



ARINC Incorporated  
 2551 Riva Road  
 Annapolis, Maryland 21401-7465  
 410-266-4000  
[http://www.arinc.com/working\\_with/procurement\\_info/trms\\_cnds.html](http://www.arinc.com/working_with/procurement_info/trms_cnds.html)

# General Provisions and FAR/DFARS Flowdown Provisions for Commercial Items Under a U.S. Government Prime Contract

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## SECTION I: GENERAL PROVISIONS

### 1. Formation of Contract and Terms and Conditions

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

### 2. Applicable Laws

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

applied by federal judicial bodies, Boards of Contracts Appeals, and quasi-judicial agencies of the federal Government.

- (b) SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances of the United States and the country where SELLER will be performing the Contract. The provisions of the *United Nations Convention on Contracts for International Sale of Goods* shall not apply to this Contract.
- (c) In particular, if the Work is to be shipped to, or performed in the United States
  - (1) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to ARINC hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
  - (2) SELLER shall provide to ARINC with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state-approved counterpart.

### 3. Assignment and Subcontracting

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

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

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

#### 4. Changes

- (a) ARINC may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of ARINC-furnished property; and, if this Contract includes services, (vi) description of services to be performed; (vii) quantity of services (i.e., hours to be worked); (viii) time of performance (e.g., hours of the day, days of the week); and (ix) place of performance. SELLER shall comply immediately with such direction.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, ARINC shall make an equitable adjustment in the Contract price or delivery schedule or both, and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment.
- (c) Any claim for an equitable adjustment by SELLER must be submitted in writing to the ARINC Procurement Representative within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the **Disputes** clause of this Contract. However, nothing contained in this **Changes** clause shall excuse SELLER from proceeding without delay in the performance of this Contract as changed.

#### 5. Commercial Computer Software

- (a) As used in this clause, "restricted computer software" means computer program, computer database, or related documentation that has been developed at private expense and is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted, and so marked when delivered or otherwise furnished.
- (b) Notwithstanding any provisions to the contrary contained in any SELLER's standard commercial license or lease agreement, SELLER agrees that the restricted computer software delivered under this Contract shall provide the following rights to ARINC and the U.S. Government.
  - (1) The restricted computer software may be:
    - (i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any government installation to

which such computer or computers may be transferred;

- (ii) Used or copied for use in or with a backup computer if any computer for which it was acquired is inoperative;
  - (iii) Reproduced for safekeeping (archives) or backup;
  - (iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this Purchase Order or Contract;
  - (v) Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in this Purchase Order or Contract; and
  - (vi) Used, copied for use in, or transferred to a replacement computer.
- (c) Release from liability: The SELLER agrees that the government or ARINC, and other persons to whom the government or ARINC may have released or disclosed commercial computer software delivered or otherwise furnished under this Contract, shall have no liability for any release or disclosure of such commercial computer software that are not marked to indicate that such software are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

#### 6. 6. Communication with ARINC Customer

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

#### 7. Confidentiality

- (a) Unless otherwise addressed by a separate Confidentiality Agreement between the parties, ARINC and SELLER shall each keep confidential and protect from unauthorized use and disclosure for a period of three (3) years after receipt all (a) confidential, proprietary and/or trade secret information; (b) tangible items containing, conveying or embodying such information; and (c) tooling identified as being subject to this article and obtained, directly or indirectly, from the other in connection with this contract (collectively referred to as a "Proprietary Information and Materials").
- (b) ARINC and SELLER shall each use Proprietary Information and Materials of the other only in connection with this contract. However, despite any other obligations or restrictions imposed by this article, ARINC shall have the right to use, disclose and reproduce SELLER's Proprietary Information and Materials, and make derivative works thereof, in connection with this contract.

Any such use, disclosure, reproduction or derivative work by ARINC shall, whenever appropriate, include a restrictive legend suitable to the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by SELLER shall apply to all materials derived by SELLER or others from ARINC's Proprietary Information and Materials.

