

U.S. Government Subcontract Terms and Conditions (International)



1. Acceptance of Subcontract. Subcontractor's acknowledgment, acceptance of payment, or commencement of performance constitutes Subcontractor's unconditional acceptance of this Subcontract. Unless expressly accepted in writing and signed by SRI, any additional or different terms or conditions proposed by Subcontractor or included in Subcontractor's acknowledgment are objected to by SRI and have no effect.

2. Communication with Customer. SRI is solely responsible for all liaison and coordination with SRI's customer as it affects the applicable prime or higher-tier contract, including the work performed under this Subcontract. Subcontractor acknowledges it has no privity of contract with the customer.

3. Key Personnel. If any Subcontractor key personnel are specified in the Subcontract Schedule, such personnel are considered to be essential to the work being performed hereunder. Subcontractor shall not remove any key personnel without the written consent of SRI. Subcontractor shall notify SRI reasonably in advance of any proposed removal of key personnel, describing in sufficient detail to permit evaluation of the impact on the work the justification for removal and the proposed substitute staff.

4. Contract Direction. Only a SRI subcontracts representative has the authority on behalf of SRI to make changes to this Subcontract. Any changes must be made in writing and signed by both parties. SRI technical or business staff may from time to time render assistance, give technical advice, or exchange information with Subcontractor's personnel. No action by SRI technical or business staff constitutes a change under the 'changes' clause of this Subcontract, and is not a basis for an equitable adjustment. Any Subcontractor effort pursuant to instructions other than written instructions from a SRI subcontracts representative is at Subcontractor's sole risk.

5. Changes. SRI may, by written notice, direct changes within the general scope of this Subcontract in any of the following: (a) technical requirements and descriptions, specifications, statement of work, drawings, or designs; (b) shipment or packing methods; (c) time and place of performance, delivery, inspection, or acceptance; (d) reasonable adjustments in quantities and delivery schedules; and (e) amount of Furnished Property. If a change increases or decreases Subcontractor's cost or time to perform this Subcontract, the parties shall negotiate an equitable adjustment in price or schedule or both, and SRI shall modify this Subcontract in writing accordingly. Failure of the parties to agree upon an adjustment does not excuse Subcontractor from performing previously agreed upon work. Subcontractor must assert any claim for adjustment within 30 days of receipt of notice of the change. SRI may examine Subcontractor's books and records to verify the amount of the claimed adjustment. Nothing in the foregoing obligates Subcontractor to continue performance or incur costs beyond the point established, if applicable, in any Limitation of Cost or Limitation of Funds articles in this Subcontract.

6. Timely Performance. Subcontractor's timely performance is a critical element of this Subcontract. If Subcontractor becomes aware of any difficulty in performing its work hereunder, Subcontractor shall promptly notify SRI in writing giving pertinent details of the reason for the delay and the actions being taken to overcome or minimize the delay. Such notification does not constitute a change to any delivery schedule or other due dates.

7. Access to SRI Facilities. If access to SRI facilities is permitted under this Subcontract, Subcontractor's personnel shall comply with all SRI security, safety, rules of conduct, badging and personal identify, and related requirements while on SRI property. Before access is granted, Subcontractor shall provide any information reasonably required by SRI to ensure proper identification of authorized Subcontractor personnel. SRI may, in its sole discretion, remove any Subcontractor employee from SRI facilities.

8. Intellectual Property. Subcontractor warrants that the work performed hereunder shall be Subcontractor's original work and that all work performed or delivered under this Subcontract will not infringe or otherwise violate the intellectual property rights of any third party. Except to the extent that the U.S. Government assumes liability therefor, Subcontractor agrees to defend, indemnify, and hold harmless SRI 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 Subcontract infringes or

otherwise violates the intellectual property rights of any person or entity. Subcontractor represents and warrants that it has obtained a present assignment of rights in inventions from its employees performing work under this Subcontract, and that there are no conflicting assignments of inventions and other intellectual property to third parties that would prevent Subcontractor granting rights to the U.S. Government if required by the Prime Contract Flowdown clauses incorporated herein.

