

PURCHASE ORDER TERMS AND CONDITIONS

1. **INTRODUCTION:** The following Purchase Order Terms and Conditions (including the attached Shipping and Invoice Instructions) shall govern the procurement of the products and/or services which are the subject matter of the accompanying Purchase Order (the "Order") issued by Carnegie Mellon University or any of its divisions, including Carnegie Mellon University H. John Heinz III College, Australia, Carnegie Mellon University, Qatar and Carnegie Mellon University in Rwanda ("University") to a supplier ("Supplier"). The University's offer to purchase the products and/or services in the Order is conditioned upon the acceptance of the Purchase Order Terms and Conditions by Supplier. By accepting the Order and/or performing thereunder, Supplier will be deemed to have accepted the Purchase Order Terms and Conditions. The Order including the Purchase Order Terms and Conditions shall constitute the entire contract between the parties, and supersedes any and all prior written and oral agreements or understandings relating to such subject matter. It is expressly agreed that the terms of the Order and the Purchase Order Terms and Conditions shall supersede any additional or contrary terms, limitations or conditions set forth in any acceptance, quote, proposal or other non-University document, and no terms included in any such document shall apply. The Order and the Purchase Order Terms and Conditions may be amended or modified only by a writing executed by both parties. Notwithstanding the foregoing, if the University and the Supplier have also entered into a written agreement executed by the Supplier and an authorized signatory of the University that governs the procurement of the products and/or services which are the subject matter of the Order (the "Written Contract"), as specified in the Written Contract, then the terms and conditions of that Written Contract control and supersede the provisions of the Order and the Purchase Order Terms and Conditions to the extent inconsistent and/or conflicting therewith.
2. **ORDERS:** Individual Orders shall be implemented by Supplier upon receipt of a telephone call, electronic transmission, or written Order issued by University's authorized buyer ("Buyer"). The Orders may be identified by number, and Supplier shall reference that number on its individual packing sheets and invoices.
3. **PERFORMANCE:** Supplier shall make deliveries or perform services in accordance with the date/dates specifically negotiated with University. In the event Supplier is unable to fulfill University's specific request, Supplier shall immediately advise University. Supplier shall not back-order or delay the shipment of goods or the performance of services without University's authorization, and if Supplier cannot make timely deliveries to University or perform services in a timely manner, in addition to any other remedies available to University at law or equity, University shall have the option to cancel, at no charge, the individual Order or service request or any portion thereof, and University may procure its requirement(s) elsewhere.
4. **LABELING:** Supplier will label the outside of each package with description, quantity, and Order number if applicable. Supplier will include this information on all packing slips and invoices.
5. **RETURNABLE CONTAINERS:** If containers are returnable, Supplier will label drum, case, bottle, etc. "RETURNABLE" including Supplier's name and University's Order number, if applicable. Supplier will pick up returnable containers from University upon notification and at Supplier's expense.
6. **DEFECTIVE OR NONCONFORMING MERCHANDISE:** University may, at any time, return defective or nonconforming merchandise. Transportation cost will be borne by Supplier and Supplier shall issue University a refund, at University's option, for full purchase price.
7. **WARRANTIES:**
 - a) In addition to any specific warranties agreed to by the parties and provided by law, Supplier warrants to University that all items delivered and all services rendered hereunder will conform to the requirements and specifications hereof and will be merchantable, of first class materials and workmanship, free from defects including defects in design and fit, and suitable and sufficient for the intended purposes.
 - b) If services or technical data are to be provided by Supplier hereunder, Supplier warrants to University that such services and/or technical data shall be performed or prepared in a professional and workmanlike manner, and are fully in conformance with the requirements and specifications of the Order.
 - c) In performance of the Order, Supplier shall comply with, and all materials and work or services furnished thereunder shall be produced or furnished in full and complete compliance with, all applicable laws and regulations. In addition to other remedies that may be available at law or in equity, University, at its option, may return to Supplier any nonconforming or defective item(s), or have Supplier re-perform such nonconforming services, and/or require correction or replacement of the item(s) or services, all at no cost to the University. These warranties are in addition to and shall not be construed as restricting or limiting any warranties of Supplier, expressed or implied, which are provided or exist by operation of law.
 - d) To the extent Supplier performs Services on premises owned or leased by or on behalf of University, Supplier agrees to comply with any and all facility access, use and/or security guidelines and/or procedures of which Supplier is informed. Supplier agrees to comply with the COVID-19 Mitigation Protocol for CMU Vendors and Service Providers (<https://www.cmu.edu/coronavirus/visitor-protocol/covid-19-mitigation-protocol-for-cmu-service-providers.html>).
 - e) Supplier represents and warrants that, in anticipation of or in connection with this Order and the Supplier's services contemplated herein, it has not, directly or indirectly, attempted, made or caused to be made, and will not, directly or indirectly, attempt, make, or cause to be made, any offer, promise, or payment to a public official, in contravention of any law, including but not limited to, the U.S. Foreign Corrupt Practices Act.
8. **INSPECTION:** University shall have the right to perform inspection and/or expediting of the materials and the fabrication thereof at the facility of Supplier or its suppliers at any reasonable times. All materials or services are subject to final inspection and acceptance by University at destination, notwithstanding any prior payment or inspection at the source. Inspection and acceptance of items/services by University, or payment therefor, shall not relieve Supplier of its responsibilities under the Order.
9. **PRICE WARRANTY:** Supplier warrants that the price(s) and discounts for the articles or services sold to University hereunder are not less favorable than those extended to any other customer (whether government or commercial) for the same or similar articles or services under similar situations. In the event Supplier reduces its price(s) or increases its discounts for articles or services, Supplier agrees to adjust the pricing for the Order accordingly as of the effective date of the change. Supplier warrants that prices shown on an Order shall be complete, and no additional charges of any type shall be added without University's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.

