



ARINC Incorporated
 2551 Riva Road
 Annapolis, Maryland 21401-7465
 410-266-4000
http://www.arinc.com/working_with/procurement_info/trms_cnds.html

General Provisions and FAR/DFARS Flowdown Provisions for Subcontracts or Purchase Orders for Noncommercial Items Under a U.S. Government Prime Contract

SECTION I: GENERAL PROVISIONS

- | | | | |
|----|--|----|-----------------------------|
| 1 | Formation of Contract and Terms and Conditions | 22 | Parts Obsolescence |
| 2 | Applicable Laws | 23 | Payments, Taxes, and Duties |
| 3 | Assignment and Subcontracting | 24 | Precedence |
| 4 | Communication with ARINC Customer | 25 | Priority Rating |
| 5 | Confidentiality | 26 | Quality Control System |
| 6 | Contract Direction | 27 | Release of Information |
| 7 | Definitions | 28 | Source Surveillance |
| 8 | Disputes | 29 | Subcontracts |
| 9 | Export Control Compliance for Foreign Persons | 30 | Survivability |
| 10 | Extras | 31 | Timely Performance |
| 11 | Furnished Property | 32 | Waiver and Approval |
| 12 | Gratuities and Kickbacks | 33 | Warranty |
| 13 | Indemnification | | |
| 14 | Independent Contractor Relationship | | |
| 15 | Insurance and Liability to Third Parties | | |
| 16 | Intellectual Property Infringement | | |
| 17 | Language and Standards | | |
| 18 | Limitation of Liability | | |
| 19 | New Materials | | |
| 20 | Offset Credit and Cooperation | | |
| 21 | Packing and Shipment | | |

SECTION II: FAR AND DFARS FLOWDOWN PROVISIONS

- A Incorporation of FAR and DFARS Clauses
- B Government Subcontract
- C Notes
- D Amendments Required by Prime Contract
- E FAR Flowdown Clauses
- F DFARS Flowdown Clauses
- G Certifications and Representations

SECTION I: GENERAL PROVISIONS

1. Formation of Contract and Terms and Conditions

- (a) This Contract is ARINC's offer to SELLER. SELLER's signature on the Contract, acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract. SELLER's acceptance of this Contract creates a binding Contract between ARINC and SELLER, which shall be governed by the provisions of this Contract.
- (b) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (c) Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment hereof are hereby objected to by ARINC and have no effect unless accepted in writing by ARINC.

2. Applicable Laws

- (a) This Contract shall be governed by the laws of the state of Maryland, excluding its choice of laws rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR), (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR, or (iii) substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contracts

Appeals, and quasi-judicial agencies of the Federal Government.

- (b) (1) SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances.
- (2) These rights and obligations shall survive the termination or completion of this Contract
- (c) In particular, if the Work is to be shipped to or performed in the United States:
 - (1) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to ARINC hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
 - (2) SELLER shall provide to ARINC with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act (OSHA) of 1970 and regulations promulgated thereunder, or the state-approved counterpart to OSHA.

3. Assignment and Subcontracting

- (a) Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by ARINC. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing

institution if ARINC is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. ARINC shall have the right to make settlements and adjustments in price with SELLER without notice to the assignee.

- (b) Without ARINC's written consent, SELLER will not subcontract for the design, development, or procurement of any substantial portion of goods or services under this contract. This limitation does not apply to SELLER's purchases of standard commercial supplies or raw materials.

4. Communication with ARINC Customer

- (a) ARINC shall be solely responsible for all liaison and coordination with the ARINC customer, including the U.S. Government, as it affects the applicable Prime Contract, this Contract, and any related contract.
- (b) Unless otherwise directed in writing by the authorized ARINC Procurement Representative, all documentation requiring submittal to, or action by, the government or the Contracting Officer shall be routed to, or through, the ARINC Procurement Representative, or as otherwise permitted by this Contract.

5. Confidentiality

- (a) Unless otherwise addressed by a separate Confidentiality Agreement between the parties, ARINC and SELLER shall each keep confidential and protect from unauthorized use and disclosure for a period of three (3) years after receipt all (a) confidential, proprietary and/or trade secret information; (b) tangible items containing, conveying or embodying such information; and (c) tooling identified as being subject to this article and obtained, directly or indirectly, from the other in connection with this contract (collectively referred to as a "Proprietary Information and Materials").
- (b) ARINC and SELLER shall each use Proprietary Information and Materials of the other only in connection with this contract. However, despite any other obligations or restrictions imposed by this article, ARINC shall have the right to use, disclose and reproduce SELLER's Proprietary Information and Materials, and make derivative works thereof, in connection with this contract. Any such use, disclosure, reproduction or derivative work by ARINC shall, whenever appropriate, include a restrictive legend suitable to the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by SELLER shall apply to all materials derived by SELLER or others from ARINC's Proprietary Information and Materials.
- (c) Upon ARINC's request at any time, and in any event upon the completion, termination or cancellation of this contract, SELLER shall return to ARINC all of ARINC's Proprietary Information and Materials and all materials derived there from (except for one archival copy), unless specifically directed otherwise in writing by ARINC or a United States of America Government Contracting Officer.
- (d) SELLER may disclose Proprietary Information and Materials of ARINC to its subcontractors as required in connection with this contract program, provided that each such subcontractor first agrees in writing to substantially the same obligations imposed upon SELLER under this article relating to Proprietary Information and Materials.

