

**Pratt and Whitney Rocketdyne, Inc.**

**CONTRACT LABOR  
TERMS AND CONDITIONS**

**(Rev 4-14-06)**

**1. CONTRACT ACCEPTANCE**

This Contract includes the provisions in the Purchase Contract, these Contract Labor Terms and Conditions, and any other requirements and provisions attached to, incorporated into, or otherwise made a part of this Contract by Buyer. Buyer shall not be bound by and specifically objects to any term or condition whatsoever that is different from or in addition to the provisions of this Contract, whether or not such term or condition will materially alter this Contract. Any such term or condition shall be deemed void and of no effect whatsoever, whether contained in any Contract acknowledgment or acceptance. Seller commencement of performance, or acceptance of this Contract, in any manner shall conclusively evidence agreement to this Contract as written.

**2. DEFINITIONS**

Whenever used in this Contract, the following terms, when capitalized, shall have the following meanings:

“Authorized Buyer Representative” means the representative of Pratt and Whitney Rocketdyne (PWR) Supplier Management & Procurement department identified in the Purchase Contract and as may be changed by written notice, who is authorized by Buyer to act on behalf of Buyer in business transactions with Seller.

"Buyer" means "PWR" acting as agent for any of its affiliates or wholly owned subsidiaries. All references in this Contract to "PWR" and any of its affiliates, divisions, or wholly owned subsidiaries shall mean "Buyer."

“Employee” or “Seller’s Employee” means any employee, agent, or representative of Seller or any subcontractor.

“Seller” means the entity identified in the Purchase Contract who agrees to sell Work.

“Work” means services performed or to be performed by Seller or its Employees under any Purchase Contract.

“Work Product” means all tangible items delivered to Buyer pursuant to this Contract, including but not limited to documentation or the creation of certain works of authorship specifically prepared in the course of performing Work.

**3. ORDER OF PRECEDENCE**

In the event of any inconsistency within or relating to this Contract, the following order of precedence will apply:

- a. The Purchase Contract.
- b. These Contract Labor Terms and Conditions.

**4. SERVICES TO BE FURNISHED**

Seller shall furnish to Buyer the services of Seller’s Employees approved in this Contract by Buyer. Such services shall be furnished at the place or places and during the period or periods specified in the Contract. Unless otherwise provided in this Contract, Seller’s Employees shall provide only those services that are within the scope of their assignment or as Buyer shall from time to time request.

**5. COMPENSATION**

As full compensation for the performance of this Contract, unless otherwise provided in the Contract, Buyer shall pay Seller at the rates set forth in the Contract for all services provided hereunder by Seller’s Employees, plus for any travel required and authorized by Buyer, or other costs or allowances specifically provided in the Pricing Exhibit. Said rates cover all profit and all wages and salaries, overhead, and other costs and expenses of Seller incident to this Contract, except such costs and expenses as may be covered by any travel, per diem or other costs or allowances specifically provided for in this Contract.

Time needed for badging and rebadging of Seller’s Employees will not be compensated by Buyer. Seller shall be responsible for all expenses incurred by Buyer related to accommodation of any disability of Seller’s Employees unless the expenses are

so substantial that they would place an undue hardship on the Seller. Any different allocation of accommodation expenses between Buyer and Seller must be expressly agreed in writing by Seller and Buyer. Buyer may offset against compensation otherwise due to Seller any disability accommodation expenses for which Seller is responsible hereunder. Buyer's standard work week begins on Monday and ends on Friday. Overtime or other premium rates, if any, will not be paid unless the performance of the overtime or other premium-pay Work is explicitly covered herein or otherwise has the prior written approval of Buyer.

a. Overtime. Overtime shall be paid for qualifying Seller's Employees per the rules of the state where the Employee is physically working. Seller's Employees will be eligible for overtime pay if they work on days observed by Buyer as Holidays per paragraph 6.b below.

b. Assignment Allowance. The assignment allowance rate, if specified under the Pricing Exhibit to the Contract, shall be paid for each calendar day (including Saturdays, Sundays, and Holidays, but excluding vacations) for each Seller's eligible Employees performing services under this Contract, provided:

- (1) The Employee's most recent place of work was outside one hundred (100) miles of Buyer's facility and
- (2) The Employee certifies upon initial assignment that he/she has no personal residence within one hundred (100) miles of Buyer's facility.

