

# TERMS AND CONDITIONS OF PURCHASE

## 1. Acceptance of Contract/Terms and Conditions:

- (a) SMS Data Products Group, Inc. ("SMS") hereby orders from SELLER the products and/or services listed on the SMS Purchase Order ("PO").
- (b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
- (c) Additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment hereof (including any auto-renewal provision) are hereby objected to by SMS and have no effect.
2. **Assignment:** Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by SMS.
3. **Payment:** Payment terms shall be those set forth on the PO. If no payment terms are listed on the PO all payments shall be made Net 45 upon delivery and acceptance of the products or services. Due dates are from the date of acceptance. Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. If SELLER becomes aware of a duplicate payment or SMS has otherwise overpaid an invoice, SELLER shall remit the overpayment back to SMS along with a description detailing the circumstances of the overpayment and affected contracts.

4. **Invoices:** All invoices must be dated and reference a valid SMS Purchase Order Number. Invoices for services must show billable time in increments of .25 hours and show the following for each service performed: hourly rate, current hours, current amount, year-to-date hours and year-to-date amount. Invoices must be submitted by the 5th calendar day of the following month and should be sent to [ap@sms.com](mailto:ap@sms.com). T&M POs require submission of daily timesheets.

5. **Travel:** Unless otherwise agreed, all travel must be preapproved in writing and shall be cost reimbursable supported by receipts. Travel shall be paid in accordance with JTR, FTR and FAR Part 31.205-46.

## 6. Changes:

- (a) SMS' Purchasing Representative 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; and (iv) delivery schedule.
- (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, SMS shall negotiate an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- (c) Any claim for an equitable adjustment by SELLER must be submitted in writing to SMS within twenty (20) 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 such change shall be resolved in accordance with the Disputes and Applicable Laws herein.

## 7. Contract Direction:

- (a) Only the SMS Purchasing Representative has authority to amend this Contract. Such amendments must be in writing.
- (b) SMS' engineering and technical personnel may from time to time render assistance or give technical advice or discuss or affect an exchange of information with SELLER's personnel concerning the products or services 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) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the SMS Purchasing Representative.
- (d) In no event will SMS be liable to SELLER for any amount in excess of the Funded Amount. Any work performed in excess of the Funded Amount is at SELLER's risk and expense. The Funded Amount can only be increased by a written modification to this agreement, executed by SMS Purchasing Representative.

8. **Delivery:** For services, delivery shall take place at the location identified in the PO. For product, delivery shall take place at SMS' facilities unless otherwise specified in the PO or documents referenced in the PO. Unless otherwise specified in the PO, all product delivered under this Contract shall be new and not previously used. Products or services shall not be supplied in excess of quantities specified.

## 9. Independent Contractor Relationship:

- (a) SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform services under this Contract shall be SELLER's employees exclusively without any relation whatsoever to SMS. SELLER assumes full responsibility for the actions and supervision of such personnel while performing services under this Contract. SMS assumes no liability for SELLER personnel.
- (b) SELLER shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.
10. **Inspection:** SMS reserves the right to inspect and accept SELLER's product(s) and/or service(s) at any reasonable times and any reasonable places, including, when practicable, during manufacture and before shipment after or before delivery. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge. No such inspection shall relieve SELLER of its obligations to furnish all product(s) or service(s) in accordance with the requirements of this Contract. If SELLER delivers non-conforming product(s) or service(s) SMS may: (i) accept all or part of such products or service at an equitable price reduction; (ii) reject the products or services; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such products or services to comply in all respects with Contract requirements and charge the cost incurred to SELLER.

11. **Packing and Shipment:** Unless otherwise specified, all products shall be packed in accordance with good commercial practice. A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, item number, dates of shipment, and the names and addresses of consignor and consignee. SELLER shall not charge for packing, crating, freight, local cartage, and/or any other services unless so specified in this PO.

12. **Timely Performance:** SELLER's timely performance is a critical element of this Contract.

