

APPLICABILITY

- Sections 1 – 35 are General Clauses applicable to all Orders.
- Sections 36 – 41 are Special Clauses applicable to certain Orders, as specified in each Section.
- Attachment A, if applicable, contains additional provisions governing Orders made pursuant to a Federal Government Contract.

GENERAL CLAUSES APPLICABLE TO ALL ORDERS

1. DEFINITIONS. Capitalized terms used throughout this document shall have the meaning either set forth below or defined elsewhere in these Terms:

- a. “Draper” means The Charles Stark Draper Laboratory, Inc.
- b. “Goods” means the goods, including all materials, component parts, products, packaging, supplies and labeling of such goods provided by Vendor to Draper pursuant to an Order.
- c. “Order” means the documents listed in Section 2.
- d. “Party” means Draper or Vendor individually; “Parties” means Draper and Vendor collectively.
- e. “PO” means the Purchase Order issued by Draper to Vendor.
- f. “Services” means the services, including labor, consulting, installation, implementation, maintenance, and other services provided by Vendor to Draper pursuant to an Order.
- g. “Terms” mean these Draper Terms of Purchase, including any Attachments.
- h. “Vendor” means the individual, company, or entity listed on the face of the PO, to whom the PO is issued.
- i. “Work” means the Goods provided and/or Services performed by Vendor pursuant to this Order.

Unless otherwise specified, any reference to “days” shall mean calendar days.

2. ORDER. The following documents comprise the entirety of an Order, all of which are incorporated by this reference. In the event of an inconsistency or conflict between these documents, the inconsistency or conflict shall be resolved by the following order of precedence, with the higher listed items having precedence over lower listed items:

- a. The PO, including any terms and instructions written on the face of the PO.
- b. These Terms.
- c. Vendor’s Quote (if applicable).
- d. Vendor’s Terms & Conditions (if applicable).

Any terms or conditions proposed by Vendor inconsistent with, or in addition to these Terms shall be void and of no effect unless accepted by Draper by inclusion on the face of the PO, or a signed amendment hereto. These Terms shall also apply to any repaired, replaced, or reperformed Work provided by Vendor hereunder.

3. SCOPE OF WORK. Vendor shall provide the Work described in, and in compliance with the Order. Unless otherwise specified in the Order, Vendor shall furnish all personnel, equipment, supplies, facilities, and services necessary to carry out the Work. In the event Draper’s use of the Goods or Services requires a license from the manufacturer or other third-party, Vendor shall obtain, provide, and deliver to Draper (without any further cost to Draper) all such licenses.

4. ACCEPTANCE OF ORDER. Any of the following acts by Vendor shall be deemed to be Vendor’s unqualified acceptance of the Order: (i) written acceptance of the Order, (ii) commencement of the Work, or (iii) accepting any payment from Draper for the Work.

5. DELIVERY. The Work shall be delivered according to the delivery date or delivery schedule in the Order. Unless otherwise specified on the face of the PO:

- a. Delivery Date & Quantity
 - i. Time is of the essence in this Order.
 - ii. The date specified for delivery is the required delivery date at Draper’s facility.
 - iii. Draper has the right to return, at Vendor’s expense, any Goods delivered more than five (5) business days’ prior to the scheduled delivery date, and Vendor shall redeliver such Goods on the delivery date.

