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ARTICLES APPLY REGARDLESS OF PRICE
(unless otherwise noted)

A. 1 GENERAL

- a. The terms and conditions of these General Provisions and those set forth in the Premier Technology, Inc. Order apply notwithstanding any different or additional terms and conditions submitted or proposed by Seller, and Premier Technology, Inc. objects to and shall not be bound by any such additional or different terms and conditions.
- b. **REQUIRED FLOWDOWN ARTICLES:** By entering into this Order, Seller shall flowdown and bind all Lower-tier Subcontractors, regardless of their level, to the Provisions of this Order in its Lower-tier Subcontracts and Purchase Orders.
- c. The failure of either party to enforce at any time any of the provisions of this Order or to require at any time performance by the other party of any of such provisions shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Order or any parts thereof, or the right of either party thereafter to enforce each and every provision.
- d. In the event of an inconsistency between provisions of this Order, the inconsistency shall be resolved by giving precedence as follows: 1) Order; 2) statement of work; 3) these General Provisions and 4) other provisions of this Order, whether incorporated by reference or otherwise. However, Subcontractor shall notify the Contractor prior to performing work based on resolution of an inconsistency by the order of precedence set forth herein.

A. 2 INCORPORATED BY REFERENCE

Certain Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses and articles are incorporated herein by reference as if set forth in their entirety. To reference the cited FAR and DEAR flow-down clauses, the following web addresses are provided:
<http://farsite.hill.af.mil/>
<http://farsite.hill.af.mil/vfdoea.htm>

Articles incorporated by reference are those in effect on the date of this Order.

- a. FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (>\$100,000)
- b. FAR 52.203-7 Anti-Kickback Procedures (>\$100,000)
- c. FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (>\$100,000) (Byrd Amendment)
- d. FAR 52.204-4 Printed or Copied Double-Sided on Recycled Paper (>\$100,000)
- e. FAR 52.222-21 Prohibition of Segregated Facilities (>\$10,000)
- f. FAR 52.222-26 Equal Opportunity (>\$10,000)
- g. FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (>\$25,000)
- h. FAR 52.222-36 Affirmative Action for Workers with Disabilities (>\$10,000)
- i. FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (>\$25,000)
- j. FAR 52.223-3 Hazardous Material Identification and Material Safety Data, Alternate I
- k. FAR 52.225-13 Restrictions on Certain Foreign Purchases (>\$2,500)
- l. FAR 52.227-1 Authorization and Consent (>\$100,000)
- m. FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (>\$100,000)
- n. FAR 52.227-3 Patent Indemnity (>\$100,000)
- o. DEAR 952.204-71 Sensitive Foreign Nation Controls
- p. DEAR 952.208-70 Printing

A. 3 DEFINITIONS

- a. "Commercial item". See FAR 52.202-1 Definitions, incorporated herein by reference.
- b. "Contractor" means Premier Technology, Inc.
- c. "Lower-tier Subcontractor" means any party entering into an agreement with the Subcontractor or any other party who has entered into a contract with the Subcontractor, for the furnishing of supplies or services required for performance of this Order.
- d. "Subcontractor" and "Seller" mean the business entity contracted to provide the materials, supplies or services covered by this Order.

A. 4 CHANGES

Changes in the terms and conditions of this Order may be made only by written agreement of the parties.

A. 5 MATERIALS AND WORKMANSHIP

- a. **New Materials**

Unless otherwise specifically approved by the Contractor, all equipment, materials, or products, including those components, parts, and materials, which are permanently installed into systems, subsystems, and/or assemblies, shall be new and of the grade/type specified by this Order. No mixed manufacturers', or manufacturing production, lots will be accepted. All workmanship shall be performed in a skillful and workmanlike manner consistent with the stated requirements and other applicable criteria of this Order.
- b. **Suspect/Counterfeit Materials**

The following materials furnished under this Order will be used in a U.S. Government-owned facility and shall be manufactured domestically, i.e., within the United States of America:

Fasteners

Fasteners, as defined in Title 15, United States Code (U.S.C.) Chapter 80, Section 5402 of the Fastener Quality Act, that are delivered to the Contractor, under this Order shall meet the "Testing and Certification of Fasteners" requirements specified in Section 5404 (a), (b), and (c) of the Act, by a laboratory accredited in accordance with the procedures and conditions specified in Section 5405.

Fasteners shall exhibit grade marks and the manufacturer's identification symbol (headstamp) as specified in the referenced Material Specification. Fasteners having a headmark, which is displayed on U.S. Customs Service Suspect Fastener Headmark List will not be accepted.

Electrical Items

Electrical items shall exhibit manufacturers' labels and identification as specified in the referenced specification or in the body of the Order.

Mechanical Items

Mechanical items shall exhibit manufacturers' labels and identification as specified in the referenced specification or in the body of the Order.

- c. Evidence of deliberate misrepresentation of any item(s) and/or component(s) and/or material(s) provided under this Order may result in an investigation to determine the validity-of-certification, fraud, and/or forgery.

