



Purchase Order Standard Terms & Conditions Effective 12/24/19

1. **Formation of Contract:** The proposed contract is Buyer's offer to purchase the goods and services (Goods) described in the offer. Acceptance is strictly limited to the terms and conditions in the offer. Unless specifically agreed to in writing by Buyer's Authorized Procurement Representative, Buyer objects to, and is not bound by, any term or condition that differs from or adds to the offer. Seller's commencement of performance or acceptance of the offer in any manner shall conclusively evidence acceptance of the offer as written.
2. **Schedule:**
 - a. Seller shall strictly adhere to the shipment or delivery schedules specified in the contract. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or other expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Force Majeure" article of the contract. The added premium transportation costs are to be borne by Seller.
 - b. Seller shall not deliver Goods prior to the scheduled delivery dates unless authorized by Buyer.
 - c. Buyer shall, at no additional cost, retain goods furnished in excess of the specified quantity or in excess of any allowable overage unless, within 45 days of shipment, Seller requests return of such excess. In the event of such request, Seller shall reimburse Buyer for reasonable costs associated with storage and return of the excess. If Goods are manufactured with reference to Buyer's proprietary information or materials, Seller agrees that, pursuant to the "Confidential, Proprietary and Trade Secrets Information and Materials" article of the contract, it will not sell or offer such Goods for sale to anyone other than Buyer without Buyer's prior written consent.
3. **Packing and Shipping:**
 - a. Seller shall pack the Goods to prevent damage and deterioration. Seller shall comply with carrier tariffs. Unless the contract specifies otherwise, the price includes shipping charges for Goods sold F.O.B. destination. Unless otherwise specified in the contract, Goods sold F.O.B. place of shipment shall be forwarded prepaid by the Seller and then added to the invoice. Seller shall make no declaration concerning the value of the Goods shipped except on Goods where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. Buyer may charge Seller for damage to or deterioration of any Goods resulting from improper packing or packaging.
 - b. Unless the contract specifies otherwise, Seller will ship the Goods in accordance with the following instructions: (i) Shipments by Seller or its subcontractors must include packing sheets containing Buyer's contract number, line item number, description and quantity of Goods shipped, part number or size, if applicable, and appropriate evidence of inspections. A shipment containing hazardous and non-hazardous materials must have separate packing sheets for the hazardous and non-hazardous materials. Seller shall not include vermiculite or other hazardous substance in any packing material included with the Goods. Items shipped on the same day will be consolidated on one bill of lading or airbill unless Buyer's Authorized Procurement Representative authorizes otherwise. The shipping documents will describe the material according to the applicable classification and/or tariff. The total number of shipping containers will be referenced on all shipping documents. Originals of all Government bills of lading will be surrendered to the origin carrier at the time of shipment. (ii) Seller will label each shipping container with the contract number and the number that each container represents of the total number being shipped (e.g., box 1 of 2, box 2 of 2). (iii) Buyer will select the carrier and mode of transportation for all shipments where freight costs will be charged to Buyer. (iv) Seller will include copies of documentation supporting prepaid freight charges (e.g., carrier invoices or UPS shipping log/manifest), if any, with its invoices. (v) If Seller is unable to comply with the shipping instructions in the contract, Seller will contact Buyer's Authorized Procurement Representative.
4. **Quality Control:** Seller shall establish and maintain a quality control system acceptable to Buyer for the Goods purchased under the contract. 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 of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Goods delivered to Buyer during the period of any such violation or deviation.
5. **Seller's Notice of Discrepancies:** Seller shall notify Buyer in writing when discrepancies in Seller's Services or Goods are discovered or suspected regarding Goods delivered or to be delivered under the contract.
6. **Inspection:**
 - a. At no additional cost to Buyer, Goods shall be subject to inspection, surveillance and test at reasonable times and places, including Seller's subcontractors' locations.
 - b. Seller shall maintain an inspection system acceptable to Buyer for the Goods purchased under the contract.
 - c. If Buyer performs an inspection or test on the premises of Seller or its subcontractors, Seller shall furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties.
7. **Acceptance and Rejection:**
 - a. Buyer shall accept the Goods or give Seller notice of rejection or revocation of acceptance ("rejection" herein), notwithstanding any payment, prior test or inspection, or passage of title. No inspection, test, delay or failure to inspect or test or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under the contract or impair any rights or remedies of Buyer.
 - b. If Seller delivers non-conforming Goods, Buyer may at its option and at Seller's expense (i) return the Goods for credit or refund; (ii) require Seller to promptly correct or replace the Goods; (iii) correct the Goods; or (iv) obtain replacement Goods from another source.
 - c. Seller shall not redeliver corrected or rejected goods without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement and other correction and redelivery shall be completed within the original delivery schedule or such later time as Buyer's Authorized Procurement Representative may reasonably direct.
 - d. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under the contract or otherwise.
8. **Warranty:** Seller warrants that all Goods furnished under the contract shall conform to all specifications and requirements of the contract and shall be free from defects in materials and workmanship. To the extent Goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer, the Goods shall be free from design and specification defects. The warranty shall survive inspection, test and acceptance of, and payment for, the Goods. The warranty shall run to Buyer and its successors, assigns and customers. Such warranty shall begin after Buyer's final acceptance. Buyer may, at its option, either (i) return for credit or refund, or (ii) require prompt correction or replacement of the defective or non-conforming Goods. Return to Seller of defective or non-conforming Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's expense. Goods required to be corrected or replaced shall be subject to the article and the "Inspection" article of the contract in the same manner and to the same extent as Goods originally delivered under the contract, but only as to the corrected or replaced part or parts thereof. Even if the parties disagree about the existence of a breach of the warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework or replace the



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Goods, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the parties later determine that Seller did not breach the warranty, the parties shall equitably adjust the contract price.

