

**ELBIT SYSTEMS OF AMERICA- NIGHT VISION LLC.**

**GENERAL PROVISIONS – FIXED PRICE COMMERCIAL (NON- GOVERNMENT)**

*For Commercial Purchase Orders under a non- U.S. Government Contract*

**DEFINITIONS AND RULES OF CONSTRUCTION**

As used throughout these Terms and Conditions, the following terms are defined as specified below unless otherwise specifically stated:

“Buyer” means Elbit Systems of America LLC., a corporation organized and existing under the laws of the state of Delaware, and all of its subsidiaries and affiliates.

“Buyer’s Representative” means the agent of Buyer with the actual authority to make legally binding commitments on behalf of Buyer as designated on the Purchase Order or Subcontract.

“Day” or “Days” means calendar day(s). All periods of days referred to in this Order shall be measured in calendar days. Where a date referenced in this Order falls on a weekend or federal holiday, the date shall be deemed to fall on the next business day unless otherwise specified.

“Item” means goods, parts, components, supplies, or items including, without limitation, those part numbers model numbers, and/or descriptions set forth on the face of this Order and any Services supplied with them, and shall also include computer software or hardware (including any software, firmware or other hardwired logic embedded within the hardware) delivered or to be delivered under this Order. It shall also include Services not supplied with Items as the context requires.

“Parties” means Buyer and Seller, and, if the context requires, their employees, officers, agents (including without limitation, carriers and riggers), subcontractors, wholly-owned subsidiaries, and others acting at their respective direction and control or under contract to either.

“Purchase Order” or “Order” means this contractual instrument, or any Purchase Order or Subcontract issued hereunder, including written change notices, supplements, amendments, or and other written modifications thereto, together with any referenced certifications, certificates (including Seller’s Annual Certification), exhibits, attachments or other documents, as well as the Subcontract (if any) and includes these terms and conditions, and the Statement of Work, if any.

“Seller” means the legal entity performing work pursuant to this Order and, if the context requires, its employees, officers, agents (including without limitation, carriers and riggers), subcontractors, and others acting at its direction and control or under contract to it.

“Seller’s Annual Certification” means the certifications and representations set forth in Supplier Vetting Annual Certification document, attested to and executed by a duly authorized representative of Seller’s company.

“Services” means any labor, performance of a duty, or effort supplied by Seller incidental to the sale of Items by Seller under this Order including, without limitation, installation, repair, and maintenance services. The term “Services” shall also include, without limitation, any effort specifically required by this Order, including all associated efforts such as design, engineering, repair, maintenance, technical, construction, consulting, professional, or other services.

**1. PURCHASE OF PRODUCTS:** Buyer has the absolute right to purchase the Items or Services from manufacturers or suppliers other than Seller. Except when issued to carry out a written contract between the parties, this order constitutes the entire agreement of sale and purchase of the goods and services identified herein, and is expressly limited to and made conditional upon the acceptance of all the terms and conditions. Any additional or different terms and conditions contained in any prior quotation or that may be contained in any acknowledgment of this purchase order shall be deemed objected to by Buyer without further notice of objection and shall be of no effect nor under any circumstances be binding upon Buyer. Seller shall be deemed to have assented to all terms and conditions of this purchase order if any of the goods are shipped or services provided to Buyer.

**2. PERFORMANCE STANDARDS:**

(a) The Items and Services Seller delivers must correspond to Items and/or Services ordered in the applicable Order. Seller shall at all times

employ persons to perform the tasks who are fully experienced and properly qualified to perform the same.

(b) Buyer shall have the right to reject any Services or Items or lots of Items which it determines are defective in material or workmanship or otherwise not in conformity with the requirements of this Order and to require their correction or replacement. Rejected Services or Items shall be removed or if permitted or required by Buyer, corrected in place by and at the expense of Seller promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Seller fails to promptly replace, correct, or remove such Services or Items or lots of Items which are required to be removed, Buyer may:

- (1) replace or correct such Services or Items and charge to Seller the cost occasioned Buyer thereby; or
- (2) pay for such Services or Items at a reduced price which is equitable under the circumstances; or
- (3) cancel this Order; or
- (4) exercise any other applicable rights or remedies.
- (5) Seller will bear all risk of loss with respect to all non-conforming Services or Items and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose of any non-conforming Services or Items. Buyer’s payment for any non-conforming Items or Services will not constitute acceptance by Buyer, limit or impair Buyer’s right to exercise any rights or remedies, or relieve Seller of responsibility for the non-conforming Items or Services.

(c) 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 herein or later agreed upon by the Parties in writing and after final inspection of those Items or Services by Buyer. Final acceptance shall be contingent upon agreement by Buyer that the Items or Services conform to the requirements of this Order. Final acceptance by Buyer shall be conclusive, except for latent defects, negligent or intentional misrepresentations by Seller that a nonconformity or defect would be or had been cured or did not exist, acceptance induced by false or negligent assurances of Seller, or as otherwise provided in this Order or applicable law. Final acceptance by Buyer of the Items or Services delivered hereunder shall not limit or affect the warranty or indemnity granted by Seller hereunder.

**3. ORDERING AND PRICING:**

(a) Buyer will submit purchase orders (“Orders”) to Seller and Seller will confirm the Order (the “Order Confirmation”) within 48 hours of receipt. The Order Confirmation will include:

- (1) the Item and/or Service price;
- (2) the quantity of Items and/or Services; and
- (3) any other costs or charges.

(b) If Seller fails to provide a proper Order Confirmation, Buyer shall only be responsible for payment of the amount set forth in the Order. Seller will be allowed no additional charges unless specified in the Order.

(c) Seller will notify Buyer in writing within thirty (30) calendar days of the occurrence of any alleged payment disputes. Buyer may deduct any Seller monetary obligations from any amounts owed to Seller by Buyer, including for overpayments, and pay only the net sum due, if any.

