



Section D7: Terms and Conditions for Subcontracts Issued in support of United States Postal Service Next Generation Delivery Vehicle, Contract No. 3DVPRT-21-B-0002.

Issued: **15 March 2021**

This subcontract or Purchase Order (Purchase Order) is issued by Buyer to Supplier in support of a prime contract with the United States Postal Service (USPS) and is subject to certain clauses contained in the USPS Next Generation Delivery Vehicle (NGDV) Contract No. 3DVPRT-21-B-0002 (the Prime Contract).

The below terms and conditions are incorporated in their entirety into any Purchase Order designated with notes identifying that it is issued in support of the USPS NGDV Contract. The referencing and reproduction, in this section of the Supplier Standards Guide, of the applicable USPS clauses and requirements shall conclusively establish their applicability, as well as their incorporation into the Purchase Order, with the same force and effect as though set forth in the Purchase Order itself. In the event of a conflict between this Section D7 and Supplier Standards Guide's Section D – Oshkosh Corporation Commercial Terms and Conditions, Section D7 shall prevail to the extent of any inconsistency.

I. USPS Definitions

A. *Definitions.* For purposes of this Purchase Order, the following clauses shall operate, impose the obligations and responsibilities of the parties and be interpreted as if:

- i. "Changes clause" means Section 5 (Changes) of Supplier Standards Guide's Section D – Oshkosh Corporation Commercial Terms and Conditions;
- ii. "Contract" means this "Purchase Order";
- iii. "Contracting Officer" means an authorized representative of Buyer's purchasing department;
- iv. "Supplier" or "Contractor" means "Supplier";
- v. "Disputes clause" means the Disputes clause in this Section D7;
- vi. "Postal Service" or "Government" means "Buyer";
- vii. "Offeror" means "Supplier";
- viii. "Prime Contract" shall mean Buyer's contract with the USPS;
- ix. "Subcontractor" shall mean Supplier's lower-tier subcontractors and Suppliers;
- x. "Supplies" and "Services" shall mean the Products furnished under this Purchase Order; and
- xi. "Termination for Default clause" means paragraph (b) of Section 23 (Termination) of Supplier Standards Guide's Section D – Oshkosh Corporation Commercial Terms and Conditions

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B. *Flowdown Requirement.* Supplier shall include these USPS Terms and Conditions in each lower tier subcontract it issues, as applicable.

II. USPS Terms and Conditions

A. DOMESTIC CONTENT

With each shipment, Supplier shall provide Buyer with a certification demonstrating the country of origin for each Product that Supplier provides to Buyer under this Purchase Order.

B. SUBCONTRACTS

No lower-tier subcontract or purchase order issued in support of this Purchase Order may provide for payment on a cost-plus-a-percentage-of-cost basis.

C. DISPUTES

- (a) Any dispute or claim arising or relating to this Purchase Order which is not settled by agreement between the parties shall, to the extent it involves a claim that is cognizable under the Claims and Disputes Clause of the Prime Contract, be presented by Buyer for decision by the USPS Contracting Officer. In the event Supplier is not satisfied with the Contracting Officer's decision, Buyer will appeal the Contracting Officer's decision as provided under the Claims and Disputes Clause of the Prime Contract. Supplier shall submit a certification to Buyer for claims exceeding \$100,000 in the form required by USPS clause B-9, Claims and Disputes (March 2006).
- (b) In presenting Supplier's claim for decision by the Contracting Officer or appealing from the final decision of the Contracting Officer:
- i. Buyer shall proceed to present the claim or to appeal from the decision, as the case may be, on behalf of Supplier in the manner prescribed in the Prime Contract, provided Buyer believes the claim to be made by Supplier in good faith;
 - ii. Buyer shall provide reasonable assistance to Supplier to present Supplier's claim or the appeal from the decision of the Contracting Officer;
 - iii. Buyer shall allow its name to be used in presenting the claim to the Contracting Officer and in any appeal from the final decision of the Contracting Officer; and
 - iv. Supplier shall be responsible for all costs incurred by both parties in the claim proceedings.
- (c) Disposition of a claim under the procedure provided in the Prime Contract shall be final and conclusive between the parties. Pending final disposition of any claim decided by the Contracting Officer and any appeal from the Contracting Officer's final decision, Supplier shall proceed diligently with performance of this Purchase Order in the manner directed by Buyer.
- (d) If and to the extent that any dispute or claim arising under or relating to this Purchase Order which is not settled by agreement between the parties does not involve a claim that is cognizable under the Claims and Disputes Clause of the Prime Contract, as part of the consideration for the execution hereof by Supplier, it is hereby agreed that any dispute between Supplier and Buyer involving the subject matter of this Purchase Order that is not resolved through good faith negotiations of the parties shall be litigated only in the state or federal courts located within the State of the United States of America in which Buyer is headquartered on the date of this Purchase Order, and Supplier and Buyer

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consent to the exclusive jurisdiction of any such court(s). Supplier acknowledges that Oshkosh Corporation, Oshkosh Defense, LLC and Pierce Manufacturing are headquartered in the State of Wisconsin, U.S.A., the McNeilus companies are headquartered in the State of Minnesota, U.S.A., and JLG Industries is headquartered in the Commonwealth of Pennsylvania, U.S.A. Supplier additionally waives personal service of process, and further consents that such service of process may be made by certified or registered mail, return receipt requested, directed to Supplier at its address stated in this Purchase Order. If Supplier is headquartered or incorporated outside the United States of America, Supplier waives any and all service requirements under the Hague Convention (20 U.S.T. 361), and hereby agrees to accept service of process through any of its offices, representatives, subsidiaries, affiliates or agents located in the United States of America. If no such office, entity or person is located within the United States of America, Supplier shall appoint an agent for service of process within the United States of America.