13. **Warranty:** SELLER warrants that the rates charged for the goods and/or services purchased pursuant hereto shall be no higher than SELLER's current rates to any other customer for the same quality and quantity of such goods or services and that all products and services furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. SELLER agrees to refund, repair, or replace any goods and/or services that do not conform. SELLER warrants that all products are new and that no refurbished products will be supplied unless specifically requested in the Purchase Order. SELLER warrants that all services will be performed in a workmanlike and professional manner in accordance with industry standards. SELLER warrants that all products are free and clear of all liens and encumbrances. SELLER warrants that all products and services shall not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party.

14. **Intellectual Property Indemnity:** SELLER shall indemnify, defend and hold harmless SMS and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents), liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any intellectual property right or misappropriation or wrongful use of information or documents, and arising out of or related to the use, manufacture, reproduction, sale or other distribution of Products and Services by SMS or its customer. SMS and/or its customer shall timely notify SELLER of any such claim, suit or action. SELLER shall, at its own expense, defend such claim, suit or action and SMS shall have the right to participate in the defense at its own expense.

## 15. Counterfeit Work:

- (a) For purposes of this clause, Work consists of those parts delivered under this Subcontract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). "Counterfeit Work" means Work that: (1) is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method; (2) is not genuine and authentic; or (3) has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.
- (b) SELLER agrees and shall ensure that Counterfeit Work is not delivered to SMS under this Subcontract.

- (c) SELLER shall only purchase products to be delivered or incorporated as Work to SMS directly from the Original Component Manufacturer ("OCM")/Original Equipment Manufacturer ("OEM"), or through an OCM/OEM authorized distributor chain. Such products shall not be acquired from independent distributors or brokers unless approved in advance in writing by SMS.
- (d) If SELLER becomes aware or suspects that it has furnished any Counterfeit Work to SMS, SELLER shall immediately notify SMS. When requested by SMS, SELLER shall provide SMS with OCM/OEM documentation that authenticates traceability of the parts, components, or equipment to the applicable OCM/OEM.
- (e) In the event Work delivered under this Subcontract constitutes or includes Counterfeit Work, SELLER shall, at its sole cost and expense, promptly replace such Counterfeit Work with genuine and authentic Work conforming to all requirements of this Subcontract. SMS shall be under no obligation to return suspect or confirmed Counterfeit Work. Notwithstanding any clause or provision in this Subcontract to the contrary, SELLER shall be liable, without limitation, to SMS for all costs and expenses relating to the investigation, analysis, and disposition (including testing, removal and replacement) of Counterfeit Work. The remedies contained in this paragraph are in addition to any other remedies SMS may have at law, equity, or under other provisions of this Subcontract.
- (f) This clause applies in addition to any quality provision, specification, statement of work, or other provision included in this Subcontract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.
- (g) SELLER is aware of penalties associated with fraud and falsification, and shall comply with all applicable standards and laws regarding Counterfeit Work.
- (h) SELLER shall include this clause or an equivalent provision in all lower-tier subcontracts for the delivery of items that will be furnished to, or included in Work furnished to, SMS under this Subcontract.

16. **Limitation of Liability:** Notwithstanding anything to the contrary contained herein, or stated in the PO, the maximum liability of SMS to SELLER or any other person, whether such liability arises under contract, tort or otherwise shall in no case exceed the price paid by SMS for the specific product or service which caused the damage. **IN NO EVENT SHALL SMS BE LIABLE TO SELLER FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO ANY DAMAGE RESULTING FROM LOSS OF BUSINESS, USE, DATA, OR PROFITS WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES WAS REASONABLY FORESEEABLE OR DISCLOSED.**

17. **Government Contract Clauses:** Where SMS has entered into a contract for ultimate delivery of SELLER's products or services to the U.S. Government, SMS is required by its contract with the U.S. Government or a Prime Contractor to incorporate certain mandatory clauses into this Agreement. The clauses SMS must include in this Agreement are incorporated by reference to the extent so required by SMS' Government contract, SMS's contract with the Prime Contractor or by law or regulation. The incorporated clauses are modified to the extent necessary to reflect the relationship of the parties.