9. Limited License to SRI. Solely to the extent required for SRI to perform its obligations under the prime or higher-tier contract, Subcontractor hereby grants to SRI a nonexclusive, royalty-free, paid-up, right and license to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works of, and authorize others to do any, some, or all of the foregoing, with respect to any and all inventions, discoveries, improvements, maskworks, and patents, as well as any and all data, copyrights, software, reports, and works of authorship that were conceived, developed, generated or delivered in performance of this Subcontract. For clarity, no license is granted to SRI for any purpose other than performance of the prime or higher-tier contract.

10. Proprietary Information. Subcontractor shall keep confidential and otherwise protect from disclosure all information and property obtained from SRI in connection with this Subcontract that is identified as confidential or proprietary. Unless expressly authorized in writing by SRI, Subcontractor shall use such information and property only for performance of this Subcontract and shall not disclose such information and property to any third party. However, such obligation shall not apply to information that Subcontractor can demonstrate by its written records was: (a) previously known to Subcontractor; (b) acquired by Subcontractor from a third party having the right to disclose such information; or (c) known to the public, through no fault of Subcontractor. Subcontractor shall maintain data protection processes and systems sufficient to protect SRI provided information and property. Subcontractor shall promptly report to SRI any discovered unauthorized access to or use of information. The provisions of this Article are superseded by any nondisclosure agreement between the parties that is attached to this Subcontract.

11. Third Party Materials. Subcontractor shall obtain SRI's written consent before incorporating any third party copyrighted material, including but not limited to so-called 'free or open source software' into any deliverables under this Subcontract. Subcontractor warrants that it has sufficient rights in such third party content to permit use by SRI and SRI's customer.

12. Warranty (Fixed-Price Subcontracts). If this is a fixed-price Subcontract, Subcontractor warrants that all work furnished pursuant to this Subcontract will conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Subcontract and shall be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one year. If any nonconforming work is identified within the warranty period, Subcontractor, at SRI's option, shall promptly repair, replace, or reperform the work. Unless otherwise specified, transportation of replacement work, return of nonconforming work, and reperformance of work shall be at Subcontractor's expense. If repair, replacement, or reperformance of work is not timely, SRI may elect to return, reperform, replace, or reprocur the nonconforming work at Subcontractor's expense. Either SRI or its customer may make claims against this warranty.

13. Furnished Property. SRI may provide to Subcontractor property owned by either SRI or its customer ("Furnished Property"). Furnished Property may only be used for the performance of this Subcontract. Title to Furnished Property remains vested in SRI or its customer. Subcontractor shall clearly mark all Furnished Property to show its ownership. Subcontractor is responsible for all loss of or damage to Furnished Property, other than reasonable wear and tear. Subcontractor shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice. At SRI's request, and upon closeout of this Subcontract, Subcontractor shall submit an inventory of Furnished Property to SRI, and shall deliver or otherwise dispose of Furnished Property as directed by SRI. Any U.S. Government Property clause incorporated herein takes precedence over this clause with respect to U.S. Government-furnished property or property to which the U.S. Government will obtain title under this Subcontract.

14. Counterfeit Parts. Subcontractor shall not deliver any part to SRI that is mislabeled or otherwise misrepresented as being of a different class, quality, or source than is actually the case, including (for example) refurbished parts that are represented as new parts and any parts designated as 'suspect' by the U.S. Government, such as parts listed in Defense Contract Management Agency alerts under the U.S. Government-Industry Data Exchange Program. If SRI determines that Subcontractor has supplied parts in violation of the foregoing, or if Subcontractor becomes aware of or suspects that it has furnished such parts, Subcontractor shall immediately replace the suspect or counterfeit part with a genuine version conforming to the requirements of this Subcontract. Notwithstanding any other provision of this Subcontract, Subcontractor is liable to SRI for SRI's costs in removing Subcontractor-supplied suspect or counterfeit parts, reinserting replacement parts, and any testing made necessary by the substitution.

15. Final Payment. Final payment under this subcontract is conditioned upon SRI's receipt and acceptance of all services, reports, and supplies called for hereunder, final patent report, final accounting for and disposition of property, the assignment to SRI of any refunds, rebates, and credits, the release discharging SRI and the U.S. Government from liabilities, as called for by the clause entitled "Allowable Cost and Payment," completion of all close-out documentation, and any final audit by Subcontractor's cognizant U.S. Government audit agency.