- (e) The provisions of this article control in the event of a conflict with any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this contract.

6. Contract Direction

- (a) Only the ARINC Procurement Representative has authority to amend this Contract. Such amendments must be in writing.
- (b) ARINC engineering and technical personnel may render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the **Changes** clause of this Contract (FAR 52.243-1) and shall not be the basis for equitable adjustment.
- (c) Action or direction by any ARINC customer shall not be deemed to be a change under the **Changes** clause of this Contract and shall not be the basis for equitable adjustment.
- (d) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the ARINC Procurement Representative.

7. Definitions

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, (e.g., PO, Purchase Order, or other such designation), including all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a master agreement that provides for releases (in the form of a Purchase Order or other such document), the term "Contract" shall also mean the release document for the Work to be performed.
- (b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (c) "ARINC" means ARINC Incorporated.
- (d) "ARINC Procurement Representative" means the person authorized by ARINC's cognizant procurement organization to administer this Contract.
- (e) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this Contract.
- (f) "SELLER" means the Party identified on the title page of the Contract, with whom ARINC is contracting.
- (g) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

8. Disputes

- (a) Any dispute, controversy, or claim arising out of or relating to this Contract or default, termination, or invalidity hereof, shall be settled by arbitration under the rules of the American Arbitration Association. The place of the arbitration shall be Washington, D.C. The language to be used in the arbitral proceedings shall be English. Judgment of the arbitrators shall be final and nonappealable and may

be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of the enforcement. Each Party shall bear its own expenses of the arbitration, but the fees and costs of the arbitrators shall be borne equally between the Parties participating in the arbitration.

- (b) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the requesting party with copies of documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators, whose determination shall be conclusive. All discovery shall be completed within thirty (30) days following the appointment of the arbitrators.
- (c) No action at law or in equity may be commenced by ARINC or SELLER under or arising from this Contract unless it is brought within two years after the accrual of the cause of action upon which the claim is based, regardless of whether ARINC or SELLER knew or should have known of the accrual of any such cause of action.
- (d) Notwithstanding the foregoing, in the event of a breach or threatened breach by ARINC or SELLER under the **Confidentiality** or **Intellectual Property** provisions of this Contract, ARINC or SELLER may forego arbitration under this provision and seek immediate judicial and equitable remedies, including, but not limited to, injunctive relief or specific performance.
- (e) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by the ARINC Procurement Representative.

9. Export Control Compliance for Foreign Persons

- (a) SELLER agrees to comply fully with all applicable U.S. export control laws.
- (b) The subject Work of this Contract (together including data, services, and hardware provided hereunder, hereinafter "Controlled Technology") may be controlled for export purposes under the International Traffic in Arms Regulations (ITAR) controlled by the U.S. Department of State or the Export Administration Regulations ("EAR") controlled by the U.S. Department of Commerce. ITAR controlled technology may not be exported without prior written authorization and certain EAR technology requires a prior license depending upon its categorization, destination, end-user and end-use. SELLER shall obtain the authority of either an Export License or an applicable License Exception before permitting the export of any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered to SELLER under this Contract. SELLER shall obtain the authority of either an Export License or an applicable License Exception before assigning any foreign persons or foreign sources to perform work under this Contract or before permitting any foreign persons or foreign sources to have access to any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered to SELLER under this Contract. "Foreign person" is any person who is not a citizen or national of the United States and includes individuals, foreign corporations, international organizations, and foreign governments. "Foreign source" includes vendors, subcontractors, and suppliers owned and controlled by a foreign person.
- (c) SELLER hereby certifies that all SELLER employees who have access to the Controlled Technology are U.S. citizens, have a

valid green card or, have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3). Any non-citizens who do not meet one of these criteria have been authorized under export licenses to perform their work hereunder.

- (d) SELLER further certifies that all SELLER employees assigned to work on this Contract are U.S. citizens, U.S. Permanent Residents, non-immigrants authorized to work in the U.S. or non-immigrants who have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3).
- (e) SELLER agrees to notify ARINC if any deliverable Work under this Contract is restricted by export control laws or regulations.
- (f) SELLER shall immediately notify the ARINC Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency. At ARINC's request, SELLER will provide ARINC with all data ARINC may need to apply for and obtain an Export License or applicable License Exception.

