

HONEYWELL FEDERAL MANUFACTURING & TECHNOLOGIES, LLC
TERMS AND CONDITIONS OF PURCHASE,
TIME AND MATERIAL OR LABOR HOUR ORDER
(Terms 1610-04-21)
Effective: September 2021

(Be advised that Honeywell FM&T is a Management and Operating (M&O) Contractor for the Department of Energy (DOE). As such, the work performed under M&O contracts is directly linked to DOE's mission, is of a long-term and continuing nature, and, among other things, includes special requirements for work direction, safety, security, cost controls, and site management. Any attempt by Sellers to alter, revise or diminish the terms/conditions and/or regulations stated herein, is an alteration to a government funded contract and may jeopardize Honeywell's ability to do business with your firm now or in the future; exceptions

1. DEFINITIONS

As used throughout this Order, the following terms shall have the meaning set forth below:

- (a) "Buyer" means Honeywell Federal Manufacturing & Technologies, LLC, in the performance of its prime contract with The United States of America and includes any duly authorized representative thereof acting within authorized limits.
- (b) "Commercial Item" or "Commercial Component" means the same as the definitions for these terms at FAR 2.101.
- (c) "Commercially available off-the-shelf" or "COTS" item means the same as the definition as provided in FAR 2.101.
- (d) "Contract" means the same as the definition at FAR 2.101 and specifically includes this Order.
- (e) "Contracting Officer" means the same as the definition at FAR 2.101 and specifically includes "Buyer" to the extent necessary to enable Buyer to administer this Order and to perform its obligations under its Government prime contract
- (f) "Contractor" means "Buyer" when used in the context of referring to a prime contractor with the U.S. Government in a FAR or DEAR clause/provision incorporated into this Order. In all other instances, "Contractor" means "Seller."
- (g) "Counterfeit Item" A counterfeit item is one that has been copied or substituted without legal right or authority or whose material, performance, or characteristics have been misrepresented by the seller or manufacturer.
- (h) "DOE" means U.S. Department of Energy or any duly authorized representative thereof, including the Contracting Officer.
- (i) "DEAR" means Department of Energy Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this Order.
- (j) "FAR" means Federal Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this Order.
- (k) "Government" means The United States of America.
- (l) "Micro-Purchase Threshold" means the same as the definition in FAR 2.101.
- (m) "Order" means Order when used in the context of referring to a contractual relationship between Buyer and Seller.
- (n) "SAT" means Simple Acquisition Threshold as defined in FAR 2.101.
- (o) "Seller" means any person or company having a contract for the supply of good or service to the Buyer as identified in the Order.

- (p) "Subcontract(s)" and "Subcontractor(s)" includes this Order when used in a FAR or DEAR clause referring to a prime and subcontractor relationship. Otherwise, it means Seller's lower tier subcontract(s) and subcontractor(s), respectively. The term "subcontract" includes purchase orders and changes, modifications, or amendments to subcontracts and purchase orders.
- (q) "Suspect Item" An item is suspect when inspection or testing indicates that it may not conform to established Government or industry-accepted specifications or national consensus standards or whose documentation, appearance, performance, material or other characteristics may have been misrepresented by the sellers or manufacturer.

2. APPLICABLE TERMS/MODIFICATIONS

Agreement by Seller to furnish the goods or services, or Seller's commencement of such performance, shall constitute Seller's unqualified acceptance of this Order subject to these terms and conditions. This Order is the complete and exclusive statement of the terms of the agreement between Seller and Buyer. No modification of this Order (including any addition, deletion, or other modification proposed in Seller's acceptance) shall be binding on Buyer unless agreed to by Buyer in a writing signed by Buyer's Purchasing Department Representative.

3. CHANGES

- (a) Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Order in any one or more of the following:
 - (1) Drawings, designs, or specifications.
 - (2) Method of shipment or packing.
 - (3) Place of delivery or performance.
 - (4) Amount of Buyer-furnished property.
- (b) If any such change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this Order, whether or not changed by the written order, or otherwise affects any other terms and conditions of this Order, Buyer shall make an equitable adjustment in the (1) ceiling price, (2) hourly rates, (3) delivery or completion schedule, and (4) other affected terms, and shall modify the Order accordingly.
- (c) Seller must assert any right it may have to an adjustment in writing to Buyer and any such written assertion must be received by Buyer within 30 days from the date of receipt of the written order by Seller. However, if Buyer decides that facts justify it, Buyer may receive and act upon any such claim asserted at any time prior to final payment under this Order.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse Seller from proceeding with the Order as changed.

4. SHIPPING INSTRUCTIONS AND INSURANCE

- (a) If Buyer is responsible for shipping costs under this Order and has authorized shipment on a commercial bill of lading, the commercial shipping documents must be annotated as follows:

"Transportation is for the U.S. Department of Energy/NNSA and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No DE-NA0002839. This may be confirmed by contacting Contracting Officer, U.S. Department of Energy/NNSA, Kansas City Field Office, 14520 Botts Rd., Kansas City, MO 64147."
- (b) A packing list must accompany each shipment; otherwise, Buyer's count will be accepted as final and conclusive. The packing list must indicate Buyer's Order number and the part number or code number. If shipment is made by Seller's supplier, Seller's name must be shown on the packing list in addition to the above information. Seller shall mark Buyer's Order number on all packages and consolidate daily shipments. If transportation charges are dependent on released valuation, Seller shall release the shipment at the value resulting in the lowest charges. Bill of lading advice of shipment must be sent as soon as material is

forwarded, giving the correct Order, part, or requisition number, description of material and full forwarding information. All material must be forwarded in accordance with routing specified on this Order or additional instructions issued by Buyer. Seller shall not insure item(s) shipped FOB shipping point.

5. TITLE AND RISK OF LOSS

- (a) Title to items or services furnished under this Order shall pass to the Government upon acceptance by Buyer, regardless of when or where Buyer takes physical possession.
- (b) Except as provided under paragraph (c) below, and regardless of the point of inspection or acceptance, risk of loss or damage to items provided under this Order shall remain with Seller until, and shall pass to Buyer upon delivery of items to the:
 - (1) Shipping point carrier, if Buyer pays carrier's transportation costs; or
 - (2) Buyer or Buyer's designee at the final delivery destination specified in the Order, if Seller pays transportation costs.
- (c) Paragraph (b) above shall not apply to items that so fail to conform to Order requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with Seller until cure or acceptance. Also, Seller shall not be liable for loss of or damage to items caused by the negligence of officers, agents, or employees of Buyer acting within the scope of their employment.