10. **INFRINGEMENT REPRESENTATION AND WARRANTY:** Supplier represents and warrants that no article, service or Work Product (as defined below) infringes or will infringe on any patent, copyright, trademark or other intellectual property rights of any third party, and that, to Supplier's knowledge, no claim of such infringement has been threatened or asserted, and no such claim is pending, against Supplier or, to Supplier's knowledge, any entity or person from which Supplier has obtained such rights.
11. **SOFTWARE LICENSE:** University has the right to perpetually use provided software with unlimited user access. Supplier warrants that Supplier holds all rights, titles and/or licenses necessary to provide any software hereunder without restriction. Supplier warrants that University is licensed to copy any software provided under the Order onto a computer memory device and to make back-up copies of such software. Unless otherwise provided for in the Order, or in a prior written agreement directed to the software provided hereunder, University's sole obligation with respect to software provided hereunder shall be to use such software in compliance with applicable laws and regulations, irrespective of any other license agreement including, but not limited to, any license agreement packaged with such software. Supplier warrants that any software provided hereunder does not contain any malicious code, program, or other internal component (e.g., computer virus, worm, time bomb, or similar component), which could damage, destroy, or alter any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, or alter any data or other information accessed through or processed by the software in any manner. Supplier also warrants that the software products which are licensed to University hereunder and used by University include accurate date capabilities. Supplier acknowledges that software, licensed by University hereunder, that may require modification in order to operate per specification(s), shall be modified by Supplier, in a timely fashion, at no cost to University.
12. **NON-ASSIGNMENT, NO SUBCONTRACTING:** An Order shall not be assignable by the Supplier. Any attempted assignment by Supplier shall be void and of no effect. In addition, Supplier may not utilize any subcontractor or third party in connection with the provision of services under an Order without University's prior written approval. Neither University's approval of a subcontractor nor Supplier's use of a subcontractor shall relieve the Supplier from responsibility under an Order, and Supplier shall be fully responsible for all acts and omissions of Supplier's subcontractors (which will be deemed to be Supplier's acts and omissions under the Order).
13. **CONFIDENTIALITY; RETURN OF MATERIALS:** (a) "Confidential Information" means all information disclosed to Supplier and/or to which Supplier has access that concerns or relates to the business, operations, financial condition or prospects of the University, regardless of the form in which such information appears and whether or not such information has been reduced to a tangible form or is marked confidential. Without limiting the general nature of the prior sentence, "Confidential Information" shall specifically include without limitation (i) all information disclosed by University to Supplier and/or to which Supplier has access, in connection with the performance of an Order; (ii) all inventions, copyrighted material, patents, discoveries, trade secrets, processes, techniques, methods, formulae, ideas and know-how of University (iii) all records, drawings, tools, plans, designs or specifications for performing the Order designed for or by University; and (iv) any and all documentation relating to contracts between University and any third party. In addition, "Confidential Information" shall also include third party information which is designated as (and/or should under the circumstances be understood to be considered) confidential and/or proprietary and that is made available to and/or accessible by University during the performance of an Order.

(b) At no time shall Supplier use or disclose to any third party any Confidential Information except as may be authorized in writing by an authorized agent of University. Supplier will put in place any and all safeguards and/or security procedures necessary to safeguard the Confidential Information from unauthorized use, access and/or disclosure. Upon completion or termination of an Order, Supplier will turn over to University all Confidential Information which are in Supplier's possession or under Supplier's control.

(c) Notwithstanding the foregoing, "Confidential Information" shall not include (i) information which is or becomes generally known to the public through no act or omission of Supplier or (ii) information which has been or hereafter is lawfully obtained by Supplier from a source other than University so long as, in the case of information obtained from a third party, such third party was or is not, directly or indirectly, subject to an obligation of confidentiality at the time such Confidential Information was or is disclosed to Supplier.

(d) Nothing in this provision shall be construed as to limit or restrict the rights of the United States Government in regard to data, tooling, designs and other information that the United States Government owns or has a right to use, including its right to authorize a subcontractor's use of such data, tooling, designs or other information.
14. **EXPORT CONTROL:** Supplier agrees to comply with all applicable U.S. export control laws and regulations to include the Export Administration Regulations (EAR), the International Traffic in Arms (ITAR) and any other applicable U.S. export laws and regulations. As an institution of higher learning, University typically does not take receipt of export-controlled goods, technical data, services or technology ("Materials"), except as may be specifically agreed to by University. Supplier agrees that it will not provide or make accessible to University any export-controlled Materials without first informing University of the export-controlled nature of the materials and obtaining from University its written consent to accept such Materials as well as any specific instructions for delivering controlled Materials to the University. Supplier agrees to obtain government approval or export license if required from the appropriate U.S. government agency and to share that information with the University prior to delivery of such Materials.
15. **TERMINATION FOR CONVENIENCE:** The University may cancel any Order for any reason prior to its shipment by Supplier upon providing Supplier notice of cancellation without any cost or fee; provided, however, such right of cancellation shall not extend to products built to Supplier's specifications. In the case of services provided under an Order, University may cancel the Order for any reason at any time and shall pay Supplier for the services actually performed through the effective date of termination which have not previously been paid, but in no event shall such amount exceed the price set forth in the Order.
16. **TERMINATION FOR DEFAULT:** a) University may, without prejudice to any other rights or remedies provided by law or under the Order, by written Notice of Default to Supplier, terminate any Order in whole or in part in any one of the following circumstances:
 1. If Supplier has been declared bankrupt, makes an assignment for the benefit of creditors, or is in receivership; or
 2. If Supplier fails to perform the work or deliver the articles in accordance with the delivery or performance schedules specified herein or any extension thereof; or
 3. If Supplier fails to perform any of the other terms of this or any Order, or so fails to make progress as to endanger the performance of the Order in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of fifteen (15) days (or such longer period as University may authorize in writing) after receipt of written notice from University specifying such failure; or

4. If Supplier is in breach of the Order and/or these Purchase Order Terms and Conditions, which termination shall be effective if such breach is not cured within fifteen (15) days following written notice of the breach to Supplier by University.

b) In the event University terminates an Order in whole or in part as provided in paragraph a) of this provision, University may procure, upon such terms and in such manner as it may deem appropriate, items, supplies or services similar to those so terminated, and Supplier shall be liable to University for any excess costs reasonably incurred for such similar supplies or services, in addition to any consequential and incidental damages incurred by the University.

c) Upon termination of an Order for any reason (whether for convenience or for cause), Supplier shall promptly provide to University any and all Work Product or other materials developed for University under the Order as of the effective date of termination.

17. **COMPLIANCE WITH DELIVERY SCHEDULE:** Time is of the essence under each Order. Any notice to Supplier by University as to possible delay and/or expediting action by University to accomplish on-time delivery shall not constitute a waiver of University's rights under any Order, nor shall such actions in any way affect the responsibility of Supplier to deliver items or perform specified services in accordance with the delivery schedule prescribed by the Order. University reserves the right to reject the goods, materials or services, or reduce the price for Supplier's failure to meet the delivery provisions of the Order whether or not material delay or loss ensues.

18. **PROPERTY RIGHTS:** All materials, tools, equipment, and other property either furnished by University to Supplier or individually paid for by University or the U.S. Government, shall remain the property of the University or the U.S. Government (to the extent such materials are "Government Property" as defined by FAR 52.245-01), as the case may be, but the Supplier assumes the risks of, and shall be responsible for, any loss thereof or damage thereto, until returned in good order to the University. Such property shall, at all times, be safely stored and properly maintained by Supplier. Supplier, in accordance with the provisions of this or any Order, but in any event upon completion or termination thereof, shall return such property to University or to any other person as University may direct, in the condition in which it was received, manufactured or procured by Supplier except for reasonable wear and tear and except to the extent that such property has been incorporated in the items delivered or has been reasonably consumed in performance of work under the Order.

This clause does not modify any rights that the U.S. Government has obtained in any such materials, tools, equipment, and other property either furnished by University to Supplier or individually paid for by University.

19. **OWNERSHIP OF WORK PRODUCT:** Except as otherwise required by United States law, or applicable DFARS (a) any and all services and any and all materials, intellectual property, physical property, and/or other work product prepared, procured, or produced in the rendition of the services under an Order ("Work Product") related thereto are intended as "works made for hire" by Supplier for University and any right, title and interest to any and all Work Product shall vest exclusively in University. In the event any such Work Product may not, by operation of law, be considered works made for hire (or if ownership of all right, title and interest therein shall not vest exclusively with University), Supplier hereby confirms that without further consideration it shall be deemed to have automatically assigned upon creation the ownership of all such rights, title and interest to University. Supplier agrees further to execute any assignments or other documents reasonably requested by University from time to time in order to confirm University's exclusive ownership of such Work Product.