10. Extras

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

11. Furnished Property

- (a) ARINC may provide to SELLER property owned by either ARINC or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall be retained by ARINC or its customer. SELLER shall clearly mark (if not already marked) all Furnished Property to show ownership.
- (c) Except for reasonable wear and tear, SELLER assumes all risk of loss, destruction, or damage of Furnished Property while in SELLER's possession, custody, or control. Upon request, SELLER shall provide ARINC with adequate proof of insurance against such risk of loss. SELLER shall promptly notify ARINC of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- (d) At ARINC's request or at completion of this Contract the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by ARINC.
- (e) With respect to government-furnished property, or property to which the government may take title under this Contract:
 - (1) For this fixed-price Contract, the clause at FAR 52.245-2 shall apply. Said clause is incorporated by reference, except as used therein "Government" means "ARINC" except in the phrases "Government-Furnished Property" and "Government Property," and in references to government title to property. "Contracting Officer" means "ARINC."
 - (2) SELLER shall provide to ARINC immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the government of its property control system.

12. Gratuities and Kickbacks

- (a) No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given by SELLER to any employee of ARINC with a view toward securing favorable treatment as a supplier.
- (b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

13. Indemnification

Each party shall indemnify the other against all liability that may result from any claim, action, or suit based on any alleged injury to or death of any person or damage to or loss of any property to the extent that it was caused or alleged to have been caused by it in the course of its performance of this Contract. The indemnifying party shall pay all attorneys fees and costs of defense and, if any judgment is rendered against the indemnified party in any such action or actions, the indemnifying party shall satisfy and discharge the judgment without cost or expense to the indemnified party.

14. Independent Contractor Relationship

- (a) SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively, without any relation whatsoever to ARINC, and shall not be entitled to participate in or receive any of ARINC's employee benefits.

15. Insurance and Liability to Third Parties

- (a) In the event that SELLER, its employees, agents, or subcontractors enter ARINC's or its customer's premises for any reason in connection with this Contract, SELLER, as well as its subcontractors and lower-tier subcontractors, shall procure and maintain worker's compensation, comprehensive general liability, bodily injury, and property damage insurance in reasonable amounts, and such other insurance as ARINC may require, as stated in the contract schedule, and shall comply with all site requirements. Such insurance shall be written through a licensed carrier, with a financial rating of no less than A-, in the respective state of operation and shall meet all legal minimum requirements of same state. SELLER shall indemnify and hold harmless ARINC, its officers, employees, and agents from any and all losses, costs, claims, causes of action, damages, liabilities, and expenses, including (but not limited to) attorneys' fees, all expenses of litigation and settlement, and court costs, by reason of property damage or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, to the extent of SELLER'S negligence, gross negligence, or intentional misconduct.
- (b) SELLER shall provide ARINC thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance. If requested, SELLER shall send a Certificate of Insurance showing SELLER's compliance with these requirements. SELLER shall name ARINC as an additional insured for the duration of this Contract.

Insurance maintained pursuant to this clause shall be considered primary as respects the interest of ARINC and is not contributory with any insurance which ARINC may carry.

16. Intellectual Property Infringement

- (a) SELLER represents that to the best of its knowledge the SELLER's patents, copyrights, trademarks, trade secrets or similar rights relating to the maintenance, sale or use of goods furnished, or relating to, or used in, the work performed, pursuant to this contract do not infringe on any existing patents, copyrights, trade secrets or other intellectual property and proprietary rights of any third party nor has any claim (whether or not embodied in action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against SELLER.
- (b) In the event of a breach of this representation, SELLER shall defend, at SELLER's own responsibility and expense, ARINC and ARINC's customer from any suit or claim against ARINC or ARINC's customer and SELLER shall indemnify and hold harmless ARINC and ARINC's customer from and against any and all claims, liabilities, losses, damages, and expenses provided ARINC (a) notifies SELLER promptly in writing of such claim; (b) allows SELLER to control the defense of such claims; and (c) reasonably cooperates with SELLER to defend such claim.
- (c) SELLER will have no obligation under this article with regard to any infringement arising from (a) SELLER's compliance with formal drawings or specifications issued by ARINC or U.S. Government where infringement could not be avoided in complying with such drawings or specifications or (b) use or sale of products in combination with other items when such infringement would not have occurred from the use or sale of those products solely for the purpose for which they were designed or sold by SELLER.
- (d) SELLER will have no obligation under this article with regard to any infringement authorized by the Authorization and Consent clause in clause of the contract, provided SELLER complies with the Authorization and Consent and the Notice and Assistance Regarding Patent and Copyright Infringement clauses in clause.

17. Language and Standards

All reports, correspondence, drawings, notices, markings, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing, all documentation and work shall use the units of U.S. standard weights and measures.

18. Limitation of Liability

- (a) Except for claims made under section (c) below, in no event shall either SELLER or ARINC be liable to the other for any indirect, incidental or consequential damages arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss.
- (b) Each Party shall indemnify and hold harmless the other, its officers, directors, employees and agents, against and from any liability, loss, damage, cost and expense (including attorneys' fees and costs of litigation) arising

out of or in connection with any claim or action which any third party may file or threaten to file against either Party or its officers, directors, employees or agents arising out of, or resulting directly from, the negligent acts or omissions or the willful misconduct of it or its employees, directors, officers, representatives, and agents in the course of its performance of its obligations under this Agreement. The indemnification provided herein shall survive the termination of this Agreement.