**4. INVOICING AND PAYMENT:**

(a) Payment shall be made in accordance with the Purchase Order. Buyer shall pay Seller, upon the submission of proper invoices or

vouchers, the prices stipulated in the Order for Items delivered and accepted or Services rendered and accepted, less any deductions provided in this Order.

(b) The invoice payment period will start on the later of the date:

- (1) sixty (60) calendar days from Buyer's receipt of an acceptable and/or approved invoice; or
- (2) the Items are delivered and accepted or Services rendered and accepted.

(c) If the invoice receipt by Buyer is delinquent, or if a pricing discrepancy results when comparing the invoice amount to Buyer's Order amount or Items or Services received, processing of the invoice may be delayed. Buyer shall consider Seller invoices paid on the date the check is postmarked and mailed to Seller.

(d) Each payment made shall be subject to reduction to the extent of amounts which are found by Buyer, Buyer's Customer, or Seller not to have been properly payable. Seller shall promptly notify Buyer of any overpayments and remit the overpayment amount to Buyer along with a description of the overpayment, including the circumstances of the overpayment, affected Order and delivery order number if applicable, and affected Order line item or subline item if applicable. Buyer, and any affiliate of Buyer, may withhold, deduct, and/or setoff all money due, or which may become due, from Buyer or any affiliate of Buyer, arising out of Seller's performance under this Order or any other transaction Buyer and its affiliates may have with Seller.

#### 5. DELIVERY & PLACE OF SERVICE:

(a) Shipments made pursuant to this Order must be shipped as specified and to the delivery location specified in the Purchase Order. If Seller does not use Buyer's specified carrier(s) and additional freight are incurred as a result, such additional freight cost shall be Seller's responsibility. Moreover, Seller agrees that Buyer reserves the right to refuse shipments made in advance of the schedule set forth in the Order. Seller 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.

(b) Seller shall provide Services at the place(s) specified by Buyer in the Order.

#### 6. CHANGES:

(a) Buyer may at any time and without notice to third parties, including sureties (if any), by written instructions from Buyer's Representative to Seller, unilaterally make changes to these terms and conditions and/or in the Services to be performed or the Items to be furnished hereunder in any one or more of the following:

- (1) drawings, designs or specifications;
- (2) method of shipment or packing;
- (3) time and/or place of delivery, inspection or acceptance;
- (4) the quantity of Items ordered or Services to be performed;
- (5) the statement of work;
- (6) method or manner of performance of the work; and,
- (7) property, facilities, equipment, or materials, to be provided under this Order.

(b) During performance of this Order, Seller shall not make any changes in the Services to be performed or in the design of Items or manufacturing of Items to be furnished by Seller under this Order, including any changes to the process, manufacturing location, or use of suppliers, without advance notification to and written approval of Buyer. Items or Services that have changed without prior notification and consent shall be nonconforming Items or Services under this Order. Changes shall not be binding upon Buyer, except when confirmed in writing by Buyer's Representative. The issuance of information, advice, approvals or instructions by Buyer's technical personnel or other representative shall be deemed expressions of personal opinion only, and shall not affect Buyer's and Seller's rights and obligations hereunder,

unless the same is in writing signed by Buyer Representative and which expressly states that it constitutes an amendment to this Order. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance.

(c) If any written change under this Article causes an increase or decrease in the estimated costs or the time required for performance of the Order, an equitable adjustment to the Order price and/or delivery schedule may be made and the Order modified in writing accordingly, provided however, that 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. Any claim by Seller for adjustment must be asserted to Buyer within fifteen (15) days from date of Buyer issued change order. Seller's claim for adjustment must be submitted in writing in the form of a complete change proposal, fully supported by factual information to Buyer's Representative within thirty (30) days from the date Buyer issued the change order. 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.

If Buyer and Seller are unable to agree upon an equitable adjustment in the event of any change directed by Buyer, the matter will be resolved in accordance with the disputes provisions of Article 10. Nothing contained herein, including failure of the Parties to agree upon any equitable adjustment to be made under this Article, shall excuse Seller from proceeding without delay with the Order as changed by Buyer's written direction.

(d) Nothing in this clause nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by Buyer of the validity of Seller's claim or any part thereof, nor be deemed to limit or in any way to restrict Buyer from taking any actions, including available remedies, it deems appropriate to protect its own interests.

#### 7. WARRANTY:

(a) Seller warrants that all the Items and Services furnished hereunder shall:

- (1) be merchantable;
- (2) be fit for the use intended by Buyer, whether expressed or reasonably implied, and/or which is stated on any packaging, labeling, or advertising;
- (3) be free from defects in material, workmanship, design and fabrication;
- (4) be free from security interests, liens or encumbrances and of good title; and
- (5) be performed with that degree of skill and judgment normally exercised by recognized professionals delivering or performing the same or similar Items or Services.

(b) Neither approval by Buyer of Seller's design or material used nor Buyer's inspection of same shall relieve Seller from any obligations under the warranties set forth in this Article.

(c) Seller guarantees all Services and Items, parts, components, and assemblies furnished hereunder against any defects in design, material, or workmanship for twelve (12) months from the date of acceptance at Buyer's location. 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.

(d) The aforesaid warranties shall survive acceptance and payment and shall run to Buyer, its customers and the users of these Service(s) and Item(s) 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, and the terms of this Order.

8. **NOTICES:** All notices permitted or required under this Agreement shall be in writing and shall be by personal delivery, a nationally recognized overnight carrier, facsimile transmission or certified or registered mail, return receipt requested.

9. **TITLE AND RISK OF LOSS:** Unless otherwise specified in the Order, Seller shall bear the risk of loss and damage to all Items to be supplied

hereunder until final acceptance by Buyer. Buyer shall have equitable title to all Items for which interim, partial or progress payments have been furnished to Seller.