18. **Government PWS/SOW:** The Government PWS, SOW, TRN and/or other requirements document(s) are incorporated by reference and SELLER must comply with all requirements set forth therein.

19. **Organizational Conflict of Interest – FAR Subpart 9.5 Compliance:** SELLER must immediately notify SMS if, at any time during the term of this Agreement, SELLER becomes aware that it has an actual or potential conflict of interest, including without limitation a relationship of any nature which may affect or which may reasonably appear to affect SELLER's ability to perform the Work.

20. **Section 508 Compliance:** SELLER shall comply with FAR Subpart 39.2 implementing Section 508 of the Rehabilitation Act of 1973.

21. **Gratuities:** SELLER shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a SMS supplier.

22. **Foreign Corrupt Practices Act:** SELLER represents and warrants that it fully understands and will comply with all provisions of the Foreign Corrupt Practices Act (FCPA) of 1977 (as amended.) SELLER further represents and warrants that it will not interact with a foreign government, political party or public international organization on behalf of SMS.

23. **Termination for Convenience:** In addition to any rights SMS has under this Contract, SMS shall have the unilateral right to terminate this agreement, in whole or in part, at any time, solely for the convenience of SMS and such termination shall not constitute default. However, where this Contract is terminated for convenience, SELLER shall be entitled to termination for convenience costs as permitted under the termination for convenience clause of the applicable U.S. Government Prime Contract that SELLER can demonstrate to the satisfaction of SMS. SELLER shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Upon termination, SELLER will immediately return to SMS all equipment, supplies, property or other items procured by or given to SELLER for performance of this Contract. In addition, SELLER will deliver to SMS all work completed or in process under this Contract.

24. **Termination for Default:** If at any time SELLER is in Default of the PO, SMS may provide written notice of the Default(s) to SELLER if SELLER fails to deliver the Products or Services within the time specified by this Contract or any written extension; (ii) if SELLER fails to perform any other provision of this Contract or fails to make progress, so as to endanger performance of this Contract; or (iii) in the event of SELLER's bankruptcy, suspension of business, insolvency, appointment of a receiver for SELLER's property or business, or any assignment, reorganization or arrangement by SELLER for the benefit of its creditors. In the event SELLER does not cure any Default(s) within five (5) calendar days of its receipt of SMS's written notice, SMS may terminate this PO, in whole or in part, for default. SELLER shall continue providing all Products or Services not canceled. SELLER shall be liable for SMS's excess re-procurement costs and will deliver to SMS all work completed or in process under this Contract. SMS may withhold from these amounts a sum that SMS determines to be necessary to protect SMS against loss or liability attributable to SELLER's default.

25. **Confidentiality:** All information or assistance of a technical or business nature, including the contents of this Agreement, provided by either party in connection with the negotiation of this Agreement or performance, hereunder shall be deemed to be of a proprietary or private nature ("Confidential") and shall be received by either party in confidence and not revealed to third parties or applied to uses or purposes outside performance of obligations under this Agreement. However, if the information is delivered for the purpose of delivery to the Government and is not marked with appropriate restrictive markings required by the Government, the information or assistance shall not be deemed Confidential and the recipient of the information ("Recipient") shall have no obligation with respect to any such information provided by the other party ("Owner"). In addition, information shall not be considered Confidential if the information: (a) is already known to Recipient; (b) is or becomes publicly known, through publication, inspection of the product, or otherwise, and through no wrongful act of Recipient; (c) is received from a third party without similar restriction and without breach of this Agreement; (d) is independently developed by Recipient; (e) is furnished to a third party by Owner without a similar restriction on the third party's rights; (f) is approved for release by written authorization of Owner; (g) is disclosed pursuant to the lawful requirement or request of a Governmental agency or disclosure is permitted by operation of law.

