

GENERAL TERMS AND CONDITIONS FOR SERVICES



GENERAL PROVISIONS

1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

(a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.

(b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.

(c) Unless expressly accepted in writing by Syncom Space Services LLC (hereinafter referred to as "S3"), additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are objected to by S3 and have no effect.

2. APPLICABLE LAWS

(a) This Contract shall be governed and construed in accordance with by the laws of the State from which this Contract is issued by S3, without regard to its conflicts of laws and provisions, except that any provision in this Contract that is: (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR) or; (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.

(b)(1) The parties, in the performance of this Contract, agree to comply with all applicable local, state, and federal laws, orders, representations rules, regulations, and ordinances of the United States and the country where SELLER will be performing the Contract. SELLER shall procure all licenses/permits, and pay all fees, and other required charges, and shall comply with of all applicable guidelines and directives of any local, state, and/or federal governmental authority. The provisions of the "United Nations Convention on Contracts for International Sale of Goods" shall not apply to this Contract.

(2) If: (i) S3's contract price or fee is reduced; (ii) S3's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on S3; or (iv) S3 incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, S3 may proceed as provided for in (4) below.

(3) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon S3's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on S3's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or, if (v) the UNITED STATES Government alleges any of the foregoing; and, as a result, (A) S3's contract price or fee is reduced; (B) S3's costs are determined to be unallowable; (C) any fines, penalties, or interest are assessed on S3; or (D) S3 incurs any other costs or damages; S3 may proceed as provided for in (4) below.

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(4) Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraphs (2) and (3) above, S3 may make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded. In the case of withholding(s), S3 may withhold the same amount from SELLER under this Contract.

(c) If the Work is to be shipped to, or performed in the United States:

(1) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to S3 hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), as amended.

(2) SELLER shall provide to S3 with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

(3) SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all 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. ASSIGNMENT

Any assignment of SELLER's Contract rights or delegation of SELLER's duties shall be void, unless prior written consent is given by S3.

4. COMMUNICATION WITH S3 CUSTOMER

S3 shall be solely responsible for all liaison and coordination with the S3 customer, including the U. S. Government, as it affects the applicable prime contract, this Contract, and any related contract.

5. CHANGES

(a) The S3 Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, S3 shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

(c) SELLER must assert its right to an equitable adjustment under this clause within thirty (30) days from the date of receipt of the written change order from S3. If the SELLER's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, S3 shall have the right to prescribe the manner of disposition of the property.

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(d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

6. CONTRACT DIRECTION

(a) Only the S3 Procurement Representative has authority on behalf of S3 to make changes to this Contract. All amendments must be in writing and executed by the parties.

(b) S3 engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER' personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

(c) Each party shall appoint and identify to the other party a Technical Representative(s) who shall be responsible for maintaining liaison between the parties.

(d) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be in writing and sent to the S3 Procurement Representative.

7. DEFINITIONS

The following terms shall have the meanings set forth below:

(a) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, including these General Provisions, all 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 "Contract" shall also mean the Release document for the Work to be performed.

(b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.

(c) "Government" means the Government of the United States of America or any department or agency thereof.

(d) "S3" means Syncom Space Services LLC acting through its companies or business units as identified on the face of this Contract. If a subsidiary or affiliate of S3 is identified on the face of this Contract, then "S3" means that subsidiary or affiliate.

(e) "S3 Procurement Representative" means a person authorized by S3's cognizant procurement organization to administer and/or execute this Contract.

(f) "SELLER" means the party identified on the face of this Contract with whom S3 is contracting.

(g) "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

8. DISPUTES

All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity exclusively in a United States Court of competent jurisdiction located in the State from which this contract is issued. Until final resolution of any dispute, SELLER shall diligently proceed with the performance of this Contract as directed by S3.

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9. ELECTRONIC CONTRACTING

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.

10. EXCUSABLE DELAY

(a) Subject to (b) and when mutually agreed by the parties, SELLER shall be excused from, and shall not be liable for, failure of performance due to one or more of the following qualifying events (such list being exclusive):

(1) War; warlike operation; insurrection; riot; fire; explosion; accident; governmental act; material control regulations or orders; act of God; act of a public enemy; epidemic; and quarantine restriction; and if

(2) Such event was beyond SELLER's control and not occasioned by its negligence or default. This Contract will be extended for that period of time attributable to such event.