16. Travel Costs. If travel is authorized under this Subcontract, then Subcontractor's actual allowable travel expenses (in accordance with the applicable cost principles for travel) will be reimbursed as part of the Subcontractor's costs. Subcontractor must maintain receipts for all expenses over \$75.00 for which reimbursement is claimed. Lodging receipts must be from establishments serving the general public. Subcontractor shall include a detailed summary of all travel costs by category of expense on each invoice.

17. Defective Cost or Pricing Data. If submission of cost or pricing data is required or requested at any time before or during performance of this Subcontract, if Subcontractor or its lower-tier subcontractors: (a) submit or certify cost or pricing data that are defective; (b) claim an exemption to a requirement to submit cost or pricing data, and such exception is invalid; (c) furnish data of any description that is invalid; or if (d) the U.S. Government alleges any of the foregoing; and, as a result, (i) SRI's contract price or fee is reduced; (ii) SRI's costs are determined to be unallowable; (iii) any fines, penalties, withholdings, or interest are assessed on SRI; or (iv) SRI incurs any other costs or damages; then SRI may make a reduction of corresponding amounts (in whole or in part) in the price of this Subcontract or any other contract with Subcontractor, may also demand payment (in whole or in part) of the corresponding amounts, or both. Subcontractor agrees to promptly pay all amounts so demanded.

18. Stop Work. If SRI initiates a 'stop work' order, Subcontractor shall immediately stop performance of this Subcontract in accordance with the stop work order and shall take all reasonable steps to minimize costs allocable to the Subcontract during the period of work stoppage, including immediately issuing stop work orders to all lower-tier subcontractors. Once the stop work order is no longer necessary, SRI shall either: (a) terminate the Subcontract in accordance with the Termination Article of this Subcontract; or (b) lift the stop work order, and negotiate an equitable adjustment to the price and delivery schedule, if Subcontractor requests such an adjustment in accordance with the Changes Article of this Subcontract.

19. Termination. SRI may terminate this Subcontract, in whole or in part, by sending written notice to Subcontractor: (a) if the U.S. Government or higher-tier contractor terminates SRI's contract covering the subcontracted work; (b) if Subcontractor materially breaches any of its obligations under this Subcontract and fails to cure such breach within ten days after receipt of SRI's written notice of the breach; or (c) for convenience, upon receipt of SRI's written notice. Upon termination, SRI's liability for Subcontractor's costs and Subcontractor's liability for procuring goods or services from alternative sources shall be as set forth in FAR Part 49.

20. Shipment. Unless otherwise specified, all deliverables are to be packed in accordance with good commercial practice. A complete packing list shall be enclosed with all shipments. Subcontractor shall mark containers or packages with necessary lifting, loading, and shipping information, including the Subcontract number, item number, date of shipment, and the name and address of consignor and consignee. Bills of lading shall also include this Subcontract number. Unless otherwise specified, delivery shall be Free Carrier at Subcontractor's facility (Incoterms 2010). Any tangible media

storing reports, memoranda, or other materials in written form including machine readable form prepared by Subcontractor and delivered to SRI hereunder shall become the sole property of SRI.

21. Gratuities and Kickbacks. Subcontractor shall not offer or give a kickback or gratuity (including in the form of entertainment or gifts) for the purpose of obtaining or rewarding favorable treatment as a SRI supplier. By accepting this Subcontract, Subcontractor 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 U.S.C. § 52-58), both of which are incorporated herein by this reference, except that paragraph (c)(1) of FAR 52.203-7 does not apply.

22. Insurance. Subcontractor, and any permitted lower-tier subcontractors, shall each maintain at its own expense during the entire period of performance of this Subcontract: (a) workers compensation insurance in amounts required by applicable law; (b) commercial liability insurance and automobile liability insurance, each covering both bodily injury and property damage with a minimum of US\$2,000,000 per occurrence limit. If requested, Subcontractor shall provide SRI with certificates of insurance showing compliance with these requirements.

23. Third Party Harms. Subcontractor assumes full responsibility for any harm it may cause in performance of this Subcontract. Subcontractor shall defend, indemnify, and hold harmless SRI, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including reasonable attorneys' fees, all expenses of litigation and settlement, and court costs, by reason of property damage or loss, environmental harm, or personal injury to any person, caused in whole or in part by the acts or omissions of Subcontractor, its officers, employees, agents, suppliers, consultants, or lower-tier subcontractors.