(b) Supplier understands that the term "moral rights" means any rights of paternity, attribution or integrity, including any right to claim authorship of a copyrightable work, to object to a modification of such copyrightable work, and any similar right existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right." Supplier irrevocably waives and agrees never to assert any moral rights Supplier may have in any Work Product, even after any completion or termination of an Order.

Notwithstanding the foregoing, nothing in this provision shall modify any rights that the U.S. Government has obtained in any Work Product.

20. **INDEMNIFICATION:** Supplier will defend, indemnify and hold harmless University, University's trustees, officers, employees, attorneys, agents, successors and assigns ("University Parties") from and against any damages, costs, liabilities, settlement amounts and/or expenses (including attorneys' fees and costs) incurred by and/or imposed upon any and/or all University Parties in connection with any claim, suit, action or demand arising out of or relating to:
(a) Supplier's negligence or willful misconduct; (b) any injury to persons or damage to property to Supplier and/or caused by the Supplier's activities under these Purchase Order Terms and Conditions or any Order; (c) products liability; (d) allegations that the Work Product infringes and/or potentially infringes on any third party's intellectual property rights; and/or (e) a breach of any terms or conditions of an Order or these Purchase Order Terms and Conditions by Supplier, including a breach of the Supplier's export control obligations specified herein.

21. **MISCELLANEOUS:**

a) No delay or failure by either party to exercise any right, remedy or power herein shall impair such party's right to exercise such right, remedy or power or be construed to be a waiver of any default or an acquiescence therein, and any single or partial exercise of any such right, remedy or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy or power. No waiver hereunder shall be valid unless set forth in writing and executed by the waiving party.

b) Suppliers performing services for the University are required to provide satisfactory evidence of appropriate and adequate general and/or professional (if applicable) liability and statutory insurance coverage (such as workmen's compensation or equivalent insurance) at levels reasonably satisfactory to the University prior to the commencement of any services, and the University must, unless otherwise agreed or not available by law, be named as additional insured on any required general liability insurance policy(ies). Supplier's insurance shall apply on a "primary" basis and Supplier's insurance company(ies) shall be required to provide University prior written notice of cancellation or material change in any of the required insurance policy(ies). One (1) current Certificate of Insurance evidencing the required insurance coverages shall be provided to the University at the address provided to Supplier at the commencement of the performance of the services, and such other times, as the University may from time to time reasonably request during the performance.

c) In performing under any Order, the Supplier will act as an independent contractor and the method and techniques of performance shall rest in Supplier's discretion, subject to the reasonable satisfaction of the University. It is understood that neither the Supplier nor the University intends that Supplier shall be, or be deemed to be, an employee of University.

- d) The Order and these Purchase Order Terms and Conditions shall be governed by the laws of the Commonwealth of Pennsylvania, USA without regard to conflicts of laws principles. All claims and/or controversies of every kind and nature arising out of or relating to the Order and the Purchase Order Terms and Conditions, including any questions concerning its existence, negotiation, validity, meaning, performance, non-performance, breach, continuance or termination shall be settled (a) at University's election, by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and, in such case (i) the arbitration proceedings shall be conducted before a panel of three arbitrators, with each party selecting one disinterested arbitrator from a list submitted by the AAA and the two disinterested arbitrators selecting a third arbitrator from the list, (ii) each party shall bear its own costs of arbitration, (iii) all arbitration hearings shall be conducted in Allegheny County, Pennsylvania, USA, and (iv) the provisions hereof shall be a complete defense to any suit, action or proceeding instituted in any Federal, state or local court or before any administrative tribunal with respect to any claim or controversy arising out of or relating to the Order or these Purchase Order Terms and Conditions and which is arbitrable as provided herein, provided that either party may seek injunctive relief in a court of law or equity to asset, protect or enforce its rights hereunder, or (b) in the event that University does not elect binding arbitration as permitted in point (a) above, exclusively in the United States District Court for the Western District of Pennsylvania, USA or, if such Court does not have jurisdiction, in any court of general jurisdiction in Allegheny County, Pennsylvania, USA and each party consents to the exclusive jurisdiction of any such courts and waives any objection which such party may have to the laying of venue in any such courts. None of the clauses within these Purchase Order Terms and Conditions authorizes the Supplier to file a claim and/or enter into disputes directly or indirectly with the Government. This subsection does not apply to the Federal government.
- e) Supplier shall at all times comply with all applicable governmental laws, status, ordinances, rules, and regulations. Supplier further agrees that it will comply with, and will not do anything that would cause Carnegie Mellon not to be in compliance with, all applicable international, federal, state and local laws, regulations, and rules relating to anti-bribery and anti-corruption, including without limitation the U.S. Foreign Corrupt Practices Act, the commercial bribery, domestic corruption laws and regulations, and all similar laws of any jurisdiction in which Supplier will be providing services to Carnegie Mellon, unless such laws conflict with U.S. laws. Carnegie Mellon may terminate this Order immediately and without notice in the event that Carnegie Mellon should believe, in good faith, that Supplier or anyone working on behalf of Supplier has committed a violation of the laws described herein, or should Supplier deny Carnegie Mellon the audit and access rights to which Carnegie Mellon is entitled under Section 21(g) of this Order. In addition, Carnegie Mellon reserves the right to withhold payment in the event that such payment would constitute a violation of the laws as herein described, or any other applicable law or regulation. Further, Carnegie Mellon reserves the right to recover payments already made in the event of noncompliance with the representations and warranties provided herein.
- f) The Supplier agrees to comply to the fullest extent required by law with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.
- g) The University actively and diligently promotes the effective use of Women-owned, Veteran-owned, Disabled Veteran-owned, HUBZone and other minority owned and/or disadvantaged business enterprises in its contracting and purchasing efforts. Supplier agrees to be subject to all applicable contract clauses required to be included in this Order by applicable laws or regulations relating thereto, including, but not limited to, the following clauses which are incorporated by reference herein: Equal Opportunity Clause (41CFR60-4, FAR 52.222-26); Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era (41CFR60-250-4, FAR 52.222-35); Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Vietnam Era Veterans' Readjustment Assistance Act of 1972 [38 U.S.C. 4211 and 4212] (the Act), (FAR 52.222- 37); Executive Order 11701, January 24, 1973 [3 CFR 1971 - 1975 Comp., p. 752]; the regulations of the Secretary of Labor [41 CFR Part 60-250 and Part 61-250]; and the Veterans Employment Opportunities Act of 1998, Public Law 105-339, FAR 52.222-37); Affirmative Action Clause for Handicapped workers (41CFR60-741.4); Certification of Non-segregated Facilities Clauses (41CFR60-1.8 and 41CFR1-12.803.10, FAR 52.222-21); Small Business Administration (13CFR-101); and HUBZone Program (13CFR-126, FAR 52.219-8). Supplier agrees and certifies, if applicable, that it has developed a written Affirmative Action Compliance Program (41CFR60-1.40(a) and 41CFR265.9, FAR 52.222-22) and annually files standard form 100 (EEO-1) (41CFR60-1.7(a)). Supplier certifies that it has not been found in noncompliance with Executive Order 11246 or Title IV of the Civil Rights Act of 1964 by any federal agency or court. If and to the extent applicable, Supplier agrees that it will abide by the provisions of the American with Disabilities Act. Supplier also agrees to require its permitted subcontractors to be bound by the foregoing contract clauses and requirements where applicable.
- h) Supplier agrees that it will maintain complete and accurate records relating to the Order provided by Supplier to Carnegie Mellon, including records of Supplier's use of any and all funds to be paid by Carnegie Mellon to Supplier under this Order (the "Records"). During the Term and for a period of three (3) years thereafter, Carnegie Mellon shall have a right of audit and access to such Records without limitation. Carnegie Mellon will have the right to request any additional information and documentation from Supplier that Carnegie Mellon, in its sole discretion, may require from Supplier in order to verify Supplier's compliance with laws as hereindescribed.
22. **FEDERAL FUNDING REQUIREMENTS/REGULATIONS:** In the event this Order is for the procurement of products and/or services to be delivered to the University's Software Engineering Institute or SEI under U.S. Federal Contract FA8702-15-D-0002 (the "SEI Prime Contract") , the clauses specified in the University's "Supplement A-1, Federal Agency Requirements/Regulations U.S. Federal Contract FA8702-15-D-0002" are applicable to such procurement and are incorporated into and form a part of these Purchase Order Terms and Conditions. Except as specified in the foregoing, if U.S. Federal Government or Stimulus Funds are used to procure the products and/or services which are the subject matter of the Order and the Order is made under a U.S. Federal contract, prime contract, grant or cooperative agreement, the clauses specified in the University's "Federal Agency Requirements/Regulations" applicable to such procurement are incorporated into and form a part of these Purchase Order Terms and Conditions. Supplier shall include in each lower-tier subcontract the appropriate flow down clauses as required by the FAR and DFARS. A copy of the University's "Supplement A-1, Federal Agency Requirements/Regulations U.S. Federal Contract FA8702-15-D-0002," and/or "Federal Agency Requirements/Regulations" can be obtained from the University's website, at <http://www.cmu.edu/finance/files/po-terms.pdf>, or from the University's Procurement Services group by contacting them at Procurement Services, Carnegie Mellon University, 5000 Forbes Avenue Pittsburgh, PA 15213 or at procurement-inbox@andrew.cmu.edu.
23. **DPAS PARTICULARS:** (Clause is applicable only if Defense Priorities and Allocations System DO or DX rating is set forth elsewhere within this purchase order.) Priority scheduling of production and delivery: Contractors and suppliers receiving DPAS-rated orders shall give the rated orders priority over other contracts as needed to meet delivery requirements (15 CFR 700.14).