19. New Materials

The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5 (not used, reconditioned, remanufactured, or of such age as to impair usefulness or safety).

20. Offset Credit and Cooperation

All offset or countertrade credit value resulting from this Contract shall accrue solely to the benefit of ARINC. SELLER agrees to cooperate with ARINC in the fulfillment of any foreign offset or countertrade obligations.

21. Packing and Shipment

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice to prevent damage and deterioration during shipping, handling, and storage.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the ARINC contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- (c) For Work shipped within the United States, unless otherwise specified, delivery shall be FOB Destination. For Work imported into the United States, unless otherwise specified, delivery shall be DDP ARINC's facility indicated on the title page of the Contract in accordance with *INCOTERMS 1990*.

22. Parts Obsolescence

ARINC may desire to place additional orders for items purchased hereunder. SELLER shall provide ARINC with a Last Time Buy Notice at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.

23. Payments, Taxes, and Duties

- (a) Unless otherwise provided, terms of payment shall be net forty five (45) days from the latest of the following: (i) ARINC's receipt of the SELLER's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work.
- (b) Payment shall be deemed to have been made as of the date of ARINC's mailed payment or electronic funds transfer.
- (c) Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. Prices shall not include

any taxes, impositions, charges or exactions for which ARINC has furnished a valid exemption certificate or other evidence of exemption.

- (d) All taxes, assessments and similar charges levied with respect to or upon any such products or Work owned by ARINC while in SELLER's possession or control, and for which no exemption is available, shall be borne by SELLER.
- (e) The prices stated in the contract are firm, fixed prices in United States dollars.

24. Precedence

Any inconsistencies in this Contract shall be resolved in accordance with the following (in descending order of precedence): (1) face of the Purchase Order, release document or schedule (which may include continuation sheets), as applicable, including any special terms and conditions; (2) any master agreement, such as corporate, sector, or blanket agreements; (3) these General Provisions; and (4) Statement of Work.

25. Priority Rating

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

26. Quality Control System

Unless this Contract contains other specific quality requirements,

- (a) SELLER shall provide and maintain a quality control system to an industry-recognized quality standard for the Work covered by this Contract.
- (b) Records of all quality control inspection work by SELLER shall be kept complete and made available to ARINC and its customers during the performance of this Contract and for such longer periods as may be specified.

27. Release of Information

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

28. Source Surveillance

In addition to inspections as otherwise provided in this Contract, and at no increase in Contract price, ARINC may assign product assurance representatives to SELLER's facilities to conduct and maintain surveillance as necessary to ensure quality and reliability. SELLER likewise shall reserve such right to ARINC with respect to SELLER's lower-tier subcontractors. If such examination is made, SELLER shall provide, and require its subcontractors to provide, such representatives with reasonable facilities, equipment, and unescorted access (except in areas where proprietary processes or data are located, in which case access shall be on an escorted basis) to all areas essential to the proper conduct of the above described activity.

29. Subcontracts

- (a) If this Contract is primarily for the purpose of furnishing services, no subcontract shall be made by the SELLER with any other Party for furnishing all or substantially all of the Work or services herein contracted for without the advance written approval of ARINC; however, this provision shall not be construed to require the approval of contracts of employment between the SELLER and personnel assigned for services hereunder.
- (b) The SELLER shall give ARINC immediate written notice of any action or suit filed and prompt notice of any claim made against the SELLER by any subcontractor or vendor that, in the opinion of the SELLER, may result in litigation related in any way to this Contract, with respect to which the SELLER may be entitled to reimbursement from ARINC.
- (c) No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost-basis, and any fee payable under cost-reimbursement, lower-tier subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4) (formerly 15.903(d)) of the FAR.

30. Survivability

If this Contract expires, is completed, or is terminated for default or convenience, SELLER shall not be relieved of those obligations contained in this Contract for the following provisions:

- (a) Applicable Laws, Clause No. 2
Confidentiality, Clause No. 5
Export Control, Clause No. 9
Independent Contractor Relationship, Clause No. 14
Insurance and Liability to Third Parties, Clause No. 15
Intellectual Property Infringement, Clause No. 16
Limitation of Liability, Clause No. 18
Release of Information, Clause No. 27
Warranty, Clause No. 33
- (b) Those U.S. Government flowdown provisions that, by their nature, should survive.

31. Timely Performance

- (a) Time is of the essence in this Contract. SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by ARINC, ARINC may store, at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall promptly notify ARINC, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless ARINC has given prior written consent.

32. Waiver and Approval

- (a) Failure by ARINC to enforce any provisions of this Contract shall not be construed as a waiver of the requirements of such provisions, or as a waiver of the

right of ARINC thereafter to enforce each and every such provisions.

