

# Sierra Nevada Company, LLC Indirect Terms and Conditions

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## 1. ACCEPTANCE

These terms and conditions constitute Sierra Nevada Company, LLC's (hereafter referred to as "SNC") offer to Seller, and acceptance is strictly limited to its terms. SNC shall not be bound by and specifically objects to any term or condition whatsoever that is different from or in addition to the provisions of this Agreement, whether or not such term or condition will materially alter this Agreement. Seller's commencement of performance or acceptance of these Terms and Conditions in any manner shall conclusively evidence agreement to the terms as written and shall create a binding Agreement between Seller and SNC.

## 2. DEFINITIONS

Whenever used in this agreement, (a) "Seller" means the person, firm or corporation furnishing the Goods or Services described in this Agreement, (b) "Buyer" means a duly authorized Supply Chain representative of SNC as stated in this Agreement, (c) "Goods" means all goods, data, software and other items furnished or to be furnished to SNC under this Agreement; (d) "Services" means all services and service-related deliverables furnished or to be furnished to SNC under this Agreement; and (e) "Agreement" means these Terms and Conditions, and all of the specifications, technical descriptions, statements of work, purchase orders, drawings, designs, documents, other requirements and provisions attached to, incorporated into or otherwise made a part of this Agreement by the Buyer. Seller and SNC are sometimes referred to herein individually as a "Party" and jointly as the "Parties."

## 3. MATERIALS AND PACKING

Goods provided under this Agreement shall consist of new materials (not used, reconditioned or remanufactured) unless otherwise authorized within this Agreement. Seller shall prepare and pack the Goods to prevent damage and deterioration, and comply with carrier tariffs. Charges for preparation, packing, crating and cartage are included in the price unless separately specified in this Agreement.

## 4. SHIPMENT/DELIVERY

Shipments or deliveries, as specified in this Agreement, shall strictly be in accordance with the specified quantities, without shortage or excess; the specified schedules; and the other requirements of this Agreement. Unless otherwise stipulated in this Agreement, partial deliveries and early shipments will be accepted. Seller shall promptly notify SNC in writing of any anticipated or actual delay, the reasons therefore, and the actions being taken by Seller to overcome or minimize the delay. If requested by SNC, Seller shall ship at its own expense via air or other expedited transportation method to offset the delay to the maximum extent possible.

Goods sold FOB place of shipment shall be forwarded with freight prepaid. Seller shall make no declaration concerning value of Goods shipped, except on Goods where tariff rating is dependent upon released or declared value, in which event Seller shall release or declare such value at maximum value within the lowest rating.

## 5. RISK OF LOSS

Unless the Agreement specifically provides otherwise, risk of loss or damage to Goods provided under this Agreement shall remain with Seller until, and shall pass to SNC upon:

- (a) Delivery of the supplies to a carrier, if transportation is FOB origin; or
- (b) Delivery of the supplies to SNC at the destination specified in the contract, if transportation is FOB destination

## 6. INSPECTION, ACCEPTANCE, AND TRANSFER OF TITLE

Seller shall only tender for acceptance those Goods and Services that conform to the requirements of this Agreement. SNC reserves the right to inspect or test any Goods or Services that have been tendered for acceptance. SNC may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in the price of this Agreement. Items not rejected by SNC within 90 days will be deemed accepted by SNC. Title to any Goods delivered under this Agreement shall pass to SNC upon SNC's acceptance of the Goods.

## 7. SERVICES

Services that Seller will provide to SNC, if any, shall be set forth in the Purchase Order and/or Statement of Work incorporated into this Agreement. The Services may include provisions of services and/or delivery of certain deliverables, reports or other items, which will be described in reasonable detail on the Purchase Order and/or incorporated Statement of Work. Services beyond those identified in the Purchase Order and/or Statement of Work are not authorized and shall not be performed without prior written approval from Buyer.

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Seller shall provide the Services: (a) in accordance with the terms and subject to the conditions set forth in the Agreement; (b) using personnel of required skill, experience and qualifications; (c) in a timely, workmanlike, and professional manner; (d) in accordance with generally recognized industry standards, or above, in Seller's field; (e) at such place and time as mutually agreeable; and (f) to the reasonable satisfaction of SNC.

### 8. SNC PROPERTY

Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all SNC property and all property to which SNC acquires an interest by virtue of the Agreement. Except for ordinary wear and tear, Seller assumes all risk of loss, destruction, or damage to such property while in Seller's possession, custody, or control, and will not use such property other than in performance of the Agreement without Buyer's written consent. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller will notify Buyer if SNC property is lost, damaged, or destroyed. As directed by Buyer, upon completion, termination, or cancellation of the Agreement, Seller shall deliver such property, to the extent not incorporated in delivered end products, to SNC in good condition subject to ordinary wear and tear and normal manufacturing losses. At the request of Buyer, Seller shall execute any documents, including but not limited to financial statements, required by SNC to protect its interest in this property.