- (c) Upon ARINC's request at any time, and in any event upon the completion, termination or cancellation of this contract, SELLER shall return to ARINC all of ARINC's Proprietary Information and Materials and all materials derived there from (except for one archival copy), unless specifically directed otherwise in writing by ARINC or a United States of America Government Contracting Officer.
- (d) SELLER may disclose Proprietary Information and Materials of ARINC to its subcontractors as required in connection with this contract program, provided that each such subcontractor first agrees in writing to substantially the same obligations imposed upon SELLER under this article relating to Proprietary Information and Materials.
- (e) The provisions of this article control in the event of a conflict with any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this contract.

## 8. Contract Direction

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

## 9. Default

- (a) ARINC, by written notice, may terminate this Contract for default, in whole or in part, if SELLER fails to comply with any of the terms of this Contract, fails to make reasonable progress in its performance of this Contract, or fails to provide adequate assurance of future performance. SELLER shall have ten (10) days (or a longer period, which ARINC may authorize in writing) to cure any such failure after receipt of notice from ARINC. Defaults involving delivery schedule delays shall not be subject to the cure provision.
- (b) ARINC shall not be liable for any Work not accepted; however, ARINC may require SELLER to deliver to ARINC any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has

specifically produced or acquired for the terminated portion of this Contract. ARINC and SELLER shall agree on the amount of payment for these other deliverables.

- (c) SELLER shall continue all Work not terminated.
- (d) If after termination under paragraph (a), it is later determined that SELLER was not in default, such termination shall be deemed a Termination for Convenience.

## 10. Definitions

The following terms shall have the meanings set forth below:

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

## 11. Disputes

- (a) Any dispute, controversy, or claim arising out of or relating to this Contract or default, termination, or invalidity hereof, shall be settled by arbitration under the rules of the American Arbitration Association, *with the following exception:*
  - (1) *ARINC may not require independent contractors to utilize arbitration to resolve any claim under Title VII of the 1964 Civil Rights Act 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 take any action to enforce any provision of an existing agreement with an independent contractor that requires the arbitration of such claims.*
  - (2) *SELLER agrees that it will not enter into or take any action to enforce similar arbitration agreements with respect to any employee or independent contractor performing work related to such contracts. (Effective June 17, 2010; Applicable to subcontracts in excess of \$1 million)*  
*Note: A certification to above provision is included in the Certifications Section of this document.*

- (b) The place of the arbitration shall be Washington, D.C. The language to be used in the arbitral proceedings shall be English. Judgment of the arbitrators shall be final and non-appealable and may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of the enforcement. Each Party shall bear its own expenses of the arbitration, but the fees and costs of the arbitrators shall be borne equally between the Parties participating in the arbitration.
- (c) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the requesting party with copies of documents relevant to the issues raised by any claim or counter claim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators, whose determination shall be conclusive. All discovery shall be completed within thirty (30) days following the appointment of the arbitrators.
- (d) No action at law or in equity may be commenced by ARINC or SELLER under or arising from this Contract unless it is brought within two years after the accrual of the cause of action upon which the claim is based, regardless of whether ARINC or SELLER knew or should have known of the accrual of any such cause of action.
- (e) Notwithstanding the foregoing, in the event of a breach or threatened breach by ARINC or SELLER under the *Confidentiality* or *Intellectual Property* provisions of this Contract, ARINC or SELLER may forego arbitration under this provision and seek immediate judicial and equitable remedies, including, but not limited to, injunctive relief or specific performance.
- (f) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by the ARINC Procurement Representative.

## 12. Excusable Delay

- (a) Subject to (b) and when mutually agreed by the Parties, SELLER shall be excused from, and shall not be liable for, failure of performance due to one or more of the following qualifying events (such list being exclusive):
  - (1) War; warlike operation; insurrection; riot; fire, flood, explosion, accident, governmental act; material control regulations or orders; act of God; act of the public enemy; epidemic; quarantine restriction, and strikes; and if
  - (2) Such event was beyond SELLER's control and not occasioned by its negligence or default. The Contract will be extended for that period of time attributable to such event.
- (b) To be excused from performance under (a) SELLER shall submit, within ten (10) calendar days of the start of the qualifying event, a written notice stating a complete and detailed description of such event, the date of commencement, an estimate of the probable period of delay, and explanation indicating how such event was beyond the control of the SELLER and not due to its negligence or fault and what efforts SELLER will make to minimize the length of the delay. SELLER shall use its best efforts to cure the qualifying event. SELLER shall submit within ten (10) calendar days of the end of the event a written notice stating the impact to the schedule

and evidence justifying the length of the delay. If the delay extends for thirty (30) days or more, this Contract may be terminated by ARINC without additional cost and ARINC may elect to return to SELLER for a refund that portion of the work delivered to ARINC prior to the occurrence of the qualifying event.