- iv. If Vendor fails to deliver conforming Goods in full on the delivery date, Draper may terminate the Order immediately by providing written notice to Vendor and Vendor shall indemnify Draper against any losses, claims, damages, and reasonable costs and expenses directly attributable to Vendor's failure to deliver the Goods on the delivery date.
 - v. If Vendor delivers more than the quantity of Goods ordered, Draper may, at its sole discretion, keep the additional quantity with no increased cost to Draper, or reject all or any excess Goods. Any such rejected Goods shall be returned to Vendor at Vendor's risk and expense.
- b. All Work furnished under this Order shall be delivered F.O.B. Destination to the address specified on the PO during Draper's normal business hours ("Delivery Location"). Risk of loss in transit shall not pass to Draper until delivery to Draper's specified destination in accordance with all applicable federal, state, or local laws or regulations.
- c. Delivery shall be deemed complete as follows:
- i. For Goods, when the required quantity goods have been actually received and accepted by Draper at the Delivery Location, notwithstanding delivery to any carrier.
 - ii. For Services, when the services have been performed, received, and accepted by Draper.
- d. Goods shall be packed for shipment according to Draper's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition and consistent with industry standards. Where applicable, for electrostatic sensitive devices (ESD) parts, Vendor shall ensure Goods are properly packaged and identified as required in ANSI/ESD-S20.20 (e.g. placed in conductive or static-dissipative packages, tubes, carriers, conductive bags, etc., for shipment) with the packaging clearly indicating that it contains electrostatic sensitive goods. Vendor must provide Draper reasonable prior written notice if it requires Draper to return any packaging material. Any return of such packaging material shall be made at Vendor's expense.

6. INSPECTION. All Work performed under this Order shall be subject to inspection and test by Draper, at all times and places, whether during or after manufacture or passing of title (as to Goods), or performance (as to Services), and notwithstanding the terms of delivery or payment. Vendor shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge. No such inspection (or election not to inspect) shall relieve Vendor of its obligations to furnish all Work in strict accordance with the requirements of this Order and Draper shall have the right to conduct further inspections after Vendor has carried out its remedial actions. It is expressly agreed that inspections and/or payments prior to delivery shall not constitute final acceptance.

If any nonconforming Work is discovered, Draper may, at its sole option:

- a. accept the Work at a reasonably reduced price;
- b. require Vendor to promptly repair, replace, or reperform the Work at Vendor's expense, including all related shipping and transportation costs;
- c. return at Vendor's expense and require Vendor to reimburse the purchase price of rejected Goods; or
- d. return, reperform, repair, replace, or reprocure the nonconforming Work at Vendor's expense if Vendor's repair, replacement, reperformance, or reimbursement of Work is not timely or satisfactory to Draper.

7. PRICE. In consideration of the Work, Draper shall pay to Vendor the amount(s) described in the Order ("Contract Price"). The Contract Price is all inclusive of packaging, shipping/transportation, insurance, duties, fees, installation, and all applicable taxes. Freight charges may be estimated in the Order.

8. TAXES. Draper is a Massachusetts nonprofit, tax-exempt corporation and is exempt from paying sales taxes (MA Taxpayer ID # 11790316) and certain federal taxes (FEIN #04-2505372). Vendor shall not charge Draper for such taxes. Proof of Draper's exemption from Massachusetts and other state's taxes are available upon Vendor's written request.

9. INVOICES. Vendor must submit a Proper Invoice (defined below) to Draper in order to be paid for the Work. For purpose of this Order, a "Proper Invoice" shall mean, at a minimum, an invoice which contains Vendor name, Vendor address, the Draper Order number associated with this work, a unique invoice number, invoice date, a description of the work/material being invoiced that is consistent with the Order information, (i.e. description of articles, shipping terms, sizes, quantities, unit prices, and extended totals). Draper reserves the right to reject any and all invoices which do not follow the specifications outlined in this section. Invoices shall be emailed to payables@draper.com.

10. PAYMENT. Draper shall pay Vendor in U.S. Dollars on or before the latter of forty-five (45) days after (i) the Proper Invoice date, or (ii) acceptance of the Work covered by a Proper Invoice. Draper may make any adjustments in Vendor's invoices due to shortages, late delivery, rejections, or other failure to comply with the requirements of this Order before payment. Payment shall not constitute final acceptance. Draper will not pay late payment penalties or fees.

11. NOTICES; REPRESENTATIVES. Any notices hereunder shall be sent to individuals and addresses listed on the PO. Notices shall be in writing and may be delivered by electronic mail in PDF format; by hand; by U.S. Mail, postage prepaid; or by a nationally recognized courier service. Draper's buyer named on the Order, or their authorized delegate in the event they are unavailable, are the only individuals authorized to act on behalf of Draper under this Order. Discussions with Draper that affect the Contract Price, schedule, Work, and Order terms shall be made only with the authorized Draper buyer or authorized delegate.