### 9. USE OF SNC EQUIPMENT AND SYSTEMS

Seller agrees that unless authorized in writing by SNC it will use only SNC provided IT equipment and systems for performance of Services under this Agreement. To the extent non-SNC IT equipment and systems are used for the performance of Services under this Agreement, the Seller certifies that access to SNC's data and systems will be limited to US Persons (22 CFR 120.15) and US servers and IT equipment and systems housing SNC's data meets cyber security requirements outlined within the Defense Federal Acquisition Regulation Supplement (DFARS) clauses 252.204-7008 (Compliance with Safeguarding Covered Defense Information Controls), 252.204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting)/NIST SP 800-171(Security Requirements). The Parties expect that SNC may authorize the use of non-SNC IT equipment and systems if no SNC data or information is contained or accessed therein and Seller is working on pre-existing Seller Intellectual Property. Any approval for the use of non-SNC IT requirement and systems must be first approved by the SNC Security Review Board. Seller shall not copy or otherwise transfer any SNC data or information to non-SNC IT equipment or systems.

### 10. SECURITY PROTOCOLS

Seller shall (i) ensure it and all of its personnel, employees, contractors, consultants, subcontractors or other agents (collectively, the "Seller Personnel") are and remain aware of SNC's security policies, guidelines, and protocols, and (ii) comply with SNC's security policies, guidelines and protocols issued by SNC from time to time when accessing or using SNC's IT equipment and systems. Seller Personnel shall not connect any of their IT equipment or systems to SNC's equipment or systems, make unauthorized adaptations to SNC's equipment or systems without written authorization by the Program Manager or SNC Technical Representative. Seller and Seller Personnel shall take all reasonable precautions in accordance with best industry practice to avoid introducing any viruses into SNC's IT equipment or systems or otherwise corrupting SNC's data. Seller Personnel shall not knowingly tamper with, compromise or circumvent any security or audit measures employed by SNC. Seller and Seller Personnel shall not use SNC's IT equipment and systems for anything other than the provision of Services under this Agreement. Seller shall indemnify SNC for all losses incurred by SNC arising out of Seller or Seller Personnel's failure to comply with its obligations related to security stated in this Agreement or any deliberate or negligent act or omission of Seller Personnel that introduces a virus into SNC's IT equipment or systems or corrupts SNC's data.

### 11. U.S. PERSONS

Seller agrees that unless authorized in writing by SNC, all persons performing Services under this Agreement must either be US Persons (as defined below) or obtain the appropriate export licenses and agreements and provide proof of the same. US Persons are defined as: US Citizens, lawful permanent residents as defined by the US Citizenship and Immigration Services and/or ITAR protected individuals as defined by 8 USC §1324b(a)(3). The Seller and SNC anticipate that such written authorization may be granted for individuals providing software development services on behalf of Seller for deliverables that are not exclusive to SNC, made to pre-existing Seller Intellectual Property, do not require access to SNC IT equipment or systems, and do not require access to ITAR or EAR controlled information.

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### 12. PAYMENT

Seller's fees in connection with the Goods and/or Services shall be set forth in any applicable Purchase Order and/or Statement of Work and shall be paid in accordance with such Statement of Work and this Agreement. If applicable to the Goods and/or Services to be provided and specifically indicated in the Purchase Order and/or any Statement of Work, SNC shall reimburse Seller in accordance with such Purchase Order and/or Statement of Work for actual and reasonable expenses incurred.

#### (a) T&M Orders

The amounts due to Seller hereunder will be paid upon the submission of monthly invoices in accordance with the payment terms specified within the Purchase Order. Invoices shall include Seller's certification to the effect that the amount contained therein is correct and just, and payment for the amount claimed has not been received previously or covered by a prior invoice.

- (1) Labor – The total labor amount shall be computed by multiplying the appropriate hourly rate or rates, as set forth in the Agreement, by the number of direct labor hours performed. Hourly rates shall be fully burdened and shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. Unless otherwise specified, the hourly rate or rates shall not be varied by virtue of Seller having performed work on an overtime basis. No overtime shall be performed without Buyer's written authorization.
- (2) Materials– Seller will only submit invoices for the actual costs of materials. Reasonable and allocable material handling costs may be included in the charge for material costs to the extent they are clearly excluded from the hourly rate. SNC will not pay profit or fee on material costs. Seller shall be reimbursed for items and services purchased directly for this Agreement only when cash, checks or other forms of actual payment have been made for such purchased items or services.
- (3) It is estimated that the total cost to SNC for the performance of this Agreement will not exceed the price set forth in the Purchase Order. Seller agrees to use its best efforts to perform the work specified in the Agreement and all obligations under this Agreement within the Purchase Order price. If at any time during the performance of this Agreement, Seller has reason to believe that the costs which will accrue in the performance of this Agreement in the next thirty (30) days when added to all other payments and costs previously accrued, will exceed eighty-five percent (85%) of the Purchase Order price, Seller shall notify Buyer in writing to that effect giving a revised estimate of the total price for performance of this Agreement including supporting reasons and documentation.
- (4) SNC shall not be obligated to pay Seller any amount in excess of the Purchase Order price, and the Seller shall not be obligated to continue performance, if to do so would exceed the Purchase Order price. Invoices received after 180 days of Goods/Services received will be at Buyer's sole discretion for payment.
- (5) At any time or times prior to final payment, SNC may audit the invoices or vouchers and substantiating material as shall be deemed necessary. Each payment made shall be subject to reduction to the extent of amounts which are found by SNC not to have been properly payable, and shall also be subject to reduction for overpayments, or to increase for underpayments, on preceding invoices or vouchers.
- (6) All claims for monies due or to become due from SNC shall be subject to deduction by Buyer for any set off or counterclaim arising out of this or any other of Buyer's Purchase Orders with Seller whether such set off or counterclaim arose before or after any such claim or assignment by Seller.