#### 10. APPLICABLE LAW AND DISPUTES:

(a) This Agreement, irrespective of the place of performance, shall be governed by, subject to, and construed in accordance with the laws of the State of Florida, excluding its choice of law rules.

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

(c) Seller consents to personal jurisdiction in the state of Florida and any litigation under this Order must be brought exclusively in a court of competent jurisdiction in the state of Florida, without regard to conflicts of law principles. The Parties hereby mutually agree to waive their respective rights to trial by jury. 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 this 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 this Order.

(d) The Parties specifically disclaim application to this Order of the United Nations Convention on Contracts for the International Sale of Goods.

#### 11. FURNISHED PROPERTY:

(a) Buyer may provide to Seller property owned by Buyer (Furnished Property) as set forth in the Order. Furnished Property shall be used only for the performance of this Order.

(b) Title to Furnished Property shall be retained by Buyer. Seller shall clearly mark (if not already marked) all Furnished Property to show ownership. While Furnished Property is in Seller's possession, Seller shall prevent the comingling of Furnished Property with other materials in Seller's possession, except in accordance with Buyer's written instructions.

(c) Except for reasonable wear and tear, Seller assumes all risk of loss, destruction, or damage of 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. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice. Seller shall maintain written records of the management, maintenance, and preservation of the Furnished Property, in accordance with good commercial practice, and provide such records to Buyer, upon request.

(d) At Buyer's request or at completion of this Order, Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposition in accordance with instructions from Buyer.

#### 12. TERMINATION:

(a) Buyer may at any time terminate this order in whole or in part for Convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the purchase order price reflecting the percentage of the work performed prior to termination, plus any reasonably incurred settlement expense

(b) Buyer may terminate this order for default in whole or in part by written notice to Seller if:

- (1) Seller becomes insolvent or makes a general assignment for the benefit of creditors; or
- (2) a petition under any bankruptcy act or similar statute is filed by or against Seller; or
- (3) Seller fails to make delivery of the Items or to perform the Services within the time specified in this Order; or
- (4) Seller fails to perform any of the other obligations of this Order, or fails to make progress, so as to endanger performance of this Order, in accordance with its terms; or

(5) Seller's financial condition endangers completion of performance, (provided with respect to (4) and (5) Seller fails to remedy any such condition within seven (7) days from the date of receipt of a notice from Buyer concerning the existence of the condition); or

(6) 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 officer or employee of Buyer; or

(7) Control of Seller changes. A change of control includes: (a) the sale, lease or exchange of a substantial portion of Seller's assets used for the production of the Items; (b) the sale or exchange of a controlling interest in the shares of Seller; or (c) the execution of a voting or other change of control. Seller will provide Buyer with written notice of change of control within ten (10) days after the change of control has become effective. Buyer will have sixty (60) days from the date that Buyer receives written notice from Seller within which to notify Seller of its decision to terminate this Order. The effective date of the termination will be no sooner than thirty (30) days after the effective date of the written notice of termination according to the terms of notice; or

(8) Seller is sanctioned, suspended, or debarred by the Government; or

(9) 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 this Order and Buyer determines that such conflict(s) cannot be adequately avoided or mitigated.

(c) Upon any termination or expiration this Agreement or if Buyer discontinues the purchase of Items or Services, each party will continue to be obligated to make all payments due that arose under this Agreement prior to such termination or expiration. Upon a termination of this Agreement

(1) Buyer may, in its sole discretion:

- (i) return non-conforming Items to Seller at Seller's expense;
- (ii) sell all other Items under the terms and conditions of this Agreement until such Item is depleted; and

(2) Buyer shall have no obligation to Seller for any of Seller's inventory of finished goods, packaging materials or raw materials of any kind, nor for any amounts expended by Seller for preparation of Services.

#### 13. INDEMNITY AGAINST CLAIMS:

(a) Seller shall keep its work and all items supplied by it hereunder and Buyer premises free and clear of all liens and encumbrances, including mechanic's liens, in any way arising from performance of this Order by Seller or by any of its vendors or subcontractors. Seller may be required by Buyer to provide a satisfactory release of liens as a condition of final payment. All personal property belonging to Buyer in Seller's custody or possession shall be at Seller's risk from loss or damage from all hazards.

(b) Seller shall, without limitation, indemnify, save, and hold harmless Buyer and its customer(s) and their respective officers, directors, employees and agents harmless from and against every liability, claim of liability, allegation, judgment, cost, expense, attorneys' fees, cause of action, loss or damages whatsoever, including, without limitation, any and all claims (including claims under Workers' Compensation or Occupational Disease laws) and resulting costs, expenses and liability which arise from personal injury, death, or property loss or damage arising out of or as a result of Seller activity or omissions under this Order, including, without limitation, latent defects in such Services or other Items, whether arising out of the actions or inactions of Seller or of its employees, subcontractors, and lower tier subcontractors.

(c) Seller agrees to notify Buyer as soon as practicable of any such claim described in subparagraph (b) above. Seller, if required to indemnify Buyer under this Article, shall promptly assume and diligently conduct the entire defense of such claim at its own expense. Buyer shall have the right to reasonably reject counsel selected by Seller and the right to reject any settlement that would negatively impact Buyer as determined solely by

Buyer. Buyer shall have the right to participate with Seller in determining the strategy to defend any such suit or action, and shall have the right, with the permission of the court, to intervene in any such claim.

(d) Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such claim and thereafter to assume and conduct the same according to Buyer's sole discretion. Upon Buyer's election, Seller shall be released from its obligation to pay for attorneys' fees and court costs. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged claim.