D. Certificate of Conformance

Certificate of Conformance. Supplier shall include with each shipment of Products a Certificate of Conformance as follows and Buyer will not accept shipments of Products that do not contain a properly executed Certificate of Conformance:

I certify that on *[insert date]*, the *[insert Supplier's name]* furnished the supplies or services called for by Purchase Order No. *[insert Purchase Order number]* via *[insert Carrier]* on *[identify the bill of lading or shipping document]* in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, preservation, packaging, packing, marking requirements and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document.

Date of Execution: _____
Signature: _____
Title: _____

E. GRATUITIES OR GIFTS

(a) Buyer may terminate this Purchase Order for default if Buyer has a reasonable belief that the supplier or the supplier's agent or other representative:

- i. Offered or gave a gratuity or gift (as defined in 5 CFR 2635) to an officer or employee of the USPS; and
- ii. Intended by the gratuity or gift to obtain a contract or favorable treatment under a contract.

(b) The rights and remedies of Buyer provided in this clause are in addition to any other rights and remedies provided by law or under this Purchase Order.

F. CHANGES

(a) Buyer may, in writing, without notice to any sureties, order changes within the general scope of this contract in the following:

- i. Drawings, designs, or specifications when supplies to be furnished are to be specially manufactured for Buyer in accordance with them;

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- ii. Statement of work or description of services;
- iii. Method of shipment or packing;
- iv. Places of delivery of supplies or performance of services;
- v. Delivery or performance schedule;
- vi Buyer or USPS furnished property or facilities.

(b) Any other written or oral order (including direction, instruction, interpretation, or determination) from an authorized representative of Buyer's Purchasing Department that causes a change will be treated as a change order under this paragraph, provided that Supplier gives Buyer written notice stating (a) the date, circumstances, and source of the order and (b) that Supplier regards the order as a change order.

(c) If any such change increases or decreases the cost of performance or the delivery schedule, the Purchase Order will be modified to effect an equitable adjustment. For changes required by a change in the Prime Contract or other action or inaction by USPS, the Purchase Order will only be modified to effect an equitable adjustment to the extent such relief is granted under the Prime Contract.

(d) The supplier's request for equitable adjustment must be asserted within 15 days of receiving a change order. A later request may be acted upon - but not after final payment under this contract - if Buyer decides that the facts justify such action.

(e) Failure to agree to any adjustment is a dispute under the Disputes clause of this Purchase Order. Nothing in that clause excuses Supplier from proceeding with the Purchase Order as changed.

G. PATENT INDEMNITY

Supplier will indemnify Buyer and the USPS, and their officers employees and agents against liability, including costs for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright, or for any actual or alleged misappropriation or misuse of any trade secret known to Supplier to be a trade secret or confidential information known to Supplier to be confidential information, arising out of Supplier's performance of this Purchase Order, provided Supplier is reasonably notified of such claims and proceedings.

H. TERMINATION FOR CONVENIENCE

In the event the Prime Contract is changed or terminated, in whole or in part, Buyer reserves the right to terminate this Purchase Order, or any part hereof, for its sole convenience. In the event of such termination, Supplier must immediately stop all work and must immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Purchase Order, Supplier will be paid a percentage of the Purchase Order price, reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges Supplier can demonstrate to the satisfaction of Buyer using its standard record keeping system, have resulted from the termination. Supplier will not be paid for any work performed or costs incurred which reasonable could have been avoided. Supplier must submit to Buyer a termination settlement proposal within 90 days after the effective date of termination, unless the parties mutually agree to a different time limit. If Supplier fails to submit a termination settlement proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due to the supplier by reason of the termination and pay that amount. If Supplier's proposal exceeds \$100,000, Buyer may request that it be certified. If Supplier and Buyer fail to agree on the whole amount to be paid because of the termination of work, Buyer will pay

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Supplier the amounts determined by Buyer. Supplier will have the right to submit a claim under the Disputes clause of this Purchase Order from any determination made by Buyer as to amount due because of the termination made under this paragraph, except that if Supplier failed to submit the termination settlement proposal within 90 days, Supplier will be deemed to have waived its right to submit a claim for termination costs. All other terminations for convenience shall be subject to paragraph (a) of Section 23 of and Supplier Standards Guide's Section D – Oshkosh Corporation Commercial Terms and Conditions.