#### b) Fixed Price Orders

Unless specifically set forth in Seller's proposal or quote and accepted by SNC, the stated contract price shall include all charges for labor, packing, shipping, hauling, storage, and transportation to the point of delivery. No separate or additional charges for these items will be accepted.

Unless otherwise authorized by Buyer, Seller shall not issue an invoice prior to the actual delivery date of Goods or Services. For Goods, Seller shall forward to SNC, with the invoice, receipt or Bill of Lading signed by the carrier, evidencing the fact that shipment has been made. Payment due dates, including discount periods, shall be calculated from the date of the later of the scheduled delivery date, the actual delivery date, or the date of receipt of a corrected invoice. The cash discount period to SNC, if any, will date from the later of (1) the receipt of a compliant invoice (not from date of the invoice) (2) the actual date of acceptance of the Goods or Services, or, (3) the delivery date specified in the Order. Unless freight and other charges are itemized, any discount shall be taken on the full amount of the invoice. Invoices shall be supported by such documents in such form as Buyer requests and shall bear such certification as may be required by law, regulations or the Purchase Order.

All payments are contingent on acceptance of the Goods or Services by SNC. For Goods, Seller shall issue separate invoices for each shipment showing the amount of material shipped. Payment shall not constitute acceptance of the Goods. Payment shall be deemed to have been made on the date SNC's check is mailed or payment is otherwise tendered. Seller shall promptly repay SNC any amounts paid in excess of amount due Seller.

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### 13. INVOICE

All invoices shall be submitted via SNC's Source-to-Pay portal at <https://s2p.sncorp.com/>. Hard copies will not be accepted. If a submitted invoice does not match the price, PO line item, or other terms of the order, it will be rejected to the seller for corrections. The payment due date will be calculated from the date of receipt of the correct invoice submitted through the Source-to-Pay portal.

All Invoices must include:

- (a) Purchase Order number
- (b) Purchase Order line item number
  - a. Description, quantity, unit of measure, unit price and extended price of the Goods delivered, or detailed description of the Services, performed during the billed period
- (c) Total amount claimed for payment
- (d) Seller name and address
- (e) Seller remittance address
- (f) Invoice number
- (g) Invoice date
- (h) Shipping number and date of shipment (as applicable)
- (i) Terms of any prompt payment discount offered
- (j) SNC Buyer Representatives name
- (k) Seller's name, title, and phone number of person to be notified in event of defective invoice.

All payments are contingent on acceptance of the goods or services by Buyer.

Seller shall issue separate invoices for travel and each shipment showing the amount of material shipped.

Unless specifically set forth in Seller's proposal or quote and accepted by Buyer, the stated contract price shall include all charges for packing, shipping, hauling, storage, and transportation to the point of delivery. No separate or additional charges for these items unrelated to this contract will be accepted.

Unless otherwise authorized by Buyer, Seller shall not issue an invoice prior to the actual delivery date of products through the SNC Source-to-Pay system. Seller shall forward to Buyer, with the invoice, receipt or Bill of Lading signed by the carrier, evidencing the fact that shipment has been made.

Payment due dates, including discount periods, shall be calculated from the date of the later of the scheduled delivery date, the actual delivery date, or the date of receipt of a correct invoice through the SNC Source-to-Pay system.

The cash discount period to Buyer, if any, will date from the later of

- (1) the receipt of a compliant invoice (not from date of the invoice)
- (2) the actual date of acceptance of the Products, or,
- (3) the delivery date specified in the Order.

Payment of invoices will be made accordance with the terms of the Order. Unless freight and other charges are itemized, any discount shall be taken on the full amount of the invoice in the SNC Source-to-Pay system. To be compliant, invoices shall be supported by such documents in such form as Buyer requests and shall bear such certification as may be required by law, regulations, or the Agreement.

Invoices not submitted through SNC Source-to-Pay are not subject to the agreed to terms of payment

The Subcontract or Purchase Order number shall appear on all invoices, packages, crates or boxes, bills of lading, express receipts, correspondence, and other instruments used in connection with the Agreement.

Invoices shall be submitted through the SNC Source-to-Pay system within ten days after shipment.

All containers, drums, carboys, etc., to be returned shall be shipped on a no charge or consignment basis unless otherwise specified in the Agreement. Buyer shall pay for only such containers that it does not return within a reasonable time.

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Payment shall not constitute acceptance of the products.

Payment shall be deemed to have been made on the date SNC's Electronic Funds Transfer (EFT) or payment is otherwise tendered through the SNC Source-to-Pay system.

Seller shall promptly repay Buyer any amounts paid in excess of amount due Seller.

Invoices which do not agree with prices or other terms of the Agreement will be returned to Seller for corrections through the SNC Source-to-Pay system.

Payment schedule shall commence upon receipt of the correct invoice by Buyer through the SNC Source-to-Pay system.

If Technical Data/Software or any part thereof as required by the Agreement is not delivered within the time specified or is deficient upon delivery, Buyer may, until such data is accepted, withhold payment to Seller of twenty percent (20%) of the total Agreement. Payments shall not be withheld nor any other action taken pursuant to this clause when Seller's failure to make timely delivery arises out of causes beyond the control and without the fault or negligence of Seller.

All claims for monies due or to become due from Buyer shall be subject to deduction by Buyer, for any set off or counterclaim arising out of this or any other of Buyer's Orders with Seller whether such set off or counterclaim arose before or after any such claim or assignment by Seller.