Eligible Employees shall also receive assignment allowance for a Saturday, Sunday, or Holiday when services are not performed if the conditions described on the Pricing Exhibit to the Contract are satisfied. The assignment allowance rate will be established by Buyer and is not a negotiated rate.

c. Relocation. Relocation expenses shall be reimbursable only as specified in accordance with PWR Contract Labor Authorized Travel and Business Expense Terms & Conditions.

d. Travel. When Seller's Employees travel on PWR business, the pricing of this time shall be consistent with applicable federal and state wage and hour laws and regulations. This will generally include compensation at the normal hourly rate or, where applicable, overtime compensation in accordance with paragraph 5.a above. If travel is required in the performance of Buyer specified tasks, Seller must provide the following certification on all invoices that include travel expenses:

"Seller certifies that all amounts for travel are in accordance with FAR 31.205-46 and are allowable and allocable as defined thereunder. Seller agrees that claims for travel reimbursement will be in accordance with Seller's policies, as may be approved by the Government and will not exceed Government regulations where applicable."

e. Invoices and Payments: Unless otherwise specified in the Contract, payment for hours worked is automatic, based on PWR time records. PWR time records supersede or take precedence over supplier time records (even if supplier time record has been signed by a PWR manager). No invoice is to be issued by the supplier against this Contract unless specifically requested by the Buyer. In addition to the above, Seller must review the weekly invoice, as provided by PWR, and report any discrepancies, via email to the appropriate Finance focal, within 60 days of the weekly invoice date. Seller's notification to PWR of a discrepancy must include documentation supporting the discrepancy claim. Documentation will include, but is not limited to, approved timekeeping records or rate confirmation from PWR Contract Labor Administrators. Any documents that cannot be forwarded to the Finance focal via email shall be faxed. PWR will notify Seller of the results of the discrepancy review and adjust payments as warranted thereby. Seller is deemed to waive all claims regarding any discrepancies which are not reported in the time-frame and manner specified above. All payments shall be subject to adjustments in accordance with paragraph 23.i (Audit Rights).

f. Inventor Motivation: In addition to the compensation under this Contract, Buyer may, in its sole and absolute discretion, make payments to Seller under certain conditions (e.g., upon the filing or issuance of certain patent applications or patents) which, in Buyer's sole judgment, reflect technological innovation that results from work performed under this Contract or any predecessor to it by Employees. Whenever it determines such payments will be made, Buyer will notify Seller and the Employees who, in Buyer's sole judgment, have demonstrated such technological innovation and will show such payments as separate line items in its accounting of the payments made to Seller under this Contract. Seller will pass on such payments (less any applicable taxes) to the named Employees promptly, and will make the named Employees available, upon request, to participate in Buyer sponsored inventor recognition ceremonies.

## 6. SCHEDULING

- a. Emergency Leave or Leave Without Cause. Buyer shall not be billed the daily hourly rates or the assignment allowance rate for any Seller's Employees that are absent from Buyer's facility or otherwise not performing services due to illness or any other reason whatsoever, even if such absence is requested by Buyer.
- b. Holidays. Seller's Employees shall observe only the Holidays and Holiday periods observed by Buyer's employees with whom Seller's Employees work. Any Work performed by Seller's Employees on such a Holiday or during any Holiday period will be compensated by Buyer as provided in paragraph 5.a above.
- c. Vacations. Seller's Employees will request and schedule vacations in advance with the cognizant Buyer supervisor.

## **7. TAXES**

All taxes, including but not limited to federal, state and local income taxes; franchise taxes; gross receipts taxes; business and occupation taxes and property taxes are deemed to be included in the price of the Services purchased by PWR from Supplier unless otherwise indicated.

If any sales or use tax is applicable to Services purchased, Supplier will separately bill such tax on its invoice to PWR. If such tax is not applicable to the Services purchased, it shall be so noted on the Purchase Contract, and PWR shall provide appropriate exemption statements and information acceptable to the taxing authority.

If custom duties, Goods & Services (GST) and/or value added taxes (VAT) are applicable to purchases by PWR under Purchase Contracts with Supplier pursuant to this Agreement, Supplier shall separately state the duty, Goods & Services and/or value added tax on its invoice to PWR in a manner allowing PWR to claim reimbursement of GST and/or VAT from the Supplier's government. If GST and/or VAT is to be reimbursed by Supplier's government, Supplier shall issue to PWR a proper invoice stating GST and/or VAT amounts in local currency at time of purchase to allow PWR to claim reimbursement of GST and/or VAT in accordance with laws governing such claims in Supplier's country.

## **8. DISCIPLINE OF PERSONNEL**

Discipline of Seller's Employees shall be Seller's responsibility.

