

GSA IT SCHEDULE 70
PURCHASE ORDER
TERMS AND CONDITIONS

BETWEEN

(Also Referred to as **Subcontractor, Offeror or Seller**)

AND

Iron Bow Technologies, LLC
2303 Dulles Station Blvd, Suite 400
Herndon, VA 20171

(Also Referred to as **Prime Contractor or Buyer**)

ADDITIONAL OR DIFFERING TERMS, CONDITIONS OR LIMITATIONS OF LIABILITY PROPOSED BY SELLER, WHETHER IN A QUOTE, ACCEPTANCE OR DELIVERY DOCUMENT SHALL HAVE NO EFFECT UNLESS ACCEPTED IN WRITING BY BUYER. IN PARTICULAR, ANY LIMITATION OF LIABILITY OR DISCLAIMER OF WARRANTY IS EXPRESSLY REJECTED.

**I. CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (52.212-4) (FEB 2007)
(DEVIATION FEB 2007)**

(a) **Inspection/Acceptance.** The Subcontractor shall only tender for acceptance those items that conform to the requirements of this contract. Prime Contractor reserves the right to inspect or test any supplies or services that have been tendered for acceptance. Prime Contractor may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, Prime Contractor may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. Prime Contractor must exercise its post-acceptance rights (1) Within a reasonable time after the defect was discovered or should have been discovered; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

Alternate I (ALTERNATE I ☐ OCT 2008) (DEVIATION I – FEB 2007). When a time-and-materials or labor-hour contract is contemplated, substitute the following:

(a) **Inspection/Acceptance.**

(1) The Prime Contractor, on behalf of the Government, has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Prime Contractor, on behalf of the Government, may also inspect the plant or plants of the Subcontractor or any lower tier subcontractor

engaged in contract performance. The inspections and tests will be performed in a manner that will not unduly delay the work.

(2) If the Prime Contractor, on behalf of the Government, performs inspection or tests on the premises of the Subcontractor or its lower tier subcontractor, the Subcontractor shall furnish and shall require its lower tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Prime Contractor will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Prime Contractor may require the Subcontractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the "hourly rate" attributable to profit shall be 10 percent. The Subcontractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. * _____ *

(5) (i) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Prime Contractor), the Prime Contractor may—

(A) By contract or otherwise, perform the replacement or correction, charge to the Subcontractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Subcontractor shall be a dispute under the Disputes clause of this contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Prime Contractor may at any time require the Subcontractor to remedy by correction or replacement, without cost to the Prime Contractor, any failure by the Subcontractor to comply with the requirements of this contract, if the failure is due to—

(i) Fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or

(ii) The conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Subcontractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Subcontractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(b) Reserved

(c) **Changes.** Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) **Disputes.**

Under this contract:

In the event of any dispute that cannot be amicably resolved within a reasonable period of time, Prime Contractor and Subcontractor hereby irrevocably consent to exclusive and personal jurisdiction in the Commonwealth of Virginia, and either party may pursue any right or remedy available at law and/or equity in the Commonwealth. Pending completion of this contract or final disposition of a dispute pursuant to this Paragraph, which releases Subcontractor from performance, the Subcontractor shall, at all times, proceed diligently with the performance of the contract.

Under the Prime Contract:

To the extent the Prime Contractor's Customer requires a mandatory disputes resolution process pursuant to statute, regulation, or contract (the "Disputes Process") which governs the resolution of questions of law or fact relating to the Prime Contract, all of the Subcontractor claims, controversies or disputes concerning matters which pertain to disputes cognizable under the Disputes Process shall be governed by the provisions of this Disputes Process and the Subcontractor shall provide Prime Contractor with a timely and detailed written notice of any such claims or controversies. Any decision under the Disputes Process relating to the contract or the Subcontractor's performance hereunder shall be conclusive and binding upon the Subcontractor unless appealed and reversed. Prime Contractor shall notify the Subcontractor of any such decision within ten (10) calendar days of Prime Contractor's receipt thereof.

In the event Prime Contractor elects to appeal any such decision, pursuant to the Disputes Process, the Subcontractor shall provide Prime Contractor with reasonable assistance in the prosecution of such appeal including, but not limited to, reasonable access to the Subcontractor's personnel and non-privileged documents. The Subcontractor further agrees to reimburse Prime Contractor for any and all reasonable costs associated with an appeal arising out of or relating to the contract, taken upon behalf of the Subcontractor. However, if the Subcontractor notifies Prime Contractor in writing that such an appeal should not be taken upon the Subcontractor's behalf, Prime Contractor shall have the right to continue such an appeal upon behalf of Prime Contractor and the Subcontractor with the Subcontractor providing reasonable assistance in the prosecution of such an appeal as described herein.