(b) In order to be excused from performance under (a) SELLER shall submit, within ten (10) calendar days of the start of the qualifying event, a written notice stating a complete and detailed description of such event, the date of commencement, an estimate of the probable period of delay, and explanation indicating how such event was beyond the control of the Seller and not due to its negligence or fault and what efforts Seller will make to minimize the length of delay. Seller shall submit within ten (10) calendar days of the end of the event a written notice stating the impact to the schedule and evidence justifying the length of the delay. If the delay extends for thirty (30) days or more this Contract may be terminated by S3 without additional cost.

(c) Failure of the United States Government to issue any required export license, or withdrawal/termination of a required export license by the United States Government, shall relieve S3 of its obligations under this Contract, and shall relieve SELLER of its corresponding obligations.

11. EXPORT CONTROL

(a) SELLER agrees to comply with all applicable in country and U.S. export control laws and regulations, specifically including for the U.S., but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq., and the Export Administration Act (EAA), 50 U.S.C. app. 2401-2420, including the Export Administration Regulations (EAR), 15 C.F.R. 730-774. As part of this obligation, SELLER specifically acknowledges that it must: i) refrain from any dealings with Debarred Persons as that term is defined in the ITAR (See <http://www.pmdtc.state.gov/compliance/debar.html>); and (ii) refrain from engaging in transactions with Denied Parties or those parties on the Entity List, as those terms are defined in the EAA (See <http://www.bis.doc.gov/dpl/thedeniallist.asp>).

(b) SELLER agrees to notify S3 if any deliverable under this Contract is restricted by export control laws or regulations.

(c) SELLER shall immediately notify the S3 Procurement Representative if SELLER, its employees, vendors, service providers, or subcontractors is or becomes listed on any Denied Parties or Entity List, or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency, or by any entity or agency of SELLER's own country.

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

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12. U.S. TRADE AND ECONOMIC SANCTIONS

(a) SELLER acknowledges that S3, is a U.S. incorporated entity, and is responsible for compliance with the economic sanctions and embargoes programs enforced by the U.S. Department of Treasury, Office of Foreign Asset Control (OFAC) , and that as a Subcontractor to a U.S. incorporated entity, SELLER is also obliged to comply with such sanctions and embargoes, including the following: Trading With the Enemy Act, 50 U.S.C. App. §§§§ 1-44 (TWEA) [North Korea, Cuba Transaction Control Regulations], the International Emergency Economic Powers Act, 50 U.S.C. §§§§ 1701-06 (IEEPA) [Iraq, Sudan, Iran, Terrorism, Narcotics, Nonproliferation, Sierra Leone, Zimbabwe, the Balkans, Syria, and Burma], Iraqi Sanctions Act, Pub.L. 101-513, 104 Stat. 2047-55 (ISA) [Iraq], United Nations Participation Act, 22 U.S.C. §§ 287c (UNPA) [Iraq and Diamond Trading], International Security and Development Cooperation Act, (ISDCA), 22 U.S.C. 2349 aa-9 (Iran), the Cuban Democracy Act (CDA), 22 U.S.C. §§ 6001-10 [relating to Cuba], Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 22 U.S.C. 6021-91, [relating to Cuba], the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. 219, 18 U.S.C. 2332d and 18 U.S.C. 2339b) [Cuba, North Korea, Iran, Iraq, Syria, and Sudan], and the Foreign Narcotics Kingpin Designation Act, Pub L. No. 106-120, tit. VIII, 113 Stat 1606, 1626-1636 (1999).

(b) SELLER warrants and represents to S3 that SELLER is not, and shall not engage in conduct that would result in becoming, a person or entity with whom S3, a U.S entity, is restricted from doing business with under the regulations enforced by OFAC including, but not limited to those Specially Designated Nationals (SDNs) named on OFAC's Specially Designated and Blocked Persons list, or under any U.S. statute, executive order, or other U.S. governmental action. Specially, Designated Nationals and Blocked Persons (SDNs) are individuals and entities located throughout the world that are blocked pursuant to the various sanctions programs administered by OFAC. SDNs can be front companies, parastatal entities, or individuals determined to be owned or controlled by, or acting for or on behalf of, targeted countries or groups. They also can be specially identified individuals such as terrorists or narcotics traffickers. U.S. persons are prohibited from engaging in any transactions with SDNs and must block any property in their possession or under their control in which an SDN has an interest. (See <http://www.treas.gov/offices/enforcement/ofac/sdn>).