9. **Taxes:** Unless the contract specifies otherwise, the price of the contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by the contract except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.
10. **Invoices and Payment:** Unless otherwise authorized by Buyer's Authorized Procurement Representative, Seller shall issue a separate original invoice for each delivery that shall include Buyer's contract number and line item number. Seller shall forward its invoice to the address specified elsewhere in the contract. Unless freight or other charges are itemized, Buyer may take any offered discount on the full amount of the invoice. Payment due date, including discount periods, shall be computed from the later of the scheduled delivery date, the actual delivery date or the date of receipt of a correct invoice, or in the case of drop shipments in support of a Government contract the date of Government acceptance. Payment shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay Buyer any amounts paid in excess of amounts due Seller.
11. **Changes:**
 - a. Buyer's Authorized Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of the contract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property; and, if the contract includes services, (vi) description of services to be performed; (vii) time of performance (e.g., hours of the day, days of the week); (viii) place of performance, and (ix) terms and conditions of the contract required to meet Buyer's obligations under Government prime contracts or subcontracts. Seller shall comply immediately with such direction.
 - b. If such change increases or decreases the cost or time required to perform the contract, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify the contract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within 25 days and deliver a fully supported proposal to Buyer's Authorized Procurement Representative within 60 days after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Buyer may examine Seller's pertinent books and records to verify the amount of Seller's claim. Failure of the parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.
 - c. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.
12. **Disputes:** Any dispute that arises under or is related to the contract that cannot be settled by mutual agreement of the parties may be decided by a court of competent jurisdiction or binding arbitration. Pending final resolution of any dispute, Seller shall proceed with performance of the contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.
13. **Force Majeure:** Seller shall not be liable for excess re-procurement costs pursuant to the "Cancellation for Default" article of the contract, incurred by Buyer because of any failure to perform the contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are (a) acts of God or of the public enemy, (b) acts of the Government within its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes, (h) freight embargoes and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. If the delay is caused by delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both, and if such delay is without the fault or negligence of either, Seller shall not be liable for excess costs unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within 10 days after the beginning of any such cause.
14. **Termination for Convenience:** Buyer may terminate all or part of the contract, effective as of the date specified by Buyer, in accordance with the provisions of Federal Acquisition Regulation ("FAR") 52.249-2 (Sep 96), "Termination for Convenience of the Government (Fixed Price)," which provisions, except for subparagraphs (d) and (j), are incorporated herein by reference. The terms "Government" and "Contracting Officer" shall mean "Buyer," "Contractor" shall mean "Seller," and the phrase "1 year" is deleted each place it occurs and "six months" is substituted in its place. The time for requesting an equitable adjustment under subparagraph (1) is reduced to 45 days. Settlements and payments under the article may be subject to approval by the Contracting Officer and the Settlement Review Board.
15. **Cancellation for Default:**
 - a. Buyer may, by written notice to Seller, cancel all or part of the contract if (i) Seller fails to deliver the Goods within the time specified by the contract or any written extension; (ii) Seller fails to perform any other provision of the contract or fails to make progress, so as to endanger performance of the contract, and, in either of these two circumstances, does not cure the failure within 10 days after receipt of notice from Buyer specifying the failure; or (iii) in the event of Seller's suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.
 - b. Seller shall continue work not canceled. If Buyer cancels all or part of the contract, Seller shall be liable for Buyer's excess re-procurement costs.
 - c. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Goods, and (ii) any partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of the contract. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its Customer has an interest.
 - d. Buyer shall pay the contract price for Goods accepted. Payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" article of the contract, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under the contract any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.
 - e. If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the parties shall be as if the contract had been terminated according to the "Termination for Convenience" article of the contract.
16. **Assignment, Delegation and Subcontracting:** Seller shall not assign any of its rights or interest in the contract or subcontract all or substantially all



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of its performance of the contract, without Buyer's prior written consent. Seller shall not delegate any of its duties or obligations under the contract. Seller may assign its right to monies due or to become due. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under the contract or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. The article does not limit Seller's ability to purchase standard commercial supplies or raw materials.

17. **Publicity:** Without Buyer's prior written approval, Seller shall not, and shall require that its subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding the contract or the Goods or program to which it pertains. Seller shall be liable to Buyer for any breach of such obligation by any subcontractor.

18. **Buyer's Property:** Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of the contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of the contract without Buyer's prior written consent. Seller shall notify Buyer's Authorized Procurement Representative if Buyer's property is lost, damaged or destroyed. As directed by Buyer, upon completion, termination or cancellation of the contract, Seller shall deliver such property, to the extent not incorporated in delivered Goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in the article limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest.