26. **Non-Solicitation:** For the duration of this agreement and for a period of one (1) year thereafter, persons in the employment of either party shall not, except by the mutual consent of the parties, be employed by the other party. This restriction, however, does not prohibit either party from hiring any person as a result of the use of an independent employment agency or as the result of the use of a general solicitation, such as an advertisement.

27. **Further Subcontracting:** No work shall be subcontracted without prior written approval and authorization from SMS. All terms of this Subcontract, including insurance requirements, shall be flowed down to any authorized subcontractors.

## 28. Stop Work:

- (a) SELLER shall stop work for up to ninety (90) days in accordance with any written notice received from SMS, or for any agreed longer period of time. SELLER shall take all reasonable steps to minimize the incurrence of costs allocable to the work during the period of work stoppage.
- (b) During any Stop Work period SMS shall either terminate in accordance with this Contract or continue the work by written notice 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(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within twenty (20) days after date of notice to continue.

29. **Security Requirements and Rated Orders:** SELLER shall comply with all U.S. Government security requirements as set forth in any Security Specification or DD-254 delivered pursuant to this Contract. If so identified,

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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).

## 30. Insurance:

(a) In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of SMS or its customers for any reason in connection with this Agreement then SELLER and its subcontractors shall procure and maintain for the performance of this Contract worker's compensation, comprehensive general liability, automobile liability, Defense Base Act (DBA), bodily injury and property damage insurance in reasonable amounts, cyber liability, and such other insurance as SMS may require. In addition, SELLER and its subcontractors shall comply with all site requirements. SELLER shall provide SMS 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, provided however such notice shall not relieve SELLER's of its obligations to procure and maintain the required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name SMS as an additional insured for the duration of this Agreement. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of SMS and is not contributory with any insurance which SMS may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations for procuring and maintaining insurance coverages are not affected by any other language in this Agreement.

(b) SELLER shall indemnify and hold harmless SMS, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss 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.

**31. Applicable Law:** SELLER agrees to comply with all applicable Federal, State, and Local laws, orders, rules, regulations, and ordinances. SELLER warrants that it has and shall maintain all registrations and licenses and shall obtain permits as required to perform the work hereunder. The laws of the Commonwealth of Virginia shall govern this Contract, without regard to its conflicts of laws provisions. Should SELLER commence any legal proceedings against SMS arising out of or concerning this Contract or the products or services purchased or licensed under this Contract, the proceedings shall be brought in the appropriate Virginia Court or Federal Court nearest to, or within, Fairfax County Virginia. The United Nations' Convention for the International Sale of Goods is expressly excluded from this Subcontract, and shall have no force or effect on the parties.

**32. Communications with SMS Customers:** SELLER shall not communicate with SMS's customer or higher tier customer in connection with this Contract, except as expressly permitted by SMS. This clause does not prohibit SELLER from communicating with the U.S. Government with respect to (1) matters SELLER is required by law or regulation to communicate to the Government, (2) fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information, (3) any matter for which this Contract, including a FAR or FAR Supplement clause included in this Contract, provides for direct communication by SELLER to the Government, or (4) any material matter pertaining to payment or utilization.

**33. Ethics and Compliance:** SELLER acknowledges and accepts full and sole responsibility to maintain an ethics and compliance program appropriate for its business throughout the performance of this Contract. SMS strongly encourages SELLER to model its program in accordance with the Federal Sentencing Guidelines, applicable guidance from enforcement authorities, and industry best practices. By the acceptance of this PO, SELLER represents that it has not participated in any conduct in connection with this PO that violates the SMS Code of Conduct or, alternatively, the equivalent business ethics and conduct standards of SELLER. If, at any time, SMS determines that SELLER is in violation of the applicable Standards of Business Ethics and Conduct, SMS may cancel this Purchase Order upon written notice to SELLER and SMS shall have no further obligation to SELLER. SELLER shall include the substance of this clause, including this flowdown requirement, in all subcontracts awarded by SELLER for work under this Contract.

