

HONEYWELL FEDERAL MANUFACTURING & TECHNOLOGIES, LLC
TERMS AND CONDITIONS OF PURCHASE,
FIXED-PRICE CONSTRUCTION PURCHASE ORDER/CONTRACT
(Terms FP Construction 1658-03-21)
Effective: August 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 are strongly discouraged.)

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 (herein "Honeywell FM&T"), 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/Service" 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, unless otherwise expressly stated herein. 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) "CRD" means Contractor Requirements Document.
- (i) "DOE" means U.S. Department of Energy or any duly authorized representative thereof, including the Contracting Officer.
- (j) "DEAR" means Department of Energy Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this Order.
- (k) "FAR" means Federal Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this Order.
- (l) "Government" means The United States of America.
- (m) "Micro-Purchase Threshold" means the same as the definition in FAR 2.101.
- (n) "Order" means purchase order/contract when used in the context of referring to a contractual relationship between Buyer and Seller.

- (o) "SAT" means Simplified Acquisition Threshold as defined in FAR 2.101.
- (p) "Seller" means any person or company having a contract for the supply of good or service to the Buyer as identified in the Order.
- (q) "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. Subcontractor may be used interchangeably with Seller when describing the relationship between Honeywell FM&T "Buyer" and the offeror/performer of this Order.
- (r) "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 seller or manufacturer.

2. CHANGES

- (a) Buyer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the Order, including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In Buyer or Government-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from Buyer that causes a change shall be treated as a change order under this clause; provided, that Seller gives Buyer written notice stating (1) the date, circumstances, and source of the order and (2) that Seller regards the order as a change order.
- (c) Except as provided in this clause, no order, statement, or conduct of Buyer shall be treated as a change under this clause or entitle Seller to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in Seller's cost of, or the time required for, the performance of any part of the work under this Order, whether or not changed by any such order, Buyer shall make an equitable adjustment and modify the Order in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before Seller gives written notice as required. In the case of defective specifications for which Buyer is responsible, the equitable adjustment shall include any increased cost reasonably incurred by Seller in attempting to comply with the defective specifications.
- (e) Seller must assert any right it may have to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to Buyer a written statement describing the general nature and amount of proposal, unless this period is extended by Buyer. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.
- (f) No proposal by Seller for an equitable adjustment shall be allowed if asserted after final payment under this Order.

3. FEDERAL, STATE, AND LOCAL TAXES

Sales and use taxes are not applicable to this Order. Buyer will provide Seller with evidence of exemption from such taxes during the bidding period. If a project exemption is provided by the Buyer, Seller warrants that the Order price does not include any amount for taxes of any kind.

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under

this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

4. INVOICE AND PAYMENTS

(a) Seller shall be paid, upon submission of proper invoice(s), the prices stipulated herein for 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) If applicable, identify shipping number and date of shipment, including bill of lading number and weight if shipped on a Government bill of lading;
- (7) Seller name;
- (8) Seller remit payment address;
- (9) Name, address, and phone number of Seller representative to contact in the event of a defective invoice.

(b) Buyer shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by Buyer, on estimates of work accomplished which meets the standards of quality established under the Order, as approved by Buyer. Seller shall furnish a breakdown of the total Order price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments, in such detail as requested by Buyer. In the preparation of estimates Buyer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to Seller at locations other than the site may also be taken into consideration if:

- (1) Consideration is specifically authorized by this Order; and
- (2) Seller furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Order.

(c) Along with each request for progress payments, Seller shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that:

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Order;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the Order, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and
- (3) This request for progress payments does not include any amounts that Seller intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

(Name)

(Title)

(Date)

- (d) If Seller, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by Seller that fails to conform to the specifications, terms, and conditions of this Order (hereinafter referred to as the "unearned amount"), Seller shall:
- (1) Notify Buyer of such performance deficiency; and
 - (2) Be obligated to pay Buyer an amount (computed by Buyer in the manner provided in 31 U.S.C. 3903 (c) (1)) equal to interest on the unearned amount from the date of receipt of the unearned amount until:
 - (i) The date Seller notifies Buyer that the performance deficiency has been corrected; or
 - (ii) The date Seller reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.
- (e) In making progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the Order work. However, if Buyer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, Buyer may authorize payment to be made in full without retention of a percentage. When the work is substantially complete, Buyer shall retain from previously withheld funds and future progress payments that amount it considers adequate for protection of the Government and shall release to Seller all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the Order, for which the price is stated separately in the Order, payment shall be made for the completed work without retention of a percentage.
- (f) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as:
- (1) Relieving Seller from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
 - (2) Waiving the right of Buyer to require the fulfillment of all of the terms of the Order.
- (g) If performance or payment bonds are required under this Order, Buyer shall pay to Seller that portion of the Order price equal to the total premiums paid by Seller to obtain bonds. This payment shall be paid at one time to Seller together with the first progress payment otherwise due after Seller has: (1) furnished the bonds; (2) furnished evidence of full payment to the surety; and (3) submitted a request for such payment. Payments for bond premiums shall not be made as increments of individual progress payments. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of a progress payment attributable to bond premiums.
- (h) Upon completion and acceptance of all work, the amount due Seller under this Order shall be paid upon the presentation of a properly executed invoice and after Seller shall have furnished Buyer with a release of all claims against Buyer and the Government arising by virtue of this Order, other than claims in stated amounts that Seller has specifically excepted from the operation of the release.

5. DISPUTES

- (a) Seller and Buyer agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. The parties may consider the use of alternative disputes resolution (ADR). In the event mediation or arbitration is mutually agreed upon, costs shall be mutually shared by Seller and Buyer and it is agreed that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows: (1) any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Western District of Missouri, Western Division; (2) provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in the 16th Judicial Circuit Court of Jackson County, Missouri,

- (b) The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with Federal law. To the extent there is no Federal law, Missouri state law shall apply.
- (c) It is agreed that in the event of a dispute, there shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under this Agreement between the parties hereto or between Seller and its sub-tier subcontractors.