### 14. WARRANTY

Seller represents and warrants that:

- (a) Services provided under this Agreement are provided with a standard of care that is at, or above, the prevailing standard in the industry.
- (b) Goods provided under this Agreement are merchantable and fit for use. The Seller also warrants that the Goods will conform to any specifications set forth in this Agreement and/or accompanying documents. Seller agrees to replace or to correct promptly without expense to SNC, including transportation and handling costs, any Goods not conforming to the foregoing requirements when notified by Buyer during a period of twelve (12) months after the Goods are placed in service or within twenty-four (24) months of when the Goods are delivered to SNC, whichever is earlier. If Seller, upon notice of any defect, fails promptly to correct or replace Goods as required herein, Buyer may, without further notice, correct or replace such Goods and Seller agrees to reimburse SNC for all costs incurred thereby. Goods that have been rejected, shall not thereafter be tendered for acceptance unless the former rejection and correction is identified and approved by the Buyer. Repaired or replacement Goods shall be subject to the provisions of this article to the same extent as the original. All warranties shall then run from the latter delivery date. Seller shall obtain from its suppliers, subcontractors, and vendors sufficient warranties to ensure that the entire Goods, as delivered to SNC, is covered by a warranty that complies with the terms of this Agreement.
- (c) Software provided under this Purchase Order does not contain any viruses or other computer programming routines or defects that are intended to damage, detrimentally interfere with or expropriate any system, data, or information.

The requirements of this provision are in addition to any warranties required or implied by law.

### 15. PROPRIETARY INFORMATION

In the event SNC and Seller have entered into a Non-Disclosure (Proprietary Information) Agreement (NDA/PIA) for the Purpose which the Purchase Order has been issued against and that NDA/PIA remains in effect, the NDA/PIA shall govern the treatment of proprietary information. If no NDA has been executed or if an NDA has expired, the following terms shall govern proprietary information exchanged between the parties:

SNC and Seller anticipate that under the Agreement it may be necessary for either to disclose to the other information of a proprietary nature. Proprietary information that may be disclosed under this Agreement includes, but is not limited to, drawings, specifications, non-public product information, and other technical capabilities. Proprietary information shall be clearly identified by the disclosing party at the time of disclosure. All written proprietary information shall be marked as proprietary prior to disclosure.

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Each of the parties agrees to use the same reasonable efforts to protect such information as is used to protect its own proprietary information, but in no case less than reasonable care. Disclosures of such information shall be restricted to those individuals who have a need to know and are directly participating in efforts related to the Agreement.

Neither party shall make any reproduction, disclosure, or use of such proprietary information except as follows:

- (a) Such information furnished by Buyer may be used by Seller in performing its obligations under the Agreement.
- (b) Such information furnished by Seller may be used by Buyer in performing its obligations under the Agreement.
- (c) Such information may also be used in accordance with any written authorization received from the disclosing party.

The limitations on reproduction, disclosure, or use of proprietary information shall not apply to, and neither party shall be liable for, reproduction, disclosure, or use of proprietary information with respect to any of the following conditions:

- (d) If, prior to the receipt thereof under the Agreement, the information has been developed independently by the party receiving it, or was lawfully known to the party receiving it, or has been lawfully received from other sources, including the Government (provided such other source did not receive it due to a breach of this clause) or was in the public domain prior to disclosure hereunder.
- (e) If, subsequent to receipt thereof under the Agreement, (i) the information is published by the party furnishing it or is disclosed by the party furnishing it to others without restriction; or (ii) it has been lawfully obtained by the party receiving it from other sources, including the Government, provided such other source did not receive it due to a breach of this clause; or (iii) if such information otherwise comes within the public knowledge or becomes generally known to the public.
- (f) If any part of the proprietary information has been or hereafter shall be disclosed in a United States patent issued to the party furnishing the proprietary information hereunder, then, after the issuance of said patent, the limitations on such proprietary information as disclosed in the patent shall be only that afforded by United States patent laws.
- (g) If the proprietary information is furnished orally, unless such proprietary information was identified as proprietary at the time of disclosure and reduced to writing and marked proprietary within fifteen (15) days of original disclosure and such writing is forwarded to the receiving party and actually received within fifteen (15) days of original disclosure.
- (h) If such proprietary information is obligated to be disclosed under order of a court of competent jurisdiction so long as prompt notice of the order is given to the other party.
- (i) If such proprietary information is disclosed with the written approval of the originating party.

The furnishing of any proprietary information by either party shall not be construed as granting to the other party either expressly, by implication, estoppel, or otherwise, any ownership or license right (other than the limited license to use the information internally for the purpose for which it was provided) under any invention, patent, trade secret, trademark, or copyright now or hereafter owned or controlled by the party furnishing same. The foregoing shall not impact any license or ownership right in information identified and set forth elsewhere in this document.

Seller shall upon Buyer's request or upon completion of this Agreement, whichever occurs first, promptly at its option: (1) destroy all proprietary information furnished in connection with the Agreement and certify such destruction; or (2) return all proprietary information furnished in connection with the Agreement, together with all copies or reprints then in Seller's possession and control, and Seller shall thereafter make no further use of nor disclose to others any such data or documents or any information derived therefrom without Buyer's prior written consent.

### 16. INTELLECTUAL PROPERTY INDEMNITY

The Seller shall indemnify SNC and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign intellectual property rights, including patent rights, trademark rights, and copyright, arising out of the performance of this Agreement, provided the Seller is reasonably notified of such claims and proceedings.

