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# General Provisions and FAR Flowdown Provisions for Cost Reimbursement, Fixed Price, and Time-and-Material Procurements for Noncommercial Items under Contract FA8222-05-D-0002

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**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. Allowable Cost and Payment**

- (a) **Invoicing.** ARINC shall make payments to the SELLER when requested as Work progresses, but not more often than once every month, in amounts determined to be allowable by ARINC in accordance with the terms of this Contract and Subpart 31.2 of the Federal Acquisition Regulation (FAR); and agency supplements as appro-

prate, in effect on the date of this Contract. If the Contract is with an educational institution, FAR Subpart 31.3 shall apply; and if with a nonprofit organization other than an educational institution, FAR Subpart 31.7 shall apply. The SELLER may submit to the ARINC Purchasing Representative, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Contract.

**(b) Reimbursing costs.**

- (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:

- a) Those recorded costs that, at the time of the request for reimbursement, the SELLER has paid by cash, check, or other form of actual payment for items or services purchased directly for the Contract.
- b) When the SELLER is not delinquent in paying costs of Contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
  - (i) Materials issued from the SELLER's inventory and placed in the production process for use on the Contract;

- (ii) Direct labor;
  - (iii) Direct travel;
  - (iv) Other direct in-house costs; and
  - (v) Properly allocable and allowable indirect costs, as shown in the records maintained by the SELLER for purposes of obtaining reimbursement under government contracts.
- c) The amount of progress payments that have been paid to the SELLER's subcontractors under similar cost standards.
- (2) SELLER contributions to any pension, profit sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes, provided that the SELLER pays the contribution to the fund within thirty (30) days after the close of the period covered.
- (3) Payments made thirty (30) days or more after the close of a period shall not be included until the SELLER actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the SELLER actually makes the payment.
- (4) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this Contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.
- (5) Except as otherwise expressly provided to the contrary in these provisions or in the schedule of this Contract, any statements in specifications or other documents incorporated in this Contract by reference designating performance of services or furnishing of materials at the SELLER's expense or at no cost to ARINC shall be disregarded for purposes of cost reimbursement under this clause.
- (d) **Final indirect cost rates.** ARINC shall reimburse SELLER on the basis of final annual indirect cost rates and the appropriate bases established by SELLER and the government in effect for the period covered by the indirect cost rate proposal. Such rates and bases shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Contract. The rates and bases shall be deemed incorporated into this Contract upon execution. SELLER shall pursue all reasonable methods and provide all reasonable assistance to the government to settle indirect rates promptly. ARINC may require SELLER to submit milestones for accomplishing final settlement of rates, at ARINC's discretion.
- (e) **Billing rates.** There shall be included as allowable indirect costs such overhead rates as may be established by SELLER and the cognizant government agency in accordance with the principles of the Federal Acquisition Regulation and applicable FAR Supplement. Pending establishment of final overhead rates for any period, SELLER shall be reimbursed at billing rates approved by the cognizant government agency, which billing rates may be revised from time to time subject to such approval and subject to appropriate adjustment when the final rates for that period are established.
- (f) **Quick closeout procedures.** When the SELLER and ARINC agree, the quick closeout procedures of Subpart 42.7 of the FAR may be used.
- (g) **Audit.** At any time or times before final payment, ARINC or the government may audit the SELLER's invoices or vouchers and statements of cost. Any payment may be (1) reduced by amounts found by ARINC or the government not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- (h) **Final payment.**
- (1) The SELLER shall submit a completion invoice or voucher, designated as such, promptly upon completion of the Work, but no later than one (1) year (or longer, as ARINC may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the SELLER's compliance with all terms of this Contract, ARINC shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
- (2) The SELLER shall pay to ARINC any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the SELLER or any assignee under this Contract, to the extent that those amounts are properly allocable to costs for which the SELLER has been reimbursed by ARINC. Reasonable expenses incurred by the SELLER for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by ARINC. Before final payment under this Contract, the SELLER and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
- (i) An assignment to ARINC, in form and substance satisfactory to ARINC, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the SELLER has been reimbursed by ARINC under this Contract; and
  - (ii) A release discharging ARINC, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Contract, except for specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known.
- (i) **Subcontracts.** 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 subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4)(i) of the FAR.

### 3. 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) If, as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, (i) ARINC's contract price or fee is reduced; (ii) ARINC's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on ARINC; or (iv) ARINC incurs any other costs or damages; ARINC may proceed as provided for in (4) below.

(3) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon ARINC's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on ARINC's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or (v) if the U.S. Government alleges any of the foregoing, and, as a result, (1) ARINC's contract price or fee is reduced; (2) ARINC's costs are determined to be unallowable; (3) any fines, penalties or interest are assessed on ARINC; or (4) ARINC incurs any other costs or damages; ARINC may proceed as provided for in (4) below.

(4) If any of the circumstances identified in (2) and (3) above occur, ARINC may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Contract or any other contract with SELLER, and may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.

(5) 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.

#### 4. 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. Amounts assigned to an assignee shall be subject to setoffs or recoupment for

any present or future claims of ARINC against SELLER. 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.

#### 5. 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.

#### 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, such as "Task Order" or "Delivery Order" issued under an Indefinite Delivery Indefinite Quantity contract. "Task Order," "TO," "Delivery Order," and "DO" as used in this Contract are interchangeable terms.

(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 SELLER under or arising from this Contract unless it is brought within one year after the accrual of the cause of action upon which the claim is based, regardless of whether 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 SELLER under the **Information of ARINC** or **Intellectual Property** provisions of this Contract, ARINC 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 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. Fee / No Fee

Unless the Cost Plus Fixed Fee Delivery Order specifies otherwise, ARINC shall pay the SELLER the fixed fee stated in the Delivery Order in accordance with FAR 52.216-8, Fixed Fee (March 1997). Unless the Cost Plus Incentive Fee Delivery Order specifies otherwise, ARINC shall pay the SELLER the incentive fee stated in the Delivery Order in accordance with FAR 52.216-10, Incentive Fee (March 1997). If the Delivery Order is Cost Reimbursement No Fee, FAR 52.216-11, Cost Contract - No Fee (April 1984) shall apply. (Note 1 applies to each FAR clause.)