## **9. COMPLIANCE WITH RULES AND REGULATIONS**

At any time when Seller's Employees or any approved Seller subcontractors are on Buyer's premises or otherwise accessing Buyer's property (including computing assets), Seller shall assure that Seller's Employees and Seller's subcontractors:

- a. Comply with Buyer's employee rules of conduct, including without limitation, Buyer's security and safety procedures. Buyer's security procedures may include badging and background check requirements.
- b. Comply with all federal, state and local health and safety laws and regulations applicable to such Buyer premises.
- c. Comply with all the rules and regulations established by Buyer for access to and activities in and around premises and properties controlled by Buyer or Buyer's customer.
- d. Comply with all applicable statutes and government rules, regulations and orders, including those pertaining to United States Export Controls.
- e. Report to Buyer's Site Safety Manager within twenty four hours after becoming aware of any injuries or illness of Seller's Employees or Seller's Subcontractor's Employees related to such Employees' work on Buyer's premises. The report shall be in writing, in a format to support recordkeeping under applicable workplace safety laws. Further Seller shall promptly furnish to Buyer a copy of any accident report prepared pursuant to any applicable law.

## **10. INDEPENDENT CONTRACTOR AND LABOR REQUIREMENTS**

- a. Seller's Responsibility for Its Employees. Employees assigned by Seller are not employees of Buyer, but are Seller's Employees and subject to the rules, regulations, and management of Seller. Seller's Employees shall be paid exclusively by Seller, and Seller shall be responsible for compliance with all requirements relating to its Employees under local, state, and federal laws and regulations, including but not limited to laws and regulations governing wage and hour requirements, social security, immigration and naturalization, unemployment insurance, income tax, workmen's compensation, labor relations, and discrimination laws. All tax obligations associated with this Contract are the sole responsibility of Seller. In the event Buyer is assessed or notified of any such taxes, Buyer shall notify

Seller and Seller shall promptly pay the amount of such assessments to the proper authority. At the request of Buyer, Seller shall give reasonable evidence of compliance with all such legal requirements and obligations.

- b. Place of Performance. All Work shall be performed at Buyer's facilities unless otherwise requested and authorized by Buyer.
- c. Qualified Employees. Seller will only employ on Buyer's assignments Employees who are qualified to perform the tasks specified by Buyer. Prior to the issuance of any Contract, Seller will furnish to Buyer the name and job assignment of each Employee then available for work and a resume of his or her qualifications. Seller warrants that each resume submitted represents a complete and accurate employment history and that the Employee is qualified for the designated assignment. Misrepresentation, gross omissions, or falsifications will be cause for removal of Seller's Employee and disallowance under paragraph 10.e below.
- d. Background Investigations: Seller will conduct a background investigation for each individual presented to Buyer that includes, but not limited to, a search of criminal court records in the county of residence. Seller represent that each individual presented to Buyer will have satisfied the Seller's background check standards and that the individual will, to the best of Seller's belief, comply with Buyer's Standards of Business conduct. Buyer reserves the right to conduct audits.

Seller will also furnish other information about Seller's Employee as reasonably requested by Buyer. No Employee of Seller will be assigned to perform services for Buyer unless the person, and his or her qualifications, background, assignment, billing rate, report date, export control status, and availability, are acceptable to Buyer. Buyer is not required to state why any person is rejected or removed from an assignment.

- e. Replacements. Seller shall, upon the written request of Buyer, remove any of Seller's Employees from the assignment with Buyer and promptly furnish a qualified replacement. If such person is removed within the first five (5) working days after reporting for work, Seller shall receive no compensation of any kind or amount for such person. No Employee's billing rate shall be changed except by mutual agreement.
- f. Security Clearances. Seller shall advise Buyer of the security clearance held by Seller's Employees furnished under any Contract, and shall keep Buyer apprised of any changes thereto.
- g. Removal. Seller shall not remove, reassign, transfer, or otherwise make available any of its Employees identified in any resume or assigned to provide services under this Contract without the express prior written consent of Buyer.
- h. Non-Disclosure of Compensation. Neither Seller nor any of its Employees shall disclose to any Buyer personnel the compensation paid Seller. Seller shall include this nondisclosure obligation in contracts or agreements with its Employees and shall orally advise them of the obligation.
- i. Subcontractors. Upon Buyer approval in accordance with paragraph 14 below, Subcontractors for these services can be used by Seller with no additional cost to PWR. Seller acknowledges and agrees that its contracts with all lower-tier contractors that Seller may use to perform services under this Agreement will contain similar obligations as set forth in this terms and conditions document.
- j. Utilization Of Small Business Concerns. If Buyer approves the use of subcontractors, Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned small business concerns to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of this contract.
- k. Diversity Data. Seller acknowledges and agrees that it will solicit and maintain, for a period of not less than two (2) years following the end of the assignment of each Employee that Seller places at Buyer's domestic U.S. facilities pursuant to this Contract, data on the (i) gender and (ii) ethnic group or race of each Employee. Seller further agrees to provide Buyer, upon Buyer's request, with this data. The ethnic group or race categories that Seller shall use for purposes of (ii) above are the following:

- 1) White
- 2) Black
- 3) American Indian and Alaskan Native

- 4) Asian or Pacific Islander
- 5) Hispanic

- l. Legal Right to Work. Seller represents and warrants that all Employees provided pursuant to this Contract are legally authorized to work in the United States. Seller represents that it has reviewed and verified all employee documentation regarding identity and right to work in the United States and shall provide Buyer with a copy of such documentation upon request. . With respect to immigration compliance, Seller specifically agrees that it is, and will remain, in compliance with the United States statute known as the Immigration Reform and Control Act of 1986, as amended, and will permit Buyer, upon reasonable notice, to inspect and audit Seller's records documenting such compliance for Seller's personnel who perform services under this Agreement.
- m. Drug Screening. Seller agrees that it will have and maintain a drug and alcohol testing program for its Employees that meets the requirements of the Drug-Free Workplace Act of 1988, 41 U.S.C. §701 et seq.

## 11. RELATIONSHIP OF THE PARTIES

- a. Independent Contractor. Seller is an independent contractor. Nothing in this Contract shall be construed as creating any relationship between Buyer and Seller other than that of Buyer and Seller, or licensee and licensor, respectively. This Contract is not intended to be, nor shall it be construed as, a joint venture, association, partnership, franchise, or other form of business organization or agency relationship.
- b. No Agency. Neither party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other, except as expressly provided herein.

## 12. INTELLECTUAL PROPERTY

- a. Work Product. All technical Work Product, including, but not limited to, ideas, information, data, documents, drawings, software, software documentation, designs, specifications, and processes produced by Seller's Employees, either alone or with others, in the course of or as a result of any Work performed under this Contract will be the exclusive property of Buyer and be delivered to Buyer promptly upon request.
- b. Inventions and Patents. All inventions conceived, developed, or first reduced to practice by Employee, either alone or with others, in the course of or as a result of any Work performed by Employee under this Contract, and any patents based on any such inventions (both domestic and foreign), will be the exclusive property of Buyer. Seller and Employee will (1) promptly disclose all such inventions to Buyer in written detail and (2) execute all papers, cooperate with Buyer, and perform all acts necessary or appropriate in connection with the filing, prosecution, maintenance, or assignment of related patents or patent applications on behalf of Buyer.
- c. Works of Authorship and Copyrights. All works of authorship (including, but not limited to, documents, drawings, software, software documentation, photographs, videotapes, sound recordings, and images) authored or otherwise created by Employee, either alone or with others, under this Contract, together with all copyrights subsisting therein, will be the sole property of Buyer. To the extent permitted under United States copyright law, all such works will be works made for hire, with the copyrights therein vesting in Buyer. In all other cases, the copyrights in such works, including all of the exclusive rights therein, will be promptly transferred and formally assigned by Seller and/or Employee free of charge to Buyer.
- d. Pre-Existing Inventions and Works of Authorship. Seller and Employee hereby grant to Buyer, and to Buyer's subcontractors, suppliers, and customers in connection with Buyer's products or Work being performed for Buyer, an irrevocable, nonexclusive, paid-up, worldwide license under any patents or copyrights (whether domestic or foreign) owned or controlled by Employee at any time and existing prior to or during the term of this Contract, but ~~only~~ to the extent that such patents or copyrights would otherwise interfere with Buyer's or Buyer's subcontractors', suppliers', or customers' use or enjoyment of the Work Product, inventions, or works of authorship belonging to Buyer under this Contract.
- e. Treatment of Proprietary Information and Materials. All proprietary, confidential, and/or trade secret information or data (including all materials containing or embodying such information or data) belonging to Buyer, or entrusted to Buyer by others, and becoming known to Employee in connection with this Contract (hereinafter "Proprietary Information") will remain the exclusive property of Buyer. Employee will, for the term of this Contract and thereafter, preserve in confidence, not disclose to others without the prior written permission of Buyer and not use (except in the performance of Work for Buyer covered by this Contract) any and all Proprietary Information. At

Buyer's request at any time and, in any event, upon the conclusion of all Work under the applicable Purchase Contract or Purchase Contracts, the Employee involved will deliver to Buyer all tangible embodiments of Proprietary Information.