Priority ratings and symbols: A priority rating consists of the appropriate DO or DX rating symbol and a program identification symbol to indicate the authorized program [e.g., DO-A7]. All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other, unless accompanying instructions otherwise provide [a rarity], and take preference over DO rated and unrated orders.

Exclusionary criteria: The contractor [Carnegie Mellon University] is not required to place a priority rating on any PO for less than 1/2 Simplified Acquisition Threshold, provided that delivery can be obtained in a timely fashion without the use of the priority rating (15 CFR Part 700.17). Mandatory acceptance or rejection of rated orders: A rated order shall be accepted by a contractor or supplier unless rejected for the reasons provided for mandatory rejection in 15 CFR 700.13(b), or for optional rejection in 15 CFR 700.13(c). A supplier must accept or reject a rated order in writing within 15 working days after receipt of a DO rated order and within 10 working days after receipt of a DX rated order. The supplier must give sanctioned reasons in writing for the rejection (15 CFR 700.13).

Mandatory extension of priority ratings throughout the acquisition chain: Contractors and suppliers receiving rated orders shall extend priority ratings to subcontractors or vendors when acquiring items to fill the rated orders [optional under $\frac{1}{2}$ the Simplified Acquisition Threshold, provided that delivery can be obtained in a timely fashion without the use of the priority rating] (15 CFR 700.15).

Penalty for willful violation. Under the Defense Production Act, any willful violation of the Act, the DPAS, or any official action taken by the Department of Commerce under the DPAS, is a crime punishable by a maximum fine of \$10,000, one year in prison, or both (15 CFR 700.70 and 15 CFR 700.74).

24. EQUAL OPPORTUNITY CLAUSES AND NOTICE OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAW: This contractor and subcontractor shall abide by the requirements of 41 CFR 60–1.4(a), 60–300.5(a) and 60–741.5(a), as applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. This contractor and subcontractor shall also abide by the requirements of 29 CFR 471, Appendix A to Subpart A, as applicable.

25. SHIPPING AND INVOICE INSTRUCTIONS

- 1. DELIVERY:** Delivery is to be made only to the destination stated in the Order and must be made during the University's normal business hours during the University's normal business work-week, legal and University's holidays excluded, unless otherwise specified in the Order. The quantity term set forth in the Order shall be complied with strictly as stated. Supplier is responsible for maintaining and providing proof of delivery.
- 2. FREIGHT:** Unless otherwise specified in the Order, the University's freight terms are F.O.B. Destination, Freight Prepaid and Allowed. If shipment is indicated on the Order as F.O.B. Supplier's plant, at the University's request, the Supplier will prepay the freight charges and, if mutually agreed to, add them to the invoice. Separate freight invoices will not be accepted. Freight charges must be supported by receipts (including a valid tax receipt, where applicable).
- 3. SHIPPING INSURANCE:** Unless otherwise specified in the Order, for all Supplier shipments for Orders indicated as F.O.B. Supplier's plant over \$10,000 U.S. in value, Supplier will, at its expense, provide motor truck (air and/or ocean, as applicable) cargo liability insurance covering all shipments in accordance with domestic and/or international (as applicable) carriage of freight rules while en route in the custody of a common or contract carrier, while in the due course of transit, that is being delivered on any mode of transportation (including airlines, ocean-going vessels, barges and trucks) owned, operated or contracted by Supplier in the maximum amount of \$10,000 U.S. in value for each shipment. In the event of any loss, the University shall not incur any co-insurance and/or under insurance penalties by Supplier or Supplier's transit insurance companies for losses that exceed \$10,000 U.S. in value. It is understood that the originating carrier issuing the bill of lading has the primary responsibility for the above insurance coverage as well as for the safe delivery of all shipped property for the University. Supplier will provide advance notice to University of shipments exceeding \$10,000 U.S. in value.
- 4. CONSOLIDATION:** Except where limited by the insurance clause above, Supplier shall consolidate all shipments to the delivery point specified herein, for any one day, on one Bill of Lading.
- 5. P.O. NUMBER(S):** University's Purchase Order Numbers must appear on all invoices, packing slips, shipping documents and labels.
- 6. PACKING, PACKAGING AND PACKING SHEETS:** Supplier shall use best commercial practice for packing and packaging of items to be delivered under this or any Order, unless otherwise specified herein. Supplier is to provide two (2) copies of each packing sheet with the shipment.
- 7. HAZARDOUS MATERIAL, PACKING, LABELING AND SHIPPING:** Supplier shall package, label, transport and ship hazardous material, items containing hazardous materials, and any other regulated materials, in accordance with all applicable laws and regulations, and shall furnish any appropriate Material Safety Data Sheets. Supplier, prior to each hazardous or regulated material shipment, shall notify University of its nature and shipment data by such means of communication as will allow for the proper preparation for acceptance of delivery by the carrier of the material and shall identify same on all shipping documents.
- 8. INVOICES:** Supplier shall render invoices as specified in the Order immediately upon delivery or completion of Order. Separate invoices for each Order must be rendered in duplicate.
- 9. TAXES:** As a non-profit educational institution in the U.S., the University is exempt from a number of taxes (both U.S. based and non-U.S. based) including, unless otherwise specified in the Order, Pennsylvania Sales and Use Tax (exemption no. 75-086-010), various other states' sales and use taxes and the U.S. Federal Excise Tax (exemption no. A110656). The University will provide evidence of exemption from tax as relating to the purchase of goods or services under the Order, as applicable, upon request. Where applicable, the Supplier must provide an appropriate tax receipt (e.g., in Australia, a valid GST invoice).