## 12. 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. Unless otherwise noted, Furnished Property is furnished without warranty and "as-is."

- (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 fixed-price Delivery Orders, 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) For time-and-material and cost-reimbursement Delivery Orders, the clause at FAR 52.245-5 shall apply, except that except that subparagraph (g) is deleted and the SELLER remains responsible for loss of or damage to Government property provided under this Contract. 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."

(3) SELLER shall provide to ARINC immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the government of its property control system.

### 13. 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.

### 14. Indemnification

- (a) The SELLER shall indemnify ARINC against all liability that may result from any claim, action, or suit by any person, based on any alleged injury to or death of any person or damage to or loss of any property that may occur or that may be alleged to have been caused by the SELLER in the course of performance of this Contract by the SELLER. The SELLER shall pay all charges of attorneys in connection therewith and, if any judgment shall be rendered

against ARINC in any such action or actions, the SELLER shall satisfy and discharge the same without cost or expense to ARINC. However, this indemnity shall not apply to claims, actions, or suits resulting from ARINC's negligence.

- (b) ARINC shall indemnify the SELLER against all liability that may result from any claim, action, or suit by any person, based on any alleged injury to or death of any person or damage to or loss of any property that may occur or that may be alleged to have been caused by ARINC in the course of performance of this Contract. ARINC shall pay all charges of attorneys in connection therewith and, if any judgment shall be rendered against the SELLER in any such action or actions, ARINC shall satisfy and discharge the same without cost or expense to the SELLER.

### 15. 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.
- (b) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, relating in any way to or affecting the performance of any of its obligations under this Contract.

### 16. Information of ARINC

Information provided by ARINC to SELLER remains the property of ARINC. SELLER agrees to comply with the terms of any confidential disclosure agreement with ARINC and to comply with all proprietary information markings and restrictive legends applied by ARINC to anything provided hereunder to SELLER. SELLER agrees not to use any ARINC-provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of ARINC.

### 17. Information of SELLER

SELLER shall not provide any proprietary information to ARINC without prior execution by ARINC of a confidential disclosure agreement.

### 18. Insurance and Liability to Third Parties

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. 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.

## 19. Intellectual Property Infringement

SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER agrees to defend, indemnify, and hold harmless ARINC and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based on a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

## 20. 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.

## 21. Limitation of Funds

(Applicable if this Contract is incrementally funded.)

- (a) The Parties estimate that performance of this Contract will not cost ARINC more than the estimated cost specified in the Schedule. The SELLER agrees to use its best efforts to perform the Work specified in the Schedule and all obligations under this Contract within the estimated cost.
- (b) The Schedule specifies the amount presently available for payment by ARINC and allotted to this Contract, the items covered, and the period of performance that the allotted amount is estimated to cover. The Parties contemplate that ARINC will from time to time allot additional funds to the Contract up to the full estimated cost specified in the Schedule, inclusive of any fee. The SELLER agrees to perform, or have performed, Work on the Contract up to the point at which the total amount, including fee, paid and payable by ARINC under the Contract approximates but does not exceed the total amount actually allotted by ARINC to the Contract.
- (c) The SELLER shall notify ARINC in writing whenever it has reason to believe that the costs it expects to incur under this Contract plus allocable fee in the next sixty (60) days, when added to all costs previously incurred, and allocable fee, will exceed seventy-five percent (75%) of the total amount then allotted to the Contract. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

- (d) Sixty (60) days before the end of the period specified in the Schedule, the SELLER shall notify ARINC in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.
- (e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the SELLER's written request, ARINC will terminate this Contract on that date in accordance with the provisions of the **Termination** clause of this Contract (FAR 52.249-6). If the SELLER estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and ARINC, in its discretion, may terminate this Contract on that later date.
- (f) Except as required by other provisions of this Contract, specifically cited and stated to be an exception to this clause:
  - (1) ARINC is not obligated to reimburse the SELLER for costs incurred plus allocable fee in excess of the total amount allotted to this Contract; or, if no allotment of funds is set forth in this Contract, the estimated cost and fee set forth in the Schedule; and
  - (2) The SELLER is not obligated to continue performance under this Contract (including actions under the **Termination** clause of this Contract (FAR 52.249-6)) or otherwise incur costs plus allocable fee in excess of the amount then allotted to the Contract, until ARINC notifies the SELLER in writing that the amount allotted or the estimated amount has been increased and specifies an increased amount, which shall then constitute the total amount allotted to or estimated for this Contract.
- (g) The estimated cost shall be increased to the extent that the amount allotted to the Contract exceeds the estimated cost specified in the Schedule.
- (h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the ARINC Purchasing Representative, shall affect the amount allotted to this Contract. In the absence of the specified notice, ARINC is not obligated to reimburse the SELLER for any costs or allocable fee in excess of the total amount allotted by ARINC to this Contract, whether incurred during the course of the Contract or as a result of termination.
- (i) When and to the extent that the amount allotted to the Contract is increased, any costs plus allocable fee the SELLER incurs before the increase that are in excess of the amount previously allotted shall be allowable to the same extent as if incurred afterward, unless ARINC issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (j) Change orders shall not be considered an authorization to exceed the amount allotted specified in the Schedule, unless they contain a statement increasing the amount allotted.

- (k) Nothing in this clause shall affect the right of ARINC to terminate this Contract. If this Contract is terminated, ARINC and the SELLER shall negotiate an equitable distribution of all property produced or purchased under the Contract, based on the share of costs incurred by each.
- (l) If ARINC does not allot sufficient funds to allow completion of the Work, the SELLER shall be entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the Work contemplated by this Contract, not to exceed the funds in fact allotted to the Contract.
- (m) At the time that the total funds allotted under this Contract equal the full estimated cost inclusive of fee specified in the Schedule, this *Limitations of Funds* clause no longer shall apply, but then the *Limitation of Cost* clause of this Contract (FAR 52.232-22) shall apply.