- (c) Failure of the U.S. Government to issue any required export license, or withdrawal or termination of a required export license by the U.S. Government, shall relieve ARINC of its obligations under this Contract, and shall relieve SELLER of its corresponding obligations.

## 13. Export Control Compliance for Foreign Persons

- (a) SELLER agrees to comply fully with all applicable U.S. export control laws.
- (b) The subject Work of this Contract (together including data, services, and hardware provided hereunder, hereinafter "Controlled Technology") may be controlled for export purposes under the International Traffic in Arms Regulations (ITAR) controlled by the U.S. Department of State or the Export Administration Regulations ("EAR") controlled by the U.S. Department of Commerce. ITAR controlled technology may not be exported without prior written authorization and certain EAR technology requires a prior license depending upon its categorization, destination, end-user and end-use. SELLER shall obtain the authority of either an Export License or an applicable License Exception before permitting the export of any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered to SELLER under this Contract. SELLER shall obtain the authority of either an Export License or an applicable License Exception before assigning any foreign persons or foreign sources to perform work under this Contract or before permitting any foreign persons or foreign sources to have access to any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered SELLER under this Contract. "Foreign person" is any person who is not a citizen or national of the United States and includes individuals, foreign corporations, international organizations, and foreign governments. "Foreign source" includes vendors, subcontractors, and suppliers owned and controlled by a foreign person.
- (c) SELLER hereby certifies that all SELLER employees who have access to the Controlled Technology are U.S. citizens, have a valid green card or, have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3). Any non-citizens who do not meet one of these criteria have been authorized under export licenses to perform their work hereunder.
- (d) SELLER further certifies that all SELLER employees assigned to work on this Contract are U.S. citizens, U.S. Permanent Residents, non-immigrants authorized to work in the U.S. or non-immigrants who have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3).
- (e) SELLER agrees to notify ARINC if any deliverable Work under this Contract is restricted by export control laws or regulations.
- (f) SELLER shall immediately notify the ARINC Procurement Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency. At ARINC's request, SELLER will provide ARINC with all data ARINC may need to apply for and obtain an Export License or applicable License Exception.

## 14. Extras

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

## 15. Furnished Property

- (a) ARINC may provide to SELLER property owned by either ARINC or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall be retained by ARINC or its customer. SELLER shall clearly mark (if not already marked) all Furnished Property to show ownership.
- (c) Except for reasonable wear and tear, SELLER assumes all risk of loss, destruction, or damage of Furnished Property while in SELLER's possession, custody, or control. Upon request, SELLER shall provide ARINC with adequate proof of insurance against such risk of loss. SELLER shall promptly notify ARINC of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- (d) At ARINC's request or at completion of this Contract the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by ARINC.

## 16. Gratuities and Kickbacks

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

## 17. Importer of Record

(Applies only if the Contract involves importation of Work into the United States)

- (a) If elsewhere in the Contract ARINC is indicated as importer of record, SELLER warrants that all sales hereunder are or will be made at not less than fair value under the United States Anti-Dumping Laws (19 U.S.C. 1673 et seq.).
- (b) If elsewhere in the Contract ARINC is not indicated as importer of record, then SELLER agrees that:
  - (1) ARINC will not be a party to the importation of Works, the transactions represented by this Contract will be consummated after importation, and SELLER will neither cause nor permit ARINC's name to be shown as "Importer of Record" on any customs declaration; and
  - (2) Upon request and where applicable, SELLER will provide to ARINC a properly executed Customs

## 18. Indemnification

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

## 19. Independent Contractor Relationship

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

## 20. Inspection and Acceptance

- (a) ARINC and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection shall relieve SELLER of its obligations to furnish all Work in accordance with the requirements of this Contract. ARINC's final inspection and acceptance shall be at destination unless otherwise specified in this Contract.
- (c) SELLER shall not retender rejected Work without disclosing the corrective action taken.