6. INSPECTION AND ACCEPTANCE

- (a) Unless otherwise specified in this Order, Seller shall be responsible for all quality assurance measures necessary to ensure that only items and services conforming to the requirements of this Order are tendered to Buyer for acceptance. This shall include such testing, in process inspection and other verification measures as are customary in the industry to ensure that parts, components, and materials furnished by seller's suppliers and incorporated into end items furnished to Buyer are not counterfeit or of suspect quality.
- (b) Notwithstanding Seller's responsibility for all quality assurance measures as described in paragraph (a) above, Buyer has the right to conduct in process inspections, if this Order is for services. Seller shall provide all reasonable facilities and assistance for the safe and convenient performance of such inspections without additional charges.
- (c) Buyer reserves the right to inspect and test all items and services that have been tendered for acceptance. Buyer has the right to reject nonconforming items and services with or without disposition instructions from Seller; the right to require their correction, replacement, re- performance; the right to accept nonconforming items or services and reduce the Order amount to reflect the reduced value of the nonconformance(s); or the right to terminate this Order for cause.

7. PREFERENCE AND CERTIFICATION FOR DOMESTIC END PRODUCTS

The terms "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the FAR clause 52.225-1 Buy American—Supplies.

Seller hereby acknowledges and agrees that by delivery of goods to Buyer that: (1) Seller certifies that each end product is a domestic end product. Offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States, or (2) Seller shall identify in writing any foreign end products by country of origin. Seller shall identify as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item manufactured in the United States and does not meet the component test in the definition of "domestic end product."

8. PRICES AND NEW MATERIAL

Unless otherwise provided in this Order, the:

- (a) Prices appearing herein include all packaging and crating.
- (b) Seller warrants that the items furnished under this Order are new and are of not such age or so deteriorated as to impair their usefulness or safety. Used items that have been refurbished and warranted as new are considered used.

9. FEDERAL, STATE, AND LOCAL TAXES

Sales taxes, gross receipts taxes, and use taxes may be applicable to this Order unless Buyer provides Seller with evidence of exemption from such taxes.

10. INVOICE, DISCOUNTS AND PAYMENTS

- (a) Seller shall be paid, upon submission of proper invoice(s), the prices stipulated herein for items and services accepted by Buyer, less any deductions, setoffs or recoupments. Seller shall submit an original invoice (electronic submission preferred) to the billing address specified in the Order. Unless otherwise specified in the Order billing instructions, each invoice must include the following information:
 - (1) Unique or non-repeating invoice number;
 - (2) Invoice date;
 - (3) Buyer's Order number;
 - (4) Order line item number, description of product or service, quantity, unit of measure, unit price, and extended price for each line item for which payment is being requested;
 - (5) Total invoice price;
 - (6) Seller standard payment terms, or;
 - (7) Discount payment terms offered;
 - (8) If applicable, identify shipping number and date of shipment, including bill of lading number and weight if shipped on a Government bill of lading;
 - (9) Seller name;
 - (10) Seller remit payment address;
 - (11) Name, address, and phone number of Seller representative to contact in the event of a defective invoice.
- (b) Buyer shall pay Seller as follows upon the submission of invoices approved by Buyer:
 - (1) Hourly Rate.
 - (i) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Order by the number of direct hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Invoices may be submitted once each month (or at more frequent intervals, if approved by Buyer) to Buyer or Buyer's designee. Seller shall substantiate invoices by evidence of actual payment and by individual daily job timecards, or other substantiation approved by Buyer. Promptly after receipt of each substantiated invoice, Buyer shall, except as otherwise provided in this purchase order/contract, and subject to the terms of (e) below, pay the invoice as approved by Buyer.
 - (ii) Unless otherwise prescribed in the Order, Buyer may withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by Seller as provided in paragraph (f) below.

- (iii) Unless the Order prescribes otherwise, the hourly rates shall not be varied by virtue of Seller having performed work on an overtime basis. If no overtime rates are provided in the Order and overtime work is approved in advance by Buyer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this Order. If the Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by Buyer.

(2) Materials and Subcontracts.

- (i) Allowable costs of direct materials shall be determined by Buyer in accordance with FAR Subpart 31.2, as supplemented by the DEAR, in effect on the date of this Order. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with Seller's usual accounting practices consistent with Subpart 31.2 of the FAR. Seller shall be reimbursed for items and services purchased directly for the Order only when cash, check, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.
- (ii) The cost of subcontracts that are authorized under the Subcontracts clause of this Order shall be reimbursable costs under this clause; provided, that the costs are consistent with subparagraph (3) below. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor in the same manner as for items and services purchased directly for the Order only when cash, checks, or other form of payment has been made for such purchased items or services; however, this requirement shall not apply to a Seller that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under (a)(1) above.
- (iii) To the extent able, Seller shall:
 - (A) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (B) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, Seller shall promptly notify Buyer and give the reasons. Credit shall be given to Buyer for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of Seller, or would have accrued except for the fault or neglect of Seller. The benefits lost, without fault or neglect on the part of Seller, or lost through fault of Buyer, shall not be deducted from gross costs.
- (3) Total cost. It is estimated that the total cost to Buyer for the performance of this Order shall not exceed the ceiling price set forth in the Order and Seller agrees to use its best efforts to perform the work specified in the Order and all obligations under this Order within such ceiling price. If at any time Seller has reason to believe that the hourly rate payments and material costs that will accrue in performing this Order in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price, Seller shall notify Buyer giving a revised estimate of the total price to Buyer for performing this Order with supporting reasons and documentation. If at any time during performing this Order, Seller has reason to believe that the total price to Buyer for performing this Order will be substantially greater or less than the then stated ceiling price, Seller shall so notify Buyer, giving a revised estimate of the total price for performing this Order, with supporting reasons and documentation. If at any time during performing this Order, Buyer has reason to believe that the work to be required in performing this Order will be substantially greater or less than the stated ceiling price, Buyer will so advise Seller, giving the then revised estimate of the total amount of effort to be required under the Order.
- (4) Ceiling price. Buyer shall not be obligated to pay Seller any amount in excess of the ceiling price in the Order, and Seller shall not be obligated to continue performance if to do so would exceed the ceiling price, unless and until Buyer shall have notified Seller in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Order. When and to the extent that the ceiling price has been increased, any hours expended and material

costs incurred by Seller in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

- (5) Audit. At any time before final payment under this Order Buyer may request audit of the invoices and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts on preceding invoices that are found by Buyer not to have been properly payable and shall also be subject to reduction for overpayments or to increase underpayments. Upon receipt and approval of the invoice designated by Seller as the "completion invoice" and substantiating material, and upon compliance by Seller with all terms of this Order (including, without limitation, terms relating to patents and the terms of (f) and (g) below), Buyer shall promptly pay any balance due Seller. The completion invoice and substantiating material shall be submitted by Seller as promptly as practicable following completion of the work under this Order, but in no event later than 1 year (or such longer period as Buyer may approve in writing) from the date of completion.
- (6) Assignment. Seller, and each assignee under an assignment entered into under this Order and in effect at the time of final payment under this Order, shall execute and deliver, at the time of and as a condition precedent to final payment under this Order, a release discharging Buyer and the Government, including their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Order, subject only to the following exceptions:
 - (i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by Seller.
 - (ii) Claims, together with reasonable incidental expenses, based upon the liabilities of Seller to third parties arising out of performing this Order, that are not known to Seller on the date of execution of the release, and of which Seller gives notice in writing to Buyer not more than 6 years after the date of the release or the date of any notice to Seller that Buyer is prepared to make final payment, whichever is earlier.
 - (iii) Claims for reimbursement of costs (other than expenses of Seller by reason of its indemnification of Buyer or Government against patent liability), including reasonable incidental expenses, incurred by Seller under the terms of this Order relating to patents.
- (7) Refunds. Seller agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by Seller or any assignee, that arise under the materials portion of this Order and for which Seller has received reimbursement, shall be paid by Seller to Buyer. Seller and each assignee, under an assignment entered into under this Order and in effect at the time of final payment under this Order, shall execute and deliver, at the time of and as a condition precedent to final payment under this Order, an assignment to Buyer of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to Buyer.
- (8) If this Order is for labor hours only, the terms of this clause that govern reimbursement for materials is not applicable.