(c) SELLER warrants and represents to S3 that it is not and shall not engage in any dealings or transactions with, or be otherwise associated with such SDNs, including employing SDNs (whether directly or through a subcontract) for performing the work as described in the Scope of Work on behalf of S3.

(d) No items or services specified in this Subcontract may be sourced from countries subject to OFAC comprehensive country embargoes, which include but may not be limited to CUBA, SUDAN, IRAN, or BURMA; or from any SDNs from SYRIA, NORTH KOREA, COTE D'IVOIRE, LIBERIA, ZIMBABWE, or the BALKANS. SDNs are individuals and entities located throughout the world that are blocked pursuant to the various sanctions programs administered by OFAC. See the current SDN list at (<http://www.treas.gov/offices/enforcement/ofac/sdn>).

(e) Unless SELLER receives explicit WRITTEN instructions from S3 to the contrary, SELLER must obtain all licenses, permits, approvals, and other authorizations required under U.S. export control laws and/or other applicable import and export laws for delivery of the items in the manner specified in any Purchase Order or Subcontract. SELLER must notify and get approval from S3 for any substitutions to ordered items prior to shipping.

(f) Unless SELLER receives explicit WRITTEN instructions from S3 to the contrary, no items specified in any Purchase Order or Subcontract may transit U.S. embargoed countries, including IRAN, SUDAN, and, in some circumstances, SYRIA, without prior written authorization from S3. SELLER will notify all shipping and freight forwarding companies of this requirement and will include notice of this requirement on the commercial invoice, packing list, and all export documentation used in connection with the delivery of items under this Subcontract agreement and any Purchase Orders. S3 will not pay invoices for goods that have transited U.S. embargoed and sanctioned countries in a manner inconsistent with this instruction.

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13. EXTRAS

Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

14. FURNISHED PROPERTY

- (a) S3 may provide to SELLER property owned by either S3 or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in S3 or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify S3 of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- (d) At S3's request, and/or upon completion of this Contract, the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by S3.
- (e) The Government Property Clause contained in Attachment D shall apply in lieu of paragraphs (a) through (d) above with respect to Government furnished property, or property to which the Government may take title under this Contract.

15. FOREIGN CORRUPT PRACTICES ACT COMPLIANCE

- a) Seller warrants and represents that it is familiar with, and will comply in all respects, with the United States Foreign Corrupt Practices Act (hereinafter the "FCPA"). Seller acknowledges that it has full access to the United States Department of Justice website concerning the FCPA at <http://www.justice.gov/criminal/fraud/fcpa/>, which includes the full text of the FCPA, as well as a lay-person's guide to the FCPA.
- b) Seller warrants and represents that it has not, and will not, offer to pay, promise to pay, authorize the payment of, or actually pay any money, or offer to give, promise to give, or authorize the giving of, or actually give, anything of value to an "official" (as such term is defined in the FCPA) of the Government (of any level, whether local, state or federal) or to any political party, or official thereof, or to any candidate for political office, while knowing, or being aware of the potential that all, or a portion, of such money or thing of value will influence or have the potential to influence any act or decision of such Government official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions in order to assist Seller in the performance of the duties which are contemplated hereunder.
- c) Neither Seller, nor any of its employees or officers, is: an official, employee, or active member of the armed services of any Government; an official or employee of any Government; an official of a political party, or a candidate for political office in any Government as of the date of execution of this Contract and during the term of this Contract, no Government official, and no official of an agency or instrumentality of the Government (whether local, state or federal) is, or will become associated with, or will own, or presently own, an interest, whether direct or indirect, in Seller, or has, or will have, any legal or beneficial interest in this Contract or the payments made by Seller hereunder.
- d) Seller warrants and represents that it has not, and will not, pay or tender, directly or indirectly, any commission or finders or referral fee to any person or firm in connection with its activities on behalf of S3 in connection with the Contract and it has not paid, or offered, or agreed to pay, any political contributions in respect of any business advice, consultation or services, which it provides, or may have provided under this Contract.