## 22. 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).

## 23. 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.

## 24. Ordering Procedures

- (a) The purpose of this clause is to define the process for ordering competitive or noncompetitive Task Orders (TOs). Further guidance is found in the DESP II User's Guide, available from ARINC. SELLER shall perform no work unless authorized by a TO issued by ARINC. This ordering procedure parallels the procedure the Government will use in ordering work under ARINC's prime contract. Unless ARINC specifies otherwise, SELLER and ARINC will use electronic mail or other suitable electronic media to expedite the ordering process.
- (b) ARINC will obtain from the Government and will furnish to SELLER a Contractual Engineering Task (CET) /Statement of Work (SOW), along with Requests for Order Proposals (RFOPS). Within the time frames specified below, unless otherwise directed by ARINC, SELLER shall furnish to ARINC a cost proposal, including labor hours, materials, and schedule required for performance of the task, along with a technical proposal, consisting of responses to any Delphi Questions designated in the letter RFP. The modified Delphi Method, which the Government will use on competitive TOs, is explained in the DESP II User's Guide.
- (c) As individual RFOPS are released for bid, ARINC will be responsible for assembling the ARINC team to bid each specific opportunity sent to the primes for bid. ARINC will require all subcontractors to register potential bid opportunities with ARINC, prior to their placement for bid on the DESP II Contract. This information will include the specific opportunity name, description of work to be performed, customer information, contact information, and any teaming requirements. Each subcontractor shall submit this information for all potential opportunities as

soon as the opportunity can be described. ARINC will employ a "first-come, first-served" policy for all new opportunities marketed under the DESP II Program, unless otherwise instructed by the Government customer to utilize a specific company for performance of the work. Likewise, for any opportunities released for bid that were not registered by any of ARINC's DESP II team partners, ARINC reserves the right to assemble the team to bid the effort, based on the specified requirements in the RFOP.

- (d) If ARINC receives an order for services which is identified as SELLER's by the Government, then ARINC shall issue that order to SELLER.
- (e) Unless noted otherwise in the letter RFP, the time frames of receipt of proposals are as follows:
  1. Projects estimated at under \$500,000 —3 working days
  2. Projects estimated at over \$500,000—5 working days
- (f) ARINC shall not pay the SELLER for any cost SELLER incurs in preparing any quotation or proposal under this Contract, including but not limited to B&P costs, indirect costs, or direct costs.
- (g) ARINC makes no guarantee that the ARINC or the Government will award an order after requesting an order proposal.
- (h) ARINC will select one of the following price arrangements for each TO, normally based upon the Government's selection of the prime contract TO: Firm Fixed Priced (FFP), Fixed Price Incentive Firm (FPIF), Cost Plus Fixed Fee (CPFF), Cost Plus Award Fee (CPAF), Cost Plus Incentive Fee (CPIF), Cost Reimbursement (CR), or Time and Materials (T&M).
- (i) "Contractor-site performance" is defined as work performed at SELLER-owned or operated facility (or facilities). "Government-site performance" is defined as work performed at a Government operated facility (or facilities).
- (j) ARINC is not required to issue any TO until the parties have negotiated all direct costs.
- (k) For SELLER's proposed subcontracts, materials, and travel, ARINC may require the SELLER to provide verifiable cost or pricing data or other than cost or pricing data as part of the offeror's proposal. It is not adequate to just provide the cost. In addition to providing these costs, an explanation of the services/items to be procured and how they were procured (competition, negotiated rates, other) must also be addressed.
- (l) In any FFP TO, labor identified in the Labor Categories Attachment of this contract shall be priced in accordance with the Not To Exceed (NTE) rates contained in Burden/Rates Tables SX-1, SX-2 (DESP II Subcontractor's rates, where 'X' represents a different numerical value assigned to each DESP II Subcontractor) to determine the total cost. Profit will be negotiated on a TO basis.
- (m) In any CPFF TO, labor identified in the Labor Categories Attachment of this contract shall be priced in accordance with the NTE rates contained in Burden/Rates Tables SX-3, SX-4 (DESP II Subcontractor's rates, where 'X' represents a different numerical value assigned to each DESP II Subcontractor). All TOs issued using the CPFF pricing arrangement will be completion type in accordance with FAR 16.306(d)(1) unless otherwise stated in the individual TO. The fee for each order shall be established as a firm dollar amount, not as a

percentage. The SELLER will receive this fee amount regardless of actual costs incurred.

- (n) SELLER's rates referred to in this clause are burdened to include all indirect rates and fee or profit as applicable. SELLER's fee or profit shall not exceed 10% for FFP rates, 9.5% for T&M rates, and 8% for CPAF, CPFF, CPIF, and CR rates. Each order's fee or profit takes into account, at a minimum, the amount of risk the SELLER is assuming and the amount of subcontracting involved.
- (o) In any T&M TO, labor identified in the Labor Categories Attachment of this contract shall be priced in accordance with the NTE rates in Burden/Rates Tables SX-5, SX-6 (DESP II Subcontractor's rates, where 'X' represents a different numerical value assigned to each DESP II Subcontractor). At the time the order is placed, the applicable labor rates and profit factors will be used to establish a ceiling amount for the order.
- (p) In any CPAF TO, labor identified in the Labor Categories Attachment of this contract shall be priced in accordance with the NTE rates in Burden/Rates Tables SX-3, SX-4 (DESP II Subcontractor's rates, where 'X' represents a different numerical value assigned to each DESP II Subcontractor). At the time the order is placed, the terms and conditions of the award fee will be established.
- (q) In any FPIF TO, labor identified in the Labor Categories Attachment of this contract shall be priced in accordance with the NTE rates in Burden/Rates Tables SX-3, SX-4 (DESP II Subcontractor's rates, where 'X' represents a different numerical value assigned to each DESP II Subcontractor). At the time the order is placed, the terms and conditions of the incentive targets will be established.
- (r) In any CPIF TO, labor identified in the Labor Categories Attachment of this contract shall be priced in accordance with the NTE rates in Burden/Rates Tables SX-3, SX-4 (DESP II Subcontractor's rates, where 'X' represents a different numerical value assigned to each DESP II Subcontractor). At the time the order is placed, the terms and conditions of the incentive fee will be established.
- (s) For each non-competitive TO, the SELLER shall submit other than certified cost or pricing data (except with respect to the labor rates and burden factors) in support of any proposal up to \$550,000, and shall submit certified cost or pricing data (except with respect to proposed labor rates and burden factors) in support of any proposal over \$550,000 unless otherwise directed by the PCO.
- (t) Each time the SELLER submits a proposal for work under this contract, it must certify whether or not it has delivered or is obligated to deliver to ARINC or to the Government under another contract, subcontract, or separate TO against this DESP II contract, the same, or substantially the same technical data requested. If so, the contract, subcontract, or TO, and place of delivery shall be disclosed.