### 17. INTELLECTUAL PROPERTY

If this Agreement is for the development of copyrights (specifically including images), patents, trade secrets, technical data, or other intellectual property ("Intellectual Property"), Seller hereby assigns to SNC all rights in, title to, and ownership of Intellectual Property that is created, conceived, or first reduced to practice under this Agreement. Seller further warrants that it will obtain such rights and title, on SNC's behalf, from all employees or subcontractors in a way that facilitates Seller's transfer of such rights and title to SNC or SNC's assigns.

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If this Agreement is not for the development of Intellectual Property, Seller shall retain ownership of all Intellectual Property related to the performance of this Agreement

If any Intellectual Property or other data is delivered to SNC as part of the performance of this Agreement to which SNC will not receive ownership, the Seller hereby grants to SNC a perpetual, irrevocable, sublicensable, transferrable, worldwide, royalty-free license to SNC to make use of the Intellectual Property or other data in any way that SNC sees fit.

**SNC-Provided Intellectual Property:** Any intellectual property, technical data, or other information owned by or provided by SNC to Seller under this Agreement shall remain the exclusive property of SNC. Seller shall treat this SNC-provided or SNC-owned intellectual property, technical data, and other information in accordance with the terms of the applicable Non-Disclosure Agreement or Agreement provision concerning proprietary information. If there is no Non-Disclosure Agreement or Agreement provision concerning proprietary information, Seller shall receive a limited, nonexclusive, revocable, non-transferrable, non-sublicensable license to this SNC-provided or SNC-owned intellectual property, technical data, and other information only for the period of performance of the Agreement and only permitting the intellectual property, technical data, and other information to be used to perform this Agreement.

**SNC Name, Trademarks, and Images:** For the sake of clarity, Seller has no right to use outside of performance of this Agreement any Intellectual Property which SNC owns or receives ownership under this provision; this specifically includes SNC images and trademarks. Nothing in this Agreement permits Seller to use publicly or with any third parties SNC's name, trademarks or Buyer-owned images. Seller can only receive the right to use such names, trademarks, or images through a separate Agreement with SNC. If Seller receives such a right to use SNC names, trademarks, or images, such use must be consistent with SNC's usage guidelines, which will be provided if and when Seller is permitted to use SNC names, trademarks, or images.

**Transfers of Pre-Existing Seller Intellectual Property:** Seller agrees that if, in the course of performing the Services, Seller incorporates Seller's pre-existing intellectual property that consists of software code that it may only be transferred to SNC IT equipment or networks after review through an SNC or SNC approved third-party software verification for risk to SNC systems per instance. This will occur through the process below until otherwise informed in writing by Program Manager or SNC Technical representative supporting the applicable deliverable.

- i. When the pre-existing Intellectual Property is source code, Seller shall submit an SNC IT Ticket request through the SNC standard system. Ticket guidance can be provided by the SNC resource managing the scope to use the applicable pre-existing Intellectual Property. In some cases the SNC resource may submit the request for the Seller resource. Seller shall not transfer such pre-existing Intellectual Property until such SNC IT Ticket is approved.
- ii. When the pre-existing Intellectual Property is compiled code or application (if Seller is not willing to provide the source) Seller resource shall submit a SNC IT Ticket request for a cyber-review request through the SNC standard system. Ticket guidance can be provided by the SNC resource managing the scope to use the applicable Intellectual Property. In some cases the SNC resource may submit the request for the Seller resource. Seller shall not transfer such pre-existing Intellectual Property until such SNC IT Ticket is approved.

**Return/Destruction of SNC IP:** Seller shall upon Buyer's request or upon completion of this Agreement, whichever occurs first, promptly at its option: (1) destroy all SNC proprietary and/or non-public information furnished in connection with the Agreement and certify such destruction; or (2) return all SNC proprietary and/or non-public information furnished in connection with the Agreement, together with all copies, reprints, or electronically stored proprietary and/or non-public information then in Seller's possession and control, and Seller shall thereafter make no further use of nor disclose to others any such data or documents or any information derived therefrom without Buyer's prior written consent.

### 18. CHANGES

Changes in the terms and conditions of this Agreement may be made only by written agreement of the Parties. Buyer may from time to time in writing direct changes within the general scope of this Agreement. If any such change causes an increase or decrease in the cost of or the time required for performance of this Agreement, an equitable adjustment in the price(s) and schedule(s) of the Purchase Order shall be made to reflect such increase or decrease and this Agreement shall be modified in writing accordingly. Unless otherwise agreed in writing, any Seller claim for adjustment must be delivered to SNC in writing within thirty (30) days after Seller receipt of such direction. Failure of Buyer and Seller to agree upon any adjustment shall not excuse Seller from performing in accordance with such direction. If Seller considers that SNC conduct has constituted a change hereunder, Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer, Seller shall take no action to implement any such change.

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### 19. NOTICE AND DESIGNATION OF RESPONSIBLE INDIVIDUALS

Notices given under the Agreement must be in writing signed by an authorized Buyer or Officer of SNC or of Seller and will be effective upon receipt if sent by certified mail return receipt requested, by email, by facsimile transmission, or by a nationally recognized courier providing receipted delivery.

Notices to be given under the Agreement shall be addressed to the parties' addresses set forth in the Agreement or to such other addresses as a party may properly, by written notice, designate.

