

# EMCORE Corporation

## Purchase Order Terms and Conditions

1. **ACCEPTANCE** of this Purchase order and its Terms and Conditions by Seller shall be evidenced by the earliest of (a) written acknowledgement by Seller, (b) commencement of performance by Seller, or (c) Seller's receipt of any payment, progress, partial or full, from Buyer under this Order. Acceptance is expressly limited to the Terms and Conditions of this Purchase Order. In the event Seller uses some form of written acknowledgement containing additional or different terms and conditions other than are as set forth herein, said form shall be used for convenience only and any terms or conditions contained therein inconsistent with or in addition to those contained herein face and reverse side hereof are rejected and shall be of no force or effect whatsoever between the parties hereto unless expressly assented to in writing by Buyer. No contract shall exist except as herein provided. Upon acceptance, this Purchase Order shall become a binding contract.
2. **PACKAGING, SHIPMENT AND DELIVERIES** Shall be made as specified by Buyer without charge for packaging, invoicing, crating or storage, unless otherwise provided for herein. Material shall be suitably packaged to ensure the lowest transportation costs and to conform with the requirements of common carriers and with any applicable specifications. Commercial bills of lading shall accompany each shipment and invoice. Purchase Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Each shipment shall contain a packing list and Buyer's count and weight shall prevail relative to any shipments not accompanied by a packing list.
3. **TITLE AND RISK OF LOSS:** Unless otherwise provided in the Purchase Order, title to supplies shall pass to Buyer only upon Buyer's final acceptance of the articles furnished hereunder. Risk of loss or damage shall remain with the Seller until (a) delivery to a common carrier, if as specified by Buyer transportation is FOB origin, or (b) delivery to Buyer at destination, if as specified by Buyer transportation is FOB destination; provided, however, that risk of loss or damage to articles furnished hereunder that do not conform with the requirements of this Purchase Order shall remain with the Seller until cured and/or until Buyer's final acceptance.
4. **INSPECTION AND FINAL ACCEPTANCE:** All material and work will be subject to final inspection and approval by Buyer after delivery, notwithstanding prior payment (whether partial or full), it being expressly agreed that payment will not constitute final acceptance. Buyer at its option may either reject any material or work not in conformity with the requirements and terms of the Purchase Order, or re-work the same at Seller's expense. Buyer, at its option, may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that five percent (5%) of the articles inspected are defective, unless Seller agrees to reimburse Buyer for the cost of a complete inspection of the articles included in such shipment. At Buyer's option, rejected material may be returned at Seller's risk and expense at the full invoice price plus applicable transportation charges, if any. No replacement of defective material or work shall be made unless specified in writing by Buyer.
5. **DELIVERY: TIME IS OF THE ESSENCE ON THIS ORDER** Deliveries shall be strictly in accordance with Buyer's delivery schedule. If Seller fails to meet such schedule, Buyer, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the original routing costs shall be paid by Seller. Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the times necessary to meet Buyer's delivery schedule and, unless otherwise specified herein, no deliveries shall be made in advance of Buyer's delivery schedule. When the Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause and length of the anticipated delay will be given immediately to Buyer.
6. **INVOICES:** An itemized invoice must be sent promptly to Buyer's Accounting Department for articles delivered and accepted or services rendered and accepted as herein provided. Delays in receiving invoices or errors and omissions of same will be considered just cause for withholding payment without losing discount privilege. Payment terms are net sixty (60) days from the latest of Buyer's receipt of Seller's proper invoice, the scheduled delivery date, or the actual delivery of the goods or services, unless otherwise provided on the face of this Purchase Order.
7. **WARRANTY:** (a) Seller warrants to Buyer and Buyer's customers that (i) all material and work covered by this Purchase Order shall conform to the specifications, drawings, samples, symbols or other description specified by Buyer and will be new, merchantable, and free from defects in design, material and workmanship, and (ii) all material and work covered by this Purchase Order shall be fit and suitable for the purpose intended, including all material and work which is in accordance with Seller's or Buyer's design, drawings or specifications. (b) Buyer shall give written notice to Seller of any breach of warranty set forth in this Article 7 within one (1) year after the last delivery under this Purchase Order, and Buyer, at its option, may return the nonconforming material to Seller for correction or replacement, all transportation charges for return and redelivery to be borne by Seller. If the Seller fails to make re-delivery of corrected or replaced material, fails to accept return of nonconforming materials or fails promptly to correct or replace same, Buyer may at Seller's cost correct or replace the nonconforming material.
8. **BUYER'S PROPERTY IN SELLER'S POSSESSION; INSURANCE** (a) Title to any property furnished by Buyer hereunder shall, at all times, remain in Buyer, but Seller shall safeguard all such property while it is in Seller's custody or control, use such property only for Buyer orders, return such property to Buyer upon request and assume the risk of and be responsible for any loss thereof or damage thereto however caused. Without limiting the foregoing, Seller agrees to procure insurance satisfactory to Buyer, insuring to the full insurable value thereof all Buyers' property in Seller's possession against loss of or damage resulting from fire or theft (including extended coverage, malicious mischief and vandalism). Satisfactory evidence of procurement of such insurance shall be submitted to Buyer promptly. Seller further agrees to pay all taxed assessed against Buyer's property or the use thereof while in Seller's possession and to file all necessary declarations and reports in connection therewith. (b) Buyer shall not be liable for any loss, damage or expense resulting directly or indirectly from any delay in delivery or non-delivery of such property to be furnished by Buyer or from the use of such property furnished by Buyer which is defective, Buyer's liability being expressly limited to the replacement of defective property upon return thereof to Buyer within thirty (30) days from receipt thereof by Seller.
9. **TAXES:** Seller agrees that, unless otherwise indicated in this Purchase Order (a) the prices herein do not include any state or local sales, use or other tax from which an exemption is available for purposes of this Purchase Order, and (b) the prices herein include all other applicable federal, state and local taxes in effect, at the date of this Purchase Order. Seller agrees to accept and use tax exemption certificates when supplied by Buyer if acceptable to the taxing authorities. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Seller, Seller agrees to notify Buyer and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to Buyer.
10. **CHANGES:** Buyer may at any time by a written order, and without notice to sureties, if any, make changes within the general scope of this Purchase Order, in any one or more of the following: (a) drawings, designs or specifications, where the supplies to be furnished are to be specially manufactured for the Buyer in accordance therewith; (b) method of shipment or packing; (c)

place or time of; **(d)** property to be furnished by Buyer and **(e)** changes to or addition of a DPAS priority rating (see article 31). If any such change causes an increase or decrease in the cost and/ or the time required for performance of this Purchase Order, an equitable adjustment shall be made in the price or delivery schedule, or both and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this article must be made in writing received by the Buyer within twenty (20) days from the date of receipt by Seller or Buyer's notification of the change, and Seller's failure to assent any such claim within twenty (20) days shall operate to waive any and all rights Seller may have for adjustment or any other form of compensation resulting from said change. Where the cost of material made obsolete or excess as a result of a change is included in Seller's claim for adjustment, the Buyer shall have the right to prescribe the manner of disposition of such material. Nothing in the Article shall excuse the Seller from proceeding with this Purchase Order as changed.

11. **ADVERTISING, ANNOUNCEMENTS AND NEWS RELEASES:** Seller shall not, without first obtaining written consent of Buyer, in any manner advertise or publish or issue any news release or make any public announcement or denial or confirmation of same concerning the fact that Seller has furnished or contracted to furnish the Buyer the material or work herein mentioned.
12. **PATENT TRADEMARK, ETC.; INDEMNITY:** Seller represents and warrants to Buyer and Buyer's customers that the manufacture, delivery, sale or use of the articles furnished hereunder will not infringe any U.S. or foreign patent nor any trademark, service mark or other proper right and Seller shall indemnify and save Buyer harmless from all claims, judgments and decrees that may be made or entered against Buyer or Buyer's customers and against all costs and expenses that Buyer shall incur by reason of any infringement or claim thereof, whether such infringement be direct or indirect arising out of the manufacture, delivery, sale or use of Seller's product. Upon Buyer's request, Seller, at its expense, shall defend or assist in the defense of any suit or action that may be brought against Buyer or Buyer's customers or against those selling or using Seller's products for any infringement or claim thereof predicated upon the manufacture, delivery, use or resale of Seller's products.
13. **DRAWINGS:** All drawings, specifications and data furnished by Buyer to Seller hereunder shall remain the property of Buyer, shall not be disclosed by Seller and shall be used by Seller only as and to the extent required for the performance of this order, unless otherwise approved by the Buyer in writing. Upon completion of work by Seller under this Purchase Order and upon Buyer's request, Seller shall promptly return to Buyer all drawings, specifications and other data furnished by Buyer in connection therewith, together with all copies or reprints then in Seller's possession or control, and Seller shall thereafter make no further use either directly or indirectly of any such drawings, specifications or data or of any information derived therefrom, without Buyer's prior written consent.
14. **COMPLIANCE WITH APPLICABLE LAWS:** Seller agrees that in the performance hereof, it will comply with all applicable laws, statutes, rules, regulations or orders of the United States Government or of any state or political subdivision thereof, and same shall be deemed incorporated herein by reference. Without limiting the generality of the foregoing, Seller agrees that it will include on all invoices issued by the Seller hereunder the following statement: "The Seller represents that with respect to the production of the articles and/ or performance of the services covered by this invoice, it has fully complied with all the provisions of the Fair Labor Standards Act of 1938, as amended. The Seller represents that all equipment and/ or services furnished under this Purchase Order will meet current safety requirements of the Occupational Safety and Health Act and Seller agrees to indemnify

Buyer against any and all liability on account of non-compliance therewith."