- (b) ARINC's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.

33. Warranty

- (a) In addition to SELLER's standard warranty, SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. All warranties shall survive inspection, test and acceptance of, and payment for, the Work. All warranties shall run to ARINC and its successors, assigns, and customers. The warranty shall extend for a period of one (1) year after ARINC's final acceptance unless a different period is set forth elsewhere in this Contract. If any nonconformity of the Work appears within that time, SELLER shall promptly repair, replace, or reperform the Work, at ARINC's option. Transportation of replacement Work, return of nonconforming Work, and repeat performance of Work shall be at SELLER's expense. Work required to be corrected or replaced shall be subject to this provision and the **Inspection and Acceptance** provision of this Contract (FAR 52.246-2 and 52.246-4) in the same manner and to the same extent as Work originally delivered under this Contract. If repair, replacement, or reperformance of Work is not timely, ARINC may elect to return the nonconforming Work or repair, replace Work, or reprocure the Work at SELLER's expense.
- (b) SELLER further warrants that all software, firmware, and hardware (products) provided by SELLER, having date-dependent functionality containing or calling on a calendar function to process date and time data, will accurately process the date and time data (including, but not limited to, inputting, storing, manipulating, comparing, calculating, updating, displaying, outputting, and transforming such dates and data).
 - (1) In the event of a discovery of any date-dependent functionality noncompliance, the discovering party shall notify the other party within five (5) business days. At ARINC's option, the noncompliant products shall be repaired or replaced by SELLER within ten (10) business days of such notice at no cost to ARINC. The date-dependent functionality warranty shall run to ARINC and its successors, assigns, and customers, and shall extend indefinitely after ARINC's final acceptance.
 - (2) Nothing in this provision shall be construed to limit any other rights under this Contract, at law or in equity that ARINC may have with respect to date-dependent functionality compliance.

SECTION II: FAR and DFARS FLOWDOWN PROVISIONS

A. Incorporation of FAR and DFARS Clauses

The Federal Acquisition Regulation (FAR) clauses and Defense Federal Acquisition Regulation Supplement (DFARS) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, during the performance of this Contract. The effective date of each clause incorporated herein shall be that in effect as of the effective date of the Subcontract or Purchase Order.

B. Government Subcontract

This Contract is entered into by the Parties in support of a U.S. Government contract.

As used in the FAR and DFARS clauses referenced below and otherwise in this Contract:

1. "CONTRACTOR" means the SELLER, as defined previously in the **Definitions** provision of this document, acting as the immediate (first-tier) subcontractor to ARINC.
2. "Prime Contract" means the contract between ARINC and the U.S. Government or between ARINC and its higher-tier contractor who has a contract with the U.S. Government.
3. "Contract" means this Contract.
4. "Subcontract" means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

C. Notes

1. Substitute "ARINC" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "ARINC Procurement Representative" for "Contracting Officer," "Administrative Contracting Officer," and "ACO" throughout this clause.
3. Insert "and ARINC" after "Government" or "Contracting Officer," as appropriate, throughout this clause.
4. Insert "or ARINC" after "Government" throughout this clause.
5. Communication or notification required under this clause from or to the CONTRACTOR, and to or from the Contracting Officer shall be through ARINC.
6. "Contracting Officer" shall mean the U.S. Government Contracting Officer for ARINC's government Prime Contract under which this Contract is entered.

D. Amendments Required by Prime Contract

CONTRACTOR agrees that upon the request of ARINC it will negotiate in good faith with ARINC relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as ARINC may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the **Changes** clause of this Contract.

E. FAR Flowdown Clauses

REFERENCE TITLE

1. **The following FAR clauses apply to this Contract :**
 - (a) 52.211-5 Material Requirements (See Note 2)
 - (b) 52.219-8 Utilization of Small Business Concerns
 - (c) 52.222-21 Prohibition of Segregated Facilities