- f. Information and Materials Used or Provided by Employee. Employee will, in the performance of services covered by this Contract, refrain from the unlawful or unauthorized use or disclosure to Buyer of any trade secrets and/or confidential information. In addition, Employee will ensure that, as to all information disclosed or otherwise provided to Buyer in connection with this Contract, Buyer may make unlimited use of and freely disclose such information without incurring any obligation or liability to Employee or to any other person or entity.
- g. Compliance by Employee. Seller shall require Employee to comply with the requirements of this clause (Intellectual Property [For Engineering/Technical Personnel]). All acts and obligations assumed by Employee, as contemplated by this clause, are part of the services performed by Seller under this Contract. Before Seller may place an Employee on assignment with Buyer, Employee must review and sign the Assigned Personnel Agreement and Notice which are attached hereto as exhibit A and hereby incorporated by reference.

### **13. SOLICITATION**

- a. Seller's Employee will be allowed to discuss potential employment with Buyer. Should these discussions lead to an offer of employment, Seller agrees to release Seller's employee to become Buyer's employee after three (3) months on assignment to Buyer. Buyer will pay no fees to Seller .
- b. Seller agrees that during the period of this Contract, it will not utilize its Employees assigned under any Contract to actively solicit for hire any of Buyer's staff.
- c. Seller agrees that it will not actively solicit for hire the staff of Buyer for a period of six months after completion of this Contract, unless prior written approval is obtained from Buyer.
- d. Seller shall not in any way solicit or recruit Employees to meet the requirements of this Contract until this Contract has been signed by both parties.
- e. Eligibility Requirements –All former Employees of the Buyer must observe a minimum six (6) months separation from the Buyer's company before returning to Buyer's company as contract labor.

### **14. SUBCONTRACTING, ASSIGNMENT OR TRANSFER**

Seller will not assign any of its rights or interest in this Agreement or subcontract all or substantially all of its performance of this Agreement without Buyer's prior written consent. Seller will not delegate any of its duties or obligations under this Agreement. Seller may assign its right to monies due or to become due.

With Buyer's written consent, the Parties may agree upon approved subcontractors, subsidiaries and/or Affiliates through whom Services will be provided by Seller. Prior to making a change to any arrangement with Seller's approved subcontractors, subsidiaries or affiliates that would have a material adverse effect upon Buyer's receipt of the Services, Seller will notify Buyer of the proposed change and will obtain Buyer's approval thereof.

No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, will relieve Seller of any of its obligations under this Agreement or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. Seller is and remains responsible for assuring that any such assignee, delegate or subcontractor complies with those provisions hereof that pertain to their work, and for flowing down to such persons those terms and conditions necessary to provide for same.

Notwithstanding any other provision hereof, Buyer may assign its rights or delegate performance of its obligation under all or part of this Contract to any subsidiary of Buyer.

### **15. GOVERNMENT REQUIREMENTS**

Within Seller's invoice or other form satisfactory to Buyer, Seller shall certify that Work and services covered by this contract were produced in compliance with Sections 6, 7, and 12, Fair Labor Standards Act, as amended and the regulations and contracts of the U.S. Department of Labor issued thereunder. The equal opportunity clauses set forth in FAR 52.222-26 and 41 CFR Part 60-1.4(a) are incorporated herein by reference, except "Contractor" means Seller. The Affirmative Action for Special Disabled and Vietnam Era Veterans clause as set forth in FAR 52.222-35 is incorporated herein by reference only if

contract exceeds \$10,000. The Affirmative Action for Handicapped Workers clause as set forth in FAR 52.222-36 is incorporated herein by reference only if contract exceeds \$2,500.

**16. TERMINATION**

Performance of services under this Contract may be terminated in whole or in part at any time by Buyer by giving Seller written notice of such termination, specifying the extent and effective date thereof. After receipt of any such notice, Seller shall stop Work hereunder to the extent it relates to the services terminated and, to the extent requested by Buyer, deliver to Buyer all completed or partially completed data, writings, recordings, pictures, drawings, and other information and items produced or obtained in the performance of services under this Contract. In the event of any termination pursuant to this clause, Seller shall be paid as provided in this Contract for all services performed hereunder and any travel, per diem, or other costs or allowances due hereunder. Seller shall have no claim against Buyer for services not performed, anticipatory profits lost, or consequential damages directly or indirectly caused by any such termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the contract price. Except as provided in this clause, any such termination shall not alter or affect the rights or obligations of the parties under this Contract.

**17. AMENDMENTS**

This Contract may not be modified or amended except by an instrument in writing executed with or subsequent to the execution of this Contract and signed by authorized representatives of Buyer and Seller.

**18. NOTICES**

Any notice, authorization, designation, request, or instruction under or in connection with this Contract to be effective shall be in writing and shall be deemed duly given or served upon delivery, addressed as set forth on the face of this contract. Either party may notify the other in the foregoing manner of any other address to which such communications are to be addressed under this Contract.