## 25. Overtime Not Authorized

Unless individual delivery orders specify an allowable payment for overtime premiums, ARINC authorizes zero dollars for payment of overtime premiums in this Contract.

## 26. 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*.

## 27. 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.

## 28. Payments, Taxes, and Duties

- (a) Unless otherwise provided in the Schedule, 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. ARINC shall have a right of setoff against payments due or at issue under this Contract or any other Contract between the Parties.
- (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 in United States dollars.

## 29. Payments—Time and Material Task Orders

For time-and-materials task orders, ARINC shall pay the SELLER as follows, upon the submission of invoices approved by ARINC.

- (a) Hourly Rate

- (1) The amounts computed by multiplying the appropriate hourly rates, as set forth in the Indefinite Delivery/Indefinite Quantity (ID/IQ) contract or in the Delivery Order by the number of direct labor hours performed. The hourly rates shall include wages, overhead, general and administrative expense, and profit. Fractional parts of an hour or day shall be payable on a prorated basis. SELLER shall submit invoices for payment to ARINC monthly. The SELLER will substantiate invoices by evidence of actual payment and by requiring completion of individual daily job time

cards/sheets signed by an authorized supervisor, or such other substantiation approved by ARINC. After receipt of each substantiated invoice, ARINC shall, except as otherwise provided in this Contract, make payment thereon as approved by ARINC.

- (2) As specified in the task order, ARINC may withhold 5% of the amount due under this paragraph A from each payment, but the total amount withheld shall not exceed \$50,000. ARINC shall withhold such amounts until the execution and delivery of a release by the SELLER as provided in the general provision entitled Allowable Cost and Payment.
  - (3) The hourly rates set forth in the schedule shall not be changed by the SELLER, having performed work on an overtime basis, unless ARINC authorizes different rates for overtime in the task order. If the task order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent that the overtime is approved in advance by ARINC. Nothing in this Contract shall excuse the SELLER from any legal requirement to pay its employees overtime.
  - (4) Payment terms are as specified in the IDIQ Contract or Delivery Orders.
- (b) Reimbursing costs.

ARINC shall specify in Time-and-Material Delivery Orders those costs, if any, that are to be reimbursed. The provisions of the General Provision entitled "Allowable Cost and Payment" shall apply to the cost reimbursement portion of Time-and-Material Delivery Orders

### 30. Payments—Fixed-Price Task Orders

For fixed -price task orders, ARINC shall pay the SELLER, upon submission of invoices approved by ARINC, a lump sum on completion of task order work, or performance-based payments for achievement of performance events as specified in the task order, or otherwise as specified by ARINC in the task order. Either ARINC or SELLER at ARINC's discretion may propose dollar values, and all such values shall have a reasonable relationship to the value of the work performed.

### 31. Performance-Based Payments

For any Delivery Order requiring performance-based payments, the SELLER shall provide a payment certification to ARINC substantially the same as specified in paragraph (m) of FAR 52.232-32 (February 2002) except that the parties shall be changed to reflect the identities of ARINC and the SELLER.

### 32. 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.

### 33. 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).

### 34. 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.

### 35. 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.

### 36. Small Business Subcontract Allocation to ARINC

This provision applies to all large businesses. SELLER shall identify 20% of its work under each proposed delivery order for award to a small business, including but not limited to ARINC small business teammates. At ARINC's direction, SELLER shall allow ARINC to subcontract for the identified 20%.

### 37. 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.

### 38. 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.

### 39. 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. 3  
Export Control, Clause No. **Error! Reference source not found.**  
Independent Contractor Relationship, Clause No. 15  
Information of ARINC, Clause No. 16  
Insurance and Liability to Third Parties, Clause No. 18  
Intellectual Property Infringement, Clause No. 19  
Release of Information, Clause No. 35  
Warranty, Clause No. 42
- (b) Those U.S. Government flowdown provisions that, by their nature, should survive.

### 40. 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.

### 41. Waiver, Approval, and Remedies

- (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.
- (c) The rights and remedies of ARINC in this Contract are in addition to any other rights and remedies provided by law or in equity.

### 42. 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 reprocur 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. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.

### 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. If this Contract is an Indefinite Delivery Indefinite Quantity (IDIQ) contract, "Task Order," "TO," "Delivery Order," and "DO" mean orders for supplies and/or services placed by ARINC under such contract. "Task Order," "TO," "Delivery

Order,” and “DO” as used in this Contract are interchangeable

5. “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**

<b>REFERENCE</b>	<b>TITLE</b>
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1. **The following FAR clauses apply to this Contract :**
  - (a) 52.211-5 Material Requirements (August 2000) (See Note 2.)
  - (b) 52.219-8 Utilization of Small Business Concerns (May 2004)
  - (c) 52.222-21 Prohibition of Segregated Facilities (February 1999)
  - (d) 52.222-26 Equal Opportunity (April 2002) (Only subparagraphs (b)(1)–(11) apply.)
  - (e) 52.223-11 Ozone-Depleting Substances (May 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
  - (f) 52.225-13 Restrictions on Certain Foreign Purchases (March 2005) (In paragraph (a), see Notes 5 and 6.)
  - (g) 52.227-14 Rights in Data—General (June 1987) and, when determined to be applicable by ARINC, Alternate I (June 1987), Alternate II (June

1987), Alternate III (June 1987), Alternate IV (June 1987), and Alternate V (June 1987).