11. ALTERNATIVE DISPUTE RESOLUTION

- (a) Unless otherwise provided in this Order, all disputes arising under or relating to this Order which are not disposed of by mutual agreement of the parties, shall be resolved under this clause.
- (b) "Claim," as used in this clause, means a written demand or written assertion by one of the parties to this Order seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Order terms, or other relief arising under or relating to this Order. A claim arising under this Order, unlike a claim relating to this Order, is a claim that can be resolved under a Order clause that provides for the relief sought by the claimant. However, a written demand or written assertion by Seller seeking the payment of money exceeding \$100,000 is not a claim until certified as required by subparagraph (c)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the submission and certification requirements of this clause if it is disputed either as to liability or amount, or is not acted upon in a reasonable time.
- (c) A claim by Seller shall be made in writing and submitted to the head of Buyer's Purchasing Organization for a written decision. A claim by Buyer against Seller shall be subject to a written decision by the head of Buyer's Purchasing Organization.

- (d) For Seller claims exceeding \$100,000, (of any amount when the parties have agreed to a form of alternative dispute resolution per paragraph (h) below) Seller shall submit with the claim a certification that:
 - (1) The claim is made in good faith; and
 - (2) Supporting data are accurate and complete to the best of Seller's knowledge and belief; and
 - (3) The amount requested accurately reflects the Order adjustment for which Seller believes Buyer is liable; and
 - (4) A statement by the person certifying the claim that they are duly authorized to certify the claim on behalf of Seller.
- (e) The head of Buyer's Purchasing Organization shall, within 60 days, decide the claim or notify Seller of the date by which the decision will be made.
- (f) The decision rendered by the head of Buyer's Purchasing Organization shall be final and conclusive and not subject to review or revision by any forum, tribunal or Government agency unless suit is filed as provided in the DISPUTES clause.
- (g) Buyer shall pay interest on the amount found due and unpaid from (1) the date Buyer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury under the Contract Disputes Act of 1978 (P.L. 95-563), which is applicable to the period during which Buyer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (h) Seller shall proceed diligently with performance of this Order, pending final resolution of any request for relief, claim, or action arising under or relating to this Order, and shall comply with any decision of the head of Buyer's Purchasing Organization.
- (i) Notwithstanding any other provision of this clause, the parties may, by mutual consent, agree to a form of alternative dispute resolution involving an impartial third party to mediate or arbitrate disputes.

12. DISPUTES

- (a) GOVERNING LAW. Missouri law governs this agreement, except for any provision (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR) or; (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision. FAR and agency provisions shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the United States Government.
- (b) DISPUTES. Either party may submit a dispute to a court of competent jurisdiction located in Missouri provided that the Parties' senior management representatives have first attempted in good faith to negotiate a resolution for a period of no less than ten business days following written notice from the Party claiming dispute. To the extent permitted by applicable law, the Parties waive any right they may have to a trial by jury. Notwithstanding the above, either Party may seek injunctive or other equitable relief in any court of competent jurisdiction at any time.

13. WAIVER RIGHTS AND REMEDIES OF BUYER

The rights and remedies of the Parties set forth herein shall be in addition to any other rights and remedies provided in law or equity and the failure or delay of either Party to exercise any rights or remedies under this Order shall not operate as a general waiver thereof, nor will any failure or delay prejudice the right of that Party to take any action in the future to enforce any provision. No waiver shall be effective unless expressly set forth in writing and signed by the Parties.

14. DELAYS AND FORCE MAJEURE

- (a) On time performance is a material condition of this Order and failure to perform according to the delivery schedule in this Order, if unexcused, shall be considered a material breach. Acceptance of late deliveries shall not constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller's risk and

expense shipments made in excess of this Order or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates.

- (b) Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Order. Such notice shall include a proposed revised schedule but such notice and proposal or Buyer's receipt or acceptance thereof shall not constitute a waiver to Buyer's rights and remedies hereunder.
- (c) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both Seller and subcontractor, and without the fault or negligence of either, Seller shall not be deemed to be in default, unless:
 - (1) The subcontracted supplies or services were obtainable from other sources;
 - (2) Buyer ordered Seller in writing to purchase these supplies or services from the other source; and
 - (3) Seller failed to comply reasonably with this order.

Upon request of Seller, Buyer shall ascertain the facts and extent of the failure. If Buyer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of Buyer under the termination clause of this Order.

- (d) Except for a default of Seller's subcontractor at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes include, but are not limited to, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In the event that performance of this Order is hindered, delayed or adversely affected by causes of the type described above ("Force Majeure"), then the Party whose performance is so affected shall so notify the other Party's authorized representative in writing promptly but no later than fourteen (14) days after the Party became aware, or should have become aware of the event of Force Majeure and, at Buyer's option, this Order may be completed with such adjustments to delivery schedule as may reasonably be required by the existence of Force Majeure.

15. TERMINATION

- (a) Buyer may terminate performance of work under this Order in whole or, from time to time, in part, if:
 - (1) Buyer determines that a termination is in Buyer's or Government's interest; or
 - (2) Seller defaults in performing this Order and fails to cure the default within 10 days (unless extended by Buyer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) Buyer shall terminate by delivering to Seller a Notice of Termination specifying whether termination is for default of Seller or for convenience of Buyer, the extent of termination, and the effective date. If, after termination for default, it is determined that Seller was not in default or that Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of Seller as set forth in the clause entitled "Delays and Force Majeure," the rights and obligations of the parties will be the same as if the termination was for the convenience of Buyer.
- (c) After receipt of a Notice of Termination, and except as directed by Buyer, Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders, except as necessary to complete the continued portion of Buyer's Order.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.