24. Records and Retention. Subcontractor shall maintain adequate records indicating the effort expended in direct performance of this Subcontract. Unless a longer period is specified elsewhere in this Subcontract, or by law or regulation, Subcontractor shall retain all records related to this Subcontract for a period of three years from the date of final payment received by Subcontractor. Records related to this Subcontract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping, export, and certification records. At no additional cost, Subcontractor shall timely provide access to such records to the U.S. Government or SRI upon request for audit.

25. Waiver, Approvals, and Remedies. Failure by either party to enforce any of the provisions of this Subcontract or applicable law shall not constitute a waiver of the requirements of such provision or law, or as a waiver of a party thereafter to enforce such provision or law. SRI's approval of documents does not relieve Subcontractor of its obligations to comply with the requirements of this Subcontract. The rights and remedies of either party to this Subcontract are cumulative and in addition to any other rights and remedies provided at law or in equity.

26. Non-Arbitration of Certain Claims. If the total value of this Subcontract exceeds US\$1M, then with respect to any employee or independent contractor performing work related to this Subcontract, Subcontractor agrees not to: (a) enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or (b) take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

27. Export Control. Each party shall control the disclosure of and access to technical data, information, and other items received under this Subcontract in accordance with all applicable export control laws and regulations. Subcontractor shall indemnify, defend, and hold SRI harmless for all liabilities, penalties, losses, damages, costs (including attorney's fees) or expenses that may be imposed on or incurred by SRI in connection with any violations of such laws and regulations by Subcontractor. Subcontractor shall

immediately notify SRI if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended, or revoked. Subcontractor will give immediate written notification to SRI if the items to be delivered or sold to SRI under this Subcontract are restricted by export control laws or regulations prior to the delivery of the items.

28. Anti-Dumping. Subcontractor warrants that all items sold to SRI are for no less than fair value, with respect to U.S. anti-dumping laws.

29. Anti-bribery. Subcontractor and its officers, directors, employees, and agents have not offered or provided and will not offer or provide, either directly or indirectly, any gift, payment, or other benefit of any kind to any person that constitutes a breach of any applicable domestic or foreign anti-bribery or corrupt practices law in either the U.S. (including the Foreign Corrupt Practices Act) or any other country in which any products are sold or services are performed under this Agreement. Upon Subcontractor's breach of the foregoing, SRI may terminate this Agreement immediately, notwithstanding any 'cure' period provided in the termination provisions hereof.

30. Compliance with Laws. Subcontractor agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. Subcontractor shall procure all necessary licenses, permits, and pay all fees and other required charges and shall comply with all applicable guidelines and directives of any local, state, or federal governmental authority. Subcontractor shall comply with all applicable taxes, including payroll taxes and income taxes, and shall pay its employees, vendors, and contractors in compliance with applicable law.

31. Independent Contractors. The parties intend to create an independent contractor relationship. Nothing herein creates a partnership, joint venture, agency, employment, or other business relationship between the parties. Subcontractor will not represent itself as an agent of SRI, nor indicate that Subcontractor has the right to obligate SRI in any way. Subcontractor is solely responsible for providing all resources, materials, and facilities needed to accomplish the work required; SRI's facilities may not be used for the performance of the efforts required except as expressly identified herein.

32. Chemicals. Subcontractor represents that each chemical substance constituting or contained in work sold or otherwise transferred to SRI 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. § 2601 et seq.) as amended. Subcontractor shall provide to SRI 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 of 1970 and regulations promulgated there under, or its state approved counterpart.

33. Applicable Law. The laws of the State of California govern this Subcontract, without regard to its conflict of laws provisions, except that any clause in this Subcontract that is incorporated in full text or by reference from the Federal Acquisition Regulation (FAR) or agency supplements thereto, or is substantially based upon any such FAR or agency supplement regulation, shall be interpreted according to the U.S. federal common law of Government contracts. The provisions of the "United Nations Convention on Contracts for the International Sale of Goods" do not apply.