12. CHANGES. Draper may from time to time, by written notice to Vendor, suspend, stop, or make changes in the Work. If any such suspension, stoppage, or change causes a material increase or decrease in the cost of, or the time required for the performance of any part of the Work, the Parties shall negotiate an appropriate equitable adjustment in the price, or delivery schedule, or both, and shall modify the Order accordingly.

As a condition precedent to any equitable adjustment, Vendor must notify Draper in writing of Vendor's request for an equitable adjustment, along with sufficient information, documentation, and cost calculations supporting the amount claimed. Unless otherwise directed by Draper, requests by Vendor for equitable adjustment must be received by Draper (a) within twenty (20) days from the date Vendor receives notice from Draper of a change, or (b) as soon as practicable, but no later than forty-five (45) days, from the date Vendor receives notice from Draper of a suspension or stoppage. Failure to agree to any adjustment shall be considered a dispute and resolved in accordance with Section 23 (Disputes).

Any change made by Vendor without Draper's written approval shall be deemed voluntary by Vendor and not compensable under the Order. Nothing in this Article shall excuse Vendor from proceeding with performance of the unchanged portions of the Order. Notwithstanding the above or any other provision of these Terms, Vendor agrees that changes to the Work that may be required to meet the performance requirements specified in the Order shall not entitle the Vendor to any adjustment in either price or delivery.

13. PROPRIETARY INFORMATION. The Parties may disclose proprietary information to each other as part of this Order. Each Party agrees that it will:

- a. only use or disclose the other Party's proprietary information in performance of this Order (all other use or disclosure requires written approval);
- b. limit access to the other Party's proprietary information to those employees, consultants, agents, or attorneys ("Representatives") who must have access to it for purposes of this Order. All Representatives must be under a confidentiality agreement with terms at least as restrictive as those contained herein, and each Party shall be responsible and liable for its Representatives' compliance hereunder.
- c. use the same degree of care to maintain and protect the other Party's proprietary information as it applies to its own proprietary information of like importance, but in no event with less than a reasonable degree of care.

The obligations regarding the protection and use of proprietary information disclosed hereunder shall survive and continue for a period of three (3) years after the expiration or earlier termination of this Order.

14. PUBLICITY. No news releases, marketing, public announcement, denial, or confirmation of any part of the subject matter of this Order shall be made without the prior written consent of Draper. Vendor shall not use the name, logo, or trademark of Draper without Draper's prior written consent. The restrictions of this paragraph shall survive the completion or termination of this Order.

15. PROPRIETARY RIGHTS.

- a. Draper Property. All drawings, tools, jigs, dies, fixtures, materials, specifications, information, data, software, and other property supplied or paid for by Draper shall be and remain the property of Draper ("Draper's Property"), which shall be returned to Draper upon Draper's request. Vendor shall use Draper's Property only in the performance of the Work under this Order, unless Draper consents otherwise in writing.
- b. Intellectual Property. Any invention or intellectual property first conceived, authored, developed, or otherwise generated by Vendor in the performance of this Order, or which is derived from or based on the use of Draper Property (collectively, the "Foreground IP"), shall be considered to be the property of Draper. Vendor hereby assigns its rights in the Foreground IP to Draper and shall execute such documents necessary to perfect Draper's title thereto. Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Order, any work performed pursuant to this Order which includes any copyright interest shall be considered a "work made for hire." To the extent any of such works do not qualify as a "work made for hire," Seller hereby assigns to Draper all its intellectual property rights, including its copyright rights, in such works effective immediately upon creation of such works, including when they are first fixed in a tangible medium.