### 20. TERMINATION

- (1) **Termination for Convenience.** SNC reserves the right to terminate this Agreement, or any part hereof, for its sole convenience. In the event of such termination, Seller shall immediately stop all terminated work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Agreement, Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges Seller can demonstrate to the satisfaction of SNC using its standard record keeping system, have resulted from the termination. Seller shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

Notwithstanding the above, in the event SNC is purchasing Goods that have not been customized or otherwise modified for SNC, SNC will only pay Seller a reasonable and mutually agreed restocking fee for the termination of such work.

- (2) **Termination for Cause.** SNC may terminate this Agreement, or any part hereof, for cause in the event of any default by Seller, or if Seller fails to comply with any terms and conditions, or fails to provide SNC, upon request, with adequate assurances of future performance. In the event of termination for cause, SNC shall not be liable to Seller for any amount for supplies or services not accepted, and Seller shall be liable to SNC for any and all rights and remedies provided by law. If it is determined that SNC improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

In addition, Buyer may terminate the Agreement for default, in whole or in part, by written notice to Seller if (i) Seller becomes insolvent or makes a general assignment for the benefit of creditors or (ii) a petition under any bankruptcy act or similar statute is filed by or against Seller and not vacated within ten days after it is filed.

### 21. BACKGROUND CHECK AND TESTING

If Seller's representatives perform work on-site or have access to SNC's IT equipment or systems, Seller must conduct a background, reference, educational, criminal record, credit and other checks, for Seller's employees, subcontractors and agents in connection with the performance of Services under this Agreement where such testing is permissible by law. Where drug testing is permissible by law, Buyer may request Seller to conduct a drug screen or ensure such drug screen is conducted for any of Seller's representatives performing work on-site at a SNC location.

### 22. FACILITIES

It is anticipated that the nature of Seller's Services will be accomplished independent of any use of SNC facilities. Entry to SNC facilities by Seller shall require SNC authorization.

### 23. RELATIONSHIP OF THE PARTIES

- (1) **Independent Contractor.** Seller, in performance of this Agreement, is acting as an independent contractor and not as an employee or agent of SNC and neither Seller, nor any employee, subcontractor, agent or representative of Seller (the "Seller Parties"), shall be considered an employee or agent of SNC within the meaning or the application of any Federal, State or local laws or regulations. Seller shall be solely responsible for the payment of (i) compensation to all Seller Parties, and (ii) any associated taxes assessed by any relevant taxing authority. Seller understands and acknowledges that SNC will not: (i) withhold FICA from Seller's payments or make FICA payments on Seller's behalf; (ii) make state or federal unemployment compensation contributions or (iii) withhold state or federal income tax from Seller's payments. Neither Seller, nor Seller's employees or subcontractors, are eligible to participate in any employee pension, health, vacation/sick pay, or other fringe benefit plan of SNC. Seller shall not have any right, power or authority to create, and shall not represent to any person that it has the right, power or authority to create, any obligation, express or implied, on SNC's behalf without the express prior written consent of Buyer.
- (2) **Subcontractors.** Unless otherwise agreed to in the Agreement, Seller is responsible for its acts and the acts of all Seller Parties. Seller may not subcontract any portion of its duties or obligation under this Agreement without the prior written



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consent of Buyer, which consent will not be unreasonably withheld or delayed; provided, however that the terms of any subcontract entered into pursuant to the terms of this Section (a "Permitted Subcontract") shall materially conform to the provisions of this Agreement, including, without limitation, the confidentiality provisions contained in this Agreement. Any Permitted Subcontract entered into by Seller shall not relieve Seller of its obligations under this Agreement

### **24. NON-SOLICITATION**

The Parties agree that during the term of this Agreement, and for a period of twelve (12) months thereafter, they will not, directly or indirectly, solicit for employment or hire any employee of the other Party or its affiliates who was introduced or made known in connection with any Services provided. This section shall not preclude either Party from hiring any such employee who responds to a general solicitation through a public medium not targeted at employees of the other party or its affiliate.

### **25. INSURANCE**

Seller, its subcontractors, and lower-tier subcontractors, agree to procure and maintain worker's compensation, comprehensive general liability, bodily injury, property damage insurance and professional liability, if applicable, in reasonable amounts that are consistent with industry practice and the specific loss potential related to performance of this Agreement, and such other insurance as SNC may require. Seller shall provide Buyer thirty (30) calendar days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's insurance under this provision. Seller shall provide Buyer with a "Certificate of Insurance" evidencing Seller's compliance with this provision. Seller shall name SNC as an additional insured for the duration of the Agreement. Insurance maintained under this provision shall be considered primary with respect to the interest of SNC and is not contributory with any insurance SNC may carry.

### **26. INDEMNIFICATION**

Seller shall indemnify and hold harmless SNC, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and settlement, and court costs, arising from or related to, in whole or in part, the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier.

### **27. COMPLIANCE WITH LAWS**

Seller shall be responsible for complying with all laws, including, but not limited to, any statute, rule, regulation, judgment, decree, order or permit applicable to its performance under this Agreement. Seller further agrees (1) to notify SNC of any obligation under this Agreement which is prohibited under any applicable law or regulation, specifically including environmental laws and regulations, at the earliest opportunity but in all events sufficiently in advance of Seller's performance of such obligation so as to enable the identification of alternative methods of performance, and (2) to notify SNC at the earliest possible opportunity of any aspect of its performance which becomes subject to additional law or regulation or which Seller reasonably believes will become subject to additional law or regulation during performance of this Agreement.