(e) In the event Buyer should bring action to enforce the indemnification provisions of this Article and prevail in such action, Seller agrees that Buyer shall be entitled to be awarded its reasonable attorney's fees and costs.

**14. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS:** Seller agrees to comply with all applicable national, state, provincial and local laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state and/or federal government authority.

**15. CONFIDENTIAL RELATIONSHIP:** Seller shall treat as proprietary and confidential all specifications, drawings, blueprints, nomenclature, samples, models and other information supplied by Buyer. Unless the written consent of Buyer is first obtained, Seller shall not in any manner advertise, publish, or release for publication, including without limitation by news releases, articles, brochures, advertisements, or speeches, any statement mentioning Buyer or the fact that Seller has furnished or contracted to furnish to Buyer Items and/or Services required by this Order, or quote the opinion of any employees of Buyer. Seller shall use the information supplied by Buyer only to accomplish work covered by this Order and for no other purpose. Upon completion, all information is to either be returned to Buyer upon Buyer's written request or destroyed by Seller in which case Seller shall provide Buyer with a Certificate of Destruction. In the event of a conflict between the terms of this Article and the terms and conditions of any separately executed and applicable Non-Disclosure Agreement between Buyer and Seller, the terms and conditions of the Non-Disclosure Agreement shall control.

**16. RISK OF DAMAGE/INDEMNIFICATION/INSURANCE:**

All personal property belonging to Buyer in Seller's custody or possession, shall be at Seller's risk from loss or damage from all hazards. Seller agrees, to the fullest extent permitted by applicable law, to indemnify and hold harmless Buyer, its officers and employees, from and against any and all claims, liabilities, causes of action, losses, costs, damages and expenses by reason of property damage or personal injury, including death, of whatsoever nature or kind, including special, incidental or consequential damages, for any reason, arising out of or as a result of Seller activity or omissions under this Order, whether arising out of the actions or inactions of Seller or of its employees, subcontractors, and lower tier subcontractors. Seller and its subcontractors and lower tier subcontractors shall maintain, at their own expense:

(a) Commercial General Liability ("GCL") insurance, with limits of at least \$2,000,000 combined single limit for bodily injury and property damage per occurrence and \$2,000,000 annual aggregate

(b) Automobile Liability insurance shall be for an amount of at least \$2,000,000 combined single limit for bodily injury and property damage per accident

(c) Worker's Compensation as prescribed by the law of the state or nation in which work is performed

(d) Employer's Liability with limits of at least \$2,000,000 for each occurrence: All CGL and automobile liability insurance shall designate Elbit SA-NV, its affiliates, and its directors, officers, and employees as additional insureds. All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. Insurance companies providing coverage must be rated by A-M Best with at least an A-VII rating.

Seller and Seller's subcontractors shall furnish, prior to the start of work or at such other time as Elbit SA-NV requires, certificates or adequate proof of the foregoing insurance. The policies shall be endorsed to provide thirty (30) days

written notice of cancellation to Elbit SA-NV. Any other coverage available to Elbit SA-NV shall apply on an excess basis.

Seller agrees that Seller, Seller's insurer(s) and anyone claiming by, through, under or on Seller's behalf shall have no claim, right of action or right of subrogation against Elbit SA-NV and Elbit SA-NV's Customer based on any loss or liability insured against under the foregoing insurance.

**17. GENERAL RELATIONSHIP:** Seller's relationship to Buyer in the performance of this Order is that of an Independent Contractor. Neither Seller nor any of the persons utilized by Seller to furnish materials or perform work or Services under this Order are employees of Buyer. Seller shall, at its own expense, comply with all applicable laws and regulations and assume all liabilities and obligations imposed by such laws and regulations with respect to this Order. Seller agrees that neither it nor its personnel are employees of Buyer, or provided to any benefits provided or rights guaranteed by Buyer, or by operation of law, to Buyer's respective employees.

**18. TAXES:** Unless otherwise notified by Buyer in writing, the price of this Order includes and Seller shall be responsible for the payment of any Federal, State, and Local taxes, duties, tariffs, transportation taxes, or other similar taxes or fees which are required to be imposed upon the Items or Services ordered hereunder by Buyer or Buyer's customer, unless Seller obtains any applicable exemptions. Seller represents that its price does not include any taxes, impositions, charges or exactions for which it is eligible to obtain and/or has obtained a valid exemption certificate or other evidence of exemption. Any taxes included in this Order shall be itemized separately in Seller's invoice.

**19. MODIFICATION OF ORDER:** This Order contains all the agreements of the Parties with respect thereto and no course of dealing or usage of the trade shall be applicable unless expressly incorporated in this Order. The terms and conditions contained in this Order may not be added to, modified, superseded or otherwise altered except by a written instrument signed by the parties.

**20. NO WAIVER OF CONDITIONS:** Buyer's failure to insist upon or enforce strict compliance by Seller with respect to any aspect of this 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 this Order shall not constitute a waiver of any other right, waiver or default under this Order.

**21. SEVERABILITY:** If any part, term, or provision of this Order shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Order, the validity of the remaining portions of provisions shall not be affected thereby. In the event that any part, term or provision of this Order is held void, illegal, unenforceable, or in conflict with any law of the federal, state, or local government having jurisdiction over this Order, Seller agrees to negotiate a replacement provision, construed to accomplish its originally intended effect, that does not violate such law or regulation.