- (4) Assign to Buyer or the Government, as directed by Buyer, all right, title, and interest of Seller under the subcontracts terminated, in which case Buyer or the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Order; approval or ratification will be final for purposes of this clause.
- (6) Transfer title (if not already transferred) and, as directed by Buyer, deliver to Buyer (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the Order had been completed, would be required to be furnished to Buyer, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Order, the cost of which Seller has been or will be reimbursed under this Order.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this Order that is in the possession of Seller and which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in subparagraph (6) above; provided, however, that Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this Order, credited to the price or cost of the work, or paid in any other manner directed by Buyer.
- (d) Seller shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within the 120-day period.
- (e) After expiration of the plant clearance period as defined in FAR Subpart 45.6, Seller may submit to Buyer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Buyer. Seller may request Buyer to remove those items or enter into an agreement for their storage. Within 15 days, Buyer will accept the items and remove them or enter into a storage agreement. Buyer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. Seller shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within this 1-year period. However, if Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) above, Seller and Buyer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Order shall be modified and Seller paid the agreed amount.
- (h) If Seller and Buyer fail to agree in whole or in part on the amount to be paid because of the termination of work, Buyer shall determine, on the basis of information available, the amount, if any, due to Seller, and shall pay the amount determined as follows:
 - (1) If the termination is for the convenience of Buyer, include:
 - (i) An amount for direct labor hours (as defined in the Order) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Order, less any hourly rate payments already made to Seller;
 - (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to Seller;

- (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by Buyer; however, Seller shall discontinue these expenses as rapidly as practicable;
- (iv) If not included in (i), (ii), or (iii) above, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Order; and
- (v) The reasonable costs of settlement of the work terminated, including:
 - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (C) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (2) If the termination is for default of Seller, include the amounts computed under (1) above but omit:
 - (i) Any amount for the preparation of Seller's termination settlement proposal; and
 - (ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by Buyer.
- (i) The cost principles and procedures in FAR Part 31, as supplemented by DEAR Part 931, in effect on the date of this Order, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) Seller shall have the right to pursue any claim or dispute, under the clause of this Order entitled "Disputes," from any determination made by Buyer under paragraph (f) or (h) above or paragraph (l) below, except that if Seller failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, it shall have no such right. If Buyer has made a determination of the amount due under paragraph (f), (h), or (l), Buyer shall pay Seller (1) the amount determined by Buyer if there is no right to pursue a claim or dispute or if such claim or dispute has not been timely pursued, or (2) if such claim or dispute has been pursued, the amount finally determined under the "Disputes" clause of this Order.
- (k) In arriving at the amount due Seller under this clause, there shall be deducted:
 - (1) All unliquidated advance or other payments to Seller, under the terminated portion of this Order;
 - (2) Any claim which Buyer or the Government has against Seller under this Order; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by Seller or sold under this clause and not recovered by or credited to Buyer.
- (l) If the termination is partial, Seller may file with Buyer a proposal for an equitable adjustment of price(s) for the continued portion of the Order. Buyer shall make any equitable adjustment agreed upon. Any proposal by Seller for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by Buyer.
- (m) Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Seller for the terminated portion of the Order, if Buyer believes the total of these payments will not exceed the amount to which Seller will be entitled.
- (o) If the total payments exceed the amount finally determined to be due, Seller shall repay the excess to Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by Buyer because of the circumstances.

16. SUSPECT/COUNTERFEIT ITEM WARRANTY

Seller warrants that all items, including subassemblies, components, and parts, tendered to Buyer shall be genuine, new and unused, and conform to the requirements of this Order, unless otherwise approved in writing by Buyer prior to delivery. Seller further warrants that all components, parts, materials, and supplies incorporated into Buyer facilities or equipment by Seller during performance of work at Buyer's facilities, shall be genuine, new and unused, and original-equipment-manufacturer items, unless otherwise approved in writing by Buyer as suitable for the intended purpose prior to use. Seller's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied to Buyer, and to certifications, affirmations, information, or documentation related to the authenticity and quality of items supplied or delivered to Buyer under this Order.

Seller shall indemnify Buyer, its agents, and assignees for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts furnished or used under this Order that are not genuine, original, and new and unused, or otherwise not suitable for the intended purpose. Seller's indemnity includes any financial loss, injury, or property damage resulting directly or indirectly from items furnished or used under this Order that are defective, suspect, or counterfeit, or that have been provided under false pretenses, or that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Suspect/counterfeit items furnished under this Order will be impounded by Buyer. Seller must promptly replace them, at no cost, with items acceptable to Buyer, and Seller shall be liable for all costs relating to discovery, removal, impoundment, and replacement of materials and equipment that exhibit suspect or counterfeit item characteristics or conditions.

Because falsification of information or documentation may constitute criminal conduct, Buyer will segregate impounded items and related paperwork that are suspected S/CI, pending a determination by National Nuclear Security Administration (NNSA) or Department of Energy (DOE) officials whether the segregated/impounded items should be utilized as evidence.

No liability shall be asserted or enforceable against Buyer, NNSA, or DOE because of impoundment, all such liability being expressly waived by Seller or any person claiming any right or interest under this Order, in the impounded items.

17. WARRANTY

Seller warrants that the goods shall (i) be new; (ii) be free from defects in workmanship, materials, and design; (iii) meet all the requirements of this Order; and (iv) be merchantable and fit for the particular purpose. Seller warrants that services shall conform to the requirements of the Order. The warranty shall begin upon acceptance and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if Seller is not the manufacturer and has not modified the supply; or (2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer of the supply or has modified it. Seller further agrees that supplies or services furnished under this Order shall be covered by the same warranties Seller provides any customer for the same or substantially similar supplies or services and that rights and remedies provided by this clause shall extend to the Government and are in addition to and do not limit any rights afforded Buyer by any other clause of this Order.

18. ASSIGNMENT, NOVATION, NAME CHANGE

- (a) Assignment: This Order is assignable by Buyer to the Government or its designee. Neither this Order nor any interest therein, nor claim thereunder, shall be assigned or transferred by Seller except as expressly authorized in writing by Buyer.
- (b) Novation: Seller shall inform Buyer of the transfer of Seller's assets, rights, obligations and/or liabilities, under this Agreement to a separate legal entity and submit written proof of such transfer. Buyer at its sole discretion may recognize the transfer. The novation shall not be effective until all three parties enter into and execute a novation agreement.
- (c) Change of Name: Seller shall inform Buyer of a corporate name change and submit documents as proof of such change. Both parties must enter into and execute a name change agreement.

19. SUBCONTRACTS

- (a) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders.

- (b) Seller shall not, without the prior written consent of Buyer, place any subcontract or purchase order:
 - (1) On other than a firm fixed-price basis.
 - (2) Exceeding \$25,000.
 - (3) Exceeding \$2,500 with any subsidiary, division, department, or affiliate of Seller.
 - (4) For any part of the work required under this Order. (Excludes raw materials or commercial stock items.
 - (5) For any item or service whose purchase is expressly prohibited by the written direction of Buyer.
- (c) No subcontract placed under this Order shall provide for payment on a cost-plus-a-percentage of cost basis, and any fee payable under cost reimbursement subcontracts shall not exceed the fee limitations in FAR Subsection 15.903(d).
- (d) Seller shall use methods, practices, and procedures in subcontracting which are acceptable to Buyer. Buyer reserves the right at any time to require Seller to submit any or all subcontract arrangements for approval; and to provide Buyer information concerning methods, practices, and procedures used or proposed to be used in subcontracting.
- (e) Unless the consent specifically provides otherwise, consent by Buyer to any subcontract shall not constitute a determination, (1) of the acceptability of any subcontract terms or conditions; (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve Seller of any responsibility for performing this Order.

20. INDEPENDENT CONTRACTOR

Seller shall act solely as an independent contractor in the performance of this Order and nothing herein shall be construed to create, without limitation, a relationship of employment, partnership, agency or joint venture between Buyer and Seller or between Buyer and any of Seller's employees in connection with the work under this Order. Neither Party has the right to bind or obligate the other. Seller agrees not to solicit for employment, either directly or indirectly through a third party, any Buyer employee during the term of this Contract.

21. NOTIFICATION OF CONFLICTS OF INTEREST REGARDING PERSONNEL

(Applicable if procurement is \$150,000 or greater and is for advisory and assistance services)

The following terms with regard to Seller's personnel performing under this Order shall apply until the earlier of two dates: the termination of the affected employee(s) or the expiration date of the Order.

Seller shall immediately notify Buyer of (1) any actual or potential personal conflict of interest with regard to any of its employees working on or having access to information regarding this Order, or (2) any such conflicts concerning Seller's employees or consultants working on or having access to information regarding this Order, when such conflicts have been reported to Seller. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing Order work.

Seller shall notify Buyer prior to incurring costs for that employee's work when an employee may have a personal conflict of interest. In the event that the personal conflict of interest does not become known until after performance on the Order begins, Seller shall, immediately notify Buyer of the personal conflict of interest. Seller shall continue performance of this Order until notified by Buyer of the appropriate action to be taken.

This clause shall flow down to all subcontracts placed hereunder unless otherwise authorized by Buyer.

22. SELLER USE OF GOVERNMENT-OWNED/BUYER-SUPPLIED EQUIPMENT

It is Buyer's policy and intent that Government-owned/ Buyer-supplied equipment, whether provided directly to Seller under this Order or otherwise provided for use by the Seller, shall not be used by contractors and that terms of our contracts require them to supply all equipment necessary to perform their required work. It is recognized, however, that exceptional circumstances could result in the necessity for limited use of Government-owned/ Buyer-supplied property; therefore, when such occasions arise, the following Indemnification and Hold Harmless provision will be applicable to such use:

- (a) Seller agrees to hold harmless and indemnify Buyer and the United States Government, their officers, agents and employees for any and all damages whatsoever, including, but not limited to, personal injury and property damage sustained as a result of, or arising out of, performance of any work involving the use of Government-owned/Buyer-supplied property.
- (b) Neither Buyer, the United States Government, nor persons acting on their behalf shall be liable for any injury to or death of persons or other living things or damage to or destruction of property or for any other loss, damage, or injury of any kind whatsoever, including costs and expenses incurred, resulting from Contractor/Seller use and operation of Government-owned/Buyer-supplied equipment.

This clause shall flow down to all appropriate subcontracts.

23. END USER LICENSE OR SIMILAR AGREEMENTS

When any supply or service acquired under this Order is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Seller or any person or entity for damages, costs, fees or any other loss or liability that would create an Anti-Deficiency Act violation, such clause shall be unenforceable against the Government, unless such indemnification by the Government is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures. Similarly, any clause requiring the Buyer to indemnify the Seller or any person or entity for damages, costs, fees or any other loss or liability that would violate the Buyer's prime contract obligations or any applicable laws or regulations shall be unenforceable against the Buyer. Neither the Government nor Buyer, including, but not limited to their employees, agents, contractors, and subcontractors, acting as an end user of the product shall be deemed to have agreed to such clauses by virtue of their appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument is invoked through an "I agree" type click box or other comparable mechanism (such as "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or Buyer. Any such clauses are deemed to be stricken from the EULA, TOS or similar legal instrument or agreement.

24. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS, CODES, RULES, AND REGULATIONS

Unless otherwise stated in this order, Seller shall, without additional expense to Buyer, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, executive orders, codes, rules, and regulations applicable to the performance of this Order.

25. SELLER RESPONSIBILITY FOR CONTROL OF TECHNICAL DATA

(Applicable if Buyer-furnished data is provided to Seller)

- (a) Import and Export Controls:

Seller agrees that all applicable laws, regulations, orders and requirements related to import and export controls ("Controls") shall apply to receipt and use; including without limitation those of the United States and the jurisdictions in which Seller is established or from which Products may be supplied. In no event shall Seller use, transfer, re-transfer, release, import, export, or re-export Products in violation of said Controls; including such transactions with those who have been denied or debarred from such privileges; and also including any activities that violate U.S. export policies which seek to control nuclear proliferation, missile technology, chemical and biological weapons.

Violations against any Controls, including but not limited to the Export Administration Regulations Atomic Energy Act ("AEA") 42 USC 2011-2259, U.S. Department of State International Traffic in Arms Regulations ("ITAR") 22 CFR 120-130, or the U.S. Department of Commerce Export Administration Regulations ("EAR"), may result in termination by Buyer of this agreement.

Seller may not under any circumstances export any Products, which includes export controlled information or materials, controlled by the AEA; and may not allow any non-U.S. Person access to any such products, information or materials. If Seller intends to export ITAR articles, which includes technical data, to non-U.S. persons, Seller shall first obtain the written consent of Buyer prior to submitting any request for authority to export any Products, and shall assume the responsibility for obtaining an export license or other approval from the U.S. government. If Seller intends to export EAR items, which includes hardware, software, materials or technology, to a foreign person, Seller shall first obtain the written consent of Buyer prior to submitting any

request for authority to export, and shall assume the responsibility for obtaining an export license or other approval from the U.S. government.

Seller shall indemnify and hold harmless Buyer, its agents, and assignees for any financial loss, penalties or fines resulting directly or indirectly from Seller's violation of the AEA 42 USC 2011-2259, ITAR 22 CFR 120-130, or the EAR. These clauses are applicable to and shall flow down to all appropriate subcontractors.

(b) Foreign Corrupt Practices Act (FCPA):

Seller represents and warrants that it understands, shall comply with the requirements of the United States Foreign Corrupt Practices Act, 15 U.S.C. 78dd-1 et. seq (the "Act") and shall communicate requirements of the Act to its directors, employees, any agents, consultants, and other third parties affiliated, retained, or otherwise used by Customer in accordance with the terms of this Agreement. Seller shall promptly notify Honeywell FM&T of the occurrence of any event that would or may result in an exception to the foregoing representation.

Under the Act, Seller or any of its Sub-contractors may not, directly or indirectly, in the name of, on behalf of, or for the benefit of Honeywell FM&T offer, promise, or authorize to pay, or pay any compensation, or give anything of value to, any official, agent, or employee of any government or governmental agency, or to any political party or officer, employee, or agency thereof, or any candidate for political office.