In the event Prime Contractor elects not to appeal any such decision pursuant to the Disputes Process of the Prime Contract, Prime Contractor shall so notify the Subcontractor in writing within fourteen (14) calendar days of Prime Contractor's receipt of such decision. If within ten (10) calendar days of receipt of Prime Contractor's notice of a decision not to appeal any such decision, the Subcontractor requests Prime Contractor, in writing, to appeal the decision, Prime Contractor may, at its sole discretion, elect to do so at the sole expense of the Subcontractor provided such an appeal would not be in violation of any civil or criminal statute. If Prime Contractor appeals any such Final Decision, whether at its election or at the Subcontractor's request, a final judgment in any such appeal, if binding upon Prime Contractor under the Prime Contract, shall in turn be binding upon the Subcontractor and Prime Contractor under the contract. Further, the Subcontractor shall be solely responsible for providing any and all information requested by Prime Contractor to support appeals pursuant to the Disputes Process.

As used herein, the term "appeal" shall include any and all proceedings taken by Prime Contractor before a Government agency, and, if applicable, a Board of Contract Appeals, and any court. The Subcontractor shall be conclusively bound by any decision of any such dispute resolution forum or tribunal. Pending completion of this contract or final disposition of a dispute pursuant to this Paragraph, which releases Subcontractor from performance, the Subcontractor shall, at all times, proceed diligently with the performance of the contract.

(e) **Definitions.** The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

Alternate I (ALTERNATE I □□OCT 2008) (DEVIATION I – FEB 2007). When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraph:

(e) **Definitions.** (1) The clause at FAR 52.202-1, Definitions, is incorporated herein by reference. As used in this clause—

(i) Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(A) Performed by the Subcontractor;

(B) Performed by its lower tier subcontractors; or

(C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) Materials means—

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Subcontractor under a common control;

(B) Lower tier subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate:
* _____ *; and

(E) Indirect costs specifically provided for in this clause.

(iv) Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by Subcontractor to furnish supplies or services for performance of this contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(f) **Excusable delays.** The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify Prime Contractor in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Prime Contractor of the cessation of such occurrence.

(g) **Invoice.**

(1) The Subcontractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

- (i) Name and address of the Subcontractor;
- (ii) Invoice date and number;
- (iii) contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Reserved;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Subcontractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Subcontractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Subcontractor shall have submitted correct EFT banking information as reasonably requested by Prime Contractor.

(C) EFT banking information is not required if the Prime Contractor waived the requirement to pay by EFT.

(h) **Patent indemnity.** The Subcontractor shall indemnify the Government and its 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, arising out of the performance of this contract, provided the Subcontractor is reasonably notified of such claims and proceedings.

(i) Payment.—

- (1) Items accepted. Payment shall be made for items accepted by the Prime Contractor that have been delivered to the delivery destinations set forth in this contract.
- (2) Payment. The Prime Contractor will make payment on Net 30 terms.
- (3) Electronic Funds Transfer (EFT). Prime Contractor and Subcontractor may arrange in advance to make payments by EFT.
- (4) Reserved
- (5) Overpayments. If the Subcontractor becomes aware of a duplicate contract financing or invoice payment or that the Prime Contractor has otherwise overpaid on a contract financing or invoice payment, the Subcontractor shall immediately notify the Prime Contractor and request instructions for disposition of the overpayment.

Alternate I (ALTERNATE I □□OCT 2008) (DEVIATION I – FEB 2007). When a time-and-materials or labor-hour contract is contemplated, substitute the following:

(i) Payments.

(1) Services accepted. Payment shall be made for services accepted by the Prime Contractor that have been delivered to the delivery destination(s) set forth in this contract. The Prime Contractor will pay the Subcontractor as follows upon the submission of commercial invoices approved by the Prime Contractor:

(i) Hourly rate.

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Prime Contractor.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Prime Contractor) to the Prime Contractor.

(D) When requested by the Prime Contractor, the Subcontractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Statement of Work prescribes otherwise, the hourly rates in the Statement of Work shall not be varied by virtue of the Subcontractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Statement of Work and the Prime Contractor approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Statement of Work provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Prime Contractor.

(ii) Materials.

(A) If the Subcontractor furnishes materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for such materials shall be the Subcontractor's established catalog or market price, adjusted to reflect the—

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Prime Contractor will reimburse the Subcontractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Subcontractor—

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Subcontractor's payment request to the Prime Contractor and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Subcontractor shall—

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Prime Contractor for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) Other Costs. Unless listed below, other direct and indirect costs will not be reimbursed.

(1) Other Direct Costs. The Prime Contractor will reimburse the Subcontractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: * _____

_____*

(2) Indirect Costs (Material Handling, Subcontract Administration, etc.). The Prime Contractor will reimburse the Subcontractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: * _____ *