6. BUY AMERICAN – CONSTRUCTION MATERIALS

The Seller shall use only domestic construction material in performing this Order, except as provided in FAR 52.225-9(b)(2)-(3).

7. WAIVERS, RIGHTS AND REMEDIES

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.

8. TERMINATION FOR CONVENIENCE

- (a) Buyer may terminate performance of work under this Order in whole or, from time to time, in part if Buyer determines that a termination is in Buyer's and Government's interest. Buyer shall terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date.
- (b) 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 (referred to as subcontracts in this Order) for materials, services, or facilities, except as necessary to complete the continued portion of the Order.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to Buyer, as directed by Buyer, all right, title, and interest of Seller under the subcontracts terminated, in which case Buyer 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 approval or ratification will be final for purposes of this clause.
 - (6) As directed by Buyer, transfer title and 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, and (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.
 - (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 in which Buyer or 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 (b)(6) of this clause; 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.

- (c) 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 this 120-day period.
- (d) 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 title to those 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.
- (e) 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.
- (f) Subject to paragraph (e) of this clause, Seller and Buyer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) below, exclusive of costs shown in subparagraph (g)(3) below, may not exceed the total Order price as reduced by (1) the amount of payments previously made and (2) the Order price of work not terminated. The Order shall be modified, and Seller paid the agreed amount. Paragraph (g) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If Seller and Buyer fail to agree on the whole amount to be paid Seller because of the termination of work, Buyer shall pay Seller the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) above:
 - (1) For Order work performed before the effective date of termination, the total (without duplication of any items) of:
 - (i) The cost of this work;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Order if not included in subdivision (i) above; and
 - (iii) A sum, as profit on (i) above, determined by Buyer under FAR 49.202, in effect on the date of this Order, to be fair and reasonable; however, if it appears that Seller would have sustained a loss on the entire Order had it been completed, Buyer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.
 - (2) The reasonable costs of settlement of the work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
 - (iv) Except for normal spoilage, and except to the extent that Buyer expressly assumed the risk of loss, Buyer shall exclude from the amounts payable to Seller under paragraph (g) above, the fair value, as determined by Buyer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.
 - (v) The cost principles and procedures of FAR Part 31, in effect on the date of this Order, shall govern all costs claimed, agreed to, or determined under this clause.

- (vi) Seller shall have the right to pursue any claim or dispute under the Disputes clause, from any determination made by Buyer under paragraph (e), (g), or (l) of this clause, except that if Seller failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l), 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 (e), (g), or (l) Buyer shall pay Seller (1) the amount determined by Buyer if there is no right to pursue a claim or dispute hereunder or if such claim or dispute has not been timely pursued, or (2) 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 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 the provisions of this clause and not recovered by or credited to Buyer.
- (l) If the termination is partial, Seller may file a proposal with Buyer for an equitable adjustment of the price(s) of 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;
 - (1) 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.
 - (2) 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 Public Law 92-41 (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.
- (n) Unless otherwise provided in this Order or by statute, Seller shall maintain all records and documents relating to the terminated portion of this Order for 3 years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this Order. Seller shall make these records and documents available to Buyer, at Seller's office, at all reasonable times, without any direct charge. If approved by Buyer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

9. EXCUSABLE DELAYS, FORCE MAJEURE, TERMINATION FOR DEFAULT, LIQUIDATED DAMAGES (IF APPLICABLE)

- (a) If Seller refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Order including any extension, or fails to complete the work within this time, Buyer may, by written notice to Seller, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, Buyer may take over the work and complete it by Order or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Seller and its sureties shall be liable for any damage to Buyer resulting from Seller's refusal or failure to complete the work within the specified time, whether or not Seller's right to proceed with the work is terminated. This liability includes any increased costs incurred by Buyer in completing the work.
- (b) Seller's right to proceed shall not be terminated nor Seller charged with damages under this clause, if:
 - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Seller. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Seller in the performance of a Order with Buyer, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight

embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Seller and the subcontractors or suppliers; and

- (2) Seller, within 10 days from the beginning of any delay (unless extended by Buyer), notifies Buyer in writing of the causes of delay. Buyer shall ascertain the facts and the extent of delay. If, in the judgment of Buyer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of Buyer shall be final and conclusive on the parties, subject to the remedies under the Disputes clause.
- (c) If, after termination of Seller's right to proceed, it is determined that Seller was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Buyer.
- (d) The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this Order.
- (e) If the Seller fails to complete the work within the time specified in the contract, the Seller shall pay liquidated damages to the Buyer in the amount of _____ [Buyer insert amount, if applicable] for each calendar day of delay until the work is completed or accepted. If not amount is selected, then actual damages will be calculated after during closeout.
- (f) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under this clause.

10. SUSPECT/COUNTERFEIT ITEMS

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.

Buyer shall incur no liability for failure to return impounded items to Seller and does not assume any liability for loss or damage to items impounded pursuant to this clause regardless of the circumstances under which said loss or damage may have occurred, and whether impounded items are in Buyer's possession or under its control.

Nothing in this clause shall limit Buyer's right to reject S/CI and related paperwork, as non-conforming, to deny payment for such items, to return such items to Seller once NNSA/DOE has released the items, or to assert other remedies provided under this Order or by law.

Seller shall include this clause in subcontracts hereunder.

