



# Mission Support Alliance Provision

## SPECIAL PROVISIONS – SOFTWARE

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## 1.0 GENERAL

- A. These Special Provisions are applicable in their entirety unless specifically deleted or amended in the Subcontract and are in addition to the General Provisions and other Special Provisions that apply to this Subcontract. In the event of a conflict between these Special Provisions and the General Provisions, these Special Provisions shall take precedence.

## 2.0 DEFINITIONS

Whenever used in this document, the following definitions shall be applicable unless the content indicates otherwise:

- (1) “Buyer” shall mean Mission Support Alliance, LLC (“MSA”) and all of its authorized representatives acting in their professional capacities (under DOE Prime Subcontract No. DE-AC06-09RL14728) authorized to enter into this Subcontract with Licensor and to effect modifications and take other action hereunder.
- (2) “Contract” means the Subcontract which is placed by the Buyer for the licensing of certain specified software and which contains or includes these Clauses.
- (3) “Contractor” which may also be referred to herein as Subcontractor and/or Licensor, means the individual or organization entering into this Subcontract with the Buyer.
- (4) “Contracting Officer” means the Government official, or any duly appointed successor or representative, who executed the Prime Contract between DOE and the Buyer.
- (5) “DOE” means the United States Department of Energy.
- (6) “Government” means the United States of America.
- (7) “Software” means the specified software licensed by Licensor to Licensee under the Subcontract.

## 3.0 GRATUITIES

- A. The right of the Licensor to proceed may be terminated by written notice if, after notice and hearing, the Buyer determines that the Licensor, its agent, or another representative—



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1. Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee; and
  2. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- B. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- C. If this Contract is terminated under paragraph (A) above, the Buyer is entitled--
1. To pursue the same remedies as in a breach of the Contract; and
  2. In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Licensor in giving gratuities to the person concerned, as determined by the Buyer. (This subparagraph C. 2. is applicable only if this Contract uses money appropriated to the Department of Defense.)
- D. The rights and remedies of the Buyer provided in this Clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

### 4.0 ANTI-KICKBACK

A. Definitions.

1. “Kickback,” means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to the Buyer or any Government employees, to Licensor or any of its employees, subcontractor, or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or in connection with a subcontract relating to Buyer’s contract.
2. “Person,” means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
3. “Prime contract,” means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
4. “Buyer” means a person who has entered into a prime contract with the United States.
5. “Buyer employee,” means any officer, partner, employee, or agent of a Buyer.



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6. "Subcontract," means a contract or contractual action entered into by a Buyer or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
  7. "Subcontractor," means (1) any person, other than the Buyer, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a Prime Contract or a subcontract entered into in connection with such buyer, and (2) includes any person who offers to furnish or furnishes general supplies to the Buyer or a higher tier subcontractor.
  8. "Subcontractor employee," as used in this Clause, means any officer, partner, employee, or agent of a subcontractor.
- B. The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--
1. Providing or attempting to provide or offering to provide any kickback;
  2. Soliciting, accepting, or attempting to accept any kickback; or
  3. Including, directly or indirectly, the amount of any kickback in the Contract price charged by a Licensor to the Buyer or in any price charged by a subcontractor under this or any contract.
- C. Contractor Responsibilities
1. The Licensor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph B of this Clause in its own operations and direct business relationships.
  2. When the Licensor has reasonable grounds to believe that a violation described in paragraph B of this Clause may have occurred, the Licensor shall promptly report in writing the possible violation. Such reports shall be made to the Buyer, inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
  3. The Licensor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph B of this Clause.
  4. The Buyer may (1) offset the amount of the kickback against any monies owed by Buyer under this Contract and/or (2) direct that the Licensor withhold from monies owed the subcontractor the amount of the kickback. The Buyer may order that any monies withheld under subdivision C. 4. (2) Of this Clause be paid directly to the Buyer unless the Buyer has already offset those monies under subdivision C. 4. (1) of this Clause.



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5. The Licensor agrees to incorporate the substance of this Clause, including this subparagraph C. 5. but excepting subparagraph C. 1., in all subcontracts under this Contract which exceed \$150,000.00.