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- e) In the event that it should come to S3's attention that Seller has engaged, or is engaging, in any activity which S3 reasonably believes to be in violation of the representations made by Seller in this Section, or of the FCPA, then upon receipt of notice of the same by Seller, Seller shall take such corrective action as S3 may request, failure of which shall give rise by S3 to immediately cancel this Contract, at which time S3 shall be relieved of any further financial commitments to Seller.
- f) Seller warrants and represents that it will maintain its books and records under "generally accepted accounting principles", and in a proper, responsible and honest manner, in order for S3 and the Seller to comply with applicable United States laws.
- g) Seller warrants and represents that it has not been convicted of, or pleaded guilty to, an offense involving fraud, corruption, or moral turpitude, and it is not now listed by any Government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programs or other Government contracts.
- h) Each of the representations and warranties made by Seller above shall be of a continuing nature for the duration of this Contract. The foregoing warranties shall survive the termination of this Contract.
- i) Seller acknowledges that S3 has entered into this Contract based upon the presumption of the truth and accuracy of the representations and warranties made to it by Seller.
- j) Seller agrees to give prompt written notice to S3 in the event that, at any time during the term of this Contract, Seller has failed to comply with, or has breached, any of its warranties hereunder. In the event Seller has not so complied, or has breached any of its warranties hereunder, this S3 shall have the right to declare this Contract null and void from the time of such noncompliance or breach.
- k) Seller agrees to indemnify S3 for any loss or expense--including, but not limited to, fines, penalties and attorney fees--if the Seller fails to comply with the FCPA.

16. GRATUITIES/KICKBACKS

- (a) SELLER shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a S3 supplier.
- (b) By accepting this Contract, SELLER 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 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

17. IMPORTER OF RECORD

Applies only if the Contract involves importation of Work into the United States.

- (a) If elsewhere in this Contract, S3 is indicated as importer of record, SELLER warrants that all sales hereunder are or will be made at not less than fair value under the United States Anti-Dumping Laws (19 U.S.C. 1673 et seq.).
- (b) If elsewhere in this Contract, S3 is not indicated as importer of record, then SELLER agrees that:
 - (1) S3 will not be a party to the importation of Works, the transaction(s) represented by this Contract will be consummated after importation, and SELLER will neither cause nor permit S3's name to be shown as "Importer Of Record" on any customs declaration Temporary or Import Bond; and
 - (2) Upon request and where applicable, SELLER will provide to S3 Customs Form 7501 entitled "Customs Entry", properly executed.

18. INDEPENDENT CONTRACTOR RELATIONSHIP AND SELLER PERSONNEL

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- (a) SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to S3. SELLER assumes full responsibility for the actions and supervision of such personnel while performing services under this Contract. S3 assumes no liability for SELLER personnel.
- (b) SELLER shall inform S3 if a former employee of S3 or its parent or any subsidiary will be assigned Work under this Contract, and any such assignment shall be subject to S3 approval.
- (c) Nothing contained in this Contract shall be construed as granting to SELLER or any personnel of SELLER rights under any S3 benefit plan.
- (d) SELLER will ensure that SELLER personnel assigned to work on S3's or Customer's premises comply with any on-premises guidelines and: (i) do not bring weapons of any kind onto S3's or Customer's premises; (ii) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on S3's or Customer's premises; (iii) do not possess hazardous materials of any kind on S3's or Customer's premises without S3's authorization; (iv) remain in authorized areas only; (v) will not conduct any non-S3 related business activities (such as interviews, hiring's, dismissals or personal solicitations) on S3's or Customer's premises, (vi) will not send or receive non-S3 related mail through S3's or Customer's mail systems; and (vii) will not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on S3's or Customer's premises without S3's written permission or as permitted by law.
- (e) All persons, property, and vehicles entering or leaving S3's or Customer's premises are subject to search.
- (f) SELLER will promptly notify S3 and provide a report of any accidents or security incidents involving loss of or misuse or damage to S3's or Customer's intellectual or physical assets, and all physical altercations, assaults, or harassment.
- (g) SELLER must coordinate with S3 to gain access to S3's or Customer's premises.
- (h) SELLER personnel: (i) will not remove S3 or Customer assets from S3's or Customer's premises without S3 authorization; (ii) will use S3 or Customer assets only for purposes of this Contract; (iii) will only connect with, interact with or use computer resources, networks, programs, tools or routines that S3 agrees are needed to provide services; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. S3 may periodically audit SELLER's data residing on S3's or Customer's information assets.
- (i) S3 may, at its sole discretion, have SELLER remove any specified employee of SELLER from S3's premises and request that such employee not be reassigned to any S3 premises under this Contract.
- (j) SELLER shall provide S3 any information about SELLER's personnel that S3 is required by law to obtain, including information on "leased employees" and "management services organization" as these terms are used in Secs. 414(m), (n), and (o) of the Internal Revenue Code.
- (k) Violation of this clause may result in termination of this Contract in addition to any other remedy available to S3 at law or in equity. SELLER shall reimburse S3 or Customer for any unauthorized use of S3 or Customer assets.
- (l) SELLER shall advise the S3 Procurement Representative of any unauthorized direction or course of conduct.
- (m) SELLER shall be responsible for and hold harmless S3 and its customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.**