11. WARRANTY OF CONSTRUCTION

- (a) In addition to any other warranties in this Order, Seller warrants, except as provided in paragraph (j) of this clause, that work performed under this Order conforms to the Order requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by Seller or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of 1-year (2 years for roofing and flashing work) from the date of final acceptance of the work. If Buyer takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1-year (2 years for roofing and flashing work) from the date Buyer takes possession.
- (c) Seller shall remedy at Seller's expense any failure to conform, or any defect. In addition, Seller shall remedy at Seller's expense any damage to Buyer-owned or controlled real or personal property, when that damage is the result of:
 - (1) Seller's failure to conform to Order requirements; or
 - (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) Seller shall restore any work damaged in fulfilling the terms and conditions of this clause. Seller's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- (e) Buyer shall notify Seller, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If Seller fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Buyer shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Seller's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Order, Seller shall:
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed, in writing, for the benefit of Buyer, if directed by Buyer; and
 - (3) Enforce all warranties for the benefit of Buyer, if directed by Buyer.
- (h) In the event Seller's warranty under paragraph (b) of this clause has expired, Buyer may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of Seller or subcontractor or supplier at any tier, Seller shall not be liable for the repair of any defects of material or design furnished by Buyer nor for the repair of any damage that results from any defect in Buyer-furnished material or design.
- (j) This warranty shall not limit Buyer's rights under the Inspection clause of this Order with respect to latent defects, gross mistakes, or fraud.
- (k) Defects in design or manufacture of equipment specified by Buyer on a "brand name and model" basis, shall not be included in this warranty. In this event, Seller shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to Buyer.

12. 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.

13. 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.

14. CONFLICTS OF INTEREST

Prevention of Conflict of Interest.

- (a) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.
- (b) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.
- (c) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

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.

15. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- (a) Seller acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. Seller also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Buyer, as well as from the drawings and specifications made a part of this Order. Any failure of Seller to take the actions described and acknowledged in this paragraph will not relieve Seller from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Buyer.
- (b) Buyer assumes no responsibility for any conclusions or interpretations made by Seller based on the information made available by Buyer. Nor does Buyer assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Order, unless that understanding or representation is expressly stated in this Order.

16. DIFFERING SITE CONDITIONS

- (a) Seller shall promptly, and before the conditions are disturbed, give a written notice to Buyer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Order, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Order.
- (b) Buyer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Seller's cost of, or the time required for, performing any part of the work under this Order, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Order modified in writing accordingly.
- (c) No request by Seller for an equitable adjustment to the Order under this clause shall be allowed, unless Seller has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by Buyer.
- (d) No request by Seller for an equitable adjustment to the Order for differing site conditions shall be allowed if made after final payment under this Order.

17. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

- (a) Seller shall keep on the work site a copy of the drawings and specifications and shall at all times give Buyer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to Buyer, who shall promptly make a determination in writing. Any adjustment by Seller without such a determination shall be at its own risk and expense. Buyer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Where reference is made to specifications, standards, or other publications of the Government, technical societies, or testing organizations, the latest issue of such specification, standard, or publication in effect on the effective date of this Order shall apply.
- (c) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of Buyer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" Buyer, unless otherwise expressly stated.

- (d) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Order unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed."
- (e) Shop drawings means drawings, submitted to Buyer by Seller, or any lower tier subcontractor pursuant to this Order, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Seller to explain in detail specific portions of the work required by the Order. Buyer may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Order.
- (f) If this Order requires shop drawings, Seller shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with Order requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Buyer without evidence of Seller's approval may be returned for resubmission. Buyer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate Buyer's reasons therefore. Any work done before such approval shall be at Seller's risk. Approval by Buyer shall not relieve Seller from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Order, except with respect to variations described and approved in accordance with (g) below.
- (g) If shop drawings show variations from the Order requirements, Seller shall describe such variations in writing, separate from the drawings, at the time of submission. If Buyer approves any such variation, Buyer shall issue an appropriate Order modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (h) Seller shall submit to Buyer for approval six copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Four sets (unless otherwise indicated) of all shop drawings, will be retained by Buyer and one set will be returned to Seller.
- (i) This clause shall be included in all subcontracts at any tier.

18. LAYOUT OF WORK

Seller shall lay out its work from Buyer-established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. Seller shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. Seller shall be responsible for executing the work to the lines and grades that may be established or indicated by Buyer. Seller shall also be responsible for maintaining and preserving all stakes and other marks established by Buyer until authorized to remove them. If such marks are destroyed by Seller or through its negligence before their removal is authorized, Buyer may replace them and deduct the expense of the replacement from any amounts due or to become due to Seller.

19. MATERIAL AND WORKMANSHIP

- (a) All equipment, material, and articles incorporated into the work covered by this Order shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Order. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Seller may, at its option, use any equipment, material, article, or process that, in the judgment of Buyer, is equal to that named in the specifications, unless otherwise specifically provided in this Order.
- (b) Seller shall obtain Buyer's approval of machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, Seller shall furnish to Buyer the name of manufacturer, model number, and other information concerning the performance, capacity, nature, and rating of machinery, and mechanical and other equipment. When required by this Order or by Buyer, Seller shall also obtain Buyer's approval of materials or articles that Seller contemplates incorporating into the work. When requesting approval, Seller shall provide full information concerning the material or articles. When directed to do so, Seller shall submit samples for approval at Seller's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- (c) All work under this Order shall be performed in a skillful and workmanlike manner. Buyer may require, in writing, that Seller remove from the work any employee Buyer deems incompetent, careless, or otherwise objectionable.
- (d) 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 inspections and other verification measures as are customary in the industry to ensure that parts, components, and materials furnished by suppliers of Seller and incorporated into end items furnished to Buyer are not counterfeit or of suspect quality.

20. DESCRIPTIVE SUBMITTALS, SUBSTITUTIONS AND SAMPLES

(Applicable when the specifications or drawings require the submission of descriptive submittals or samples for Buyer approval.)