26. Telecommunications and Video Surveillance Services or Equipment.

26.1 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

26.1.1 Definitions. As used in this clause

26.1.1.1 “Backhaul” means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

26.1.1.2 “Covered foreign country” means The People’s Republic of China or The Russian Federation.

26.1.1.3 “Covered telecommunications equipment or services” means

26.1.1.3.1 Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

26.1.1.3.2 For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

26.1.1.3.3 Telecommunications or video surveillance services provided by such entities or using such equipment; or

26.1.1.3.4 Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

26.1.1.4 “Critical technology” means

26.1.1.4.1 Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

26.1.1.4.2 Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled

26.1.1.4.2.1.1 Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

26.1.1.4.2.1.2 For reasons relating to regional stability or surreptitious listening;

26.1.1.4.3 Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

26.1.1.4.4 Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

26.1.1.4.5 Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

26.1.1.4.6 Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

26.1.1.5 “Interconnection arrangements” means arrangements governing the physical connection of two or more networks to allow the use of another’s network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

26.1.1.6 “Reasonable inquiry” means an inquiry designed to uncover any information in the entity’s possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

26.1.1.7 “Roaming” means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high

26.1.1.8 “Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

26.1.2 Prohibition.

26.1.2.1 Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) (“FY 2019 NDAA”) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

26.1.2.2 Section 889(a)(1)(B) of the FY 2019 NDAA prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The prohibition in Section 889(a)(1)(B) applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Government contract.

26.1.2.3 The Supplier is therefore prohibited from providing to (i) CMU or (ii) the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.

26.1.3 Exceptions. This clause does not prohibit contractors or suppliers from providing

26.1.3.1 To the Government, a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

26.1.3.2 To CMU or the Government, telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

26.1.4 Reporting requirement.

26.1.4.1 In the event the Supplier identifies that any equipment, system or service provided to (i) CMU or (ii) the Government uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, or the Supplier is notified of such by a subcontractor at any tier or by any other source, the Supplier shall report the information in paragraph (d)(2) of this clause to CMU.

26.1.4.2 The Supplier shall report the following information pursuant to paragraph (d)(1) of this clause:

26.1.4.2.1 Within one business day from the date of such identification or notification: the Purchase Order number; Supplier (and subcontractor, as applicable) name; Supplier (and subcontractor, as applicable) unique entity identifier (if known); Supplier (and subcontractor, as applicable) Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

26.1.4.2.2 Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Supplier shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

26.1.5 Subcontracts. The Supplier shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

26.2 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. Supplier represents that it will not provide any product, equipment, or service that uses covered telecommunications equipment or services to Carnegie Mellon University in the performance of this Purchase Order. For purposes of this representation, “covered telecommunications equipment or services” has the meaning set forth in Section 26.1.

26.3 Certification. No less than on an annual basis all Suppliers to Carnegie Mellon must complete and return the “Annual Certification Regarding Certain Telecommunications and Video Surveillance Services or Equipment”, (https://www.cmu.edu/contracts/docs/unsecured/required_annual_cert_video.pdf).

SUPPLEMENT A-1

FEDERAL AGENCY REQUIREMENTS/REGULATIONS FA8702-15-D-0002

In the event this Order is for the procurement of products and/or services to be delivered to the University's Software Engineering Institute (or SEI) under U.S. Federal Contract FA8702-15-D-0002, the applicable clauses listed below are incorporated into, and form a part of, the terms and conditions of the Order with the same force and effect as if they were given in full text. The term "FAR" means the Federal Acquisition Regulations. The term "DFARS" means the Department of Defense Supplement to the Federal Acquisition Regulations. The term "AFFARS" means the Department of the Air Force Federal Acquisition Regulation Supplement. The term "CMU" means Carnegie Mellon University. In all clauses, unless the context of a clause requires otherwise, the term "Contractor" shall be deemed to refer to the "Supplier" and the terms "Government," "Contracting Officer," and equivalent phrases shall be deemed to mean CMU, "University," or such other name to which CMU is referred in the Order. When a clause uses a word or term that is defined in the FAR, DFARS or AFFARS, the word or term shall have the same meaning as in the definition in FAR 2.101 or DFARS 202.101 in effect on the date of the SEI Federal Contract award unless a different definition is set forth in this Order. Any reference to a "Disputes" clause in any of the clauses listed below shall be deemed to refer to the "Disputes" clause contained in the above referenced Federal Contract. In no event shall such reference to a "Disputes" clause be construed to allow the Supplier to prosecute and appeal directly to the Contracting Officer of the above-referenced Federal Contract, nor shall such "Disputes" clause be construed to allow the Supplier to prosecute and appeal in the name of CMU, without the concurrence or approval of CMU. Supplier shall include in each lower-tier subcontract the appropriate flow down clauses as required by the FAR and DFARS.

The full text of the clauses may be found at <https://www.acquisition.gov/>

The following provisions apply regardless of the amount of the Order **(for Commercial and Non-Commercial Items)**:

- 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. (Aug 2020)
- 52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION (JUN 2023)
- 52.211-05 MATERIAL REQUIREMENTS (AUG 2000)
- 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008)
- 52.222-50 COMBATING TRAFFICKING IN PERSONS (MAR 2015)
- 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
- 52.242-13 BANKRUPTCY (JUL 1995)
- 52.242-15 STOP WORK ORDER (AUG 1989) ALTERNATE I (APR 1984)
- 52.244-06 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2015)
- 52.246-09 INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984)
- 252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (SEP 2011)
- 252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)
- 252.204-7015 DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT CONTRACTORS (FEB 2014)
- 252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (FEB 2013)
- 252.225-7048 EXPORT CONTROLLED ITEMS (JUN 2013)
- 252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2011)
- 252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

The following provisions apply if the amount of the Order equals or exceeds \$5,000 **(for Commercial and Non-Commercial Items)**:

- 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015)
- 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)

The following provisions apply if the amount of the Order equals or exceeds \$10,000 **(for Commercial and Non-Commercial Items)**:

- 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
- 52.222-26 EQUAL OPPORTUNITY (APR 2015)
- 52.222-29 NOTIFICATION OF VISA DENIAL (APR 2015) (Applies to subcontracts performed in or on behalf of a foreign country)
- 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (Applies to all subcontracts performed wholly or partially within the United States.)