26. RELEASE OF INFORMATION TO THE PUBLIC

Seller shall not, without the prior written consent of Buyer, make any release of information in any form, including but not limited to Buyer's name or marks, other than to Seller's employees and subcontractors which is required for the performance of their work under this Order, which identifies or could lead to the identification of Buyer's name or Buyer's product or which uses Buyer's name or Buyer's product in any advertising, marketing materials, publicity or promotional material, or on Seller's website. Furthermore, Seller will not claim or suggest, implicitly or explicitly, that Buyer's use of its services or deliverables constitutes Buyer's endorsement of its services or deliverables.

27. CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the work under this purchase Order requires that Seller be given access to confidential or proprietary business or financial information belonging to the Government, Buyer or other companies, Seller shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties, including its corporate parent, unless specifically authorized by Buyer in writing. The foregoing obligations, however, shall not apply to information which:
- (1) At the time of receipt by Seller, is in public domain;
 - (2) Is published after receipt thereof by Seller or otherwise becomes part of the public domain through no fault of Seller;
 - (3) Seller can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government, Buyer or other companies;
 - (4) Seller can demonstrate was received by it from a third party who did not require Seller to hold it in confidence.
- (b) Seller shall obtain the written agreement, in a form satisfactory to Buyer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information to any person or entity except those persons within Seller's organization directly concerned with the performance of the Order.
- (c) Seller agrees, if requested by Buyer, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to Seller under this Order, and to supply a copy of such agreement to Buyer.
- (d) Seller agrees that upon request by Buyer it will execute a Buyer-approved agreement with any party whose facilities or information it is given access to or is furnished, restricting use and disclosure of the information obtained from the facilities. Upon request by Buyer, such an agreement shall also be signed by Seller personnel.

- (e) The clause shall flow down to all appropriate subcontracts.

28. OBTAINING SECURITY CLEARANCES

(Applicable if work requires access to classified information or to areas of restricted access.)

- (a) Seller shall furnish Buyer advance written notice identifying all subcontractor organizations requiring access to the work site, other areas of FM&T's Plant, or other controlled access facilities.
- (b) Should "L" or "Q" security clearances be required for Seller or lower-tier subcontractor personnel, Seller shall furnish Buyer a letter listing name, citizenship, status and craft of each person.
- (c) Due to length of time and expense required to obtain a security clearance, Seller shall apply for clearances only for permanent employees whose continued employment is anticipated during the overall performance term of Order.
- (d) Buyer will furnish Seller with required forms to initiate processing of security clearances. Seller is responsible for distribution and return of completed forms to Buyer by applicants.

29. NOTIFICATION OF "L" AND "Q" CLEARED OR "UNCLEARED WITH A BADGE" EMPLOYEE TERMINATIONS

(Applicable if Seller has "L" or "Q" cleared or "Uncleared With A Badge" employees.)

Seller shall notify Buyer's designated security representative by telephone within eight hours after termination of any "L" or "Q" cleared or "Uncleared With A Badge" seller employee who has been assigned to work under this Order. If seller fails to notify Buyer's designated security representative within eight hours, Seller shall be responsible for any damage or injury resulting from or arising out of the actions or omissions of Seller's former employees.

Such notice shall be confirmed by facsimile or e-mail to Buyer's Personnel Security Department.

30. PRIORITY RATING

If so identified, this Order is a "rated order" certified for national defense use, and Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

31. PROHIBITION ON ACRONIS BRANDED PRODUCTS AND SERVICES

Acronis is a global technology company that develops on-premises and cloud software for backup, disaster recovery, and secure file sync and share and data access that the DOE Chief Information Officer has determined presents significant risk to the Department's cybersecurity. Seller shall not provide any Acronis branded products or services under this Order and shall not store any Buyer information on Acronis branded software systems.

32. SEVERABILITY

If any provision of this Agreement (or portion thereof) is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the Parties agree the court will construe the provision in a manner that renders the provision valid and enforceable to the fullest extent possible under the law of the applicable jurisdiction and that the remaining provisions will remain in full force and effect.

33. SURVIVAL

All provisions of this Agreement which by their nature should apply beyond its term will remain in force after any termination or expiration of this Agreement including, but not limited to, those addressing the following subjects: Prices; Invoices, Discounts, and Payment; Setoff; Warranty; Stop Work Order; Indemnification; Insurance; Confidentiality; Intellectual Property; Relationship Between the Parties/ Independent Contractor; Disputes; Waiver, Rights, and Remedies; Release of Information to the Public; and Survival.

34. ENTIRE AGREEMENT

This Order, including those additional terms or conditions incorporated herein by reference and made a part hereof, constitute the entire agreement between the Parties with respect to the Order and will supersede all prior or contemporaneous understandings, proposals, negotiations, communications, commitments or representations, oral or

written, between the Parties or their representatives. Should Seller require a EULA, TOS, or similar legal instrument or agreement through an "I agree" type click box or other comparable mechanism (such as "click-wrap" or "browse-wrap" agreements) to access any product provided pursuant to this Order, the terms of such EULA, TOS, or similar legal instrument or agreement shall not have the effect of, or be interpreted as, modifying, supplementing, or otherwise altering this Order or binding the Buyer or any end user acting on behalf of the Buyer or the Government. No modification of this Order or waiver or addition to any of its terms and conditions will be binding upon either Party unless made in writing and signed by the Parties' authorized representatives specifically designated in the Order.

35. ORDER OF PRECEDENCE

Unless otherwise specified, for any inconsistency between the Order, these terms and conditions, or the specifications and drawings, the inconsistency shall be resolved by giving precedence in the following order:

- (a) The Order document, including these terms and conditions of purchase;
- (b) Product drawings/specification/SS prefix documents;
- (c) Design/Production Agency material/process specifications and standards;
- (d) Applicable federal, military, industrial or technical society material/process specifications and standards; and
- (f) Equipment manufacturer's operating procedures.

36. EMPLOYEE CONCERNS PROGRAM

The Department of Energy Employee Concerns Program (ECP) encourages the free and open expression of employee concerns and provides DOE federal, contractor, and subcontractor employees with an independent avenue to raise any concern related, but not limited, to the environment, safety, health, and management. The ECP office is within the Office of Environment, Health, Safety and Security (EHSS). Additional ECP information can be located at: https://powerpedia.energy.gov/wiki/Employee_Concerns_Program

37. COMPLIANCE WITH LAWS

Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent rules and regulations and such compliance shall be a material requirement of this Agreement. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits.

Seller shall include this clause in all subcontracts, at any tier, involving the performance of this Agreement.

38. INTEGRITY

Seller, its employees, agents, or representatives shall not provide, directly or indirectly, any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind to Buyer employees in any way related to this subcontract directly or indirectly. A breach of this provision will be deemed a material breach of this Contract and grounds for termination of this Contract.