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(n) SELLER shall indemnify and hold harmless S3 from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which S3 may sustain or incur in consequence of (i) SELLER's failure to pay any employee for the Work rendered under this Contract, or (ii) any claims made by SELLER's personnel against S3.

19. INFORMATION OF S3

(a) SELLER shall not reproduce or disclose any information, knowledge, or data of S3 that SELLER may receive from S3 or have access to, including proprietary or confidential information of S3 or of others when in possession of S3 (hereinafter S3 INFORMATION) without prior written consent of S3. S3 INFORMATION includes, but is not limited to, business plans, marketing information, cost estimates, forecasts, bid and proposal data, financial data, formulae, compositions, products, processes, procedures, inventions, systems, or designs. SELLER agrees not to use any S3 INFORMATION for any purpose except to perform this Contract. SELLER shall maintain data protection processes and systems sufficient to adequately protect S3 INFORMATION.

(b) Prior to commencement of Work, SELLER shall have a written agreement with each of its employees performing services hereunder sufficient to enable SELLER to comply with this Clause.

(c) Information provided by S3 to SELLER remains the property of S3. SELLER agrees to comply with the terms of any Proprietary Information Agreement with S3 and to comply with all proprietary information markings and restrictive legends applied by S3 to anything provided hereunder to SELLER. SELLER agrees not to use any S3 provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of S3. SELLER shall maintain data protection processes and systems sufficient to adequately protect S3 INFORMATION.

(d) The provisions set forth above are in addition to any obligations contained in a proprietary information agreement between the parties.

20. INFORMATION OF SELLER

SELLER shall not provide any proprietary information to S3 without prior execution of a proprietary information agreement by the parties.

21. INSURANCE/ENTRY ON S3 PROPERTY

(a) In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of S3 or its customers for any reason in connection with this Contract then SELLER and its subcontractors shall procure and maintain for the performance of this Contract workers compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as S3 may require. In addition, SELLER and its subcontractors shall comply with all site requirements. SELLER shall provide S3 thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER's of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name S3 as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of S3 and is not contributory with any insurance, which S3 may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Contract.

(b) SELLER shall defend, indemnify and hold harmless S3, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to

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any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors.

22. INTELLECTUAL PROPERTY

(a) SELLER warrants that the Work performed or 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. Except to the extent that the U.S. Government assumes liability therefore, SELLER agrees to defend, indemnify, and hold harmless S3 and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

(b) SELLER's obligation to defend, indemnify, and hold harmless S3 and its customers under Paragraph (a) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to S3's Prime Contract for infringement of a U.S. patent and S3 and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorneys fees by a third party.

(c) In addition to the Government's rights in data and inventions SELLER agrees that S3 in the performance of its Prime contract obligation, shall have an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative, and authorize others to do any, some or all of the foregoing, any and all, inventions, discoveries, improvements, maskworks and patents as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, generated or delivered in performance of this Contract. SELLER certifies the originality of all deliverable items and states that no portion is protected by any copyright or similar right vested in any third party.

(d) Items delivered under this Contract such as operating and maintenance manuals shall be delivered with the right to copy for internal use and/or copy and deliver with the right to use to S3's customers.