**19. WORK INTERRUPTIONS**

Notwithstanding any other provision of this Contract, Buyer shall not compensate Seller in any sum or manner whatsoever, including travel, per diem, or other costs or allowances, for any day Seller's Employee does not perform their services, including but not limited to nonperformance resulting from any strike, picket line, or other labor disturbance.

**20. NOTICE OF ACTUAL OR ANTICIPATED DELAYS OR DEFICIENCIES**

Whenever Seller has knowledge of any actual or anticipated deficiency or delay in performance for any reason, including an actual or potential labor dispute, Seller shall immediately notify and submit all relevant information to Buyer. If requested by Buyer, Seller shall use additional effort, including premium effort, to correct any deficiency or avoid or minimize delay to the maximum extent possible. All of the cost associated with this additional effort shall be borne by Seller; the rights and remedies of Buyer under this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or elsewhere under the Contract.

**21. RESPONSIBILITY FOR CLAIMS**

- a. Indemnification, Negligence of Seller or Subcontractor. Seller shall indemnify and hold harmless Buyer; its subsidiaries; and their respective directors, officers, employees, and agents (hereinafter referred to as "Indemnitees") from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, and damages, of any kind and nature whatsoever, for property damage, personal injury, or death (including without limitation injury to or death of employees of Seller or any subcontractor) and expenses, costs of litigation, and counsel fees related thereto or incident to establishing the right to indemnification arising out of or in any way related to the Contract, the performance thereof by Seller, any subcontractor, or other third parties, or any activities of Indemnitees, including without limitation the provision of services, personnel, facilities, equipment, support, supervision, or review. The foregoing indemnity shall apply only to the extent of the negligence of Seller, any subcontractor, or their respective employees. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by the Seller or any subcontractor. Seller expressly waives any immunity under industrial insurance, whether arising from Title 51.04.010 et seq. of the Revised Code of Washington or any other statute or source, to the extent of the indemnity set forth in this paragraph 21.a (Indemnification, Negligence of Seller or subcontractor).

- b. Indemnification, Performance of Seller or Subcontractor. Seller shall defend, indemnify, and hold harmless the Indemnitees from and against all actions and claims, including attorneys' fees and other costs of litigation related thereto, involving or in any way related to establishing the right to indemnification, that right arises out of or in any way relates to Seller's failure to perform any of its obligations under the Contract or to any subcontractor's failure to perform any of its obligations under the Contract or its subcontract.
- c. Subcontractor Indemnification. If any subcontractors or their Employees will have a presence on Buyer's premises in connection with the performance of the Work, Seller shall require each subcontractor to provide an indemnity enforceable by and for the benefit of the Indemnitees to the same extent require of Seller under paragraph 21.a (Indemnification by Seller).

## 22. SELLER'S INSURANCE

- a. Commercial General Liability. Throughout the period when Work is performed and until final acceptance by Buyer, Seller shall carry and maintain, and ensure that all subcontractors carry and maintain commercial general liability insurance with available limits of not less than one million dollars (\$1,000,000) per occurrence, for bodily injury and property damage combined. Such insurance shall be in a form and with insurers acceptable to Buyer and shall contain coverage for all premises and operations, broad form property damage, and contractual liability (including without limitation that specifically assumed under paragraph 21.a herein). Seller shall cause the Indemnitees to be named as an additional insured, but only to the extent of the indemnity set forth in paragraph 21.a. Such insurance shall not be maintained on a per project basis unless the respective Seller or subcontractor does not maintain blanket coverage.
- b. Automobile Liability. If licensed vehicles will be used in connection with the performance of the Work, Seller shall carry and maintain, and ensure that any subcontractor who uses a licensed vehicle in connection with the performance of the Work carries and maintains, throughout the period when Work is performed and until final acceptance by Buyer, business automobile liability insurance covering all vehicles, whether owned, hired, rented, borrowed, or otherwise, with available limits of liability of not less than one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage.
- c. Workers' Compensation. Seller shall carry and maintain, and ensure that all subcontractors carry and maintain, insurance in accordance with the applicable laws relating to workers' compensation covering all of their respective Employees working on or about Buyer premises. If Buyer is required by any applicable law to pay any workers' compensation premiums with respect to Employee of Seller or any subcontractor, Seller shall reimburse Buyer for such payment.
- d. Certificates of Insurance. Prior to the commencement of the Work, Seller shall provide for Buyer's review and approval certificates of insurance reflecting full compliance with the requirements set forth in paragraphs 22.a (Commercial General Liability), 22.b (Automobile Liability), and 22.c (Workers' Compensation) as applicable. Such certificates shall be kept current and in compliance throughout the period when Work is being performed and until final acceptance by Buyer and shall provide for thirty (30) days advance written notice to Buyer in the event of cancellation. Failure of Seller or any subcontractor thereof to furnish certificates of insurance, or to procure and maintain the insurance required herein, or failure of Buyer to request such certificates, endorsements, or other proof of coverage shall not constitute a waiver of the respective Seller's or subcontractor's obligations hereunder.
- e. Self-Assumption. Any self-insured retention, deductibles, and exclusions in coverage in the policies required under clause 22 shall be assumed by, for the account of, and at the sole risk of Seller or the subcontractor that provides the insurance and to the extent applicable shall be paid by such Seller or subcontractor. In no event shall the liability of Seller or any subcontractor be limited to the extent of any of the minimum limits of insurance required under clause 22.
- f. Buyer's Property. Seller shall clearly mark and maintain an inventory of and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this contract without Buyer's prior written consent. Seller shall notify Buyer's Authorized Procurement Representative if Buyer's property is lost, damaged or destroyed. As directed by Buyer, upon completion, termination or cancellation of this contract, Seller shall deliver such property, to the extent not incorporated in delivered materials, to Buyer in good condition subject to ordinary wear and tear and normal