(2) Total cost. It is estimated that the total cost to the Prime Contractor for the performance of this contract shall not exceed the ceiling price and the Subcontractor agrees to use its best efforts to perform the work specified in the Statement of Work and all obligations under this contract within such ceiling price. If at any time the Subcontractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Subcontractor shall notify the Prime Contractor giving a revised estimate of the total price to the Prime Contractor for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Subcontractor has reason to believe that the total price to the Prime Contractor for performing this contract will be substantially greater or less than the then stated ceiling price, the Subcontractor shall so notify the Prime Contractor, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Prime Contractor has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Prime Contractor will so advise the Subcontractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) Ceiling price. The Prime Contractor will not be obligated to pay the Subcontractor any amount in excess of the ceiling price, and the Subcontractor shall not be obligated to continue performance if to do so would exceed the ceiling price, unless and until the Prime Contractor notifies the Subcontractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price has been increased, any hours expended and material costs incurred by the Subcontractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) Access to records. At any time before final payment under this contract, the Prime Contractor will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Subcontractor and the Prime Contractor):

- (i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;
- (ii) For labor hours (including any lower tier subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—
 - (A) The original timecards (paper-based or electronic);
 - (B) The Subcontractor's timekeeping procedures;
 - (C) Subcontractor records that show the distribution of labor between jobs or contracts; and
 - (D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

- (iii) For material and subcontract costs that are reimbursed on the basis of actual cost—
 - (A) Any invoices or lower tier subcontract agreements substantiating material costs; and
 - (B) Any documents supporting payment of those invoices.

(5) Overpayments/Underpayments. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Prime Contractor not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Subcontractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Prime Contractor within 30 days will pay any such increases, unless the parties expressly agree otherwise in writing. The Subcontractor's payment will be made by check. If the Subcontractor becomes aware of a duplicate invoice payment or that the Prime Contractor has otherwise overpaid on an invoice payment, the Subcontractor

- (i) Remit the overpayment amount to the Prime Contractor's payment office cited in the contract along with a description of the overpayment including the--
 - (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
 - (B) Affected contract number and delivery order number, if applicable;
 - (C) Affected contract line item or subline item, if applicable; and
 - (D) Contractor point of contact.
- (ii) Provide a copy of the remittance and supporting documentation to the Prime Contractor.

- (6) (i) - (vii) Reserved.
- (viii) Upon receipt and approval of the invoice designated by the Subcontractor as the "completion invoice" and supporting documentation, and upon compliance by the Subcontractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Subcontractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Prime Contractor may approve in writing) from the date of completion.

- (7) **Release of claims.** The Subcontractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Prime Contractor, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

- (i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Subcontractor.
- (ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising out of performing this contract, that are not known to the Subcontractor on the date of the execution of the release, and of which the Subcontractor gives notice in writing to the Prime Contractor not more than 6 years after the date of the release or the date of any notice to the Subcontractor that the Prime Contractor is prepared to make final payment, whichever is earlier.
- (iii) Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of the Prime Contractor against patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of this contract relating to patents.

(8) - (10) Reserved.

(j) **Risk of loss.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Subcontractor until, and shall pass to the Prime Contractor or End User upon:

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Prime Contractor or End User at the destination specified in the contract, if transportation is f.o.b. destination.

(k) **Taxes.** The contract price includes all applicable Federal, State, and local taxes and duties.

(l) **Termination for the Prime Contractor's convenience.** The Prime Contractor reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Subcontractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Subcontractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Subcontractor can demonstrate to the satisfaction of the ordering activity using its standard record keeping system, have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Prime Contractor any right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

Alternate I (ALTERNATE I □□OCT 2008) (DEVIATION I – FEB 2007). When a time-and-materials or labor-hour contract is contemplated, substitute the following:

(l) **Termination for the Prime Contractor's convenience.** The Prime Contractor reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Subcontractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Subcontractor shall be paid an amount for direct labor hours (as defined in the Statement of Work) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Subcontractor plus reasonable charges the Subcontractor can demonstrate to the satisfaction of the Prime

Contractor using its standard record keeping system that have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Prime Contractor any right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) **Termination for cause.** The Prime Contractor may terminate this contract, or any part hereof, for cause in the event of any default by the Subcontractor, or if the Subcontractor fails to comply with any contract terms and conditions, or fails to provide the Prime Contractor, upon request, with adequate assurances of future performance. In the event of termination for cause, the Prime Contractor shall not be liable to the Subcontractor for any amount for supplies or services not accepted, and the Subcontractor shall be liable to the Prime Contractor for any and all rights and remedies provided by law. If it is determined that the Prime Contractor improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

Prime Contractor may also terminate this contract for cause, in whole or in part, by written notice to the Subcontractor if:

1. The Subcontractor shall become insolvent or make a general assignment for the benefit of creditors;
2. A petition under any bankruptcy act or similar statute is filed by or against the Subcontractor and not vacated within ten (10) days after it is filed;
3. Subcontractor cannot pay its bills when due, or Subcontractor's liabilities exceed its assets, or the Subcontractor admits to insolvency, or calls a meeting of its creditors, appoints a dissolution or liquidation agent or committee, or an application is made for the appointment of a receiver.

(n) **Title.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Prime Contractor or End User upon acceptance, regardless of when or where the Prime Contractor or End User takes physical possession.

(o) **Warranty.** The Subcontractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) **Limitation of liability.** Except as otherwise provided by an express warranty, the Subcontractor will not be liable to the Prime Contractor for consequential damages resulting from any defect or deficiencies in accepted items.