- (d) 52.222-26 Equal Opportunity (Only subparagraphs (b)(1)–(11) apply.)
- (e) 52.223-11 Ozone-Depleting Substances (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
- (f) 52.225-13 Restrictions on Certain Foreign Purchases (In paragraph (a), see Notes 5 and 6.)
- (g) 52.227-14 Rights in Data—General
- (h) 52.234-1 Industrial Resources Developed Under Defense Production Act Title III (See Note 2.)
- (i) 52.242-13 Bankruptcy (See Note 2)
- (j) 52.242-15 Stop-Work Order (See Notes 1 and 2.)
- (k) 52.243-1 Changes – Fixed Price (See Notes 1 and 2; delete the reference to the "Disputes" clause in subparagraph (e).)
- (l) 52.244-6 Subcontracts for Commercial Items
- (m) 52.246-2 Inspection of Supplies – Fixed-Price (The government also may exercise any of ARINC's inspection rights under this clause. See Notes 1 and 2)
- (n) 52.246-4 Inspection of Services – Fixed-Price (The government also may exercise any of ARINC's inspection rights under this clause. See Note 1)
- (o) 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (See Note 2.) (Refer to FAR 47.507 for applicability)
- (p) 52.249-2 Termination for Convenience of the Government (Fixed-Price) (Applicable only for fixed-price contracts. See Notes 1 and 2. "Government" and "Contracting Officer" mean "ARINC" except in paragraph (n), where "Government" means ARINC and the "Government" and "Contracting Officer" means "ARINC" or the "Contracting Officer." In paragraph (c), "120 days" is changed to "60 days." In paragraph (d), "15 days" is changed to "30 days," and "45 days" is changed to "60 days." In paragraph (e), "1 year" is changed to "6 months." Paragraph (j) is deleted. In paragraph (l), "90 days" is changed to "45 days." Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)
- (q) 52.249-8 Default (Fixed-Price Supply and Service) (Applicable only for fixed-price contracts. See Notes 1 and 2, except Note 1 is not applicable to paragraph (e). Timely performance is a material element of this Contract.)

2. **The following FAR clauses apply to this Contract if the value of this Contract exceeds \$10,000:**
 - (a) 52.222-36 Affirmative Action for Workers with Disabilities
3. **The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:**

- (a) 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
- (b) 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
- (c) 52.248-1 Value Engineering (See Note 1, except in subparagraphs (c)(5) and (m), see Note 3.)
4. **The following FAR clauses apply to this Contract if the value of this Contract exceeds \$100,000:**
- (a) 52.203-6 Restrictions on Subcontractor Sales to the Government
- (b) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (see Note 5.)
- (c) 52.215-2 Audit and Records-Negotiation (Insert "and the ARINC Purchasing Representative" after "the Contracting Officer or representatives of the Contracting Officer" or after "...representatives of the Contracting Officer who are employees of the government," where indicated throughout the clause.)
- (d) 52.215-14 Integrity of Unit Prices (Delete paragraph (b) of the clause.)
- (e) 52.223-14 Toxic Chemical Release Reporting (See Notes 2 and 5; delete subparagraph (e).)
- (f) 52.227-1 Authorization and Consent (Applicable only if the Prime Contract contains this clause. In the clause, in paragraph (a)(1), see Note 4, and in paragraph (a)(2)(ii), see Note 2.)
- (g) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (See Notes 2 and 4.)
5. **The following FAR clause applies to this Contract if the value of this Contract exceeds \$550,000:**
- (a) 52.219-9 Small Business Subcontracting Plan (Applicable if the CONTRACTOR is not a small business; see Notes 1 and 2, applicable to subparagraph (c) only; the CONTRACTOR's subcontracting plan is incorporated herein by reference.)
6. **The following FAR clauses apply to this Contract if the value of this Contract exceeds \$650,000:**
- (a) 52.215-12 Subcontractor Cost or Pricing Data (Applicable if not otherwise exempt under FAR 15.403.)
- (b) 52.215-13 Subcontractor Cost or Pricing Data – Modifications (Applicable for modifications if not otherwise exempt under FAR 15.403.)
7. **The following FAR clauses apply to this Contract if the value of this Contract exceeds \$5,000,000 and the period of performance is more than 120 days:**
- (a) 52.203-13 Contractor Code of Business Ethics and Conduct
- (b) 52.203-14 Display of Hotline Poster(s)
8. **The following FAR clauses apply to this Contract as indicated:**
- (a) 52.204-2 Security Requirements (Applicable if the Work requires access to classified information; delete paragraph (c) of the clause.)
- (b) 52.215-10 Price Reduction for Defective Cost or Pricing Data (Applicable if FAR 52.215-12 applies to this Contract. See Notes 2 and 4. Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)
- (c) 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modifications (Applicable if FAR 52.215-13 applies to this Contract, and FAR 52.215-10 is not applicable. See Notes 2 and 4. Rights and obligations under this clause shall survive completion of the work and final payment under this Contract.)
- (d) 52.215-15 Pension Adjustments and Asset Reversions (Applicable if this Contract meets the applicability requirements of FAR 15.408(g); see Note 5.)
- (e) 52.215-16 Facilities Capital Cost of Money (Applicable only if the Contract is subject to the cost principles under FAR Subpart 31.2 and the CONTRACTOR proposed facilities capital cost of money in its offer.)
- (f) 52.215-17 Waiver of Facilities Capital Cost of Money (Applicable only if the Contract is subject to the cost principles under FAR Subpart 31.2 for Contracts with commercial organizations, and the CONTRACTOR did not propose facilities capital cost of money in its offer.)
- (g) 52.215-18 Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions (Applicable if this Contract meets the applicability requirements of FAR 15.408(j); see Note 5.)
- (h) 52.215-19 Notification of Ownership Changes (Applicable if this Contract meets the applicability requirements of FAR 15.408(k); See Note 2.)
- (i) 52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (See Note 2)
- (j) 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (See Note 2.)
- (k) 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (Applicable as prescribed in FAR 22.305.)
- (l) 52.223-3 Hazardous Material Identification and Material Safety Data (Applicable if the Contract involves hazardous material. See Notes 2 and 3)
- (m) 52.223-7 Notice of Radioactive Materials (Applicable to Work containing covered radioactive