**22. ARTICLE HEADINGS:** 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.

**23. ASSIGNMENT AND SUBCONTRACTING:** Neither this Order itself, nor any interest or obligation hereunder, shall be assigned or transferred by Seller without the prior written consent of Buyer. Seller shall not subcontract the furnishing of any of all or substantially all of complete Items or Services required by this Order, without the prior written approval of Buyer; however, this Article shall not be construed to require the approval of contract of employment between Seller and personnel assigned for Services hereunder. Seller shall flow down all applicable requirements to Seller's subcontractors and assignees, if any. Seller further agrees to select subcontractors (including vendors or suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Purchase Order. Seller shall remain primarily responsible for the performance of obligations which it subcontracts hereunder and shall reasonably supervise such work. However, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if Buyer is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of Buyer against Seller. Buyer shall have the right to make settlements and adjustments in price with Seller

without notice to the assignee. Seller shall give Buyer immediate written notice of any action or suit filed and prompt notice of any claim made against Seller by any subcontractor or vendor that, in the opinion of Seller, may result in litigation related in any way to this Order, with respect to which Seller may be entitled to reimbursement from Buyer. Buyer may assign this Order, at no cost to Buyer, to any affiliated company, any successor in interest, or Buyer's Customer.

#### 24. **SUSPENSION OF WORK/STOP WORK ORDER:**

(a) 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 120 days, and for any further period as the Parties may agree, unless extended by Buyer's customer. Upon receipt of the written 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.

(b) If work is suspended, an adjustment may be made in accordance with the provisions of Article 6 for any increase in the time and the cost (exclusive of profit) of performing this Order necessarily caused by such suspension prior to incurrence of costs in excess of the contract price, and this Order may be modified in writing accordingly.

(c) A claim shall not be allowed under this Article unless the claim, in an amount stated, is asserted in writing within thirty (30) days after Buyer's issuance of the notice of termination of the suspension. Suspension may only be terminated by written notice from Buyer, regardless of the expiration of the original or extended suspension period. When the suspension has been terminated, Seller shall immediately commence performance, notwithstanding the fact that there is no agreement as to a revised schedule or the cost of completing this Order.

25. **COMPLIANCE WITH THE U.S. FOREIGN CORRUPT PRACTICES ACT:** Seller warrants and represents that it is familiar with the requirements of the U.S. Foreign Corrupt Practices Act of 1977, as amended. Seller will not offer, pay or promise to pay, give, or authorize payment of any money or anything of value to any government or public official (including political parties, officials or candidates for political office) for the purpose of influencing any act or decision of such official in his official capacity, including failure to perform his official function. Seller agrees that no expenditures for other than lawful purposes will be made with respect to the performance of this Order.

26. **EXPORT CONTROL COMPLIANCE:** Seller, at its sole expense, agrees to comply with all laws and regulations of the United States and other countries related to exports and imports including obtaining all required authorizations from the U.S. or other applicable governments. Seller shall immediately notify Buyer Representative if Seller's export privileges are denied, suspended or revoked in whole or in part by any U.S. or other government entity or agency. Buyer may deem Seller's failure to comply with the requirements of this Article a material failure to perform under this Order that shall subject Seller to termination in accordance with Article 12, Termination.

(a) **ITAR Controlled Hardware, Technical Data, or Services.**

(1) Seller is hereby notified that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), technical data (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or services provided by Buyer for purposes of this Order are or may be subject to the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. §§ 120-130). In addition, Seller is hereby notified that hardware, technical data, and/or services sold by Seller that are designed, developed, modified, adapted or configured from hardware, technical data, and/or services provided by Buyer are or may also be subject to the ITAR. The ITAR is accessible at the U.S. Department of State, Directorate of Defense Trade Controls ("DDTC") website at <http://www.pmdtc.state.gov>.

(2) If Seller is a manufacturer and/or exports Defense articles or Defense services, Seller represents that it is registered with the U.S. Department of State and will maintain said registration in order to be eligible to engage in the manufacture and/or export of defense articles and defense services as required by the ITAR (22 C.F.R. § 122.1(a)).

(3) The ITAR restricts access to Buyer's and Seller's controlled hardware, technical data, or services to U.S. citizens and permanent residents (i.e., U.S. person) only. Seller is advised and acknowledges that controlled hardware, technical data, and/or services shall not be exported out of the U.S. or transferred to a non-U.S. person inside the U.S. "deemed export", without prior authorization of the U.S. Government. Seller will be informed by Buyer of the export control status (i.e., jurisdiction and categorization of all hardware, technical data, and/or services provided to Seller by Buyer). Hardware and technical data will be clearly marked as export controlled or not. Seller agrees that it will abide by all restrictions and requirements in the ITAR, including that Seller not transfer or provide access to any ITAR-controlled hardware, technical data, or services provided by Buyer to non-U.S. persons employed by or associated with Seller, whether located in the U.S. or not, without U.S. Government authorization and permission from Buyer.

(4) If this Order is in an amount of \$500,000 or more, or if this Order is amended so that the total amount of the Order is in an amount of \$500,000 or more, Seller shall, within fifteen (15) days of the date of this Order, or such amendment, inform Buyer in a written statement if Seller has paid, offered or agreed to pay, in respect of the sale for which the Items will be used, political contributions or fees or commissions, within the meaning of 22 C.F.R. Part 130. Seller's statement shall conform to the requirements of 22 C.F.R. Part 130. Failure of Seller to provide Buyer with such a statement within the specified time-frame, or any extension thereof, shall constitute a certification by Seller that it has not paid, offered, or agreed to pay such political contributions, fees or commissions.

(b) **Goods, Technology, Software Subject to U.S. Export Administration Regulations.**

(1) Seller is hereby notified that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), technology (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or software provided by Buyer for purposes of this Order are or may be subject to the Export Administration Regulations ("EAR"). In addition, Seller is hereby notified that the hardware, technology, technical data, and/or software sold by Seller that is derived from hardware, technology, and/or software provided by Buyer are or may also be subject to the EAR. The EAR is accessible at the U.S. Department of Commerce, Bureau of Industry and Security website at <http://www.bis.doc.gov>.

