



Standard Commercial PO

Terms & Conditions



Assured Information Security Purchase Order

GENERAL PROVISIONS FOR COMMERCIAL SUBCONTRACTS/PURCHASE ORDERS

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SECTION I: General Provisions for All Orders

Section 1A: General/Administrative Provisions

1. DEFINITIONS

The following terms shall have the meanings set forth below:

- a) "AIS" means the Assured Information Security, Inc.
- b) "AIS Procurement Representative" means the person authorized by AIS' cognizant procurement organization to administer and/or execute this Agreement.
- c) "Agreement" means the instrument of contracting, such as purchase order ("PO"), contract, subcontract, or other such type of designation, to which these terms and conditions are attached or incorporated by reference, including all other referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a purchase order or other such document) the term "Agreement" shall also mean the release document for the Work to be performed.
- d) "USG" means United States Government.
- e) "AIS' Customer" means the entity with whom AIS has or anticipates having a contractual relationship to provide services or goods that utilize or incorporate the Work. For purposes of the "FURNISHED PROPERTY" and "INDEPENDENT CONTRACTOR RELATIONSHIP" provisions of this Agreement, "AIS' Customer" may include any higher tier contractor(s).
- f) "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- g) "Open Source" means with respect to Software and any licenses of same, that Software provided under a license which permits the user to run, copy, distribute, study, change, modify and/or improve the Software but which prohibits the user from: (a) withholding improvements and/or modifications made by the user to the source code when and/if user thereafter distributes the Software; and/or (b) adding restrictions on use when redistributing or transferring the Software to third parties. For purposes of this Agreement, "Open Source" Software shall also include "Free Software" as defined by the Free Software Foundation Inc. By way of example and not limitation, "Open Source" licenses shall include such licenses as the GNU General Public License, the Mozilla Public License 1.1, Apache Software License Version 2.0, the Academic Free License 2.0, and Open Software License 2.0.
- h) "Supplier" means the party identified on the face of this Agreement with whom AIS is contracting. For the purposes of the "CUSTOMER COMMUNICATION" and "INDEPENDENT CONTRACTOR RELATIONSHIP" provisions only, "Supplier" shall also include Supplier's agents, representatives, subcontractors, and suppliers at any tier.
- i) "Software" means: (1) computer programs, source code, source code listings, executable code, machine readable code, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable software to be read, reproduced, recreated, or recompiled; (2) associated documentation such as operating manuals, application manuals, and installation and operating instructions that explain the capabilities of software and provide instructions on using the software; and (3) derivative works, enhancements, modifications, and copies of those items identified in (1) and (2) above.

- j) "Work" means all required deliverables, articles, materials, supplies, goods and services, including, but not limited to, technical data and Software, constituting the subject matter of this Agreement.

2. ACCEPTANCE OF AGREEMENT /TERMS AND CONDITIONS

- a) This Agreement integrates, merges, and supersedes any contemporaneous and prior offers, understandings, negotiations, and agreements concerning the subject matter hereof and constitutes the entire Agreement between the parties regarding the same.
- b) Supplier's acknowledgment, acceptance of payment, or commencement of performance shall constitute Supplier's unqualified acceptance of this Agreement.

3. ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SUPPLIER OR INCLUDED IN SUPPLIER'S ACKNOWLEDGMENT HEREOF ARE HEREBY OBJECTED TO BY AIS AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY AN AIS PROCUREMENT REPRESENTATIVE.

- d) Any assignment of Supplier's contract rights or delegation of duties shall be void, unless prior written consent is given by AIS. A change of control of Supplier shall constitute an impermissible assignment. However, Supplier may assign rights to be paid amounts due, or to become due, to a financing institution if AIS 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 AIS against Supplier. AIS shall have the right to make settlements and/or adjustments in price without notice to the assignee. AIS may freely assign this contract.
- e) By executing this Agreement, Supplier expressly agrees that nothing in this Agreement grants the Supplier a direct claim or cause of action against the USG.
- f) Supplier shall flow down all mandatory FAR or DFARS clauses to all lower-tier subcontracts.

3. PRECEDENCE

Any inconsistencies in this Agreement shall be resolved in accordance with the following descending order of precedence: (1) applicable prime contract FAR and DFARS clauses that are flowed by reference or by full text; (2) the primary Agreement, purchase order, or subcontract document; (3) any master-type agreement (such as corporate, operating group, IDIQ, or blanket agreements); (4) representations and certifications; (5) these terms and conditions; (6) statement of work; and (7) specifications or drawings.

4. AGREEMENT DIRECTION/CHANGES

- a) Only the AIS Procurement Representative has authority to make changes in, to amend, or to modify this Agreement on behalf of AIS. Supplier shall not implement any changes or modifications to this Agreement (including specifications and quality control provisions) without first having received written authorization to do so from AIS' Procurement Representative.
- b) AIS program, operations, engineering, technical, or other personnel may periodically render assistance, give technical advice, discuss, or exchange information with Supplier's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under this clause of this Agreement and shall not be the basis for equitable adjustment. If Supplier believes the foregoing creates an actual or constructive change, Supplier shall notify the AIS Procurement Representative and shall not accept such direction or perform



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said action unless authorized by AIS Procurement Representative.

- c) Except as otherwise provided herein, all notices to be furnished by the Supplier shall be sent to the AIS Procurement Representative.
- d) AIS may, at any time, exclusively by a written order signed by its Procurement Representative, and without notice to sureties, if any, make changes within the general scope of this Agreement (a "Change Order") in any one or more of the following:
 - i. Drawings, designs, or specifications when the supplies being furnished are to be specially manufactured for AIS in accordance with the drawings, designs, or specifications;
 - ii. Method of shipment or packing;
 - iii. Place of inspection, delivery or acceptance;
 - iv. Delivery schedules; and/or
 - v. Any other matters affecting this Agreement .
- e) AIS' Procurement Representative may sometimes elect to attach AIS' own internal change documents to the Change Order for clarification purposes. When issued, these forms will be in conjunction with, not in lieu of, a Change Order. The Supplier shall promptly review all changes to the part and/or service as specified in the Change Order and any Attachments, if any, and notify AIS of any effect that the change may have on the performance of the Agreement.
- f) If any such change causes an increase or decrease in the cost of or the time required for performance of this Agreement, an equitable adjustment shall be made in the Agreement price, the delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Any claim by Supplier for adjustment under this article must be asserted in writing to AIS' Procurement Representative no later than thirty (30) calendar days after the date of receipt by Supplier of the written change authorization or within such extension as AIS may grant in writing; AIS may, in its sole discretion, consider any such claim regardless of when asserted. Such claim shall be in the form of a complete change proposal fully supported by factual information. Pending any such adjustment, Supplier will diligently proceed with the Agreement as modified. Where the cost of property made excess or obsolete as a result of a change is included in Supplier's claim for adjustment, AIS shall have the right to direct the manner of disposition of such property. AIS shall have the right to examine any of Supplier's pertinent books and records for the purpose of verifying Supplier's claim.

NOTE: Only AIS's Procurement Representative shall have the authority to direct or authorize changes or modifications to this Agreement. AIS' PROGRAM MANAGEMENT AND ENGINEERING PERSONNEL HAVE NO AUTHORITY TO MODIFY OR OTHERWISE TO DIRECT OR AUTHORIZE CHANGES TO THIS AGREEMENT.

- g) AIS SHALL NOT BE LIABLE FOR ANY OF SUPPLIER'S INCREASED COSTS OF PERFORMANCE THAT RESULT FROM SUPPLIER'S IMPLEMENTATION OF CHANGES OR MODIFICATIONS THAT AIS' PROCUREMENT REPRESENTATIVE DID NOT FIRST APPROVE IN WRITING.
- h) AIS and Supplier agree that if this Agreement , or any order, ancillary agreement, or correspondence is transmitted electronically neither AIS nor Supplier shall contest the validity thereof, on the basis that this Agreement , or the order, acknowledgement, ancillary agreement, or correspondence exists only in electronic form, an electronic record was used in its creation or formation, or it contains only an Electronic Signature or it was generated automatically, without human

intervention by a system intended for the purposes of generating same.

5. AIS' CUSTOMER COMMUNICATION

AIS shall be primarily responsible for all liaison and coordination with AIS' Customer or any higher tier contractor(s) as it affects this Agreement or any Work thereunder or related thereto. Supplier shall promptly notify the AIS Procurement Representative of any communications with AIS' Customer or any higher tier contractor(s) that affects this Agreement or any Work thereunder or related thereto.

6. INFORMATION

- a) Information provided by AIS to Supplier remains the property of AIS. Supplier shall comply with all proprietary information markings and restrictive legends applied by AIS to anything provided hereunder to Supplier. Supplier shall not use any AIS provided information for any purpose except to perform this Agreement and shall not disclose such information to third parties without the prior written consent of AIS.
- b) If the parties have entered a non-disclosure agreement ("NDA") pertaining to the Work of this Agreement, the terms and conditions of such NDA shall govern the protection and exchange of proprietary information between the Parties.
- c) Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Agreement or the subject matter hereof, shall not be made by Supplier without the prior written approval of AIS Procurement Representative.
- d) Supplier will employ appropriate tools and practices to protect AIS' provided data and advise AIS within 2 days if a cyber-attack has been detected which may have compromised AIS' data. Supplier agrees, if solicited, to complete the Cyber Security Supplier Questionnaire.

7. SURVIVABILITY

If this Agreement expires, is completed, or is terminated, Supplier shall not be relieved of those obligations contained in the following provisions:

- Applicable Laws
- Counterfeit Parts: Prevention and Notification
- Definitions
- Disputes/Jury Waiver
- Export Control
- Furnished Property
- Independent Contractor Relationship
- Information
- Entry on AIS or AIS' Customer Property
- Intellectual Property
- Maintenance of Records
- Parts Obsolescence
- Warranty

8. SEVERABILITY

Each paragraph and provision of this Agreement is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Agreement will remain in full force and effect.

9. PAYMENTS, TAXES, AND DUTIES

- a) Unless otherwise provided, terms of payment shall be net sixty (60) days or 2% 10 NET 60 if so agreed between the parties and so indicate on the face of the order from the latest of the following: (i) AIS' receipt of Supplier's accurate invoice in



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accordance with proper invoicing instructions as identified on the PO, or other master-type agreement; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work. AIS shall have a right of setoff against payments due or at issue under this Agreement or any other Agreement between AIS and Supplier.

- b) Each payment made shall be subject to reduction to the extent of amounts which are found by AIS not to have been properly payable and shall also be subject to reduction for overpayments.
- c) Payment shall be deemed to have been made as of the date of mailing AIS' payment or electronic funds transfer.
- d) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.
- e) Supplier will provide AIS with a W-9 Form (Request for Taxpayer Identification Number and Certification) in accordance with IRS regulations. An updated form is required for any Name or address change. If Supplier fails to provide a complete and proper W-9 Form, AIS is required to subject payments to Backup Withholdings.

10. MAINTENANCE OF RECORDS

- a) Unless a longer period is specified in this Agreement or by law or regulation, Supplier shall retain all records related to this Agreement for five (5) years from the date of final payment received by Supplier. Records related to this Agreement include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, quality processes and procedures, shipping and export, certifications, and receipt records.
- b) AIS and AIS' Customer shall have access to such records, and any other records Supplier is required to maintain under this Agreement for the purpose of audit during normal business hours, upon reasonable notice for as long as such records are required to be retained. Audit rights shall be available to AIS on all performance related reports and other records, except records pertaining to proprietary indirect cost data. Audit of any proprietary indirect cost data may be accomplished through a mutually agreeable third-party auditor from a nationally recognized firm of certified public accountants.

11. OFFSET CREDIT/COOPERATION

All offset or countertrade credit value resulting from this Agreement, and any lower tier subcontracts, shall accrue solely to the benefit of AIS. Supplier shall cooperate with AIS in the fulfillment of any foreign offset/countertrade obligations.

12. SUPPLEMENTAL TERMS AND CONDITIONS

Any additional or supplemental terms and conditions that are required by AIS' shall be provided as a note on the face of this Agreement or as Special or Additional Provisions to the Agreement.

13. ENTRY ON AIS OR AIS' CUSTOMER PROPERTY

- a) If Supplier's personnel are to work at AIS' facility with unescorted access, Supplier is required to have performed pre-employment background screenings at no charge to AIS. Supplier employees will not be allowed access to work at AIS facilities until written confirmation from Supplier has been received by the AIS Procurement Representative stating that Supplier's employees are cleared by Supplier to report to work. If the Supplier personnel in question holds a U.S. Government-granted Security clearance or access that has been validated by AIS through JPAS (Joint Personnel Adjudication System) or via a visit certification, then a pre-employment background

screening for that Supplier personnel is not required. Pre-employment background screenings must include the following: (a) Identity and Right to Work Verification (Criteria: A successful I-9 / E-Verify System Check) (b) Criminal Conviction Check, to the extent permitted by applicable law, for a minimum of previous seven years for each county lived in (Criteria: No record or if misdemeanors, occurrence greater than seven years prior, then the Supplier may choose to provide an explanation of the event to AIS. AIS will review the explanation against security requirements) (c) Education Verification for degreed positions only; and (d) Minimum of three years of employment history (Criteria: Employment history is confirmed as presented).

- b) Supplier shall ensure that personnel assigned to work at AIS' or AIS' Customer's premises comply with any on-premises guidelines. Unless otherwise authorized in writing by AIS, Supplier's personnel assigned to work at AIS' or AIS' Customer's premises shall while at AIS' or AIS' Customer's premises (i) not bring weapons of any kind; (ii) not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) not possess hazardous materials of any kind; (iv) remain in authorized areas only; and/or (v) not solicit AIS' employees for employment.
- c) All Supplier personnel, property, and vehicles entering or leaving AIS' or AIS' Customer's premises are subject to search.
- d) Supplier shall promptly notify AIS and provide a report of any and all physical altercations, assaults or harassment, and accidents or security incidents involving death, personal injury or loss of or misuse of or damage to AIS' or AIS' Customer's property, while on AIS' or its AIS' Customer's premises.
- e) AIS may, at its sole discretion, remove or require Supplier to remove any specified personnel of Supplier from AIS' or AIS' Customer's premises and request that such personnel not be reassigned to any AIS premises under this Agreement or any other Agreement. Any costs arising from or related to removal of Supplier's employee shall be borne solely by Supplier and not charged to this Agreement.
- f) Supplier shall not assign any persons to work at AIS facilities who are not a "U.S. Person" per 22 C.F.R. 120.15 (lawful permanent resident as defined by 8 U.S.C. 1101(a)(20)).
- g) Supplier acknowledges that AIS and/or AIS' Customer have a zero-tolerance policy for harassing behavior. Supplier, its employees, and its lower-tier subcontractors (when permitted) shall comply with the conduct requirements in effect at a worksite of AIS or AIS' Customer. AIS and AIS' Customer reserve the right to exclude or remove from any worksite, any individual who has been deemed careless, uncooperative, or whose continued employment has been determined by AIS or AIS' Customer to be contrary to the AIS', AIS' Customer's, or the public's interest. Exclusion from the worksite under the circumstances described in this clause shall not relieve Supplier from full performance of the Agreement, nor will it provide the basis for an excusable delay or any claims against AIS or AIS' Customer.

14. INDEPENDENT CONTRACTOR RELATIONSHIP

- a) Supplier's relationship to AIS shall be that of an independent contractor and this Agreement does not create an agency, partnership, or joint venture relationship between AIS and Supplier or AIS and Supplier personnel. Supplier personnel engaged in performing Work under this Agreement shall be deemed employees of Supplier and shall not for any purposes be considered employees or agents of AIS. Supplier assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Agreement. AIS assumes no liability for Supplier personnel.
- b) Nothing contained in this Agreement shall be construed as granting to Supplier or any personnel of Supplier rights under any AIS benefit plan. Supplier shall provide and maintain all



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insurance and benefits required by law, including but not limited to workers' compensation insurance.

- c) Supplier personnel: (i) will not remove AIS or AIS' Customer's assets from AIS' or AIS' Customer's premises without AIS written authorization; (ii) will use AIS or AIS' Customer assets only as authorized in writing by the AIS Procurement Representative for purposes of this Agreement; (iii) will only connect with, interact with or use AIS' computer networks and equipment, communications resources, programs, tools or routines as AIS agrees, all at Supplier's risk and expense, and then only in compliance with applicable AIS policies; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. AIS may monitor any communications made over or data stored in AIS computer networks and equipment or communications resources.

Section 1B: Laws and Regulations

15. APPLICABLE LAWS

- a) Unless specifically identified otherwise on a PO or under a master-type agreement, which is part of this Agreement, all matters arising from or related to it shall be governed by and construed in accordance with the law of the state of New York, excluding its choice of law rules. All federal regulation and prime contract flow-down clauses shall be construed in accordance with United States federal law.

- b) (1) Supplier shall comply with all applicable laws, orders, rules, regulations, and ordinances. Supplier shall procure all licenses and permits and pay all fees and other required charges necessary to conduct its business, all at Supplier's expense.

(2) Supplier shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(3) AIS is a federal government contractor subject to the nondiscrimination and affirmative action compliance requirements of Executive Order 11246, Executive Order 13672, as amended, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. AIS is committed to compliance with these nondiscrimination and affirmative action requirements. As part of our efforts to comply with these laws and their implementing regulations, we have developed and implemented equal employment opportunity and affirmative action policies and programs, which are designed to ensure that all qualified applicants and employees are treated without regard to such factors as race, color, religion, sex, national origin, disability, veteran status, sexual orientation, gender identity, or any other reason prohibited by law.

In accordance with the implementing regulations of these laws this Agreement serves as notification to Supplier about our nondiscrimination and affirmative action policies, and also "requests appropriate action" of Supplier to ensure full compliance throughout the subcontracting chain under related federal contract(s).

- i. To the extent applicable, the equal employment opportunity and affirmative action requirements set forth in 41 C.F.R. Part 60-1.4(a) (women and minorities) (if > \$10,000), 41 C.F.R. Part 60-250.5(a) (if > \$25,000) and Part 60-300.5(a) (covered veterans), and the employee notice requirements set forth in 29 C.F.R. Part 471,

Appendix A to Subpart A, are hereby incorporated by reference into this Agreement.

- ii. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60 741.5(a) (if >\$15,000). 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 (If this procurement is =>\$10,000.) Additionally, this contractor and subcontractor shall abide by the requirements of 41 CFR 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 (if this procurement is =>\$150,000).**

(4) If: (i) AIS' contract price or fee is reduced; (ii) AIS' costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on AIS; or (iv) AIS incurs any other costs or damages as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Supplier, its directors, officers, employees, agents, suppliers, or subcontractors at any tier, AIS may proceed as provided for in subparagraph (b)(5).

(5) Upon the occurrence of any of the circumstances identified in subparagraph (b)(4) above, AIS may make an offset reduction of corresponding amounts (in whole or in part) due Supplier under this Agreement or any other agreement with Supplier, and/or may demand payment (in whole or in part) of the corresponding amounts. Supplier shall promptly pay amounts so demanded.

- c) For orders \$500,000 and above to be substantially performed outside of the United States: Supplier shall comply with the policy, controls, and reporting requirements as defined in U.S. Executive Order, 25 September 2012, Strengthen Protections Against Trafficking In Persons In Federal Contracts; Sec. 2. Anti-Trafficking Provisions subsection (2).
- d) In accordance with 10 USC 2330a, if this Agreement is for services, the Supplier shall report all labor hours required for performance under this Agreement via a secure data collection site. Specific instructions will be provided by the Procurement Representative if applicable.

16. GRATUITIES/KICKBACKS/ETHICAL CONDUCT

- a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Supplier, or anyone acting on Supplier's behalf, to any employee of AIS with a view toward securing favorable treatment as a supplier.
- b) By accepting this Agreement, Supplier certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. Sec. 51-58), incorporated herein by this specific reference if this Agreement exceeds \$150,000, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.
- c) AIS maintains an ethics program that includes a written code of conduct, training, and awareness for all employees. Failure to comply with this Code of Conduct or Supplier's comparable ethics program and standards shall be considered a material breach and shall be grounds for termination of this Agreement.

17. EXPORT CONTROL



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- a) Supplier shall comply with all applicable United States export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2799aa-2, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, the Export Administration Regulations, 15 C.F.R. 730-774, and the regulations of the Office of Foreign Assets Control (31 C.F.R. Parts 500-595). Supplier shall obtain all required export licenses and agreements necessary to perform Supplier's Work, as applicable.
- b) Supplier shall comply with all applicable United States anti-boycott laws and regulations, including but not limited to, the requirements of the Export Administration Regulations, 15 C.F.R. 760, and the Internal Revenue Code, 26 U.S.C. 999, including the requirements on reporting anti-boycott requests to the U.S. Government. Supplier shall provide to AIS within 30 days of submittal a copy of any anti-boycott report made to the U.S. Government that involves this Agreement.
- c) Without limiting the foregoing, Supplier shall not transfer any export-controlled item, data or services, to include transfer to a person who is not a "U.S. Person" as defined in the ITAR (22 C.F.R. 120.15), without the authority of a United States Government export license, technical assistance agreement, or other authority. The restrictions on the transfer of export-controlled data apply equally to data furnished by AIS and to any such data incorporated in documents generated by Supplier. Additionally, no disclosure of data furnished by AIS can be made unless and until AIS has considered the request and provided its written approval through contractually authorized channels. Supplier will strictly comply with the conditions in any such approval and in the export license or other Government authorization for such disclosure.
- d) Further, a United States Government export license, export agreement, or applicable license exemption or exception shall be obtained by Supplier prior to the transfer of any export-controlled item, data or services to any U.S. Person that is employed by any "Foreign person" within the meaning of 22 C.F.R. 120.16.
- e) Supplier shall notify in writing the AIS Procurement Representative if any use, sale, import or export by AIS of Work to be delivered under this Agreement is restricted by any export control laws or regulations applicable to Supplier.
- f) Supplier shall immediately notify in writing the AIS Procurement Representative if Supplier is listed in any Denied Parties List or if Supplier's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.
- g) If Supplier is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Supplier represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defense Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R. 122.1) as required by the ITAR.
- h) Where Supplier is a signatory under an AIS export license or export agreement (e.g., Technical Assistance Agreement, Manufacturing License Agreement), Supplier shall provide immediate written notification to the AIS Procurement Representative in the event of changed circumstances affecting said license or agreement.
- i) Failure of the United States Government or any other government to issue any required export or import license, or withdrawal/termination of a required export or import license by the United States Government or any other government, shall relieve AIS of its obligations under this Agreement. Provided that Supplier has diligently pursued obtaining such license and, through no fault of Supplier, such license has been denied, withdrawn, or terminated, Supplier shall also be relieved of its

obligation under this Agreement. In either event, this Agreement may be terminated by AIS without additional cost or other liability.

- j) Supplier acknowledges and confirms that if under this Agreement Supplier manufactures, exports, or brokers defense articles, related technical data or defense services as defined on the United States Munitions List (Part 121 of the ITAR), Supplier is so registered with the Directorate of Defense Trade Controls (DDTC), Department of State (applicable to companies operating in the U.S. only).

18. DISPUTES/JURY WAIVER

- a) All disputes arising from or related to this Agreement, which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity in accordance with subparagraph (b) of this provision. Until final resolution of any dispute hereunder, Supplier shall diligently proceed with the performance of this Agreement as directed by the AIS Procurement Representative.
- b) AIS and Supplier agree to timely notify each other of any claim, dispute or cause of action arising from or related to this Agreement, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, AIS AND SUPPLIER AGREE THAT ANY LAWSUIT OR CAUSE OF ACTION THAT ARISES FROM OR IS RELATED TO THIS AGREEMENT SHALL BE FILED WITH AND LITIGATED ONLY IN A COURT OF COMPETENT JURISDICTION WITHIN THE STATE OF NEW YORK; AND AIS AND SUPPLIER EACH HEREBY CONSENT AND AGREE TO THE PERSONAL JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED WITHIN THE NEW YORK WITH RESPECT TO ANY SUCH CLAIM, DISPUTE OR CAUSE OF ACTION AND WAIVE ANY DEFENSE OR OBJECTION TO THE EXERCISE OF PERSONAL JURISDICTION AND/OR VENUE BY ANY SUCH COURT.
- c) TO THE EXTENT PERMITTED BY APPLICABLE LAWS, AIS AND SUPPLIER EACH WAIVE ANY RIGHTS WHICH EITHER MAY HAVE TO TRIAL BEFORE A JURY OF ANY DISPUTE ARISING FROM, OR RELATED TO, THIS AGREEMENT. SUPPLIER AND AIS FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY.

19. WAIVER, APPROVAL AND REMEDIES

- a) Failure by AIS to enforce any provision(s) of this Agreement shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of AIS thereafter to enforce each and every such provision(s).
- b) AIS' approval of documents shall not relieve Supplier from complying with any requirements of this Agreement.
- c) The rights and remedies of AIS in this Agreement are cumulative and in addition to any other rights and remedies provided by law or in equity.

Section 1C: Quality/Product Control Provisions

20. QUALITY CONTROL SYSTEM

- a) Supplier agrees to provide and maintain a quality control system to an industry recognized Quality Standard and to provide access to Supplier's facilities at all reasonable times by AIS, authorized AIS' Customer representatives, and Regulatory Authorities. Supplier agrees to include, and to require its subcontractors to include, the substance of this provision, including this sentence, in each of its subcontracts under this Agreement. Further, Supplier shall be in compliance with any other specific quality requirements identified in this Agreement.



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- b) Records of all quality control inspection work by Supplier shall be kept complete and available to AIS and AIS' Customers.
- c) Supplier agrees to notify AIS Procurement Representative of product that does not meet the requirements of this order that cannot be reworked to compliance. Written Approval will be required by AIS Procurement Representative prior to Supplier's shipment of nonconforming material to AIS. Additionally, Supplier shall notify AIS Procurement Representative if Supplier discovers that previously delivered product does not meet the requirements of this order.
- d) Supplier agrees to notify AIS Procurement Representative with changes in product and/or process which affect compliance with applicable specifications, technical data sheets, or reliability of the product, changes of suppliers, and changes of manufacturing facility locations.
- e) All hardware, data, other documentation, tooling and equipment required by Supplier during the performance of this order shall be maintained under configuration control. AIS' approval of the drawing package shall constitute a baseline release for hardware fabrication. AIS' approval of other such documentation shall likewise constitute a baseline release for applicable activities. Upon receipt of such approval, the Supplier shall not implement any change in design, processes, controls, parts or proprietary data released to AIS thereafter to internal functions or second-tier suppliers without AIS' prior written approval.

21. TIMELY PERFORMANCE

- a) Supplier's timely performance is a critical element of this Agreement.
- b) Unless advance shipment has been authorized in writing by the AIS Procurement Representative, AIS may store at Supplier's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- c) If Supplier becomes aware of difficulty in performing the Work, Supplier shall timely notify AIS, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- d) In the event of a termination or change, no claim will be allowed for any manufacture or procurement in advance of Supplier's normal flow time unless there has been prior written consent by AIS' Procurement Representative.

22. INSPECTION AND ACCEPTANCE

- a) AIS and AIS' Customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. AIS shall perform such inspections in a manner that will not unduly delay the Work. Supplier shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- b) No such inspection (or election not to inspect) shall relieve Supplier of its obligations to furnish all Work in strict accordance with the requirements of this Agreement. AIS' final inspection and acceptance shall be at destination.
- c) If Supplier delivers non-conforming Work, AIS may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Agreement requirements and charge the cost incurred to Supplier.
- d) When Work is not ready at the time specified by Supplier for inspection, AIS may charge to Supplier the additional cost of inspection.

- e) AIS may also charge Supplier for any costs of additional inspection and/or transportation when rejection makes re-inspection necessary.
- f) Supplier shall not re-tender rejected Work without disclosing the corrective action taken.
- g) Supplier shall not tender finished goods to AIS which have been returned from another customer without prior written approval from AIS Procurement Representative. Such approval requests shall include a full explanation of Supplier's verification process for those goods. For returned goods to be considered for acceptance by AIS, an Authorized/Franchised Distributor must include acceptance of returned goods for resale as part of its counterfeit/fraudulent parts risk management plan.

23. COUNTERFEIT PARTS: PREVENTION AND NOTIFICATION

- a) Definitions for purposes of this Agreement:
 - i. "Counterfeit Part" is one that is (1) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source and/or (2) previously used parts provided as "new." A part is a "Suspect Counterfeit Electronic Part" if visual inspection, testing, or other information provides reason to believe that the part may be a counterfeit part.
 - ii. "Counterfeit Electronic Part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mislabeled, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
 - iii. As used herein, "authentic" shall mean (A) from the legitimate source claimed or implied by the marking and design of the product offered; and (B) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.
 - iv. "Independent Distributors" are persons and businesses that are not part of an OCM's authorized distribution chain. These also may be referred to as non-franchised distributors, unauthorized distributors or brokers.
 - v. "Electronic Part" means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81). The term "Electronic Part" includes any embedded software or firmware.
 - vi. "Original Component Manufacturer" (OCM) is an organization that designs and/or engineers a part and is pursuing or has obtained the intellectual property rights to that part.
 - vii. "Original Equipment Manufacturer" (OEM) is an organization that designs, manufactures and/or engineers an end product comprised of various parts and is pursuing or has obtained the intellectual property rights to that end product.



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- viii. "Suspect Counterfeit Electronic Part" means an Electronic Part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Electronic Part is authentic.
- b) Supplier represents and warrants that only new and authentic materials are used in products required to be delivered to AIS and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part shall be used unless approved in advance in writing by the AIS Procurement Representative. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Supplier shall only purchase authentic parts/components directly from the OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. Supplier must make available to AIS, at AIS' request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by AIS Procurement Representative. Supplier must present complete and compelling support for its request and include in its request all actions needed to ensure that the parts/components thus procured are legitimate parts. AIS may additionally need to get AIS' Customer's approval of Supplier's request. Awaiting the processing of such requests shall not constitute a basis for excusable delay on part of the Supplier. AIS' approval of Supplier request(s) does not relieve Supplier's responsibility to comply with all Agreement requirements, including the representations and warranties in this provision.
- c) Supplier shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification to the AIS Procurement Representative and his/her written approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. Supplier shall provide copies of such documentation for its system for AIS' inspection upon AIS' request. Supplier's system shall be consistent with applicable industry standards, AS5553 as minimum, for the detection and avoidance of Counterfeit Electronic Parts and Suspect Counterfeit Electronic Parts, including policies and procedures for training personnel, designing and maintaining systems to mitigate risks associated with parts obsolescence, making sourcing decisions, prioritizing mission critical and sensitive components, ensuring traceability of parts, developing lists of trusted and non-trusted suppliers, flowing down requirements to subcontractors, inspecting and testing parts, reporting and quarantining Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts, and taking corrective action.
- d) If the Supplier is providing electronic components/devices only, the following certification applies:

Certification of Origin of Product:

Acceptance of this Agreement constitutes confirmation by the Supplier that it is the Original Equipment Manufacturer (OEM)/Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. Supplier further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM/OCM is available upon request. If the Supplier is not the OEM/OCM or a franchised or authorized distributor, the Supplier confirms by acceptance of this Agreement that it has been authorized in writing by AIS to act on AIS behalf to procure from the OCM or a franchised or authorized distributor of the OEM/OCM. The Supplier further warrants that OEM/OCM acquisition traceability documentation is accurate and available to AIS upon AIS' request and is retained as a quality record in accordance with the "Maintenance of Records" provision contained herein.

- e) Supplier shall flow the requirements of this provision to its subcontractors and suppliers at any tier for the performance of this Agreement.
- f) Notifications: Should Supplier become aware of a Counterfeit Part or Suspect Counterfeit Part that, by any means, has been delivered to AIS, or acquired for this Agreement whether or not delivered to AIS. Supplier shall notify AIS as soon as possible but not later than 7 days of discovery. Supplier will verify receipt of this notification by AIS. This requirement will survive this Agreement.
- g) Supplier shall be liable for cost of Counterfeit Parts and Suspect Counterfeit Parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.
- h) Supplier shall quarantine Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts and make them available for investigation by appropriate government authorities. Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts shall not be returned to the supply chain unless and until such time that the parts are determined to be authentic.

24. PACKING AND SHIPMENT

- a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- b) A complete packing list shall be enclosed with all shipments. Supplier shall mark containers or packages with necessary lifting, loading, and shipping information, including the AIS Agreement number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Agreement number.
- c) Unless otherwise specified, delivery shall be in accordance with INCOTERMS 2010 DAP at the place of AIS identified in the order.
- d) Work shall not be supplied in excess of quantities specified in this Agreement. Supplier shall be liable for handling charges and return shipment costs for any excess quantities.

25. PARTS OBSOLESCENCE

"Obsolete Electronic Part" means an electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the current design activity or original manufacturer.

Supplier shall take appropriate actions to mitigate Electronic Parts obsolescence in order to maximize the availability and use of authentic, originally designed, and qualified Electronic Parts throughout the product's lifecycle.

AIS may desire to place additional orders for items purchased hereunder. Supplier shall provide AIS with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any item purchased under this Agreement.

26. WARRANTY

Supplier warrants that all Work furnished pursuant to this Agreement shall strictly conform to all specifications, drawings, samples, and descriptions, and other requirements of this Agreement and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of one (1) year. If any non-conformity with Work appears within that time, Supplier shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at Supplier's expense. If repair or replacement or re-performance of Work is not timely, AIS may elect to return the nonconforming Work or repair or replace Work or re-procure the Work at Supplier's expense. All



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warranties shall run to the benefit of AIS and its successors and AIS' Customer(s).

27. SOFTWARE

Without the prior written approval of AIS, which AIS may withhold in its sole discretion, Supplier shall not incorporate any Open Source Software, including any source code governed by an Open Source license, into Work to be performed and/or delivered under this Agreement. Before AIS will consider providing written approval for the incorporation of such Open Source Software, Supplier shall first identify all Open Source Software proposed to be incorporated into Work to be performed and/or delivered under this Agreement, including a complete source code listing of the Software comprising the Work with a description of the operation of the Software in English and machine-readable form, together with copies of any license agreements required to be accepted.

Section 1D: Liability and Indemnification

28. INDEMNIFICATION

SUPPLIER SHALL INDEMNIFY, HOLD HARMLESS AND, AT AIS' ELECTION, DEFEND AIS, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LOSSES, COSTS, CLAIMS, PENALTIES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FEES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY FEES, ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, AND COURT COSTS, ARISING FROM OR RELATED TO ANY ACT OR OMISSION OF SUPPLIER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, OR SUBCONTRACTORS AT ANY TIER, RELATED TO OR AS PART OF THE EXECUTION OF WORK TO BE PERFORMED OR OTHERWISE IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT .

29. FURNISHED PROPERTY

- a) AIS may provide to Supplier property owned by either AIS or AIS' Customer ("Furnished Property") or require Supplier to acquire property to be used specifically for Work under this Agreement ("Acquired Property"). Unless previously authorized in writing by the AIS Procurement Representative, Furnished Property and/or Acquired Property shall be used only for the performance of this Agreement .
- b) Title to Furnished Property and/or Acquired Property shall remain in AIS or AIS' Customer as applicable. Supplier shall clearly mark (if not so marked) all Furnished Property and/or Acquired Property to show its ownership.
- c) The Furnished Property shall be supplied in "as-is" condition unless otherwise set forth in this Agreement . Except for reasonable wear and tear, Supplier shall be responsible for, and shall promptly notify AIS of, any loss or damage to Furnished Property and/or Acquired Property while in Supplier's care, custody, or control. Without additional charge, Supplier shall manage, maintain, preserve, and insure Furnished Property and/or Acquired Property in accordance with good commercial practice. In the event of such loss or damage, Supplier shall immediately replace, reimburse, repair, and/or provide consideration to AIS for such loss or damage as AIS may require, at its sole option.
- d) All Furnished Property and/or Acquired Property associated with Work under this Agreement shall be received, inspected, inventoried, processed, and reported as required by FAR part 45. At AIS' request, and/or upon completion of this Agreement, Supplier shall submit, in an acceptable form, inventory lists of Furnished Property and/or Acquired Property and shall deliver or make such other disposal as may be directed by AIS.
- e) The Government Property clause (52.245-1) contained in the Federal Acquisition Regulation shall apply in lieu of subparagraphs (a) (b) and (d) above with respect to

Government-furnished property, or property to which the Government may take title under this Agreement .

30. INTELLECTUAL PROPERTY

- a) Definitions:
 - i. "Intellectual Property" shall mean all ideas, inventions, discoveries, processes, designs, methods, substances, articles, computer programs, and improvements (including, without limitation, enhancements to, or further interpretation or processing of, information that was in the possession of Employee prior to the date of this Agreement), whether or not patentable or copyrightable, that Supplier discovers, conceives, invents, creates, or develops, alone or with others, before or within the performance of this agreement.
 - ii. "Foreground Intellectual Property" shall mean all Intellectual Property that is developed while Supplier is performing under this Subcontract.
 - iii. "Background Intellectual Property" shall mean all pre-existing Intellectual Property that is developed at private expense before starting performance of this Agreement.
- b) Supplier shall disclose all Background Intellectual Property that may be delivered to AIS or the USG in performance under this Agreement before Agreement execution. Supplier shall have readily available and provide upon request proof of private development and ownership of all Background Intellectual Property to claim it as such.
- c) Supplier agrees that AIS shall be the sole owner of all Foreground Intellectual Property, including any modification to Supplier's Background Intellectual Property. Supplier hereby assigns, conveys, transfers, and agrees to assign, convey or transfer all right, title, and interest in the foregoing to AIS, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at AIS's request and expense, all assistance reasonably required and documentation necessary to perfect title therein for AIS. Supplier shall maintain and disclose to AIS written records of, and otherwise provide AIS with full access to all information relating to the subject matter covered by this section. Supplier shall assist AIS, at AIS's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protections relating to this Agreement.
- d) Supplier grants and agrees that AIS shall have a nonexclusive, worldwide, sub licensable, perpetual, irrevocable, paid-up, royalty-free license and right to make, have made, sell, offer for sale, use, execute, reproduce, display, modify, perform, publish, distribute, copy, prepare derivatives or compilations, and authorize others to do any, some or all of the foregoing, with respect to any and all Background Intellectual Property necessary for AIS to practice or otherwise exercise its rights to Foreground Intellectual Property. Supplier shall provide all assistance reasonably required and execute all documents necessary to perfect the rights granted to AIS herein. To enable Supplier to comply with the foregoing, Supplier shall ensure that each of its personnel, workers, representatives, agents and subcontractors providing services under this Agreement, assign sufficient rights they have in all inventions, works for hire, project results, and the like, to Subcontractors.
- e) Supplier warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.
- f) If an injunction is obtained against AIS's use of Intellectual Property or a portion thereof as a result of infringement or misappropriation of the intellectual property of any third party



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under this Agreement at any tier, Supplier shall either (i) procure for AIS and AIS' Customers the right to continue using the Intellectual Property or (ii) replace or modify the delivered items or services so they become non-infringing. The indemnity and hold harmless provision of this Agreement shall not be considered an allowable cost under any provisions of this Agreement except with regard to allowable insurance costs.

- g) Supplier agrees that AIS is the sole owner of any Foreground Intellectual Property developed under this Agreement, and that Supplier shall have no right to such Foreground Intellectual Property except as specifically authorized in writing by the contractually authorized representative of AIS.
- h) Supplier understands and agrees to the rights and obligations set forth in all applicable FAR and DFARS clauses referencing Intellectual Property and specified in this Agreement, including all attachments to this Agreement. These FAR and DFARS flowdown clauses shall take precedence over any other terms in this Agreement and include but are not limited to FAR 52.227-14, "Rights in Data- General" (May 2014), DFARS 252.227-7013, "Rights in Technical Data – Noncommercial Items" (Feb. 2014), 252.227-7014, "Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation" (Feb. 2014), and 252.227-7015 "Technical Data – Commercial Items" (Feb 2014). Unless otherwise indicated, substitute the following party names in all FAR clauses, as applicable:
 - i. "AIS" for "agency," "government," or "United States;"
 - ii. "AIS Procurement Representative" for "contracting officer," "Administrative Contracting Officer," or "ACO";
 - iii. "Seller" for "contractor" or "offeror."
- i) All above referenced flowdown clauses retain their original meanings, including rights to audit Supplier records. For avoidance of doubt, Supplier hereby grants to AIS such Intellectual Property rights as AIS requires in order to perform its obligations to AIS' Customers. Supplier shall not assert any right associated with Intellectual Property that may be delivered to the USG in a manner inconsistent with AIS' contractual obligations with USG.
- j) Nothing in this Agreement shall be construed or interpreted to limit or in any way restrict the rights of the USG in regard to Intellectual Property it owns or has a right to use, including its right to authorize a Supplier's use of such Intellectual Property.
- k) To the extent that Supplier provides any commercial computer software under this Agreement, the Parties agree that any normal commercial terms governing such commercial items shall govern use of such commercial items, except to the extent that such normal commercial terms conflict or are inconsistent with applicable federal law or regulation. In the case of any conflict or inconsistency, the applicable federal law or regulation shall take precedence over any conflicting or inconsistent commercial term. The Parties further agree that the use of any commercial terms shall be contingent upon the acceptance of any commercial computer software terms by the USG. In addition, the Parties agree that to the extent that the USG is the end user of any commercial computer software provided by Supplier, AIS shall have the right to perform AIS' contractual obligations to its USG using the same commercial computer software and licenses. Any "shrink-wrapped" or "click-through" terms that are transmitted or required to access the software shall not apply to this agreement.

31. TERMINATION

- a) Termination for Convenience
 - i. For specially performed Work: AIS may terminate part or this entire Agreement for its convenience by giving written notice to Supplier. Upon receipt of such notice Supplier shall immediately: (i) cease work; (ii) prepare

and submit to AIS an itemization of all completed and partially completed deliverables and services; (iii) deliver to AIS deliverables satisfactorily completed up to the date of termination at the agreed upon prices in this Agreement; and (iv) deliver upon request any Work in process. Supplier shall use reasonable efforts to mitigate AIS' liability under this paragraph by, among other actions, accepting the return of, returning to its suppliers, selling to others, or otherwise using the canceled deliverables (including raw materials or work in process) and provided such expenses do not exceed the prices set forth in this Agreement. AIS' only obligation shall be to pay Supplier a percentage of the price reflecting the percentage of the Work performed in accordance with the Agreement schedule prior to the notice of termination, plus reasonable charges that Supplier can demonstrate to the satisfaction of AIS, using generally accepted accounting principles, have resulted from the termination. Supplier shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.

- ii. For other than specially performed Work: AIS may terminate part or this entire Agreement for its convenience by giving written notice to Supplier and AIS' only obligation to Supplier shall be payment of Supplier's standard re-stocking or service charge, not to exceed ten (10) percent of the price of the terminated Work.
- iii. In either case, Supplier shall continue all Work not terminated.
- iv. In no event shall AIS be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Agreement price. Supplier's termination claim shall be submitted within sixty (60) days from the effective date of the termination.

b) Termination for Default

- i. AIS, by written notice, may terminate this Agreement for default, in whole or in part, if Supplier fails to comply with any of the terms of this Agreement, fails to make progress as to endanger performance of this Agreement, or fails to provide adequate assurance of future performance. Supplier shall have ten (10) days (or such longer period as AIS may authorize in writing) to cure any such failure after receipt of written notice from AIS. Default involving delivery schedule delays shall not be subject to the cure provision.
- ii. AIS shall not be liable to pay for any Work not accepted; however, AIS may require Supplier to deliver to AIS any supplies and materials, and drawings that Supplier has specifically produced or acquired for the terminated portion of this Agreement. AIS and Supplier shall agree on the amount of payment for these other deliverables.
- iii. Supplier shall continue all Work not terminated.
- iv. If after termination for default it is later determined that Supplier was not in default, such termination shall be deemed a Termination for Convenience.

32. INSURANCE

In the event that Supplier, its employees, agents, or subcontractors enter the site(s) of AIS or AIS' Customer for any reason in connection with this Agreement, then Supplier and its subcontractors shall procure and maintain worker's compensation (with a waiver of subrogation in favor of AIS), automobile liability, comprehensive general liability (bodily injury and



property damage) insurance in amounts reasonably acceptable to AIS, and such other insurance as AIS may reasonably require. With respect to any injury, including, but not limited to, death, to employees of Supplier or Supplier's agents, subcontractors or suppliers, Supplier's obligation to indemnify and defend in accordance with this paragraph shall apply regardless of cause. Supplier shall provide to the AIS Procurement Representative thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Supplier's required insurance, provided however such notice shall not relieve Supplier of its obligations to procure and maintain the required insurance. If requested, Supplier shall send a "Certificate of Insurance" showing Supplier's compliance with these requirements. Supplier shall name AIS as an additional insured for the duration of this Agreement. Property and Supplier's Equipment Insurance maintained pursuant to this paragraph shall be considered primary as respects the interest of AIS and is not contributory with any insurance that AIS may carry. "Subcontractor" as used in this subparagraph shall include Supplier's subcontractors at any tier.

33. STOP WORK ORDER

- a) Supplier shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from AIS, or for such longer period of time as AIS and Supplier may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.
- b) Within such period, AIS shall either terminate or continue the Work by written order to Supplier. In the event of a continuation, an equitable adjustment in accordance with provision "Agreement Direction/Changes" shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.