34. Severability. If any provision of this Subcontract or application thereof is found invalid, illegal, or unenforceable by law, the remainder of this Subcontract will remain valid, enforceable, and in full force and effect, and the parties will negotiate in good faith to substitute a provision of like economic intent and effect.

35. Electronic Signatures. The parties agree that if this Subcontract is transmitted electronically, neither party shall contest the validity of this Subcontract, or any acknowledgment thereof, on the basis that this Subcontract or acknowledgment contains only an electronic signature.

36. Entire Agreement. This Subcontract integrates, merges, and supersedes any prior offers, negotiations, and agreements (including any letter subcontract or letter of authorization) concerning the subject matter hereof, and constitutes the entire agreement between the parties.

37. Dispute Resolution. Except when prohibited by law, the parties shall resolve disputes arising out of this Subcontract, including disputes about the scope of this arbitration provision, by final and binding arbitration seated and

held in San Francisco, California before a single arbitrator. JAMS (www.jamsadr.com) shall administer the arbitration under its comprehensive arbitration rules and procedures. The arbitrator shall award the prevailing party its reasonable attorneys' fees and expenses, and its arbitration fees and associated costs. The arbitration proceedings will be conducted in English, and will be confidential. Any court of competent jurisdiction may enter judgment on the award. Either party may seek preliminary relief from a court of competent jurisdiction to prevent imminent or continuing irreparable harm before filing a demand for arbitration.

38. Headings. The headings used in this Subcontract are for the convenience of the parties only and do not define, limit, or describe the scope or intent of the provisions of the Subcontract.

39. Notice of Disputes. Subcontractor shall promptly notify SRI of any litigation or labor dispute relating to this Subcontract or that has the potential to impair Subcontractor's ability to comply with this Subcontract.

40. Assignment. Subcontractor may not assign or novate this Subcontract, or delegate its responsibilities hereunder, without the prior written consent of SRI, and any purported assignment is void.

41. Use of Name. Subcontractor may not use the names "SRI," "SRI International," or any other trademark or logo owned by SRI for marketing or endorsement purposes without the prior written consent of SRI.

42. Survival. Upon expiration or termination of this Subcontract, any clauses (including incorporated clauses of the FAR or agency supplements thereto) which by their nature extend beyond such expiration or termination shall survive.

43. English Language. The parties shall use the English language in all reports, correspondence, drawings, notices, markings, and other communications relating to this Subcontract.

44. Currency. Unless expressly stated elsewhere in this Subcontract, all amounts of money specified in this Subcontract are in U.S. Dollars.

45. U.S. Government Contract Flowdowns. This Subcontract is being issued in support of a U.S. Government contract. Therefore, certain terms from the prime contract are listed on the 'Prime Contract Flowdowns' attachment to the Subcontract, which is hereby incorporated by reference including any notes or modifications following each clause citation. The full text of all Federal Acquisition Regulation (FAR) and agency supplement clauses may be found on the Internet at <http://farsite.hill.af.mil/>, and copies may also be requested from your SRI Subcontract Administrator. Any reference in an incorporated clause to a disputes clause shall be interpreted as the Dispute Resolution clause of this Subcontract.

46. GSA Schedule Orders. If this document is issued in order for SRI to purchase items from Subcontractor's GSA schedule then the parties agree that: (a) notwithstanding the title of this document as a subcontract, this agreement documents a 'contractor team arrangement' not a prime/sub relationship; (b) each party is independently responsible for reporting and payment of its own sales under its schedule contract and paying the related industrial funding fee to the GSA; (c) if there are any conflicts between the terms of this Subcontract and Subcontractor's GSA schedule, the terms of the GSA schedule control; and (d) any "open market items" are clearly identified as such in accordance with FAR 8.402(f).

47. Contractor Status. Subcontractor certifies that neither Subcontractor nor any of this principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this type of transaction by any Federal department or agency. Subcontractor will promptly notify SRI of any change to its status during the term of this Subcontract.

48. Conflict of Interest. Subcontractor certifies that to the best of its knowledge there are no relevant facts or circumstances which would give rise to an organizational conflict of interest with respect to this Subcontract.

49. Priority Rating. If so identified on the Subcontract Schedule, this Subcontract is a "rated order" certified for national defense use and Subcontractor shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

- END OF TERMS (SC-002 Rev. 6/12) -