(2) The EAR restrict the shipment, transmission, or transfer of certain of Buyer's and Seller's controlled hardware, technology, technical data and/or software from the U.S. to foreign countries, as well as to foreign persons located inside the U.S. (also referred to as a "deemed export."). Seller is advised and acknowledges that certain controlled hardware, technology, technical data and/or software may not be exported out of the U.S. or to a non-U.S. person inside the U.S. without prior authorization of the U.S. Government. Seller will be informed by Buyer of the export control status (i.e., jurisdiction and categorization) of all hardware, technology, and/or software provided to Seller by Buyer. Hardware and technology will be clearly marked as export controlled or not. Seller agrees that it will not transfer or provide access to any EAR-controlled hardware, technology, technical data, or software provided by Buyer out of the United States or to non-U.S. persons employed by or associated with Seller, whether located in the U.S. or not, without U.S. Government authorization and permission from Buyer.

(c) Seller agrees that it will inform Buyer of the export control status (i.e. jurisdiction and categorization) of all hardware, technical data, technology, software, and/or services sold to Buyer under this Order to include clearly marking all hardware and/or technical data.

(d) **Anti-Boycott Laws and Regulations.**

(1) Seller is hereby notified that, as outlined in greater detail in 15 C.F.R. § 760.2, the following are prohibited under the EAR: refusing or agreeing to refuse to do business with or

in a boycotted country or with a national of boycotted country or a boycotted person; refusing to employ or otherwise discriminating against a U.S. person in deference to a boycott request on the basis of race, religion, sex, or national origin; furnishing information about the race, religion, sex, or national origin of the U.S. person or any owner, officer, director, or employee of a domestic concern or controlled in fact non-U.S. affiliate in response to a boycott request; furnishing information about any person's past, ongoing, or proposed future relationships (or the absence of relationships) with other parties if the information is sought for boycott-related reasons; providing information about any person's association with or support for any charitable or fraternal organization supporting a boycotted country; and paying, honoring, confirming, or otherwise implementing a letter of credit that contains any prohibited boycott requirement or request.

(2) Seller is advised and acknowledges that it may be responsible for complying with any applicable anti-boycott laws, regulations, and guidance.

(3) Seller also certifies to Buyer that it does not, and shall not, participate or comply with any boycott (both domestic and international), or boycott-related request or engage in any restrictive trade practices which are in contravention of a Government law or regulation including 15 C.F.R. Part 760.

(e) Where Seller is a signatory under a Buyer export authorization, Seller shall provide prompt notification to Buyer's Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of applicable export regulations including, but not limited to, those that could affect Seller's performance under this Contract.

(f) Seller shall indemnify Buyer and be solely responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

(g) U.S. Economic and Trade Sanctions. Seller understands that the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. Seller agrees that it will comply with these OFAC administered regulations and policies, and will not transfer any Items or Services to or from, or otherwise engage with entities or persons listed on the Specially Designated Nationals ("SDN") List. The SDN List is accessible at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>. Seller further agrees that it will not engage in unauthorized transactions, including the transfer any Items or Services to or from, with persons or entities identified on any other U.S. government screening list, including those identified on the U.S. government's Consolidated Screening List. The Consolidated Screening List can be found here: [http://2016.export.gov/ecr/eg\\_main\\_023148.asp](http://2016.export.gov/ecr/eg_main_023148.asp).

(h) Hardware, Technology, or Technical Data Received Without Marking. Seller is hereby notified that, to the extent it should receive any hardware, technology, or technical data from Buyer that is not marked as export controlled (i.e., under the ITAR or EAR), Seller must treat such hardware, technology, or technical data in conformance with the most restrictive standard potentially applicable unless it requests and receives specific written instructions from Buyer that releases Seller from this requirement.

(i) Imports Appearing on the U.S. Munitions Import List. If performance under this Purchase Order requires Seller to permanently import into the U.S. articles appearing on the U.S. Treasury Department, Bureau of Alcohol, Tobacco & Firearms ("BATF") U.S. Munitions Import List at 27 CFR Part 47, Subpart C, Seller is advised and hereby acknowledges that such items may not be permanently imported into the U.S. without an approved import permit issued by BATF pursuant to 27 CFR Part 47, Subpart E, unless an exemption applies. Additionally, if Seller is engaged in the business, in the U.S., of importing articles appearing on the U.S. Munitions Import List, Seller must register with BATF pursuant to 27 CFR Part 47, Subpart D. Downloadable

copies of the BATF regulations and forms are accessible at the BATF website at <http://www.atf.treas.gov/regulations/index.htm>.

(j) Items Requiring Approved BATF Permits. If performance under this Purchase Order requires Seller to export out of the U.S. machine guns, destructive devices, explosives, and certain other firearms, as defined in 27 CFR Part 179, Subpart B, Seller is advised and hereby acknowledges that such items may not be exported out of the U.S. without an approved export permit issued by BATF pursuant to 27 CFR Part 178, Subpart K and 27 CFR Part 179, Subpart H. Seller is also advised that an approved export license issued by the DDTTC may also be required pursuant to the relevant requirements of the ITAR.

(k) Record Keeping. Seller agrees to bear sole responsibility for all regulatory record keeping associated with the use of licenses and license exceptions/exemptions. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. Seller agrees to share its applicable export control documentation with Buyer upon request. Seller agrees to notify Buyer if any deliverable under this Order is restricted by export control laws or regulations. Seller shall immediately notify Buyer Representative if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

(l) Upon Buyer's 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 this Order, including the names and locations of the sources, and a description of the items or services obtained from such sources.

**27. FOREIGN PERSONS:** The Seller acknowledges that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), technical data (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or services provided by Buyer for purposes of this Order may be controlled by the ITAR or the EAR, and may require U.S. Government export authorization before assigning any Foreign Person (as defined in 22 CFR 120.16, which includes foreign governments, business entities, groups and international organizations) to perform work under this Order or before granting access to Foreign Persons to any technical data obtained, used, generated, or delivered in performance of this Order. Any request for export authorization must include the information required by applicable export laws and regulations (reference ITAR, EAR or Chapter 10 of the National Industrial Security Program Operating Manual).