## 21. Insurance and Liability to Third Parties

- (a) In the event that SELLER, its employees, agents, or subcontractors enter ARINC's or its customer's premises for any reason in connection with this Contract, SELLER, as well as its subcontractors and lower-tier subcontractors, shall procure and maintain worker's compensation, comprehensive general liability, bodily injury, and property damage insurance in reasonable amounts, and such other insurance as ARINC may require, as stated in the contract schedule, and shall comply with all site requirements. Such insurance shall be written through a licensed carrier, with a financial rating of no less than A-, in the respective state of operation and shall meet all legal minimum requirements of same state. SELLER shall indemnify and hold harmless ARINC, its officers, employees, and agents from any and all losses, costs, claims, causes of action, damages, liabilities, and expenses, including (but not limited to) attorneys' fees, all expenses of litigation and settlement, and court costs, by reason of property damage or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, to the extent that it was caused or alleged to have been caused by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier.

- (b) SELLER shall provide ARINC thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance. If requested, SELLER shall send a Certificate of Insurance showing SELLER's compliance with these requirements. SELLER shall name ARINC as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of ARINC and is not contributory with any insurance which ARINC may carry.

## 22. Intellectual Property Infringement

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

## 23. Language and Standards

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

## 24. Limitation of Liability

- (a) In no event shall either SELLER or ARINC be liable to the other for any indirect, incidental or consequential damages arising out of or relating to this Agreement,

regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss.

- (b) Each Party shall indemnify and hold harmless the other, its officers, directors, employees and agents, against and from any liability, loss, damage, cost and expense (including attorneys' fees and costs of litigation) arising out of or in connection with any claim or action which any third party may file or threaten to file against either Party or its officers, directors, employees or agents arising out of, or resulting directly from, the negligent acts or omissions or the willful misconduct of it or its employees, directors, officers, representatives, and agents in the course of its performance of its obligations under this Agreement. The indemnification provided herein shall survive the termination of this Agreement.

## 25. New Materials

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

## 26. Offset Credit and Cooperation

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

## 27. Packing and Shipment

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

## 28. Payments, Taxes, and Duties

- (a) Unless otherwise provided, terms of payment shall be net forty five (45) days from the latest of the following: (i) ARINC's receipt of the SELLER's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work.
- (b) Payment shall be deemed to have been made as of the date of ARINC's mailed payment or electronic funds transfer.
- (c) Unless otherwise specified, prices include all applicable federal, state, and local taxes, as well as duties, tariffs,

and similar fees imposed by any government, all of which shall be listed separately on the invoice. Prices shall not include any taxes, impositions, charges, or exactions for which ARINC has furnished a valid exemption certificate or other evidence of exemption.

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

### 29. Precedence

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

### 30. Priority Rating

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

### 31. Quality Control System

Unless this Contract contains other specific quality requirements,

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

### 32. Release of Information

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

### 33. Stop Work Order

- (a) SELLER shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from ARINC, or for such longer period of time as the Parties may agree, and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by this Contract during the period of Work stoppage.
- (b) Within such period, ARINC shall either terminate or continue the Work by written order to SELLER. In the event of a continuation, an equitable adjustment, in accordance with the principles of the **Changes** clause, shall be made to the price, delivery schedule, or other

provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

### 34. Survivability

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

- (a) Applicable Laws, Clause No. 2  
Export Control, Clause No. 13  
Independent Contractor Relationship, Clause No. 19  
Confidentiality, Clause No. 7  
Insurance and Liability to Third Parties, Clause No. 21  
Intellectual Property, Clause No. 22  
Limitation of Liability, Clause No. 24  
Release of Information, Clause No. 32  
Warranty, Clause No. 38
- (b) Those U.S. Government flowdown provisions that, by their nature, should survive.