The following provisions apply if the amount of the Order equals or exceeds \$15,000 **(for Commercial and Non-Commercial Items)**:

- 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUL 2014)

The following provisions apply if the amount of the Order equals or exceeds \$30,000 **(for Commercial and Non-Commercial Items)**:

- 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2015)
Applies to all first-tier subcontracts directly awarded by the SEI for the purpose of acquiring supplies or services for performance of the SEI's prime contract.
- 252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (DEC 2014)

The following provisions apply if the amount of the Order equals or exceeds \$150,000 **(for Commercial and Non-Commercial Items)**:

- 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)
- 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)
- 52.222-37 EMPLOYEE REPORTS ON VETERANS (OCT 2015)

The following provisions apply if the amount of the Order equals or exceeds \$150,000 (**for Non-Commercial Items**):
52.203-07 ANTI- KICKBACK PROCEDURES. (MAY 2014)

The following provisions apply if the amount of the Order equals or exceeds \$250,000 (for Commercial and Non-Commercial Items):
52.203-03 GRATUITIES. (APR 1984)
52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)
52.227-01 AUTHORIZATION AND CONSENT (DEC 2007) ALTERNATE 1 (APR 1984)
52.227-02 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)
252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA—BASIC (APR 2014)

The following provisions apply if the amount of the Order equals or exceeds \$150,000 (**for Commercial and Non-Commercial Items AND IS a Cost-Reimbursement or Firm Fixed Price Order**):

52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009) (Applies to all orders except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.)

The following provisions apply if the amount of the Order equals or exceeds \$500,000 (**for Commercial and Non-Commercial Items**):
252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (SEP 2004)

The following provisions apply if the amount of the Order equals or exceeds \$700,000 (\$1.5 million for construction of any public facility) and to have further subcontracting opportunities. (**for Commercial and Non-Commercial Items**):

52.219-09 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2015) (does not apply to Small Businesses)
52.219-16 LIQUIDATED DAMAGES -- SUBCONTRACTING PLAN (JAN 1999) (does not apply to Small Businesses)
252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (AUG 2012) (does not apply to Small Businesses)

The following provisions apply if the amount of the Order equals or exceeds \$2,000,000 (**applies only to negotiated subcontracts, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1**):

52.230-05 COST ACCOUNTING STANDARDS – EDUCATIONAL INSTITUTION (AUG 2016) (Applies to negotiated subcontracts. The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.)
52.230-06 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)

The following provisions apply if the amount of the Order equals or exceeds \$5,500,000 and the performance period exceeds 120 days (**for Commercial and Non-Commercial Items**):

52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015) For purposes of this clause, the agency office is: Department of Defense Office of Inspector General
Investigative Policy and Oversight
Contractor Disclosure Program
4800 Mark Center Drive, Suite 11H25
Alexandria, VA 22350-1500
Toll Free Telephone: 866-429-8011

The following provisions apply if the amount of the Order is a subcontract for experimental, developmental, or research work performed by a small business concern or non-profit organization (**for Commercial and Non-Commercial Items**):

52.227-11 PATENT RIGHTS- OWNERSHIP BY THE CONTRACTOR (MAY 2014) (For purposes of this clause, Government shall mean Government, and Contractor shall mean Subcontractor.) Paragraph (j) Communications: "AFLCMC/JAZ; Building 11, Rm 100; 2240 B St, Wright-Patterson AFB, OH 45433-7109. (In subcontracts, at any tier, the agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes statute in connection with proceedings under paragraph (h) of this clause.

The following provisions apply if the Order involves classified information (**for Commercial and Non-Commercial Items**):

52.204-02 SECURITY REQUIREMENTS (AUG 1996), ALT 1 (APR 1984)
52.227-10 FILING OF PATENT APPLICATIONS – CLASSIFIED SUBJECT MATTER (DEC 2007)
252.204-7005 ORAL ATTESTATION OF SECURITY RESPONSIBILITIES (NOV 2001)
252.209-7002 DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (JUN 2010)
252.223-7004 DRUG-FREE WORK FORCE (SEP 1988)

The following provisions apply regardless of the amount of the Order if the Contract is for a **Non-Commercial Item**:

52.204-04 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)
52.239-01 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)
52.243-02 CHANGES – COST REIMBURSEMENT (AUG 1987) – ALTERNATE V (APR 1984)
52.249-05 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (AUG 2016)
252.235-7010 ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER (MAY 1995)

The following provisions apply if the amount of the Order equals or exceeds \$35,000 and is for a **Non-Commercial Item**:

Supplement A, Federal Agency Requirements/Regulations (US Federal Contract FA 8702-15-D-0002) through Modification 0020, CAAC Letter 2018-03, and OSD Class Deviation Letter Dated APR 13 2018. Last Updated: September 21, 2023

52.209-06 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015)

The following provisions apply if the amount of the Order equals or exceeds \$250,000 and is for a **Non-Commercial Item**:

52.203-16 PREVENTING PERSONAL CONFLICTS OF INTEREST (DEC 2011) (Applies for Non-Commercial Orders greater than \$150,000 and In which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions (i.e., instead of performance only by a self-employed individual).

The following provisions apply if the amount of the Order equals or exceeds \$250,000 and is for a **Non-Commercial Item**:

52.203-05 COVENANT AGAINST CONTINGENT FEES. (MAY 2014)
52.203-06 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (SEPT 2006)
52.203-08 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)
52.203-10 -- PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (MAY 2014)
52.215-2 AUDIT AND RECORDS— NEGOTIATION. (OCT 2010) ALTERNATE II (AUG 2016) (Applies for Orders greater than the Simplified Acquisition Threshold that (1) are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these; (2) For which certified cost or pricing data are required; or (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause
52.215-14 INTEGRITY OF UNIT PRICES (OCT 2010) ALTERNATE I (OCT 1997)
52.223-6 DRUG FREE WORKPLACE (MAY 2001) Does not apply to contracts performed outside of the United States and its outlying areas.
252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (DEC 2008)

The following provisions apply if the amount of the Order equals or exceeds \$2,000,000 and is for a **Non-Commercial Item**:

52.215-10 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA. (AUG 2011)
52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA - MODIFICATIONS. (AUG 2011)
52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (JUN 2020) ALTERNATE I (AUG 2020)
52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS (JUN 2020) ALTERNATE I (AUG 2020)
52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS. (OCT 2010)
52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)
52.215-19 -- NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

The following provisions apply if the amount of the Order equals or exceeds \$1,000,000 and is for a **Non-Commercial Item**:

252.222-7006 RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEC 2010)

The following provisions apply if the amount of the Order equals or exceeds \$5,000,000 and is for a **Non-Commercial Item**:

252.203-7004 DISPLAY OF HOTLINE POSTERS (JAN 2015)

The following provisions apply if the Order is Performed Outside of the United States and is for **Non-Commercial Items**:

52.228-03 WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT) (JUL 2014)
52.228-04 WORKER'S COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS (APR 1984)
252.225-7004 REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA— SUBMISSION AFTER AWARD (OCT 2010) (Applies to Orders Equal to or Exceeding \$700,000)
252.225-7043 ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUN 2015 Para (d). Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from: 'HQ AFSFC/SPPT; telephone DSN 473-0927/0928 or commercial (210)671-0927/0928.'
252.225-7995 CONTRACTOR PERSONNEL PERFORMING IN THE UNITED STATES CENTRAL COMMAND AREA OF RESPONSIBILITY (DEVIATION) (JUL 2014) (Full text of clause will be provided for all applicable orders).
252.228-7003 CAPTURE AND DETENTION (DEC 1991)

The following provisions apply if the Order is Cost Type or Time and Materials for **Non-Commercial Items**:

52.232-20 LIMITATION OF COST (APR 1984)
52.232-22 LIMITATION OF FUNDS (APR 1984)
52.242-01 NOTICE OF INTENT TO DISALLOW COSTS (APR1984)
52.242-03 PENALTIES FOR UNALLOWABLE COSTS (MAY 2014)
252.242-7006 ACCOUNTING SYSTEM ADMINISTRATION (FEB 2012)

The following provisions apply if the Order is with an **Institution of Higher Learning**:

252.209-7005 RESERVE OFFICER TRAINING CORPS AND MILITARY RECRUITING ON CAMPUS (MAR 2012)

The following provisions apply to any Order that meet the conditions identified in the notes (**for Commercial and Non-Commercial Items**):

- 52.219-08 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014) (Applies to Orders that offer further subcontracting opportunities)
- 52.224-02 PRIVACY ACT (APR 1984) (Applies to all Orders when the work statement requires the design, development, or operation of a system of records on individuals)
- 52.224-3 PRIVACY TRAINING (JAN 2017) ALTERNATE I (JAN 2017). (Applies to all Orders when the work statement requires the design, development, or operation of a system of records on individuals)
- 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (Applies to Orders with Small Businesses only)
- 52.245-01 GOVERNMENT PROPERTY (APR 2012) ALTERNATE II (APR 2012) (Applies to all Orders where government property is furnished to the Subcontractor)
- 52.245-09 USE AND CHARGES (APR 2012) (Applies to all Orders where government property is furnished to the Subcontractor)
- 52.247-63 PREFERENCE FOR US.-FLAG AIR CARRIERS (JUNE 2003) (Applies to all Orders that involve international air transportation.)
- 252.204-7000 DISCLOSURE OF INFORMATION (AUG 2013) (Applies to all Orders that are not designated as “Fundamental Research”)
- 252.204-7009 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016) (applies to all orders for services that include support for the Government’s activities related to safeguarding covered defense information and cyber incident reporting.)
- 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER REPORTING INCIDENT (OCT 2016) (Applies to all orders for operationally critical support, or for which subcontract performance will involve covered defense information) (When this clause is applicable, subcontractor shall (i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and (ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.
- 252.211-7007 REPORTING OF GOVERNMENT- FURNISHED PROPERTY (AUG 2012) (Applies to all Orders where government property is furnished to the Subcontractor)
- 252.215-7000 PRICING ADJUSTMENTS (DEC 2012) (Applies to all orders awarded on the basis of certified cost or pricing data.)
- 252.215-7002 COST ESTIMATING SYSTEM REQUIREMENTS (DEC 2012) (Applies to all orders awarded on the basis of certified cost or pricing data.)
- 252.227-7013 RIGHTS IN TECHNICAL DATA-- NONCOMMERCIAL ITEMS (FEB 2014) (Applies whenever any technical data for noncommercial items, or for commercial items is developed in any part at Government expense for delivery to the Government under this contract)
- 252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (FEB 2014) (Applies whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government)
- 252.227-7015 TECHNICAL DATA – COMMERCIAL ITEMS (FEB 2014) (Applies to any order where technical data related to commercial items is developed exclusively at private expense for delivery to the Government)
- 252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE (SEP 2011) (Applies to all orders to subcontractors, at any tier, who will be furnishing computer software to the Government)
- 252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (MAY 2013) (Applies to all subcontractors receiving Government Furnished Information (GFI) marked with restrictive legends)
- 252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988) (Applies to all subcontractors delivering technical data or computer software to the Government in performance of the subcontract)
- 252.227-7030 TECHNICAL DATA— WITHHOLDING OF PAYMENT (MAR 2000) (Applies to all orders specifying the delivery of technical data)
- 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (JUN 2013) (Applies to all orders specifying the delivery of technical data)
- 252.227-7039 PATENTS – REPORTING OF SUBJECT INVENTIONS (APR 1990)
- 252.228-7001 GROUND AND FLIGHT RISK (JUN 2010) (Applies to all orders for the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft)
- 252.228-7005 ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (DEC 1991) (Applies to all Orders for the manufacture, modification, repair, or overhaul of aircraft, missiles, and space launch vehicles)
- 252.235-7004 PROTECTION OF HUMAN SUBJECTS (JUL 2009) (Applies to all Orders that may include research involving human subjects in accordance with 32 CFR Part 219, DoD Directive 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b))
- 252.237-7010 PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL (JUN 2013) (Applies only when the Order requires Subcontractor personnel to interact with detainees in the course of their duties)
- 252.237-7019 TRAINING FOR CONTRACTOR PERSONNEL INTERACTING WITH DETAINEES (JUN 2013) (Applies only when the Order requires Subcontractor personnel to interact with detainees in the course of their duties)

- 252.239-7016 TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES, AND SERVICES (DEC 1991) (Applies when the Order is for the performance of a subcontract which requires securing telecommunications)
- 252.239-7018 SUPPLY CHAIN RISK (NOV 2013) (Applies when the Order involves the development or delivery of any information technology, whether acquired as a service or as a supply)
- 252.244-7001 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION-BASIC (MAY 2014) (Applies when subcontractor's sales to the Government (excluding competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to Part 12) are expected to exceed \$25 million during the next 12 months).
- 252.245-7000 GOVERNMENT- FURNISHED MAPPING, CHARTING, AND GEODESY PROPERTY (APR 2012) (Applies to the Order when Government-Furnished Mapping, Charting, and Geodesy Property is provided to the Subcontractor)
- 252.245-7001 TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY (APR 2012) (Applies to the Order when Government-Furnished Property is supplied to the Subcontractor)
- 252.245-7002 REPORTING LOSS OF GOVERNMENT PROPERTY (APR 2012) (Applies to the Order when Government-Furnished Property is supplied to the Subcontractor)
- 252.245-7003 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (APR 2012) (Applies to the Order when Government-Furnished Property is supplied to the Subcontractor)
- 252.245-7004 REPORTING, REUTILIZATION, AND DISPOSAL (MAR 2015) (Applies to the Order when Government-Furnished Property is supplied to the Subcontractor)