**34. Furnished Property:** SMS may, by written authorization, provide to SELLER property owned by either SMS or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract. Title to Furnished Property shall remain in SMS or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership. SELLER shall be responsible for, and shall promptly notify SMS of, any loss or damage to Furnished Property. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with applicable law, the requirements of this Contract and good commercial practice.

**35. Place of Performance:** SELLER shall not change the place of performance under this PO without SMS's prior written consent.

**36. Publicity:** No news releases or public announcements concerning this PO or the work to be performed hereunder shall be issued by the SELLER without the prior written consent of SMS.

**37. Trade Compliance:** (a) The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Contract, including but not limited to the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulations ("ITAR") of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the antiboycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control. (b) SELLER shall provide in writing to the SMS Procurement Representative the export classification of any deliverable items or data restricted by trade control laws. (c) SELLER shall promptly notify SMS if SELLER is, or becomes, 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 Governmental entity. (d) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause. (e) The Subcontractor's obligations to adhere to the ITAR and EAR shall survive the expiration or termination of this Agreement.

**38. Service Contracts Act Compliance:** To the extent that the Service Contract Labor Standards and the applicable provisions of the Fair Labor Standards Act as amended is applicable to all or part of the work to be performed under the PO, SELLER warrants and agrees to abide by all applicable requirements of the Act. SELLER agrees to fully indemnify and hold harmless SMS for all wage/fringe benefit underpayments, fines, penalties or other charges assessed by the Government, the prime contractor (if other than SMS), the US Department of Labor, an administrative board, or court against SMS due to SELLER's failure to abide by, or conform with, all applicable requirements of the Act or its implementing regulations and contract clauses.

**39. Retention of Records:** Unless a longer period is specified in this Contract or by law or regulation, SELLER shall retain all records related to this Contract for four (4) years from the date of final payment received by SELLER. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, SELLER shall timely provide access to such records to the US Government and/or SMS upon request.

**40. Cybersecurity:** SELLER represents that it will comply with Federal cybersecurity requirements applicable to the Subcontract, including, but not limited to, FAR 52.204-21, "Basic Safeguarding of Covered Contractor Information Systems," and/or DFARS 252.204-7012, "Safeguarding Covered Defense Information and Cyber Incident Reporting," DFARS 252.204-7019, "Notice of NIST SP800-171 DoD Assessment Requirements", DFARS 252.204-7020, "NIST SP800-171 Assessment Requirements", DFARS 252.204-7021 "Cybersecurity Maturity Model Certification Requirements." A failure by SELLER to provide appropriate assurances of its ability to comply, upon request by SMS, constitutes a material breach of this Agreement.

**41. Order of Precedence:** Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) face of the PO and/or Task Order, including any special terms and conditions; (2) these Terms of Purchase and any supplementary Terms invoked in this Contract; (3) the Statement of Work; and (4) All other attachments, exhibits, appendices, documents or terms incorporated by reference in or attached to this Contract.

**42. Disputes:** Any dispute that arises under or is related to this Contract that cannot be settled by mutual agreement of the Parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, SELLER shall diligently proceed with performance of this Contract according to SMS's instructions. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN**

## ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS SUBCONTRACT.

**43. Survivability:** All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Agreement, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of intellectual property and proprietary information), and product support obligations shall survive the expiration or termination of this Agreement.

**44. Quality Requirements:** SELLER shall require lower-tier suppliers to comply with quality assurance requirements comparable to those contained in this PO. SELLER shall assume responsibility for the quality of all procured material and workmanship.

**45. Remedies:** SMS may exercise all rights and remedies at law and in equity. SMS shall be entitled at all times to set off any amount owing at any time from SELLER to SMS, against any amount payable at any time by SMS to SELLER.

**46. Force Majeure:** Except for a default of SELLER's subcontractor at any tier, neither SMS nor SELLER shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence, including acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity (including acts of government related to economic sanctions and embargoes), fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. SELLER shall notify SMS in writing within forty-eight (48) hours after the beginning of any such cause(s). In all cases, SELLER shall use reasonable efforts to avoid or minimize all such failures, including exercising work-around plans or obtaining the Services or Products from other sources.

**47. Indemnity:** SELLER shall, without limitation, defend, indemnify and hold harmless SMS and its customer(s) and their respective officers, directors, employees, agents, affiliates, and successors from and against (i) all losses, claims, causes of action and resulting costs, expenses (including attorney fees and litigation and/or settlement costs) and liability arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this PO; (ii) failure to comply with applicable laws or regulations; and (iii) intentional misconduct, negligence or fraud.

**48. Electronic PO:** The parties agree that this Contract may be executed by fax, facsimile, email, or similar electronic means and shall be as effective as and as binding as if the Contract was executed with original signatures.

**49. FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment Compliance:** By accepting this PO, SELLER represents that it does not provide covered telecommunications equipment or services to SMS in performance of this contract. SELLER shall defend, indemnify and hold harmless SMS from and against any loss, cost, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in its performance of its obligations hereunder.

**50. SMS is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**

**51. Representations and Certifications.** All representations and certifications, which the SELLER submitted to SMS in connection with the award of this Order, are incorporated herein and made a part hereof and SMS has relied such upon in issuing this Order. The SELLER shall promptly advise SMS should there be any change in SELLER's status with respect to these representations and certifications.

**52. Discontinuance of Manufacture.** Should SELLER decide to discontinue manufacture of the Items purchased by SMS under this Purchase Order, SELLER: (1) shall provide written notice to SMS of the intended supply discontinuance; and (2) shall provide SMS a minimum of twelve (12) months from the written notification date to allow SMS to place final "lifetime buy" purchase orders for the Items at a unit price to be negotiated, but in no event higher than the unit price provided in this Purchase Order.

**53. Certification of Independent Price Determination.** SELLER certifies in connection with this procurement that the price(s) proposed and/or agreed upon have been arrived at independently, without consultation, communications, or agreement with any others for the purpose of restricting competition, and that the fact that the prices herein have been provided to SMS has not been knowingly disclosed by Seller and will not be disclosed by Seller directly or indirectly, to any other party.

**54. Privacy.** The Parties agree that for the purposes of processing personal information or personal data subject to the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020, and its implementing regulations (collectively, the "CPRA"), and the Virginia Consumer Data Protection Act, SELLER is a 'service provider' or data processor and SMS is a 'Business' or data controller. Each Party will comply with its respective obligations under applicable U.S. data protection laws.

**55. General Data Protection Regulation ("GDPR") Compliance:** Any information containing personal data shall be handled in accordance with all applicable privacy laws and regulations, including without limitation the GDPR and equivalent laws and regulations. If for the performance of the Contract it is necessary to exchange personal data, the relevant Parties shall determine their respective positions towards each other (either as controller, joint controllers or processor) and the subsequent consequences and responsibilities according to the GDPR as soon as possible after the Effective Date and where required implement these in a separate written agreement.

**56. Entire Agreement:** This document, the PO, and any documents specifically incorporated by reference in the PO constitute the entire Contract between the SELLER and SMS. They are intended as a complete and exclusive statement of the terms of the Contract and no course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. No agent, employee, or representative of SMS has any authority to bind SMS to any affirmation, representation or warranty concerning the product(s) or service(s) sold under this Contract, unless the same is included within this written Contract. This Contract may be modified or rescinded only by a written instrument signed by the parties hereto or by their duly authorized agents. Waiver by SMS of any provision hereof in one instance shall not constitute a waiver as to any other instance. Where the terms of this Contract and the SELLER's documents conflict, this document shall take precedence. Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect. The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.