- (a) Descriptive Submittals. In accordance with the clause entitled "Material and Workmanship," Seller shall submit for Buyer's approval, six or more copies of each descriptive submittal as follows:
 - (1) Shop drawings, catalog data, equipment and materials lists, elementary diagrams, wiring diagrams, installation instructions, maintenance manuals and instructions, and operation brochures, shall be submitted for the items of equipment and materials listed in the specifications and drawings in accordance with the coded legend set forth therein within the time required by Buyer. If materials or equipment are required but are not specifically listed herein, the most closely related item listed will govern the type of descriptive submittal required. After Buyer's approval has been indicated on each copy by appropriate signature, stamp and date, four or more copies will be retained by Buyer and the balance returned to Seller. Approval of such submittals will not relieve Seller of the responsibility for correcting any errors that may exist or for meeting requirements of the specifications and drawings.
 - (2) Submittals shall include a list showing each item and manufacturer for approval and shall be submitted concurrently with all equipment that forms a system or subsystem that must be reviewed simultaneously because of coordination requirements.
 - (3) Where NFPA codes or other prescribed codes require that materials and/or fixtures shall be approved, listed, or labeled; this approval shall be that of Underwriters Laboratory, or Factory Mutual Research Corporation. Where a company has but a single product and that company is listed as approved by either of the above firms, individual material and/or fixture approval will not be required. However, for a company having a multiple line of either materials or fixtures, some of which are not approved, then individual approved notification is required.
 - (4) Catalogs for submittal shall have unrelated pages removed. Capacities and specified parameters relating to the item shall be clearly marked.
 - (5) Maintenance manuals and instructions shall indicate routine-type work, defined by step-by-step instructions that should be performed to insure long life and proper operations. The recommended frequency of performance shall also be included. Instructions should include possible trouble spots with diagnosis and correction of each. These manuals and instructions shall be turned over to Buyer upon completion of the project.
 - (6) Theory of operation brochures shall describe the function of each component or subassembly in block-diagram-type presentation to a degree that a mechanic will understand the product well enough to operate and maintain it. These brochures will be submitted to Buyer upon completion of the project.
 - (7) All items and materials requiring a fire rating shall be U.L. labeled or a certificate from the manufacturer certifying the U.L. rating shall be submitted to Buyer. Seller shall furnish a letter certification stating that all fire rated materials used in the construction were installed in accordance with the U.L. requirements.
- (b) Substitutions. Written authorization of Buyer is required for inclusion in the work of items proposed to be substituted in lieu of those specified or referenced in accordance with the clause entitled "Changes."
- (c) Samples.

- (1) When samples are required, they shall be furnished at Seller's expense in accordance with the clause entitled "Material and Workmanship." Samples shall be submitted within the time specified, or if no time is specified, within a reasonable time before use to permit inspection and testing. Samples shall be shipped prepaid, delivered as directed by Buyer, and shall be properly marked to show the name of the material, trademark of manufacturer, place of origin, number and name of work where the material represented by the sample will be used, and the name of Seller submitting the sample.
- (2) Samples not subject to destructive testing may be retained by Buyer until completion of the construction. If requested in writing by Seller at the time of submission, samples will be returned at Seller's expense upon completion of the construction. Failure of any samples to pass specified requirements will be sufficient cause for refusal to consider further any samples from the same manufacturer whose materials failed to pass testing requirements.

21. PROGRESS SCHEDULES AND REQUIREMENTS FOR OVERTIME WORK

- (a) Seller shall, within 15 days after receipt of a notice to proceed or such other period of time determined by Buyer, prepare and submit a construction progress schedule to Buyer for approval. The progress schedule shall be in the form, detail and number of copies prescribed by Buyer showing the order in which Seller proposes to perform the work, and the dates on which Seller contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment, interruption of utility services, and other key work activities). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the performance period of the Order. Buyer may require a revised progress schedule where changes are made to the Order affecting the amount or type of work to be performed or the performance period of the Order. If Seller fails to submit an initial or revised progress schedule within the time prescribed, Buyer may withhold approval of progress payments until Seller submits the required schedule.
- (b) Seller shall submit periodic reports of actual progress at the intervals and in the form, detail, and number of copies, directed by Buyer. If, in the opinion of Buyer, Seller falls behind the approved schedule, Seller shall take steps necessary to improve its progress, including those that may be required by Buyer, without additional cost to Buyer. In this circumstance, Buyer may require Seller to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as Buyer deems necessary to demonstrate how the approved rate of progress will be regained. Where extended working hours are not attributable to an excusable delay under the Default clause of this Order, Seller shall be liable for any increased costs to Buyer for administering the Order (i.e. additional security forces, project engineer superintendence, or utilities) during such periods.
- (c) Onsite work during other than the hours stated in the construction specifications (the normal daytime business hours of Buyer if not stated in the construction specifications) shall be subject to Buyer approval. Requests for extended work hours shall be submitted during Buyer's normal daytime business hours: (1) twenty-four hours in advance of Seller's need if the extended hours will occur on Saturday, Sunday, or a holiday; or, (2) four hours in advance of Seller's need if the extended hours will occur during other periods. Notwithstanding Buyer approval to work extended hours, such work will be stopped should it disrupt Buyer operations.
- (d) Failure of Seller to comply with the requirements of Buyer under this clause constitutes grounds for a determination by Buyer that Seller is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Order. Upon making this determination, Buyer may terminate Seller's right to proceed with the work, or any separable part of it, in accordance with the default terms of this Order.

22. OPERATIONS AND STORAGE AREAS

- (a) Seller shall confine all operations (including storage of materials) on Buyer premises to areas authorized or approved by Buyer. Seller shall hold and save Buyer and the Government, their officers and agents, free and harmless from liability of any nature occasioned by Seller's performance.
- (b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Seller only with the approval of Buyer and shall be built with labor and materials furnished by Seller without expense to Buyer. Such temporary buildings and utilities shall only be used for purposes directly related to the performance of Order work. The temporary buildings and utilities shall remain the property of Seller and shall be removed by Seller at its expense upon completion of the work. After removal, the site or sites of temporary buildings and

utilities shall be cleaned to the satisfaction of Buyer. With the written consent of Buyer, the buildings and utilities may be abandoned and need not be removed.