manufacturing losses. Nothing in this article limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest.

## 23. GENERAL PROVISIONS

- a. Severability. If any provision of this Contract shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.
- b. Non-waiver. Any failure of Buyer to enforce any provision of this Contract shall not constitute waiver of such provision or prejudice the right of Buyer to enforce such provision at any subsequent time. No such provision shall be deemed waived unless the waiver is in writing and signed by authorized representatives of Buyer and Seller.
- c. Publicity. Seller will not, and will ensure that Seller's Employees will not, (1) make reference to this Contract (including any Purchase Contract) or Seller's or Seller's Employee's relationship with Buyer in connection with any form of promotion or public announcement or (2) use, or cause or permit to be used, the Buyer name or any Buyer trademark or service mark in any form of promotion or publicity without Buyer's prior written approval. Seller is, however, authorized to refer to this Contract and any relevant Purchase Contract to the extent reasonably necessary to solicit and employ Employees.
- d. Survival. All indemnities, warranties, and representations made under this Contract and all accrued obligations under the clause entitled "Proprietary Information" will survive cancellation or termination of this Contract. Cancellation or termination of this Contract will not affect operation of those provisions of this Contract that, by their terms, survive or are required to survive in order to effectuate the intent of the parties as reflected by this Contract.
- e. Rights and Remedies. Except as limited under this Contract, the rights and remedies afforded to each party under this Contract are in addition to any other rights or remedies, at law or in equity, or otherwise.
- f. Right to Offset. Buyer, without waiver or limitation of any of its rights or remedies, shall be entitled from time to time to deduct from any amounts due or owing by Buyer to Seller in connection with this Contract any and all amounts owed by Seller to Buyer in connection with this Contract.
- g. Agent for Process. Seller shall appoint an agent for the service of legal process in the State of Delaware. Such obligation shall continue beyond the termination or cancellation of this Contract.
- h. Approval and Payment. Seller understands and agrees that Buyer approval and payment of any of Seller's invoices against this Contract is not to be construed as any type of acceptance of the prices or rates included thereon. Payment of Seller's invoices shall be subject to adjustment for any amount subsequently found to have been improperly invoiced.
- i. Audit Rights. For the purposes of verifying sums and rates invoiced by Seller, Seller agrees to retain, until three years after final payment under this Contract, all books, documents, papers, records, etc., pertaining to all transactions hereunder. Seller further agrees that, during this time, Buyer shall be granted access to and have the right to audit any and all such information during normal working hours. Buyer's standard audit procedure for any given Contract will consist of the following:
  - (1) A random invoice sampling of at least five percent (5%);
  - (2) The determination of an error rate, if any; and,
  - (3) The calculation of any adjustment amount by applying the percentage error rate to the total current aggregate dollar expenditure figure for the entire time period in question and then adding appropriate freight and tax considerations.
- j. Gratuities. Neither Seller nor its Employees, agents, or representatives shall offer or extend any gratuities, such as gifts, entertainment, or personal discounts, to any of Buyer's employees regardless of the purpose or intent of the offer. Any question on this policy may be referred to the Authorized Buyer Representative.
- k. Purchase Contract Value. The dollar allotment on the face of this Contract in the space designated "Unit Price" is for Buyer's budget purpose only and represents no guarantee or commitment for future purchase requirements. Any estimate or other representation of future purchase requirements provided to Seller by Buyer is not to be considered or relied upon as an indication of Buyer's actual purchase requirements.