### **28. ASSIGNMENT**

Neither performance of this Agreement, nor any interest herein, nor any claim hereunder, may be assigned or delegated by Seller without the prior written consent of SNC. SNC's consent shall not be deemed to relieve Seller of its obligations to comply fully with the requirements hereof.

### **29. EXPORT COMPLIANCE**

Seller agrees to comply with all applicable U.S. export control laws and regulations, including, but not limited to, the Arms Export Control Act, 22 U.S.C. §§ 2751-2799, the International Traffic in Arms Regulation (ITAR), 22 C.F.R. §§ 120-130, the Export Administration Act, 50 U.S.C. §§ 2401-2420, and the Export Administration Regulations (EAR), 15 C.F.R. §§ 730-744. In addition, Seller agrees that it will not transfer any export-controlled items, data, or services, to include the transfer to a foreign person employed by or associated with Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption/exception. Seller agrees to notify Buyer if any Product under this Order is restricted under export control laws or regulations, if Seller becomes listed on any restricted party list including, but not limited to, the Denied Persons List, Unverified List, Entity List, Specially Designated Nationals List and Debarred List, or if Seller has any export privileges denied, suspended, or revoked by the government. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any violation of the above laws and regulations, or breach by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, of the obligations under this clause.

### **30. MATERIAL SAFETY DATA SHEETS**

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Seller will comply with the Hazard Communication Standard, 29 CFR 1910.1200. Seller shall ensure that the name of the product as identified on the Material Safety Data Sheet is identical to the name that appears on the label of the product shipped to SNC. Seller shall provide a copy of the Material Safety Data Sheet with each shipment of the product.

### 31. NON-WAIVER AND PARTIAL INVALIDITY

Any and all failures, delays or forbearances of either party in insisting upon or enforcing at any time or times any of the provisions of this Agreement, or to exercise any rights or remedies under this Agreement, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies in those or any other instances; rather, the same shall be and remain in full force and effect. Further, if any provision of this Agreement is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.

### 32. GOVERNING LAW

This Agreement and the performance thereof shall be governed by the laws of the State of Nevada.

### 33. TAXES

All rates provided herein include all federal, state, and local taxes. Seller shall provide Buyer with the appropriate IRS Form W-8 (e.g., W-8BEN, W-8BEN-E, W-8IMY, etc.) if the Seller is a non-US entity or IRS Form W-9 if the Seller is a US entity. If Seller fails to provide one of these forms, SNC may be required under by the Internal Revenue Code to withhold a portion of the amounts due to the Seller. If SNC is required by law or regulation to make such a withholding, Seller hereby consents to the withholding and agrees that it shall not constitute a breach of this Agreement.

### 34. DISPUTES/ARBITRATION

The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement informally. If the matter has not been resolved pursuant to informal negotiations, such controversy or claim shall be resolved by means of binding arbitration before a single neutral arbitrator in accordance with the then existing Commercial Arbitration Rules of the American Arbitration Association, including the Optional Rules for Emergency Measures of Protection. The parties shall mutually agree upon the individual who shall act as arbitrator. If the parties are unable to agree upon a neutral arbitrator, a list of potential arbitrators (no more than 10) shall be obtained by SNC from the American Arbitration Association. The parties, starting with SNC, will alternately strike names from the list until only one-name remains; the remaining person shall be the arbitrator.

No demand for arbitration may be made after the date when the institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitation. The arbitration shall be held in Washoe County, Nevada or any other place agreed upon at the time by the parties. The arbitrator is not authorized to award punitive or other damages not measured by the prevailing party's actual damages.

A party may apply to the arbitrator for injunctive relief until an arbitration award is rendered or the dispute is otherwise resolved. A party also may, without waiving any other remedy, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party pending the arbitrator's appointment or decision on the merits of the dispute. The arbitrator's compensation and costs shall be shared equally by the parties.

The prevailing party in any such arbitration shall be entitled to recover its reasonable attorney fees and costs incurred in such proceeding from the non-prevailing party.

Until final resolution of any dispute hereunder, Seller shall diligently proceed with performance of the Agreement as directed by SNC.

### 35. FORCE MAJEURE

Neither party shall be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy, acts of any Government authority, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, or unusually severe weather. If the delay is caused by the delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both Seller and the subcontractor, and without fault or negligence of either of them, Seller shall not be liable to SNC for damages unless the articles or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. Seller will notify Buyer in writing within ten (10) calendar days after the beginning of any such cause.

**36. NEWS AND PUBLIC STATEMENTS OR RELEASES**

Seller shall not make, deny or confirm any public statements, news releases, advertisement, media interviews or public announcements (collectively, “Public Release”) concerning the Agreement, the subject matter of the Agreement or any phase of the program hereunder unless SNC, in its sole and absolute discretion, provides Seller with advance written approval of such Public Release. In furtherance of the foregoing, Seller shall submit the requested Public Release and detailed information concerning the applicable forum, publication or media outlet in writing to Buyer no later than fifteen (15) business days prior to the requested release date. SNC’s approval of a specific Public Release hereunder shall not operate or be construed as an approval of any previous or subsequent Public Release by Seller. This provision shall not apply to any disclosure deemed by a Seller’s legal counsel to be required by law or by regulation of any federal, state or local government agency.