- (c) Seller shall, under regulations prescribed by Buyer, use only established roadways, or use temporary roadways constructed by Seller when and as authorized by Buyer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, Seller shall protect them from damage. Seller shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

23. CLEANING UP

Seller shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, Seller shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Buyer or the Government. Upon completing the work, Seller shall leave the work area in a clean, neat, and orderly condition satisfactory to Buyer.

24. UTILITIES

- (a) Water, Electricity and Gas.

Except as otherwise stated in this Order, water, electricity, gas and compressed air will be furnished to Seller without charge, subject only to its availability. In the event Buyer determines such utilities are not available, Seller will furnish necessary utilities from other sources at no additional cost to Buyer.

- (b) Temporary Utility Service.

Unless otherwise directed by Buyer, Seller shall install and maintain, at its own expense, all temporary utility connections to existing distribution systems. Such connections will be made only at locations approved by Buyer. The temporary lines and connections will be furnished, installed, connected, and maintained by Seller in a workmanlike manner, satisfactory to Buyer, and furnished with acceptable protective devices necessary to prevent damage to property. Inspection and acceptance by Buyer will not relieve Seller from liability for any damage caused by Seller in installing or maintaining such temporary utility services. The utility services shall be restored to their original condition, at the expense of Seller, when the temporary connections are removed, unless otherwise authorized by Buyer.

- (c) Temporary Lighting and Ventilation.

Seller will be responsible for furnishing and maintaining adequate facilities, approved by Buyer, for temporary lighting and ventilation, as required in all areas during all processes of work.

- (d) Telephone.

All telephones required by Seller shall be furnished at its own expense.

- (e) Interruptions to Utility Services.

Certain portions of the work may require interruptions to utility services. No outage will be permitted without prior written consent of Buyer. All outages shall be held to a minimum in number and duration. Specific requirements shall be as set forth in the specifications or drawings. All utility tie-in costs shall be included in the total Order price at non-premium time except to the extent this Order specifically requires tie-ins to be made at premium time.

25. PROJECT ENGINEERS AND SAFETY COORDINATOR

- (a) The work is subject to inspection pursuant to the clause entitled "Inspection" by Buyer's duly appointed Project Engineers who will be identified to Seller in writing prior to the commencement of work.
- (b) Buyer's duly appointed Safety Coordinator, who will also be identified to Seller in writing prior to the commencement of work, or the Safety Coordinator's designee, shall have authority to inspect Seller's work for compliance with safety requirements identified in the Construction Safety Handbook.

26. CONTRACTOR SAFETY HANDBOOK

In accordance with the terms of the DEAR clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution," the Contractor Safety Handbook, is incorporated into this Order, by reference, with the same force and effect as if stated in full text. This publication sets forth the safety, health, fire and environmental protection requirements, and plant rules, which must be followed by Seller and its subcontractors who are performing work in or about the DOE Kansas City Plant site, or other sites as identified in the Order. Unless specifically amended, nullified, or augmented by the Construction Specifications incorporated into this Order, all terms and requirements of the Contractor Safety Handbook shall apply. These requirements are in addition to any other requirements of this Order. Seller shall comply with the requirements of the most current version of the Contractor Safety Handbook as it appears on the Honeywell FM&T web site <https://supplier.kcnsc.doe.gov/ptl/home> (navigate to 'Current Suppliers,' then to 'Category Specific Information,' and then to 'Construction Services Suppliers').

27. USE OF EXPLOSIVES

Seller use, transportation, storage or handling of explosives, including detonating devices, shall be subject to approval only by written permission of Buyer's Project Engineer. If such written permission is granted, Seller shall be responsible for all injuries to persons, including death resulting therefrom, and for damage to property (including Buyer or Government property) resulting from use, transportation, storage or handling of explosives. Seller shall indemnify and hold harmless Buyer and the Government as well as their officers, agents and employees against any and all loss, damage, and expense against liability to third persons resulting from the use, transportation, storage or handling of explosives and shall promptly pay the cost and expense of the defense of any claim or litigation against Buyer or the Government or their officers, agents, or employees, resulting therefrom, including the amount of any judgment rendered against Buyer or Government, or settlement (made with the consent of Seller). The use, transportation, storage, or handling of explosives shall be performed in accordance with applicable OSHA rules and regulations and the latest edition of the DuPont Blasters Handbook.

28. INSPECTION

- (a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) Seller shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the Order conforms to Order requirements. Seller shall maintain complete inspection records and make them available to Buyer. All work shall be conducted under the general direction of Buyer and is subject to Buyer inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Order.
- (c) Buyer inspections and tests are for the sole benefit of Buyer and do not:
 - (1) Relieve Seller of responsibility for providing adequate quality control measures;
 - (2) Relieve Seller of responsibility for damage to or loss of the material before acceptance;
 - (3) Constitute or imply acceptance; or
 - (4) Affect the continuing rights of Buyer after acceptance of the completed work under paragraph (i) below.
- (d) The presence or absence of Buyer's project engineer or inspector does not relieve Seller from any Order requirement, nor is the project engineer or inspector authorized to change any requirement of the Order, including the specifications and drawings, unless authorized in writing by Buyer's Purchasing Representative.
- (e) Seller shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Buyer. Buyer may charge to Seller any additional cost of inspection or test when work is not ready at the time specified by Seller for inspection or test, or when prior rejection makes reinspection or retest necessary. Buyer shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the Order.
- (f) Seller shall, without charge, replace or correct work found by Buyer not to conform to Order requirements, unless in the public interest Buyer or the Government consents to accept the work with an appropriate adjustment in Order price. Seller shall promptly segregate and remove rejected material from the premises.

- (g) If Seller does not promptly replace or correct rejected work, Buyer may (1) by Order or otherwise, replace or correct the work and charge the cost to Seller or (2) terminate Seller's right to proceed in accordance with the "Default" clause of this Order.
- (h) If, before acceptance of the entire work, Buyer decides to examine already completed work by removing it or tearing it out, Seller, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of Seller or its subcontractors, Seller shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet Order requirements, Buyer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the Order, Buyer shall accept, as promptly as practicable after completion and inspection, all work required by the Order or that portion of the work Buyer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Buyer's rights under any warranty or guarantee.