I. TERMINATION FOR CAUSE

In addition to the causes set forth in paragraph (b) of Section 23 of and Supplier Standards Guide's Section D – Oshkosh Corporation Commercial Terms and Conditions, the debarment, suspension, or ineligibility of Supplier, its partners, officers, or principal owners under the Postal Service's procedures (see 39 CFR Part 601) may constitute an act of default under this Purchase Order, and such act will not be subject to notice and cure pursuant to any termination for cause provision of this Purchase Order. If it is determined that Buyer improperly terminated this contract for cause, such termination will be deemed a termination for convenience.

J. UNAUTHORIZED OBLIGATIONS

(a) Except as stated in paragraph (2) of this clause, when any supply or service acquired under this Purchase Order is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring USPS to indemnify Supplier or any person or entity for damages, costs, fees, or any other loss or liability, the following shall govern:

i. Any such clause is unenforceable against USPS.

ii. Neither USPS nor any USPS authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the USPS or any USPS authorized end user to such clause.

iii. Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (1) of this clause does not apply to indemnification by USPS that is expressly authorized by statute and specifically authorized under applicable regulations and procedures.

K. EXAMINATION OF RECORDS

(a) Records - "Records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b). Examination of Costs - If this is a cost-type contract, Supplier must maintain, and Buyer and USPS will have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Purchase Order. This right of examination includes inspection at all reasonable times of Supplier's plants, or parts of them, engaged in the performance of this Purchase Order.

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(c). Cost or Pricing Data - If Supplier is required to submit cost or pricing data in connection with any pricing action relating to this Purchase Order, to Buyer and USPS, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, will have the right to examine and audit all of Supplier's records, including computations and projections, related to:

- i. The proposal for the Purchase Order or modification;
- ii. The discussions conducted on the proposal(s), including those related to negotiating;
- iii. Pricing of the Purchase Order or modification; or
- (a) Performance of the Purchase Order or modification.

(d) Reports - If Supplier is required to furnish cost, funding or performance reports, the contracting officer or any authorized representative of Buyer and USPS will have the right to examine and audit the supporting records and materials, for the purposes of evaluating:

- i. The effectiveness of Supplier's policies and procedures to produce data compatible with the objectives of these reports; and
- ii. The data reported.

(e) Availability - Supplier must maintain and make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs a. through d. of this clause, for examination, audit, or reproduction, until 3 years after final payment under the Prime Contract or any longer period required by statute or other clauses in this Purchase Order. In addition:

- i. If the Prime Contract is completely or partially terminated, Supplier must make available the records related to the work terminated until 3 years after any resulting final termination settlement; and
- ii. Supplier must make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or related to this Purchase Order. Such records must be made available until such appeals, litigation or claims are finally resolved.

L. EQUAL OPPORTUNITY PREAWARD COMPLIANCE OF SUBCONTRACTS

If the Purchase Order has an estimated or actual amount of \$10 million or more, prior to the award of the Purchase Order, Buyer must obtain in writing from the contracting officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore eligible for award.

III. USPS CLAUSES IN FULL TEXT

CLAUSE B-25: ADVERTISING OF CONTRACT AWARDS (FEBRUARY 2013)

Except with the contracting officer's prior approval, the supplier agrees not to refer in its public statements or commercial advertising to the fact that it was awarded a Postal Service contract or to imply in any manner that the Postal Service endorses its products.

CLAUSE 2-15: SPECIAL TOOLING (MARCH 2006)

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a. Definition:

1. Special tooling means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements so specialized that, without substantial modification or alteration, their use is limited to developing or producing particular supplies or performing particular services. The term includes all components of such items, but does not include:

(a) Consumable property;

(b) Special test equipment; or

(c) Buildings, non-severable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

2. For the purposes of this clause, special tooling does not include:

(a) Items acquired by the supplier before the effective date of this contract, or replacements of such items, whether or not altered or adapted for use in the performance of this contract; or

(b) Items specifically excluded by the Schedule.

b. Use of Special Tooling. The supplier agrees not to use any items of special tooling purchased or manufactured by the supplier for the performance of this contract except in performing it, or as approved by the contracting officer.

c. List of Special Tooling. Within 60 days after delivery of the first production end items under this contract, or such later date as the contracting officer may prescribe, the supplier must (if the contracting officer so requests) furnish the contracting officer a list of all special tooling acquired or manufactured by the supplier for use in the performance of this contract. The list shall specify the nomenclature, tool number, and related product part number or service, and unit or group cost of the special tooling. Upon completion or termination of all or a substantial part of the work under this contract, the supplier must furnish a final list in the same form covering all items not previously reported under this paragraph c.; provided, however, that the contracting officer may, by written notice, waive this requirement or extend it until the completion of this contract and other contracts and subcontracts for which approval has been obtained under paragraph b. above. Special tooling that has become obsolete as a result of changes in design or specification need not be reported, except as provided for in paragraph d below.

d. Changes in Design. If any changes in design or specifications affect interchangeability of parts, the supplier will, unless otherwise agreed to by the contracting officer, give the contracting officer notice of any part that is not interchangeable with the new or superseding part; and the usable special tooling for each part covered in this notice will be retained by the supplier, subject to the provisions of paragraph i. below, pending disposition under paragraph f. below.

e. Supplier's Offer to Retain Special Tooling. When the supplier furnishes a list or notice under paragraph c. or d. above, the supplier may designate the items of special tooling (either specifically or by listing the particular products, parts, or services for which they were used or designed) the supplier desires to retain, together with a written offer to retain them:

1. Free and clear of any Postal Service interest, for an amount designated in the offer that should ordinarily not be less than the fair value of the items, which fair value takes into account, among other things, their value to the supplier for use in further work; or

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2. For a period of time and under terms and conditions agreed to by the parties, subject to ultimate retention or disposition of these items in accordance with paragraph f. below.

f. Disposition of Special Tooling

1. Within 90 days after receipt of any list or notice under paragraph c. or d. above, or such further period as may be agreed upon by the parties, the contracting officer will furnish to the supplier:

(a) A list specifying the particular products, parts, or services for which the Postal Service may require special tooling, together with a request that the supplier transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Postal Service all usable items of special tooling used or designed for the manufacture or performance of any designated portion of those products, parts, or services and on hand when production of the products or parts, or performance of the services, ceased;

(b) An acceptance or rejection of any offer made by the supplier under paragraph e above, or a request for further negotiation with respect to it;

(c) A direction to the supplier to sell, or to dispose of as scrap, for the account of the Postal Service, any or all of the special tooling covered by the list;

(d) A statement with respect to any or all of the special tooling covered by the list specifying that the Postal Service has no further interest in it and waives its rights in it; or

(e) Any combination of the foregoing, as the circumstances warrant.

2. The supplier will promptly comply with any request by the contracting officer under subparagraph f.1 preceding to transfer title to any items of special tooling, and will:

(a) Immediately prepare them for shipment by proper packaging, packing, and marking, in accordance with any instruction issued by the contracting officer, promptly delivering them to the Postal Service as directed by the contracting officer; or

(b) If a storage agreement has been entered into, prepare them for storage in accordance with that agreement, as directed by the contracting officer.

3. To the extent that compliance with direction to ship or store under subparagraph f.2 preceding may occasion cost to the supplier for which the supplier will not otherwise be compensated, the contract price will be equitably adjusted in accordance with the Changes clause. Any items of special tooling delivered or stored must be accompanied by any operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed.

4. If the contracting officer has requested further negotiations under f.1(b) above, the supplier agrees to enter into them in good faith with the contracting officer. Any items of special tooling not disposed of by transfer of title and delivery to the Postal Service, or by acceptance of an offer of the supplier made under paragraph e above, or of such offer as modified in the course of negotiations, must be disposed of in the manner set forth in f.1(c) or (d) above. Any failure of the contracting officer to give the required direction within the specified period will be construed as a direction pursuant to f.1(c) above.

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g. Proceeds of Retention or Disposition of Special Tooling. If the contracting officer accepts an offer of the supplier to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds will be:

1. Deducted from the amounts due to the supplier under this contract and the contract amended accordingly; or
2. Otherwise paid as the contracting officer may direct.

h. Property Control. The supplier agrees to follow normal industrial practice in maintaining property-control records on special tooling and to make them available for inspection by the Postal Service at all reasonable times. The supplier further agrees that, to the extent practicable, the supplier will identify by appropriate stamp, tag, or other mark all special tooling subject to this clause.

i. Maintenance Pending Disposition. The supplier agrees that, between the date any usable items of special tooling are no longer needed by the supplier, within the meaning of this clause, and the date of their final disposition under this clause, the supplier will take all reasonable steps necessary to maintain their identity and existing condition, unless the contracting officer has directed that they be disposed of as scrap or has given notice under f.1(d) above. The supplier shall not be required to keep any such items in place.

j. Special Tooling Provisions for Subcontracts. The supplier agrees, in placing any subcontracts or purchase orders under this contract that involve the use of special tooling whose full cost is charged to the subcontract or purchase order, to include therein appropriate provisions to obtain rights comparable to those granted to the Postal Service by this clause, unless the contracting officer determines, upon the supplier's request, that with respect to any subcontract, purchase order, or class thereof, such rights are not of substantial interest to the Postal Service. The supplier further agrees to exercise any rights for the benefit of the Postal Service as the contracting officer may direct.

CLAUSE 4-4: NONDISCLOSURE (MARCH 2006) (MODIFIED) (references in this clause to “Postal Service” shall mean USPS)

The supplier acknowledges that confidential information might be generated or made available during the course of performance of this agreement. In addition to the restrictions on disclosure established under the supplier's code of ethics, the supplier specifically agrees not to disclose any information received or generated under this contract, unless its release is approved in writing by the contracting officer. The supplier further agrees to assert any privilege allowed by law and to defend vigorously Postal Service rights to confidentiality.

CLAUSE 4-13: SOFTWARE LICENSE WARRANTY AND INDEMNIFICATION (MARCH 2006) (MODIFIED) (references in this clause to “Postal Service” shall mean USPS and Buyer)

a. The supplier warrants that it has full power and authority to grant the rights contained in this contract with respect to the software without the consent of any other person. Neither the performance of the services by the supplier nor the license to and use by the Postal Service of the software and documentation (including copying) will in any way constitute an infringement or other violation of any copyright, trade secret known to the supplier to be a trade secret, trademark, patent, invention, or other rights of any third party known to the supplier.

b. The supplier indemnifies and holds harmless (including reasonable attorney's fees) the Postal Service and its employees or agents against all liability to third parties arising from supplier's breach of Clause 4-13(a) resulting in a violation of any third party's trade secrets known to the supplier to be a

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trade secret, trademark, copyright, or patent rights in connection with the licensing of the software. The Postal Service may, at this option and expense, conduct the defense in any third-party action, and the supplier promises fully to cooperate with this defense. This indemnification is limited to the software delivered to the Postal Service or as modified by the supplier, and does not cover third-party claims arising from modifications by the Postal Service not authorized by the supplier.

- c. If a third-party claim causes the Postal Service's quiet enjoyment and use of the software to be seriously endangered or disrupted, the supplier must either:
1. Replace the software, without additional charge, by a compatible, functionally equivalent, and non-infringing product;
 2. Modify the software to avoid the infringement;
 3. Obtain a license for the Postal Service to continue use of the software for the term of this contract, and pay for any additional fee required for the license; or
 4. If none of these alternatives is possible even after the supplier's best efforts, return a pro rata portion of the license, or 10 years, whichever is less.

CLAUSE 8-8: ADDITIONAL DATA REQUIREMENTS (MARCH 2006) (MODIFIED)

- a. In addition to the data specified elsewhere in this contract to be delivered, the contracting officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first generated or produced under this contract.
- b. Clause 8-6: Rights in Technical Data and the Rights in Computer Software clause, or other equivalent data clauses if included in this contract, apply to all data ordered under this Additional Data Requirements clause. Nothing in this clause requires the supplier to deliver any data specifically identified in this contract as not subject to this clause.
- c. When data are to be delivered under this clause, the supplier will be compensated for converting the data into the prescribed form for reproduction and delivery.
- d. The contracting officer may release the supplier from the requirements of this clause for specifically identified data items at any time during the three-year period set forth in paragraph a. above.

CLAUSE 8-11: RIGHTS IN DATA - EXISTING WORKS (MARCH 2006) (MODIFIED) (*references in this clause to "Postal Service" shall mean Postal Service and Buyer*)

- a. Except as otherwise provided in this contract, the supplier grants to the Postal Service, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, and perform and display publicly all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.
- b. The supplier indemnifies the Postal Service, its employees, and its agents against any liability, including costs and fees, incurred as the result of the violation of trade secrets known by supplier to be trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. This paragraph b. does not apply unless the Postal Service notifies the supplier as soon as practicable of any claim or suit, affords the supplier an opportunity under applicable laws or regulations to participate in the defense of it, and obtains the supplier's consent to its settlement (which consent

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may not be unreasonably withheld). These provisions do not apply to material furnished to the supplier by the Postal Service and incorporated in data to which this clause applies.

CLAUSE 8-16: POSTAL SERVICE TITLE IN TECHNICAL DATA AND COMPUTER SOFTWARE (MARCH 2006) (MODIFIED) (references in this clause to the "Postal Service" shall mean USPS, except that references in paragraph (c) of this clause to the "Postal Service" shall mean USPS and Buyer)

a. Definitions:

1. Data. Data means technical data including drawings, technical reports, studies, and similar documents; computer software and computer software documentation, including but not limited to source code, object code, algorithms, formulas, and, other data that describe design, function, operation, or capabilities, and other recorded information, regardless of the form or the medium on which it may be recorded. It does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
2. Form, Fit, and Function Data. Data relating to an item or process that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.
3. Limited Rights Data. Data other than computer software developed at private expense, including minor modifications of these data.
4. Technical Data. Data other than computer software, of a scientific or technical nature.
5. Restricted Computer Software. Computer software developed at private expense that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software, including minor modifications of this computer software.
6. Restricted Rights. The rights of the Postal Service in restricted computer software, as set forth in a Restricted Rights Notice as provided in paragraph h. below, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.
7. Unlimited Rights. The rights of the Postal Service in technical data and computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.

b. Rights:

1. The Postal Service has title to all data first produced under this contract developed at Postal Service Expense. Accordingly, the supplier assigns all rights, title, and interest to the Postal Service in all data first produced under this contract developed at Postal Service Expense. The Postal Service hereby grants all rights necessary or useful to all data assigned to the Postal Service under this paragraph to the supplier and its subcontractors on a royalty-free basis to enable their performance under this contract. The Postal Service agrees to grant back to the supplier, for use outside of this contract, a nonexclusive license to all data assigned to the Postal Service under this paragraph subject to a cumulative royalty of five percent of net revenue associated with the data license. The parties shall negotiate in good faith the terms of any license agreement consistent with

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this provision. In no event shall the cumulative royalty under Clauses 8-1 and 8-16 exceed five percent in total of net revenue associated with the licenses. The supplier, unless directed otherwise by the contracting officer, must place on all such data delivered in accordance with this paragraph the following notice:

"This data is the confidential property of the U.S. Postal Service and may not be used, released, reproduced, distributed or published without the express written permission of the U.S. Postal Service."

2. The supplier grants to the Postal Service a royalty-free, nonexclusive, irrevocable license throughout the world to publish, translate, deliver, perform, use, and dispose of in any manner any portion of data that is not first produced in the performance of this contract but in which copyright is exclusively owned by the supplier and that is incorporated in the data furnished under this contract, and to authorize others to do so for Postal Service purposes.

3. Unless the contracting officer's written approval is obtained, the supplier may not include in any data prepared for or delivered to the Postal Service under this contract any data which is not owned by the supplier or the Postal Service without acquiring for the Postal Service any right necessary to perfect a license of the scope set forth in subparagraph b.1.

c. Indemnity. The supplier indemnifies the Postal Service (and its officers, agents, and employees acting for the Postal Service) against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, in accordance with Clause 4-1(h), or (2) based upon any libelous or other unlawful matter contained in these works. This provision does not apply to material furnished by the Postal Service and incorporated in the works to which this clause applies.

d. Additional Rights in Technical Data

1. Except as provided in paragraph b., the Postal Service has unlimited rights in:

(a) Form fit, and function data, including such data developed at private expense, delivered under this contract, and

(b) Technical data delivered under this contract that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract.

2. Copyright:

(a) The contracting officer may direct the supplier to establish, or authorize the establishment of, claim to copyright in the technical data and to assign, or obtain the written assignment of, the copyright to the Postal Service or its designated assignee.

(b) Except as otherwise set forth in this contract, the supplier may not, without prior written permission of the contracting officer, incorporate in technical data delivered under this contract any data not first produced under this contract containing the copyright notice of 17 U.S.C. § 401 or 402, unless the supplier identifies the data and grants to the Postal Service, or acquires on its behalf at no cost to the Postal Service, a paid-up, nonexclusive, irrevocable worldwide license in such copyright data to reproduce, prepare derivative works, distribute copies to the public, and perform and display the data publicly.

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(c) The Postal Service agrees not to remove any copyright notices placed on data pursuant to this paragraph d., and to include such notices on all reproductions of the data.

e. Release, Publication, and Use of Technical Data and Computer Software:

1. Except as otherwise set forth in this contract, unless prior written permission is obtained from the contracting officer or to the extent expressly set forth in this contract, the supplier will not use, release to others, reproduce, distribute, or publish any technical data or computer software first produced by the supplier in the performance of the contract.

2. The supplier agrees that if it receives or is given access to data or software necessary for the performance of this contract that contain restrictive markings, the supplier will treat the data or software in accordance with the markings unless otherwise specifically authorized in writing by the contracting officer.

f. Unauthorized Marking of Data or Computer Software

1. If any technical data or computer software delivered under this contract are marked with the notice specified in paragraph h. and the use of such a notice is not authorized by this clause, or if the data or computer software bear any other unauthorized restrictive markings, the contracting officer may at any time either return the data or software or cancel the markings. The contracting officer must afford the supplier at least 30 days to provide a written justification to substantiate the propriety of the markings. Failure of the supplier to timely respond, or to provide written justification, may result in the cancellation of the markings. The contracting officer must consider any written justification by the supplier and notify the supplier if the markings are determined to be authorized.

2. The foregoing procedures may be modified in accordance with Postal Service regulations implementing the Freedom of Information Act (5 U.S.C. § 552) if necessary to respond to a request thereunder. In addition, the supplier is not precluded from bringing a claim in connection with any dispute that may arise as the result of the Postal Service's action to remove any markings on data or computer software, unless this action occurs as the result of a final disposition of the matter by a court of competent jurisdiction.

g. Omitted or Incorrect Markings:

1. Technical data or computer software delivered to the Postal Service without the limited rights notice or restricted notice authorized by paragraph h., or the data rights notice required by paragraph b., will be deemed to have been furnished with unlimited rights, and the Postal Service assumes no liability for the disclosure, use, or reproduction of such data or computer software. However, to the extent the data or software have not been disclosed outside the Postal Service, the supplier may request, within six months (or a longer time approved by the contracting officer) after delivery of the data or software, permission to have notices placed on qualifying technical data or computer software at the supplier's expense, and the contracting officer may agree to do so if the supplier:

(a) Identifies the technical data or computer software to which the omitted notice is to be applied;

(b) Demonstrates that the omission of the notice was inadvertent;

(c) Establishes that the use of the proposed notice is authorized; and

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(d) Acknowledges that the Postal Service has no liability with respect to the disclosure, use, or reproduction of any such data or software made before the addition of the notice or resulting from the omission of the notice.

2. The contracting officer may also:

(a) permit correction of incorrect notices, at the supplier's expense, if the supplier identifies the technical data or computer software on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or

(b) correct any incorrect notices.

h. Protection of Rights

1. Protection of Limited Rights Data. When technical data other than data listed in paragraph d., above, are specified to be delivered under this contract and qualify as limited rights data, if the supplier desires to continue protection of such data, the supplier must affix the following "Limited Rights Notice" to the data, and the Postal Service will thereafter treat the data, subject to paragraphs f. and g. above, in accordance with the Notice:

"LIMITED RIGHTS NOTICE

These technical data are submitted with limited rights under Postal Service Contract No. [] (and subcontract [], if appropriate). These data may be reproduced and used by the Postal Service with the express limitation that they will not, without written permission of the supplier, be used for purposes of manufacture or disclosed outside the Postal Service; except that the Postal Service may disclose these data outside the Postal Service for the following purposes, provided that the Postal Service makes such disclosure subject to prohibition against further use and disclosure:

1. Use (except for manufacture) by support service suppliers.
2. Evaluation by Postal Service evaluators.
3. Use (except for manufacture) by other suppliers participating in the Postal Service's program of which the specific contract is a part, for information and in connection with the work performed under each contract.
4. Emergency repair or overhaul work.

This Notice must be marked on any reproduction of these data, in whole or in part."

2. Protection of Restricted Computer Software:

(a) When computer software is specified to be delivered under this contract and qualifies as restricted computer software, if the supplier desires to continue protection of such computer software, the supplier must affix the following "Restricted Rights Notice" to the computer software, and the Postal Service will thereafter treat the computer software, subject to paragraphs f. and g. above, in accordance with the Notice:

"RESTRICTED RIGHTS NOTICE

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a. This computer software is submitted with restricted rights under Postal Service Contract No. [] (and subcontract [], if appropriate). It may not be used, reproduced, or disclosed by the Postal Service except as provided below or as otherwise stated in the contract.

b. This computer software may be:

1. Used or copied for use in or with the computer or computers for which it was acquired, including use at any Postal Service installation to which the computer or computers may be transferred;
2. Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
3. Reproduced for safekeeping (archives) or backup purposes;
4. Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights;
5. Disclosed to and reproduced for use by support service suppliers in accordance with 1 through 4 above, provided the Postal Service makes such disclosure or reproduction subject to these restricted rights; and
6. Used or copied for use in or transferred to a replacement computer.

c. Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Postal Service, without disclosure prohibitions, with the minimum rights set forth in the preceding paragraph.

d. Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

e. This Notice must be marked on any reproduction of this computer software, in whole or in part."

(b) When it is impracticable to include the above Notice on restricted computer software, the following short-form Notice may be used instead, on condition that the Postal Service's rights with respect to such computer software will be as specified in the above Notice unless otherwise expressly stated in the contract.

"RESTRICTED RIGHTS NOTICE (SHORT FORM)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. [] (and subcontract [], if appropriate) with [] ."

i. Subcontracting. The supplier has the responsibility to obtain from its subcontractors all computer software and technical data and the rights therein necessary to fulfill the supplier's obligations under this contract. If a subcontractor refuses to accept terms affording the Postal Service such rights, the supplier must promptly bring such refusal to the attention of the contracting officer and may not proceed with subcontract award without further authorization.

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j. Standard Commercial License or Lease Agreements. The supplier unconditionally accepts the terms and conditions of this clause unless expressly provided otherwise in this contract or in a collateral agreement incorporated in and made part of this contract. Thus the supplier agrees that, notwithstanding any provisions to the contrary contained in the supplier's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such agreement has been proposed before or after issuance of this contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the Postal Service has the rights set forth in this clause to use, duplicate, or disclose any restricted computer software delivered under this contract.

k. Relationship to Patents. Nothing contained in this clause implies a license to the Postal Service under any patent or may be construed as affecting the scope of any license or other right otherwise granted to the Postal Service.

CLAUSE 9-14: EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS (JUNE 2020)
(applicable to Purchase Orders of \$150,000 or more)

a. The supplier must comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

b. The supplier and subcontractor must abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime suppliers and subcontractors to employ and advance in employment qualified protected veterans.

c. Subcontracts. The supplier will insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The supplier will act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as appropriate to identify properly the parties and their undertakings.

CLAUSE 9-16: EMPLOYER REPORTS ON EMPLOYMENT OF PROTECTED VETERANS (JUNE 2020)
(applicable to Purchase Orders of \$150,000 or more)

a. Definitions. As used in this clause, "Armed Forces service medal veteran," "disabled veteran," "active duty wartime or campaign badge veteran," and "recently separated veteran" have the meaning given them in 41 CFR 61-300.2.

b. Unless the supplier is a state or local government agency, the supplier must report at least annually, as required by the Secretary of Labor, on-

1. The total number of employees in the supplier's workforce, by job category and hiring location, who are protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

2. The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

3. The maximum number and minimum number of employees of the supplier or subcontractor at each hiring location during the period covered by the report.

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- c. The supplier must report the above items by completing the Form VETS-4212, entitled "Federal Contractor Veterans' Employment Report VETS--4212" at <http://www.dol.gov/vets/vets4212.htm>.
- d. VETS-4212 Reports must be filed no later than September 30 of each year following a calendar year in which a supplier or subcontractor held a covered contract or subcontract. Upon the request of the contracting officer, the supplier must provide proof of reporting.
- e. The employment activity report required by paragraphs b.(2) and b.(3) of this clause must reflect total new hires and maximum and minimum number of employees during the 12-month period preceding the ending date selected for the report. Supplier may select an ending date-
1. As of the end of any pay period during the period July 1 through August 31 of the year the report is due; or
 2. As of December 31, if the supplier has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1, Standard Form 100.
- f. The number of veterans reported must be based on data known by the supplier when completing their VETS-4212 Reports. The supplier's knowledge of veteran status may be obtained in a variety of ways, including an invitation to applicants to self-identify in accordance with 41 CFR 60-300.42, voluntary self-disclosure by employees, or actual knowledge of an employee's veteran status by the employer. This paragraph does not relieve an employee of liability for discrimination under 38 U.S.C. 4212.
- g. The supplier must include the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor

IV. USPS Clauses Incorporated By Reference

Wherever in this Purchase Order a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it, in the Postal Service Supplying Practices, and its date. The text of incorporated terms may be found at <http://about.usps.com/manuals/spp/spp.pdf>. The following clauses are incorporated in this contract by reference:

- (a) CLAUSE B-15: NOTICE OF DELAY (MARCH 2006)
- (b) CLAUSE B-19: EXCUSABLE DELAYS (MARCH 2006)
- (c) CLAUSE B-28: SAFETY AND HEALTH STANDARDS (MARCH 2006)
- (d) CLAUSE B-30: PERMITS AND RESPONSIBILITIES (MARCH 2006)
- (e) CLAUSE B-39: INDEMNIFICATION (MARCH 2006) (*in this clause, references to "Postal Service" shall mean USPS and Buyer*)
- (f) CLAUSE 1-1: PRIVACY PROTECTION (OCTOBER 2014)
- (g) CLAUSE 1-6: CONTINGENT FEES (MARCH 2006)
- (h) CLAUSE 1-7: ORGANIZATIONAL CONFLICTS OF INTEREST (MARCH 2006)

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- (i) CLAUSE 1-11: PROHIBITION AGAINST CONTRACTING WITH FORMER OFFICERS OR PCES EXECUTIVES (MARCH 2006) *(references in this clause to "Postal officers" or "Postal Career Executive Service executives" shall retain their original meaning)*
- (j) CLAUSE 1-12: USE OF FORMER POSTAL SERVICE EMPLOYEES (MARCH 2006) *(references in this clause to "Postal Service employees" shall retain their original meaning)*
- (k) CLAUSE 2-2: QUALITY MANAGEMENT SYSTEM (MARCH 2006)
- (l) CLAUSE 2-12: POSTAL SERVICE PROPERTY - SHORT FORM (MARCH 2006)
- (m) CLAUSE 2-15: SPECIAL TOOLING (MARCH 2006)
- (n) CLAUSE 2-23: REIMBURSEMENT - POSTAL SERVICE TESTING (MARCH 2006) *(applies if Buyer is subject to such charges by USPS as a result of the actions or omissions of Supplier)*
- (o) CLAUSE 3-1: SMALL-, MINORITY-, AND WOMAN-OWNED BUSINESS SUBCONTRACTING REQUIREMENTS (FEBRUARY 2018) *(applicable to Purchase Orders in excess of \$1 million)*
- (p) CLAUSE 3-2: PARTICIPATION OF SMALL-, MINORITY-, AND WOMAN-OWNED BUSINESSES (FEBRUARY 2018)
- (q) CLAUSE 4-19: INFORMATION SECURITY REQUIREMENTS RESOURCE (FEBRUARY 2013)
- (r) CLAUSE 5-1: PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (MARCH 2006)
- (s) CLAUSE 5-2: SUBCONTRACTOR COST OR PRICING DATA (MARCH 2006)
- (t) CLAUSE 7-11: RECYCLED CONTENT PRODUCTS (JULY 2014)
- (u) CLAUSE 7-15: SUPPLIER SUSTAINABILITY DATA REPORTING (JULY 2014)
- (v) CLAUSE 8-13 INTELLECTUAL PROPERTY RIGHTS (MARCH 2006) *(references in this clause to the "Postal Service" shall mean USPS)*
- (w) CLAUSE 8-18: MANUFACTURE OF REPAIR PARTS (MARCH 2006) *(references in this clause to the "Postal Service" shall mean USPS)*
- (x) CLAUSE 9-1: CONVICT LABOR (MARCH 2006)
- (y) CLAUSE 9-2: CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (MARCH 2006)
- (z) CLAUSE 9-5, CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - SAFETY STANDARDS (MARCH 2006)
- (aa) CLAUSE 9-6: WALSH-HEALEY PUBLIC CONTRACTS ACT (OCTOBER 2019)
- (bb) CLAUSE 9-7: EQUAL OPPORTUNITY (MARCH 2006)

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(cc) CLAUSE 9-12: FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT -
PRICE ADJUSTMENT (FEBRUARY 2010)

(dd) CLAUSE 9-13: EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES
(OCTOBER 2019) (*applicable to Purchase Orders of \$10,000 or more*)

(ee) CLAUSE 9-14: EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS (JUNE
2020) (*applicable to Purchase Orders of \$150,000 or more*)

(ff) CLAUSE 9-16: EMPLOYER REPORTS ON EMPLOYMENT OF PROTECTED VETERANS
(JUNE 2020) (*applicable to Purchase Orders of \$150,000 or more*)

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