### 5.0 COVENANT AGAINST CONTINGENT FEES

- A. The Licensor warrants that no person or agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Buyer shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- B. “Bona fide agency,” as used in this Clause, means an established commercial or selling agency, maintained by a Licensor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Buyer contracts nor holds itself out as being able to obtain any Buyer contract or contracts through improper influence.
- C. “Bona fide employee,” as used in this Clause, means a person, employed by a Licensor and subject to the Licensor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Buyer contracts nor holds out as being able to obtain any Buyer contract or contracts through improper influence.
- D. “Contingent fee,” as used in this Clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Buyer contract.
- E. “Improper influence,” as used in this Clause, means any influence that induces or tends to induce a Buyer employee or officer to give consideration or to act regarding a Buyer’s contract on any basis other than the merits of the matter.

### 6.0 RESTRICTIONS ON SUBCONTRACTOR SALES

- A. Except as provided in paragraph B below, the Licensor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government or the Buyer of any item or process (including computer software) made or furnished by the subcontractor under this Contract or under any follow-on production contract.
- B. The prohibition in paragraph A. of this Clause does not preclude the Licensor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph A. applies only to the extent that any agreement restricting sales by subcontractor’s results in



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the Buyer being treated differently from any other prospective purchaser for the sale of the commercial item(s).

- C. The Contractor agrees to incorporate the substance of this Clause, including this paragraph C, in all subcontracts under this Contract which exceed \$150,000.00.

### 7.0 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

- A. Licensor shall report to the Buyer, promptly and in reasonable written detail, each notice or claim or patent or copyright infringement, related to performance of this Contract, of which Licensor has knowledge.
- B. In the event of any claim or suit against the Government or the Buyer on account of any alleged patent or copyright infringement arising out of the performance of this Contract, Licensor shall furnish to the Buyer, when requested, all evidence and information in possession of Licensor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Buyer except where Licensor has agreed to indemnify the Buyer and the Government.
- C. Licensor agrees to incorporate this Clause, including this paragraph C, in all subcontracts under this Contract, which are expected to exceed \$150,000.00.

### 8.0 PATENT AND COPYRIGHT INDEMNITY

The following provisions shall apply if the amount of this Subcontract exceeds \$10,000.00.

- A. Licensor shall indemnify the Buyer and the Government and their officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application which is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) or copyright arising out of the manufacture or delivery of supplies (including Software), the performance of services or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work" under this Contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- B. This indemnity shall not apply unless Licensor shall have been informed as soon as practicable by the Buyer or the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules or regulations to participate in its defense. Further, this indemnity shall not apply to:



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1. An infringement resulting from compliance with specific written instructions of the Buyer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Contract not normally used by Licensor;
2. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
3. A claimed infringement that is unreasonably settled without the consent of Licensor unless required by final decree of a court of competent jurisdiction.

### 9.0 EQUAL OPPORTUNITY

- A. If, during any 12-month period (including the 12 months preceding the award of this Contract), the Licensor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000.00, the Licensor shall comply with subparagraphs B. 1. through 11. of this Clause. Upon request, the Licensor shall provide information necessary to determine the applicability of this Clause.
- B. During performance of this Contract, the Licensor agrees as follows:
  1. The Licensor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this Clause for the Licensor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
  2. The Licensor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to--
    - a. Employment,
    - b. Upgrading,
    - c. Demotion,
    - d. Transfer,
    - e. Recruitment or recruitment advertising,
    - f. Layoff or termination,



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- g. Rates of pay or other forms of compensation, and
  - h. Selection for training, including apprenticeship.
3. The Licensor shall post in conspicuous places available to employees and applicants for employment the notices that explain this Clause.
  4. The Licensor shall, in all solicitations or advertisements for employees placed by or on behalf of the Licensor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  5. The Licensor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice advising the labor union or workers' representative of the Licensor's commitments under this Clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
  6. The Licensor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
  7. The Licensor shall furnish all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Licensor shall also file Standard Form 100 (EEO 1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Licensor has filed within the 12 months preceding the date of Contract award, the Licensor shall, within 30 days after Contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission (EEOC) for the necessary forms.
  8. The Licensor shall permit access to its premises, during normal business hours, by the Buyer or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Licensor shall permit the Buyer to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
  9. If the OFCCP determines that the Licensor is not in compliance with this Clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Licensor may be declared ineligible for further Government contracts or Buyer contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Licensor as provided in Executive Order 11246, as amended; in



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the rules, regulations; and orders of the Secretary of Labor; or as otherwise provided by law.