16. WARRANTY. In addition to Vendor's standard warranty, Vendor warrants that:

- a. If Goods are being supplied under this Order, such Goods shall (i) be free from defects in design, material, and workmanship, (ii) be suitable for their intended use, (iii) be new, and (iv) conform to applicable specifications, drawings, and standards of quality and performance.
- b. If Services are being provided, such Services shall be performed (i) in a good and workmanlike manner, (ii) by personnel with the requisite experience, skill, qualifications, training, and licenses, and (iii) in accordance with the applicable professional standards currently recognized in the industry.
- c. The Work including but not limited to manufactured products, machines, devices, material, software, and firmware, which are not of Draper’s design, composition, or manufacture, shall be free and clear of infringement of any valid patent, copyright, trademark, mask works, trade secret, or other proprietary rights owned or controlled by a third party.
- d. The Work will be performed in compliance with all applicable laws or regulations, including those described in Sections 30 (Compliance with Government Laws and Requirements) and 31 (Equal Opportunity).

The foregoing warranties shall survive any delivery, inspection, acceptance, or payment by Draper for the longer of (i) one (1) year from delivery of Goods or performance of Services, or (ii) Vendor’s standard warranty period.

17. INDEMNIFICATION. “Claims” shall mean any and all allegations, claims, actions, suits, demands, damages, liabilities, losses, obligations, settlements, judgments, costs and expenses, including, without limitation, reasonable attorneys’ fees and costs. “Draper Indemnitees” shall mean Draper, and its directors, officers, employees, agents, affiliates, students, vendors, suppliers, and customers. “Vendor Agents” shall mean Vendor and its directors, officers, employees, agents, affiliates, vendors, subcontractors and suppliers.

Vendor shall indemnify and defend Draper Indemnitees from and against any and all Claims which arise out of, or relate to:

- Vendor Agents’ acts or omissions while on the Premises (defined in Section 30);
- Vendor Agents’ intentional or willful misconduct, negligence, or fraud;
- personal injury, death, or property loss or damages attributed to, or caused by, the Work; or
- Vendor Agents’ breach of any representation, warranty, promise, obligation, or covenant made herein, including the warranties in Section 16.

Draper shall promptly notify Vendor of any actual or prospective Claims for which defense or indemnification is sought. In the event that defense or indemnification is sought for a Claim, Vendor shall retain qualified, independent counsel that is reasonably acceptable to Draper, with demonstrable experience defending Claims of the type to be defended.

After Vendor assumes the defense of a Claim, Vendor may contest, pay, or settle the Claims without the consent of Draper only if that settlement (1) does not entail any admission on the part of the Draper that it violated any law or infringed the rights of any person, (2) has no effect on any other Claim against Draper, (3) provides as the claimant’s sole relief monetary damages that are paid in full by Vendor, and (4) requires that the claimant release Draper from all liability alleged in the Claim.

18. LIMITATION OF LIABILITY. EXCEPT FOR BREACH OF SECTION 13 (PROPRIETARY INFORMATION), AND THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 17, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES OF ANY KIND, OR LOST PROFITS, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19. INSURANCE REQUIREMENTS. Without prejudice to Vendor’s obligation to indemnify Draper, Vendor shall procure at its expense and maintain for the duration of this Order, and ensure that its Vendor Agents (defined in Section 17) who provide Work under this Order also procure and maintain, the insurance policies required below with financially responsible insurance companies, and with policy limits not less than those indicated below.

- a. Workers’ Compensation: Coverage for statutory obligations imposed by the laws of the State(s) in which Vendor will perform the Work.
- b. Business Automobile Liability: Coverage for use of all owned, non-owned, and hired vehicles with limits of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage liability.
- c. Commercial General Liability: Coverage for third party bodily injury and property damage, personal injury, products and completed operations, contractual liability, and independent contractors’ liability with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

The required insurance coverages above shall be primary and non-contributing with respect to any other insurance that may be maintained by Draper. Notwithstanding any provision contained herein, Vendor Agents are not insured by Draper and are not covered under any policy of insurance that Draper has obtained or has in place. Any self-insured retentions, deductibles, and exclusions in

coverage in the policies required under this Section shall be assumed by, for the account of, and at the sole risk of Vendor and shall be paid by Vendor. In no event shall Vendor's liability under this Order be limited to the extent of any insurance or the minimum limits required herein. In the event Vendor Agents enter onto Draper Premises (defined in Section 30) to perform the Work, Vendor shall name Draper as an additional insured on its insurance policies.