- (h) 52.232-20 Limitation of Cost (April 1984) (Applicable when this Contract becomes fully funded. See Notes 1 and 2.)
- (i) 52.232-22 Limitation of Funds (April 1984) (Applicable if this Contract is incrementally funded. When the Contract becomes fully funded FAR 52.232-20 shall apply in lieu of this clause. See Notes 1 and 2.)
- (j) 52.234-1 Industrial Resources Developed Under Defense Production Act Title III (December 1994) (See Note 2.)
- (k) 52.242-13 Bankruptcy (July 1995) (See Note 2.)
- (l) 52.242-15 Stop-Work Order (August 1989) and Alternate I (April 1984) (See Notes 1 and 2.)
- (m) 52.243-1 Changes – Fixed Price (August 1987) and Alternate I (April 1984), Alternate II (April 1984), Alternate III (April 1984), and Alternate V (April 1984) (See Notes 1 and 2.)
- (n) 52.243-2 Changes – Cost Reimbursement (August 1987) Alternate I (April 1984), Alternate II (April 1984), and Alternate V (April 1984) (See Notes 1 and 2.)
- (o) 52.243-3 Changes – Time-and-Materials or Labor-Hours (September 2000) (See Notes 1 and 2.)
- (p) 52.244-6 Subcontracts for Commercial Items (December 2005)
- (q) 52.246-2 Inspection of Supplies – Fixed-Price (August 1996) (The government also may exercise any of ARINC’s inspection rights under this clause. See Notes 1 and 2.)
- (r) 52.246-3 Inspection of Supplies – Cost Reimbursement (May 2001) (See Note 1 except in subparagraphs (b), (c), and (d) where Note 3 applies, and in paragraph (k) where the term “Government” is unchanged. In subparagraph (e), change “60 days” to “120 days,” and in subparagraph (f) change “6 months” to “12 months.” The government also may exercise any of ARINC’s inspection rights under this clause.)
- (s) 52.246-4 Inspection of Services – Fixed-Price (August 1996) (The Government also may exercise any of ARINC’s inspection rights under this clause. See Note 1.)
- (t) 52.246-5 Inspection of Services--Cost-Reimbursement (April 1984) (The government also may exercise any of ARINC’s inspection rights under this clause. See Notes 1 and 2.)
- (u) 52.246-6 Inspection - Time-and-Material and Labor-Hour) (May 2001) (The Government also may exercise any of ARINC’s inspection rights under this clause. See Note 1.)
- (v) 52.246-7 Inspection of Research and Development - Fixed Price (August 1996) (The Government

- also may exercise any of ARINC's inspection rights under this clause. See Note 1.)
- (w) 52.246-8 Inspection Of Research And Development--Cost-Reimbursement (May 2001) (The government also may exercise any of ARINC's inspection rights under this clause. See Notes 1 and 2.)
- (x) 52.246-9 Inspection of Research and Development (Short Form) (April 1984) (The Government also may exercise any of ARINC's inspection rights under this clause. See Note 1.)
- (y) 52.247-1 Commercial Bill of Lading Notations (April 1984) (See Note 4.)
- (z) 52.247-67 Submission of Commercial Transportation Bills To The General Services Administration For Audit (June 1997) (See Note 5.)
- (aa) 52.249-2 Termination for Convenience of the Government (Fixed-Price) (May 2004) (Applicable only for fixed-price delivery orders and 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.)
- (bb) 52.249-4 Termination for Convenience of the Government (Services) (Short Form) (April 1984) (See Notes 1 and 2.)
- (cc) 52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (September 1996) (Applies only to cost-reimbursement contracts or delivery orders except for contracts for research and development with an educational/nonprofit institution on a no-fee basis. See Notes 1 and 2.)
- (dd) 52.249-6 Termination (Cost-Reimbursement) (May 2004) (See Notes 1 and 2. Substitute "90 days" for "120 days" and "90-day" for "120-day" in subparagraph (d). Substitute "180 days" for "1 year" in subparagraph (f). Delete subparagraph (j). Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)
- (ee) 52.249-6 Termination (Cost Reimbursement) (May 2004) -- Alternative IV (September 1996) (Applies only to time-and-material or labor-hour. See Notes 1 and 2.)
- (ff) 52.249-8 Default (Fixed-Price Supply and Service) (April 1984) (Applicable only for fixed-price contracts or delivery orders. See Notes 1 and 2, except Note 1 is not applicable to paragraph (e). Timely performance is a material element of this Contract.)
- (gg) 52.253-1 Computer Generated Forms (January 1991)
2. **The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:**
- (a) 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (December 2001)
- (b) 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)
- (c) 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (December 2001)
3. **The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:**
- (a) 52.203-6 Restrictions on Subcontractor Sales to the Government (July 1995)
- (b) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (June 2003) (see Note 5.)
- (c) 52.215-2 Audit and Records-Negotiation (June 1999) (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 (October 1997) (Delete paragraph (b) of the clause.)
- (e) 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (September 2000) (Applicable as prescribed in FAR 22.305.)
- (f) 52.223-14 Toxic Chemical Release Reporting (August 2003) (See Notes 2 and 5; delete subparagraph (e).)
- (g) 52.227-1 Authorization and Consent (July 1995) and Alternate I (April 1984) (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.)
- (h) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (August 1996) (See Notes 2 and 4.)
- (i) 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (April 2003) (See Note 2.)
- (j) 52.248-1 Value Engineering (February 2000) (See Note 1, except in subparagraphs (c)(5) and (m), see Note 3.)
4. **The following FAR clause applies to this Contract if the value of this Contract equals or exceeds \$500,000:**
- (a) 52.219-9 Small Business Subcontracting Plan (January 2002) Alternate II (October 2001) (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.)