(e) All reports, memoranda or other materials in written form, including machine readable form, prepared by SELLER pursuant to this Contract and furnished to S3 by SELLER hereunder shall become the sole property of S3.

23. MAINTENANCE OF RECORDS

(a) SELLER shall maintain complete and accurate records in accordance with generally accepted accounting principles to substantiate SELLER's charges hereunder. Such records shall include, but not be limited to, applicable time sheets, job cards, phone bills, travel receipts and job summaries. SELLER shall retain such records for three (3) years from final payment of this Contract.

(b) S3 shall have access to such records, and any other records SELLER is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for so long as such records are required to be retained.

24. LANGUAGE AND STANDARDS

All reports, correspondence, drawings, notices, marking, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing all documentation and work shall employ the units of United States Standard weights and measures.

25. OFFSET CREDIT/COOPERATION

This Contract has been entered into in direct support of S3's international offset programs. All offset benefit credits resulting from this Contract are the sole property of S3 to be applied to the offset program of its choice.

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SELLER agrees to assist S3 in securing appropriate offset credits from the respective country government authorities.

26. PAYMENTS, INVOICES, TAXES, AND DUTIES

(a) Unless otherwise provided, terms of payment shall be net Forty Five (45) days from the latest of the following: (i) S3's receipt of the SELLER's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work.

(b) Each payment made shall be subject to reduction to the extent of amounts which are found by S3 or SELLER not to have been properly payable, and shall also be subject to reduction for overpayments. SELLER shall promptly notify S3 of any such overpayments found by SELLER.

(c) S3 shall have a right of setoff against payments due or at issue under this Contract or any other contract between the parties.

(d) Payment shall be deemed to have been made as of the date of mailing S3's payment or electronic funds transfer.

(e) 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.

(f) The prices stated in the Contract are firm, fixed prices in United States Dollars.

(g) SELLER agrees to submit upon the request of S3's Procurement Representative a release of claims upon final payment under this Contract.

(h) Seller invoices must be separately numbered, and must show applicable discounts; be addressed to "S3"; include the Subcontract number, Subcontract Administrator's name, the cumulative total of billing; be strictly consistent with this Subcontract, and provide all relevant supporting back up documentation to support billing to include but not limited to time sheets, bills of lading, transportation receipts, etc. unless otherwise specified. Invoices shall be delivered by SUBCONTRACTOR to the address noted in the Subcontract.

27. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Subcontract, Purchase Order and/or Task Order release document, or schedule, (including any continuation sheets), as applicable, including any special terms and conditions; (2) this General Provisions and FAR Flow-down document; and (3) the Statement of Work.

28. PRIORITY RATING

If so identified, this Contract is a "rated order" certified for national defense use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700), when placing order with United States suppliers.

29. PROHIBITED SOFTWARE

(a) This clause only applies to Work that includes the delivery of software.

(b) As used herein, "Prohibited License" means the General Public License ("GPL") or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as "GPL-Compatible, Free Software License."

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(c) As used herein, "Prohibited Software" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a Prohibited License, or (3) software provided under a license that (a) subjects the delivered software to any Prohibited License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates S3 to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

(d) Unless SELLER has obtained S3's prior written consent, which S3 may withhold in its sole discretion, SELLER shall not use in connection with this Contract, or deliver to S3, any Prohibited Software.

(e) SELLER agrees to defend, indemnify, and hold harmless S3, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys fees, relating to use in connection with this Contract or the delivery of Prohibited Software.

30. QUALITY CONTROL SYSTEM

(a) SELLER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.

(b) Records of all quality control inspection work by SELLER shall be kept complete and available to S3 and its customers.

31. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of S3.

32. SEVERABILITY

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

33. STOP WORK

(a) SELLER shall stop work for up to ninety (90) days with written notice from S3 or longer as the parties may agree.

(b) Within such period, S3 shall either terminate or continue the work by written notice to SELLER. If continued, an equitable adjustment per the Changes clause shall be made to the price, delivery schedule or other provisions affected by the work stoppage, provided the claim for equitable adjustment is made within thirty (30) days after the date of notice to continue.

34. TERMINATION FOR CONVENIENCE

(a) For specially performed Work:

(1) S3 may terminate part or all of this Contract for its convenience with 7 days notice in advance by giving written notice to SELLER.