Upon Draper's request, Vendor shall provide certificates of insurance evidencing the insurance policies above, including evidence of additional insured status. Failure of Draper to demand such certificates or to identify any deficiency in the insurance provided shall not be construed as or deemed to be a waiver of Vendor's obligations to maintain the above insurance coverages.

20. TERMINATION.

- a. Termination for Convenience. Draper may terminate this Order, in whole or in part at any time with ten (10) days prior written notice to Vendor.
- b. Termination for Default. Either Party may, by written notice to the other Party, terminate this Order for default upon the occurrence of any of the following:
 - i. A Party becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors, or admits in writing its inability to pay its debts as they become due.
 - ii. A Party materially breaches its obligations under this Order, and does not cure such breach within a period of ten (10) days after receipt of notice from the non-breaching Party specifying such breach.

If this Order is terminated due to Vendor's material breach, Draper may procure or otherwise obtain, upon such terms and in such manner as Draper may deem appropriate, supplies or services similar to the Work terminated, and Vendor shall be liable to Draper for any excess costs of such similar supplies or services.

- c. Effect of Termination. At or after termination, whether in whole or in part, Vendor shall transfer title and deliver to Draper, in the manner and to the extent requested in writing by Draper, complete or partially complete Work, including articles, materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, information, and contract rights as Vendor has produced or acquired during performance of the terminated part of this Order.

If this Order is terminated for convenience, Draper will equitably reimburse Vendor following the procedures outlined in Section 12 (Changes). If this Order is terminated for default, Draper will pay Vendor the Contract Price for completed items delivered to and accepted by Draper, and the fair value of the other items so requested and delivered. Regardless of the reason for termination, in no event shall such value exceed the Contract Price for such items.

To the extent this Order is terminated in part, Vendor shall continue performing the non-terminated parts of this Order. Draper shall have no obligations to Vendor with respect to the terminated part of this Order except as herein provided. In case of Vendor's material breach of this Order, Draper's rights as set forth herein shall be in addition to Draper's other rights at law or in equity not set forth in this Order.

21. FORCE MAJEURE. Neither Party shall be liable for damages resulting from default due to causes beyond that Party's reasonable and foreseeable control, and without such Party's fault or negligence. Such causes include, but are not limited to, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In the event that performance of this Order is hindered, delayed or adversely affected by causes of the type described above ("Force Majeure"), then the Party whose performance is so affected shall so notify the other Party's authorized representative in writing and, at Draper's option, this Order may be changed or terminated with such adjustments to delivery schedule and Contract Price as may reasonably be required by the existence of Force Majeure.

22. GOVERNING LAW. This Order shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law provisions. The rights and obligations of the Parties under this Order shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended.

23. DISPUTES. Any claim, controversy, or dispute that may arise under or in connection with this Order ("Dispute"), shall be reduced to writing and submitted for resolution to ascending levels of management of the respective Parties. Any dispute that cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) days from the date the written claim is received by the other Party, may be settled by a court of competent jurisdiction. The Parties agree to the personal and exclusive jurisdiction and venue of the federal and state courts of Middlesex and Suffolk Counties, Massachusetts. To the extent permitted by applicable law, the Parties waive any right they may have to a trial by jury.

Notwithstanding the above, either Party may seek injunctive or other equitable relief at any time in any court of competent jurisdiction for breach of its confidentiality obligations under Section 13 or infringement of its intellectual property rights.

Pending any prosecution, appeal, or final decision or settlement of any Dispute, Vendor shall proceed diligently, as directed by Draper, with the performance under this Order.

Nothing in this Section nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by Draper of the validity of Vendor's claim or any part thereof, nor be deemed to limit or in any way restrict Draper from taking any actions, including available remedies, it deems appropriate to protect its own interests.