19. **Intellectual Property:** a. Definitions: Intellectual Property ("IP"). IP means inventions, discoveries and improvements, know-how, works of authorship, technical data, drawings, specifications, process information, reports and documented information; and computer software. IP includes all worldwide common law and statutory rights to the foregoing, including but not limited to, patents, industrial designs, trade secrets, copyrights, mask work registrations, and the like. Background IP. Background IP means of all IP owned or developed by Seller prior to the effective date of or outside the scope of this Contract. Foreground IP. Foreground IP means IP conceived, developed or first reduced to practice by, for or with Seller either alone or with others in the performance of this Contract.

b. Seller-Owned IP. Seller shall retain ownership of all its Background IP and of any Foreground IP not assigned to Buyer pursuant to paragraph e. below (collectively, the "Seller-Owned IP"). With regard to Seller-Owned IP that is other than Proprietary Information and materials, Seller grants to Buyer an irrevocable, nonexclusive, sublicensable, perpetual, paid-up, royalty-free, worldwide license (i) to use, reproduce, distribute, modify, and prepare derivative works of such Seller-Owned IP and (ii) to use, make, have made, offer for sale, sell, distribute and import products and services that incorporate or embody such Seller-Owned IP, in each case solely as necessary for the purpose of exploiting Buyer's rights in the Services and/ or the Foreground IP assigned to Buyer hereunder or as otherwise permitted under this Contract. Seller grants to Buyer such license rights for any purpose in the event Buyer cancels all or part of this Contract for Seller default or in the event Buyer, in its own judgment, must provide Seller with design, manufacturing, or on-site support substantially in excess of what is required of Buyer under this Contract for Seller to comply with this Contract.

c. Agreements. Seller shall obtain agreements with its employees and independent contractors to enable the grant of rights to which Buyer is entitled under this Article.

d. Third Party IP. To the extent Seller incorporates third-party IP into any contract deliverable, Seller shall obtain for Buyer at least the license rights granted in paragraph b of this Article in such third-party IP, at no additional cost to Buyer and hereby grants such rights to Buyer.

e. Foreground IP. The following subparagraphs of this paragraph e shall not apply to any Services to the extent their development was funded by the U.S. Government. (i) All Foreground IP shall be the exclusive property of Buyer. To the extent Foreground IP consists of works of authorship that qualify as a "work for hire" as defined under U.S. copyright law, such works shall be deemed to be "works made for hire" with the copyrights automatically vesting in Buyer. For all other Foreground IP, Seller hereby irrevocably transfers, conveys, and assigns all right, title and interest in such Foreground IP free of charge to Buyer. Seller shall protect Foreground IP that is Proprietary Information and Materials as required by this Contract and shall mark documents or portions of documents containing Foreground IP as "Smartronix Proprietary" information or as otherwise directed by Buyer in writing. (ii) Seller will, within two (2) months after conception or first actual reduction to practice of any invention and prior to Contract completion, disclose in writing to Buyer all inventions 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 Foreground IP 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. (iii) Buyer-Owned IP. Buyer shall retain ownership of all Buyer IP provided hereunder and of any Foreground IP assigned to Buyer pursuant to paragraph e. above (collectively, the "Buyer -Owned IP"). Buyer grants to Seller a non-exclusive, royalty-free right during the term of this Contract to use, reproduce, modify, practice and prepare derivative works of any Buyer-Owned IP solely as necessary for Seller to perform its obligations under this Contract or otherwise permitted under this Contract. 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 this Contract, including, but not limited to, developing, manufacturing, obtaining a certification to manufacture, offering for sale or selling any product, equipment, or service which utilizes or is enabled by Buyer-Owned IP.

20. **Patent, Trademark and Copyright Indemnity:** Seller will indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorneys' fees and/or costs), liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of Goods by either Buyer or its customer. Buyer and/or its customer will duly notify Seller of any such claim, suit or action; and Seller will, at its own expense, fully defend such claim, suit or action on behalf of indemnitees. Seller will have no obligation under the article with regard to any infringement arising from (a) Seller's compliance with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of Goods in combination with other items when such infringement would not have occurred from the use or sale of those Goods solely for the purpose for which they were designed or sold by Seller. For purposes of the article only, the term Buyer will include Smartronix, LLC and all Smartronix subsidiaries and all officers, agents and employees of Smartronix or any Smartronix subsidiary.



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21. **Confidential, Proprietary and Trade Secret Information and Materials:** Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (a) confidential, proprietary and/or trade secret information; (b) tangible items and software containing, conveying or embodying such information; and (c) tooling identified as being subject to the article and obtained, directly or indirectly, from the other in connection with the contract or other agreement referencing the contract (collectively referred to as "Proprietary Information and Materials"). Buyer and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of the contract and/or any other agreement referencing the contract. However, despite any other obligations or restrictions imposed by the article, Buyer shall have the right to use, disclose and reproduce Seller's Proprietary Information and Materials, and make derivative works thereof, for the purposes of testing, certification, use, sale or support of any Goods delivered under the contract or any other agreement referencing the contract. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Buyer's Proprietary Information and Materials. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of the contract, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with the article. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of the contract, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under the article relating to Proprietary Information and Material. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor. The provisions of the article are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of the article shall survive the performance, completion, termination, or cancellation of the contract.
22. **Confidentiality of Buyer's Data:** Seller shall keep confidential all information, drawings, specifications, or data and return, upon request, all documents furnished by Buyer and marked proprietary to Buyer and shall not divulge or use such information, drawings, specifications or data for the benefit of any other party. Except as required for the efficient performance of this Purchase Order, Seller shall not make copies or permit copies to be made without the prior written consent of Buyer. Seller shall make no use, either directly or indirectly, of any such data or any information derived there from, except in performing this Purchase Order, without obtaining Buyer's written consent; such limitation shall not apply to data or information that (i) was in the rightful possession of Seller without restriction, prior to the first receipt from Buyer; or (ii) now or hereafter, through no act or failure to act on the part of Seller, becomes generally known and available to the public without restriction; or (iii) is hereafter disclosed and made available to Seller without restriction by others having the right to make such disclosure.
23. **Records and Audit:** Seller shall retain all records and documents pertaining to the Goods for a period of no less than seven years after final payment. Such records and documents shall date back to the time the contract was issued and shall include without limitation, catalogs, price lists, invoices and inventory records for purposes of verification of prices or rates charged by Seller for Goods procured by Buyer. Buyer shall have the right to examine, reproduce and audit all such records related to pricing and performance to evaluate the accuracy, completeness and currency of cost and pricing data submitted with Seller's bid or offer to sell; and related to "Changes," "Termination for Convenience" or "Cancellation for Default" articles of the contract.
24. **Rights of Buyer's Customers and Regulators to Perform Inspection, Surveillance and Testing:** Buyer's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance, quality control, and configuration control shall extend to the customers of Buyer that are departments, agencies or instrumentalities of the United States Government. Seller shall cooperate with any such United States Government-directed or Buyer-directed inspection, surveillance, test or review without additional charge to Buyer. Nothing in the contract shall be interpreted to limit United States Government access to Seller's facilities pursuant to law or regulation.
25. **Utilization of Small Business Concerns:** Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned small business concerns to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of the contract.
26. **Rights and Remedies:** Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of the contract, or in exercising any rights or remedies under the contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in the contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity. If any provision of the contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.
27. **Compliance with Laws:** Seller shall comply with all applicable statutes and government rules, regulations and orders, including those pertaining to United States Export Controls.
28. **Governing Law:** The contract shall be governed by and construed in accordance with the laws of the state of Maryland.
29. **Government Terms and Conditions:** Government terms and conditions ("clauses") applicable to the contract are incorporated herein either by attachment to the document or by some other means of reference.
30. **Suspension of Work:** Buyer's Authorized Procurement Representative may, by written order, suspend all or part of the work to be performed under the contract for a period not to exceed 100 days. Within such period of any suspension of work, Buyer shall (i) cancel the suspension of work order; (ii) terminate the contract in accordance with the "Termination for Convenience" article of the contract; (iii) cancel the contract in accordance with the "Cancellation for Default" article of the contract; or (iv) extend the stop work period. Seller shall resume work whenever a suspension is canceled. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if (i) the contract is not canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the contract delivery schedule; and (iii) Seller submits a claim for adjustment within 20 days after the suspension is canceled.
31. **Access to Plants and Properties:** Seller shall comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's customer.
32. **Business Conduct:** a. Compliance with Laws. Seller and the Services shall comply with all applicable statutes and government rules, regulations and orders including without limitation, (i) all applicable country laws relating to anti-corruption or antibribery, including, but not limited to, legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public



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Officials in International Business Transactions” or other anti-corruption/anti-bribery convention; and (ii) the requirements of the Foreign Corrupt Practices Act, as amended, (“FCPA”) (15 U.S.C. §§78dd-1, et. seq.), regardless of whether Seller is within the jurisdiction of the United States, and Seller shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer 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.

b. **Gratuities.** Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer’s employees, agents or representatives for the purpose of securing this Contract or securing favorable treatment under this Contract.

c. **Code of Basic Working Conditions and Human Rights.** Buyer is committed to providing a safe and secure working environment and the protection and advancement of basic human rights in its worldwide operations. Buyer strongly encourages Seller to adopt and enforce similar concepts, including conducting Seller’s operations in a manner that is fully compliant with all applicable laws and regulations pertaining to fair wages and treatment, freedom of association, personal privacy, collective bargaining, workplace safety and environmental protection. Seller shall include the substance of this clause, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

d. **Environmental Health and Safety Performance.** Seller acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system (“EMS”) appropriate for its business throughout the performance of this Contract. Buyer expects that Seller’s EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this clause to its suppliers. Seller shall not deliver goods that contain any asbestos mineral fibers.

e. **Seller Facility.** Seller shall provide Buyer written notice of any proposed plans for moving Seller’s manufacturing location for the goods or moving tooling or other equipment utilized in the manufacture of the goods to another facility. In no event shall Seller proceed with implementing such plans prior to obtaining Buyer’s prior written approval.

f. **Buyer Policies.** Seller agrees that Buyer’s internal policies, procedures and codes are intended to guide the internal management of the Buyer and are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by the Seller against the Buyer.

g. **Conflict Minerals.** Seller shall, no later than thirty (30) days following each calendar year in which Seller has delivered any goods to Buyer, under this Contract or otherwise, complete and provide to Buyer a single and comprehensive Conflict Minerals Report. Seller shall perform appropriate due diligence on its supply chain in order to fulfill the reporting obligations.

h. **Code of Business Ethics and Conduct.** 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 Smartronix Human Resources, or to its Ombudsman: Roger Myerberg, Esq., Sawyer & Myerberg, P.A., 21689 Great Mills Road, Lexington Park, MD 20653, 301-863-9434. Although Buyer will not use the failure to report improper or unethical behavior as a basis for claiming breach of contract by Seller, Seller is encouraged to exert reasonable effort to report such behavior when warranted.

i. **Employee Awareness of Contributions.** Seller shall ensure employees are made aware of how they contribute to product and service conformity and safety; with a focus on providing products and services that meet or exceed

all requirements. Seller shall include the substance of this clause, including this flowdown requirement, in all subcontracts awarded by Seller for work under this Contract.

33. **Counterfeit Goods:** a. Seller shall not furnish Counterfeit Goods to Buyer, defined as goods or separately-identifiable items or components of goods that: (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, “OEM”) item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, relabeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Notwithstanding the foregoing, Services or items that contain modifications, repairs, rework, or re-marking as a result of Seller’s or its subcontractor’s design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked, shall not be deemed Counterfeit Goods. Counterfeit Goods shall be deemed nonconforming to this Contract.

b. Seller shall implement an appropriate strategy to ensure that goods furnished to Buyer under this Contract are not Counterfeit Goods. Seller’s strategy shall include, but is not limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-authorized suppliers, obtaining from such non-authorized suppliers appropriate certificates of conformance that provide one or more of the following: (i) the OEM’s original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item’s authenticity.

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

d. Seller bears responsibility for procuring authentic goods or items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Article.

34. **Trade Control Compliance:** a. The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Contract, including but not limited to the Export Administration Regulations (“EAR”) of the U.S. Department of Commerce, the International Traffic in Arms Regulations (“ITAR”) of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the antiboycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, “Trade Control Laws”).

b. Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Contract in compliance with all applicable Trade Control Laws. Seller shall not transfer (to include transfer to foreign persons employed by or associated with, or under contract to Seller, or Seller’s sub-tier suppliers or Seller’s non-U.S. subsidiaries) any export-controlled item, data or services, without providing advance notice to Buyer and obtaining the requisite export and/or import authority.



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c. Subject to applicable Trade Control Laws, Seller shall provide Buyer with the export control classification of any commodity or technology including software.

d. Seller represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Laws. A copy of process control documents and other documents reasonably requested by Buyer related to Seller's compliance with applicable Trade Control Laws shall be made available to Buyer upon request.

e. Seller shall promptly notify Buyer 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 Governmental entity.

f. Seller shall timely inform Buyer of any actual or alleged violations of any applicable Trade Control Laws, including any suits, actions, proceedings,

notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations, in Seller's performance under this Contract and shall comply with all reasonable requests from Buyer for information regarding any such violations.

g. Seller shall incorporate into any contracts with its sub-tier suppliers' obligations no less restrictive than those set forth in this Article requiring compliance with all applicable Trade Control Laws.

35. **Entire Agreement:** The contract contains the entire agreement of the parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of the contract. No amendment or modification of the contract shall bind either party unless it is in writing and is signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.



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ATTACHMENT FOR ORDERS ISSUED UNDER GOVERNMENT CONTRACTS

If the order is issued under a United States Government prime contract or subcontract (including GSA) as noted on the face of the Purchase Order, the regulations of the below identified clauses set forth in the Federal Acquisition Regulations (FAR) or DOD FAR Supplement (DFARS) in effect on the date of the order are incorporated herein by reference, it being understood that as used therein, the terms "Government" and "Contracting Officer" shall be deemed to mean buyer, "Contractor" seller, and "Contract" the purchase order or subcontract.

For "Commercial Items" as defined in FAR 2.101, the following FAR clauses apply:

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| 1) 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009. | 6) 52.222-36 Affirmative Action for Workers with Disabilities. NOTE: Applicable to any Order of \$25,000 or more. |
| 2) 52.219-8 Utilization of Small Business Concerns. NOTE: Applicable to any order greater than \$100,000. | 7) 52.247-63 Preference for U.S. – Flag Air Carriers. NOTE: Applicable to any Order greater than \$50,000. |
| 3) 52.222-26 Equal Opportunity. | 8) 52.225-5 Trade Agreements. |
| 4) 52.222-35 Affirmative Action for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. NOTE: Applicable to any Order of \$25,000 or more. | |
| 5) 52.225-1 Buy American Act – Supplies. | |

For all other items, the following FAR and DFARS clauses apply:

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| 1) 52.203-3 Gratuities. | when cost or pricing data is required or for which any pre-award or post-award cost determinations will be subject to FAR Part 31. |
| 2) 52.203-6 Restriction on Subcontractor Sales to the Government. NOTE: Applicable to any order greater than \$100,000. | 21) 52.215-19 Notification of Ownership Changes NOTE: Applicable to any Order when cost or pricing data is required or for which any pre-award or post-award cost determinations will be subject to FAR Subpart 31.2. |
| 3) 52.203-7 Anti-Kickback Procedures. NOTE: The substance of this clause, except subparagraph (c) (1), is applicable to any Order and all lower-tier subcontracts which exceed \$150,000. Seller shall immediately notify Buyer of any alleged violations involving any of Buyer's or Seller's employees. | 22) 52.216-5 Price Redetermination Prospective. |
| 4) 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. | 23) 52.219-8 Utilization of Small Business Concerns. NOTE: Applicable to any Order greater than \$100,000. |
| 5) 52.203-12 Limitation of Payments to Influence Certain Federal Transactions. NOTE: Applicable to any Order greater than \$100,000. | 24) 52.219-9 Small Business Subcontracting Plan. NOTE: Applicable to any Order greater than \$750,000. |
| 6) 52.203-13 Contractor Code of Business Ethics and Conduct. NOTE: Only applies to orders over \$5.5 million. | 25) 52.219-28 Post Small Business Concern Representation for the Small Business Competitiveness Demonstration Program. |
| 7) 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009. | 26) 52.222-1 Notice to Government of Labor Disputes. |
| 8) 52.204-2 Security Requirements. NOTE: Delete paragraph (c), and applicable only if the Order involves access to classified information. | 27) 52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation. NOTE: Applicable to all subcontracts at any tier. |
| 9) 52.204-10 Reporting Executive Compensation and First Tier Subcontract Awards. NOTE: Applicable only to Orders of \$25,000 or more. | 28) 52.222-6 Construction Wage Rates |
| 10) 52.209-5 Certification Regarding Responsibility Matters. | 29) 52.222-7 Withholding of Funds. |
| 11) 52.211-5 Material Requirements. | 30) 52.222-8 Payrolls and Basic Records. |
| 12) 52.211-15 Defense Priority and Allocation Requirements. | 31) 52.222-9 Apprentices and Trainees. |
| 13) 52.215-2 Audit and Records-Negotiation. NOTE: Applicable to any Order greater than \$100,000. | 32) 52.222-10 Compliance with Copeland Act Requirement. |
| 14) 52.215-10 Price Reduction for Defective Cost or Pricing Data. NOTE: Applicable to any Order when cost or pricing data is required. | 33) 52.222-11 Subcontracts (Labor Standards). |
| 15) 52.215-11 Price Reduction for Defective Cost or Pricing Data-Modifications. NOTE: Applicable if FAR 52.215-10 is not applicable to this Order. | 34) 52.222-12 Contract Termination-Debarment. |
| 16) 52.215-12 Subcontractor Cost or Pricing Data. NOTE: Applicable to any Order when cost or pricing data is required. | 35) 52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations. |
| 17) 52.215-13 Subcontractor Cost or Pricing Data - Modifications. NOTE: Applicable if FAR 52.215-12 is not applicable to this Order. | 36) 52.222-14 Disputes Concerning Labor Standards. |
| 18) 52.215-14 Integrity of Unit Prices. NOTE: Delete paragraph (b), and applicable to any Order greater than \$100,000. | 37) 52.222-15 Certification of Eligibility. |
| 19) 52.215-15 Pension Adjustments and Asset Reversions. NOTE: Applicable to any Order when cost or pricing data is required or for which any pre-award or post-award cost determinations will be subject to FAR Part 31. | 38) 52.222-16 Approval of Wage Rates. |
| 20) 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions. NOTE: Applicable to any Order | 39) 52.222-26 Equal Opportunity. |
| | 40) 52.222-35 Equal Opportunity for Veterans. NOTE: Applicable to any Order of \$25,000 or more. |
| | 41) 52.222-36 Equal Opportunities for Workers with Disabilities. NOTE: Applicable to any Order greater than \$10,000. |
| | 42) 52.222-37 Employment Reports Veterans. NOTE: Applicable to any Order greater than \$25,000. |
| | 43) 52.222-41 Service Contract Labor Standards. |
| | 44) 52.222-50 Combating Trafficking in Persons. |
| | 45) 52.222-54 Employment Eligibility Verification. |
| | 46) 52.223-3 Hazardous Material Identification and Material Safety Data. |
| | 47) 52.223-7 Notice of Radioactive Material. |
| | 48) 52.224-2 Privacy Act. |



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- 49) 52.225-1 Buy American Act - Balance of Payments Program-Supplies. 52.225-3 Buy American Act –Free Trade Agreements – Israeli Trade Act.
- 50) 52.225-5 Trade Agreements.
- 51) 52.225-8 Duty Free Entry.
- 52) 52.225-13 Restrictions on Certain Foreign Purchases.
- 53) 52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan.
- 54) 52.226-6 Promoting Excess Food Donations to Non-Profit Organizations.
- 55) 52.227-1 Authorization and Consent.
- 56) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement. NOTE: Applicable to subcontracts of \$100,000 or more except when both complete performance and delivery are outside the United States, its possessions and Puerto Rico, unless supplies are ultimately to be shipped into one of those areas.
- 57) 52.227-9 Refund of Royalties.
- 58) 52.227-10 Filing of Patent Applications - Classified Subject Matter.
- 59) 52.227-11 Patent Rights-Retention by the Contractor (Short Form). NOTE: Applicable to Small Business firms or nonprofit organizations.
- 60) 52.227-13 Patent Rights-Acquisition by the Government.
- 61) 52.228-5 Insurance-Work on a Government Installation.
- 62) 52.230-2 Cost Accounting Standards. NOTE: Not applicable to small business concern.
- 63) 52.230-3 Disclosure and Consistency of Cost Accounting Practices. NOTE: Not applicable to small business concern.
- 64) 52.230-6 Administration of Cost Accounting Standards. NOTE: Not applicable to small business concern.
- 65) 52.242-15 Stop Work Order.
- 66) 52.244-2 Subcontracts.
- 67) 52.244-6 Subcontracts for Commercial Items.
- 68) 52.245-2 Government Property Installation Operation Services (Fixed Price Contracts).
- 69) 52.246-3 Inspection of Supplies-Cost-Reimbursement. NOTE: Applicable to Cost Reimbursement items only.
- 70) 52.246-5 Inspection of Services-Cost-Reimbursement. NOTE: Applicable to Cost Reimbursement items only.
- 71) 52.246-23 Limitation of Liability.
- 72) 52.246-24 Limitation of Liability - High Value Items.
- 73) 52.246-25 Limitation of Liability-Services.
- 74) 52.247-4016 Heat Treatment and Marking of Wood Packaging Materials.
- 75) 52.247-63 Preference for U.S. - Flag Air Carriers. NOTE: Applicable to any Order greater than \$50,000.
- 76) 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.
- 77) 52.248-1 Value Engineering.
- 78) 52.248-3 Value Engineering-Construction.
- 79) 252.203-7001 Prohibition on Persons Convicted of Fraud NOTE: Applicable to any Order of \$100,000 or more.
- 80) 252.204-7008 Export Controlled Items.
- 81) 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting
- 82) 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.
- 83) 252.225-7010 Commercial Derivative Military Article – Specialty Metals Compliance Certificate.
- 84) 252.225-7014 Reserved.
- 85) 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.
- 86) 252.225-7025 Restriction on Acquisition of Forgings.
- 87) 252.225-7026 Acquisition Restricted to Products or Services from Iraq or Afghanistan.
- 88) 252.227-7013 Rights in Technical Data-Noncommercial Item.
- 89) 252.227-7030 Technical Data-Withholding of Payment.
- 90) 252.227-7037 Validation of Restrictive Markings on Technical Data.
- 91) 252.235-7003 Frequency Authorization.
- 92) 252.239-7016 Telecommunications Security Equipment Devices, Techniques and Services.
- 93) 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts).
- 94) 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System
- 95) 252.246-7008 Sources of Electronic Parts
- 96) 252.247-7023 Transportation of Supplies by Sea. NOTE: Applicable in any Order and all lower-tier subcontracts for ocean transportation of supplies. Paragraphs (f) and (g) shall not apply if this Order or any lower-tier subcontract is at or below \$100,000. Paragraph (c), first sentence has been modified to read “The Seller and its subcontractors may request that the Buyer obtain Government authorization for shipment...” “45” is changed to “60” days in paragraph (d) and “30” to “20” in paragraph (e). In paragraph (e), delete “and the division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590.” In paragraph (g) “for the purposes of the Prompt Payment clause of this contract” is deleted.
- 97) 252.247-7024 Notification of Transportation of Supplies by Sea.
- 98) 252.249-7002 Notification of Anticipated Contract Termination or Reduction. NOTE: Applicable to Orders of \$500,000 or more when Seller is first-tier subcontractor or \$100,000 or more when Seller is lower-tier subcontractor.



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ADDITIONAL TERMS FOR SERVICE CONTRACTS ONLY

If the order is issued for the performance of services, the following additional terms and conditions shall apply:

- 1. Travel.** Reimbursement of any travel or other direct costs specifically excluded from the fixed price shall require the prior approval of the Buyer and shall be in accordance with the [GSA] Joint Travel Regulations. Reimbursement of such approved costs shall be at cost only, exclusive of fee/profit.
- 2. Payment.** Payment on Seller invoices will be made within ten (10) days after Buyer receives payment under its Prime Contract. The Seller shall be paid, upon submission of proper invoices or vouchers, for supplies/services rendered and accepted. Notwithstanding anything in this Order to the contrary, Buyer has the right to withhold from payments due to Seller such sums as are under dispute; and Buyer shall be reimbursed by Seller for any and all such sums that are finally determined to be (i) reasonably necessary to protect Buyer against losses or damages resulting from the negligence or unsatisfactory work of Seller, its subcontractors, affiliates, or their respective officers, directors, agents or employees (collectively Seller's "Affiliates"); or (ii) reasonably necessary to protect Buyer against claims filed relating to Seller's Services. Any sums withheld from Seller and subsequently determined to be due and owing shall be paid immediately. Seller shall not invoice for any services required to correct deficiencies attributable to errors or omissions of Seller.
- 3. General Indemnification.** Seller shall defend, indemnify and hold harmless Buyer from and against any and all liabilities, losses, damages, costs, credits, penalties or charges, including reasonable attorneys' fees, suffered or incurred by Buyer as a result of (i) any claims, suits, proceedings, audits, investigations, or other actions brought against Buyer, its agents, employees, representatives, or subcontractors arising out of or related to the performance of Seller, its agents, employees, representatives, or subcontractors under or certifications made pursuant to this Order; or (ii) any failure by Seller to comply fully with any laws and regulations, whether or not the same are specifically referenced in this Agreement.
- 4. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DIRECT DAMAGES NOT LIMITED BY THIS CLAUSE INCLUDE BUT ARE NOT LIMITED TO (I) ANY CLAIM FOR REPROCUREMENT COSTS; (II) ANY CLAIM FOR "OFFSET" BROUGHT PURSUANT TO THE PROVISIONS OF THE FEDERAL ACQUISITION REGULATIONS AND (III) ANY CLAIM FOR ADMINISTRATIVE OR CIVIL FALSE CLAIMS REMEDIES. Except in the case of fraud or willful misconduct, in no event shall Buyer be liable for damages in excess of amounts paid to Seller hereunder.
- 5. Intellectual Property of Seller.** In addition to the Government's rights in data and inventions, if any, and to the extent that any pre-existing materials owned by Seller are contained in the deliverables, Seller agrees that Buyer, in the performance of its Prime Contract obligation, shall have an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative and authorize others to do any, some or all of the foregoing, any and all, inventions, discoveries, improvements, maskworks, and patents as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, used or delivered by Seller in performance of this Order.
- 6. Insurance.** Without prejudice to Seller's liability to indemnify Buyer, Seller shall procure, at its expense and maintain for the duration of the Subcontract Agreement, the insurance policies described below with financially responsible insurance companies rated "A-" VII or higher by A.M. Best, reasonably acceptable by Buyer, with policy limits not less than those indicated below, and maintain such coverage during the entire performance period; however, minimum required Liability limits can be met by any combination of primary and Umbrella/Excess Liability limits.

Commercial General Liability: \$1,000,000 per occurrence for bodily injury & property damage; \$1,000,000 Personal & Advertising Injury; \$2,000,000 General Aggregate and \$2,000,000 Products and Completed Operations Aggregate. Such coverage is to include Contractual Liability and be written on an Occurrence Form. Buyer is to be added as an Additional Insured and Products/Completed Operations insurance is to be carried for at least 2 years from the completion of the work. Waiver of subrogation where allowed by state law.

Automobile Insurance: \$1,000,000 combined single limit per accident for bodily injury and property damage covering owned, non-owned and hired autos. Waiver of subrogation where allowed by state law.

Worker's Compensation: Statutory limits under applicable State or Federal Statutes. Waiver of subrogation where allowed by state law

Professional Liability: \$1,000,000.00 per occurrence and aggregate providing coverage for claims arising out of the performance of professional services, resulting from error, omission, or negligent act of the Seller. Coverage must be on an uninterrupted Claims Made basis or Extended Reporting Period (Tail coverage) for at least 2 years from the completion of the work.

If the Seller makes, sells, installs, maintains and/or repairs aircraft products as part of this contract, or provides or operates aircraft (owned, leased or borrowed) and/or provides pilots as part of this contract, then Aircraft Products Liability, Aircraft Grounding, and Aviation Liability coverage must be obtained and maintained at the following limits:

Aircraft Products Liability: \$5,000,000 per occurrence and \$5,000,000 in aggregate. Buyer is to be added as an Additional Insured.

Aircraft Grounding: \$5,000,000 per occurrence and \$5,000,000 in aggregate. Smartronix is to be added as an Additional Insured.

Aviation Liability: \$1,000,000 per occurrence (including passengers). Smartronix is to be added as an Additional Insured.

For contracts involving work overseas in the support of an U.S. Government Contract, and for all other contracts involving work overseas, Defense Base Act or Foreign Voluntary Workers Compensation coverage shall apply subject to the Statutory limits and include employers' liability at the following limits:

Employers Liability \$500,000 Each Accident; \$500,000 Disease – Each Employee; \$500,000 Disease – Policy Limit

Losses under any deductibles or self-insured retentions (SIR) are the sole responsibility of the Seller. Insurance shall protect Seller, Buyer, and any other Party expressly designated by Buyer elsewhere within this Order, from claims that arise from any actions by Seller, any lower-tier subcontractor (s), anyone directly or indirectly employed by Seller and their subcontractors, or anyone for whose acts may be liable under this Order. Seller shall have all liability amended or endorsed to indicate that, with respect to the additional insured, there shall be severability of interest. Additional Insured status for Buyer is to be primary and non-contributory.



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Prior to the commencement of any work, and within fifteen (15) days of any policy renewal that occurs while any work is on-going, Seller shall provide Buyer certificates of insurance evidencing the insurance policies above including evidence of additional insured status where required. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Failure of Buyer to demand such certificates or to identify any deficiency in the insurance provided shall not be construed as or deemed to be a waiver of Seller's or its Subcontractors' obligations to maintain the above insurance coverage.

7. Non-Waiver of Conditions. No term or provision hereof shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent or waiver by any authorized Party, or breach by the other, whether expressed or implied, shall not constitute a consent to, or waiver of, any subsequent breach or difference. Failure of Buyer to insist on strict performance shall not constitute a waiver of any of the provisions of this Subcontract Agreement or waiver of any other default of Seller.

8. Export. Seller will not, nor will Seller authorize or permit its personnel to disclose, export, or re-export any of Buyer's information, or any process, deliverable, or service that is produced under this Order, without prior notification and compliance with all applicable Federal, State, and local laws; regulations; and ordinances, including the regulation of the U.S. Department of Commerce and/or the U.S. Department of State, including the International Trade in Arms Regulations (ITAR) and the Arms Export Control Act (AECA). In addition, Seller agrees to notify Buyer if Seller is listed in the Denied Parties List published by the U.S. Department of Commerce, or if Seller's export privileges are otherwise denied, suspended, or revoked in whole or in part by either the U.S. Department of Commerce or the U.S. Department of State.

9. Notification of Debarment/Suspension. By acceptance of this Order, either in writing or by performance, Seller certifies that as of the date of award of this Order neither Seller, nor any of Seller's principals, is debarred, suspended, or proposed for debarment by the US Government or any State Government. Further, Seller shall provide immediate written notice to the Buyer in the event that during the performance of this Order the Seller or any of Seller's principals are debarred, suspended, or proposed for debarment by any Federal or State Government entity.

10. Security Requirements. The Seller shall comply with the Computer Security Act of 1987 and the National Industrial Security Procedures Operating Manual (NISPOM) for safeguarding classified information (DoD 5220.22M). If applicable, the Seller's facility that processes security clearances shall be cleared for Top Secret. The Seller shall be responsible for providing properly cleared personnel and ensuring compliance by its employees with security regulations of Government installations or other facilities where work is performed under this Order. This includes the safekeeping, wearing, and visibility of badges when required; and the return of all badges and Government property upon completion. All clearances, checks, research, and associated activities shall be at Seller's expense, and shall not result in any direct cost to either Buyer or the US Government.