## **28. COMPLIANCE WITH HAZARDOUS SUBSTANCES AND WASTE RECYCLING LAWS:**

(a) Seller warrants that the resale, supply, or export of any Product (whether used as a component or otherwise) by Buyer in any market will not violate any law or regulation in any jurisdiction worldwide on the use of hazardous substances, or the recycling or treatment of waste equipment including, but not limited to the laws implementing the European Directive (2002/95/EC) on the Restriction on the Use of Certain Hazardous Substances in Electronic and Electrical Equipment ("RoHS Directive") and European Directive (2002/96/EC) on Waste Electrical and Electronic Equipment ("WEEE Directive"), the U.S. Environmental Protection Agency ("EPA"), etc. (together, "Environmental Laws").

(b) Seller warrants to Buyer that no Product contains any lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers, or other substance (in a quantity other than in compliance with the Environmental Laws), the use of which is banned or restricted by any Environmental Law.

(c) As soon as Seller is aware of any non-compliance by in no event any later than prior to the delivery of any Product, Seller shall identify in writing to Buyer

(1) any and all components and materials contained in the Products that may require recycling or other treatment under the laws and regulations implementing the Environmental Laws,

(2) the location of any component or material that is hazardous within the meaning of the WEEE Directive or other

Environmental Laws, and any Product that is required by the Environmental Laws to be marked shall be so marked by Seller.

(d) Seller shall, upon request, provide Buyer with written confirmation of its compliance with the Environmental Laws, in the form, manner, and within the timeframe reasonably directed by Buyer.

(e) Buyer shall have the right to audit the Seller's compliance with the Environmental Laws. Seller shall provide Buyer with all such information and documentation that it may reasonably require (including access to its staff and facilities) to enable Buyer to satisfy itself of the Seller's compliance with all Environmental Laws and that the warranty contained in subsection (a) above remains true and accurate.

(f) Seller shall bear all costs and expenses, including those related to recycling or taking back the Products, arising out of or related to either Buyer or Seller complying with the Environmental Laws and placing the Products on, or their importation into, any jurisdiction worldwide.

(g) Seller shall indemnify and hold Buyer harmless from any cost, expense, liability, or damage suffered by Buyer by reason of any breach or alleged breach of any of the Environmental Laws arising out of or related to the Products.

## 29. RIGHTS IN DATA AND INVENTIONS:

(a) Definitions:

(1) Intellectual Property. Intellectual Property means inventions, discoveries and improvements, know-how, works of authorship, technical data, drawings, specifications, process information, reports and documented information, and computer software.

(2) Background Intellectual Property. Background Intellectual Property means Intellectual Property that is (i) in existence prior to the effective date of this Order or (ii) is designed, developed or licensed after the effective date of this Order independently of both the work undertaken or in connection with this Order, and the proprietary information and Intellectual Property of the other party to this Order.

(3) Foreground Intellectual Property. Foreground intellectual property means intellectual property conceived, created, acquired, developed, derived from or based on development performed under this Order or information supplied by Buyer, or first actually reduced to practice by Seller in connection with this Order.

(b) All Intellectual Property supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless:

- (1) otherwise required by U.S. Government Regulations, or
- (2) Buyer has executed a separate agreement restricting the use and disclosure of such Intellectual Property.

(c) Foreground Intellectual Property. All Foreground Intellectual Property developed exclusively with Buyer monies (i.e., development was accomplished entirely with monies paid by Buyer to Seller that are not subject to recovery by Buyer under a government contract) and not subject to this paragraph (d) below is hereby assigned to Buyer and shall be proprietary to Buyer, shall be used by Seller only for purposes of providing Items or Services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer's express written consent. All such Foreground Intellectual Property shall be promptly provided to Buyer on request or upon completion of this Order. Any work performed pursuant to this Order which includes any copyright interest shall be considered a "work made for hire." The tangible medium storing copies of all reports, memoranda, or other materials in written form, including machine-readable form, prepared by Seller and furnished to Buyer pursuant to this Order shall become the sole property of Buyer.

(d) Inventions. Subject to paragraph (g) below, any invention constituting Foreground Intellectual Property is hereby assigned to Buyer and Buyer shall own all right, title, and interest in such property. Seller shall execute all documents necessary to perfect Buyer's interest in and title thereto, including, without limitation, assigning any and all right, title and

interest Seller has in any such invention to Buyer. Seller shall ensure that any third party with whom Seller has subcontracted to deliver Items or Services, and Seller's employees, also executes and assigns any and all rights, titles, and interest in any such invention to Buyer. Seller shall, within two (2) months after conception or first actual reduction to practice of any invention constituting Foreground Intellectual Property and prior to completion of the Order, disclose in writing to Buyer all inventions, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all written instruments, and assist as Buyer reasonably directs in order to file, acquire, prosecute, maintain, enforce and assign Buyer's invention rights. Seller hereby irrevocably appoints Buyer and any of Buyer's officers and agents as Seller's attorney in fact to act on Seller's behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such written instruments.

(e) Seller-Owned Intellectual Property. Seller shall retain ownership of all Background Intellectual Property and of any Foreground Intellectual Property not assigned to Buyer pursuant to paragraphs (c) and (d) (collectively, "Seller-Owned Intellectual Property"). Unless otherwise expressly agreed in writing to the contrary, 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 Intellectual Property in the performance of its Contract or higher-tier contract obligations (including obligations of follow-on contract or contracts for subsequent phases of the same program).

(f) Buyer-Owned Intellectual Property. Buyer shall retain ownership of all Buyer Intellectual Property provided hereunder and of any Foreground Intellectual Property assigned to Buyer pursuant to this Article paragraph (c) above (collectively, "Buyer-Owned Intellectual Property"). Buyer grants to Seller a non-exclusive, royalty-free right during the term of this Order to use, reproduce, modify, practice and prepare derivative works of any Buyer-Owned Intellectual Property solely as necessary for Seller to perform its obligations under this Order. Seller shall not, without Buyer's prior written consent, use Buyer-Owned Intellectual Property or any derivative works of any of the Buyer-Owned Intellectual Property in any manner not authorized under this 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 Intellectual Property.

## 30. 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. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically under this contract, Seller shall report such behavior to appropriate Buyer Points of Contact ("POCs"). Buyer's Code of Conduct contains listings of its POCs and is available on <http://www.elbitsystems.com>. Seller's employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities.

(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 must immediately notify Buyer if, at any time during the term of this 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 ("Conflict of Interest").

(c) Seller Compliance: In performing its obligations under this Order, Seller will not use child labor as defined by local law, will not use forced or compulsory labor, will not physically abuse labor and will respect employees' rights to choose whether to be represented by third parties and to bargain collectively in accordance with local law. In addition, in all wage and benefit, working hours and overtime and health, safety and environmental matters, Seller will comply with all applicable laws and regulations. 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 involved in work for Buyer, and failure to comply with the obligations in this paragraph shall be cause for immediate termination without penalty or further liability to Buyer.

## 31. EQUAL OPPORTUNITY:

(a) 41 C.F.R. § 60-741.5(a). This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

(b) 41 C.F.R. § 60-300.5(a). This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

(c) This contractor and subcontractor shall abide by the requirements of 41 C.F.R. Parts 60-1, 60-20, and 60-50 as set forth under EO 11246 and as amended under EO 13672, specifically section 202 and section 203, where these regulations prohibit discrimination on the bases of race, color, religion, sex, sexual orientation, gender identity, or national origin and require affirmative measures to prevent discrimination on those bases from occurring.

32. **NON-SOLICITATION:** During the term of this Order, and for a period of twenty-four (24) months following termination of this Order, Seller shall not, directly or indirectly, solicit for employment, employ or otherwise engage the services of employees or individual consultants of Buyer.

### 33. COUNTERFEIT PARTS:

(a) As used herein, "Counterfeit Parts" means Items or separately identifiable components of items that:

(1) Are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") Item;

(2) Do not contain proper external or internal materials or components required by the OEM and are not constructed in accordance with OEM design;

(3) Have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or

(4) Have not passed successfully all OEM-required testing, verification, screening, and quality control processes.

(b) Seller shall not furnish Counterfeit Parts to Buyer and shall implement an appropriate system to ensure that Items furnished to Buyer under this Order are not Counterfeit Parts. Seller's system shall include, but is not limited to, the direct procurement of Items or components of Items from OEMs or authorized suppliers and/or testing or inspection in accordance with accepted government- and industry-recognized techniques to ensure the authenticity of Items.

(c) If Seller becomes aware or suspects that it has furnished Counterfeit Parts to Buyer under this Order, Seller shall promptly notify Buyer of such no later than thirty (30) days from that discovery. Seller shall replace, at Seller's own expense, such Counterfeit Parts with OEM or Buyer-approved Items that conform to the requirements of this Order. Seller shall be liable for all costs related to the replacement of Counterfeit Parts and any testing or validation necessitated by the installation of authentic Items or components of Items after Counterfeit Parts have been replaced.

### 34. PROHIBITED SOFTWARE:

(a) This clause only applies to Services/Items that include the delivery of software.

(b) "OSS License" means 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 variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."

(c) As used herein, "Prohibited Software" means software that incorporates or embeds software in, or integrates software in connection with, as part of, bundled with, or alongside any

- (1) open source, publicly available, or "free" software, library or documentation; or
- (2) software that is licensed under a Prohibited License; or
- (3) software provided under a license that:

(i) subjects the delivered software to any Prohibited License; or

(ii) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge; or

(iii) obligates Buyer to sell, loan, distribute, disclose or otherwise make available or accessible to any third party:

(i) The delivered software, or any portion thereof, in object code and/or source code formats; or

(ii) Any Items incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

(d) SELLER shall disclose to BUYER in writing any (OSS) that will be used or delivered in connection with this Contract and shall obtain BUYER's prior written consent before using or delivering such OSS in connection with this Contract. BUYER may withhold such consent in its sole discretion. SELLER warrants all OSS used or delivered in connection with this Contract complies with any applicable OSS License.

(e) Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, to the extent Seller causes Buyer to use or to deliver Prohibited Software in connection with this Order.

35. **MERGER:** This Agreement constitutes the entire agreement with respect to the purchase and sale of Items and/or Services between Buyer and Seller and all other subject matter covered herein. This Agreement shall not be modified, changed or amended except in a writing signed by both parties. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

36. **NON-RELIANCE:** Seller expressly represents that in accepting this 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 this Order.

37. **ORDER OF PRECEDENCE:** The clauses of this Order shall be construed and interpreted as consistent whenever possible. Any conflicts in this Order shall be resolved by giving precedence in the following order:

(a) the Purchase Order

(b) these Terms and Conditions (which are incorporated by reference in any Purchase Order issued hereunder); and

(c) any Statement of Work, Specifications, or Requirements

38. **SURVIVABILITY:** If this Order expires, is completed, or is terminated for default or convenience, Seller shall not be relieved of those obligations contained in this Order which by their nature survive, including but not limited to: Ordering and Pricing, Warranty, Applicable Law and Disputes, Indemnity Against Claims/Limitation of Liability, Compliance with Federal, State and Local Laws, Confidential Relationship, Insurance, and General Relationship.