29. USE AND POSSESSION PRIOR TO COMPLETION

- (a) Buyer or the Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, Buyer shall furnish Seller a list of items of work remaining to be performed or corrected on those portions of the work that Buyer or Government intends to take possession of or use. However, failure of Buyer to list any item of work shall not relieve Seller of responsibility for complying with the terms of the Order. Buyer's or Government's possession or use shall not be deemed an acceptance of any work under the Order.
- (b) While Buyer or Government has such possession or use, Seller shall be relieved of the responsibility for the loss of or damage to the work resulting from Buyer's or Government's possession or use. If prior possession or use by Buyer or Government delays the progress of the work or causes additional expense to Seller, an equitable adjustment shall be made in the Order price or the time of completion, and the Order shall be modified in writing accordingly.

30. PERFORMANCE OF WORK BY SELLER

Seller shall perform on the site, and with its own organization, work equivalent to at least fifteen (15) percent of the total amount of work to be performed under this Order. This percentage may be reduced if Buyer determines that the reduction would be to the advantage of Buyer or the Government.

31. SUPERINTENDENCE BY SELLER

At all times during performance of this Order and until the work is completed and accepted, Seller shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to Buyer and has authority to act for Seller.

32. OTHER PURCHASE ORDERS/CONTRACTS

Buyer or the Government may undertake or award other Order for additional work at or near the site of the work under this Order. Seller shall fully cooperate with the other contractors or subcontractors and with Buyer or Government employees and shall carefully adapt scheduling and performing the work under this Order to accommodate the additional work, heeding any direction that may be provided by Buyer. Seller shall not commit or permit any act that will interfere with the performance of work by any other contractor, subcontractor, Buyer or Government employees.

33. SUSPENSION OF WORK

- (a) Buyer may order Seller, in writing, to suspend, delay, or interrupt all or any part of the work of this Order for the period of time that Buyer determines appropriate for the convenience of Buyer or the Government.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of Buyer in the administration of this Order, or (2) by Buyer's failure to act within the time specified in this Order (or within a reasonable time if not specified), an adjustment shall be made for any

increase in the cost of performance of this Order (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Order modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Seller, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Order.

- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before Seller shall have notified Buyer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Order.

34. LIABILITY FOR DAMAGES, PROTECTION OF EXISTING INSTALLATION

- (a) Liability. Seller shall be responsible for all injury or death to persons or damage to property or underground utilities which are indicated in the specifications and/or drawings (or the existence of which Seller knew or should have known) that occurs as a result of performing work hereunder. Seller shall indemnify and hold harmless Buyer and the Government and their officers and employees from and against all claims or suits based upon such injury or damage. Seller shall also be responsible for all material delivered and work performed until completion and final acceptance of the work.
- (b) Protection of Existing Installation, Materials, and Work.
 - (1) Seller shall protect all existing structures, traffic signs, and installation of any kind (including underground property or underground utilities which are indicated in the specifications and/or drawings or the existence of which is otherwise made known to Seller) against damages or interruption of service. Seller shall at all times protect and preserve all materials, supplies and equipment of every description, including property which may be Government-furnished or owned, and all work performed. All requests of Buyer to enclose or specially protect such property shall be complied with.
 - (2) If Buyer determines that structures, installation, materials, equipment, supplies, and work performed are not adequately protected by Seller, necessary protective action may be taken by Buyer, and the cost thereof will be charged to Seller or be deducted from any payments due Seller. Unless otherwise stated in these terms and conditions or directed by Buyer, damage to any utilities, the existence of which is not made known or not indicated in the specifications or drawings, shall be repaired immediately by Seller and an equitable adjustment (excluding profit) will be made in the Order price and performance period for increased performance costs and/or delays attributable to the repair.

35. BONDING REQUIREMENTS - CONSTRUCTION

(Applicable if this Order exceeds \$100,000.)

- (a) Bond Requirement. Seller shall not be allowed to begin work under this Order until it has furnished: (1) a payment bond to assure payment of all persons supplying material and labor in connection with the work hereunder; and (2) a performance bond securing performance of the work and fulfillment of Seller's other obligations under the Order.
- (b) Penal Sums. The penal sum of bonds shall be based upon the Order price (or estimated amount appearing on the face of the Order) as follows:
 - (1) Payment Bond: shall be 100% of the Order price. If the Order price increases, an additional amount equal to 100% of the amount of the increase.
 - (2) Performance Bond: shall be 100% of the Order price. If the Order price increases, an amount equal to 100% of the amount of the increase.
- (c) Acceptability of Sureties. Corporate or Individual Sureties offered for payment and performance bonds by Seller shall meet the following requirements:

- (1) Corporate Sureties -- must appear on the list contained in the Department of Treasury Circular #570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" in accordance with FAR Section 28.202
 - (2) Individual Sureties -- must meet the requirements described under FAR Section 28.203.
- (d) Alternatives in lieu of Sureties. Seller may deposit with Buyer any of the types of security listed under FAR Section 28.204 (i.e. United States bonds or notes, certified or cashiers checks, bank drafts, money orders, or currency) instead of furnishing corporate or individual sureties on payment and performance bonds. When any of these types of security are furnished, Seller shall execute the payment and performance bonds forms as the principal and shall incorporate a statement on the bond forms pledging the security. Additionally, where bonds or notes are deposited, Seller shall furnish a duly executed power of attorney and agreement authorizing the collection or sale of such bonds or notes in the event of default of the principal on the payment or performance bond.
- (e) Bid Guarantee
- (1) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.
 - (2) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds-
 - (i) To unsuccessful bidders as soon as practicable after the opening of bids; and
 - (ii) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.
 - (3) The amount of the bid guarantee shall be 20percent of the bid price or \$3 million, whichever is less.
 - (4) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.
 - (5) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

36. ADDITIONAL BOND SECURITY

(Applicable if Seller is required to furnish payment or performance bonds under the Order.)