39. FAR AND DEAR CLAUSES/PROVISIONS AND GOVERNMENT DIRECTIVES INCORPORATED BY REFERENCE

This Order incorporates one or more FAR and DEAR provisions/clauses by reference with the same force and effect as if they were given in full text. For FAR and DEAR provisions incorporated by reference, "Government" means "Buyer", "Contractor" means "Seller," "Contracting Officer" means "Buyer's Purchasing Representative," and "Subcontractor" means "Seller's Subcontractor" (unless expressly set forth otherwise below). DOE Directives incorporated by reference are available online at directives.doe.gov. The words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2; (2) when title to subcontractor property is to be transferred directly to the Government; and (3) when information, data, and/or reports are to be transferred directly to the Government. Nothing in this Order grants Seller a direct right of action against the Government. Such provisions/clauses are identified below and elsewhere in this Order by their title, effectivity date, and reference where they appear in the FAR and/or DEAR.

This Order may be subject to additional FAR and DEAR clauses/provisions and government directives incorporated

in to the Buyer's Prime Contract at a later date from this document's publication. These additional clauses will only be applicable for future orders placed after the initial effective date. A list of these additional applicable clauses can be located at: <https://supplier.kcnsc.doe.gov/ptl/general-information> under *Contract Language, Terms & Conditions (Current)*, 1612 Supplemental

Applicable to all Orders, regardless of amount:

FAR 52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017)
FAR 52.204-10	Reporting Executive Compensation and First Tier Subcontract Awards "(The usual substitution of the parties is not applicable to this clause. Seller shall report to Buyer the information required under the clause.) (October 2016)
FAR 52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018)
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019)
FAR 52.215-23	Limitations on Pass-Through Charges (JUN 2020)
FAR 52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation (MAY 2014)
FAR 52.222-21	Prohibition Of Segregated Facilities (APR 2015)
FAR 52.222-26	Equal Opportunity (SEP 2016)
FAR 52.222-50	Combating Trafficking in Persons (JAN 2019)
FAR 52.244-6	Subcontracts for Commercial Items (AUG 2019)
FAR 52.225-1	Buy American – Supplies (MAY 2014)
FAR 52.225-13	Restrictions On Certain Foreign Purchases (JUN 2008)
FAR 52.227-3	Patent Indemnity (APR 1984)
FAR 52.227-14	Rights in Data-General (with ALT V and modified in accordance with 927.409(a)) (MAY 2014)
FAR 52.242-15	Stop Work Order (AUG 1989), ALTERNATE I (APR 1984)
FAR 52.246-6	Inspection—Time And Material And Labor Hour (MAY 2001), ALTERNATE I (APR 1984) (Applies when inspection and acceptance are to be performed at Seller's plant).
DEAR 952.203-70	Whistleblower Protection For Contractor Employees (DEC 2000)
DEAR 952.247-70	Foreign Travel (JUN 2010)
DEAR 970.5204-2	Laws, Regulations, And DOE Directives (DEC 2000)(Deviation)
DEAR 970.5245-1	Property (AUG 2016); "Government" remains unchanged.
DOE O 206.1	Department of Energy Privacy Program (JAN 2009)
DOE O 471.3	Identifying and Protecting Official Use Only Information (JAN 2011)

Applicable to all orders regardless of amount:

...if funded under the Recovery Act

FAR 52.203-15	Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010)
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...in all subcontracts except those for COTS items in which Seller may have Federal contract information residing in or transiting through its information system:

FAR 52.204-21	Basic Safeguarding of Covered Contractor Information Systems (JUN 2016)
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...in all service contracts subject to the Service Contract Labor Standards Statute:

FAR 52.222-41	Service Contract Labor Standards (MAY 2014)
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...in all service contracts subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the US:

FAR 52.222-55	Minimum Wages Under Executive Order 13658 (DEC 2015)
FAR 52.222-62	Paid Sick Leave Under Executive Order 13706 (JAN 2017)

...if delivery of hazardous material is required:

FAR 52.223-3	Hazardous Material Identification And Material Safety Data (JAN 1997), ALTERNATE I (JUL 1995)
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...if design, development or operation of a system of records on individuals is required to accomplish an agency function:

FAR 52.224-1 Privacy Act Notification (APR 1984)
FAR 52.224-2 Privacy Act (APR 1984)

...if subcontractor employees will: (1) Have access to a system of records, (2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) Design, develop, maintain, or operate a system of records:

FAR 52.224 -3 Privacy Training (JAN 2017)

...if FAR 52.224-3 is applicable and the agency specifies that only its agency-provided training is acceptable:

FAR 52.224 -3 ALT I Privacy Training (JAN 2017)

...for subcontracts that may involve making unclassified information about nuclear technology available to sensitive foreign nations:

DEAR 952.204-71 Sensitive Foreign Nations Controls (MAR 2011)

...if any contract work is subcontracted in accordance with FAR 48 CFR 52.227-3:

DEAR 970.5227-6 Patent Indemnity – Subcontracts (DEC 2000)

...if real property will be delivered or acquired:

DEAR 952.217-70 Acquisition of Real Property (MAR 2011)

...if work is to be performed on a DOE site:

FAR 52.204-9 Personal Identity Verification of Contractor Personnel (JAN 2011)

...if complex or hazardous work is to be performed on a DOE owned or contracted facility:

DEAR 970.5223-1 Integration of Environment, Safety, And Health into Work Planning and Execution (DEC 2000)

...if for protective services or other services performed on the DOE owned site which will affect the continuity of operation of the facility:

DEAR 970.5222-1 Collective Bargaining Agreements—Management and Operating Contracts (DEC 2000);
Applicable to all subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility

...if an uncleared contractor requires physical access to an NNSA site, logical access to NNSA Information Technology systems (including remote access), or a combination of both for greater than 179 days:

NNSA SD 206.2 Implementation of Personal Identity Verification for Uncleared Contractors (APR 2018)

...for all subcontracts that are subject to the provisions of 10 CFR part 707 which applies to DOE contractors and subcontractors performing work at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, and to individuals with unescorted access to the control areas of certain DOE reactors:

DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites (DEC 2010)

...if energy-consuming products will be delivered or acquired:

FAR 52.223-15 Energy Efficiency in Energy-Consuming Products
DEAR 952.204-77 Computer Security (AUG 2006)

...if printing (as defined in Title I of the U.S. Government Printing and Binding Regulations) is required:

DEAR 970.5208-1 Printing (DEC 2000)

...if experimental, developmental, or research work will be performed by a small business firm or domestic nonprofit organization:

DEAR 952.227-11 Patent Rights – Retention by the Contractor (short form) (MAR 1995); As flowed down herein "Contractor" shall mean "Seller"

...if experimental, developmental, or research work will be performed and the subcontract does not contain 952.227-11:

DEAR 952.227-13 Patent Rights – acquisition by the Government (DEC 2007); As flowed down herein
“Contractor” shall mean “Seller”

...if FAR 52.227-14 applies and experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract

FAR 52.227-16 Additional Data Requirements (JUN 1987)

...if the subcontract involves research work:

DEAR 952.235-71 Research Misconduct (JUL 2005)

DEAR 970.5227-3 Technology Transfer Mission (Aug 2002) Alternate II (DEC 2000) (NNSA Class Deviation Oct 2011)

...replaces FAR 52.227-14 if the subcontract, including subcontracts for related support services, involves the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under Buyer's contract with DOE and technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data:

DEAR 970.5227-1 Rights in Data – Facilities (DEC 2010)

...if the amount of royalties reported during negotiation of the subcontract exceeds \$250:

DEAR 970.5227-8 Refund Of Royalties (AUG 2002)

...in all subcontracts that will be performed outside the US in areas of – (1) Combat operations, as designated by the Secretary of Defense; or (2) Other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area:

FAR 52.225-26 Contractors Performing Private Security Functions Outside the United States (OCT 2016)

...if the subcontractor is a small business:

FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (DEC 2013)

...in all subcontracts likely to include classified subject matter:

FAR 52.227-10 Filing of Patent Applications – Classified Subject Matter (DEC 2007)

DEAR 952.204-70 Classification/Declassification (SEP 1997)

DEAR 970.5204-1 Counterintelligence (DEC 2010), Paragraph (a) only

...when work involves access to classified information, special nuclear material or authorized unrestricted access to areas containing these:

DEAR 952.204-2 Security (MAR 2011) Class Deviation (OCT 2013)

...for any contract that involves access to Unclassified Controlled Nuclear Information:

DOE O 471.1B Identification and Protection of Unclassified Controlled Nuclear Information

...if seller is required to have DOE controlled or protected information, technologies, or equipment at their facilities or on their systems

DOE O 142.3A Unclassified Foreign Visits and Assignments Program

...if Seller will be required to process, discuss, or store Classified Information, Sensitive but Unclassified (SBU) Information, or Controlled Unclassified Information (CUI)

DOE O 470.6 Technical Security Program

... and If the subcontractor will be required to handle or store Government Owned Data on their systems:

NIST SP 800-171 Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations

...when work may generate classified information, documents or material:

DOE O 475.2B Identifying Classified Information

...if involving international air transportation:

FAR 52.247-63 Preference for U.S.-Flag Air Carriers (JUN 2003)

...if involving ocean transportation of supplies subject to the Cargo Preference act of 1954:
FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)

...if performance involves risk of public liability for a nuclear incident or precautionary evacuation and Seller is not subject to Nuclear Regulatory Commission (NRC) financial protection requirements or NRC indemnification:
DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (JUN 1996).

...when a major helium requirement is involved:
FAR 52.208-8 Required Sources for Helium and Helium Usage Data (APR 2014)

...if the costs incurred are a factor in determining amount payable to Seller under Order:
DEAR 970.5232-3 Accounts, Records, And Inspection (DEC 2010)

... if work is to be performed on a government site:
FAR 52.237-2 Protection Of Government Buildings, Equipment, And Vegetation (APR 1984)

Applicable if the Order exceeds \$3,500, is not a COTS item and includes work to be performed in the United States:
FAR 52.222-54 Employment Eligibility Verification (AUG 2013)

Applicable if the Order exceeds the Micro-Purchase Threshold:
FAR 52.223-18 Encouraging Contractor policies To Ban Text Messaging While Driving (AUG 2011)

Applicable if the Order exceeds \$10,000 and will be performed wholly or partially in the United States:
FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (DEC 2010);

Applicable if the Order exceeds \$15,000:
FAR 52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (MAY 2014).
FAR 52.222-36 Equal Opportunity for Workers with Disabilities (JUL 2014)

Applicable if the Order exceeds \$100,000 and is for research and development activities:
DEAR 970.5227-4 Authorization and Consent (AUG 2002)
DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

Applicable if the Order exceeds \$150,000:
FAR 52.203-7 Anti-Kickback Procedures (excepting paragraph (c)(1)) (MAY 2014)
FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)
FAR 52.215-2 Audit Records - Negotiation (OCT 2010)
FAR 52.215-23 Limitations On Pass-Through Charges (OCT 2009)
FAR 52.222-35 Equal Opportunity for Veterans (OCT 2015)
FAR 52.222-37 Employments Reports on Veterans (FEB 2016)

...and subcontractor employees will perform acquisition functions closely associated with inherently governmental functions:
FAR 52.203-16 Preventing Personal Conflicts of Interest (DEC 2011)

Applicable if the Order exceeds the SAT:
FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006)
FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (APR 2014)
FAR 52.227-1 Authorization and Consent (DEC 2007)
FAR 52.219-8 Utilization of Small Business Concerns (OCT 2018)

...and is for commercial services:
FAR 52.222-17 Non-displacement of Qualified Workers (MAY 2014)

...and involves the performance of advisory and assistance services:

DEAR 952.209-72 Organizational Conflicts Of Interest (AUG 2009), ALTERNATE I. (b)(1)(i) Period is 'five (5) years'

...and support operations of the DOE facility and offers significant subcontracting opportunities for energy efficient or environmentally sustainable products or services:

DEAR 952.223-78 Sustainable Acquisition Program (OCT 2010)

Applicable if the Order exceeds \$500,000, and is not for COTS items:

FAR 52.222-60 Paycheck Transparency (Executive Order 13673) (OCT 2016)

Applicable if the Orders exceeds \$500,000 and is not for commercial items:

DEAR 952.226-74 Displaced Employee Hiring Preference (JUN 1997)

DEAR 970.5226-2 Workforce Restructuring Under Section 3161 Of The National Defense Authorization Act For Fiscal Year 1993 (DEC 2000)

and it is for services:

FAR 52.204-14 Service Contract Reporting Requirements (OCT 2016)

Applicable if the Order exceeds \$700,000, and the subcontractor is not a small business:

FAR 52.219-9 Small Business Subcontracting Plan (AUG 2018)

Applicable if Order value is \$750,000 or greater and a Certificate of Current Cost or Pricing Data is required in connection with initial award or any subsequent modification of Order:

FAR 52.215-10 Price Reduction For Defective Certified Cost Or Pricing Data (AUG 2011)

FAR 52.215-12 Subcontractor Certified Cost Or Pricing Data (OCT 2010)

FAR 52.215-13 Subcontractor Certified Cost Or Pricing Data - - Modifications (OCT 2010)

FAR 52.215-15 Pension Adjustments And Asset Reversions (OCT 2010)

FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (JUL 2005).

FAR 52.215-19 Notification of Ownership Changes.

Applicable if the Order exceeds \$5,500,000, and has a performance period of more than 120 days:

FAR 52.203-13 Contractor Code of Business Ethics and Conduct (In Paragraph (b)(3)(i), the meaning of "agency office of the Inspector General" and "Contracting Officer" do not change, in Paragraph (b)(3)(ii) the meaning of "Government" does not change, and in Paragraphs (b)(3)(iii) and (c)(2)(ii)(F), the meaning of "OIG of the ordering agency", "IG of the agency" "agency OIG" and "Contracting Officer" do not change.) (OCT 2015)

Applicable if Order value exceeds \$5,500,000 and does not involve acquisition of a commercial item:

FAR 52.203-14 Display Of Hotline Poster(s) (OCT 2015)

Applicable if supplies may be imported into the United States in excess of \$15,000 may obtain duty-free entry:

FAR 52.225-8 Duty-Free Entry (OCT 2010)