### 35. Termination for Convenience

- (a) For specially performed Work, ARINC may terminate part or all of this Contract for its convenience by giving written notice to SELLER. ARINC's only obligation shall be to pay SELLER a percentage of the price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges that SELLER can demonstrate to the satisfaction of ARINC using generally accepted accounting principles, that have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred that reasonably could have been avoided.
- (b) In no event shall ARINC be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.
- (c) For other than specially performed Work, ARINC may terminate part or all of this Contract for its convenience by giving written notice to SELLER and ARINC's only obligation to SELLER shall be payment of a mutually agreed-upon restocking or service charge.
- (d) SELLER shall continue all Work not terminated.

### 36. Timely Performance

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

### 37. Waiver and Approval

- (a) Failure by ARINC to enforce any of the provisions of this Contract shall not be construed as a waiver of the requirements of such provisions, or as a waiver of the right of ARINC thereafter to enforce each and every such provision.
- (b) ARINC's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.

### 38. Warranty

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

## SECTION II: FAR AND DFARS FLOWDOWN PROVISIONS

### A. Incorporation of FAR and DFARS Clauses

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

### B. Government Subcontract

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

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

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this Contract.
3. "CONTRACTOR" means the SELLER, as defined previously in the "Definitions" provision of this document, acting as the immediate (first-tier) subcontractor to ARINC.
4. "Prime Contract" means the Contract between ARINC and the U.S. Government or between ARINC and its higher-tier contractor who has a contract with the U.S. Government.
5. "Subcontract" means any Contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

### C. Notes

1. Substitute "ARINC" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "ARINC Procurement Representative" for "Contracting Officer," "Administrative Contracting Officer," and "ACO" throughout this clause.
3. Insert "and ARINC" after "Government" or "Contracting Officer", as appropriate, throughout this clause.
4. Insert "or ARINC" after "Government" throughout this clause.
5. Communication and notification required under this clause from or to the CONTRACTOR and to or from the Contracting Officer shall be through ARINC.

### D. Amendments Required by Prime Contract

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

## E. FAR Flowdown Clauses

REFERENCE	TITLE
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- |  |  |
|--|--|
| <b>1. The following FAR clauses apply to this Contract :</b>   |  |
| (a) 52.215-20  | Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (See Note 2.)   |
| (b) 52.215-21  | Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (See Note 2.)   |
| (c) 52.219-8   | Utilization of Small Business Concerns   |
| (d) 52.222-21  | Prohibition of Segregated Facilities   |
| (e) 52.222-26  | Equal Opportunity (Only subparagraphs (b)(1)–(11) apply.)  |
| (f) 52.225-13  | Restrictions on Certain Foreign Purchases  |
| (g) 52.244-6   | Subcontracts for Commercial Items  |
| (h) 52.247-64  | Preference for Privately Owned U.S.-Flag Commercial Vessels  |
| <b>2. The following FAR clauses apply to this Contract if the value of this Contract exceeds \$10,000:</b>             |  |
| (a) 52.222-36  | Affirmative Action for Workers with Disabilities   |
| <b>3. The following FAR clause applies to this Contract if the value of this Contract equals or exceeds \$100,000:</b> |  |
| (a) 52.222-35  | Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans  |
| <b>4. The following FAR clause applies to this Contract if the value of this Contract exceeds \$100,000:</b>           |  |
| (a) 52.222-39  | Notification of Employee Rights Concerning Payment of Union Dues or Fees   |
| <b>4. The following FAR clause applies to this Contract if the value of this Contract exceeds \$550,000:</b>           |  |
| (a) 52.219-9   | Small Business Subcontracting Plan (Applicable if the CONTRACTOR is not a small business; see Note 1 and Note 2, applicable to subparagraph (c) only; the CONTRACTOR's subcontracting plan is incorporated herein by reference.) |
| <b>5. The following clauses apply as indicated:</b>  |  |
| (a) 52.204-2   | Security Requirements (Applicable if the Work involves access to classified information; delete paragraph (c) of the clause.)  |
| (b) 52.223-7   | Notice of Radioactive Materials (Applicable to Work containing covered radioactive material. Insert "30" in the blank; See Notes 1 and 2.)   |

- (c) 52.223-11 Ozone-Depleting Substances (Applicable if Work was manufactured with or contains ozone-depleting substances.)