Seller shall promptly furnish additional security required to protect Buyer, the Government and persons supplying labor or materials under this Order if:

- (a) Any surety upon any bond furnished with this Order becomes unacceptable to Buyer or the Government;
- (b) Any surety fails to furnish reports on its financial condition as required by Buyer or the Government; or
- (c) The Order performance period is extended and an irrevocable letter of credit (ILC) is used as security. If Seller does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, Buyer has the right to immediately draw on the ILC.

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

It is Buyer's policy and intent that Government-owned/
Buyer-supplied equipment 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 equipment; therefore, when such occasions arise, the following Indemnification and Hold Harmless provision will be applicable to such use:

Contractor/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 equipment.

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.

Honeywell FM&T Terms & Conditions "U.S. GOVERNMENT PROPERTY IN POSSESSION OF SELLER" applies to purchase orders when performance includes U.S. Government Property as that term is defined in FAR 52.245-1, whether furnished, fabricated, acquired, or in the possession of Seller or any of Seller's Subcontractors or Suppliers at any tier, without regard to when title to such property becomes vested in the Buyer or the U.S. Government.

38. 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.

39. SELLER RESPONSIBILITY FOR CONTROL OF TECHNICAL DATA

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

Export Regulations:

Seller agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the jurisdictions in which Seller is established or from which **Products** may be supplied, will apply to their receipt and use. In no event shall Seller use, transfer, release, import, export, Products in violation of such applicable laws, regulations, orders or requirements. Exports and re-exports to parties who have been denied export privileges or debarred from an export transaction are prohibited. Seller shall not undertake any activities that violate U.S. export policies which seek to control nuclear proliferation, missile technology, chemical and biological weapons, as they relate to nations to support international terrorism. Violations against any U.S. export laws and regulations, including but not limited to the Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), Office of Foreign Asset Controls (OFAC), may result in termination by Buyer of this agreement. For information identified as Unclassified Controlled Nuclear Information (UCNI), the access requirements found in 10 CFR, Chapter 10, Part 1017, and Subpart D must be followed.

If Seller intends to export or release the hardware and/or data to Foreign Persons, Seller shall assume the responsibility for obtaining an export license or other approval from the U.S. Department of State. Seller shall first obtain the written consent of Buyer prior to submitting any request for authority to export any such technical data. These clauses are applicable to and shall flow down to all appropriate subcontractors.

Seller shall indemnify Buyer, its agents, and assignees for any financial loss, penalties or fines resulting directly or indirectly from Seller's violation of the 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).

FCPA Regulations:

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. A copy of the Act can be found at <http://www.justice.gov/criminal/fraud/fcpa/statutes/regulations.html>. Seller and any Sub-contractor, certify that on the date of this Agreement neither they nor any of their officers, directors, employees or agents is, or during the term of this Agreement shall become, an official, agent or employee of any government, governmental agency, or political

party or a candidate for any political office. 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.

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, or to any customer, end-user of **Products**, or employee of Honeywell FM&T.

40. COUNTERINTELLIGENCE

The Contractor shall take all reasonable precautions in the work under this contract to protect programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats or activities conducted for governmental or industrial purposes.

41. 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

42. CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the work under this 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.

43. 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.

44. 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.

45. OFCCP VETERANS DISABILITY AFFIRMATIVE ACTION PROGRAM

41 CFR 60-741.5(a) & 41 CFR 60-300.5(a): To the extent employment activities occur in the United States and if otherwise applicable this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

46. 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.

47. 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.

48. 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; Applicable Law and Forum; Waiver, Rights, and Remedies; Release of Information to the Public; and Survival.

49. 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.

50. 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.

51. 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) Change Orders
- (b) This Order document, including these terms and conditions of purchase;
- (c) Specifications
- (d) Drawings
- (e) Other Documents

52. 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).

53. 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.

54. 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:

55. 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.

56. 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. Further, Seller, its employees, agents, or representatives shall not employ, directly or indirectly, any Buyer employees during the performance of this contract. A breach of this provision will be deemed a material breach of this Contract and grounds for termination of this Contract.

57. FAR AND DEAR CLAUSES/PROVISIONS 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.knsc.doe.gov/ptl/general-information> under Contract Language, Terms & Conditions (Current)

Applicable to all Orders, regardless of amount:

FAR 52.203-15	Whistleblower Protections Under The American Recovery And Reinvestment Act of 2009 (JUN 2010)
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 52.204-21	Basic Safeguarding of Covered Contractor Information Systems (JUN 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 (JUL 2018)
FAR 52.208-8	Required Sources for Helium and Helium Usage Data (AUG 2018). Applicable when subcontract involves a major helium requirement. This clause shall flow down to all subcontracts.
FAR 52.209-10	Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015)
FAR 52.219-8	Utilization Of Small Business Concerns (OCT 2018)
FAR 52.222-4	Contract Work Hours And Safety Standards Act--Overtime Compensation (MAR 2018)
FAR 52.222-21	Prohibition Of Segregated Facilities (APR 2015)
FAR 52.222-26	Equal Opportunity (SEPT 2016)
FAR 52.222-50	Combating Trafficking In Persons (JAN 2019)
FAR 52.225-9	Buy American Act—Construction Materials (MAY 2014) (Note: The fill-in for paragraph (b)(2) of this clause is "None.")