A. 6 APPROVALS

The granting of approvals by the Contractor of any data submitted by Subcontractor under this Order shall not affect, or relieve Subcontractor from, compliance with this Order.

A. 7 PASSAGE OF TITLE AND LIENS

- a. Title to deliverables shall pass at the place of delivery to Contractor. If purchased F.O.B. origin, delivery to the carrier shall be deemed to be delivery to Contractor.
- b. Seller agrees to furnish deliverables free and clear of all liens, claims, and encumbrances. Seller agrees to hold Contractor and the Government harmless from all liens, claims, or demands in connection with the Work.

A. 8 DELIVERY AND PAYMENT

- a. Supplier shall work such hours, including night shifts and overtime operations, as may be necessary to meet this Subcontract delivery date(s), or any duly authorized extensions thereof, at no increase in the price of this Order.
- b. Unless otherwise specified in this Order, a separate invoice shall be issued upon each delivery of supplies or completion of services, and shall be payable by Contractor upon receipt of supplies or completion of services and receipt by Contractor of a correct invoice therefore. Credit and discount periods shall be computed from the date such invoice is received to the date Contractor's check is mailed. Unless freight and other charges are itemized, the discount will be taken on the full amount of invoice.

A. 9 INSPECTION

- a. Seller shall perform, or have performed, all inspections and tests necessary to substantiate that the Supplies or Services furnished under this Order conform to Order requirements, including any applicable technical requirements for specified manufacturers' parts.

- b. Contractor has the right either to reject or to require correction of nonconforming Supplies or Services. Supplies or Services are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Order requirements. Contractor may reject nonconforming Supplies or Services with or without disposition instructions.
- c. Rejection of non-conforming work shall be made as promptly as practicable after delivery, except as otherwise provided in this Order; but failure to inspect or reject work shall neither relieve Subcontractor from responsibility for such work as is not in accordance with the Order requirements nor impose liability upon the Contractor.
- d. Inspections and tests by Contractor do not relieve Seller of responsibility for defects or other failures to meet Order requirements.

A.10 ASSIGNMENT

Neither this Order nor any interest herein nor claim hereunder shall be assigned or transferred by the Subcontractor, except as expressly authorized in writing by the Contractor. The Contractor may assign this Order to another entity, as applicable.

A. 11 FEDERAL, STATE, AND LOCAL TAXES

Except as may be otherwise provided in this Order, the order prices include all applicable federal, state, and local taxes and duties. Premier Technology, Inc. is exempt under Idaho law from the payment of certain Idaho sales or use taxes for any tangible personal property. Therefore, the order price shall not include Idaho sales or use tax for any tangible personal property purchased hereunder.

A.12 COMPLIANCE WITH LAWS

The Subcontractor shall abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this Order is performed.

A. 13 DISPUTES

- a. The parties agree that the appropriate forum for resolution of any unresolved dispute of claim pertaining to this Order shall be the Federal District Court, with venue in the U.S. District Court for the District of Idaho in Pocatello, Idaho. In the event the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, with venue in the District Court of the Seventh Judicial District for the District of Idaho in Idaho Falls, Idaho.
- b. Any substantive issue of law in dispute shall be determined in accordance with the law of the State of Idaho, except an issue involving a Federal Acquisition Regulation clause(s), which shall be determined in accordance with federal procurement law. Nothing in this Article shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this Order.
- c. Nothing in this Article 13 shall preclude the use of an alternate dispute resolution (ADR) process, as agreed by the Parties.
- d. There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this Order pending final resolution of any dispute, claim, or litigation, arising under, or related to, this Order, between the parties hereto or between the Subcontractor and Lower-tier Subcontractors or suppliers.
- e. The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this Order.

A. 14 DEFAULT

- a. Contractor may, subject to Paragraphs 14.3 and 14.4 of this Article, by written notice of default to Seller, terminate this Order in whole or in part if Seller fails to: (i) deliver the Supplies or to perform the Services within the time specified in this Order or any extension; (ii) make progress, so as to endanger performance of this Order; or (iii) perform any of the other provisions of this Order.
- b. Contractor terminates this Order in whole or in part, it may acquire, under the terms and in the manner Contractor considers appropriate, supplies or services similar to those terminated, and Seller shall be liable to Contractor for any excess costs for those supplies or services. However, Seller shall perform the work not terminated.
- c. Excusable Delays: Except for defaults of lower-tier Subcontractors at any tier, Seller shall not be liable for any excess costs if the failure to perform this Order arises from causes beyond the control and without the fault or negligence of Seller. Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of Seller.
 1. The Seller shall notify the Contractor in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contractor of the cessation of such occurrence.
- d. If the failure to perform is caused by the default of a Lower-tier Subcontractor at any tier, and if the cause of the default is beyond the control of both Seller and the Lower tier Subcontractor and without the fault or negligence of either, Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Seller to meet the required delivery schedule.
- e. If this Order is terminated for default, Contractor may require Seller to transfer title to the Government and deliver to Contractor, as directed by Contractor, any (1) completed Supplies, and (2) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this Article) that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Contractor, Seller shall also protect and preserve property in its possession in which Contractor or the Government has an interest.
- f. Contractor shall pay the order price for conforming Supplies delivered. Seller and Contractor shall agree on the amount of payment for manufacturing materials delivered and for the protection and preservation of the property. Failure to agree will be a dispute under the "Disputes" article. Contractor may withhold from these amounts any sum it determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.
- g. If, after termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued as a Right to Cancel by Contractor.
- h. The rights and remedies of Contractor in this Article are in addition to any other rights and remedies provided by law or under this Order.

A. 15 RIGHT TO CANCEL

Contractor reserves the right to cancel this Order, or any part hereof. In the event of such cancellation, the Subcontractor shall immediately stop all work cancelled and shall immediately cause any and all of its affected suppliers and Lower-tier subcontractors to cease work. Subject to the terms of this Order, the Subcontractor shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of cancellation, plus reasonable charges that the Subcontractor can demonstrate to the satisfaction of the Contractor using its standard record keeping system, have resulted from the cancellation. The Subcontractor shall not be required to comply with cost accounting standards or cost principles for this purpose. This Article does not give the Contractor the right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided or mitigated.

A. 16 WARRANTY

- a. Subcontractor warrants that the supplies or services shall be free from defects in material and workmanship, of the most suitable grade of their respective kinds for the purpose, and comply with all requirements set forth in this Order, until one year after first placed into service by Contractor, or three years after acceptance, whichever first occurs. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by Contractor, by promptly (i) repairing or replacing the nonconforming supplies specified (and correcting any plans, specifications, or drawings affected); (ii) furnishing Contractor any materials, parts, and instructions necessary to correct or have corrected the nonconformity, or (iii) paying to Contractor a portion of the order price as is equitable under the circumstances.
- b. Subcontractor fails to perform its obligations promptly under this Article, Contractor may perform, or have performed; such obligations and Subcontractor shall pay Contractor all charges occasioned thereby.
- c. The warranty with respect to corrected supplies or services shall be subject to the same terms as the warranty provided for in Paragraphs 16.1 and 16.2 of this Article. The warranty for corrected or replaced supplies or services shall continue until the expiration of such period plus a period equal to the time elapsed between the discovery of the nonconformity and its correction.
- d. Unless installation is an element of the work, Subcontractor shall not be obligated under this Article for the costs of removal or reinstallation of any supplies furnished or items serviced hereunder from the location of their installation, or for the costs of removal or reinstallation of structural parts or items not furnished by Seller hereunder. Subcontractor shall, in any event, bear all packing, packaging, and shipping costs to the Subcontractor's plant and return and shall bear all risk of loss or damage for the items upon which services have been performed or supplies while in transit.

A.17 DOMESTIC MANUFACTURE / NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS-SENSE OF CONGRESS

- I It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

A.18 DEFENSE NUCLEAR FACILITIES SAFETY BOARD (DNFSB)

The Subcontractor shall cooperate with the Contractor in preparation of responses to DNFSB (if required). The Subcontractor shall fully cooperate with DNFSB and provide access to such work areas, personnel, and information as necessary. If the Contractor direction to provide DNFSB support causes an increase or decrease in the cost of performance of any work under this Order, Subcontractor may

request an equitable adjustment pursuant to the Changes clause. Subcontractor shall include the requirements of this DNFSB clause in all lower-tier subcontracts.

A.19 NOTICE OF CIVIL PENALTIES FOR VIOLATION OF SECURITY OF DOE CLASSIFIED OR SENSITIVE INFORMATION OR DATA

The Subcontractor shall comply with PL 107-197 relating to the safeguarding and security of restricted data, 42, U.S.C.A. 2282b. Any person who has entered into a contract or agreement with DOE, or a subcontract or sub-agreement thereto, and who violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary pursuant to this chapter relating to the safeguarding or security of Restricted Data or other classified or sensitive information shall be subject to a civil penalty of not to exceed \$100,000 for each such violation.

A.20 CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR

The Representative, Certifications, and Other Statements of the Offeror submitted with the offer for this Order are, by reference, hereby incorporated in and made a part of this Order.

A.21 PUBLIC RELEASE OF INFORMATION

Information, data, photographs, sketches, and advertising relating to the work under this Order, which Subcontractor desires to release or publish, shall be submitted to the Contractor for approval eight weeks prior to the desired release date. As part of the approval request, Subcontractor shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases, regardless of tier or supplier, must have the prior approval before release. Subcontractor shall include all provisions of this Article, including this sentence, in all Lower-tier Subcontracts under this Order.

A.22 ASBESTOS CONTAINING MATERIALS

Subcontractor shall not use asbestos-containing materials (ACM), as defined in 29 CFR 1910.1001, in the connection with this Order in any form. By entering into this Order, Subcontractor certifies that the item(s) provided will not contain any ACM.

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