The fol

- material. Insert "30" in the blank; See Notes 1 and 2.)
- (n) 52.225-1 Buy American Act – Supplies (Applicable if the Work contains other than domestic components.)
- (o) 52.225-8 Duty-Free Entry (Applicable if supplies will be imported into the Customs Territory of the United States. In paragraph (c)(1), the notice provision shall be 45 days. See Notes 3, 5, and 6.
- (p) 52.227-9 Refund of Royalties (Applicable when reported royalty exceeds \$250; see Notes 1 and 2.)
- (q) 52.227-10 Filing of Patent Applications – Classified Subject Matter (Applicable if the Work or any patent application may cover classified subject matter.)
- (r) 52.227-11 Patent Rights – Retention by the Contractor (Short Form) (Applicable if CONTRACTOR is a small business or nonprofit organization performing experimental or research and development (R&D) work.)
- (s) 52.227-12 Patent Rights-Retention by the Contractor (Long Form) (Applicable to other than a small business or nonprofit organization performing experimental or R&D work.)
- (t) 52.228-3 Workers' Compensation Insurance (Defense Base Act)
- (u) 52.228-4 Workers' Compensation and War-Hazard Insurance Overseas
- (v) 52.228-5 Insurance—Work on a Government Installation (Applicable if Work performed on government installation. See Note 2)
- (w) 52.230-2 Cost Accounting Standards (When referenced in the Contract, full CAS coverage applies. In subparagraphs (a)(4)(ii) and (a)(5), see Note 1. Delete paragraph (b) of the clause.)
- (x) 52.230-3 Disclosure and Consistency of Cost Accounting Practices (When referenced in the Contract, modified CAS coverage applies. In subparagraphs (a)(3)(ii) and (a)(4), see Note 1. Delete paragraph (b) of the clause.)
- (y) 52.230-6 Administration of Cost Accounting Standards (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)
- (z) 52.233-3 Protest After Award (In the event ARINC's customer has directed ARINC to stop performance of the work under the Prime Contract under which this contract is issued pursuant to FAR 33.1, ARINC may, by written order to SELLER, direct SELLER to stop performance of the work called for by this Contract; "30 days" means "20 days" in paragraph (b)(2); Note 1 applies except the first time it appears in paragraph (f); in paragraph (f) add "and recovers those costs from ARINC" after "33.104(h)(1)"; See Note 2.)

- (aa) 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (Applicable if Work performed on government installation. See Note 2)
- (bb) 52.243-6 Change Order Accounting (Applicable only if Prime Contract requires change order accounting. See Note 2; delete reference to the "Disputes" clause in the last sentence.)
- (cc) 52.247-63 Preference for U.S.-Flag Air Carriers (Applicable if this Contract involves international air transportation.)

F. DFARS Flowdown Clauses

If this contract is placed under a U.S. Government Department of Defense (DoD) contract, the following additional DFARS clauses apply.

REFERENCE	TITLE
-----------	-------

1. **The following DFARS clauses apply to this Contract:**

- | | |
|------------------|--|
| (a) 252.225-7013 | Duty-Free Entry. |
| (b) 252.225-7014 | Preference for Domestic Specialty Metals Alternate I (Applicable if the Work to be furnished hereunder contains specialty metals.) |
| (c) 252.227-7013 | Rights in Technical Data – Noncommercial Items |
| (d) 252.227-7014 | Rights in Non-Commercial Computer Software and Non-Commercial Computer Software Documentation |
| (e) 252.227-7016 | Rights in Bid or Proposal Information |
| (f) 252.227-7019 | Validation of Asserted Restrictions – Computer Software |
| (g) 252.227-7025 | Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (For subparagraph (c)(1), see Note 3.) |
| (h) 252.227-7026 | Deferred Delivery of Technical Data or Computer Software (See Note 1.) |
| (i) 252.227-7027 | Deferred Ordering of Technical Data or Computer Software (See Note 4.) |
| (j) 252.227-7028 | Technical Data or Computer Software Previously Delivered to the Government (In this clause, the terms "contract" and "subcontract" shall not change in meaning) |
| (k) 252.227-7030 | Technical Data - Withholding of Payment (See Notes 1 and 2.) |
| (l) 252.227-7037 | Validation of Restrictive Markings on Technical Data |
| (m) 252.228-7005 | Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (In subparagraph (a), see Note 5; in subparagraph (b), see Note 3.) |

- (n) 252.231-7000 Supplemental Cost Principles
- (o) 252.243-7001 Pricing of Contract Modifications
- (p) 252.247-7023 Transportation of Supplies by Sea (Substitute the DFARS clause for FAR clause 52.247-64 in all Contracts for ocean transportation of supplies; In paragraph (g), delete the reference to the "Prompt Payment" clause; See Notes 1 and 2, except for paragraph (d) of the clause, which shall retain its original meaning.)
- (q) 252.247-7024 Notification of Transportation of Supplies by Sea (See Note 2.)

