed to date of termination. Buyer may take immediate possession of all work so performed upon notice of termination.



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If this Order is terminated as a result of the termination for convenience of Buyer's Government Prime Contract, then the rights, duties, and obligations of the parties shall be determined in accordance with the applicable termination for convenience clause incorporated into this Order by the Supplemental Terms and Conditions.

### **18. Termination for Default**

Buyer may, by written notice of default to Seller, terminate this Order in whole or

in part if Seller fails (i) to deliver the goods and/or perform the services within the time specified in this Order or any extension thereof, (ii) to perform any of the other provisions or meet any of the requirements of this Order, or (iii) to make progress so as to endanger performance of this Order in accordance with its terms and, in either of the second or third circumstances, does not cure such failure within ten days after receipt of written notice from Buyer specifying such failure.

If Buyer terminates this Order in whole or in part it may acquire, upon such terms as it deems appropriate, goods and/or services similar to those terminated. Seller shall be liable to Buyer for any excess cost for such similar goods and/or services, provided, however, that Seller shall continue performance of this Order to the extent not terminated under the provisions of this Article and, provided, further, that Buyer shall pay the price set forth in this Order for completed goods or services delivered and accepted.

The rights and remedies of Buyer in this Article are in addition to any other rights and remedies provided by law or in equity, or under this Order.

### **19. Set-Off**

Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer, or to any of Buyer's affiliated companies, against any amount payable at any time by Buyer, or by any of its affiliated companies, to Seller.

### **20. Disputes Under This Order**

The parties shall attempt amicably to resolve all disputes arising from or related to this Order. If the parties are unable to resolve amicably such a dispute within a reasonable time, the dispute shall be adjudicated in a court of competent jurisdiction in the State where Buyer is located, applying the laws of the State of New York, as well as, when applicable, the law of federal contracts as enunciated in decisions of administrative boards of contract appeals and the federal courts. Pending resolution or settlement of any dispute arising under this Order, Seller shall proceed diligently as directed by Buyer with the performance of this Order.

### **21. Disputes Under A Government Prime Contract**

If the Contracting Officer of Buyer's Government Prime Contract by a final decision interprets any provision or requirement of Buyer's Prime Contract, and the same or substantially similar provision or requirement is contained in this Order, such interpretation shall be binding between Buyer and Seller, provided that Buyer affords Seller the opportunity to appeal such decision in Buyer's name, and provided further that Seller provides to Buyer any and all information requested by Buyer to justify Buyer's verifying, supporting, or providing any and all certificates required by the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq. Any such appeal brought by Seller shall be at the sole expense of Seller, who shall be solely responsible for the prosecution of such appeal. If Seller so appeals, Seller shall, upon Buyer's written request, provide to Buyer advance copies of papers to be



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filed in such appeal and such other information, consultation, and opportunity to participate in the appeal as Buyer may request. As used in this provision, the term "appeal" shall include any and all proceedings taken by Seller under this provision before any board of contract appeals or federal courts.

If Seller asserts against Buyer a claim for either damages or an equitable adjustment in a situation where the facts constituting such claim would also support a claim by Buyer against Buyer's customer, prior to initiating any action or suit on such claim against Buyer in any court, if Buyer so authorizes, Seller shall pursue, to exhaustion of its administrative and judicial remedies, such claim in Buyer's name and at Seller's cost against Buyer's customer.

Any reference to the "Disputes" clause in any applicable or DS clause incorporated into this Order shall mean this Article 20 "Disputes Under A Government Prime Contract."

### **22. Indemnification**

In addition to any other indemnification provision of this Order, Seller shall indemnify, defend and hold harmless Buyer, its officers, directors, and employees, from any and all claims, liabilities, losses, damages, costs, and expenses, including attorneys' fees -- for actual or alleged (a) injury to any person, (b) damage to any property, or (c) violation of any law, ordinance, or regulation, arising from or related to Seller's (or Seller's subcontractors') performance of work in connection with this Order (including, if applicable, Seller's violation of the Truth in Negotiations Act or any implementing or comparable regulation, including Part 15); or any civil or criminal penalty or fine incurred by Buyer which is caused to any degree or any extent by Seller, its employees, agents, representatives, suppliers, or subcontractors.

### **23. Design Changes**

During performance of this Order, Seller shall not make any changes in the design of goods to be furnished by Seller under this Order without advance written notification to and written approval of Buyer. This requirement applies whether or not there is a cost impact associated with the change and regardless of the type of change involved, including product improvements.

### **24. Export Control**

Seller agrees to comply fully with all applicable laws and regulations of Seller's country and of the United States pertaining to the export of any hardware, software, defense service, information or technical data provided by, through or with the cooperation of the Buyer in the performance of this Order, whether in the United States or abroad. This Order may involve information or items that are subject to the International Traffic in Arms Regulations (ITAR) or Export Administration Regulations (EAR) and that may not be released to Foreign Persons inside or outside the United States without the proper export authority.

The ITAR defines a "Foreign Person" as any person who is not a U.S. citizen, a lawful permanent resident as defined by 8 USC 1101(a)(20), or a protected individual as defined by 8 USC 1324b(a)(3). Foreign Person is also defined as a corporation, a business, an association, a partnership, or any other entity that is not incorporated or organized to do business in the United States and as international organizations, foreign governments, and any agency or subdivision of foreign governments (e.g., diplomatic missions).

Seller further agrees that it will not export or re-export, directly or indirectly, any hardware, software, defense service, information or technical data provided by, through or with the cooperation of the Buyer to any Foreign Person, including persons employed by or associated with, or under contract with the Seller or Seller's lower-tier suppliers without the prior written consent of the Buyer and without first obtaining any required export license or other approval.



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In addition, should Seller participate in the performance of this Order at Buyer's facilities, Seller shall inform Buyer in advance in writing of the country of citizenship (or countries, in the case of dual citizenship) of each Foreign Person employee, agent, or representative of Seller or of Seller's suppliers prior to such person being allowed access to Buyer's facilities. Seller's and Seller's suppliers' Foreign Person employees, agents, or representatives shall not participate in the performance of this Order at Buyer's facilities without Buyer's written consent.

Seller shall comply with the registration requirements of the International Traffic in Arms Regulations at 22 CFR §122.1, as applicable.

Seller shall indemnify and hold Buyer harmless for all claims, demands, damages, costs, fines, penalties, attorneys' fees and other expenses arising or resulting from Seller's failure to comply with this clause.

### **25. Protection of Controlled Unclassified Information**

To the extent Seller's performance under this Order involves access to, generation of, receipt of, storage of, transmission of, or other processing of Controlled Unclassified Information ("CUI"), Seller will protect all CUI in accordance with this Order, the Prime Contract, and all applicable federal statutes, regulations, agency guidance, and mandatory contract clauses, including, as applicable, 32 C.F.R. Part 2002, 52.204-21, DS 252.204-7012, DS 252.204-7019, DS 252.204-7020, DS 252.204-7021, and any successor provisions, in each case as incorporated into the Prime Contract or otherwise applicable to the Work. Seller acknowledges that compliance with this Section is a material requirement of this Order and of Buyer's performance obligations to the U.S. Government.

For purposes of this Section, "CUI" means information that law, regulation, or government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls, but that is not classified under Executive Order 13526 or any successor order. CUI includes information marked or identified as CUI by the U.S. Government or Buyer and any information that reasonably should be understood to be subject to CUI controls under the Prime Contract, statement of work, technical data package, or written direction from Buyer or the U.S. Government, whether or not so marked.

Seller will: (a) use CUI solely as necessary to perform the Work and for no other purpose; (b) restrict access to CUI to its employees, individual independent Buyers, and approved lower-tier Sellers with a strict need to know and who are bound by written confidentiality, security, and use restrictions at least as protective as those set out in this Section; (c) implement and maintain all administrative, technical, physical, and organizational safeguards required by the Prime Contract and applicable law for any system, environment, device, or media that stores, processes, or transmits CUI; (d) not disclose CUI to any third party except as expressly authorized in writing by Buyer or as required under the Prime Contract or applicable law; and (e) comply with all applicable marking, handling, dissemination, reproduction, transmission, storage, export control, return, destruction, media sanitization, and incident response requirements.

Seller will not remove, obscure, or alter CUI markings, dissemination controls, restrictive legends, or related metadata unless expressly authorized in writing by Buyer or the originating U.S. Government agency, as applicable. Seller will segregate CUI from non-controlled information to the extent reasonably necessary to support compliant handling and will not commingle CUI in any manner that impairs identification, access control, retrieval, deletion, destruction, or auditability.

Seller will not use CUI for marketing, benchmarking, analytics, artificial intelligence training, machine learning model development, product development, testing unrelated to the Work, or any other purpose not expressly required to perform the Work. Seller will not sell, license, commercially exploit, or create derivative datasets from CUI.



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If DS 252.204-7012, DS 252.204-7021, or similar cybersecurity requirements apply, Seller will provide the level of security required by those clauses for all covered Buyer information systems and covered defense information, maintain any required System Security Plan and Plans of Action and Milestones, obtain and maintain any required assessment results or certifications, and furnish evidence of compliance to Buyer upon request to the extent permitted by law and security restrictions.

Seller will notify Buyer in writing within twenty-four hours, and in any event sufficiently in advance to enable Buyer to comply with the Prime Contract, of: (a) any actual, suspected, or reasonably likely unauthorized access to, disclosure of, loss of, compromise of, or inability to account for CUI; (b) any cyber incident, security incident, or operational disruption affecting CUI or any information system that stores, processes, or transmits CUI; (c) any material failure by Seller or a lower-tier Seller to comply with this Section; (d) any assessment, audit finding, adverse score, lapse in required certification, or other development that may affect compliance with applicable cybersecurity requirements; and (e) any subpoena, legal process, public records request, or third-party demand seeking disclosure of CUI, unless legally prohibited from doing so. Seller will provide Buyer with all information, incident reports, images, forensic data, malware samples, logs, and supporting materials required for Buyer to comply with the Prime Contract and applicable law.

Seller will immediately take all necessary and appropriate actions to contain, investigate, mitigate, and remediate any incident involving CUI and will fully cooperate with Buyer, the U.S. Government, and their respective designees in connection with incident response, reporting, damage assessment, forensic review, corrective action, and recovery. Such cooperation includes preserving affected systems, media, logs, packet capture data, and other relevant evidence for the period required by applicable contract requirements and refraining from actions that would materially impair investigation or reporting.

Buyer may provide Seller with written security instructions, security classification guides, handling procedures, access restrictions, or customer-specific controls relating to CUI, and Seller will promptly comply with those requirements to the extent they do not conflict with applicable law. If Seller identifies any ambiguity regarding whether information is CUI or what controls apply, Seller will treat the information as CUI and promptly seek written direction from Buyer.

Seller will flow down this Section and all other mandatory CUI, safeguarding, cyber incident reporting, assessment, and audit requirements to each approved lower-tier Seller, consultant, cloud service provider, hosted environment provider, managed service provider, and any other recipient that may access CUI or operate systems that store, process, or transmit CUI in connection with the Work. No lower-tier recipient may access CUI unless: (a) such access is strictly necessary for performance of the Work; (b) Buyer has provided any required prior written approval; and (c) Seller has bound the lower-tier recipient in writing to obligations no less protective than those in this Section and all applicable Prime Contract flow-down clauses. Seller remains fully responsible for all acts, omissions, and compliance failures of its lower-tier recipients relating to CUI.

Seller will maintain complete, current, and accurate records reasonably necessary to demonstrate compliance with this Section, including policies, procedures, training records, system security documentation, incident records, audit results, assessment results, and lower-tier flow-down documentation. Upon reasonable notice, Buyer may review such records and, to the extent permitted under the Prime Contract and applicable law, conduct or have conducted audits, assessments, inspections, interviews, and compliance reviews of Seller's relevant facilities, systems, personnel, and records during normal business hours, subject to reasonable security and safety procedures. Seller will promptly address any deficiencies identified by Buyer or the U.S. Government and will provide written corrective action plans and status updates upon request.

Seller will ensure that all personnel with access to CUI receive appropriate training regarding CUI identification, safeguarding, handling, dissemination restrictions, incident reporting, and any program-specific requirements before being granted access to CUI and periodically thereafter. Seller will immediately revoke access for any person who no longer has a need to know or who fails to comply with applicable CUI requirements.



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Upon expiration or termination of this Order, or earlier upon Buyer's request, Seller will promptly return, delete, destroy, or sanitize all CUI, including all copies, extracts, backups, compilations, working papers, and derivative materials, in accordance with Buyer's instructions, the Prime Contract, and applicable law and required sanitization standards. If retention is required by law, regulation, legal hold, or an express Prime Contract requirement, Seller may retain only the minimum portion of CUI required for that purpose and will continue to protect such retained CUI in accordance with this Section until secure deletion or destruction is completed.

Seller represents and warrants on a continuing basis that it has, and will maintain throughout performance, the personnel, systems, procedures, Order controls, and security environment necessary to comply with this Section and all applicable CUI requirements. Seller will promptly notify Buyer if at any time it cannot meet any applicable safeguarding, reporting, assessment, certification, or flow-down requirement.

Any breach of this Section will constitute a material breach of this Order. In addition to any other rights or remedies available under this Order, at law, or in equity, Buyer may suspend disclosure of CUI, require immediate corrective action, direct Seller to cease processing CUI, withhold payment to the extent reasonably related to the noncompliance, terminate this Order for default or cause, and seek injunctive relief or specific performance. If a conflict exists between this Section and any applicable federal statute, regulation, or mandatory Prime Contract clause governing CUI, the federal requirement will control to the extent of the conflict, and Seller will comply with Buyer's written instructions for implementing that requirement.

The obligations in this Section survive expiration or termination of this Order for so long as Seller or any lower-tier recipient possesses, can access, or is required to retain CUI, and thereafter for any longer period required by the Prime Contract or applicable law.

### **26. Compliance with Laws**

Seller shall comply with the applicable provisions of all federal, state, and local laws and ordinances and all lawful orders, rules, and regulations thereunder, and such compliance shall be a material requirement of this Order.

### **27. Notification of Employee Rights Under Federal Labor Laws**

Seller shall comply, as applicable, with the requirements of 29 CFR Part 471 - Notification of Employee Rights Under Federal Labor Laws, and 29 CFR Part 471, Appendix A to subpart A is incorporated by reference into this Order with the same effect as though set out in full text herein. Seller, by signing its offer, hereby certifies compliance with the requirements of 29 CFR Part 471.

### **28. Duty to Proceed**

Except as expressly authorized in writing by Buyer, no failure of Buyer and Seller to reach agreement with respect to any dispute relating to or arising under this Order shall excuse Seller from proceeding diligently with the performance of the work required by this Order.

### **29. Certificates**

Seller shall furnish to Buyer any certificate required to be furnished by any provision of this Order, including any clauses incorporated by reference herein, and any certificate required by any future law, ordinance, or regulation



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with respect to Seller's compliance with the terms and provisions of such laws, ordinances, or regulations. As used in this Article, the word "certificate" shall include any plan or course of action or recordkeeping function.

### **30. Incorporation of Supplemental Terms & Conditions**

If this Order is placed under a Government Prime Contract, then the clauses set forth by citation in the Supplemental Terms and Conditions, attached as Supplement 1 and, if applicable, Supplement 2, are incorporated by reference into this Order with the same force and effect as though set out in full text herein.

### **31. Order of Precedence**

In the event of any inconsistency or conflict between or among the provisions of this Order, such inconsistency or conflict shall be resolved by the following descending order of precedence: (i) Typed provisions set forth in this Order; (ii) Documents incorporated by reference on the face page(s) of this Order; (iii) These standard terms and conditions, and any supplemental terms and conditions as referenced herein and/or set forth on the reverse side of the Order; (iv) The Statement of Work; and (v) Specifications attached to this Order or incorporated by reference. Buyer's specifications shall prevail over any specifications of Seller.

In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples (whether or not approved by Buyer), and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Order, Seller shall, before proceeding, consult Buyer, whose written interpretation shall be final and binding on the parties.

### **32. Construction**

The construction of this Order shall be governed by the law specified in the article entitled "Disputes Under This Order." The title designations of the numbered articles and provisions to this Order are for convenience only and shall not affect the interpretation or construction of this Order. Notwithstanding any other provisions of these terms and conditions, upon prior written notice to Buyer and to the extent that such use will not interfere with Seller's performance of this Order or any other Order/subcontract between Seller and Buyer, Seller, with the U.S. Government's written authorization, may use any furnished property, data, information or other items, which the U.S. Government owns and/or for which it has the right to authorize use on other U.S. Government contracts or subcontracts.

### **33. Assignment**

Seller shall not sell, assign, or in any manner transfer this Order or its rights, duties, and obligations under this Order without first obtaining the written consent of Buyer. Any attempted assignment without such consent shall be void. The foregoing shall not apply to assignment to any successor entity in the event Seller shall change its name. Notwithstanding the foregoing, in the event of an approved sale, assignment or transfer as provided hereunder, Seller shall remain liable, jointly and severally, to Buyer for all obligations arising under or resulting from this Order.

### **34. Notices**

All notices required or permitted to be sent by either party shall be deemed sufficiently given when delivered by hand delivery or sent by telecopy (which is confirmed), recognized overnight courier service or certified mail, return receipt requested, to the parties at the addresses shown on the first page of this Order for each party and to the attention of the individual who executes this Order on behalf of the party to whom the notice is sent. All



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notices shall be deemed given (i) on the date of delivery if delivered by hand or sent by telecopy, (ii) on the next business day if sent by recognized overnight courier service and (iii) on the third business day following the date sent by certified mail, return receipt requested. Either party may designate, in writing, a different manner of address for notices under this Order.

### **35. Survival**

Seller's obligations under the warranty, proprietary information, Buyer's property, indemnification and intellectual property provisions of this Order shall survive completion or any earlier termination of this Order.

### **36. Force Majeure**

Neither Buyer nor Seller shall be liable for failure to perform under this Order if such failure is due to events which are beyond the reasonable control and without the fault or negligence of Buyer or Seller, as the case may be, and which intervene after the execution of this Order and impede its performance, provided such failure to perform shall only be excused for the duration of such intervening event and shall be subject to the Buyer's right to terminate this Order pursuant to clause 17. Examples of such Force Majeure events include, but are not limited to: a strike or labor dispute, war or act of war (whether or not an actual declaration thereof is made), insurrection, riot or civil commotion, act of public enemy, fire, flood, or other act of God, or any act of governmental authority (including export restrictions). The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and cessation thereof.

### **37. Waiver, Remedies, and Severability**

The failure or delay of Buyer to insist on performance of any provision of this Order, or to exercise any right or remedy available under this Order, shall not be construed as a waiver of that provision, right, or remedy in any later instance. Further, if any provision of this Order is or becomes void or unenforceable by operation of law, the remaining provisions shall be valid and enforceable.

Unless otherwise expressly stated in this Order, the rights and remedies of both parties hereunder shall be in addition to their rights and remedies at law or in equity; provided, however, that in no event shall Buyer be liable to Seller for any anticipatory profits or for any special (including multiple or punitive), indirect, incidental, or consequential damages howsoever arising.

### **38. Entire Agreement**

This Order, including any attachments and documents incorporated by reference, constitutes the entire agreement between Buyer and Seller, and supersedes all prior representations, agreements, understandings, and communications between Buyer and Seller related to the subject matter of this Order, whether oral or written. No amendment or modification of this Order shall be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of both Buyer and Seller.



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**39.**

### FAR CLAUSES

#### Commercial Items – Fixed Price Supply - Required

Clause #	Name of the Clause	Date
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	JUN 2020
52.203-6	Restrictions on Subcontractor Sales to the Government—Alternate I	OCT 1995
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	JUL 2018
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	AUG 2020
52.212-5	Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items	NOV 2020
52.222-50	Combating Trafficking in Persons	OCT 2020
52.222-50	Combating Trafficking in Persons, Alternate I	MAR 2015
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	JUN 2020
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008
52.232-40	Providing Accelerated Payments to Small Business Contractors	DEC 2013

#### Commercial Items – Fixed Price Supply - Required When Applicable

Clause #	Name of the Clause	Date
52.203-13	Contractor Code of Business Ethics and Conduct	JUN 2020
52.024-21	Basic Safeguarding of Covered Contractor Information Systems	JUN 2016
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 29	JUN 2010
52.203-16	Preventing Personal Conflicts of Interest	JUN 2020
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	JAN 2017
52.204-14	Service Contract Reporting Requirements	OCT 2016
52.204-15	Service Contract Reporting Requirements for Indefinite-Delivery Contracts	OCT 2016
52.204-9	Personal Identity Verification of Contractor Personnel	JAN 2011
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	JUN 2020
52.219-8	Utilization of Small Business Concerns	OCT 2018
52.219-9	Small Business Subcontracting Plan	JUN 2020
52.222-21	Prohibition of Segregated facilities	APR 2015
52.222-26	Equal Opportunity	SEP 2016
52.222-35	Equal Opportunity for Veterans	JUN 2020
52.222-36	Equal Opportunity for Workers with Disabilities	JUN 2020
52.222-37	Employment Reports on Veterans	JUN 2020
52.222-4	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010
52.222-41	Service Contract Labor Standards	AUG 2018



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52.222-51	Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements	MAY 2014
52.222-53	Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements	FEB 2009
52.222-54	Employment Eligibility Verification	OCT 2015
52.222-55	Minimum Wages Under Executive Order 13658	NOV 2020
52.223-15	Energy Efficiency in Energy-Consuming Products	MAY 2020
52.224-3	Privacy Training	JAN 2017
52.225-19	Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States	MAY 2020
52.225-26	Contractors Performing Private Security Functions Outside the United States	JUL 2013
52.225-8	Duty-Free Entry	OCT 2010
52.226-6	Promoting Excess Food Donation to Nonprofit Organizations	JUN 2020
52.232-4	Providing Accelerated Payments to Small Business Contractors	DEC 2013
52.234-4	Earned Value Management System	NOV 2016
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	FEB 2006

### Non-Commercial Fixed-Price Supplies - Required

Clause #	Name of the Clause	DATE
52.202-1	Definitions	JUN 2020
52.203-5	Covenant Against Contingent Fees	MAY 2014
52.203-6	Restrictions on Subcontractor Sales to the Government	JUN 2020
52.203-7	Anti-Kickback Procedures	JUN 2020
52.211-5	Material Requirements	AUG 2000
52.222-50	Combating Trafficking in Persons	OCT 2020
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	JUN 2020
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008
52.232-40	Providing Accelerated Payments to Small Business Contractors	DEC 2013
52.233-3	Protest After Award	AUG 1996
52.243-1	Changes—Fixed-Price	AUG 1987
52.244-6	Subcontracts for Commercial Items	NOV 2020

### Fixed-Price Supply (FP SUP) > Required When Applicable

Clause #	Name of the Clause	DATE
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	JUN 2020
52.203-13	Contractor Code of Business Ethics and Conduct	JUN 2020



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52.203-14	Display of Hotline Poster(s)	JUN 2020
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009	JUN 2010
52.203-16	Preventing Personal Conflicts of Interest	JUN 2020
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	JUN 2020
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	JAN 2017
52.203-3	Gratuities	APR 1984
52.204-2	Security Requirements	AUG 1996
52.204-21	Basic Safeguarding of Covered Contractor Information Systems	JUN 2016
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	JUL 2018
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	AUG 2020
52.204-9	Personal Identity Verification of Contractor Personnel	JAN 2011
52.208-8	Required Sources for Helium and Helium Usage Data	AUG 2018
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	JUN 2020
52.211-14	Notice of Priority Rating for National Defense Use, Emergency Preparedness, and Energy Use Program	APR 2008
52.211-15	Defense Priority and Allocation Requirements	APR 2008
52.212-5	Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items	NOV 2020
52.214-26	Audit and Records—Sealed Bidding	JUN 2020
52.214-26	Audit and Records—Sealed Bidding, Alternate I	JUN 2020
52.214-27	Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding	JUN 2020
52.214-28	Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding	AUG 2020
52.214-28	Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, Alternate I	AUG 2020
52.214-29	Order of Precedence—Sealed Bidding	JAN 1986
52.215-10	Price Reduction for Defective Certified Cost or Pricing Data	AUG 2011
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data—Modifications	JUN 2020
52.215-12	Subcontractor Certified Cost or Pricing Data	AUG 2020
52.215-12	Subcontractor Certified Cost or Pricing Data, Alternate I	AUG 2020
52.215-13	Subcontractor Certified Cost or Pricing Data—Modifications	AUG 2020
52.215-13	Subcontractor Certified Cost or Pricing Data—Modifications, Alternate I	AUG 2020
52.215-14	Integrity of Unit Prices	JUN 2020
52.215-15	Pension Adjustments and Asset Reversions	OCT 2010
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	JUL 2025
52.215-19	Notification of Ownership Changes	OCT 1997
52.215-2	Audit and Records—Negotiation	JUN 2020
52.215-2	Audit and Records—Negotiation Alternate I	MAR 2009
52.215-23	Limitations on Pass-Through Charges	JUN 2020
52.219-8	Utilization of Small Business Concerns	OCT 2018
52.219-9	Small Business Subcontracting Plan	JUN 2020
52.222-21	Prohibition of Segregated facilities	APR 2015
52.222-22	Previous Contracts and Compliance Reports	FEB 1999



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52.222-24	Preaward On-Site Equal Opportunity Compliance Evaluation	FEB 1999
52.222-26	Equal Opportunity	SEP 2016
52.222-35	Equal Opportunity for Veterans	JUN 2020
52.222-35	Equal Opportunity for Veterans, Alternate I	JUL 2014
52.222-36	Equal Opportunity for Workers with Disabilities	JUN 2020
52.222-36	Equal Opportunity for Workers with Disabilities, Alternate I	JUL 2014
52.222-37	Employment Reports on Veterans	JUN 2020
52.222-4	Contract Work Hours and Safety Standards—Overtime Compensation	MAY 2018
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010
52.222-50	Combating Trafficking in Persons, Alternate I	MAR 2015
52.222-54	Employment Eligibility Verification	OCT 2015
52.222-55	Minimum Wages Under Executive Order 13658	NOV 2020
52.223-15	Energy Efficiency in Energy-Consuming Products	MAY 2020
52.223-7	Notice of Radioactive Materials	JAN 1997
52.224-2	Privacy Act	APR 1984
52.224-3	Privacy Training	JAN 2017
52.225-19	Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States	MAY 2020
52.225-26	Contractors Performing Private Security Functions Outside the United States	JUL 2013
52.225-8	Duty-Free Entry	OCT 2010
52.226-6	Promoting Excess Food Donation to Nonprofit Organizations	JUN 2020
52.227-1	Authorization and Consent	JUL 2020
52.227-10	Filing of Patent Applications—Classified Subject Matter	DEC 2007
52.227-14	Rights in Data—General	MAY 2014
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement	JUN 2020
52.227-9	Refund of Royalties	APR 1984
52.228-5	Insurance—Work on a Government Installation	JAN 1997
52.229-6	Taxes—Foreign Fixed-Price Contracts	FEB 2013
52.229-7	Taxes—Fixed-Price Contracts with Foreign Governments	FEB 2013
52.230-2	Cost Accounting Standards	JUN 2020
52.230-3	Disclosure and Consistency of Cost Accounting Practices	JUN 2020
52.230-5	Cost Accounting Standards—Educational Institution	JUN 2020
52.230-6	Administration of Cost Accounting Standards	OCT 2015
52.232-16	Progress Payments	JUN 2020
52.234-1	Industrial Resources Developed Under Title III, Defense Production Act	DEC 1994
52.234-4	Earned Value Management System	NOV 2016
52.242-17	Government Delay of Work	APR 1984
52.245-1	Government Property	JAN 2017
52.246-16	Responsibility for Supplies	APR 1984
52.246-26	Reporting Nonconforming Items	JUN 2020
52.246-4	Inspection of Services—Fixed-Price	AUG 1996



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<b>52.247-63</b>	Preference for U.S.-Flag Air Carriers	JUN 2003
<b>52.247-64</b>	Preference for Privately Owned U.S.-Flag Commercial Vessels	FEB 2006
<b>52.248-1</b>	Value Engineering	JUN 2020
<b>52.249-1</b>	Termination for Convenience of the Government (Short-Form) (Fixed-Price)	APR 1984
<b>52.249-2</b>	Termination for Convenience of the Government (Fixed-Price)	APR 2012
<b>52.250-1</b>	Indemnification Under Public Law 85-804	APR 1984
<b>52.202-1</b>	Definitions	JUN 2020
<b>52.203-5</b>	Covenant Against Contingent Fees	MAY 2014
<b>52.203-6</b>	Restrictions on Subcontractor Sales to the Government	JUN 2020
<b>52.203-7</b>	Anti-Kickback Procedures	JUN 2020
<b>52.211-5</b>	Material Requirements	AUG 2000
<b>52.222-50</b>	Combating Trafficking in Persons	OCT 2020
<b>52.223-18</b>	Encouraging Contractor Policies to Ban Text Messaging While Driving	JUN 2020
<b>52.225-13</b>	Restrictions on Certain Foreign Purchases	JUN 2008
<b>52.232-40</b>	Providing Accelerated Payments to Small Business Contractors	DEC 2013
<b>52.233-3</b>	Protest After Award	AUG 1996
<b>52.243-1</b>	Changes—Fixed-Price	AUG 1987
<b>52.244-6</b>	Subcontracts for Commercial Items	NOV 2020