15. **DEFAULT:** **(a)** Buyer may, by written notice of default to the Seller, cancel the whole, or any part of this Purchase Order if **(i)** the Seller fails to make delivery of the articles to be furnished hereunder to perform the work or services within the time specified herein; **(ii)** the Seller fails to perform any other provision of the Purchase Order or breaches any of the terms hereof, or so fails to make progress as to endanger performance of the Purchase Order in accordance with its terms, and does not cure such failure within ten (10) days after receipt of notice from the Buyer specifying such failure; **(iii)** if Seller becomes insolvent or makes an assignment for the benefits of its creditors, or if a bankruptcy petition is filed by or with respect to Seller. **(b)** If Buyer cancels this Purchase Order in whole or in part, in addition to any other remedies of Buyer at law or equity under this Purchase Order, Buyer may **(i)** procure, upon such terms and in such manner as Buyer deems appropriate, the articles, material, work, or services similar to that cancelled, and Seller shall pay Buyer upon demand all excess procurement costs (including administrative costs) that Buyer may incur for such re-procurement, and **(ii)** direct Seller in writing to continue performance of the non-cancelled portion of this Purchase Order. Neither party will be liable to the other for any delay or failure to perform that results from an unforeseeable cause beyond its reasonable control and without its fault or negligence, except that Buyer may terminate all or any portion of this order without liability to Seller if such delay or failure to perform by Seller or on behalf of Seller extends beyond thirty (30) days of Buyer's requested delivery date. TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER'S TOTAL LIABILITY ARISING UNDER OR RELATING TO THIS ORDER (WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE GOODS OR SERVICES GIVING RISE TO THE CLAIM.
16. **BUYER'S REMEDIES:** All rights and remedies of Buyer set out in the Purchase Order are cumulative and are in addition to any remedies provided at law or equity.
17. **TERMINATION FOR CONVENIENCE:** **(a)** Buyer may terminate, without cause, the whole or (from time to time) any part of the work required under this Purchase Order by delivering to the Seller a written Notice of Termination specifying the work terminated and the effective date thereof. **(b)** Buyer's sole liability to Seller shall be payment of a percentage of the order price reflecting the percentage of work performed by Seller prior to termination. Any claim for such payment must be received in writing by Buyer within thirty (30) days of receipt of written notice of termination. Buyer shall have the right to audit all elements of any termination claim, and Seller shall make available to Buyer on request all books, records and papers relating thereto. **(c)** Buyer's rights of termination is in addition to and not in derogation of Buyer's rights under Article 15 hereof. Notwithstanding the issuance by Buyer of a Notice of Termination hereunder, any right of Buyer based on prior breach of performance by Seller shall survive.
18. **WAIVER:** The failure of Buyer to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Purchase Order or to exercise any rights hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.
19. **ASSIGNMENT/SUBCONTRACTING:** None of the sums due or to become due nor any of the work to be performed under this Purchase Order shall be assigned nor shall Seller subcontract for complete or substantially completed material called for by this

order without Buyer's prior written consent.

20. **PRICE WARRANTY:** Seller warrants that the prices charged under this order do not exceed those charged by Seller to any other customer, including preferred customers of the U.S. Government, for purchase of the same items or services in like or similar quantities.
21. **INDEMNIFICATION:** Seller agrees to defend, indemnify and save Buyer harmless from all damages, claims, liabilities, costs, judgments, settlements, contract losses, fines, penalties, and other costs and expenses (including, without limitation, attorney's fees) arising out of or relating in any way to any defects in the goods or services, any unauthorized use or disclosure of Buyer Confidential Information, any breach of or inaccuracy in any representation, warranty, certification, or covenant of Seller, any breach of this order arising from a violation of Law, or any bodily injury, death, or damage to real or tangible personal property arising from any act or omission of Seller, its agents, employees or subcontractors. Seller shall maintain Workmen's Compensation Insurance and Employee Liability Insurance in the minimum amount of Five Hundred Thousand Dollars (\$500,000.00) covering all Seller personnel while on Buyers premises.
22. **GOVERNING LAW, JURISDICTION AND VENUE:** This Purchase Order and any subsequent changes thereto shall be construed and enforced in accordance with the laws of the State of California. Notwithstanding the forgoing, in the event a government contract number appears on the face of this order, or if the work under this order otherwise directly or indirectly supports a government contract, this order and all matters relating to this order (whether in contract, statute, tort, or otherwise) shall be governed by and construed in accordance with the common law of federal Government contracts, as enunciated and applied by the federal courts, the boards of contract appeals, and the United States Government Accountability Office.

All proceedings arising under or relating to this order (whether arising in contract, statute, tort or otherwise) shall be maintained exclusively in any state or federal court of general jurisdiction located in the State of California, and the parties irrevocably and unconditionally submit and consent to exclusive jurisdiction and venue therein and expressly waive any right to object to personal jurisdiction or venue in such courts.

If any provision of this order shall be construed by a court of competent jurisdiction to be unenforceable, in whole or in part, then such provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth herein. In any case, the remaining provisions of this order shall remain in full force and effect.

23. **SAFEGUARDING MATERIAL IN PROCESS:** In all Purchase Orders where progress payments or milestone payments are made by the Buyer, Seller must properly safeguard against loss, damage and/ or theft of all materials leaving the Seller's plant for further processing.
24. **APPROVALS:** Wherever this Purchase Order provides for submittal of designs, components, or other items for approval of Buyer, such approval shall not be construed as a complete check as to the adequacy of said design, component, or item, nor as an agreement or acknowledgement by Buyer that the design, component, or item will meet requirements of this Purchase Order. Such approvals are solely for the purpose of insuring Buyer's knowledge of Seller's plans and progress and will indicate only that Seller's general approach toward meeting requirements under this subcontract is satisfactory. Such approvals shall in no way relieve the Seller of the responsibility for any error or deficiency which may exist in the submitted design, component, or other item, as Seller shall be

responsible for meeting all the requirements of this Purchase Order.

25. **STOP WORK ORDER:** The Buyer reserves the right to stop work under this Purchase Order for a reasonable time without incurring any additional liability.
26. **SETOFF:** Buyer may SETOFF against any amount payable to any person under this Purchase Order any claim or charge Buyer may have against Seller.
27. **EXPORT COMPLIANCE:** (a) Seller is advised that this purchase order may involve goods or services subject to the International Traffic in Arms Regulations ("ITAR") (22 CFR Subchapter M, Parts 120-130) or the Export Administration Regulations (EAR). (b) If Seller is a U.S. Company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, the Seller hereby certifies that it has registered with the U.S. Department of State Directorate of Defense Trade Controls and understands its obligations to comply with, and will comply with, the ITAR and EAR, including obtaining any licenses or permits thereunder and any other applicable government directives related to export control. (c) Seller shall only employ U.S. persons (as defined by 22 CFR 120.15) on the worksite and shall exclude foreign persons (as defined by 22 CFR 120.16) unless the Seller has obtained the express written authorization of the Buyer and the Seller has obtained the appropriate export license, technical assistance agreement or other requisite documentation for ITAR controlled technical data or items. (d) Seller shall not transfer any export-controlled information (e.g. technical data) from the United States ("U.S.") to any non-U.S. person, country, government or entity without first complying with all the requirements of the ITAR or EAR, as applicable. (e) Prior to requesting U.S. Government authorization to export Buyer's export-controlled information, Seller must first obtain Buyer's written consent. Buyer's written consent shall not relieve Seller of its obligations to comply with U.S. export regulations (f) Seller shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's noncompliance with U.S. export laws.
28. **COMPLETE AGREEMENT:** The conditions of purchase stated herein and all statements on the Purchase Order, including all insertions thereon by Buyer, and including all the documents referred to in Article 29 (order of precedence) below, constitute the complete agreement between Buyer and Seller concerning this purchase and merge and supersede all prior oral and written agreements, communications, and representations relating to the subject matter hereof. No prior course of dealing, custom or usage nor prior negotiations between Buyer and Seller, and no terms or conditions of sale set forth in Seller's quotation, order, or sales acknowledgement shall constitute any part of the agreement between Buyer and Seller concerning this purchase.
29. **ORDER OF PRECEDENCE:** In the event of an inconsistency in the provisions of the Purchase Order, the following descending order of precedence shall prevail; (i) these General Terms and Conditions for Fixes Price Purchases; (ii) the pages of this Purchase Order, including but not limited to a reordering of the precedence set forth in this Article;; (iii) Statement of Work; (iv) Specifications; (v) Drawings; and (vi) any other documents referenced in this Purchase Order.
30. **AS9100 FLOW DOWN REQUIREMENTS:** (a) The Seller shall not ship nonconforming product to the Buyer unless Seller notifies and receives approval from the Buyer. (b) The Seller shall notify the Buyer of changes in product and/or process definition and, where required, obtain Buyer approval of such changes. (c) The Buyer, their customer, and regulatory authorities have right of access to all Seller's facilities involved in the order and to all applicable records, at any level of the supply chain. (d) Records related to the

product under this Purchase Order must remain legible, readily identifiable, retrievable and retained for 10 years. (e) The Seller shall flow down to sub-tier suppliers the applicable requirements in the purchasing document, including key characteristics where required. (f) The Seller shall monitor key characteristics that have been identified by the Buyer. Key characteristic monitoring data (i.e., control charts, inspection records, trend charts, etc.) shall be made available to the Buyer upon request. (g) Where specified in the Purchase Order, the Buyer and Buyer's customer shall be afforded the right to verify at the Seller's premises that subcontracted product conforms to specified requirements. (h) The Seller shall be responsible for the quality of all products purchased under this Purchase Order, including Buyer-designated sources. (i) The seller's level of product traceability shall provide for, at a minimum:

- Identification to be maintained throughout the product life.
- All the products manufactured from the same batch of raw material or from the same manufacturing batch to be traced.
- In any assembly, the identity of its components and those of the next higher assembly to be traced.
- In any given product, a sequential record of its production (manufacture, assembly, inspection) to be retrieved.

(j) In the event there is a significant change to the Seller's Quality Management System and/or their Quality Management System certification expires, the Seller shall notify Buyer's Purchasing and Quality departments.

(k) The Seller shall only purchase components and parts procured directly from the OCM/OEM, or through the OCM authorized distributor chain. Procurement through an independent distributor or broker is NOT authorized, unless first approved in writing by Buyer. Reference SAE AS5553 and AS6174 as guidelines.

31. **DPAS PRIORITY RATING:** All companies in the United States must comply with the provisions of the DPAS regulation. Any company who places or receives priority ratings should be thoroughly familiar with and must comply with, the provisions of the DPAS regulation. In the event that a priority rating is flowed down to the buyer, a new purchase order or an amended purchase order will be sent to the seller. A purchase order can either be fully dedicated to the specific rating or partially. If only a portion of the purchase order is rated, a separate line item will be designated as the priority quantity. In the event that a current open purchase order contains the item which is rated, an amendment to the PO will designate which line item is priority rated and the non-rated line items may be rescheduled. A seller must accept or reject a rated order and transmit the acceptance or rejection (in writing or electronically) to the buyer placing the order within 15 working days after receipt of a "DO" rated order and 10 working days after receipt of a "DX" rated order. If the order is rejected within the provisions of DPAS, a seller must provide the reasons for the rejection. If a seller has accepted a rated order and subsequently finds that the shipment or performance will be delayed, the seller must notify the buyer immediately, give the reasons for the delay, and advise of new shipment or performance date. A priority rating on a rated order may be changed or canceled by written notification from the buyer who placed the rated order. If the buyer no longer needs items to fill a rated order, any rated orders placed with sellers for the items, or the priority rating on those orders, will be cancelled.

32. **Ethical Behavior:** The Seller shall be aware of the importance of ethical behavior. The Seller will be treated in a fair and equitable manner, without personal bias or prejudice. All purchasing transactions must be conducted in a manner that will foster good public, community, employee, Seller, and Buyer relations.

- No Buyer employees or family member may solicit or accept any gift, gratuity, favor, or special accommodation from any Seller or prospective Seller, at any time.
- Promotional novelties of less than \$15.00 retail value and normal business courtesies of nominal value are acceptable provided they are intended to facilitate the purposes of a working business meeting. These may include meals,

refreshments, and local transportation. However, the acceptance of any courtesy which can be construed as entertainment, as inducement for the award of any order, or as acknowledgment of any previous order shall not be permitted.

- Offering, soliciting, or providing any business courtesy, gift, gratuity, favor, or special accommodation as an inducement for award of any order, or as an acknowledgment of any previous order, is unlawful and subject to prosecution.
- Loans are not to be accepted from an individual or organization having prospective dealings with the Buyer unless such individual or organization is in the business of making loans to individuals.
- Buyer shall not accept any compensation for the performance of managerial or consultation services from an outside firm who does business with or is a competitor to Buyer.

33. **ENVIRONMENTAL PERFORMANCE:** Seller shall minimize aspects of its business that can negatively impact the environment and strive for pollution prevention during the production and fulfillment of products/services provided to Buyer. Seller shall maintain strict compliance with all applicable federal, state, and local environmental laws, regulations, and ordinances. If hazardous materials are used in the performance of services provided to Buyer, Seller shall make information and/or Safety Data Sheet available upon request in accordance with The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).

34. **OBsolescence**

The Seller shall monitor materials for potential obsolescence and notify Buyer immediately of any parts at or near End of Life. If an item is or will become obsolete, the Seller shall work with the Buyer for an acceptable solution. The Buyer must approve any changes related to obsolescence.

35. **CONFIDENTIAL INFORMATION:** Any non-public information or data furnished by Buyer under this order, including, without limitation, in the form of specifications, drawings, reprints, technical information, equipment, prototypes, forecasts, schedules, or other technical or business information shall be deemed Buyer Confidential Information, shall remain Buyer's property, shall be kept confidential, and shall be promptly returned to Buyer at Buyer's request. Seller shall disclose Buyer Confidential Information only to those of its employees with a need to know the Buyer Confidential Information in order for Seller to exercise its rights or perform its obligations under this order, provided such employees are subject to confidentiality obligations at least as restrictive as these purchase order terms and conditions. Seller shall not disclose, disseminate, or transfer, without Buyer's prior written permission, any Buyer Confidential Information to any third party, or use Buyer Confidential Information for any purpose other than performing this order. Without limiting the foregoing, Seller shall not use Buyer Confidential Information to invent, create, modify, adapt, or manufacture any hardware, software or other products or services that would or could compete with or be used in lieu of Buyer's hardware, software, or other products or services. In addition, Seller shall not reverse engineer or otherwise decompile or disassemble any Confidential Information. Seller shall comply with all proprietary information and restrictive markings applied to any information furnished and shall protect Buyer Confidential Information from disclosure using the same degree of care Seller uses in protecting Seller's own confidential information from disclosure, but in no event less than a reasonable degree of care. Except as expressly stated in this order, no license, right or interest under any Intellectual Property is granted, transferred, or implied with respect to Buyer Confidential Information. Buyer shall notify Seller of any applicable requirements relating to the safeguarding and protection of Government confidential or non-public information ("Sensitive Government Information"). Seller shall, at no additional cost to Buyer, comply strictly with such requirements and maintain data

protection processes and systems sufficient adequately to protect Sensitive Government Information. Seller shall not use Sensitive Government Information for any purpose other than performing its obligations under this order and shall not disclose, disseminate, or transfer Sensitive Government Information to any third party without Buyer's prior written consent Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential.

36. **INTELLECTUAL PROPERTY:** As used in this order, the term "Intellectual Property" shall mean all inventions, improvements, discoveries, works of authorship, technical data, computer software, algorithms, mask works, ideas, concepts, and know-how, as well as all patents, patent applications, copyrights, trademarks, trade secrets, and other intellectual property rights attendant thereto. Seller grants to the Government the rights in data and inventions set forth in the clauses incorporated by reference in Exhibit A. Seller grants to Buyer, in connection with Buyer's performance of its obligations in support of any prime contract or subcontract (at any tier) in support of any prime contract with the U.S. Government, a paid-up, royalty-free license to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of and prepare derivatives, and to authorize others to do any or all of the foregoing, any Intellectual Property first conceived, reduced to practice, authored, developed or created by Seller in performance of this order or delivered by Seller under this order. Subject to the rights granted to the Government and Buyer above: (a) each party shall own, and shall be afforded all rights of ownership incident to, all preexisting Intellectual Property of that party and all Intellectual Property first conceived, reduced to practice, authored, developed, or created by that party in the performance of this order; (b) neither party shall have any right, title, or interest in or to any Intellectual Property of the other party or any Intellectual Property first conceived, reduced to practice, authored, developed or created by the other party in performance of this order; (c) Buyer shall own all Intellectual Property first conceived, reduced to practice, authored, developed, or created jointly by the parties in the performance of this order. Seller shall require its employees and, if applicable, other persons under contract to it, to provide reasonable assistance in the procurement and protection of the rights conferred by this paragraph and execute all lawful documents in conjunction therewith.

37. **REMEDIES:** The rights and remedies in this order are cumulative in addition to any other rights and remedies available at law or in equity. Seller acknowledges that Buyer will suffer irreparable harm, and that monetary damages alone will not adequately compensate Buyer, for any breach of the Confidential Information or Intellectual Property paragraphs of this order. Therefore, in the event Seller breaches or threatens to breach those paragraphs, Buyer shall be entitled to seek interim, emergency, and permanent restraints and injunctive relief (without the need to post any bond or other undertaking), as well as to an accounting and payment by Seller of any and all amounts received by Seller as a result of the breach.

38. **ACCESS TO FACILITIES:** If Seller has access to Buyer's premises, Seller agrees to adhere to all Buyer work rules, safety standards and security requirements, to maintain insurance satisfactory to Buyer, and to furnish evidence of such insurance at Buyer's request. Seller Personnel shall provide information reasonably requested by Buyer to ensure proper identification and Buyer, in its sole discretion, shall have the right to require Seller to remove specified personnel from its premises.

39. **RELATIONSHIP OF THE PARTIES:** Each party is an independent contractor, and neither party is, nor shall it represent itself to be, an agent, partner, fiduciary, joint venture, co-owner, or representative of the other party. Neither party shall have the

authority, or represent that it has the authority, to bind the other party. Each party assumes full responsibility for the actions, supervision, and compensation of its employees, agents, or subcontractors, and neither party assumes any responsibility for the actions, supervision, or compensation of the other party's employees, agents, or subcontractors.

40. **AUTHORIZED REPRESENTATIVE:** The Buyer representative listed on the face of this order ("Buyer's Authorized Representative") shall have sole authority to make contractual commitments, to provide contractual direction, and to change or modify contractual requirements relating to this order. All notices required under this order shall be furnished in writing to Buyer's Authorized Representative with a copy of all legal notices to Buyer's legal department at 2015 W. Chestnut Street, Alhambra, CA 91803, Attn: Legal Department, email: Legal@emcore.com. Buyer's engineering, technical, and other personnel may from time to time render assistance, give technical advice, make suggestions, or discuss or effect an exchange of information; but such actions shall not be deemed to constitute a change and shall not obligate Buyer to provide any additional compensation to Seller.

41. **CONFLICT MINERALS:** By accepting these terms and conditions, Seller agrees to timely respond, to the best of Seller's knowledge and belief following an appropriate due diligence inquiry, to any request by, or on behalf of, Buyer, for information on the source and chain of custody of conflict minerals necessary to the functionality or production of a product manufactured by Seller or supplied by Seller to Buyer. In addition, Seller understands and acknowledges that any information provided by Seller in this regard may be used by Buyer to comply with its reporting obligations under the Dodd-Frank Wall Street Reform and Consumer Protection Act, including filing a Form SD and Conflict Minerals Report with the U.S. Securities and Exchange Commission.

42. **INCORPORATION OF FAR/DFAR CLAUSES:** The clauses identified in Exhibit A are incorporated by reference to the extent indicated in Exhibit A, and Seller agrees to comply with such clauses. The effective version of each clause shall be the version that applies to Buyer under its prime contract or higher-tier subcontract. In all cases, the clauses shall be interpreted to apply to Seller as necessary to reflect the position of Seller as a subcontractor to Buyer, to ensure Seller's obligations to Buyer, and to enable Buyer to meet its obligations to its customer. Without limiting the foregoing: (1) unless the context of the clause or Law requires otherwise, the term "Contractor" shall mean "Seller," the term "Contract" shall mean this order, the term "Subcontractor" shall mean Seller's subcontractor, and the terms "Government," "Contracting Officer" and equivalent phrases shall mean Buyer and Buyer's Authorized Representative, respectively; (2) the words "Government" and "Contracting Officer" do not change when a right, act, authorization or obligation can be granted or performed only by the Government or when title to property is to be transferred directly to the Government; (3) where a clause specifies the number of days in which Seller must act, that number shall be halved; and (4) where a clause specifies the number of days in which Buyer must act, that number shall be doubled.

43. **SURVIVAL:** Those terms and conditions contained herein that would, by their nature, survive the expiration, completion, or termination for any reason of this order, shall survive any such expiration, completion or termination, including without limitation 1, 11, 12, 13, 15, 16, 18, 21, 22, 26, 27, 28, 29, 35, 36, 37, 40, 42, 43.

## **EXHIBIT A**

### **TERMS APPLICABLE TO U.S. GOVERNMENT SUBCONTRACTS**

#### **A. GOVERNMENT SUBCONTRACT**

- (a) This Contract is entered into by the parties in support of a U.S. Government contract.
- (b) As used in the FAR and DFARS clauses referenced below and otherwise in this Contract:
1. “Commercial Item” means a commercial item as defined in FAR 2.101.
  2. “Commercially available off-the-shelf (COTS) item” means a COTS item as defined in FAR 2.101.
  3. “Contract” means this order, including the applicable Ts&Cs.
  4. “Contracting Officer” shall mean the U.S. Government Contracting Officer for the Prime Contract under which this Contract is entered.
  5. “Contractor” and “Offeror” means the Seller, which is the party identified on the face of the Contract with whom EMCORE is contracting, acting as the immediate subcontractor to EMCORE.
  6. “Prime Contract” means the contract between EMCORE and the U.S. Government or between EMCORE and its higher-tier contractor who has a contract in support of a U.S. Government contract.
  7. “Subcontract” means any contract placed by Seller or lower-tier subcontractors under this Contract.
  8. “Ts&Cs” means the EMCORE Purchase Order Terms and Conditions applicable to this Contract.
  9. “Work” means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

#### **B. NOTES**

The following notes apply to the clauses incorporated by reference below only when specified in the parenthetical phrase following the clause title and date.

1. Substitute “EMCORE” for “Government” or “United States” throughout this clause.
2. Substitute “EMCORE’s authorized representative” for “Contracting Officer”, “Administrative Contracting Officer”, and “ACO” throughout this clause.
3. Insert “and EMCORE” after “Government” throughout this clause.
4. Insert “or EMCORE” after “Government” throughout this clause.
5. Communication/notification required under this clause from/to Seller to/from the Contracting Officer shall be through EMCORE.
6. Insert “and EMCORE” after “Contracting Officer”, throughout the clause.
7. Insert “or EMCORE’s authorized representative” after “Contracting Officer”, throughout the clause.

8. If Seller is an international contractor, this clause applies to this Contract only if Work under the Contract will be performed in the United States or Contractor is recruiting employees in the United States to Work on the Contract.

**C. PROVISIONS OF THE FEDERAL ACQUISITION REGULATION (FAR) APPLICABLE TO ORDERS FOR COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT (ALL AGENCIES)**

To the extent indicated in the Ts&Cs, the following FAR clauses apply to this Contract:

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020) (Applies if this Contract exceeds the threshold specified in FAR 3.808 on the date of award of this Contract).

FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (JUN 2020) (Applies if this Contract exceeds threshold specified in FAR 3.1004(b)(1) on the date of this Contract and has a period of performance of more that 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)

FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)

FAR 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applies if the Work requires access to classified information.)

FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011) (Applies where Seller will have physical access to a federally-controlled facility or access to a Federal information system.)

FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUN 2020) (Subparagraph (d)(2) does not apply. If Seller meets the thresholds specified in paragraphs (d)(3) and (g)(2) of the clause, Seller shall report required executive compensation by posting the information to the Government's System for Award Management (SAM) database. All information posted will be available to the general public.)

FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016) (Applies unless Seller is furnishing commercially available off-the-shelf items.)

FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018)

FAR 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020) (Copies of notices provided by Seller to the Contracting Officer shall also be provided to EMCORE.)

FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 2020) (Applies if this Contract exceeds the threshold specified in FAR 9.405-2(b) on the date of award of this Contract except does not apply if this Contract is for commercial off the shelf items. Copies of notices provided by Seller to the Contracting Officer shall be provided to EMCORE.)

FAR 52.215-20 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 2010) (Note 2 applies in paragraph (a)(1).)

FAR 52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (JUN 2020) (Note 2 applies in paragraphs (a)(1) and (b).)

FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018) (Note 8 applies.)

FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (Note 8 applies.)

FAR 52.222-26 EQUAL OPPORTUNITY (SEP 2016) (Note 8 applies.)

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020) (Applies if this Contract is valued at or above the threshold specified in FAR 22.1303(a) on the date of this Contract. Note 8 applies.)

FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 2020) (Applies if this contract exceeds the threshold specified in FAR 22.1408(a) on the date of award of this Contract. Note 8 applies.)

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020) (Applies if this Contract is valued at or above the threshold specified in FAR 22.1303(a) on the date of this Contract. Note 8 applies.)

FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (Applies if this Contract exceeds \$10,000. Note 8 applies.)

FAR 52.222-41 SERVICE CONTRACT ACT OF 1965 (AUG 2018) (Applies if this Contract is for services subject to the Service Contract Act. The clause does not apply if this Contract has been administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4. Note 8 applies.)

FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (OCT 2020) (Note 2 applies. In paragraph (e) Note 3 applies.)

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015) (Applies if this Contract exceeds \$3,500 except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item. Note 8 applies.)

FAR 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (NOV 2020) (Applies if this Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and is to be performed in whole or in part in the United States. "Contracting Officer" means "EMCORE.")

FAR 52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2017) (Applies if this Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.)

FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (Applies if this Contract involves hazardous material. Notes 2 and 3 apply, except for paragraph (f) where Note 4 applies.)

FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (Applies to Work containing covered radioactive material. In the blank insert "30". Notes 1 and 2 apply.)

FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (JUN 2016) (Applies if the Work was manufactured with or contains ozone-depleting substances.)

FAR 52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION) (Available as of the date of this Contract at <https://www.whitehouse.gov/wp-content/uploads/2021/09/FAR-Council-Guidance-on-Agency-Issuance-of-Deviations-to-Implement-EO-14042.pdf>) (Applies if this Contract exceeds the simplified acquisition threshold in effect at the time of award of this Contract and Seller is required to provide services performed in whole or in part within the United States or its outlying areas.)



FAR 52.224-3 PRIVACY TRAINING (JAN 2017) (Applies if Seller will (1) have access to a system of records; (2) create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) design, develop, maintain, or operate a system of records. In paragraph (d), Note 6 applies.)

FAR 52.225-1 BUY AMERICAN ACT -- SUPPLIES (MAY 2014) (Applies if the Work contains other than domestic components. Note 2 applies to the first time "Contracting Officer" is mentioned in paragraph (c).)

FAR 52.225-5 TRADE AGREEMENTS (OCT 2019) (Applies if the Work contains other than U.S. made or designated country end products as specified in the clause.)

FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

FAR 52.227-19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (DEC 2007)

FAR 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (Applies if Seller is a small business concern. Note 1 applies. This clause does not apply if EMCORE does not receive accelerated payments under the Prime Contract. Not all agencies provide accelerated payments.)

FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2020)

FAR 52.245-1 GOVERNMENT PROPERTY (JAN 2017) (ALT I) (APR 2012) ("Contracting Officer" means "EMCORE" except in the definition of Property Administrator and in paragraphs (h)(1)(iii) where it is unchanged, and in paragraphs (c) and (h)(4) where it includes EMCORE. "Government" is unchanged in the phrases "Government property" and "Government furnished property" and where elsewhere used except in paragraph (d)(1) where it means "EMCORE" and except in paragraphs (d)(2) and (g) where the term includes EMCORE. The following is added as paragraph (n) " Seller shall provide to EMCORE immediate notice if the Government or other customers (i) revokes its assumption of loss under any direct contracts with Seller, or (ii) makes a determination that Seller 's property management practices are inadequate, and/or present an undue risk, or that Seller has failed to take corrective action when required.")

FAR 52.246-26 REPORTING NONCONFORMING ITEMS (NOV 2021)

FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)

**D. PROVISIONS OF THE DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) APPLICABLE TO ORDERS FOR COMMERCIAL ITEMS UNDER A U.S. DEPARTMENT OF DEFENSE PRIME CONTRACT**

To the extent indicated in the Ts&Cs, the following DFARS clauses apply to this Contract:

DFARS 252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

DFARS 252.203-7003 AGENCY OFFICE OF THE INSPECTOR GENERAL (AUG 2019) (Applies when FAR 52.203-13 applies to this Contract.)

DFARS 252.204-7009 LIMITATIONS ON THE USE AND DISCLOSURE OF THIRD PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016) (Applies if this Contract involves services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting.)

DFARS 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2019) (Applies if this Contract is for operationally critical support or for which performance will involve covered defense information. Seller shall furnish EMCORE copies of notices provided to the

Contracting Officer at the time such notices are sent. Seller shall also furnish EMCORE copies of any reports Seller receives from its lower tier subcontractors.)

DFARS 252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT (MAY 2016)

DFARS 252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES (DEC 2019) (Copies of reports provided by Seller under this clause will be provided to EMCORE.)

DFARS 252.204-7020 NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS (NOV 2020) (Applies except if this Contract is for commercial off the shelf items.)

DFARS 252.211-7003 ITEM UNIQUE IDENTIFICATION AND VALUATION (MAR 2016) (Applies if this Contract requires the Work to contain unique item identification.” Items subject to unique item identification are identified elsewhere in this Contract. All reports required to be submitted under this clause shall be submitted to EMCORE. “Government” means “EMCORE” except in the definition of “issuing agency” in paragraph (a).

DFARS 252.215-7010 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND OTHER DATA THAN CERTIFIED COST OR PRICING DATA (JUL 2019) This clause applies in lieu of FAR 52.215-20. Contracting Officer means “EMCORE” Paragraph (b)(ii)(E) is deleted.

DFARS 252.223-7001 HAZARD WARNING LABELS (DEC 1991) (Applies if this Contract requires the delivery of hazardous materials.)

DFARS 252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM (JUN 2013) (Note 2 applies.)

DFARS 252.223-7999 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 2021-O0009) (OCT 2021) (Available as of the date of this Contract at <https://www.acq.osd.mil/dpap/policy/policyvault/USA001998-21-DPC.pdf>) (Applies if this Contract exceeds the simplified acquisition threshold in effect at the time of award of this Contract and Seller is required to provide services performed in whole or in part within the United States or its outlying areas.)

DFARS 252.225-7001 BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM (DEC 2017) (Applies if the Work contains other than domestic components. Applies in lieu of FAR 52.225-1.)

DFARS 252.225-7007 PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (DEC 2018) Applies if this contract is for an item on the United States Munitions List or the 600 series of the Commerce Control List.)

DFARS 252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (DEC 2019) (Applies if the Work to be furnished contains specialty metals. Paragraph (d) is deleted.)

DFARS 252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2017)

DFARS 252.225-7021 TRADE AGREEMENTS (SEP 2019) (Applies if the Work contains other than U.S.-made, qualifying country, or designated country end products. Applies in lieu of FAR 52.225-5.)

DFARS 252.225-7048 EXPORT-CONTROLLED ITEMS (JUN 2013)

DFARS 252.225-7052 RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS, TANTALIM, AND TUNGSTEN (OCT 2020) (Applies except where an exception in paragraph (c) applies.)

DFARS 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (APR 2019) (Applies if this Contract exceeds \$500,000. Note 2 applies to paragraph (c) the first time “Contracting Officer” appears. In subparagraph (f)(1) “Contractor” shall mean “EMCORE.” EMCORE shall have no liability to Seller for any incentive payment under this clause unless and until the Government provides said incentive payment to EMCORE.)

DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA --NONCOMMERCIAL ITEMS (FEB 2014) (Applies in lieu of FAR 52.227- 14. Applies to the extent specified in DFARS 252.227-7015.)

DFARS 252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (FEB 2014) (Applies in lieu of FAR 52.227-14.)

DFARS 252.227-7015 TECHNICAL DATA -- COMMERCIAL ITEMS (FEB 2014)

DFARS 252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE (SEP 2016)

DFARS 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 2016)

DFARS 252.232-7017 ACCELERATING PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS - PROHIBITION ON FEES AND CONSIDERATION (APR 2020) (Note 1 applies.)

DFARS 252.239-7018 SUPPLY CHAIN RISK (FEB 2019)

DFARS 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS (OCT 2020).

DFARS 252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013) (Applies if this Contract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system. Contractor shall provide notifications to EMCORE and the contracting officer identified to Seller.)

DFARS 252.246-7007 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (AUG 2016) (Paragraphs (a) through (e) apply. To the extent this clause conflicts with other provisions of this contract, this clause shall prevail. In paragraph (c)(2) Note 3 applies. In paragraph (c)(6) Note 6 applies.)

DFARS 252.246-7008 SOURCES OF ELECTRONIC PARTS (MAY 2018) (Applies if this contract is for electronic parts or assemblies containing electronic parts, unless Seller is the original manufacturer. Note 1 applies except in paragraph (d). Note 2 applies.

DFARS 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA - BASIC (FEB 2019) (Applies in lieu of FAR 52.247-64 in all Contracts for ocean transportation of supplies. In the first sentence of paragraph (g), insert a period after “Contractor” and delete the balance of the sentence. Paragraph (f) and (g) shall not apply if this Contract is at or below the simplified acquisition threshold. Notes 1 and 2 apply to paragraph (g).)

DFARS 252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (JUN 2020) (Applies if this Contract is equal or exceeds the threshold specified in DFARS 249.7003(c)(2)(i)” and “249.7003(c)(2)(ii)). Note 2 applies. Delete paragraph (d)(1) and the first five words of paragraph (d)(2).)

**E. PROVISIONS OF THE FEDERAL ACQUISITION REGULATION (FAR) APPLICABLE TO ORDERS FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT (ALL AGENCIES)**

To the extent indicated in the Ts&Cs, the following FAR clauses apply to this Contract:

FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUN 2020) (Applies if this Contract exceeds the threshold specified in FAR 3.808 on the date of award of this Contract).

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020) (Applies if this Contract exceeds the threshold specified in FAR 3.808 on the date of award of this Contract).

FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (JUN 2020) (Applies if this Contract exceeds the threshold specified in FAR 3.1004(b)(1) on the date of this Contract and has a period of performance of more than 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)

FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (JUN 2020) (Applies if this Contract exceeds threshold specified in FAR 3.1004(b)(1) on the date of award of this Contract. Contact EMCORE's authorized representative for the location where posters may be contained if not indicated elsewhere in the Contract. Note 8 applies.)

FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (JUN 2020) Applies if this Contract exceeds the simplified acquisition threshold in effect on the date of award of this Contract.)

FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)

FAR 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applies if the Work requires access to classified information.)

FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011) (Applies where Seller will have physical access to a federally-controlled facility or access to a Federal information system.)

FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUN 2020) (Subparagraph (d)(2) does not apply. If Seller meets the thresholds specified in paragraphs (d)(3) and (g)(2) of the clause, Seller shall report required executive compensation by posting the information to the Government's System for Award Management (SAM) database. All information posted will be available to the general public.)

FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016) (Applies unless Seller is furnishing commercially available off-the-shelf items.)

FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018)

FAR 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020) (Copies of notices provided by Seller to the Contracting Officer shall also be provided to EMCORE.)

FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 2020) (Applies if this Contract exceeds the threshold specified in FAR 9.405-2(b) on the date of award of this Contract except does not apply if this Contract is for commercial off the shelf items. Copies of notices provided by Seller to the Contracting Officer shall be provided to EMCORE.)

FAR 52.211-5 MATERIAL REQUIREMENTS (AUG 2000) (Note 2 applies.)

FAR 52.215-2 AUDIT AND RECORDS-NEGOTIATION (JUN 2020) (Applies if this Contract exceeds the simplified acquisition threshold in effect at the time of award of this Contract and if: (1) Seller is required to furnish cost or pricing data, or (2) the Contract requires Seller to furnish cost, funding, or performance reports, or (3) this is

an incentive or redeterminable type contract. Note 3 applies. Alternate II applies if Seller is an educational or non-profit institution.)

FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011) (Applies if submission of certified cost or pricing data is required. Notes 2 and 4 apply except the first time “Contracting Officer” appears in paragraph (c)(1). “Government” means “EMCORE” in paragraph (d)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)

FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA - MODIFICATIONS (JUN 2020) (Applies if submission of certified cost or pricing data is required for modifications. Notes 2 and 4 apply except the first time “Contracting Officer” appears in paragraph (d)(1). “Government” means “EMCORE” in paragraph (e)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)

FAR 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (JUN 2020) (Applies if this Contract exceeds the threshold under FAR 15.403 and is not otherwise exempt.)

FAR 52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA - MODIFICATIONS (JUN 2020) (Applies if this Contract exceeds the threshold under FAR 15.403 and is not otherwise exempt.)

FAR 52.215-14 INTEGRITY OF UNIT PRICES (JUN 2020) (Applies if this Contract exceeds the simplified acquisition threshold. Delete paragraph (b) of the clause.)

FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010) (Applies if this Contract meets the applicability requirements of FAR 15.408(g). Note 5 applies.)

FAR 52.215-16 FACILITIES CAPITAL COST OF MONEY (JUN 2003) (Applies only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and Seller proposed facilities capital cost of money in its offer.)

FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997) (Applies only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and Seller did not propose facilities capital cost of money in its offer.)

FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005) (Applicable if this Contract meets the applicability requirements of FAR 15.408(j). Note 5 applies.)

FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) (Applies if this Contract meets the applicability requirements of FAR 15.408(k). Note 5 applies.)

FAR 52.215-20 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 2010) (Note 2 applies in paragraph (a)(1).)

FAR 52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (JUN 2020) (Note 2 applies in paragraphs (a)(1) and (b).)

FAR 52.215-23 LIMITATION ON PASS-THROUGH CHARGES (JUN 2020) Applies if this is a cost-reimbursement subcontract in excess of the simplified acquisition threshold, except if the prime contract to which this contract relates is with DoD, then the clause applies to both cost-reimbursement subcontracts and fixed-price subcontracts, 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. Notes 4 and 6 apply.)

FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018) (Note 8 applies.)

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JUN 2020) (Applies if this Contract exceeds the threshold at FAR 19.702(a) except the clause does not apply if Seller is a small business concern. Note 2 is applicable to paragraph (c) only. Seller's subcontracting plan is incorporated herein by reference. Note 8 applies.)

FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (MAY 2018) (Applies if the Contract may require or involve the employment of laborers and mechanics. Note 8 applies.)

FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (Note 8 applies.)

FAR 52.222-26 EQUAL OPPORTUNITY (SEP 2016) (Note 8 applies.)

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020) (Applies if this Contract is valued at or above the threshold specified in FAR 22.1303(a) on the date of this Contract. Note 8 applies.)

FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 2020) (Applies if this contract exceeds the threshold specified in FAR 22.1408(a) on the date of award of this Contract. Note 8 applies.)

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020) (Applies if this Contract is valued at or above the threshold specified in FAR 22.1303(a) on the date of this Contract. Note 8 applies.)

FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (Applies if this Contract exceeds \$10,000. Note 8 applies.)

FAR 52.222-41 SERVICE CONTRACT ACT OF 1965 (AUG 2018) (Applies if this Contract is for services subject to the Service Contract Act. The clause does not apply if this Contract has been administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4. Note 8 applies.)

FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (OCT 2020) (Note 2 applies. In paragraph (e) Note 3 applies.)

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015) (Applies if this Contract exceeds \$3,500 except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item. Note 8 applies.)

FAR 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (NOV 2020) (Applies if this Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and is to be performed in whole or in part in the United States. "Contracting Officer" means "EMCORE.")

FAR 52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2017) (Applies if this Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.)

FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (Applies if this Contract involves hazardous material. Notes 2 and 3 apply, except for paragraph (f) where Note 4 applies.)

FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (Applies to Work containing covered radioactive material. In the blank insert "30". Notes 1 and 2 apply.)

FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (JUN 2016) (Applies if the Work was manufactured with or contains ozone-depleting substances.)

FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (JUN 2020) (Applies if this Contract exceed the micro-purchase threshold as defined in FAR 2-101 on the date of award of this Contract. Note 8 applies.)

FAR 52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION) (Available as of the date of this Contract at <https://www.whitehouse.gov/wp-content/uploads/2021/09/FAR-Council-Guidance-on-Agency-Issuance-of-Deviations-to-Implement-EO-14042.pdf>) (Applies if this Contract exceeds the simplified acquisition threshold in effect at the time of award of this Contract and Seller is required to provide services performed in whole or in part within the United States or its outlying areas.)

FAR 52.224-3 PRIVACY TRAINING (JAN 2017) (Applies if Seller will (1) have access to a system of records; (2) create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) design, develop, maintain, or operate a system of records. In paragraph (d), Note 6 applies.)

FAR 52.225-1 BUY AMERICAN ACT -- SUPPLIES (MAY 2014) (Applies if the Work contains other than domestic components. Note 2 applies to the first time "Contracting Officer" is mentioned in paragraph (c).)

FAR 52.225-5 TRADE AGREEMENTS (OCT 2019) (Applies if the Work contains other than U.S. made or designated country end products as specified in the clause.)

FAR 52.225-8 DUTY FREE ENTRY (OCT 2010) (Applies if Work will be imported into the Customs Territory of the United States. Note 2 applies.)

FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

FAR 52.227-1 AUTHORIZATION AND CONSENT (JUN 2020) (Applies only if the Prime Contract contains this clause.)

FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (JUN 2020) (Applies if this Contract exceeds the simplified acquisition threshold. Notes 2 and 4 apply.)

FAR 52.227-9 REFUND OF ROYALTIES (APR 1984) (Applies when reported royalty exceeds \$250. Note 1 applies except for the first two times "Government" appears in paragraph (d). Note 2 applies.)

FAR 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (DEC 2007) (Applies if the Work or any patent application may cover classified subject matter.)

FAR 52.227-11 PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR (MAY 2014) (Applies if this Contract includes, at any tier, experimental, developmental, or research Work and Seller is a small business concern or domestic nonprofit organization. FAR 52.227-13 applies in lieu of this clause if Seller is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government.)

FAR 52.227-13 PATENT RIGHTS - OWNERSHIP BY THE GOVERNMENT (DEC 2007) (Applies if this Contract is for experimental, developmental or research Work and Seller is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government. Paragraph (g) is deleted.)

FAR 52.227-14 RIGHTS IN DATA - GENERAL (MAY 2014) (Does not apply if DFARS 252.227-7013 applies).

FAR 52.228-5 INSURANCE -- WORK ON A GOVERNMENT INSTALLATION (JAN 1997) (Applies if this Contract involves Work on a Government installation. Note 2 applies. Note 4 applies to paragraph (b). Unless

otherwise specified by this Contract, the minimum kinds and amount of insurance shall be as described in FAR 28.307-2.)

FAR 52.230-2 COST ACCOUNTING STANDARDS (JUN 2020) (Applies only when referenced in this Contract that full CAS coverage applies. "United States" means "United States or EMCORE." Delete paragraph (b) of the clause.)

FAR 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (JUN 2020) (Applies only when referenced in this Contract that modified CAS coverage applies. "United States" means "United States or EMCORE." Delete paragraph (b) of the clause.)

FAR 52.230-4 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES FOR CONTRACTS AWARDED TO FOREIGN CONCERNS (JUN 2020) (Applies only when referenced in this Contract, modified CAS coverage applies. Note 3 applies in the second and third sentences.)

FAR 52.230-5 COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTIONS (JUN 2020) (Applies only when referenced in this Contract that this CAS clause applies. "United States" means "United States or EMCORE." Delete paragraph (b) of the clause.)

FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010) (Applies if FAR 52.230-2, FAR 52.230-3, FAR 52.230-4 or FAR 52.230-5 applies.)

FAR 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (Applies if Seller is a small business concern. Note 1 applies. This clause does not apply if EMCORE does not receive accelerated payments under the Prime Contract. Not all agencies provide accelerated payments.)

FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) (In the event EMCORE's customer has directed EMCORE to stop performance of the Work under the Prime Contract under which this Contract is issued pursuant to FAR 33.1, EMCORE may, by written order to Seller, direct Seller to stop performance of the Work called for by this Contract. "30 days" means "15 days" in paragraph (b)(2). Note 1 applies except the first time "Government" appears in paragraph (f). In paragraph (f) add after "33.104(h) (1)" the following: "and recovers those costs from EMCORE".)

FAR 52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (SEP 2016) (Notes 1 and 2 apply.)

FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (APR 1984) (Applies if Work is performed on a Government installation. Note 2 applies. Note 4 applies to the second time "Government" appears in the clause.) FAR 52.242-13 BANKRUPTCY (JUL 1995) (Notes 1 and 2 apply.)

FAR 52.242-13 BANKRUPTCY (JUL 1995) (Notes 1 and 2 apply.)

FAR 52.242-15 STOP-WORK ORDER (AUG 1989) (Notes 1 and 2 apply.)

FAR 52.243-1 CHANGES - FIXED PRICE (AUG 1987) (Notes 1 and 2 apply. Alternate I applies if this Contract is for services. Alternate II applies if this contract is for supplies and services.)

FAR 52.243-6 CHANGE ORDER ACCOUNTING (APR 1984) (Applies if the Prime Contract requires Change Order Accounting. Note 2 applies.)

FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2020)



FAR 52.245-1 GOVERNMENT PROPERTY (JAN 2017) (ALT I) (APR 2012) (“Contracting Officer” means “EMCORE” except in the definition of Property Administrator and in paragraphs (h)(1)(iii) where it is unchanged, and in paragraphs (c) and (h)(4) where it includes EMCORE. “Government” is unchanged in the phrases “Government property” and “Government furnished property” and where elsewhere used except in paragraph (d)(1) where it means “EMCORE” and except in paragraphs (d)(2) and (g) where the term includes EMCORE. The following is added as paragraph (n) “Seller shall provide to EMCORE immediate notice if the Government or other customers (i) revokes its assumption of loss under any direct contracts with Seller, or (ii) makes a determination that Seller’s property management practices are inadequate, and/or present an undue risk, or that Seller has failed to take corrective action when required.”)

FAR 52.246-2 INSPECTION OF SUPPLIES - FIXED PRICE (AUG 1996) (Note 2 applies. Note 3 applies, except in paragraph (b) the second time “Government” appears; (f), (h), (j), and (l) where Note 1 applies.)

FAR 52.246-4 INSPECTION OF SERVICES - FIXED PRICE (AUG 1996) (Note 3 applies, except in paragraphs (e) and (f) where Note 1 applies.)

FAR 52.246-26 REPORTING OF NONCONFORMING ITEMS (JUN 2020) Applies if this Contract is for the items listed in paragraph (g) of the clause. Copies of reports provided under this clause shall be provided to EMCORE as well as the Contracting Officer. Seller shall notify EMCORE when it issues a GIDEP report pursuant to this clause.

FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003) (Applies if this Contract involves international air transportation.)

FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)

FAR 52.248-1 VALUE ENGINEERING (JUN 2020) (Applies if this Contract exceeds the simplified acquisition threshold, as defined in FAR 2.101 on the date of award of this Contract. Note 1 applies, except in paragraphs (c)(5), where Note 3 applies and except in (b)(3) where Note 4 applies, and where “Government” precedes “cost” throughout. Note 2 applies. In paragraph (m) “Government is unchanged.” Also, “Government” does not mean “EMCORE” in the phrase “Government costs.”)

FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 2012) (Notes 1 and 2 apply. Note 4 applies to the first time “Government” appears in paragraphs (b)(4) and (b)(6), it applies to all of paragraph (b)(8) and it applies to the second time “Government” appears in paragraph (d). In paragraph (n) “Government” means “EMCORE and the Government” . In paragraph (c) “120 days” is changed to “60 days.” In paragraph (d) “15 days” is changed to “30 days,” and “45 days” is changed to “60 days.” In paragraph (e) “1 year” is changed to “6 months.” Paragraph (j) is deleted. In paragraph (l) “90 days” is changed to “45 days.” Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)

FAR 52.249-5 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (AUG 2016) (Applies in lieu of FAR 52.249-2 if this Contract is for research and development Work with an educational or nonprofit institution on a no-profit or no-fee basis. Notes 1 and 2 apply. In paragraph (c) “120 days” is changed to “60 days.” In paragraph (d) “1 year” is changed to “6 months” In paragraph (e) “1 year” is changed to “6 months.” Paragraph (h) is deleted. Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)

FAR 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984) (Notes 1 and 2 apply, except Note 1 is not applicable to paragraph (c). Note 4 applies to the second and third time “Government” appears in paragraph (e). Timely performance is a material element of this Contract.)

**F. PROVISIONS OF THE DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) APPLICABLE TO ORDERS FOR NON-COMMERCIAL ITEMS UNDER A U.S. DEPARTMENT OF DEFENSE PRIME CONTRACT**

To the extent indicated in the Ts&Cs, the following DFARS clauses apply to this Contract:

DFARS 252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES (DEC 2008) (Applies if this Contract exceeds simplified acquisition threshold. The terms “contract,” “contractor,” and “subcontract” shall not change in meaning in paragraphs (a) and (d). Delete paragraph (g). In paragraph (e), the remedies described in subparagraphs (2) and (3) are available to EMCORE not the Government. In paragraph (f), note 5 applies.)

DFARS 252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

DFARS 252.203-7003 AGENCY OFFICE OF THE INSPECTOR GENERAL (AUG 2019) (Applies when FAR 52.203-13 applies to this Contract.)

DFARS 252.203-7004 DISPLAY OF FRAUD HOTLINE POSTER(S) (AUG 2019) (Applies in lieu of FAR 52.203-14. Applies if this Contract exceeds the threshold at DFARS 203.1004(b)(2)(ii)).

DFARS 252.204-7009 LIMITATIONS ON THE USE AND DISCLOSURE OF THIRD PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016) (Applies if this Contract involves services that include support for the Government’s activities related to safeguarding covered defense information and cyber incident reporting.)

DFARS 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2019) (Applies if this Contract is for operationally critical support or for which performance will involve covered defense information. Seller shall furnish EMCORE copies of notices provided to the Contracting Officer at the time such notices are sent. Seller shall also furnish EMCORE copies of any reports Seller receives from its lower tier subcontractors.)

DFARS 252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT (MAY 2016)

DFARS 252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES (DEC 2019) (Copies of reports provided by Seller under this clause will be provided to EMCORE.)

DFARS 252.204-7020 NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS (NOV 2020)

DFARS 252.211-7003 ITEM UNIQUE IDENTIFICATION AND VALUATION (MAR 2016) (Applies if this Contract requires the Work to contain unique item identification.” Items subject to unique item identification are identified elsewhere in this Contract. All reports required to be submitted under this clause shall be submitted to EMCORE. “Government” means “EMCORE” except in the definition of “issuing agency” in paragraph (a).)

DFARS 252.215-7008 ONLY ONE OFFER (JUL 2019) (Applies if this subcontract exceeds the simplified acquisition threshold.)

DFARS 252.215-7010 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND OTHER DATA THAN CERTIFIED COST OR PRICING DATA (JUL 2019) This clause applies in lieu of FAR 52.215-20. Contracting Officer means “EMCORE” Paragraph (b)(ii)(E) is deleted.

DFARS 252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) - BASIC (DEC 2019) (Applies if FAR 52.219-9 applies to this Contract.)

DFARS 252.222-7006 RESTRICTION ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEC 2010) (The certification in paragraph (b)(2) applies to both Seller in its own capacity and to Seller’s covered subcontractors.)

DFARS 252.223-7001 HAZARD WARNING LABELS (DEC 1991) (Applies if this Contract requires the delivery of hazardous materials.)

DFARS 252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM (JUN 2013) (Note 2 applies.)

DFARS 252.223-7999 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 2021-O0009) (OCT 2021) (Available as of the date of this Contract at <https://www.acq.osd.mil/dpap/policy/policyvault/USA001998-21-DPC.pdf>) (Applies if this Contract exceeds the simplified acquisition threshold in effect at the time of award of this Contract and Seller is required to provide services performed in whole or in part within the United States or its outlying areas.)

DFARS 252.225-7001 BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM (DEC 2017) (Applies if the Work contains other than domestic components. Applies in lieu of FAR 52.225-1.)

DFARS 252.225-7007 PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (DEC 2018) Applies if this contract is for an item on the United States Munitions List or the 600 series of the Commerce Control List.)

DFARS 252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (DEC 2019) (Applies if the Work to be furnished contains specialty metals. Paragraph (d) is deleted.)

DFARS 252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2017)

DFARS 252.225-7013 DUTY-FREE ENTRY (APR 2020) (Notes 1 and 2 apply in subparagraph (c). Applies in lieu of FAR 52- 225-8. The prime contract number and identity of the Contracting Officer are contained elsewhere in this contract. If this information is not available, contact EMCORE's authorized representative.)

DFARS 252.225-7016 RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (JUN 2011) (Applies if Work supplied under this Contract contains ball or roller bearings. Note 1 applies to subparagraph (a) (2).)

DFARS 252.225-7021 TRADE AGREEMENTS (SEP 2019) (Applies if the Work contains other than U.S.-made, qualifying country, or designated country end products. Applies in lieu of FAR 52.225-5.)

DFARS 252.225-7033 WAIVER OF UNITED KINGDOM LEVIES (APR 2003) (Applies if this Contract is with a United Kingdom firm. Note 2 applies. Note 1 applies to the second sentence of paragraph (a).)

DFARS 252.225-7043 ANTI-TERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUN 2015) (Applies where Seller will be performing or traveling outside the U.S. under this Contract. For paragraph (c), see applicable information cited in DFARS 225.7401.)

DFARS 252.225-7048 EXPORT-CONTROLLED ITEMS (JUN 2013)

DFARS 252.225-7052 RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS, TANTALIM, AND TUNGSTEN (OCT 2020) (Applies except where an exception in paragraph (c) applies.)

DFARS 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (APR 2019) (Applies if this Contract exceeds \$500,000. Note 2 applies to paragraph (c) the first time "Contracting Officer" appears. In subparagraph (f)(1) "Contractor" shall mean "EMCORE." EMCORE shall have no liability to Seller for any incentive payment under this clause unless and until the Government provides said incentive payment to EMCORE.)

DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA -- NONCOMMERCIAL ITEMS (FEB 2014) (Applies in lieu of FAR 52.227- 14.)

DFARS 252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (FEB 2014) (Applies in lieu of FAR 52.227-14.)

DFARS 252.227-7015 TECHNICAL DATA -- COMMERCIAL ITEMS (FEB 2014) (Applies to commercial items delivered under this Contract)

DFARS 252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2011)

DFARS 252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE (SEP 2016)

DFARS 252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (MAY 2013) (For paragraph (c)(1), Note 3 applies.)

DFARS 252.227-7026 DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988) (Note 1 applies.)

DFARS 252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988) (Note 1 applies to the first sentence.)

DFARS 252.227-7028 TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995) (The definitions for "contract" and "subcontract" shall not apply herein, except for the first reference to contract. Note 4 applies.)

DFARS 252.227-7030 TECHNICAL DATA - WITHHOLDING OF PAYMENT (MAR 2000) (Notes 1 and 2 apply to (a); Note 4 applies to (b).)

DFARS 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 2016)

DFARS 252.227-7038 PATENT RIGHTS - OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (JUN 2012) (Applies if (1) Seller is not small business or nonprofit organization subject to FAR 52.227-11, and (2) the Contract is for experimental, developmental, or research Work.)

DFARS 252.228-7005 MISHAP REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (NOV 2019) (In paragraph (a) note 5 applies. In paragraph (b) note 3 applies.)

DFARS 252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

DFARS 252.232-7017 ACCELERATING PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS - PROHIBITION ON FEES AND CONSIDERATION (APR 2020) (Note 1 applies.)

DFARS 252.235-7003 FREQUENCY AUTHORIZATION - BASIC (MAY 2014) (Applies if this Contract requires developing, producing, constructing, testing, or operating a device requiring a frequency authorization. Note 2 applies.)

DFARS 252.239-7018 SUPPLY CHAIN RISK (FEB 2019)

DFARS 252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991) (Applies if this is a fixed price contract).

DFARS 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS (OCT 2020).

DFARS 252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013) (Applies if this Contract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems,

assemblies, subassemblies, and parts integral to a system. Seller shall provide notifications to EMCORE and the contracting officer.)

DFARS 252.246-7007 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (AUG 2016) (Paragraphs (a) through (e) apply. In paragraph (c)(2) Note 3 applies. In paragraph (c)(6) Note 6 applies.)

DFARS 252.246-7008 SOURCES OF ELECTRONIC PARTS (MAY 2018) (Applies if this contract is for electronic parts or assemblies containing electronic parts, unless Seller is the original manufacturer. Note 1 applies except in paragraph (d). Note 2 applies.)

DFARS 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA - BASIC (FEB 2019) (Applies in lieu of FAR 52.247-64 in all Contracts for ocean transportation of supplies. In the first sentence of paragraph (g), insert a period after "Contractor" and delete the remainder of the sentence. Paragraph (f) and (g) shall not apply if this Contract is at or below the simplified acquisition threshold. Notes 1 and 2 apply to paragraph (g).)

DFARS 252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (JUN 2020) (Applies if this Contract is equal or exceeds the threshold specified in DFARS 249.7003(c)(2)(i) and 249.7003(c)(2)(ii)). Note 2 applies. Delete paragraph (d)(1) and the first five words of paragraph (d)(2).)

## **G. CERTIFICATIONS AND REPRESENTATIONS**

Seller acknowledges that EMCORE will rely upon Seller certifications and representations, including representations as to business size and socio-economic status as applicable, contained in this clause and in any written offer, proposal or quote, or company profile submission, which results in award of a contract to Seller. By entering into such contract, Seller republishes the certifications and representations submitted with its written offer, including company profile information, and oral offers/quotations made at the request of EMCORE, and Seller makes those certifications and representations set forth below. Seller shall immediately notify EMCORE of any change of status regarding any certification or representation.

FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to solicitations and contracts the threshold specified in FAR 3.808 on the date of subcontract award)

1. Definitions. As used in this provision-- "Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).
2. Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.
3. Certification. Seller hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.
4. Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, Seller shall complete and submit, with its offer, to EMCORE OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Seller need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

5. Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

1. Seller certifies, to the best of its knowledge and belief, that Seller and/or any of its Principals—
  - a. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
  - b. Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
  - c. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph 1.b of this provision; and
  - d. Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at 9.104-5(a)(2) for which the liability remains unsatisfied.
2. Federal taxes are considered delinquent if both of the following criteria apply: (i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted. (ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
3. For purposes of the certification at paragraph 1 above, “Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment; and similar positions).
4. Seller certifies, to the best of its knowledge and belief, that Seller has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
5. Seller shall provide immediate written notice to EMCORE if, at any time prior to contract award, Seller learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
6. The certification in paragraph 1 above is a material representation of fact upon which reliance was placed when making award. If it is later determined that Seller knowingly rendered an erroneous certification, in addition to other remedies available, EMCORE may terminate this contract for default.

FAR 52.222-22 Previous Contracts and Compliance Reports

1. Seller represents that if Seller has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26):
  - a. Seller has filed all required compliance reports and
  - b. that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.
2. Paragraph 1 applies only to the extent (1) Seller performs Work in the United States, or (2) recruits employees in the United States to Work on this Contract.

#### FAR 52.222-25 Affirmative Action Compliance

1. Seller represents: (1) that Seller has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, Seller will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.
2. Paragraph 1 applies only to the extent (1) Seller performs Work in the United States, or (2) recruits employees in the United States to Work on this Contract.

#### FAR 52.204-24 / 52.204-25 Representations Regarding Certain Telecommunications and Video Surveillance Services or Equipment

1. Seller represents that it will not provide “covered telecommunications equipment or services” to EMCORE in the performance of this Contract.
2. Seller represents that it does not use “covered telecommunications equipment or services,” or use any equipment, system, or service that uses “covered telecommunications equipment or services.”
3. “Covered telecommunications equipment or services” has the meaning provided in FAR Clause 52.204-25 (AUG 2020).
4. If, at any time in the future, Seller identifies any breach of either of the above representations in connection with this Contract, or Seller is notified of such by a lower-tier subcontractor at any tier or by any other source, Seller shall have the following reporting obligations to EMCORE, in addition to any other applicable reporting obligations:
  - (i) Immediately upon such identification by, or notification to, Seller, Seller shall report to EMCORE: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier 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.
  - (ii) Within 5 business days of such identification by, or notification to, Seller, Seller shall report to EMCORE: Any further available information about mitigation actions undertaken or recommended. In addition, Seller 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.
5. Seller shall obtain substantially similar representations from all vendors/suppliers of Seller in support of the Contract, and shall also require those vendors/suppliers to obtain substantially similar representations from all of their vendors/suppliers at all tiers.