2. The following DFARS clause applies to this Contract if the value of this Contract exceeds \$100,000:

- (a) 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (In this clause, the terms "contract," "contractor," and "subcontract" shall not change in meaning; Delete paragraph g; See Note 2.)

3. The following DFARS clauses apply to this Contract if the value of this Contract equals or exceeds \$550,000:

- (a) 252.249-7002 Notification of Anticipated Contract Termination or Reduction (See Note 1.)

4. The following DFARS clause applies to this Contract if the value of this Contract equals or exceeds \$1,000,000:

- (a) 252.211-7000 Acquisition Streamlining

5. The following DFARS clauses apply to this Contract only if the stipulation in the relevant parenthetical applies:

- (a) 252.204-7008 Requirements for Contracts Involving Export-Controlled Items-(Applicable if DFAR 252.204-7008 is in ARINC prime contract and export-controlled items (hardware, software, or technical data) are involved in performance of the subcontract)
- (b) 252.215-7000 Pricing Adjustments (Applicable if FAR 52.215-12 or 52.215-13 applies to this Contract.)
- (c) 252.219-7003 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (Applicable if FAR 52.219-9 applies to this Contract; delete subparagraph (g).)
- (d) 252.223-7001 Hazard Warning Labels (Applies if this Contract requires submission of hazardous material data sheets; see FAR 23.302(c).)
- (e) 252.223-7002 Safety Precautions for Ammunition and Explosives (Applicable only if the articles furnished under the Contract contain ammunition or explosives, including liquid and solid propellants. See Notes 1, 3, and 5)

- (f) 252.223-7003 Change in Place of Performance – Ammunition and Explosives (Applicable if DFARS 252.223-7002 applies to this Contract. See Notes 2 and 4)
- (g) 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives Only applicable if this contract involves arms, ammunition, and explosives.)
- (h) 252.225-7001 Buy American Act and Balance of Payments Program (Substitute the DFARS clause for FAR clause 52.225-3 in all Contracts for supplies; applicable if the Work contains other than domestic components as defined by this clause)
- (i) 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (Applicable if items supplied under this Contract contain ball or roller bearings. See Note 2)
- (j) 252.225-7032 Waiver of United Kingdom Levies (Applicable if this Contract exceeds \$1 million and is with a United Kingdom firm. See Note 2)
- (k) 252.225-7043 Anti-Terrorism/Force Protection for Defense Contractors Outside the United States (Applies where CONTRACTOR will be performing or traveling outside the United States under this Contract.)
- (l) 252.235-7003 Frequency Authorization (Applicable if this Contract requires developing, producing, constructing, testing, or operating a device requiring a frequency authorization. See Note 2)

G. Certifications and Representations

1. The clauses listed below contain certifications and representations that are material representations of fact upon which ARINC will rely in making awards to CONTRACTOR. By submitting its written offer, providing oral offers or quotations at the request of ARINC, or accepting any Contract, CONTRACTOR certifies to the representations and certifications as set forth in each of the clauses listed below. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), or request for proposal or solicitation (oral or written), issued by ARINC. CONTRACTOR shall immediately notify ARINC of any change of status with regard to these certifications and representations.
2. The following clauses of the FAR are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to any order, agreement, or subcontract. In each clause incorporated below, substitute "ARINC" for "Government" and "Contracting Agency" and "ARINC Procurement Representative" for "Contracting Officer" throughout.
 - (a) **FAR 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions"**. (Applicable to solicitations and contracts exceeding \$100,000.)

(1) *Definitions.* As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" ([52.203-12](#)).

(2) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" ([52.203-12](#)) are hereby incorporated by reference in this provision.

(3) *Certification.* CONTRACTOR certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(4) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

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

- (b) **FAR 52.209-5, "Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters"**
- (c) **FAR 52.222-22, "Previous Contracts and Compliance Reports"**
- (d) **FAR 52.222-25, "Affirmative Action Compliance" (April 1984).**
- (e) **FAR 52.223-13, "Certification of Toxic Chemical Release Reporting"**. (Applicable to competitive solicitations and POs that exceed \$100,000.)

3. **Conflict of Interest**

To the best of the Offeror/SELLER's knowledge and belief, there is no actual or potential conflict of interest with respect to the performance of work under this contract or agreement; or, the Offeror/SELLER has notified ARINC in writing of such a conflict of interest and received written authorization from ARINC to continue in pursuit of a contract

or agreement. If in the performance of a contract or agreement with ARINC the Offeror/SELLER becomes aware of an actual or potential conflict of interest, the Offeror/SELLER will immediately notify the Procurement Representative responsible for the contract or agreement in question.