

**STELLANT SYSTEMS, INC.**  
**GENERAL TERMS AND CONDITIONS FOR PURCHASE OF**  
**ITEMS AND SERVICES UNDER A COMMERCIAL (NON- GOVERNMENT) CONTRACT (APPLICABLE**  
**TO FIXED PRICE, COST TYPE, AND TIME AND MATERIAL PURCHASE ORDERS)**

**1. DEFINITIONS:**

- (a) “Buyer” means Stellant Systems, Inc, a corporation organized and existing under the laws of the state of Delaware, and all of its subsidiaries and affiliates.
- (b) “Buyer’s Procurement Representative” means the agent of Buyer with the actual authority to make legally binding commitments on behalf of Buyer as designated on the Order.
- (c) “Item” means goods, parts, components, articles, or supplies, including, without limitation, those part numbers, model numbers, and/or descriptions set forth on the face of the Order, and shall also include computer software or hardware (including any software, firmware or other hardwired logic embedded within the hardware) delivered under the Order.
- (d) “Order” means the purchase order or subcontract issued hereunder, including these General Terms and Conditions and all other referenced documents, and any subsequent changes or modifications.
- (e) “Party” or “Parties” means Buyer and Seller individually or collectively.
- (f) “Seller” means the legal entity performing work pursuant to an Order and, if the context requires, its employees, officers, agents, subcontractors, and others acting at its direction and control or under contract to it.
- (g) “Services” means any labor, performance of a duty, or effort supplied by Seller under an Order such as installation, manufacturing, design, engineering, repair, maintenance, technical, construction, consulting, professional, or other services, where the cost of such Services are separate from and not included in the price of the Item.

**2. PURCHASE OF ITEMS AND SERVICES AND ORDER OF PRECEDENCE:**

- (a) These terms and conditions shall govern the delivery of Items or performance of Services provided by Seller under an Order. All documents provided for under an Order shall be in English. Any additional or different terms and conditions contained in Seller’s order document, any prior quotation, or any acknowledgment of an Order (including, but not limited to, any shrink-wrap or click-through terms) that are not negotiated by the Parties and identified on the Order are explicitly rejected by Buyer without further notice of rejection and shall be of no effect nor under any circumstances binding upon Buyer. Seller expressly represents that in accepting the Order it does not rely and has not relied upon any written or oral representation, warranty, or statement not set forth in the Order and that it will not have any right or remedy rising out of any representation, warranty, or other statement not expressly set out in the Order.
- (b) The headings and subheadings of Articles contained herein are used for convenience and ease of reference and do not limit the scope or intent of the Article. The terms and conditions of the Order shall be construed and interpreted as consistent whenever possible. Any conflicts in an Order shall be resolved by giving precedence in the following order: (i) the Order document; (ii) the master agreement entered into between the Parties, if any (which is incorporated by reference in any Order issued hereunder); (iii) these General Terms and Conditions (which are incorporated by reference in any Order issued hereunder); (iv) the statement of work; (v) any specifications, drawings, or other requirements attached hereto or incorporated herein by reference; and (vi) any supplement terms, conditions, or provisions (such as an End User License Agreement) specifically negotiated between the Parties and identified on the Order.

**3. ACCEPTANCE OF THE ORDER:** Any of the following acts by Seller shall constitute acceptance of the Order: (i) execution of the acknowledge page of the Order and return to Buyer within three (3) business days of receipt or within the timeframe required by applicable law; (ii) initiation of any aspect of performance or notification to Buyer that Seller is commencing performance under the Order; (iii) shipment of any Items or performance of any Services under the Order; or (iv) acceptance of any form of payment, partial or complete, under the Order.

**4. DELIVERY, TITLE, AND RISK OF LOSS:**

- (a) Items and Services shall be delivered or performed in accordance with the schedule, shipping instructions, and delivery location set forth in the Order. For international shipments, unless otherwise set forth on the face of the purchase order, the INCOTERM for all shipments under the Order shall be DPU, Buyer’s Dock, INCOTERMS 2020. Time is of the essence in Seller’s performance of the Order. Buyer reserves the right to refuse shipments made in advance of the schedule set forth in the Order and may return early delivery shipments at Seller’s expense. If Buyer chooses to retain the Items shipped in advance of the schedule date, Buyer may make payment in accordance with the original delivery schedule in the Order. Buyer shall not be responsible for any additional costs associated with early delivery. Buyer may also refuse deliveries made after the scheduled delivery date set forth in the Order, and in such case, will not be liable to Seller for any Items or Services not accepted. Acceptance of early or late deliveries shall not be deemed a modification of Seller’s obligation to make future deliveries in accordance with the delivery schedule set forth in the Order.
- (b) When any delays in delivery occur or Seller anticipates difficulty in complying with the delivery date set forth on the Order, Seller shall immediately notify Buyer in writing. Such notice shall include a revised schedule and shall not constitute a waiver to Buyer’s rights and remedies hereunder. Seller shall take all steps necessary to avoid or minimize delay. Except to the extent delay is caused by Buyer, all of the costs of delay and any additional effort shall be borne by Seller. Seller, at the request of Buyer, shall provide (i) a written explanation for the root cause of the delay, (ii) a corrective action plan to address the late deliveries, and (iii) assurances that Seller will make all future deliveries in accordance with the Order requirements and schedule. Such corrective action plan and assurances shall be satisfactory to Buyer as determined by Buyer in its sole discretion. If Buyer agrees to accept deliveries after the delivery date has passed, Buyer shall have the right to direct Seller to make shipments by the most expeditious means, and the total cost of such expedited shipment and handling shall be borne by Seller.
- (c) Seller shall comply with Buyer’s routing and shipping instructions. If Buyer’s routing and shipping instructions are not attached to the Order or have not been previously received by Seller, Seller shall immediately request such instructions from Buyer. Seller shall remain liable for any and all additional charges which accrue as a result of Seller’s failure to comply with Buyer’s routing and shipping instructions, including Buyer’s specified carrier.
- (d) Unless otherwise specified in the Order, Seller shall be responsible for safe and adequate packing conforming to the requirements of carriers’ tariffs or, in the absence of such requirements, conforming to the best commercial practices. All expendable packaging materials must be legally and economically disposable or recyclable. Wooden packaging from Seller must conform to International Standards for Phytosanitary Measures (ISPM 15) regarding the Regulation of Wood Packaging

Material in International Trade (2019), as amended. Seller shall separately number all containers, packages, etc., showing the corresponding number on the invoice. An itemized packing slip bearing the Order number must be placed in each container. Unless set forth in the Order, Seller shall not charge extra for packaging or packing materials.

(e) Unless prohibited by applicable law, Seller may be subjected to liquidated damages for delivery of any Items or performance of any Services after the delivery date set forth on the Order in the amount of one percent (1%) of the total value of the delayed Item or Service for each day delivery or performance is delayed beyond the delivery date set forth in the Order (up to a maximum amount of twenty-five percent (25%) of the total value of the delayed Item or Service). Seller shall pay any liquidated damages within sixty (60) calendar days of Buyer's acceptance of the Items or Services or Buyer. Buyer's right to recover liquidated damages shall be in addition to all other rights and remedies that Buyer has under the Order. The total amount of liquidated damages shall be subtracted from the line item value. If the delivery delay was as a result of any action taken on the part of Buyer, Seller shall notify Buyer in writing at the time the delay occurs and request that Buyer waive liquidated damages provided herein. Failure to notify Buyer may result in liquidated damages.

(f) Any overshipment allowances require prior Buyer authorization and will be applied to either the line item or entire Order, at Buyer's discretion. Unauthorized overshipments shall be returned to Seller at Seller's sole expense.

(g) Unless otherwise specified in the Order, Seller shall bear the risk of loss and damage to all Items supplied hereunder until final acceptance by Buyer. Buyer shall have equitable title to all Items for which interim, partial, or progress payments have been made to Seller. Title of Item passes upon final acceptance by Buyer.

## **5. QUALITY CONTROL AND NON-CONFORMANCE:**

(a) Seller and its suppliers shall establish and maintain a quality management, inspection and counterfeit parts program acceptable to Buyer and consistent with current industry standards (e.g., ISO9001, AS9100, AS9115, AS9120, AS5553, AS6496, AS6174, etc.). Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Items or Services provided to Buyer during the period of any such violation or deviation. If Seller learns of any violations of its obligations under this Quality Control and Non-Conformance Article, Seller shall within forty-eight (48) hours so notify Buyer and within sixty (60) calendar days must rectify the non-compliance issues. If the violation is not corrected and certification has not taken place within this time frame, then Buyer at its sole discretion may terminate the Order. Seller will notify Buyer of any changes that affect quality within twenty-four (24) hours of that change. These changes include, but are not limited to, change in key management or personnel, change in source of supply of key materials, change in address or site configuration.

(b) Subject to applicable national security regulations, Seller shall provide Buyer and Buyer's customer right of access, on a non-interference basis, to any area of Seller's or Seller's supply chain sub-tier premises where any part of the work is being performed. Seller shall flow this requirement down to its sub tier supply chain suppliers as a condition of the Order. Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities, and assistance for the safety and convenience of Buyer and Buyer's representatives in the performance of their duties.

(c) An Order may include requirements for design, test, inspection, verification (including production process verification), use of statistical techniques for product acceptance, and related instructions for acceptance by Buyer, and as applicable, critical items including key characteristics and requirements for test specimens (e.g., production method, number, storage conditions) for design approval, inspection/verification, investigation or auditing. Seller shall properly test and inspect its Items in accordance with the Order requirements and applicable law. Buyer and Buyer's customer shall have the right, but not the obligation, to inspect and test material, work in process, services and supplies. Seller shall keep and maintain inspection, test, and related records, for a period of six (6) years following completion of the Order. Seller shall allow copies to be made and shall furnish all records required by Buyer or Buyer's customer.

(d) Seller shall notify Buyer within forty-eight (48) hours upon Seller's discovery that an Item or Service is non-conforming. If Seller delivers a non-conforming Item or Service, Buyer may, at its option and Seller's expense: (i) return the Item or Service for refund or credit; (ii) accept all or part of the Item or Service at a mutually agreed upon price reduction or other consideration; (iii) require Seller to promptly correct or replace the Item or Service; (iv) obtain a conforming Item or Service from another source; (v) cancel the Order for default, or (vi) exercise any other applicable rights or remedies. Buyer shall specify in writing the reason for any rejection of a non-conforming Item or Service. If Buyer elects to return the non-conforming Item or Service, Seller shall provide disposition instructions regarding the non-conforming Item or Service, and if applicable, the date the non-conforming Item or Service will be repaired or replaced and returned to Buyer. Seller shall bear all risk of loss for the non-conforming Item or Service and be liable for any increase in costs, including removal, re-procurement costs, repair, reinstallation costs attributable to Buyer's rejection of the non-conforming Item or Service. In the event of any costs incurred by the Buyer related to a root cause corrective analysis, Seller shall reimburse buyer any outstanding cost not covered by an equitable price reduction within thirty (30) days. If Buyer rejects an Item or Service as non-conforming and Seller does not acknowledge Buyer's rejection and plan of disposition for the Item or Service within two (2) business days, Buyer will be entitled to dispose of the non-conforming Item or Service without liability to Seller. Additionally, Buyer may elect to return the nonconforming Item or Service back to Seller at Seller's risk of loss and expense.

(e) Buyer's payment for any non-conforming Item or Service will not constitute final acceptance by Buyer, limit or impair Buyer's right to exercise any rights or remedies, or relieve Seller of responsibility for the non-conforming Item or Service. In the event Buyer decides for any reason to accept a non-conforming Item or Service, any costs incurred by Buyer for testing, evaluating, and manufacturing relating to the design changes to the Item or Service, shall be responsibility of Seller, and Seller may not pass along any costs in relation to the design changes.

(f) Final acceptance by Buyer of the Items or Services provided hereunder shall take place only after complete delivery of all Items or Services in accordance with the delivery schedule specified in the Order, or later as agreed upon by the Parties in writing, and after final inspection of those Items or Services by Buyer and Buyer's customer. Final acceptance shall be contingent upon agreement by Buyer and Buyer's customer that the Items or Services conform to the requirements of the Order. Final acceptance by Buyer is final, except for latent defects, negligent or intentional misrepresentations by Seller that a nonconformity or defect would be or has been cured or did not exist, acceptance induced by false or negligent assurances of Seller, or as otherwise provided in the Order or applicable law. Final acceptance by Buyer of the Items or Services delivered hereunder shall not limit, void, or affect in any way the warranty or indemnity granted by Seller hereunder. Payment alone shall not constitute final acceptance of the Items or Services rendered. The requirements and obligations in this Quality Control and Non-Conformance Article are material terms of the Order.

## **6. COUNTERFEIT PARTS:**

(a) For purpose of this Article, the following definitions apply:

- (i) “Authorized Aftermarket Manufacturer” or “AAM” means an entity that fabricates a Part under a contract with, or with the express written authority of, the Original Manufacturer based on the Original Manufacturer’s designs, formulas and/or specifications, usually due to the Original Manufacturer’s decision to discontinue production.
  - (ii) “Authorized Distributor” or “AD” means a distributor authorized in writing by an Original Manufacturer to distribute product within the terms of a contractual agreement. The term Franchised Distributor is synonymous with AD.
  - (iii) “Authorized Reseller” means a reseller that purchases Parts either from the Original Manufacturer or their ADs within the terms of a contractual agreement and then sells the part to the end user. Some Parts an Authorized Reseller would handle include Commercial Off-The-Shelf (COTS) assemblies and commodities and Information Technology (IT) equipment, hardware, fasteners, and raw materials.
  - (iv) “Authorized Source” means an Original Manufacturer, AD, AAM, Authorized Reseller, or other supplier approved by Buyer in writing that obtains Parts exclusively from an Original Manufacturer, AD, or AAM.
  - (v) “Contract Manufacturer” means a company that produces goods under contract for another company under the label or brand name of that company.
  - (vi) “Counterfeit Part” means (1) an unauthorized copy, imitation, substitute, or modified part, which is knowingly misrepresented as a specified genuine part of the original manufacturer, or (2) a previously used Electrical, Electronic, and Electromechanical Part which has been modified and is knowingly misrepresented as new without disclosure to Buyer that it has been previously used. Examples of a Counterfeit Part include, but are not limited to, the false identification of grade, serial number, date code, or performance characteristics. NOTE: This definition shall be read so as not to conflict with the definition for “counterfeit electronic part” cited in DFARS 252.246-7007, where that definition shall govern to the extent that clause applies.
  - (vii) “Electrical, Electronic, and Electromechanical Part” or “EEE Part” means a component designed and built to perform specific functions using electricity and is not subject to disassembly without destruction or impairment of design use. Examples of an electrical part include but are not limited to resistors, capacitors, inductors, transformers, and connectors. Examples of an electronic part include but are not limited to active devices, such as monolithic microcircuits, hybrid microcircuits, diodes, and transistors. An electromechanical part is a device that has electrical inputs with mechanical outputs, or mechanical inputs with electrical outputs, or combinations of each, including but not limited to motors, synchros, servos, and relays. Although some electromechanical parts may typically be referred to as assemblies, for the purpose of these terms, they are considered to be electromechanical parts.
  - (viii) “Independent Distributor” means a distributor that purchases parts (typically from excess inventories) from an Original Manufacturer, Contract Manufacturer, or other distributor (authorized or independent) with the intention to resell them back into the market to other Original Manufacturers, Contract Manufacturers, or other distributors. Independent Distributors do not have contractual agreements with the Original Manufacturer.
  - (ix) “Original Component Manufacturer” or “OCM” means an entity that designs and/or engineers a Part and is entitled to any intellectual property rights to that Part. The Part and/or its packaging is typically identified with the OCM’s trademark. OCMs may contract out manufacturing and/or distribution of their Part. Different OCMs may produce or supply Parts for the same application or to a common specification.
  - (x) “Original Equipment Manufacturer” or “OEM” means a company that manufactures and assembles Parts that it has designed from purchased materials/components and sells those Parts under the company’s brand name.
  - (xi) “Original Manufacturer” means an OCM or OEM.
  - (xii) “Part” means broadly all parts, including EEE Parts, products, materials, chemicals, assemblies, subassemblies, hardware, and all other components or pieces of components that may go into an Item. A Part can also be an Item.
- (b) Authorized Acquisitions.
- (i) Seller shall purchase or acquire all Parts directly from Authorized Sources. SELLER SHALL NOT PURCHASE PARTS FROM OR USE INDEPENDENT DISTRIBUTORS TO SUPPLY PARTS WITHOUT THE PRIOR WRITTEN CONSENT OF BUYER.
  - (ii) Authorized Distributors shall only purchase EEE Parts directly from the Original Manufacturer. Buyer will not accept EEE Parts from other ADs or Independent Distributors without prior written authorization.
  - (iii) Contract Manufacturers and Authorized Resellers (including any Contract Manufacturer or Authorized Reseller providing Maintenance Repair and Overhaul (MRO) services) shall only purchase Parts from the Original Manufacturer or their ADs.
- (c) Seller shall implement and control processes appropriate to Seller’s organization and the Items for the prevention of Counterfeit Parts or support Counterfeit Parts use and inclusion in the Items. Seller’s Counterfeit Parts prevention processes shall address the following: (i) training of appropriate persons in the awareness and prevention of Counterfeit Parts; (ii) application of a Parts obsolescence monitoring program; (iii) controls for acquiring externally provided Parts from Original Manufacturers or Authorized Sources; (iv) traceability requirements of Parts to the Original Manufacturer and Authorized Source; (v) verification and test methodologies to detect Counterfeit Parts; (vi) monitoring of Counterfeit Parts reporting from external sources; (vii) quarantine and reporting of suspect or detected Counterfeit Parts, including preventing reentry into the supply chain. If Seller provides EEE Parts, Seller shall implement a counterfeit electronic parts detection and avoidance system compliant with the requirements of SAE standard AS5553 or an equivalent generally accepted standard.
- (c) Seller shall not furnish Counterfeit Parts or suspect Counterfeit Parts to Buyer under an Order. Seller shall provide to Buyer or use in Items delivered to Buyer only new and authentic Parts, traceable to the Original Manufacturer. For all purchases, Seller shall ensure the Part remains unchanged from the Part sold by or acquired from the Original Manufacturer and the certifications show the chain of custody from the Original Manufacturer. Upon request, Seller shall provide authenticity and traceability records to Buyer. Seller shall immediately notify Buyer in writing if Seller cannot provide a Part traceable to the Original Manufacturer. Upon receipt of such notification, Buyer reserves the right to terminate the Order at no cost to Buyer and/or require Seller, at Seller’s cost, to assist Buyer with material validation testing and inspection at an independent test facility of Buyer’s choice.

(d) If Seller becomes aware or suspects that it has furnished a Counterfeit Part to Buyer under the Order, Seller shall promptly notify Buyer of such no later than forty eight (48) hours after discovery. Seller shall not invoice any Counterfeit Part or suspected Counterfeit Part. Any Counterfeit Part or suspected Counterfeit Part that has already been invoiced shall be deducted from the value of the Order. Buyer may, at Buyer's sole option, elect not to return the Counterfeit Part or suspected Counterfeit Part to Seller. If Buyer chooses to return the Item or Part to Seller for Seller to remove the Counterfeit Part or suspected Counterfeit Part, Buyer requires Seller provide a certification of destruction through an independent third party chosen by Buyer to prove Seller's destruction of the Counterfeit Part or suspected Counterfeit Part. Seller shall replace, at Seller's own expense, such Counterfeit Part with a Part from an Original Manufacturer or a Buyer-approved Part that conforms to the requirements of the Order. Seller shall be liable for all costs related to (i) the investigation and traceability of any Counterfeit Part or suspected Counterfeit Part, (ii) the replacement of any Counterfeit Part, and (iii) any testing or validation necessitated by the installation of authentic Items or components of Items after a Counterfeit Part has been replaced. Buyer's remedies shall not be limited by the Warranty Article in the Order and are in addition to any remedies Buyer may have at law, equity, or otherwise under the Order. Seller shall include this Counterfeit Parts Article in all of its lower tier subcontracts.

## **7. INVOICING, PAYMENT, AND TAXES:**

- (a) Unless otherwise provided by Buyer on the face of the Order, terms of payment are net sixty (60) calendar days from the latest of the following: (i) Buyer's receipt of an accurate and approved invoice; (ii) the date the Items or Services are delivered and finally accepted, or (iii) the date provided in the Order for receipt of Items or completion of Services. For interim payments under a financing arrangement, except where Buyer or Buyer's customer requires an audit or other review of a specific payment request, payment terms are net sixty (60) from Buyer's receipt of an accurate and approved invoice. Seller shall notify Buyer in writing within thirty (30) calendar days of the occurrence of any alleged payment disputes. Buyer shall pay Seller the prices set forth on the Order for Items delivered and finally accepted or Services rendered and finally accepted, less any deductions provided in the Order. If Seller does not return the acknowledgement page of the Order and commences performance, Buyer shall only be responsible for payment for the work performed to the extent that the work was required by Buyer, not to exceed the amounts set forth in the Order. All payments shall be made in U.S. Dollars with no adjustments for currency exchange rates. The Parties shall consider the invoices paid on the date the check is postmarked and mailed to Seller. For invoices subject to a prompt payment discount, the discount period will be computed from the date of receipt of a correct invoice to the date Buyer issues a check.
- (b) Seller shall issue a separate invoice in English for each shipment or each billing period. There shall not be a lapse of more than thirty (30) calendar days between performance and submission of an invoice. Seller shall not backdate any invoices. Unless otherwise instructed by Buyer, each invoice shall include: (i) Buyer Order number and line number; (ii) Buyer line description (as referenced on the Order); (iii) the unit price and total price; (iv) Seller's invoice number and date; (v) the payment terms; and (vi) a description of the work performed. Upon Buyer's request, Seller shall provide a reconciliation of all invoices submitted to Buyer.
- (c) Each payment made shall be subject to a reduction for any amounts found by Buyer, Buyer's customer, or Seller not to have been properly payable, including any overpayments. Seller shall promptly notify Buyer of any overpayments and remit the overpayment amount to Buyer along with a description of the overpayment. To the extent permitted by applicable law, Buyer, and any affiliate or subsidiary of Buyer, may withhold, deduct, or setoff all money due, or which may become due, from Buyer arising out of Seller's performance under the Order or any other transaction Buyer and its affiliates or subsidiaries may have with Seller.
- (d) Unless otherwise approved by Buyer in writing, the prices for the Items and Services in the Order include and Seller shall be responsible for the payment of any applicable federal, state, and local taxes, duties, tariffs, or other similar fees (collectively "taxes") imposed by any government, unless Seller obtains an applicable exemption. Seller represents that the price does not include any taxes, impositions, charges, or exactions for which it is eligible to obtain or has obtained a valid exemption certificate or other evidence of exemption. Any taxes in the Order shall be itemized separately on Seller's invoice.
- (e) **FOR FLEXIBLY PRICED ORDERS ONLY:** Buyer shall not be obligated to pay Seller for amounts in excess of the Not to Exceed ("NTE") amount of the Order as set forth on the face of the Order or any duly authorized modifications. Seller shall provide written notification to Buyer upon invoicing eighty percent (80%) of the authorized funding under the Order. Such notification will include an estimated cost to complete the Order. If the total estimated cost to complete (taken into account the actuals incurred) is greater than the NTE amount, then such notification also shall contain the costs to date, estimate costs to completion, and total costs, together with supporting reasons and documentation. Seller is not authorized to incur costs in excess of the NTE amount until Buyer notifies Seller in writing that the NTE amount has been increased.

## **8. CHANGES:**

- (a) Buyer may, at any time and without notice, direct changes in writing and seek a modification of the Order, subject to the mutual agreement of the Parties, for: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) time and/or place of delivery, inspection, acceptance, or performance; (iv) the quantity of Items ordered or Services to be performed; (v) the statement of work; (vi) method or manner of performance; (vii) any property, facilities, equipment, or materials to be provided by Buyer under the Order; and (viii) the terms and conditions of the Order required to meet Buyer's obligations under the Buyer's customer contract.
- (b) During performance of the Order, Seller shall not make any changes in the Services to be performed or in the design or manufacturing of Items to be furnished by Seller under the Order, including any changes to the process, manufacturing location, or use of suppliers, without advance notification to and written approval of the Buyer's Procurement Representative. Only the Buyer's Procurement Representative has authority on behalf of Buyer to make changes to the Order, which shall be in writing. Items or Services that change without prior notification and consent shall be deemed nonconforming Items or Services under the Order. The issuance of information, advice, approvals, or instructions by Buyer's technical personnel shall be deemed expressions of personal opinion only and shall not affect the Parties' rights and obligations hereunder, unless the change expressly states that it constitutes an amendment to the Order and is signed in writing by the Buyer's Procurement Representative. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect upon Seller's performance.
- (c) If any written change causes an increase or decrease in the estimated costs or the time required for performance of the Order, Seller shall promptly notify Buyer and assert its claim for equitable adjustment in writing within thirty (30) calendar days after the written change is ordered or within such extension as Buyer may grant in writing. Buyer may, in its sole discretion, consider any such claim regardless of when asserted, except that no claim for equitable adjustment shall be allowed after final payment. Nothing in this clause shall be deemed to constitute acceptance by Buyer of the validity of Seller's claim or any part thereof. Once asserted, an equitable adjustment to the Order price and/or delivery schedule may be made and the Parties may modify the Order in writing accordingly. Any equitable adjustment in price to which Seller may be entitled as a result of an increase in the quantity of Items or Services ordered shall not exceed the unit price established for such Items or Services herein or the NTE amount (for flexibly priced). If the Parties are unable to agree upon an equitable adjustment, the matter will be resolved in accordance with Governing Law and Disputes Article.

## **9. WARRANTY:**



(a) Seller represents and warrants that the Items and Services provided hereunder: (i) shall conform to the requirements of the Order, the applicable specifications, and, to the extent not inconsistent therewith, Seller's documentation; (ii) shall be merchantable; (iii) shall be fit for the use intended by Buyer, whether expressed or reasonably implied, and/or which is stated on any packaging, labeling, or advertising; (iv) shall be free from security interests, liens, or encumbrances and of good title; (v) will not infringe or otherwise violate the intellectual property rights of any third party; and (vi) are and when delivered to Buyer shall be free from viruses, spyware, and other similar harmful and destructive code designed to damage, destroy, reveal, or alter any software, hardware, or data, permit unauthorized access to any software or hardware, or disable any program automatically. Seller represents and warrants that for a period of twelve (12) months after final acceptance by Buyer the Items furnished hereunder shall be free from defects in material, workmanship, design, and fabrication. In the case of latent defects, Buyer's rights to corrective action by Seller shall commence upon Buyer's discovery of the latent defect and notification of Seller thereof.

(b) Seller represents and warrants (i) its performance of the Order does not and will not violate or conflict with any agreement to which Seller is a party; (ii) there is no pending or threatened litigation that would have a material adverse impact on its performance under the Order, (iii) Seller or any of its officers or directors are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency, and (iv) it will perform all Services in a professional and competent manner using properly qualified and trained personnel with the degree of skill and judgment normally exercised by recognized professionals delivering or performing the same or similar services.

(c) Remedies for breach of any of these warranties shall be at Buyer's election, including those specified in Article 5(d) (Quality Control and Non-Conformance) for non-conforming Items and Services. Seller shall follow the procedure set forth in Article 5(d) (Quality Control and Non Conformance). Any Items or Services corrected or replaced pursuant to this Warranty Article shall be subject to all provisions of this Warranty Article to the same extent as Items and Services initially delivered.

(d) The warranties set forth herein shall survive inspection, test, final acceptance, and payment of Items and Services. The approval by Buyer of Seller's design or material used or Buyer's inspection of same shall not relieve Seller from any obligations under the warranties set forth in the Order. The warranties set forth in the Order shall run to Buyer, Buyer's customers, and any users of the Items or Services, and shall not be deemed to be the exclusive rights of Buyer, but shall be in addition to other rights of Buyer under law, equity, or the terms of the Order.

#### **10. END OF LIFE AND SUPPORT:**

(a) Seller shall notify Buyer in writing if any Items or any parts, subcomponents, components, assemblies, or subassemblies in the Items delivered hereunder, including those supplied by Seller's lower-tiered subcontractors, are or are expected to be going out of production or will no longer be commercially available. Such notice shall:

(i) be provided to Buyer at least twelve (12) months prior to the anticipated date of discontinuance or unavailability, or if twelve (12) months' notice is not reasonable given the circumstances, as soon as practically possible; and (ii) specifically identify the name and address of the supplier and the part by name, part number, function, and the location in the Item delivered. In such case, Seller shall make available to Buyer and hereby grants Buyer a royalty free license to use all drawings, specifications, data, and know-how to enable Buyer or Buyer's customer to manufacture or procure the Item, component, subassembly, or spare part.

(b) Seller shall support the Items purchased hereunder during the operational life of the Items or for a period of ten (10) years from the date of final shipment under the Order and expiration of any warranty period. Support includes, but is not limited to, technical service for the Item. Additionally, Seller shall maintain an inventory of subassemblies and spare parts as may be required to support the operation of the Item.

**11. SUSPENSION OF WORK:** Buyer shall have the right to direct Seller in writing to suspend all or any part of the work for a period of time not to exceed one hundred twenty (120) calendar days, and for any further period as the Parties may agree or as extended by Buyer's customer. Upon receipt of the written stop work notice, Seller shall immediately comply with the terms of the notice and shall take all reasonable measures to mitigate the costs allocable to the suspended portion of the work.

At the end of the suspension period, Buyer shall either (i) cancel the suspension, or (ii) terminate the work covered by the suspension as provided for in the Termination for Convenience Article of the Order; provided that a suspension may only be canceled or work terminated by written notice from the Buyer's Procurement Representative, regardless of the expiration of the suspension period. If Buyer cancels the suspension, Seller shall immediately commence performance, notwithstanding the fact that there is no agreement as to a revised schedule or the cost of completing the Order. If work is suspended, an equitable adjustment may be requested in accordance with the provisions of Article 8(c) (Changes) for any increase in the time and the cost of performing the Order necessarily caused by such suspension, exclusive of profit, and the Order may be modified in writing accordingly. For flexibly priced Orders, Seller shall request the equitable adjustment prior to the incurrence of any costs in excess of the NTE amount.

**12. FORCE MAJEURE:** If either Party cannot perform, in whole or in part, any of its obligations under the Order because of any act of God, act of any government, government delay, court order, public enemy, fire, flood, pandemic, epidemic, strike, freight embargo, industrial disturbance, or any other cause beyond the Party's reasonable control, and provided further that the Party could not have mitigated, avoided, or prevented the cause or delay through the exercise of reasonable care and precautions (a "Force Majeure Event"), then the non-performing Party will (i) promptly notify the other Party in writing, (ii) take commercially reasonable steps to resume performance as soon as possible, and (iii) not be considered in breach during the duration of and to the extent its performance is prevented by the Force Majeure Event. In the event a Force Majeure Event continues for a period of fifteen (15) calendar days, Buyer may terminate such part of the Order remaining to be performed by providing written notice to Seller with no further liability to Buyer.

**13. FURNISHED PROPERTY:** Buyer may provide drawings, tools, dies, fixtures, materials, and other property owned by Buyer or Buyer's customer ("Buyer Furnished Property") solely for Seller to use in the performance of the Order. All rights, title, and interest in the Buyer Furnished Property shall remain with Buyer or Buyer's customer. Seller shall clearly mark, maintain an inventory and keep segregated or identifiable all of the Buyer Furnished Property. Seller shall manage, maintain, and preserve the Buyer Furnished Property in accordance with good commercial practice, and upon Buyer's reasonable request, provide Buyer written records of Seller's management, maintenance, and preservation of the Buyer Furnished Property, including any inventory lists. The Buyer Furnished Property shall be promptly returned to Buyer on request or upon completion or termination of the Order. If Seller fails to return the Buyer Furnished Property upon Buyer's demand, Buyer shall have the right, upon reasonable notice, to enter Seller's premises and remove any such property at any time without being liable for trespasses or damages of any sort. Except for reasonable wear and tear, Seller assumes all risk of loss, destruction, or damage of the Buyer Furnished Property while in Seller's possession, custody, or control. Upon request, Seller shall promptly provide Buyer with adequate proof of insurance against such risk of loss. Seller shall promptly notify Buyer of any loss or damage to the Buyer Furnished Property. Seller shall include this Buyer Furnished Property Article in all of its lower tier subcontracts and notify Buyer and obtain approval prior to passing Buyer Furnished Property to any lower tier subcontractor.

#### **14. SELLER OPERATING AT BUYER FACILITY:**

(a) Seller's employees, agents, and contractors (collectively, "personnel") may be granted access to Buyer facilities, subject to compliance with Buyer's standard administrative and security requirements and policies provided to Seller. Seller acknowledges and agrees Seller's personnel with access to Buyer's facilities can be

removed and/or barred from entry at Buyer's sole discretion. Upon Buyer's direction, Seller shall remove such personnel and promptly provide a qualified replacement. Seller agrees to use its best efforts to ensure continuity of performance under the Order.

(b) Subject to applicable laws, if Seller's personnel are to be onsite at any of Buyer's facilities, Buyer shall have the right to require Seller's personnel to submit to Buyer's standard drug test and/or background check or equivalent standards prior to performing any Services. Prior to access being granted to Seller's personnel, Seller shall certify that such screening was accomplished.

## 15. RIGHTS IN DATA AND INVENTIONS:

(a) Definitions. The following terms shall have the meanings set forth below:

- (i) "Intellectual Property" or "IP" means inventions, discoveries and improvements, know-how, works of authorship, technical and other data, drawings, specifications, process information, reports and documented information, and computer software.
  - (ii) "Background IP" means Intellectual Property that is (i) in existence prior to the effective date of the Order or (ii) is designed, developed, or licensed from a third party after the effective date of the Order independently of both (1) the work undertaken or in connection with the Order and (2) the proprietary information and IP of the other party to the Order.
  - (iii) "Foreground IP" means Intellectual Property conceived, created, acquired, developed, derived from, or based on development performed under the Order or information supplied by Buyer, or first actually reduced to practice by Seller in connection with the Order.
- (b) Buyer-Owned IP. Seller shall treat as proprietary and confidential all Intellectual Property and other information supplied by Buyer ("Buyer-Owned IP"). Buyer grants to Seller a non-exclusive, non-transferable (except as expressly provided herein), royalty-free right during the term of the Order to use, reproduce, modify, practice and prepare derivative works of any Buyer-Owned IP solely as necessary for Seller to perform its obligations under the Order. Seller shall not, without Buyer's prior written consent, use Buyer-Owned IP or any derivative works of any of the Buyer-Owned IP in any manner not authorized under the Order, including, but not limited to, developing, manufacturing, offering for sale or selling any item or service which utilizes or is enabled by Buyer-Owned IP. On Buyer's request or upon completion or termination of the Order for any reason, Seller shall promptly return or destroy, at Buyer's option, all Buyer-Owned IP and all copies. If Seller destroys the Buyer-Owned IP, Seller shall provide Buyer a certificate of destruction. In the event of a conflict between the terms of this paragraph (b) and the terms and conditions of any separately executed and applicable Non-Disclosure Agreement ("NDA") between Buyer and Seller, the terms and conditions of the NDA shall control.
- (c) Foreground IP. All Foreground IP not subject to paragraph (d) below is hereby assigned to Buyer, shall be proprietary to Buyer, and Buyer shall own all right, title, and interest in such property. Buyer grants to Seller a non-exclusive, non-transferable (except as expressly provided herein), royalty-free right during the term of the Order to use the Foreground IP solely as necessary for Seller to perform its obligations under the Order. Seller shall not, without Buyer's prior written consent, (i) use Foreground IP in any manner not authorized under the Order, including, but not limited to, developing, manufacturing, offering for sale, or selling any item or service which utilizes, is enabled by, or is derived from Foreground IP, and (ii) disclose the Foreground IP to any third party. Foreground IP does not include any Seller-Owned IP. Seller shall provide all Foreground IP free of any Seller confidential or proprietary markings and legends. Except as required for the performance of the Order and for archival purposes, Seller shall not make copies or permit copies to be made of Foreground IP without the prior written consent of Buyer. On Buyer's request or upon completion or termination of the Order for any reason, Seller shall promptly provide to Buyer all Foreground IP and all copies. Notwithstanding the foregoing, to the extent it is not reasonably feasible to remove Foreground IP or Buyer-Owned IP from disaster recovery or other archival systems, Seller shall be relieved from the foregoing return obligation, provided however, that all such Foreground IP or Buyer-Owned IP shall remain subject to the confidentiality obligations under the NDA and the Order, including after expiration or termination of the Order for any reason. Seller shall disclose to Buyer in writing all inventions constituting Foreground IP and cooperate, at Buyer's expense, as may be necessary to obtain patent or other legal protection on such inventions. Seller further agrees to execute assignments to Buyer, at Buyer's expense, of any patents or patent applications associated with Foreground IP. Any work performed pursuant to the Order that includes any copyright interest shall be considered a "work made for hire" and all rights, title and interest shall be and are hereby assigned to Buyer. The tangible medium storing copies of all reports, memoranda, or other materials in written form, including machine-readable form, prepared by Seller and delivered to Buyer pursuant to the Order shall become the sole property of Buyer and shall be provided to Buyer free of any Seller confidential or proprietary markings or legends.
- (d) Seller Background IP. Seller shall retain ownership of all Seller Background IP and of any Foreground IP. If Seller includes any Seller Background IP in any Foreground IP or Item provided to Buyer or any Seller Background IP is required to fully exploit such Foreground IP or Item, Seller grants to Buyer a nonexclusive, irrevocable, sublicensable, paid-up, royalty-free worldwide right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works of any and all Seller-Owned IP incorporated into the Foreground IP or Item or otherwise delivered to Buyer in connection with the Order. The foregoing, however, shall not include the right for Buyer to separate the Seller Background IP from the Foreground IP or Item and separately exploit or use the Seller Background IP. For Orders that include the delivery of software, the permitted use and license grant of any software shall be extended to Buyer's affiliates and subsidiaries and Buyer's contractors and outsourcers performing services for or on behalf of Buyer.
- (e) Tools. If any tools, gauges, appliances, or equipment (collectively "Tools") should be manufactured or procured by Seller for producing or developing the Items delivered under the Order, then such Tools shall become the property of Buyer. Buyer shall have all right, title, and interest to such Tools irrespective of whether the Tools are an Item under the Order. Seller shall manage, maintain, and preserve the Tools in accordance with good commercial practice, and upon Buyer's reasonable request, provide Buyer written records of Seller's management, maintenance, and preservation of the Tools, including any inventory lists. Buyer grants to Seller a nonexclusive, non-transferable (except as expressly provided herein), royalty-free right during the term of the Order to use the Tools solely as necessary for Seller to perform its obligations under the Order. All Tools shall be promptly provided to Buyer on request or upon completion or termination of the Order.

## 16. THIRD PARTY SOFTWARE:

(a) This Third Party Software Article only applies to Items and Services that include the delivery of software. As used herein, "Open Source Software" means any software, programming, or other intellectual property that is subject to (i) the General Public License ("GPL"), Lesser/Library GPL, (LGPL), the Affero GPL (AGL), the Apache license, the Berkeley Software Distribution ("BSD") license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License (MPL), or any similar license, including, but not limited to, those licenses listed at <http://www.opensource.org/licenses> or (ii) any agreement with terms requiring any intellectual property owned or licensed by Buyer to be (1) disclosed or distributed in source code or object code form, (2) licensed for the purpose of marking derivative works, or (3) redistributable.

(b) In the event Seller provides any third party software, including Open Source Software, to Buyer in connection with the Order (“Third Party Software”), the following shall apply: (i) Seller shall specifically identify in writing to Buyer all Third Party Software and submit written copies of all third party license agreements applicable to Buyer; and (ii) Seller warrants that (1) it has the right to license any Third Party Software licensed to Buyer under the Order, (2) to the best of Seller’s knowledge, the Third Party Software does not, and the use of the Third Party Software by Buyer as contemplated by the Order will not, infringe any intellectual property rights of any third party, and (3) unless specifically provided otherwise herein, Buyer shall have no obligation to pay any third party any fees, royalties, or other payments for Buyer’s use of any Third Party Software.

(c) Seller shall obtain Buyer’s prior written consent, which may be withheld in Buyer’s sole discretion, before using or delivering any Open Source Software in connection with the Order. All Open Source Software provided by Seller to Buyer shall be considered, as appropriate, part of and included in the definition of “Seller-Background IP” and subject to all warranties, indemnities, and other requirements of the Order, including scope of license and maintenance and support, relating to the Seller Background IP. Seller represents and warrants all Open Source Software used or delivered in connection with the Order: (i) does not require any software to be published, accessed or otherwise made available without the consent of Buyer; or (ii) does not require distribution, copying or modification of any software free of charge.

## 17. INSURANCE:

(a) Minimum Insurance. Seller shall maintain, at its expense, on an occurrence basis (except as noted below), at all times during the term of the Order and for three (3) years following completion of all work performed under the Order, whichever is later, the insurance coverage listed below with insurance companies eligible to do business in the jurisdiction in which work is performed and maintaining an AM Best’s rating of A- VIII or better. The required insurance shall include limits of not less than the minimum limits of liability specified below, policy limits, or limits required by law, whichever are greater. Limits of insurance required herein may be satisfied with any combination of primary and Umbrella/Excess insurance. Additionally, Seller shall cause its subcontractors performing work under the Order to maintain insurance as per the insurance requirements herein. Such insurance shall include:

(i) Commercial General Liability Insurance: Coverage shall be on an occurrence form with limits not less than \$5,000,000 combined single limit per occurrence (unless higher limits are required by statute or law) for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, personal and advertising injury, and products and completed operations coverage.

(ii) Automobile Liability Insurance: Should the performance of the Order involve the use of automobiles including instances when Seller will be using an automobile onsite at a Buyer facility, Seller shall provide business automobile insurance insuring the ownership, operation, and maintenance of all owned, non-owned, and hired motor vehicles. Seller shall maintain limits of at least \$5,000,000 combined single limit per accident for bodily injury and property damage. If Seller’s work involves the delivering, hauling, or transportation of goods, such policy shall include the Motor Carrier Act endorsement (MCS-90) and ISO Pollution Liability Broadened Coverage for covered auto endorsement (CA 99 48) or equivalent form.

(iii) Workers’ Compensation Insurance: Such insurance shall provide coverage in amounts at least \$1,000,000 each occurrence and not less than the statutory requirements in the state where the work is performed even if such coverage is elective in that state, including occupational disease coverage, and if applicable, Federal Voluntary Workers’ Compensation coverage if employees will be temporarily working outside of the United States. To the extent that any work to be performed is subject to the Jones Act, the Longshore and Harbor Workers’ Compensation Act, or the Defense Base Act, the Workers’ Compensation policy must be endorsed to cover such liability under such Act. Should Buyer lease or borrow any of Seller’s employees to perform Services under the Order, such policy shall include ISO Alternate Employer endorsement WC 00 03 01 A or an endorsement providing equivalent coverage, including Buyer as an alternate employer with respect to Services performed by Seller’s employees under the Order.

(iv) Employers’ Liability Insurance: Such insurance shall provide limits of not less than \$1,000,000 each person/accident. In states where Workers’ Compensation insurance is a monopolistic state-run system (e.g., Ohio, Washington, North Dakota, and Wyoming), Seller shall add Stop Gap Employers Liability with limits not less than \$500,000 for each accident or disease.

(v) Excess and/or Umbrella Liability Insurance: Coverage must be on an occurrence form with limits of not less than \$5,000,000 per occurrence/\$5,000,000 annual aggregate in excess of the limits stated in (i), (ii), and (iv) above.

(vi) Professional Liability / Errors & Omissions Insurance/ Technology Errors & Omissions: If Seller is providing professional services under the Order, Seller shall carry professional liability / errors & omissions / technology errors & omissions and in the amount of at least \$5,000,000 for each wrongful act or omission and in the annual aggregate.

(b) Additional Insurance. Some or all of the following additional insurance coverage may be required, depending upon the nature of the work to be performed. These additional insurance requirements will be identified on the Order.

(i) Cyber / Privacy Liability or Network Security Insurance (may be separate or combined with the Professional Liability / E&O Liability / Technology E&O Policy): Such insurance shall (i) cover the liability of Seller by reason of any actual or alleged error, omission, negligent act or wrongful act of the Seller committed in rendering or failing to render any products or services, and shall specifically include coverage for liabilities caused by a security breach, breach of privacy or a breach of privacy regulations, including but not limited to unauthorized disclosure of information, unauthorized access, or failure to protect a network security breach; liabilities resulting from the unauthorized release, transmission or publication of private or technical information in Seller’s possession under the scope of the Order, (ii) include the indemnification of Buyer for any costs and expenses, including Buyer’s notification expenses, incurred by Buyer arising out of a security breach, privacy breach or breach of privacy regulations; with an occurrence or per claim limit, and an annual aggregate limit of not less than \$5,000,000, and (iii) if underwritten on a claims made insuring agreement, be maintained for a period of not less than two (2) years after the expiration of the Order.

(ii) Media Liability Insurance: Such insurance shall include limits of at least \$2,500,000 per claim or wrongful act.

(iii) Aviation Liability / Aircraft / Spacecraft Insurance: Such insurance shall provide coverage for owners and non-owned aircraft, aircraft/space products, completed operations, war, hijacking, and other perils (AVN 52D) and include limits of \$50,000,000 per occurrence/aggregate for any work involving aircraft or spacecraft products and services.

(iv) Hangar-keepers’ Liability Insurance: Such insurance shall include limits of \$50,000,000 per occurrence.

(v) All Risk Property Insurance Replacement Value: Such insurance shall cover the value of property of Buyer or Buyer’s customer in the care, custody, or control of Seller and include Buyer as Loss Payee.

- (vi) **Marine General Liability/ Hull/Protection & Indemnity Insurance:** If performance of the Order requires or involves the installation of equipment onboard a vessel and/or if any vessels are used in any of Seller's operations conducted under the terms of the Order, Seller or the watercraft operator shall carry Marine General Liability /Hull/Protection & Indemnity coverage for each vessel with the following minimum limits:
- (1) **Marine General Liability Coverage:** on an occurrence form with limits not less than \$5,000,000 combined single limit per occurrence (unless higher limits are required by statute or law) for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, personal and advertising injury, and products and completed operations coverage. Watercraft exclusions should be removed from the Marine General Liability policy.
  - (2) **Protection & Indemnity Insurance:** with limit of not less than one million (\$1,000,000) per occurrence for bodily injury and property damage including, but not limited to, coverage for crew (or separate Maritime Employer's Liability) and passengers, Collision/Towers Liability, Contractual Liability, Cargo Legal, In Rem, Wreck Removal, and Pollution Liability;
  - (3) **Hull and Machinery Insurance:** for all vessels used in the scope of work under the Order, in amounts equal to the fair market value of the applicable vessel(s) owned and/or operated by or for the service provider. Hull and Machinery shall include coverage for additional perils & war, strikes, riots & civil commotions (s.r. & c.c.); and
  - (4) **Vessel Pollution Liability Insurance:** including liability for bodily injury and property damage for all vessels and/or barges of any size used in the scope of work under the Order with limits of at least one million (\$1,000,000) per vessel per occurrence and in the aggregate.
- (vii) **Fidelity or Crime Insurance:** Such insurance shall provide a client coverage endorsement with limits of not less than \$1,000,000 per insuring agreement and shall include Buyer as Loss Payee. Coverage must include employee dishonesty, including but not limited to dishonest acts of Seller, its employees, agents, subcontractors and anyone under Seller's supervision or control, and loss of Buyer property, Forgery, Computer Fraud, and Funds Transfer Fraud. Seller shall be liable for money, securities or other property of Buyer.
- (viii) **Environmental Insurance (Contractor's Pollution Liability Insurance):** If required within the scope of Seller's work to be performed, such insurance shall include limits of at least \$5,000,000 each occurrence, claim, or wrongful act and \$10,000,000 aggregate. The insurance required herein cannot exclude coverage for bodily injury, property damage, pollution or environmental harm resulting from or arising out of the work to be performed, asbestos, lead or silica-related claims, claims arising out of microbial matter or bacteria, testing, monitoring, measuring operations or laboratory analyses, or liability arising out of the operation of a treatment facility. The policy must contain a 'separation of insureds' clause.
- (ix) **Pollution Legal Liability Insurance:** Such insurance shall include limits of at least \$3,000,000 each occurrence, claim, or wrongful act and \$6,000,000 aggregate.
- (x) **Installation Floater and Motor Truck Cargo Liability Insurance:** If Installation Floater (Install &/or Rigging) and Motor Truck Cargo services will be performed, Buyer shall provide Seller required limits.
- (c) **Waiver of Subrogation.** To the fullest extent allowed by law, all required insurance policies shall include a waiver of subrogation in favor of Stellant Systems, Inc., its affiliates, subsidiaries, successors and assigns as their interests may appear, and each of their respective directors, officers and employees. Waiver of subrogation endorsement **MUST** be attached to the Certificate of Insurance.
- (d) **Additional Insured.** Except for Workers' Compensation Insurance and Fidelity Insurance, Seller shall name Buyer, its subsidiaries, and their directors, officers, employees, agents, and successors and assigns as Additional Insureds under each of Seller's policies with respect to Seller's work, operations, and completed operations, including claims arising from Buyer's vicarious liability emanating from Seller's work or operations. The Additional Insured endorsements shall be included by endorsement to the policies in a form acceptable to Buyer. The endorsements **MUST** be attached to the Certificate of Insurance. For policies where additional insured coverage is required, policies shall include severability of interest/separation of insureds provisions and shall not contain any cross-suit liability exclusions.
- (e) **Certificate of Insurance.** Seller shall provide to Buyer, within fifteen (15) calendar days of Buyer's issuance of an Order and prior to the start of any work, a Certificate of Insurance evidencing the coverages, limits, and provisions specified in this Article and thereafter upon the renewal of any of the policies including copies of endorsements adding Buyer as an Additional Insured and/or granting waivers of subrogation. The Certificates are to be signed by a person authorized by the insurer to issue certificates of insurance. Seller shall provide Buyer such copies within ten (10) business days of Buyer's written request.
- (f) **General Requirements.** Seller shall give Buyer a minimum of thirty (30) calendar days' written notice prior to any suspension, non-renewal, cancellation (except ten (10) calendar days for non-payment of premium), or material change in coverage, scope, or amount of any policy. Failure to do so shall constitute a material breach of the Order. In the event Seller fails to secure and continuously maintain the insurance coverage required under the Order, Buyer may charge Seller, and Seller shall pay Buyer, (i) Buyer's actual expenses incurred in purchasing similar protection, and (ii) the value or amount of any claims, actions, damages, liabilities, costs, and expenses paid by Buyer which would not have been paid by Buyer if Seller had complied with the requirements of this Article. None of the requirements contained in this Article, including, but not limited to, requirements relating to types and minimum limits of coverage, are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Seller under the Order or as otherwise provided by law. Seller's purchase and maintenance of the insurance described in this Article shall not release Seller from its respective obligations or liabilities in connection with the Order. Furthermore, Seller is responsible for any losses, claims, and incidental costs arising out of the Services which exceed the limits of liability or which may be outside the coverage required in this Article. No provision of the Order shall impose on Buyer any duty or obligation to verify the existence or adequacy of the insurance coverage maintained by Seller and/or Seller's subcontractors. Any failure on the part of Buyer to pursue or obtain the evidence of insurance required by the Order from Seller or any other party and/or failure of Buyer to point out any non-compliance of such evidence of insurance shall not constitute a waiver of any of the insurance required under the Order. Seller is required to fully fund losses within its deductibles, selfinsured retentions, and self-insured programs, without contribution from Buyer. Seller's required insurance coverage shall be primary insurance, and any insurance or self-insurance maintained by Buyer shall be excess and non-contributory with Seller's insurance.

## 18. TERMINATION FOR CONVENIENCE:

- (a) At any time, Buyer may, in its sole discretion and by written notice, direct Seller to terminate work under the Order, in whole or in part. In such event, Buyer shall have all rights and obligations accruing to it either at law or in equity, including Buyer's right to title and possession of any of the Items and Services paid for by Buyer. Upon notice of termination, Buyer may take immediate possession of all work so performed.
- (b) Upon notice of termination, Seller shall immediately stop work and limit costs incurred on the terminated work. In the event Buyer partially terminates the Order, Seller shall continue the performance of the Order to the extent not canceled.



(c) Upon notice of termination for convenience, Seller shall submit a settlement proposal to Buyer within sixty (60) calendar days (unless otherwise extended in writing) with full supporting documentation for all costs claimed. Buyer, after deducting any amounts previously paid, shall reimburse Seller for the actual, reasonable, substantiated, and allowable costs of the work. The total amount to be paid by Buyer for the work shall be determined by Buyer and shall not exceed the value of the Order. Payment for completed Items delivered and accepted by Buyer shall be at the price set forth in the Order.

#### **19. TERMINATION FOR DEFAULT:**

- (a) Buyer may terminate the Order for default, in whole or in part, by written notice to Seller if: (i) Seller fails to make delivery of the Items or perform the Services within the time specified in the Order; (ii) Seller fails to perform any of the other obligations of the Order, or fails to make progress, so as to endanger performance of the Order; (iii) it is found that gratuities (in the form of entertainment, gifts, travel or anything of value) or kickbacks were offered or given by Seller, or by any agent or representative of Seller, to any employee or agent of Buyer; (iv) Seller is sanctioned, suspended, or debarred by the U.S. government; (v) it is found that Seller has a potential, actual, or apparent personal or organizational conflict of interest related to or arising out of its performance of the Order and Buyer determines that such conflict cannot be adequately avoided or mitigated; or (vi) Seller fails to agree upon any deletion, amendment, or addition to the Order that is required by statute, executive order, or applicable regulation. Upon written notice by Buyer, Seller shall have five (5) calendar days to cure such deficiency, unless Buyer extends the cure period in writing.
- (b) Seller shall promptly notify Buyer if Seller: (i) becomes insolvent or makes a general assignment for the benefit of creditors; or (ii) files a petition or application or commences any proceeding under any bankruptcy or similar statute or has a petition or application filed or any such proceeding commenced against it. In such event, or if Buyer reasonably believes Seller could likely become insolvent, Buyer may determine Seller's financial condition endangers completion of performance and may require Seller to post such financial assurance (e.g., performance guarantee), as Buyer, in its sole discretion, deems necessary. Seller's failure to remedy any insolvency, assignment, petition, or post such financial assurance upon seven (7) calendar days written notice shall constitute a default under the Order. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or equity under the Order.
- (c) After receipt of notice of termination for default, Seller shall stop work under the Order on the date and to the extent specified in the notice of termination for default.
- (d) Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed Items and any raw material, parts, Tools, dies, jigs, fixtures, plans, drawings, Services, and information ("Materials") as Seller has produced or acquired for the performance of the Order. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Except for situations where Seller is in violation of the U.S. Foreign Corrupt Practices Act as referenced in Article 26(e) (Foreign Corrupt Practices Act): (i) payment for completed Items delivered and accepted by Buyer shall be at the Order price; and (ii) payment for unfinished Items or Services, which have been delivered and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience Article, except that Seller shall not be entitled to profit.
- (e) If Seller is terminated for default pursuant to this clause, Seller shall be liable to Buyer for any excess repurchase costs incurred in acquiring goods and/or services similar to those terminated for default, and for any other damages, whether or not repurchase is effected.

**20. CHANGE OF CONTROL:** For the purposes of this Change of Control Article, "Change of Control" means (i) the sale, conveyance, transfer, distribution, lease, assignment, license, or other disposition of all or substantially all of the assets of Seller, (ii) any consolidation or merger of Seller or its controlling affiliates, any dissolution of Seller or its controlling affiliates, or any reorganization of one or more of Seller or its controlling affiliates, or (iii) any sale, transfer, issuance, or disposition of any equity securities or securities or instruments convertible or exchangeable for equity securities (collectively, "securities") of Seller or its controlling affiliates in which the holders of all of the securities that may be entitled to vote for the election of any member of a board of directors or similar governing body of Seller or such controlling affiliate immediately prior to such transaction(s) hold less than fifty percent (50%) of the securities that may be entitled to vote for the election of any such member in such entity immediately following such transaction(s). Seller shall provide Buyer written notice of any Change of Control within seven (7) calendar days prior to the effective date of the Change of Control. Buyer will have sixty (60) calendar days from the date that Buyer receives written notice to notify Seller of its decision to terminate the Order for Buyer's convenience. The effective date of the termination will be no sooner than thirty (30) calendar days after the effective date of the written notice of termination.

#### **21. INDEMNIFICATION:**

(a) Seller shall defend, indemnify, and hold harmless Buyer, its officers, directors, customers, agents, employees, successors, and assigns against any and all claims, actions, awards, liabilities, damages, losses, and expenses, including attorneys' fees, expert fees, and court costs, arising out of or relating to: (i) Seller's breach of any warranty contained in the Order; (ii) death, personal injury, destruction, or damage to real or tangible personal property, contamination of the environment, and any associated clean-up costs caused or contributed to by Seller or Seller's agents, subcontractors, employees, or anyone acting on behalf of Seller; (iii) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor; (iv) any negligent act, omission, or willful misconduct of Seller or any of Seller's agents, subcontractors, employees, or anyone acting on behalf of Seller; (v) the violation by Seller or Seller's personnel of any applicable federal, state, or local law, including but not limited to export control, hazardous substance, toxic substance, and hazardous conditions laws; (vi) the breach by Seller or Seller's personnel of its confidentiality or data security obligations hereunder; (vii) any employment-related claims, including those arising from Worker's Compensation or Occupational Disease law, brought by Seller's personnel against any indemnified party of Buyer; and (viii) Seller's failure to keep its work and all Items supplied by Seller hereunder and Buyer's premises free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance by Seller or by any of its vendors or subcontractors.

(b) Seller shall, at Seller's expense, defend, indemnify, and hold harmless Buyer, its officers, directors, customers, agents, employees, successors, and assigns from all claims, actions, awards (including, but not limited to, awards based on infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fees and/or costs), liabilities, damages, losses, and expenses, including attorneys' fees, expert fees, and court costs, arising out of or relating to the actual or alleged infringement or misappropriation of a third party's patent, copyright, trademark, trade secret, or other intellectual property right. Seller's infringement indemnification obligation does not apply to the extent the infringement claim arises from Seller's adherence to Buyer's written instructions or direction which involves the use of other than items or merchandise of Seller's origin, design, or selection or where Seller's Item has been modified by anyone other than Seller and the infringement or claim of infringement arises as a result of such modification. Seller's infringement indemnification obligation shall be excluded from any limitation of liability.

(c) If the Items or Services become or are likely to become the subject of an infringement claim, then, in addition to defending the claim and paying any damages and attorneys fees as required above, Seller shall, at its option and expense, either: (i) promptly replace or modify the Items or Services, without loss of material functionality or performance, to make it non-infringing; or (ii) promptly procure for Buyer the right to continue using the Items or Services pursuant to the Order. If after

using commercially reasonable efforts Seller fails to provide one of the foregoing remedies within forty-five (45) calendar days of notice of the claim, Buyer shall have the right to terminate the Order with no further liability to Seller, and Seller shall refund to Buyer all amounts paid for the infringing Items or Services.

(d) Buyer shall provide Seller with prompt written notice of any indemnified claim, permit Seller to control the defense and settlement of such claim, and reasonably cooperate and assist Seller in connection with the defense and settlement of such claim; provided that all settlements shall require prior written approval by Buyer. Seller shall provide Buyer with regular updates as to the status of the defense and settlement, including copies of documents and materials associated with the defense and settlement. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing Seller's indemnification obligations, including attorneys' fees.

**22. LIENS:** Seller shall keep its work, equipment, Materials, all Items supplied hereunder, and Buyer's premises free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance of the Order by Seller or any of its agents or subcontractors. As a condition of final payment, Seller may be required by Buyer to provide a satisfactory release of liens with reasonable evidence that all services, labor, materials, and equipment have been paid in full. All property belonging to Buyer or Buyer's customer in Seller's custody or possession shall be at Seller's risk from loss or damage.

**23. OFFSETS AND INDUSTRIAL PARTICIPATION:** When Buyer has identified an offset obligation directly related to the performance of the Order in its solicitation or in relation to any properly enacted modification, and Seller's performance of the Order generates offset credits which Buyer could use to satisfy that identified offset obligation, then Buyer shall have the right to such Seller offset credits. Buyer retains the right to assign any such offset or countertrade credits to third parties. Seller shall include this clause, for the benefit of Buyer, in all lower-tier purchase orders and subcontracts awarded in the performance of the Order. Seller shall maintain a record of its purchases under the Order and Buyer reserves the right to review such record not more often than every six (6) months to determine offset availability. Buyer shall have no rights to any other offset credits that may be generated by Seller in connection with the Order. Seller agrees to provide all reasonably necessary information in such form as may be required to enable Buyer to obtain the aforementioned offset credits.

**24. EXPORT CONTROL COMPLIANCE:** Seller agrees to comply with all applicable import, export, and economic sanctions laws and regulations, including those of the United States and other applicable foreign jurisdictions. Within thirty (30) calendar days of contract award or prior to receipt by Buyer, whichever comes first, Seller shall provide Buyer with all applicable trade control classification information, including the commodity jurisdiction, classification, and required customs information, for all Items and data supplied to Buyer. For the purpose of this Export Control Compliance Article, "data" means information in an electronic form and includes but is not limited to, technical data as defined in 22 C.F.R. §120.33, technology as defined in 15 C.F.R. §772.1, and source code as defined in 15 C.F.R. §722.1. The requirements and obligations of this Export Control Compliance Article are material terms of the Order.

(a) ITAR and EAR.

- (i) Seller is hereby notified that certain articles, software, data, and/or services provided by Buyer for purposes of the Order may be subject to the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. §§ 120-130) or the Export Administration Regulations ("EAR") (15 C.F.R. §§ 730 et seq.). In addition, Seller is hereby notified that articles, software, data, and/or services that are designed, developed, modified, adapted or configured from articles, software, data, and/or services provided by Buyer may also be subject to the ITAR or EAR. Buyer shall provide written notice to Seller of the export control status (i.e., jurisdiction and classification) of all articles, software, data, and/or services provided by Buyer to Seller prior to providing access.
  - (ii) Seller shall not transfer or provide access to any ITAR-controlled or EAR-controlled articles, software, data, or technology provided by Buyer to any non-U.S. persons/foreign nationals, including foreign national employees of U.S. companies, foreign companies, or other entities, whether located in the U.S. or not, without Buyer's express written consent and also proper export license or other approval from the U.S. government.
  - (iii) If Seller is a manufacturer and/or exports ITAR-controlled articles or services, Seller represents that it is duly registered with the U.S. Department of State and will maintain its registration for the duration of the Order, in accordance with 22 C.F.R. Part 122. Non-U.S. companies shall be registered as required under applicable foreign government export regulations.
  - (iv) Seller represents that it is knowledgeable of the requirements contained in 22 C.F.R. Part 130. To the extent Seller meets the definition of "supplier" or "vendor" in 22 C.F.R. Part 130, Seller agrees to comply with Buyer's request to provide information regarding fees, commissions, or political contributions to Buyer as set forth in 22 C.F.R. 130.10 and 22 C.F.R. 130.12. In the event Buyer does not request such information from Seller and Seller nonetheless has made, or offered or agreed to make, fees, commissions or political contributions that are within the scope of 22 C.F.R. Part 130, Seller agrees to proactively disclose such information to Buyer within fifteen (15) calendar days after Seller has made the payment, offer or agreement, whichever comes first.
- (b) IT Services. In the event Seller will host, receive, or otherwise access Buyer's software or data, Seller agrees that Buyer's information will remain in the United States and accessible by only U.S. Persons as defined in 22 C.F.R. 120.62.
- (c) Anti-Boycott Laws and Regulations. Seller acknowledges and agrees that it may be responsible for complying with any applicable anti-boycott laws and regulations. Seller warrants to Buyer that it does not, and shall not, participate or comply with any boycott request or engage in any restrictive trade practices in contravention of any applicable law or regulation.
- (d) Notice Required. Seller shall provide prompt written notification to the Buyer's Procurement Representative in the event of changed circumstances that could affect Seller's performance under the Order, including, but not limited to, revocation of export privileges, whether in whole or in part, or a violation or potential violation of applicable export regulations as the violation or potential violation relates to any of Buyer's articles, software, data, or services provided hereunder.
- (e) OFAC Listed Person. Seller warrants that it is not (i) a Specially Designated National or Blocked Persons pursuant to the lists published by the U.S. Office of Foreign Assets Control ("OFAC Listed Person"), or (ii) a department, agency, or instrumentality of, or otherwise controlled by or acting on behalf of any OFAC Listed Person or the government of a country subject to comprehensive U.S. economic sanctions administered by OFAC. Seller further warrants that it will provide immediate written notice to Buyer if it becomes subject to either of the foregoing.
- (f) Consolidated Screening List. Seller further agrees that it will not engage in unauthorized transactions involving the articles, software, technology or services provided hereunder, to or from, with persons or entities identified on any U.S. government screening list, including, but not limited to those identified on the U.S. government's Consolidated Screening List. Seller also agrees to comply with any foreign jurisdiction regulations involving denied or restricted persons or entities.
- (g) Imports Appearing on the U.S. Munitions Import List. If performance under the Order requires Seller to permanently import into the U.S. articles enumerated on the Bureau of Alcohol, Tobacco & Firearms ("BATF") U.S. Munitions Import List, Seller hereby acknowledges that such items may not be permanently imported into the U.S. without an approved import permit pursuant to 27 C.F.R. Part 447, unless an exemption applies. Additionally, if Seller is engaged in importing articles appearing on the U.S. Munitions Import List into the U.S., Seller agrees to maintain active registration with BATF pursuant to 27 C.F.R. Part 447.

- (h) Items Requiring Approved BATF Permits. If performance under the Order requires Seller to export from the U.S. items defined in 27 C.F.R. Part 479, Seller hereby acknowledges that such items may not be exported from the U.S. without an approved export permit issued by BATF. Seller is also advised that an approved export license issued by the DDTC may also be required pursuant to the relevant requirements of the ITAR.
- (i) Record Keeping. Seller agrees to bear sole responsibility for all regulatory record keeping associated with the use of import and export licenses and license exceptions or exemptions. Seller agrees to produce its applicable authorizations to Buyer upon written request.

## 25. CUSTOMS:

- (a) Credits and Refunds. All transferable credits or benefits associated with or arising from Items purchased under the Order, export credits, or rights to the refund of duties, taxes, or fees (collectively, “trade credits”) belong to Buyer.
- (b) Documentation.
  - (i) For any shipments to be imported by Buyer, Seller shall provide to the Buyer’s Procurement Representative five (5) business days advance written notification of shipments. Such notification shall include submission of a copy of the commercial invoice and packing list required by this provision and such other information as Buyer may reasonably request.
  - (ii) Seller shall forward copies of its shipping documents and any applicable certificates via email or facsimile to Buyer so that Buyer may facilitate Customs clearance. These documents shall include:
    - (1) Commercial Shipping Invoice in accordance with 19 C.R.F. § 141.86;
    - (2) Any benefit Buyer may receive from an applicable Free Trade Agreement or Special Trade Program supported by Seller’s certifications/statements of eligibility and qualification (examples include United States Mexico Canada Agreement or IFTA certificates of origin); and
    - (3) If using Ocean Transport: The Importer Security Filing (“ISF”) data elements in accordance with 19 C.F.R. Part 149 shall be provided to Buyer three (3) business days before the cargo is laden aboard the vessel at foreign port of departure. Any penalty or fine due to the failure of Seller or any of its agents in support of the ISF requirement shall be to the account of Seller.
  - (iii) For articles returned to Buyer after repair, Seller shall:
    - (1) Obtain and reference written instructions on how the repaired article is to be returned to Buyer prior to shipment and on shipping documents, respectively;
    - (2) Include a Foreign Repairer Certificate attesting to the work performed abroad in accordance with 19 C.F.R. § 10.8;
    - (3) Include a commercial invoice stating the reason for return. Items returned to Buyer after repair must include the hardware value in accordance with 19 C.F.R. Part 152, Subpart E. from the original sale of the item. Ex: “Hardware value for Customs purposes only: \$\_\_\_”;
    - (4) Include the cost of the repair (parts and labor) as a separate line item on the commercial invoice. Ex: “Repair value for Customs purposes only: \$\_\_\_”; and
    - (5) For repair work done under warranty, Seller shall include the cost of repair. Ex: “WARRANTY repair value for Customs purposes only: \$\_\_\_”.
  - (iv) For articles returned with a Department of State license, Seller shall indicate the license number on the commercial invoice.
  - (v) For articles returned under any ITAR exemption, Seller shall include the exemption citation on the commercial invoice in accordance with 22 C.F.R. § 123.4(d)(1)(i).
  - (vi) For any Duty Free Entries against a U.S. prime contract, Seller shall include the requirements of DFARS 252.225 -7013(e)(2)(iv).
- (c) Sources. Upon Buyer’s written request, Seller shall provide a report of all sources outside the United States utilized by Seller or its lower-tier subcontractors in the fulfillment of the Order, including the names and locations of the sources, and a description of the items or services obtained from such sources.
- (c) Customs Trade Partnership Against Terrorism. Seller acknowledges that Stellant Systems, Inc. Technologies Inc. is a certified Customs Trade Partnership Against Terrorism (“CTPAT”) member. Consistent with Buyer’s obligations and responsibilities under CTPAT, if Seller’s Items will be imported into the U.S. or Canada, Seller shall implement and maintain security measures that meet or exceed the CTPAT Program Minimum Security Criteria (MSC). Seller shall provide one of the following documents, with a copy to CTPAT@Stellant Systems, Inc.com, at time of execution of the Order to verify compliance with CTPAT MSC requirements: (i) copy of Seller’s CTPAT certification; (ii) certification of Seller’s participation in an approved Authorized Economic Operator (AEO) program with a Mutual Recognition Arrangement (MRA) with the U.S.; (iii) written/electronic documentation from Seller’s corporate officer attesting to compliance; or (iv) a complete copy of Buyer’s supply chain security questionnaire. To comply with Buyer’s obligations under the CTPAT program, Seller will permit Buyer to conduct, on a non-interference basis and once per year, onsite visit of Seller’s facilities to verify CTPAT MSC compliance and respond to supply chain risk assessments/questionnaires in a timely manner upon Buyer’s request.
- (d) This Customs Article shall survive five (5) years beyond the completion of the Order.

## 26. COMPLIANCE OBLIGATIONS:

- (a) General. Seller shall comply with all applicable federal, state, and local laws, orders, rules, regulations, and ordinances, including any environmental, transportation, or employment regulations. Seller shall procure all licenses and permits, pay all fees and other required charges, and comply with all applicable guidelines and directives of any local, state, and federal government authority. Unless otherwise specified in the Order, export licenses will be obtained by Buyer. If Buyer determines that Seller has violated any of the obligations, including but not limited to any obligation set forth in this Compliance Obligations Article, Buyer may, in its discretion, either terminate the Order and/or require Seller to implement a corrective action plan as a condition of continued or future business. The violation of any applicable law, rule, or regulation shall be deemed a material breach of the Order.
- (b) Reporting Obligations. To the extent applicable, Seller agrees to provide to Buyer all Item content information required to satisfy both Buyer’s content reporting obligations and Buyer’s customers’ reporting obligations.
- (c) Certificates. Upon Buyer’s request, Seller agrees to furnish to Buyer or directly to Buyer’s customer, any certificate required to be furnished under these General Terms and Conditions.

(d) Seller's Business Systems. "Business Systems" as used in this clause means material management and accounting system, cost estimating system, accounting system, earned value management system, property management system, and purchasing system. If Seller's Business Systems are reviewed and audited by the U.S. government, Seller shall provide prompt notice to Buyer whenever there is a material change in the status of the U.S. government's audit findings or determination of adequacy of any of Seller's Business Systems. If the U.S. government observes a deficiency in Seller's Business Systems that may result in Seller's Business Systems and/or Buyer's Business Systems being deemed not adequate and if any of the deficient Business Systems produce data integral to the output of Buyer acting in its role as a contractor to the U.S. government or to another prime contractor, then Seller shall be liable for and hold harmless Buyer from any loss, damage, or expense whatsoever that Buyer may suffer.

(e) U.S. Foreign Corrupt Practices Act. Seller represents and warrants it shall: (i) comply with the requirements of the U.S. Foreign Corrupt Practices Act ("FCPA") (15 U.S.C. §§ 78dd-1, et. seq., as amended), regardless of whether Seller is within the jurisdiction of the United States; (ii) neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery; and (iii) not interact with any government official, political party, or public international organization on behalf of Buyer without the prior written permission of the Buyer's Procurement Representative. Breach of this provision by Seller shall be considered an irreparable material breach of the Order and shall entitle Buyer to terminate the Order immediately without compensation to Seller.

(f) No Gratuities. No gratuities (in the form of entertainment, gifts, travel, or anything of value) or kickbacks shall be offered or given by Seller or by any agent, representative, affiliate, subsidiary, or subcontractor of Seller to any officer or employee of Buyer's customer or Buyer. This restriction specifically prohibits the direct or indirect inclusion of any kickback amounts in any invoices or billings submitted under the Order or any other agreement with Buyer.

(g) No Child Labor. Seller shall comply with all local, state, and national laws relating to the prohibition on child labor and indentured, prison, or compulsory labor. Seller shall comply with all applicable laws and industry standard relating to working hours, working conditions, and any collective bargaining agreements. Seller further agrees that, if requested by Buyer, it shall demonstrate, to the satisfaction of Buyer, compliance with all requirements in this paragraph. Buyer shall have the right to inspect any site of Seller for compliance with this paragraph. Seller shall include this provision in all of its lower tier subcontracts.

(h) No Human Trafficking. Seller shall comply with all applicable local, state, and national laws in the countries where Seller does business relating to the prohibition of slavery and human trafficking. Upon Buyer's request, Seller shall provide to Buyer a copy of its human trafficking compliance plan and/or other evidence of Seller's compliance with this provision. Seller shall include this provision in all of its lower tier subcontracts.

(i) National Defense Authorization for Fiscal Year 2019 Act Section 889. Buyer, as a U.S. government contractor, is prohibited from using: (i) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (ii) video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (iii) telecommunications or video surveillance services provided by such entities or using such equipment; or (iv) telecommunications or video surveillance equipment or services produced or provided by an entity that is owned or controlled by, or otherwise connected to, the government of the People's Republic of China (collectively, "covered telecommunications equipment or services") as a substantial or essential component of any system or as critical technology as part of any system, regardless of whether the use is in performance of work under a federal contract. By acceptance of the Order, Seller represents and warrants that it: (1) does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services, as a substantial or essential component of any system or as critical technology as part of any system; and (2) will not provide covered telecommunications equipment or services to Buyer in the performance of the Order. In the event Seller identifies covered telecommunications equipment or services used as a substantial or essential component of any system or as critical technology as part of any system at any time during the proposal process or contract performance, or Seller is notified of such by a subcontractor at any tier or by any other source, Seller shall immediately notify Buyer and reasonably cooperate with Buyer's requests for supporting documentation and any resolution required by Buyer's customer. Seller shall include this provision in all lower tier contracts.

(j) Prohibited Contracting. For purposes of this Article, "Covered Entity" means Kaspersky Lab, any successor entity to Kaspersky Lab, any entity that controls, is controlled by, or is under common control with Kaspersky Lab, or any entity of which Kaspersky Lab has a majority ownership. For purposes of this Article, "Covered Article" means any hardware, software, or service that is developed or provided by the Covered Entity, includes any hardware, software, or service developed or provided in whole or in part by the Covered Entity, or contains components using any hardware or software developed in whole or in part by the Covered Entity. Seller is prohibited from providing any Covered Article in the performance of the Order. In the event Seller identifies that a Covered Article has been provided to Buyer under the Order, Seller shall immediately notify Buyer in writing of such event and discontinue its use under the Order. Seller will, at Seller's cost, cooperate with Buyer to provide any requested information regarding the Covered Article and any mitigation efforts taken by Seller. Seller shall include this provision in all of its lower-tier subcontracts.

(k) Equal Opportunity. Buyer and Seller shall abide by the equal opportunity federal and state laws that prohibit discrimination on the bases of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status and require affirmative measures to prevent discrimination on those bases from occurring, including employment and advance in employment requirements.

**27. CYBER SECURITY AND INCIDENT REPORTING:** Seller shall comply with the following:

(a) "Buyer Data" means all data, content, materials, Confidential Information, and other information provided by Buyer to Seller or otherwise transmitted to Seller for use in connection with the Items and Services. Seller shall establish and maintain environmental, safety and facility procedures, data security procedures, and other safeguards against the destruction, corruption, loss or alteration of Buyer's data and to prevent access, intrusion, alteration or other interference by any unauthorized third parties of the same, that are: (i) no less rigorous than those maintained by Seller for its own information or the information of its customers of a similar nature and scope; (ii) no less rigorous than the accepted practices in the industry; and (iii) no less rigorous than those required by applicable data security and privacy statutes and regulations. Buyer Data shall be maintained by Seller as Confidential Information. Seller acknowledges and certifies that (1) Seller shall not "sell" (as defined at Cal. Civ. Code § 1798.140(ad), as it may be amended) Buyer Data, and (2) Seller will not use, disclose, or retain Buyer Data for purposes other than performing the Items and Services for Buyer or to comply with applicable law, and Seller will ensure that its subcontractors are restricted from any use or retention of Buyer Data other than for purposes of performing the Items and Services for Buyer or to comply with applicable law. Seller may not de-identify, aggregate, redact, create derivative data, or other process Buyer Data for Seller's purposes other than a required to perform the Items or Services for Buyer. In the course of furnishing the Services, Seller shall not access, and shall not permit its personnel or entities within its control to access, Buyer's electronic communication systems, networks, or computers without Buyer's written authorization.

(b) Seller has the obligation to protect the confidentiality, authenticity, and integrity of Buyer Data by protecting the transmission of electronic messages from unauthorized access or modifications. Seller agrees to appropriately and effectively encrypt Buyer Data transmitted over public networks, stored on Seller portable devices, and at rest in any hosting system by using the most current industry standard security algorithm or cryptography validated by the curing FIPS 140 standard and an



appropriate encryption strength. Seller will take all reasonable measures to secure and defend its location and equipment against “hackers” and others who may seek, without authorization, to modify or access Seller’s systems or the information found therein. Seller will periodically test its systems for potential areas where security could be breached and remediate any medium or high risk issues and critical gaps. Seller shall rapidly report cyber incidents to Buyer and the DoD at <http://dibnet.dod.mil> if applicable and provide the requisite information required under the DFARS 252.204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting) and as reasonably requested by Buyer. Without exception, Seller shall report to Buyer any breach of Seller’s data security procedures that result in any actual or threatened loss, corruption, or alteration of Buyer’s data within seventy-two (72) hours of Seller’s discovery of the incident. In such an instance, in addition to Seller’s other obligations under the Order, or under any law or regulation, Seller agrees, at Seller’s cost, to use diligent efforts to instigate, contain, and promptly remedy any such breach, fully cooperate with Buyer in resolving such breach and mitigate any damage from such breach. Failure to report any cyber incidents will be considered a material breach of the Order. In the event of a data breach, Buyer shall be afforded unfettered access to certain technical information (e.g., logs, packet flow information, etc.) in order to satisfy information requests from Buyer or Buyer’s customer. Seller shall encrypt emails to Buyer regarding cyber incidents using industry standard encryption methods.

(c) Should Buyer elect to utilize supplier checklists, representations or certifications of compliance, outside vendor verification, or onsite security audits, Seller shall support as required to meet the continuing needs of Buyer or Buyer’s customer.

## **28. ETHICAL STANDARDS OF CONDUCT:**

(a) Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Buyer’s expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. Buyer’s further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards equivalent to Buyer’s Supplier Code of Conduct (available at: [https://www.Stellant Systems, Inc..com/sites/default/files/2020-08/Stellant Systems, Inc.SupplierCodeOfConduct\\_1.pdf](https://www.Stellant Systems, Inc..com/sites/default/files/2020-08/Stellant Systems, Inc.SupplierCodeOfConduct_1.pdf)) or comply with Buyer’s Supplier Code of Conduct. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically under the Order, Seller shall report such behavior to the Buyer’s Procurement Representative or the appropriate Buyer points of contact set forth in Buyer’s Supplier Code of Conduct. Seller’s employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities. Seller shall include this Ethical Standards of Conduct Article in all of its lower tier subcontracts.

(b) Seller shall not participate in any personal, business, or investment activity that may be defined as a conflict of interest, whether real or perceived. As a material obligation hereunder, Seller shall immediately notify Buyer if, at any time during the term of the Order, Seller becomes aware that it has an actual or potential conflict of interest, including without limitation, a relationship of any nature which may affect or which may reasonably appear to affect Seller’s objectivity or ability to perform the work.

**29. CONFLICT MINERALS:** Items delivered to Buyer shall be free of any known conflict minerals, as defined by the Securities and Exchange Commission (“SEC”) at 17 CFR PARTS 240 and 249b, (Dodd-Frank Act Section 1502). If Seller is a registrant with the SEC, Seller shall comply with all the conflict minerals reporting requirements and perform appropriate due diligence on its supply chain in order to fulfill the reporting obligations of the conflict minerals rule.

## **30. ASSIGNMENT AND SUBCONTRACTING:**

(a) Neither the Order nor any interest herein nor claim hereunder may be transferred, novated, assigned, or delegated by Seller without the prior written consent of Buyer. Lack of consent shall not be deemed as a waiver or otherwise relieve Seller of its obligations to comply fully with the requirements hereof. Seller shall promptly notify Buyer in writing of any organizational changes made by Seller, including name, ownership changes, mergers, or acquisitions as set forth in the Change of Control Article, and any changes made to Seller’s strategic suppliers or the location or identity of Seller’s manufacturers.

(b) Seller shall not subcontract the Order, in whole or in part, without the prior written authorization of Buyer, and Seller shall require an agreement with conforming performance requirements from immediate lower-tier suppliers. Seller shall be and remain responsible to Buyer for (i) the performance of all work including Services performed or provided by Seller’s subcontractors, and (ii) the acts and omissions of Seller’s subcontractors in connection with the performance or provision of any of the work.

## **31. GOVERNING LAW AND DISPUTES:**

(a) The Order, irrespective of the place of performance, shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of law provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to the Order. The Parties agree that any and all disputes, claims, or litigation arising from or related in any way to the Order shall be resolved exclusively by the courts in New York City, New York, and each Party waives any objections against and agrees to submit to the personal jurisdiction of such state and federal courts, including objections or defenses based upon an inconvenient forum. THE PARTIES HEREBY AGREE TO WAIVE THEIR RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE ORDER OR THE SUBJECT MATTER HEREOF.

(b) Any disputes under the Order that are not disposed of by mutual agreement of the Parties may be decided in an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with performance of the Order as directed by Buyer. Buyer and Seller shall each bear its own costs of processing any dispute hereunder.

(c) The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity. Subject to any specific clauses in the Order, Seller shall be liable for any damages incurred by Buyer as a result of Seller’s failure to perform its obligations in the manner required by the Order.

**32. NOTICES:** All notices permitted or required under the Order shall be in writing to the address in the Order, unless otherwise specified, and shall be by personal delivery, a nationally recognized overnight carrier, facsimile transmission, or certified or registered mail, return receipt requested.

**33. RELATIONSHIP OF PARTIES:** Seller’s relationship to Buyer in the performance of the Order is that of an independent contractor and nothing herein contained shall be construed as creating any employer/employee, agency, or other relationship of any kind. Under no circumstance shall Seller be deemed an agent or representative of Buyer or authorized to commit Buyer in any way. Buyer shall be solely responsible for any and all communication with Buyer’s customer regarding the Order or any related order or agreement. Seller shall not communicate with Buyer’s customer regarding any matters related to this Order unless written approval is received from Buyer.

**34. CONFIDENTIALITY:** The obligations in this Confidentiality Article apply to the extent the Parties have not executed an NDA applicable to the work under the Order. If the Parties have executed a NDA applicable to the work under the Order, the terms and conditions of the NDA control and take precedence over this

Confidentiality Article. Buyer may disclose to Seller certain non-public information or materials relating to Buyer's products, intellectual property, business, business plans, marketing programs and efforts, customer lists, customer information, financial information, and other confidential information and trade secrets that is identified or labeled as "proprietary" or "confidential" ("Confidential Information") under the Order or under a nondisclosure agreement. Confidential Information does not include information that: (a) is or becomes publicly available through no breach by Seller of the Order; (b) was previously known to Seller prior to the date of disclosure, as evidenced by contemporaneous written records; (c) was acquired from a third party without any breach of any obligation of confidentiality; or (d) was independently developed by Seller without reference to Buyer's Confidential Information. To the extent Confidential Information is required to be disclosed pursuant to a subpoena or other similar order of any court or government agency, Seller upon receiving such subpoena or order shall (i) promptly inform Buyer in writing and provide a copy thereof, (ii) cooperate with Buyer in limiting disclosure of Buyer's Confidential Information, and (iii) shall only disclose that Confidential Information necessary to comply with such subpoena or order. Seller will not use or disclose any Buyer Confidential Information without Buyer's prior written consent, except disclosure to and subsequent uses by Seller's authorized employees or consultants on a need-to-know basis for performance of the Order, provided that such employees or consultants have executed written agreements restricting use or disclosure of such Confidential Information that are at least as restrictive as Seller's obligations under this Confidentiality Article. Subject to the foregoing nondisclosure and non-use obligations, Seller agrees to use at least the same care and precaution in protecting such Confidential Information as Seller uses to protect its own Confidential Information and trade secrets, and in no event less than reasonable care. Seller acknowledges that due to the unique nature of the Buyer's Confidential Information, Buyer will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, Buyer shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure. In any action for equitable relief, the Parties agree to waive any requirement for the posting of a bond or security. On Buyer's written request or upon expiration or termination of the Order for any reason, Seller will promptly return or destroy, at Buyer's option, all originals and copies of Buyer's Confidential Information, including all documents and materials it has received containing such Confidential Information, together with all summaries, records, modifications, adoptions and other documents containing or prepared from Buyer's Confidential Information.

**35. NO PUBLICITY:** Seller shall not make any media release or other public announcement relating to or referring to the Order without Buyer's prior written consent. Seller shall acquire no right to use, and shall not use, without Buyer's prior written consent, the terms or existence of the Order, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of Buyer: (i) in any advertising, publicity, press release, customer list, presentation or promotion; (ii) to express or to imply any endorsement of Seller or Seller's Items or Services; or (iii) in any manner other than expressly in accordance with the Order.

**36. NO WAIVER:** Buyer's failure to insist upon or enforce strict compliance by Seller with respect to any aspect of the Order shall not be deemed a waiver or relinquishment to any extent of any of Buyer's rights; rather, the same shall remain in full force and effect. Waiver of a right under the Order shall not constitute a waiver of any other right, waiver, or default under the Order.

**37. SEVERABILITY:** If any part, term, or provision of the Order is found to be void, illegal, unenforceable, or in conflict with any law or regulation of the government having jurisdiction over the Order, that part will be enforced to the maximum extent permitted by law and the remainder of the Order will remain in full force. In the event that any part, term or provision of the Order is found to be void, illegal, unenforceable, or in conflict with law, Seller agrees to negotiate a replacement provision, construed to accomplish its originally intended effect that does not violate such law or regulation.

**38. SURVIVABILITY:** All of the provisions of the Order shall survive the termination (whether for convenience or default), suspension, or completion of the Order, unless they are clearly intended to apply only during the term of the Order.

**39. ELECTRONIC TRANSMISSIONS:** The Parties agree that if the Order is transmitted electronically, neither Party shall contest its validity, or any acknowledgment thereof, on the basis that the Order contains an electronic signature.

**40. ENTIRE AGREEMENT:** The Order, including all exhibits, schedules, and attachments, contains the entire agreement of the Parties, and supersedes any prior negotiations, representations, and course of dealing, whether written or oral, between the Parties with respect to the subject matter hereof. The Order may be amended or supplemented only by a writing that refers explicitly to the Order and is signed by the Buyer's Procurement Representative and Seller.

**41. LIMITATION OF LIABILITY:** IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, MULTIPLE OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE ORDER. IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF BUYER IN ANY CAUSE OF ACTION BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR THE PERFORMANCE OR BREACH OF THE ORDER OR ANYTHING DONE IN CONNECTION THEREWITH EXCEED THE ORDER PRICE. NOTWITHSTANDING ANYTHING ELSE IN THE ORDER TO THE CONTRARY, THE STATED MONETARY LIMITATION HEREINABOVE IS THE MAXIMUM LIABILITY BUYER HAS TO SELLER. TO THE EXTENT THAT THIS LIMITATION OF LIABILITY CONFLICTS WITH ANY OTHER PROVISION OF THE ORDER, THE PROVISION SHALL BE REGARDED AS AMENDED TO WHATEVER EXTENT REQUIRED TO MAKE SUCH PROVISION CONSISTENT WITH THIS LIMITATION OF LIABILITY.