**F. DoD FAR Supplement (DFARS) Flowdown Clauses**

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

REFERENCE	TITLE
1.	The following DFARS clauses apply to this Contract only if the stipulation in the relevant parenthetical notation applies:
(a) 252.204-7008	Requirements for Contracts Involving Export-Controlled Items-(Applicable if DFAR 252.204-7008 is in ARINC prime contract and export-controlled items (hardware, software, or technical data) are involved in performance of the subcontract)
(b) 252.219-7003	Small, Small Disadvantaged, and Women-Owned Small Business Sub-Contracting Plan (DoD Contracts) (Applicable if FAR 52.219-9 applies to this Contract.)
(c) 252.223-7001	Hazard Warning Labels (Applicable if Contract requires the delivery of hazardous materials as defined in the clause.)
(d) 252.225-7001	Buy American Act and Balance of Payments Program (Applicable if the Work contains other than domestic components as defined by this clause. Substitute the DFARS clause for FAR clause 52.225-9.)
(e) 252.225-7014	Preference for Domestic Specialty Metals Alternate 1 (Applicable if the Work to be furnished hereunder contains specialty metals.)
(f) 252.227-7015	Technical Data – Commercial Items (Applicable only if technical data is to be delivered under this Contract. (See Note 3)

**G. Certifications and Representations**

- 1. The clauses listed below contain certifications and representations that are material representations of fact upon which ARINC will rely in making awards to CONTRACTOR. By submitting its written offer, providing oral offers or quotations at the request of ARINC, or accepting any Contract, CONTRACTOR certifies to the representations and certifications as set forth in each of the clauses listed below. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal, or solicitation (oral or written) issued by ARINC. CONTRACTOR shall immediately notify ARINC of any change of status with regard to these certifications and representations.

- 2. The following clauses of the FAR are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to any order, agreement, or subcontract. In each clause incorporated below, substitute “ARINC” for “Government” and “Contracting Agency” and “ARINC Procurement Representative” for “Contracting Officer” throughout.

- (a) The following FAR clause applies to this Contract if the value of this Contract exceeds \$5,000,000 and the period of performance is more than 120 days:

**52.203-13 Contractor Code of Business Ethics and Conduct**

**By signing a contract or performing against a contract in which FAR 52.203-13 is applicable:**

The contractor hereby certifies that they will comply with all elements of FAR 52.203-13 including timely disclosure, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, and the cognizant ARINC Procurement Representative whenever, in connection with the award, performance, or closeout of this contract or any subcontract there under, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

- (1) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
- (2) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

The contractor also certifies that, within 30 days of signing a contract or performing against a contract in which FAR 52.203-13 is applicable, they will establish a written code of business ethics and conduct and will make a copy of the code available to each employee engaged in performance of the contract.

- (b) FAR 52.209-5, “Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters”.

- 3. The following FAR clauses apply to this Contract if Work under the Contract will be performed in the United States or Contractor is recruiting employees in the United States to work on the Contract.

- (a) FAR 52.222-22, “Previous Contracts and Compliance Reports”.
- (b) FAR 52.222-25. “Affirmative Action Compliance”

- 4. Conflict of Interest

To the best of the Offeror/SELLER’s knowledge and belief, there is no actual or potential conflict of interest with respect to the performance of work under this contract or agreement; or, the Offeror/SELLER has notified ARINC in

writing of such a conflict of interest and received written authorization from ARINC to continue in pursuit of a contract or agreement. If in the performance of a contract or agreement with ARINC the Offeror/SELLER becomes aware of an actual or potential conflict of interest, the Offeror/SELLER will immediately notify the Procurement Representative responsible for the contract or agreement in question.

## **5. Disputes**

In accordance with the 2010 Department of Defense Appropriations Act, Public Law No. 111-118, Section 8116, SELLER certifies that it will not enter into or take any action to enforce arbitration agreements with any employee or independent contractor performing work related to subcontracts covered by these General Terms, for claims under Title VII of the 1964 Civil Rights Act 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.(Effective June 17, 2010; Applicable to subcontracts in excess of \$1 million)