The following clauses apply to all Subcontractors at any tier accessing a **Government Installation**:

- 52.237-02 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)
- 252.223-7006 PROHIBITION ON STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS - BASIC (SEP 2014)

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- 5352.223-9000 ELIMINATION OF USE OF CLASS I OZONE DEPLETING SUBSTANCES (ODS) (NOV 2012)

The following provisions apply to any Order that meet the conditions identified in the notes (for Commercial and Non-Commercial Items):

- 5352.204-9000 NOTIFICATION OF GOVERNMENT SECURITY ACTIVITY AND VISITOR GROUP SECURITY AGREEMENTS (MAR 2012) (Applies to Orders which require a DD Form 254 for performance on U.S. Government installations and overseas)
- 5352.223-9001 HEALTH AND SAFETY ON GOVERNMENT INSTALLATIONS (NOV 2012) (Applies to Orders, other than for construction, which require performance on a Government installation.)
- 5352.242-9001 COMMON ACCESS CARDS (CAC) FOR CONTRACTOR PERSONNEL (NOV 2012) (Applies to Orders that require contractor personnel to meet one or both of the following criteria: (a) Require logical access to Department of Defense computer networks and systems in either the unclassified environment or the classified environment where authorized by governing security directives; and/or (b) Perform work which requires the use of a CAC for installation entry control or physical access to facilities and buildings.)

AFLCMC (H)-H003 ORGANIZATIONAL CONFLICT OF INTEREST (APR 2015)

(a) The following restrictions and definitions apply to prevent conflicting roles which may bias the Contractor's judgment or objectivity, or to preclude the Contractor from obtaining an unfair competitive advantage in concurrent or future acquisition.

(1) Descriptions or definitions:

"Contractor" means the business entity receiving the award of this contract, its parents, affiliates, divisions and subsidiaries.

"Development" See FAR Part 35.001

"Pre-Major Defense Acquisition Program" See DFARS 209.571-1

"Proprietary Information" means all information designated as proprietary in accordance with law and regulation, and held in confidence or disclosed under restriction to prevent uncontrolled distribution. Examples include limited or restricted data, trade secrets, sensitive financial information, and computer software; and may appear in cost and pricing data or involve classified information.

"System" means the system that is the subject of this contract. "Systems engineering and technical assistance" See DFARS 209.571-1

(b) Restrictions: Contractor and its affiliates agree to maintain independence and to avoid all appearances of bias, impartiality, and impaired judgment in the performance of this contract. This includes agreeing not to participate as a contractor or a major subcontractor in the development or production of a weapon system for which Contractor is also supplying systems engineering and technical assistance as part of a major defense acquisition program or pre-major defense acquisition program (DFARS 209.571-7). For any non-government work, Contractor agrees to abide by the general guidelines and approval procedures contained in "AGREEMENT OF SPONSORSHIP BETWEEN THE DEPARTMENT OF DEFENSE (DOD) AND CARNEGIE MELLON UNIVERSITY FOR THE OPERATION OF THE SOFTWARE ENGINEERING INSTITUTE (SEI)" for such activities, particularly those guidelines and procedures that relate to conflicts of interest.

(c) The Contractor may gain access to proprietary information of other companies during contract performance. The Contractor agrees to enter into company-to-company agreements to:

- (1) Protect another company's information from unauthorized use or disclosure for as long as it is considered proprietary by the other company;
- (2) To refrain from using the information for any purpose other than that for which it was furnished. For information purposes, the Contractor shall furnish copies of these agreements to the Contracting Officer. These agreements are not intended to protect information that is available to the Government or to the Contractor from other sources and furnished voluntarily without restriction; and
- (3) To the extent doing so does not interfere with duties owed to the Government under this contract.
- (d) The above restrictions shall be included in all subcontracts, teaming arrangements, and other agreements calling for performance of work related to this contract, unless excused in writing by the contracting officer.
- (e) Work performed by the CMU-SEI shall only be in the U.S public interest and will be characterized by a need for unquestioned objectivity and impartiality, divorced from all conflicting interests. This includes both organizational conflicts of interest (COI) and personal COIs of employees. An organizational COI may result when factors create an actual or potential COI on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential COI on a future acquisition. Personal COI may arise when an individual is in a position to influence research findings or recommendations materially and/or who, because of personal or imputed financial interests, may lack objectivity or may be perceived to lack impartiality. This guidance can be used as a starting point for reviewing organizational and personal COI. However, such conflicts of interest shall be governed by applicable laws, regulations, and policies.
- (f) In order to maintain this privileged position of trust and confidence, the appearance of conflict of interest as well as the actuality must be avoided. This requires that both CMU and the SEI:
 - (1) Maintain a written, rigorous, corporate-wide, conflict of interest set of policies; report any COI to the applicable Contracting Officer and the Executive Agent as soon as it is identified; provide an annual compilation of conflicts of interest and their disposition; and maintain an audit program to verify compliance;
 - (2) Implement policies that address all major areas of personal COIs including, but not necessarily limited to: gifts, outside activities; and financial interests.
 - (3) Implement procedures to screen for potential COI. All personnel - including chief executives and other officers, directors, trustees, employees, consultants, and subcontractor employees - in a position to make or materially influence research findings and/or recommendations that might affect one or another outside interest will submit an Annual Statement of Financial Interests. At a minimum, this statement must list all financial interests, e.g., stocks, stock options, and bonds in a single company which exceed \$15,000 at the end of the reporting period, but excluding publicly traded diversified mutual funds. This statement must be reviewed, in view of their position or assigned projects, to affirm that they have no interest, direct or indirect, which could diminish their objectivity or place them in potential conflict with the public's interest. In lieu of requiring such Annual Statements, the SEI may use an alternative system that provides for a task-by-task review for potential conflicts.
 - (4) Implement procedures to ensure compliance with the following:: anti-kickback procedures (FAR 52.203-7); cancellation, rescission, and recovery of funds for illegal or improper activity and price or fee adjustment for illegal or improper activity (FAR 52.203-8 and 52.203-10); payments to influence federal transactions (FAR 52.203-11 and 52.203-12); and contractor code of business ethics and conduct (FAR 52.203-13); provisions of the DoD Appropriations Act concerning compensated service to more than one DoD FFRDC by a member of the Board of Directors, Trustees, or any other similar entity (section 8024(b) of PL 113-235, "Consolidated and Further Continuing Appropriations Act, 2015," December 16, 2014, and similar recurring provisions, if enacted, in subsequent years (Reference (h))) and unless the SEI has a DoD-approved COI policy, provisions of the DFARS (DFARS 235.017) concerning simultaneous service of an FFRDC Trustee or Director on the Board of a for-profit defense contractor.
 - (5) Maintain policies and procedures to protect proprietary, privileged, and sensitive information from disclosure.
 - (6) Provide initial and annual refresher training covering ethics and conflicts of interest for all affected employees.
 - (7) Designate an office responsible for ethics compliance and training.