**37. PROHIBITION ON KASPERSKY LAB**

Seller warrants that no articles obtained through this procurement include or contain hardware, software, components, or services that have been developed or provided, in whole or in part, by Kaspersky Lab, any successor entity to Kaspersky Lab, any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or any entity of which Kaspersky Lab has a majority ownership.

In the event the Seller identifies an article developed or provided by Kaspersky Lab, or any associated entities, or the Seller is notified of such by a subcontractor or supplier at any tier or any other source, the Seller shall report in writing to SNC Supply Chain Compliance at [ProcureCompliance@SNCorp.com](mailto:ProcureCompliance@SNCorp.com). The Seller shall report the following information:

A. Within one (1) business day from the date of such identification or notification:

- 1) The Subcontract, or Purchase Order number; any related release order number(s), if applicable;
- 2) Supplier name;
- 3) Brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number);
- 4) Item description; and any readily available information about mitigation actions undertaken or recommended.

B. Within ten (10) business days of submitting the report: Any further available information about mitigation actions undertaken or recommended. In addition, the Seller shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

**38. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

The following clauses are incorporated by reference, as if fully set forth herein, and apply to the extent indicated therein: FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, FAR 52.204-26 Covered Telecommunications Equipment or Services—Representation, DFARS 252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation, DFARS 252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, and DFARS 252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services.

If the Seller is notified of any prohibited activity, by a supplier at any source, Seller will report this in writing to SNC Procurement Compliance at [ProcureCompliance@SNCorp.com](mailto:ProcureCompliance@SNCorp.com). Within one (1) business day from the date of notification, Seller will provide:

- 1) Purchase Order number and any related release order number(s), if applicable;
- 2) Supplier name, unique entity identifier (if known), and supplier CAGE code (if known);
- 3) Brand; model number OEM number, manufacturer part number, or wholesaler number;
- 4) Item description; and
- 5) Any readily available information about mitigation actions taken or recommended.

Within ten (10) business days of submitting the report:

- 1) Any further available information about mitigation actions taken or recommended in this instance;

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- 2) Description of the efforts Seller took to prevent use of covered telecommunications or video surveillance equipment or services from the People's Republic of China and the Russian Federation; and
- 3) Any additional efforts which Seller will make to prevent future use.

### 39. COMBATING TRAFFICKING IN PERSONS

Seller agrees to prohibit trafficking in persons during the performance of this Agreement. This includes all activities involving trafficking in persons, the procurement of commercial sex acts, and the use of forced labor as outlined in U.S. laws and regulations, including but not limited to the Trafficking Victims Protection Act of 2000 (22 U.S.C. 78) and Executive Order 13627.

If Seller becomes aware of any prohibited activity, they will immediately notify Supply Chain Compliance as [ProcureCompliance@SNCorp.com](mailto:ProcureCompliance@SNCorp.com) including:

- 1) The known details of the prohibited trafficking activity, including type of activity, timeframe and location and the occurrence(s), and any other information Seller used to assess the credibility of the detection or notification of the activity;
- 2) Any actions Seller has taken to remediate; and
- 3) Any actions Seller has taken to refer the trafficking related activity information to law enforcement or other public authorities.

Seller's failure to comply with this provision may be considered a material breach of this Agreement.

### 40. PROHIBITION ON A BYTEDANCE COVERED APPLICATION

The seller acknowledges they do not have, nor use a covered application on any information technology provided by them, including equipment provided by seller's employees, as described by Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13 dated February 27, 2023, and "No TikTok on Government Devices" Implementation Guidance". Further details are available in FAR Clause 52.204-27.

### 41. USE OF SNC'S PURCHASING SYSTEM

The Seller agrees to utilize SNC's designated purchasing system for all transactions related to this Agreement. The Seller acknowledges that it is their responsibility to familiarize themselves with the purchasing system's processes, procedures, and requirements.

The Seller shall ensure that all relevant records, including but not limited to purchase orders, agreements, contracts, invoices, receipts, and delivery documentation, are accurately and promptly entered into SNC's purchasing system. The Seller shall maintain up-to-date records in accordance with the requirements specified by SNC.

Furthermore, the Seller shall be responsible for ensuring the accuracy and completeness of the information provided in SNC's purchasing system. This includes promptly updating any changes to their contact details, financial information, certifications, accreditations, or any other relevant data that may affect the Agreement's execution.

The Seller shall cooperate with SNC in resolving any discrepancies or issues related to the records in the purchasing system. They shall promptly respond to requests for information or clarification from SNC's designated personnel responsible for managing the purchasing system.

Failure by the Seller to comply with the requirements outlined in this clause may result in delays, payment issues, or other adverse consequences. SNC reserves the right to take appropriate actions, including but not limited to withholding payment or terminating the Agreement, in the event of non-compliance.

### 42. PRECEDENCE

All documents in this Agreement shall be read so as to be consistent. In the event of conflict, the order of precedence is:

1. Purchase Order
2. Purchase Order Schedule
3. FORM-154 (Terms and Conditions-Indirect)

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4. SNC Statement of Work
5. SNC Specification/Drawing
6. Any other documents incorporated herein by reference

### 43. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement, and supersedes any and all other agreements, understandings and communications, between SNC and Seller and related to the subject matter of this Agreement. No amendment or modification of this Agreement shall be binding upon SNC unless set forth in a written instrument signed by SNC's Buyer and an authorized representative of the Seller. The rights and remedies afforded to SNC or Customers pursuant to any provision of this Agreement are in addition to any other rights and remedies afforded by any other provisions of this Agreement, by law, or otherwise.