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

- (a) 52.215-12 Subcontractor Cost or Pricing Data (October 1997) (Applicable if not otherwise exempt under FAR 15.403.)
- (b) 52.215-13 Subcontractor Cost or Pricing Data – Modifications (October 1997) (Applicable for modifications if not otherwise exempt under FAR 15.403.)

6. **The following FAR clauses apply to this Contract as indicated:**

- (a) 52.204-2 Security Requirements (August 1996) (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 (October 1997) (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 (October 1997) (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 (October 2004) (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 (June 2003) (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 (October 1997) (Applicable only if the Contract is subject to the cost principles under FAR Subpart 31.2, 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 (October 1997) (Applicable if this Contract meets the applicability requirements of FAR 15.408(j); see Note 5.)
- (h) 52.215-19 Notification of Ownership Changes (October 1997) (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 (October 1997) (See Note 2.)

- (j) 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (October 1997) (See Note 2.)
- (k) 52.223-3 Hazardous Material Identification and Material Safety Data (January 1997) (Applicable if the Contract involves hazardous material. See Notes 2 and 3.)
- (l) 52.223-7 Notice of Radioactive Materials (January 1997) (Applicable to Work containing covered radioactive material. Insert "30" in the blank; See Notes 1 and 2.)
- (m) 52.225-1 Buy American Act – Supplies (June 2003) (Applicable if the Work contains other than domestic components.)
- (n) 52.225-8 Duty-Free Entry (January 2005) (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.)
- (o) 52.227-9 Refund of Royalties (April 1984) (Applicable when reported royalty exceeds \$250; see Notes 1 and 2.)
- (p) 52.227-10 Filing of Patent Applications – Classified Subject Matter (April 1984) (Applicable if the Work or any patent application may cover classified subject matter.)
- (q) 52.227-11 Patent Rights – Retention by the Contractor (Short Form) (June 1997) (Applicable if CONTRACTOR is a small business or non-profit organization performing experimental or research and development (R&D) work.)
- (r) 52.227-12 Patent Rights-Retention by the Contractor (Long Form) (January 1997) (Applicable to other than a small business or nonprofit organization performing experimental or R&D work.)
- (s) 52.227-13 Patent Rights-Acquisition by the Government (January 1997) (Applicable to work performed outside the US and its possessions, by entities that are other than a small business, nonprofit organization, or domestic firm, performing experimental or R&D work.)
- (t) 52.228-3 Workers' Compensation Insurance (Defense Base Act) (April 1984)
- (u) 52.228-4 Workers' Compensation and War-Hazard Insurance Overseas (April 1984)
- (v) 52.228-5 Insurance—Work on a Government Installation (January 1997) (Applicable if Work is performed on government installation. See Note 2.)
- (w) 52.230-2 Cost Accounting Standards (April 1998) (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.)

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| (x) 52.230-3   | Disclosure and Consistency of Cost Accounting Practices (April 1998) (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.)  | (d) 252.222-7002 | Compliance with Local Labor Laws (Overseas) (June 1997) (Note 3 applies to paragraph (b).)   |
| (y) 52.230-6   | Administration of Cost Accounting Standards (April 2005) (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)  | (e) 252.225-7012 | Preference for Certain Domestic Commodities (June 2004.)   |
| (z) 52.233-3   | Protest After Award (August 1996) (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 CONTRACTOR, direct CONTRACTOR 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.) | (f) 252.225-7013 | Duty-Free Entry (January 2004.)  |
| (aa) 52.237-2  | Protection of Government Buildings, Equipment, and Vegetation (April 1984) (Applicable if Work is performed on government installation. See Note 2.)  | (g) 252.225-7025 | Restriction on Acquisition of Forgings (April 2003.)   |
| (bb) 52.243-6  | Change Order Accounting (April 1984) (Applicable only if Prime Contract requires change order accounting. See Note 2; delete reference to the "Disputes" clause in the last sentence.)  | (h) 252.225-7028 | Exclusionary Policies and Practices of Foreign Governments (April 2003.)   |
| (cc) 52.245-17 | Special Tooling (May 2004) (Applicable if this is a fixed-price contract and the contract involves the use of special tooling; see Note 2. DoD contracts shall incorporate the (May 2004) clause.)  | (i) 252.225-7041 | Correspondence in English (June 1997.)   |
| (dd) 52.245-18 | Special Test Equipment (February 1993) (Applicable if this contract involves the acquisition or fabrication of special test equipment. Notice to acquire shall be through ARINC. See Notes 4, 5, and 6.)  | (j) 252.227-7013 | Rights in Technical Data – Noncommercial Items (November 1995)   |
| (ee) 52.247-63 | Preference for U.S.-Flag Air Carriers (June 2003) (Applicable if this Contract involves international air transportation.)  | (k) 252.227-7014 | Rights in Non-Commercial Computer Software and Non-Commercial Computer Software Documentation (June 1995)  |
|                |   | (l) 252.227-7016 | Rights in Bid or Proposal Information (June 1995)  |
|                |   | (m) 252.227-7019 | Validation of Asserted Restrictions – Computer Software (June 1995)  |
|                |   | (n) 252.227-7025 | Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (June 1995) (For subparagraph (c)(1), see Note 3.)                      |
|                |   | (o) 252.227-7026 | Deferred Delivery of Technical Data or Computer Software (April 1988) (See Note 1.)  |
|                |   | (p) 252.227-7027 | Deferred Ordering of Technical Data or Computer Software (April 1988) (See Note 4.)  |
|                |   | (q) 252.227-7028 | Technical Data or Computer Software Previously Delivered to the Government (June 1995) (In this clause, the terms "contract" and "subcontract" shall not change in meaning)      |
|                |   | (r) 252.227-7030 | Technical Data - Withholding of Payment (March 2000) (See Notes 1 and 2.)  |
|                |   | (s) 252.227-7036 | Declaration of Technical Data Conformity (January 1997)  |
|                |   | (t) 252.227-7037 | Validation of Restrictive Markings on Technical Data (September 1999)  |
|                |   | (u) 252.228-7005 | Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (December 1991) (In subparagraph (a), see Note 5; in subparagraph (b), see Note 3.) |
|                |   | (v) 252.231-7000 | Supplemental Cost Principles (December 1991)   |
|                |   | (w) 252.242-7000 | Postaward Conference (December 1991)   |

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

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| (a) 252.204-7001 | Disclosure of Information (December 1991)   |
| (b) 252.209-7004 | Subcontracting with Firms that are Owned or Controlled by the government of a Terrorist Country (March 1998) (Note 2 applies to paragraph (b).) |
| (c) 252.211-7003 | Item Identification and Valuation (April 2005)  |

- (x) 252.243-7000 Engineering Change Proposals (September 1999) (See Note 2.)
  - (y) 252.243-7001 Pricing of Contract Modifications (December 1991)
  - (z) 252.243-7002 Pricing of Equitable Adjustments (March 1998) (See Note 1.)
  - (aa) 252.247-7024 Notification of Transportation of Supplies by Sea (March 2000) (See Note 2.)
2. **The following DFARS clause applies to this Contract if the value of this Contract equals or exceeds \$100,000:**
- (a) 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (March 1999) (In this clause, the terms "contract," "contractor," and "subcontract" shall not change in meaning; Delete paragraph g; See Note 2.)
  - (b) 252.209-7000 Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate Range Nuclear Forces (INF) Treaty (November 1995) (See Note 5.)
  - (c) 252.247-7023 Transportation of Supplies by Sea (May 2002) (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.)
  - (d) 252.215-7000 Pricing Adjustments (December 1991) (Applicable if FAR 52.215-12 or 52.215-13 applies to this Contract.)
  - (e) 252.219-7003 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (April 1996) (Applicable if FAR 52.219-9 applies to this Contract; delete subparagraph (g).)
  - (f) 252.223-7001 Hazard Warning Labels (December 1991) (Applies if this Contract requires submission of hazardous material data sheets; see FAR 23.302(c).)
  - (g) 252.223-7002 Safety Precautions for Ammunition and Explosives (May 1994) (Applicable only if the articles furnished under the Contract contain ammunition or explosives, including liquid and solid propellants. See Notes 1, 3, and 5.)
  - (h) 252.223-7003 Change in Place of Performance – Ammunition and Explosives (December 1991) (Applicable if DFARS 252.223-7002 applies to this Contract. See Notes 2 and 4.)
  - (i) 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (September 1999) Only applicable if this contract involves arms, ammunition, and explosives.)
  - (j) 252.225-7001 Buy American Act and Balance of Payments Program (April 2003) (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)
  - (k) 252.225-7014 Preference for Domestic Specialty Metals (April 2003) Alternate I (April 2003) (Applicable if the Work to be furnished hereunder contains specialty metals.)
  - (l) 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (May 2004) (Applicable if items supplied under this Contract contain ball or roller bearings. See Note 2.)
  - (m) 252.225-7032 Waiver of United Kingdom Levies - Evaluation of Offers (April 2003) (Applicable if this Contract exceeds \$1 million and is with a United Kingdom firm. See Note 2.)
  - (n) 252.225-7043 Anti-Terrorism/Force Protection for Defense Contractors Outside the United States (June 1998) (Applies where CONTRACTOR will be performing or traveling outside the United States under this Contract.)
  - (o) 252.235-7003 Frequency Authorization (December 1991) (Applicable if this Contract requires developing, producing, constructing, testing, or operating a device
3. **The following DFARS clauses apply to this Contract if the value of this Contract equals or exceeds \$500,000:**
- (a) 252.225-7004 Reporting of Contract Performance Outside the United States (April 2003)
  - (b) 252.249-7002 Notification of Anticipated Contract Termination or Reduction (December 1996) (See Note 1.)
  - (c) 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (September 2004.) (See Note 5.)
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 (December 1991)
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 (July 2008) (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)

requiring a frequency authorization. See Note 2.)

- (n) 252.245-7001 Reports of Government Property (May 1994) (Applicable if government property is provided or acquired under this Contract. CONTRACTOR shall submit its required reports to ARINC, not later than October 10, notwithstanding anything to the contrary in this clause. See Note 5.)

**6. The following AFFARS clauses apply to this Contract:**

- (a) 5353.223-9000 Elimination of Use of Class I Ozone Depleting Substances (ODSs) (April 2003) (See Note 5.)
- (b) 5353.223-9001 Health and Safety on Government Installations (June 1997) (See Note 3.)
- (c) 5353.237-9001 Requirements Affecting Contractor Personnel Performing Mission Essential Services (November 2004) (Applies if the Government has identified services performed under this contract as "Essential DoD Contractor Services." In paragraph (b), insert "To be specified in delivery orders." See Note 5.)
- (d) 5353.242-9000 Contractor Access to Air Force Installations (June 2002) (See Note 5. In paragraph (e) the Contractor is responsible for ensuring the return of all base identification passes to the ARINC person designated in delivery order(s).)
- (e) 5353.245-9004 Base Support (July 1997) and Alternate I (AFMC) (July 1997) See Note 5. In paragraph (e) insert "TBD on individual delivery orders as applicable."

**7. The following Joint ALC clauses apply to this Contract:**

- (a) 9952.237-9001 Contractor Identification (JALC) (March 2003)
- (b) 9952.237-9002 Contract Holidays (JALC) (June 1997) (See Notes 3 and 4.)
- (c) 9952.761-H761 Organizational Conflict of Interest (September 2004)

(1) To prevent conflicting roles which may bias the contractor's judgment or objectivity, or to prevent the contractor from obtaining an unfair competitive advantage in concurrent or future acquisitions, the contractor will be restricted as set forth below in subparagraph (c) of this provision.

(b) The following descriptions or definitions apply:

(1) Systems Engineering: Means determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and/or supervising design.

(2) Technical Direction: Means developing work statements, determining parameters, directing other contractors' operations, and/or resolving technical controversies.

(3) Development: Means all efforts towards solution of broadly-defined problems. This may encompass research, evaluating technical feasibility, proof of design and test, or engineering of programs not yet approved for acquisition or operation.

(4) Proprietary Information: Means all information designated as proprietary in accordance with law and regulation, and held in confidence or disclosed under restriction to prevent uncontrolled distribution. Examples include limited or restricted data, trade secrets, sensitive financial information, and computer software; and may appear in cost and pricing data or involve classified information.

(5) System: Means the system that is the subject of the applicable Task Order (TO).

(6) System Life: Means all phases of the system's development, production or support.

(7) Contractor: Means the business entity receiving the award of this ARINC contract; its parents, affiliates, divisions and subsidiaries.

(8) Design: Is the action of implementing a function concept. Typically, this includes planning, creating, devising, constructing, modifying or developing a new or existing item, component, program or process. The results of the design activity may be represented by a set of drawings, etc., from which an actual item can be produced. Detailed design data describes the physical configuration and performance characteristics of an item, component, program or process in sufficient detail to ensure that the item, component, program or process produced IAW the detailed design data will be essentially identical to the original.

(c) The contractor will be restricted as set forth in FAR Subpart 9.5. The following additional restrictions shall also apply:

(1) Tasks to be performed on this contract may result in the contractor delivering a non-proprietary competitive data package for hardware items and components and software programs to be used by the Government for future competitive production contracts. Therefore, the contractor shall not be allowed to compete for production of any hardware items and components or software programs either directly or indirectly, as a prime contractor, a subcontractor (regardless of the tier of subcontractor), vendor, or a consultant to another contractor for systems of which they were involved in the designing effort under this program that results in the prime contractor delivering a non-proprietary competitive data package.

(2) The prohibition shall be in effect for the period beginning with the date of this contract through and until (i) Five years after completion of any TOs issued hereunder, including option periods; or (ii) The completion of the first production contract resulting from a competitive data package furnished under said TOs, whichever is longer.

(3) The contractor agrees that it will (i) Assure formal company policies and procedures effectively address this exclusion and that all employees associated with this contract are fully aware of those specific policies and procedures; (ii) Include in any contract with third parties for software or hardware engineering design services, including subcontracts down through any tier, the same contractual obligations imposed by this

provision. This subparagraph is intended to impose upon each tier the responsibility for passing the contractual obligations up or down to the next tier. This exclusion does not need to be included in subcontracts issued for purposes of prototype fabrication, limited production/spares, producibility verification, system evaluation or other purposes when the subcontractor does not participate in or contribute to the actual design.

(d) The contractor may be required to prepare and submit complete specifications for non-developmental items to be used in a competitive acquisition. The contractor shall not furnish these items to the government, either as a prime or subcontractor, for the duration of the initial production contract.

(e) The contractor may gain access to proprietary information of other companies during contract performance. The contractor agrees to enter into company-to-company agreements to protect the other company's information from unauthorized use or disclosure for as long as it is considered proprietary by the other company and refrain from using the information purposes, the contractor shall furnish copies of these agreements to the contracting officer. These agreements are not intended to protect information which is available to the Government or to the contractor for other sources and furnished voluntarily without restriction.

(f) Waivers to the Organizational Conflict of Interest Clauses may be considered when in the government's interest or on a case by case basis after award of the basic contract. Waiver requests with supporting rationale will be submitted to the Contracting Officer by and through ARINC for review and decision coordination.

(g) Before accepting and performing each TO issued under this contract, the contractor shall evaluate the TO for actual and potential organization conflicts of interest and shall provide timely written notice to the contracting officer setting forth the general nature of the actual or potential organizational conflict of interest, or concluding that no significant organizational conflict of interest exists with respect to the TO.

(h) By accepting and performing any TO issued under this contract, the contractor represents that the contractor has identified and evaluated actual and potential organizational conflicts of interest with respect to that TO and has either provided timely written notice to the contracting officer setting forth the general nature of the actual or potential organizational conflict of interest, or concluded that no significant organizational conflict of interest exists with respect to the TO. If no written notice is provided to the contracting officer, the government shall assume that the contractor has concluded that no significant organizational conflict of interest exists with respect to the TO.

(d) 9952.762-H762 Use of Nondisclosure Agreements (NDAs) (September 2004)

(e) 9952.762-H762 Use of Nondisclosure Agreements (NDAs) (SEP 2004)

1. NDAs will be used as ARINC or the Government determines appropriate for individual Task Orders (TOs). These NDAs serve to protect confidential, proprietary and/or sensitive information to which contractors may be given access as a result of their performance under the prime contract TOs.

These NDAs provide assurance to the ARINC and the Government that the contractor employees will conform to the conditions and responsibilities in regards to the confidential, proprietary and/or sensitive information to which they are given access.

2. If it has been determined that an NDA is appropriate for a TO and included in the TO solicitation, Contractor responses to that solicitation will be considered non-responsive if they do not contain signed NDAs for each employee identified in the proposal. Furthermore, the successful offeror for such a TO will be required to have signed NDAs for employees assigned to the effort for the duration of the TO.
3. Contractor may request ARINC to provide a copy of the sample NDA provided by the Government to ARINC in its prime contract User's Guide. This example may be tailored and altered as appropriate on a TO basis.

## 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" (April 1991).** (Applicable to solicitations and contracts exceeding \$100,000.)
    - (1) The definitions and prohibitions contained in the clause under FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 2003), are hereby incorporated by reference in paragraph (b) of this certification.
    - (2) CONTRACTOR certifies that to the best of its knowledge and belief that on and after December 23, 1989—
      - (a) 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 his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

- (b) If any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) 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 his or her behalf in connection with a solicitation or order, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, in accordance with its instructions, and
  - (c) Offeror will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (3) Submission of this certification and disclosure is a prerequisite for making or entering into a contract as imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form 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" (December 2001).**
  - (c) **FAR 52.222-22, "Previous Contracts and Compliance Reports" (February 1999).**
  - (d) **FAR 52.222-25, "Affirmative Action Compliance" (April 1984).**
  - (e) **FAR 52.223-13, "Certification of Toxic Chemical Release Reporting" (August 2003).** (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.