(q) **Other compliances.** The Subcontractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) **Compliance with laws unique to Government contracts.** The Subcontractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) **Order of precedence.** Any inconsistencies in this contract shall be resolved by giving precedence in the following order:

- (1) Clauses Incorporated by Reference from the Prime Contract/Delivery Order (Addendum 1).

- (2) Addendum to include any license agreements for computer software.
- (3) The terms of this document known as the “GSA IT Schedule 70 Purchase Order Terms and Conditions”.
- (4) Statement of Work.
- (4) Other documents, exhibits, and attachments.

(t) Reserved.

II. SPECIAL PROVISIONS

(a) GEOGRAPHIC SCOPE OF CONTRACT

The geographic scope of this contract will be domestic delivery only. Domestic delivery means within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

(b) LIABILITY FOR INJURY OR DAMAGE:

The Subcontractor shall not be liable for any injury to Prime Contractor or Prime Contractor’s customer under the Prime Contract’s personnel or damage to Prime Contractor or Prime Contractor’s customer under the Prime Contract’s property arising from the use of equipment maintained by the Subcontractor, unless such injury or damage is due to the fault or negligence of the Subcontractor.

(c) FOB DESTINATION:

All items supplied hereunder shall be FOB Destination, unless expressly set forth otherwise in writing by the Prime Contractor.

(d) DELIVERY SCHEDULE:

The Subcontractor shall deliver to destination NLT _____(if blank, as set forth in any Addendum or Exhibit attached hereto). If an item cannot be delivered within the delivery time for that item, the Subcontractor shall notify the Prime Contractor within two business days of receipt of order of the expected delivery date for the ordered item(s). Upon notification, the Prime Contractor may choose to cancel the order or request due consideration for the delay.

(e) TRADE AGREEMENTS ACT OF 1979, as amended:

The Subcontractor represents that all items supplied under this contract are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

(f) FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATION STANDARDS

REQUIREMENTS: Subcontractor agrees all supplies provided hereunder shall comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be responded to promptly by the Contractor.

(g) **FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS):** Information Technology products under this contract that do not conform to Federal Information Processing Standards (FIPS) should not be supplied unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

(h) **FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS):** Telecommunication products under this contract that do not conform to Federal Telecommunication Standards (FED-STDS) should not be supplied unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Acquisition Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202) 619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975-2833.

(i) **SUBCONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2003):**

- (1) **Security Clearances:** The Subcontractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price included in this contract.
- (2) **Travel:** The Subcontractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges can only be priced as a fixed price item on orders placed under this contract. Travel in performance of a task order will only be reimbursable to the extent authorized by the Prime Contractor.
- (3) **Certifications, Licenses and Accreditations:** As a commercial practice, the Subcontractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific products or services offered under this contract. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price included in this contract.
- (4) **Insurance:** As a commercial practice, the Subcontractor may be required to obtain/possess insurance coverage for specific products or services offered under this contract. All costs associated with obtaining/possessing such insurance should be factored into the price included in this contract.
- (5) **Personnel:** The Subcontractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. The Prime Contractor may require agency approval of additions or replacements to key personnel.
- (6) **Organizational Conflicts of Interest:** Where there may be an organizational conflict of interest as determined by the Prime Contractor, the Subcontractor's participation in such order may be restricted in accordance with federal regulations such as FAR Part 9.5.
- (7) **Documentation/Standards:** The Subcontractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the Prime Contractor's order and incorporated herein.

- (8) Data/Deliverable Requirements: Any required data/deliverables will be set forth by the parties in the addenda to this contract.
- (9) Government-Furnished Property: Any Government property, equipment, materials or resources required by Subcontractor hereunder shall be expressly identified by the parties in the addenda to this contract.
- (10) Availability of Funds: Many operating funds of customers of the Prime Contractor are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under this contract or any option year. The Prime Contractor's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Prime Contractor for any payment may arise until funds are available through the Prime Contractor.
- (11) Overtime: For professional services, the labor rates in this contract should not vary by virtue of the Subcontractor having worked overtime. For services applicable to the Service Contract Act (as identified in this contract), the labor rates in the contract will vary as governed by labor laws (usually assessed a time and a half of the labor rate).

(j) SUBCONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS:

For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to otherwise in this contract:

- (1) Time of delivery/installation quotations for individual orders;
- (2) Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this contract.
- (3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.

(k) INSTALLATION, DEINSTALLATION, REINSTALLATION:

To the extent applicable, the Subcontractor agrees to comply with the provisions of The Davis-Bacon Act (40 U.S.C. 276a-276a-7) which provides in relevant part that contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act apply.

The Prime Contractor shall receive from its Government Customer the proper Davis-Bacon wage determination and will issue it to the Subcontractor as applicable.

(l) SECTION 508 COMPLIANCE

Subcontractor agrees to provide Prime Contractor with all information available regarding compliance with accessibility standards, partial compliance or what accessibility features are offered on products and services provided by Subcontractor. The EIT standard can be found at: www.Section508.gov/.

(m) INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)(FAR 52.228-5):

(1) The Subcontractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required below or elsewhere in this contract.

(2) Before commencing work under this contract, the Subcontractor shall notify the Prime Contractor in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Prime Contractor's interest shall not be effective—

(i) For such period as the laws of the State in which this contract is to be performed prescribe; or

(ii) Until 30 days after the insurer or the Subcontractor gives written notice to the Prime Contractor, whichever period is longer.

(3) The Subcontractor shall insert the substance of this clause, including this paragraph (3), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in this provision or elsewhere in this contract. The Subcontractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Prime Contractor upon request.

(n) SOFTWARE INTEROPERABILITY:

Subcontractor is encouraged to identify within its software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at <http://www.core.gov>.

(o) ADVANCE PAYMENTS:

A payment under this contract to provide a service or deliver an article for the United States Government through the Prime Contractor may not be more than the value of the service already provided or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 3324).

**(p) EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT—REQUIREMENTS
52.222-51 (NOV 2007)**

(1) As applicable, the Subcontractor represents the items of equipment to be serviced under this contract are used regularly for other than Government purposes, and are sold or traded by the Subcontractor in substantial quantities to the general public in the course of normal business operations.

(2) The Subcontractor represents that any services shall be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(i) An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Subcontractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(ii) An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Subcontractor.

(3) the Subcontractor represents the compensation (wage and fringe benefits) plan for all service employees performing work under this contract shall be the same as that used for these employees and for equivalent employees servicing the same equipment of commercial customers.

(4) The Subcontractor is responsible for compliance with all the conditions of this exemption by its lower tier subcontractors. The Subcontractor shall determine the applicability of this exemption to any subcontract on or before subcontract award. In making a judgment that the exemption applies, the Subcontractor shall consider all factors and make an affirmative determination that all of the conditions in paragraphs (1) through (3) of this clause will be met.

(5) If the Department of Labor determines that any conditions for exemption in paragraphs (1) through (3) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) will be followed.

(6) The Subcontractor shall include the substance of this clause, including this paragraph (6), in subcontracts for exempt services under this contract.

(q) EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT TO CONTRACTS FOR CERTAIN SERVICES—REQUIREMENTS 52.222-53 (FEB 2009)

(1) As applicable, the Subcontractor represents the services provided under this contract are offered and sold regularly to non-Governmental customers, and are provided by the Subcontractor to the general public in substantial quantities in the course of normal business operations.

(2) The Subcontractor represents the contract services are furnished at prices that are, or are based on, established catalog or market prices. An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Subcontractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Subcontractor.

(3) The Subcontractor represents each service employee who will perform the services under this contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

(4) The Subcontractor represents that it uses the same compensation (wage and fringe benefits) plan for all service employees performing work under this contract as the Contractor uses for these employees and for equivalent employees servicing commercial customers.

(5) (i) Except for services identified in FAR 22.1003-4(d)(1)(iv), the subcontractor for exempt services shall be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost; or (ii) A subcontract for exempt services shall be awarded on a sole source basis.

(6) The Subcontractor is responsible for compliance with all the conditions of this exemption by its lower tier subcontractors. The Subcontractor shall determine in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely lower tier subcontractors, that all or nearly all likely subcontractors will meet the conditions in paragraphs (1) through (4) of this clause. If the services are currently being performed under a subcontract, the Subcontractor shall consider the practices of the existing subcontractor in making a determination regarding the conditions in paragraphs (1) through (4) of this clause. If the Subcontractor has reason to doubt the validity of the certification, the requirements of the Service Contract Act shall be included in the subcontract.

(7) If the Department of Labor determines that any conditions for exemption at paragraphs (1) through (5) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures in at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) will be followed.

(8) The Subcontractor shall include the substance of this clause, including this paragraph (8), in subcontracts for exempt services under this contract.

(r) Energy Efficiency in Energy-Consuming Products (DEC 2007) 52.223-15

(1) Definition. As used in this clause-- Energy-efficient product--

(A) Means a product that--

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

(B) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(2) The Subcontractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are--

(A) Delivered;

(B) Acquired by the Subcontractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Subcontractor for use by the Government through Prime Contractor; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(3) The requirements of paragraph (2) apply to the Subcontractor (including any lower tier subcontractor) unless--

(A) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or

(B) Otherwise approved in writing by the Prime Contractor.

(4) Information about these products is available for--

(A) ENERGY STAR® at <http://www.energystar.gov/products>; and

(B) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html

(s) Protest after Award/Stop Work Order 52.233-3

Upon Prime Contractor's receipt of a notice of protest or a determination that a protest is likely from the Prime Contractor's customer, the Prime Contractor's customer may, by written order to the Prime Contractor, direct the Prime Contractor to stop performance of the work called for by this contract.

The order shall be specifically identified as a stop-work order issued under FAR 52.233-3. Upon Prime Contractor's receipt of the order, the Prime Contractor shall promptly issue a corresponding order to Subcontractor and Subcontractor agrees to immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stop-page.

(1) Upon receipt of the final decision in the protest, Prime Contractor shall either —

- (i) Cancel the Stop-Work Order; or
 - (ii) Terminate the work covered by this contract as provided in the Default, or the Termination for Convenience clauses of this contract.
- (2) If the Stop-Work Order is canceled by Prime Contractor either before or after a final decision in the protest, Subcontractor shall immediately resume work.
- Prime Contractor shall make an equitable adjustment in the delivery schedule or contract price, or both, and this contract shall be modified, in writing, accordingly, if—
- (i) The Stop-Work Order results in an increase in the time required for, or in Subcontractor's cost properly allocable to, the performance of any part of this contract, but only to the extent Prime Contractor is allowed and receives an equitable adjustment from its customer as reflected in a modification to this contract; and
 - (ii) Subcontractor asserts its right to Prime Contractor for an adjustment within 25 days after the end of the period of work stoppage.
- (3) If the Stop-Work Order is not canceled and the work covered by this contract is terminated for Prime Contractor's convenience, Prime Contractor will allow reasonable costs resulting from the Stop-Work Order in arriving at the termination settlement, but only to the extent Prime Contractor is allowed and receives such costs from its customer.
- (4) If the Stop-Work Order is not canceled and the work covered by this contract is terminated for default, Prime Contractor will allow, by equitable adjustment or otherwise, reasonable costs resulting from the Stop-Work Order, but only to the extent Prime Contractor is allowed and receives such costs from its customer.
- (5) Prime Contractor's right to terminate this contract in accordance with the terms and conditions herein at any time is not affected by any action taken pursuant to the Stop-Work Order.
- (6) If a protest related to this contract is sustained and it is wholly or partially based on an intentional or negligent misstatement, misrepresentation, or miscertification of Subcontractor, and Prime Contractor is required to pay an amount equal to the protestor's protest costs, Subcontractor agrees to reimburse Prime Contractor for all such amounts.

(t) Non-Solicitation of Personnel

During the term of this contract and for a period of one year thereafter neither party shall directly or indirectly solicit for hire any employee or employees of the other party to include other Subcontractor employee(s) who are associated with or involved in the performance under this contract. This provision does not preclude either party from hiring an individual employed by the other who, without other solicitation, is involuntarily terminated by the other party or who responds to general non-targeted employment advertising in newspapers, trade publications or other public commercial media.

(u) Assignment of Agreement

The Subcontractor shall not assign its duties, obligations, or responsibilities under this contract, nor shall it sell, transfer, or in any way encumber its interest under this contract without first obtaining Prime Contractor's written consent, which will not be unreasonably withheld. In the event (1) the Subcontractor assigns its duties, obligations, or responsibilities under this contract or (2) sells, transfers, or in any way encumbers its interest under this Subcontract, Prime Contractor may terminate this contract with thirty (30) days written notice at no cost to Prime Contractor.

(v) Independent Contractor

In the conduct of the work under this contract, each party is acting in the capacity of an independent contractor and is not an agent or employee of the other. Neither party has the authority to bind the other, except as authorized herein. Nothing herein creates any rights in or for the benefit of third parties. This contract is not intended to be one of hiring under the provisions of any Worker's Compensation or any other law, and shall not be so construed.

(w) Insurance

The Subcontractor shall procure and maintain the following minimum insurance during the entire period of its performance under this contract:

1. Workers' Compensation Insurance as required by applicable Federal and State workers' compensation and occupational disease statutes and Employer's Liability Insurance with a limit of \$1,000,000 per employee/accident/disease.
2. Automobile Liability Insurance covering bodily injury and property damage arising out of the use of owned, non-owned and hired vehicles with a limit of \$1,000,000 per accident. Prime Contractor shall be named as an additional insured.
3. Commercial General Liability Insurance covering bodily injury and property damage arising out of premises, operations, and products of the Subcontractor with a limit of \$1,000,000 per occurrence. Prime Contractor shall be named as an additional insured.

A certificate of each policy of insurance shall be furnished to the Prime Contractor within ten (10) days after the effective date of this contract and at each subsequent policy renewal, certifying compliance with these insurance requirements. The insurance company (ies) providing the required insurance shall be of good standing, authorized to conduct business in the jurisdiction in which services are performed.

The policies evidencing the required insurance shall provide that cancellation or any material change in the policies adversely affecting the interest of the Government or Prime Contractor shall not be effective until thirty (30) days after written notice has been given to Prime Contractor. Replacement insurance shall be procured without interruption of continuous coverage.

If any of the required coverage is to be provided by self-insurance, the Subcontractor shall submit evidence of financial responsibility to Prime Contractor and shall obtain Prime Contractor's written approval.

(x) Restriction of Federal Government Personnel

Subcontractor shall not, in the performance of this contract, use as a consultant or employ (on either a full-time or part-time basis), any active duty federal government personnel (civilian or military) without prior written approval of the Prime Contractor and the Prime Contractor's Government Contracting Officer. Approval may be possible only in those cases where there is a clearly no violation of government instruction, directives, laws, regulations or policies and no conflict or appearance of conflict of interest.

(y) Confidentiality

The parties agree to maintain the confidentiality of, and not disclose to third parties or those of their employees without a need to know, all confidential or proprietary information ("Confidential Information") received from the other party. Such Confidential Information shall be marked as such, or its confidential nature shall be made known to the receiving party when given or as soon thereafter as is possible. Each party shall safeguard Confidential Information it receives, using the same degree of care that it exercises with respect to its own confidential information, but no less than reasonable care. All Confidential Information shall be used by the receiving party only for purposes of performing hereunder.

The restrictions of this provision shall not apply to information which the receiving party can demonstrate is or was: publicly available, otherwise than through the fault of the receiving party;

already in the receiving party's possession prior to receipt from the providing party, or independently developed by the receiving party;

disclosed to the receiving party by a third-party without notice of any restriction on further disclosure; and publicly disclosed by the providing party.

If either party should receive a subpoena or other governmental order compelling disclosure of Confidential Information, it shall promptly notify the providing party so the latter may take necessary steps to prevent or limit disclosure. In any event, the receiving party shall disclose only so much of the Confidential Information as is required by law.

Confidential Information may be disclosed by the receiving party to its consultants or subcontractors performing hereunder, if they have first agreed in writing to protect such Confidential information as required herein, and then only if such Confidential Information is marked as such.

The disclosure of Confidential Information by either party to the other shall not be construed to grant any license or right in such Confidential Information, and all such Confidential Information will remain the property of the providing party. Upon the expiration or termination of this contract, or upon the request of the providing party, the receiving party shall cease use of all Confidential Information, and shall return, or destroy and so certify, any Confidential Information in its possession.

The parties acknowledge that the unpermitted disclosure of Confidential Information may cause the providing party irreparable harm for which money damages are inadequate, and for which equitable remedies may be sought by the providing party.

This provision will survive the expiration or termination of this contract.

(z) Organizational Conflict of Interest

For purposes of this clause, an organizational conflict of interest (OCI) means that a relationship exists whereby the Subcontractor has past, present, or potential contracts or financial interests that either directly or indirectly relate to the work to be performed under the contract and which may (1) diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage. It does not include the normal flow of benefits from incumbency.

The Subcontractor warrants that, to the best of the Subcontractor's knowledge and belief, there are no relevant facts or circumstances concerning any past, present, or potential contracts or financial interests relating to the work to be performed which could give rise to an OCI as defined above, or that any actual or potential OCI with respect to the work to be performed under contract has been communicated in writing to the Prime Contractor.

The Subcontractor agrees that if actual or potential OCI arises after award, with regard to any portion of work or modification thereto, the Subcontractor will make a full disclosure in writing to the Prime Contractor. This disclosure shall include a description of actions, which the Subcontractor has taken or proposes to take, after consultation with the Prime Contractor, to avoid, mitigate, or neutralize the actual or potential conflict.

In the event an OCI cannot be avoided or mitigated, Buyer reserves the right, at its sole option, to i) terminate any affected Purchase/Task Order and perform the work itself and/or issue the work to another Subcontractor or ii) require the Subcontractor to contract the work to another technically qualified Subcontractor, subject to the approval of Buyer, and at the same or less than the negotiated rates and/or level of effort contained in the contract. In the event there is a difference between the Subcontractor's negotiated rates and/or level of effort and/or level of effort required by the replacement Subcontractor selected, that fact shall not form the basis for an equitable price adjustment.

Prime Contractor will allow Subcontractor the opportunity to review all proposed Purchase/Task Orders to be issued under this contract for potential organizational conflict of interest (OCI) concerns. If after reviewing a proposed Purchase/Task Order, Subcontractor believes that a potential OCI may exist, then Subcontractor will report all relevant information to the Buyer, who in turn will forward the information to the Government Contracting Officer for determination. If the Prime Contractor or its Government Contracting Officer finds an OCI does exist, then

Subcontractor must decline performance on that particular Purchase/Task Order unless the Prime Contractor is willing to provide a written waiver.

(aa) Subcontractor Status

During the performance of this contract, the Subcontractor shall provide immediate notice to the Prime Contractor (1) if it is being investigated or is suspended, debarred, or declared ineligible by any U.S. Government Agency or (2) if it receives a notice of proposed investigation or debarment from any U.S. Government Agency.

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

(1) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Subcontractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(2) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac>.

(3) The Subcontractor shall insert this clause, including this paragraph (3), in all subcontracts.

(cc) TRADE AGREEMENTS 52.225-5 (MAR 2009)

(1) Definitions. As used in this clause.

Designated country means any of the following countries:

(A) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(B) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(C) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(D) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

Designated country end product means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

(A) Means an article that

- (i) (a) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
 - (b) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and
- (ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).
 - (a) For this reason, the following articles are not Caribbean Basin country end products:
 - (1) Tuna, prepared or preserved in any manner in airtight containers;
 - (2) Petroleum, or any product derived from petroleum;
 - (3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and
 - (4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;
 - (b) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.usitc.gov/tata/hts/>. In particular, see the following:
 - (1) General Note 3(c), Products Eligible for Special Tariff treatment.
 - (2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States Caribbean Basin Trade Partnership Act of 2000.
 - (3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).
 - (4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States Caribbean Basin Trade Partnership Act; and

Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Designated country end product means an article that

(A) Is wholly the growth, product, or manufacture of a designated country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Free Trade Agreement country end product means an article that

(A) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Least developed country end product means an article that.

- (A) Is wholly the growth, product, or manufacture of a least developed country; or
- (B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

WTO GPA country end product means an article that

- (A) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

End product means those articles, materials, and supplies to be acquired under the contract for public use.
United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(2) Delivery of end products. The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

(3) United States law will apply to resolve any claim of breach of this contract.

III. CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (52.212-5) (MAR 2009)

Whenever necessary to make the context of the FAR Clauses set forth herein applicable to this contract, the term "Contractor" shall mean Subcontractor, the term "Contract" shall mean this contract, and the term "Government", "Contracting Officer", and equivalent phrases shall mean Prime Contractor, provided the use of such terms shall convey data and patent rights only to the U.S. Government, and that in provisions relating to Government property, audit or compliance with federal regulations, the U.S. Government will act on its own behalf.

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.222-50 Combating Trafficking in Persons (Feb 2009)

(i) *Definitions.* As used in this clause—

"Coercion" means—

- (A) Threats of serious harm to or physical restraint against any person;
- (B) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (C) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced Labor” means knowingly providing or obtaining the labor or services of a person—

- (A) By threats of serious harm to, or physical restraint against, that person or another person;
- (B) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (C) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

- (A) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (B) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

- (A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(ii) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

- (A) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (B) Procure commercial sex acts during the period of performance of the contract; or
- (C) Use forced labor in the performance of the contract.

(iii) *Contractor requirements.* The Contractor shall—

- (A) Notify its employees of—
 - (i) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and
 - (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
- (B) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (ii) of this clause.

(iv) *Notification.* The Contractor shall inform the Contracting Officer immediately of—

- (A) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
- (B) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(v) *Remedies.* In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraphs (iii), (iv), or (vi) of this clause may result in—

- (A) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
- (B) Requiring the Contractor to terminate a subcontract;
- (C) Suspension of contract payments;
- (D) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(E) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(F) Suspension or debarment.

(vi) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(vii) *Mitigating Factor.* The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

(2) Reserved.

(3) Reserved

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

Reserved

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

Reserved.

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iv) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

(v) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(vi) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(vii) 52.222-41, Service Contract Act of 1965 (NOV 2007) (41 U.S.C. 351, et seq.).

(viii) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

(ix) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (NOV 2007) (41 U.S.C. 351, et seq.).

(x) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-- Requirements (NOV 2007) (41 U.S.C. 351, et seq.).

(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

LIST OF ATTACHMENTS

Subject to the Order of Precedence clause contained herein, the following attachments constitute part of this contract:

- (1) Clauses Incorporated by Reference from the Prime Contract/Delivery Order (Addendum 1).
- (2) Other Addenda, to include copies of any license agreements for computer software.
- (3) The terms of this document known as the “GSA IT Schedule 70 Purchase Order Terms and Conditions”.
- (4) Statement of Work
- (5) Other documents, exhibits, and attachments

This contract, with its Attachments/Addenda/Exhibits, constitutes the entire agreement between the parties. It supersedes all prior understandings, written or oral, between the parties with respect to the subject matter hereof and is not the result of any representations, statements, or agreements other than those expressed here. The contract shall not be changed except by an instrument in writing of a later date that has been duly executed by authorized representatives of both parties.

Unless otherwise expressly stated to the contrary herein, the laws of the Commonwealth of Virginia shall govern the validity, construction, scope, and performance of this contract. By signing this contractual agreement the Subcontractor certifies, to the best of its knowledge and belief, that the Subcontractor is not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency and meets all the certification requirements of FAR 52.209-5.

THE PARTIES AGREE THAT ADDITIONAL OR DIFFERING TERMS, CONDITIONS OR LIMITATIONS OF LIABILITY PROPOSED BY SELLER, WHETHER IN A QUOTE, ACCEPTANCE OR DELIVERY DOCUMENT SHALL HAVE NO EFFECT UNLESS ACCEPTED IN WRITING BY BUYER, IN PARTICULAR, ANY LIMITATION OF LIABILITY OR DISCLAIMER OF WARRANTY IS EXPRESSLY REJECTED.

In witness whereof, the parties hereto have, through duly authorized officials, accepted and signed this contract based on the terms, conditions, and provisions contained here, as of the dates set forth below.

Iron Bow Technologies, LLC

(Signature)

(Signature)

(Name)

(Name)

(Title)

(Title)

(Date)

(Date)

Addendum 1

Clauses Incorporated by Reference from the Prime Contract Delivery Order

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