- l. Termination for Violation of Company Rules. Seller's employees who are terminated from Buyer's assignment for Violation of Company Rules of Buyer will not be considered for future assignments.
- m. Disputes. Any dispute that arises under or is related to this contract that cannot be settled by mutual agreement of the parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.
- n. Offset Credits.
  - (1) To the exclusion of all others, Buyer or its assignees shall be entitled to all industrial benefits or offset credits which might result from this contract. Seller shall provide documentation or information which Buyer or its assignees may reasonably request to substantiate claims for industrial benefits or offset credits.
  - (2) Seller agrees to use reasonable efforts to identify the foreign content of goods or services which Seller either produces itself or procures from subcontractors for work directly related to this contract. Promptly after selection of a non-U.S. subcontractor for work under this contract, Seller shall notify Buyer of the name, address, subcontractor point of contact (including telephone number) and dollar value of the subcontract.

**24. EXPORT CONTROL.** Buyer may be required to obtain information concerning U.S. export control status of Seller's personnel or Seller's subcontractor personnel entering the premises of Buyer or accessing Buyer's computing systems. Seller agrees to furnish this information before commencement of work and at any time thereafter before substituting or adding new personnel to work on Buyer's premises or to access Buyer's computing systems. Information submitted by Seller shall be certified by an authorized representative of Seller as being true and correct

Buyer may specify in an applicable Purchase Contract that personnel performing certain duties must be U.S. citizens or otherwise qualify as U.S. Persons under applicable export control laws. There may be certain instances where U.S. Citizenship is a requirement of an applicable Purchase Contract. To the extent Seller chooses to use individuals who are not U.S. citizens or individuals otherwise qualifying as U.S. Persons under applicable export control laws, Seller will be responsible for obtaining all export licenses required for each such individual to perform the Services to which he or she is assigned. Seller will comply with any additional export control restrictions identified in an applicable Purchase Contract.

Buyer and Seller will not knowingly export or re-export any computer system, part, technical data or sub-elements under this Agreement, directly or indirectly, to any destinations prohibited by the U.S. Government. The term "technical data" in this context, means such data as is defined as technical data by applicable U.S. export regulations.

**25. CHANGES**

Only the Authorized Buyer Representative may approve changes in any requirements under this Contract.

**26. COMPLIANCE FORMS**

All required PWR Compliance Forms must be completed and submitted to PWR Contract Labor Administration prior to Assignment Start Date.

**27. PROCUREMENT INTEGRITY**

Seller understands and agrees that it is acting solely on its own and for its benefit, and in no way as a representative or agent of Buyer, in recruiting individuals to perform services under this Contract.

Moreover, Seller agrees to comply with the Procurement Integrity Provisions of the Office of Federal Procurement Policy Act of 1988 (The Act), 41 U.S.C. 423, and its implementing regulations, FAR 3.104 et seq. Seller shall reimburse Buyer, by contract price adjustment or otherwise, for any damages incurred by Buyer for any violation of The Act that is caused by Seller. Seller agrees to hold Buyer harmless from and indemnify Buyer for all costs, expenses, and offsets that Buyer may incur as a consequence of violations of The Act that are caused by Seller. The rights and obligations set forth in this clause shall survive completion of, final payment under, or termination of this Contract.

**28. INFRINGEMENT**

Seller shall defend Buyer and customers against all claims and proceedings based upon actual or alleged infringement of any patent or copyrights by any Work Product or based upon actual or alleged misappropriation or wrongful use of any proprietary or confidential information involving any Work Product, and Seller shall hold them harmless from any resulting losses, liabilities, damages, costs and expenses. Seller shall be notified of such claims or proceedings with reasonable promptness. Seller's obligations under this clause shall not apply to the extent any goods are manufactured pursuant to detailed designs furnished by Buyer or to any infringement arising from the use or sale of goods in combination with items not furnished by seller if such infringement would not have occurred from the use or sale of such goods solely for the purpose for which they were designed or delivered to Buyer. Seller's obligation under this clause shall extend to the U.S. Government only if and to the extent Buyer is obligated or liable to the U.S. Government.

**29. GOVERNING LAW**

This Contract shall be construed under and governed by the internal laws of the State of Delaware, without regard to conflict of law provisions. The prevailing party in any litigation arising out of this Contract shall be entitled to recover its reasonable attorneys' fees and costs from the losing party.

**30. COMPLETE AGREEMENT**

This Contract contains the complete and exclusive statement of the terms of the Contract between Buyer and Seller with respect to the Work and supersedes and merges any prior or contemporaneous agreements, commitments, proposals, representations, or communications, oral or written, with respect to the Work.