(2) Upon termination, in accordance with S3 written direction, SELLER will immediately: (i) Cease work; (ii) Prepare and submit to S3 an itemization of all completed and partially completed deliverables and services; (iii) Deliver to S3 any and all Work completed up to the date of termination at the agreed upon prices; and (iv) Deliver upon request any Work in process. In the event S3 terminates for its convenience after performance has

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commenced, S3 will compensate SELLER for the actual, allowable, and reasonable expenses incurred by SELLER for Work in process up to and including the date of termination provided SELLER uses reasonable efforts to mitigate S3's liability under this clause.

(3) In no event shall S3 be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

(b) For other than specially performed Work: S3 may terminate part or all of this Contract for its convenience by giving written notice to SELLER and S3's only obligation to SELLER shall be payment of a mutually agreed- upon restocking or service charge.

(c) In either case, SELLER shall continue all Work not terminated.

35. DEFAULT

(a) S3, by written notice, may terminate this Contract for default, in whole or in part, if SELLER (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) becomes insolvent or suffers a material adverse change in financial condition. SELLER shall have ten (10) days (or such longer period as S3 may authorize in writing) to cure any such failure after receipt of notice from S3. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.

(b) Following a termination for default of this Contract, SELLER shall be compensated only for Work actually delivered and accepted. S3 may require SELLER to deliver to S3 any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. S3 and SELLER shall agree on the amount of payment for these other deliverables.

(c) Upon the occurrence and during the continuation of a default, S3 may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Contract. If after termination for default under this Contract, it is determined that SELLER was not in default, such termination shall be deemed a termination for convenience.

(d) SELLER's obligations under Performance and Warranty; Codes, Laws and Regulations; Patent Protection; EEO; PO for commercial Items; Complete Agreement shall survive termination or cancellation. SELLER shall continue all Work not terminated or cancelled.

36. SURVIVABILITY

(a) If this Contract expires, is completed or is terminated, SELLER shall not be relieved of those obligations contained in the following clauses:

- Applicable Laws
- Electronic Contracting
- Export Control
- Independent Contractor Relationship and Seller Personnel
- Information of S3
- Insurance/Entry on S3's Property
- Intellectual Property
- Maintenance of Records
- Language and Standards
- Prohibited Software
- Release of Information
- Warranty

(b) Those U. S. Government flow down provisions that by their nature should survive.

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37. TIMELY PERFORMANCE

- (a) SELLER's timely performance is a critical element of this Contract.
- (b) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify S3, in writing, giving pertinent details. This notification shall not change any delivery schedule.

38. WAIVERS, APPROVALS, AND REMEDIES

- (a) Failure by either party to enforce any of the provisions of this Contract or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such provision or law.
- (b) S3's approval of documents shall not relieve SELLER of its obligation to comply with the requirements of this Contract.
- (c) The rights and remedies of either party in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

39. WARRANTY

- (a) SELLER warrants that it is and shall remain free of any obligation or restriction which would interfere or be inconsistent with or present a conflict of interest concerning the Work to be furnished by SELLER under this Contract.
- (b) SELLER warrants that it will perform the services under this Contract with the degree of high professional skill and sound practices and judgment which is normally exercised by recognized professional firms with respect to services of a similar nature.
- (c) SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any nonconforming Work is identified within the warranty period, SELLER, at S3's option, shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work, return of nonconforming Work, and re-performance of Work shall be at SELLER's expense. If repair, or replacement, or re-performance of Work is not timely, S3 may elect to return, re-perform, repair, replace, or re-procure the non-conforming Work at SELLER's expense. All warranties shall run to S3 and its customers.

40. EQUAL EMPLOYMENT OPPORTUNITY

U.S. SUPPLIERS shall comply with applicable laws, executive orders, and regulations concerning nondiscrimination in employment including but not limited to the Equal Opportunity Clause of Section 202, Executive Order 11246, as amended.

S3 is an Equal Employment Opportunity employer. As such, 41 CFR 60-1.4(a), 41 CFR 60-300.5, 41 CFR 60-741.5 as well as 29 CFR Part 471, Appendix A to Subpart A are herein incorporated by reference, to the extent applicable.

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). 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, 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, national origin, protected veteran status or disability.