FAR 52.225-1	Buy American – Supplies (MAY 2014)
FAR 52.225-10	Notice of Buy American Requirement-Construction Materials (MAY 2014)
FAR 52.225-13	Restrictions On Certain Foreign Purchases (JUN 2008)
FAR 52.227-3	Patent Indemnity (APR 1984)
FAR 52.227-4	Patent Indemnity—Construction Contracts (DEC 2007)
FAR 52.242-15	Stop Work Order (AUG 1989), ALTERNATE I (APR 1984)
FAR 52.247-64	Preference For Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (When purchase involves ocean transportation)
DEAR 952.203-70	Whistleblower Protection For Contractor Employees (DEC 2000)
DEAR 952.204-71	Sensitive Foreign Nations Controls (MAR 2011)
DEAR 952.211-71	Priorities And Allocations (APR 2008)
DEAR 952.223-78	Sustainable Acquisition Program (OCT 2010)
DOE O 206.1	Department of Energy Privacy Program
DOE O 206.1	Department of Energy Privacy Program (JAN 2009)
DOE O 471.3	Identifying and Protecting Official Use Only Information (JAN 2011)
DOE O 206.2	Identity, Credential, and Access Management (ICAM) (FEB 2013)
NNSA SD 206.2	Implementation of Personal Identity Verification for Uncleared Contractors (APR 2018)

Applicable to all orders regardless of amount:

...in all service subcontracts subject to the Service Contract Labor Standards Statute:

FAR 52.222-17	Non-displacement of Qualified Workers (MAY 2014)
FAR 52.222-41	Service Contract Labor Standards (MAY 2014)

...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 subcontracts 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 a DOE 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)
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...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)
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...if supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or, if other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States:

FAR 52.225-8	Duty-Free Entry (OCT 2010)
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...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)
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...if the subcontractor is a small business:

FAR 52.232-40	Providing Accelerated Payments to Small Business Subcontractors (DEC 2013)
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...if there are subcontracts for commercial items:

FAR 52.244-6 Subcontracts For Commercial Items (AUG 2019)

...if Buyer furnishes Government property to Seller in the performance of Order, including Seller acquired property to which title vests in the Government under this Order:

FAR 52.245-1 Government Property (APRIL 2012), ALTERNATE I (APRIL 2012)

FAR 52.245-9 Use And Charges (APRIL 2012)

...if international air transportation of personnel or property:

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

...if access to computers owned, leased or operated on behalf of the DOE may be provided:

DEAR 952.204-77 Computer Security (AUG 2006)

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

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

...if foreign travel is required in the performance of Order:

DEAR 952.247-70 Foreign Travel (JUN 2010)

...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 (AUG 2016)

...if duplicating or printing services are required:

DEAR 970.5208-1 Printing (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 any contract work is subcontracted in accordance with FAR 48 CFR 52.227-3:

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

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

DEAR 970.5227-8 Refund Of Royalties (AUG 2002)

...if property will be delivered, acquired or provided by the Buyer for use by the Seller:

DEAR 970.5245-1 Property (AUG 2016); "Government" remains unchanged

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

FAR 52.204-9 Personal Identity Verification of Contractor Personnel (JAN 2011). This clause shall flow down to all subcontracts.

DEAR 970.5223-1 Integration Of Environment, Safety, And Health Into Work Planning And Execution (DEC 2000)

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

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

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

DEAR 952.204-2 Security (AUG 2016)

DEAR 952.204-70 Classification/Declassification (SEP 1997)

DEAR 952.204-73 Facility Clearance (AUG 2016)

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

...in any subcontract 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

Applicable if the Order exceeds \$2,000:

FAR 52.222-6 Construction Wage Rate Requirements (AUG 2018)
FAR 52.222-7 Withholding Of Funds (MAY 2014)
FAR 52.222-8 Payrolls And Basic Records (AUG 2018)
FAR 52.222-9 Apprentices And Trainees (JUL 2005)
FAR 52.222-10 Compliance With Copeland Act Requirements (FEB 1988)
FAR 52.222-11 Subcontracts (Labor Standards) (MAY 2014)
FAR 52.222-12 Contract Termination-Debarment (MAY 2014)
FAR 52.222-13 Compliance With Construction Wage Rate Requirements (MAY 2014)
FAR 52.222-14 Disputes Concerning Labor Standards (FEB 1988)
FAR 52.222-15 Certification Of Eligibility (MAY 2014)

Applicable 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 (OCT 2015). This clause shall flow down to all subcontracts.

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:

FAR 52.222-23 Notice Of Requirement For Affirmative Action To Ensure Equal Employment Opportunity (FEB 1999) (The term "Covered Area" referred to in this FAR clause includes the Missouri Counties of Clay, Platte, Jackson, Ray, and Cass; and the Kansas Counties of Wyandotte and Johnson. Goals for minority and female participation in each trade are 12.7% and 6.9%, respectively. The term "Covered Area" referred to in this FAR clause for New Mexico is Bernalillo County. Goals for minority and female participation are 38.3% and 6.9%, respectively.)
FAR 52.222-27 Affirmative Action Compliance Requirements For Construction (APR 2015)
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 Affirmative Action For Workers With Disabilities (JUL 2014)

Applicable if the Order exceeds \$100,000:

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 52.222-35 Equal Opportunity For Veterans (OCT 2015)
FAR 52.222-37 Employment 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)

...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'

...if international air transportation of personnel or property:

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

Applicable if the Order exceeds \$500,000:

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 (NOV 2010)

...and is for services:

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

Applicable if the Order exceeds \$5,500,000:

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

...and if performance period is 120 days or more:

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 the Order is \$700,000 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 52.215-2 Audit Records - Negotiation (OCT 2010). This clause shall flow down to all subcontracts that exceed the simplified acquisition threshold subject to the conditions contained in this clause.
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). This clause shall flow down to all subcontracts that anticipate a requirement for certified cost or pricing data or preaward/postaward cost determinations subject to Part 31.
FAR 52.215-19 Notification of Ownership Changes. This clause shall flow down to all subcontracts for which it is contemplated that certified cost or pricing data will be required or postaward cost determination will be subject to Subpart 31.2.

Applicable if the Order exceeds \$1,500,000 and Seller is not a small business. Seller is required to submit a Subcontracting Plan:

FAR 52.219-9 Small Business Subcontracting Plan (AUG 2018), ALTERNATE II (NOV 2016)