10. The Contractor shall include the terms and conditions of subparagraph B. 1. through 11. of this Clause in every subcontract or contract that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
  11. The Licensor shall take such action with respect to any subcontract or contract as the Buyer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Licensor becomes involved in, or is threatened with, litigation with a subcontractor as a result of any direction, the Licensor may request through the Buyer that the United States enter into the litigation to protect the interests of the United States.
- C. Notwithstanding any other clause in this Contract, disputes relative to this Clause will be governed by the procedures in 41 CFR 60-1.1.

### 10.0 EQUAL OPPORTUNITY FOR VETERANS

A. *Definitions.* As used in this clause—

1. “All employment openings” means all positions except executive and senior management, those positions that will be filled from within the Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.
2. “Armed Forces service medal veteran” means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).
3. “Disabled veteran” means—
  - (1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
  - (2) A person who was discharged or released from active duty because of a service-connected disability.
4. “Executive and senior management” means—



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- (1) Any employee—
    - (i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;
    - (ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
    - (iii) Who customarily and regularly directs the work of two or more other employees; and
    - (iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or
  - (2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.
5. “Other protected veteran” means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.
  6. “Positions that will be filled from within the Contractor’s organization” means employment openings for which the Contractor will give no consideration to persons outside the Contractor’s organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.
  7. “Qualified disabled veteran” means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.
  8. “Recently separated veteran” means any veteran during the three-year period beginning on the date of such veteran’s discharge or release from active duty in the U.S. military, ground, naval or air service.
- B. General.



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1. The Contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:
    - (i) Recruitment, advertising, and job application procedures.
    - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
    - (iii) Rate of pay or any other form of compensation and changes in compensation.
    - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
    - (v) Leaves of absence, sick leave, or any other leave.
    - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor.
    - (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
    - (viii) Activities sponsored by the Contractor including social or recreational programs.
    - (ix) Any other term, condition, or privilege of employment.
  2. The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).
  3. The Department of Labor's regulations require contractors with 50 or more employees and a contract of \$100,000.00 or more to have an affirmative action program for veterans. See 41 CFR Part 60-300, Subpart C.
- C. Listing openings.



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1. The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.
  2. The Contractor shall make the listing of employment openings with the appropriate employment service delivery system at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
  3. Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State workforce agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.
- D. *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- E. *Postings.*
1. The Contractor shall post-employment notices in conspicuous places that are available to employees and applicants for employment.
  2. The employment notices shall—
    - (i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans,



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Armed Forces service medal veterans, and other protected veterans; and

- (ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.
  - 3. The Contractor shall ensure that applicants or employees who are disabled veterans are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
  - 4. The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.
- F. *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor. This includes implementing any sanctions imposed on a contractor by the Department of Labor for violations of this clause (52.222-35, Equal Opportunity for Veterans). These sanctions (see 41 CFR 60-300.66) may include—
- 1. Withholding progress payments;
  - 2. Termination or suspension of the contract; or
  - 3. Debarment of the contractor.
- G. *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts of \$100,000.00 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

### 11.0 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

#### A. General.

- 1. Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities



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without discrimination based upon their physical or mental disability in all employment practices such as—

- (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
  - (iii) Rates of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
  - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- B. Postings.
1. The Contractor agrees to post employment notices stating—
    - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
    - (ii) The rights of applicants and employees.
  2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the



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contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

3. The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is

### 12.0 UNAUTHORIZED OBLIGATIONS

- A. When any supply or service acquired under this Subcontract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Buyer or the Government to indemnify the Subcontractor or any person or entity for damages, costs, fees, or any other loss or liability
  1. Any such clause is unenforceable against the Buyer or the Government.
  2. Neither the Buyer or the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (*e.g.*, “click-wrap” or “browse-wrap” agreements), execution does not bind the Buyer or the Government or any Government authorized end user to such clause.
  3. Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.