24. NOTIFICATION OF INFORMATION SECURITY INCIDENT. For purposes of this clause, an "Information Security Incident" means any actual or suspected data breach, cyber incident, or other incident that Vendor actually is, or reasonably should be, aware involves or otherwise concerns the loss, misuse, unauthorized or unintended access to, or modification or destruction of Draper-provided (i) data, (ii) systems, (iii) Proprietary Information, (iv) Controlled Unclassified Information (as that term is defined 32 CFR §2002.4) (collectively, (i) through (v) are referred to as "Sensitive Information").

Vendor will promptly, but in no event later than seventy two (72) hours following Vendor's learning of an Information Security Incident, notify Draper's Information Security Office at CyberThreat@draper.com of such Information Security Incident. At Vendor's sole expense, Vendor will immediately (a) investigate any Information Security Incident; (b) undertake all efforts to secure Draper's Sensitive Information, and mitigate the impact of the Information Security Incident; (c) provide ongoing, timely, and relevant information to Draper, including requests for information and status updates; (d) report to Draper, no less frequently than once per week until the Information Security Incident has been resolved, Vendor's mitigation efforts related to the Information Security Incident; (e) cooperate with Draper to provide timely notice to affected third parties, if necessary; (f) cooperate with Draper in connection with any independent investigation that Draper may desire to conduct with respect to such Information Security Incident; (g) comply with all legal and regulatory requirements, regarding safeguarding of Sensitive Information, including notice and reporting requirements, regarding the Information Security Incident; and (h) cooperate with Draper in identifying any reasonable steps that should be implemented to limit, stop, or otherwise remedy any Information Security Incident. For three (3) years following the resolution of an Information Security Incident, Draper shall have access to and the right to examine, reproduce, and audit Vendor records related to the Information Security Incident and Vendor's obligations under this clause.

25. GENERAL RELATIONSHIP. Vendor is not an employee of Draper for any purpose whatsoever. Vendor agrees that in all matters relating to this Order, it shall be acting as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of this Order. Vendor shall have no right, power, or authority to create any obligation, expressed or implied, on behalf of Draper or its Customer and shall have no authority to represent Draper as an agent.

26. NON-SOLICITATION. Vendor shall not solicit Draper's employees for employment at any time during the performance of this Order. The foregoing restriction shall not prohibit the placement of advertising of general circulation that may be received or viewed by Draper's employees.

27. NON-WAIVER OF RIGHTS. The failure of a Party to insist upon strict performance of any of the terms and conditions in this Order, or to exercise any rights or remedies, shall not be construed as a waiver of its rights to assert any of the same or to rely on any such terms or conditions at any time thereafter.

28. EXPORT AND IMPORT COMPLIANCE. Vendor shall comply with the laws and regulations of the United States relating to exports and foreign transactions, including, but not limited to, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). In particular, Vendor shall not disclose any technical data, nor deliver or export any product manufactured by use of technical data, out of the United States, or to foreign entities within the United States, without proper written authorization from the U.S. Government.

29. ASSIGNMENTS AND SUBCONTRACTS. This Order is not assignable and shall not be assigned by Vendor without the prior written consent of Draper. Further, Vendor agrees to obtain Draper's approval before subcontracting any substantial portion of this Order.

30. ENTRY ON DRAPER'S FACILITIES. In the event a Vendor Agent enters the facilities or property of Draper (the "Premises") for any reason in connection with this Order, then Vendor shall (a) comply with all security, safety, rules of conduct, badging and personal identity, and related requirements of Draper while on the Premises; and (b) provide information reasonably required by Draper to ensure proper identification of the Vendor Agent. Draper may, in its sole discretion, have Vendor remove any Vendor Agent from the Premises and request that such Vendor Agent not be reassigned to perform any Work or to enter the Premises under this Order.

31. COMPLIANCE WITH GOVERNMENT LAWS AND REQUIREMENTS. Vendor shall, at all times, adhere to the highest standards of business ethics, and carefully comply with all applicable federal, state, and local laws, statutes, acts, regulations, rules, ordinances, government directives, and orders now in effect or hereafter enacted, including those related to labor relations, wages, hours of employment, combating trafficking in persons, equal employment opportunity data protection, environmental matters, non-segregated facilities, health and safety, and procurement integrity (e.g., the Procurement Integrity Act, 41 U.S.C. § 2104-107). Vendor shall obtain at its own cost any permits or licenses required to perform the Work.

32. EQUAL OPPORTUNITY. Draper and Vendor shall abide by the requirements of 41 CFR 60–1.4(a), 60–300.5(a) and 60–741.5(a). 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. Moreover, these regulations require that covered prime contractors and Vendors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

33. MODIFICATION. Any modification or change to this Order must be made in writing and signed by authorized representative of the Parties.

34. SEVERABILITY. To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any clause of this Order invalid or otherwise unenforceable in any respect. In the event a provision of this Order is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Order will continue in full force and effect.

35. ENTIRE AGREEMENT. The Parties agree that this Order, including all documents incorporated herein by reference, constitute the entire agreement and understanding between the Parties and supersedes and replaces any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof.

SPECIAL CLAUSES APPLICABLE TO CERTAIN ORDERS. If any of the following Special Clauses do not apply to this specific Order, such clauses shall be deemed self-deleting.

36. HANDLING OF PERSONAL INFORMATION. This Section shall apply if Vendor is handling “Personal Information” of Massachusetts residents, as defined in Massachusetts Information Security Regulations, 201 Code of Mass. Regs. 17.00 et seq. (the “IS Regulations”).

Vendor agrees that, as long as it has access to or maintains copies of Personal Information, it shall: (a) comply with the IS Regulations, (b) promptly notify Draper of any suspected or actual data breach involving Personal Information, and (c) cooperate with Draper to investigate and remediate any suspected or actual data breach involving Personal Information.

37. SUSPECT/COUNTERFEIT PARTS. This Section applies if Vendor will be providing Goods under this Order.

“Counterfeit Work” means Work that is (a) an unlawful or unauthorized reproduction, substitution, or alteration that has been mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the Original Component Manufacturer (OCM) or Original Equipment Manufacturer (OEM); (b) approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable; (c) an item that does not contain the proper external or internal materials or components required by the OCM/OEM or that is not constructed in accordance with OCM/OEM specification; (d) an item or component thereof that is used, refurbished or reclaimed but is misrepresented as being a new item; (e) an item that has not successfully passed all OCM/OEM-required testing, verification, screening and quality control but is misrepresented as having met or passed such requirements; (f) an item with a label or other marking intended, or reasonably likely, to mislead a reasonable person into believing a non-OCM/OEM item is a genuine OCM/OEM item when it is not, including without limitation the false identification of grade, serial number, lot number, date code, or performance characteristics; or (g) an item designated as a suspect counterfeit part by the U.S. Government, such as parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP). Parts that have been modified pursuant to a specific Draper purchase order requirement, such as refinished, up-screened, or up-rated parts that are properly identified as such are not considered Counterfeit Work.

Vendor represents and warrants that it shall not deliver to Draper any articles, components, goods, assemblies or other items that constitute Counterfeit Work. Vendor’s warranty against Counterfeit Work shall survive any termination or expiration of this Order.

Vendor shall only purchase products to be delivered or incorporated as Work to Draper directly from the OCM/OEM, or from a distributor expressly authorized by the OCM/OEM. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by Draper.

Vendor shall immediately notify Draper if Vendor becomes aware or suspects that it has furnished Counterfeit Work. Draper may impound the Counterfeit Work for further investigation as to its authenticity, and Vendor shall cooperate fully with any such investigation. Draper shall not be required to return such Counterfeit Work to Vendor during such investigation or thereafter. If, after investigation, Draper concludes in its sole judgment that Work delivered by Vendor constitutes Counterfeit Work, Draper may report such facts to the GIDEP.

If the Orders calls for the delivery of electronic parts, the following additional requirements apply: (i) Vendor shall comply with DFARS 252.246-7007 and 252.246-7008, and the definition of “electronic part” therein shall apply (ii) Vendor shall maintain a process that complies with the most recent revision of SAE standard AS 5553 - Counterfeit Electronic Parts, Avoidance, Detection, Mitigation, and Disposition; and (iii) If Vendor is an OCM/OEM-authorized distributor of electronic parts, