

UES GENERAL TERMS AND CONDITIONS

for

Purchase Orders designated as subcontracts for “commercial items” under Federal Government Prime Contracts

(a) *Inspection/Acceptance.* The Seller shall only tender for acceptance those items that conform to the requirements of this contract. The Buyer reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Buyer may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Buyer may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Buyer must exercise its post-acceptance rights -- (1) Within a reasonable time after the defect was discovered or should have been discovered; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Seller or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution. However, when a third party makes payment (e.g., use of a commercial purchase card), the Seller may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* (1) *Choice of law.* All disputes arising under or related to this contract shall be resolved, first according to its terms, secondly according to the law of Federal contracts as enunciated by the boards of contract appeals and Federal courts and thirdly by the substantive laws of the state of Ohio. (2) *Choice of forum.* All disputes not resolved by negotiation between the parties or by third party arbitration as may be agreed to by the parties, shall be resolved by the court of competent jurisdiction for the same in and for Greene County, Ohio, unless there is Federal Court jurisdiction, in which case either party may seek removal to a Federal Court having jurisdiction otherwise.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence such as, acts of nature or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify the Buyer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Buyer of the cessation of such occurrence.

(g) *Invoice.* The Seller shall submit invoices to the address designated in the contract to receive invoices. An invoice must include -- (1) Name and address of the Seller; (2) Invoice date and number; (3) Contract number, and, if applicable, the relevant contract line item number and/or the order number; (4) Description, quantity, unit of measure, unit price and extended price of the items delivered; (5) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading; (6) Terms of any discount for prompt payment offered; (7) Name and address of official to whom payment is to be sent; (8) Name, title, and phone number of person to notify in event of defective invoice; (9) Taxpayer Identification Number (TIN), but only if required elsewhere in this contract; and (10) if Electronic funds transfer (EFT) is requested by the Seller, EFT banking information needed for such transfers.

(h) *Payment.* (1) *Amount.* Payment shall be made in full for items accepted by the Buyer that have been delivered to the delivery destinations set forth in this contract. (2) *Time.* The Buyer will make payment within thirty

(30) days after the later of (A) acceptance of all items or (B) receipt of a proper invoice, as specified at (g), above. Payments not made within the time specified shall bear interest at the statutory rate allowed by the state of Ohio from that time specified until paid. (3) *Method.* If requested by the Seller and authorized by the Buyer, payment shall be by electronic funds transfer, provided EFT banking information has been provided by the Seller as specified at (g)(10), above. Otherwise payment shall be by check sent as specified at (g)(7), above. (4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the later of (A) acceptance of all items or (B) receipt of a proper invoice, as specified at (g), above. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made. (5) *Overpayments.* If the Seller becomes aware of a duplicate payment or that the Buyer has otherwise overpaid any payment, the Seller shall-- (i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-- (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment); (B) Affected contract number and delivery order number, if applicable; (C) Affected contract line item or subtitle item, if applicable; and (D) Seller point of contact. (ii) Provide a copy of the remittance and supporting documentation to the Buyer. (6) *Interest.* (i) All amounts that become payable by the Seller to the Buyer under this contract shall bear simple interest from the date of acceptance until paid unless paid within 30 days of receipt of a proper invoice as specified at (2), above. The interest rate shall be the statutory interest rate as allowed by the state of Ohio. (ii) The Buyer may issue a demand for payment to the Seller upon finding a debt is due under the contract. (iii) Interest shall accrue from the date of the overpayment until paid.

(i) *Patent indemnity.* The Seller shall indemnify the Buyer and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Seller is reasonably notified of such claims and proceedings.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Seller until, and shall pass to the Buyer upon: (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or (2) Delivery of the supplies to the Buyer at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for convenience.* The Buyer, by giving written notice to the Seller, may terminate this contract, or any part of it, for its sole convenience. In the event of such termination, the Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of the Buyer using its standard record keeping system, have resulted from the termination. The Seller shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Buyer any right to audit the Seller's records. The Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Buyer may terminate this contract, or any part hereof, for cause in the event of any default by the Seller, or if the Seller fails to comply with any contract terms and conditions, or fails to provide the Buyer, upon request, with adequate assurances of future

performance. In the event of termination for cause, the Buyer shall not be liable to the Seller for any amount for supplies or services not accepted, and the Seller shall be liable to the Buyer for any and all rights and remedies provided by law. If it is determined that the Buyer improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Buyer upon acceptance, regardless of when or where the Buyer takes physical possession.

(o) *Warranty.* The Seller warrants and implies that the items delivered hereunder are merchantable and fit for use for any particular purpose described in this contract. All warranties survive acceptance and are for the benefit of the Buyer's customer, as well as for the Buyer, itself.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Seller will not be liable to the Buyer for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Seller shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with Clauses Required for Commercial Items by the Prime Contract.* (1) The following Federal Acquisition Regulation clauses, appropriately modified to reflect the relationship of the parties and subject to the limitations and thresholds stated, are inserted in this subcontract: (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), applicable if the subcontract exceeds \$5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer. (ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), applicable if the subcontract is funded under the Recovery Act. (iii) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 637(d)(2) and (3)), applicable if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities. (iv) 52.222-21, Prohibition of Segregated Facilities (Apr 2015). (v) 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246). (vi) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a)); (vii) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793). (viii) 52.222-37, Employments Reports on Veterans (Feb 2016) (38 U.S.C. 4212). (ix) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40. (x) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627). (xi) 52.222-55, Minimum Wages under Executive Order 13658 (Dec 2015). (xii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note). (xiii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), applies if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40 (i.e., if the subcontractor is a small business concern). (xiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), applies if FAR clause 52.247-64 is included in the prime contract and flow down is required in accordance with paragraph (d) of that clause. (2) The following Federal Acquisition Regulation clauses, appropriately modified to reflect the relationship of the parties and subject to the limitations and thresholds stated, are inserted in this subcontract only if it is a contract for services: (i) 52.222-17, Non-displacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause 52.222-17. (ii) 52.222-41, Service Contract Labor Standards (May 2014), (41 U.S.C. chapter 67), applicable if service contract is over \$2,500. (iii) 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) (41 U.S.C. chapter 67.), applicable to service contracts for "exempt services" as defined in the clause and determined in accordance with FAR 22.1003-4(d)(3). (iv) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67), applicable to service contracts for services subject to exemption as defined in the clause and determined in accordance with FAR 22.1003-4(d)(3). (v) 52.222-54, Employment Eligibility Verification (Oct 2015) (E. O. 12989), applicable to service contracts having a value of more than \$3,500 and includes work performed in the United States. (3) The following clause as required by DFARS 252.244-7000, applies to DoD subcontracts only: (i) The Seller is not required to flow down the terms of any Defense Federal Acquisition Regulation Supplement (DFARS) clause in this subcontract in lower tier subcontracts for commercial items at any lower tier under this subcontract, unless so specified in the particular clause. (ii) While not required, the Seller may flow down to lower tier subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligation. (iii) The Seller shall include the terms of this clause, subparagraph (r)(3), including this subparagraph (iii), in lower tier subcontracts awarded under this subcontract, including subcontracts for the acquisition of commercial items.

(s) *Disclosure of Information.* (1) The Seller shall not release to anyone outside its organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless— (A) The USG Contracting Officer has given prior written approval; (B) The information is otherwise in the public domain before the date of release; or (C) The information results from or arises during the performance of a project that has been scoped and negotiated by the Government contracting activity with the Buyer, the Seller and research performer and determined in writing by the contracting officer to be fundamental research in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the USD (AT&L) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008, (available at DFARS PGI 204.4). (2) Requests for approval under paragraph 10.1 shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Seller shall submit its request to the Contracting Officer through the Buyer at least ten (10) business days before the proposed date for release. (3) The Seller agrees to include a similar requirement, including this paragraph (s), in each lower tier subcontract under this contract. Subcontractors shall submit requests for authorization to release through the higher tier contractor to the Contracting Officer.

(t) *Order of precedence.* Any inconsistencies in this contract shall be resolved by giving precedence in the following order: (1) The description of supplies/services. (2) Special Terms and Conditions, if any. (3) The Assignments, Disputes, Payments, Invoice, and Other Compliances clauses. (4) All clauses incorporated into this contract to comply with a Federal Government prime contract. (5) Addenda to this solicitation or contract, including any license agreements for computer software, if any. (6) Other clauses of these terms and conditions. (8) Other attachments, documents, and exhibits, if any. (9) The specification, if any.

(u) *Entire Agreement.* This contract, including all its parts as set forth at paragraph (s), above, includes the entire understanding between the parties relative to the sale which is its subject, and supersedes all previous or contemporaneous understandings, commitments, or agreements, written or oral, regarding the sale. Failure at any time by one of the parties to enforce any provision of this contract shall neither constitute a waiver of such provision nor prejudice that party's right to enforce such provision at any subsequent time. Waiver of any provision of this contract shall only be effective if expressed in writing by the party granting such waiver. If any provision of this contract is or becomes void or unenforceable by force of law, the parties shall attempt to reform it appropriately and in no case shall the unenforceability of any contract provision affect enforceability of the remainder of it.

END OF GENERAL TERMS AND CONDITIONS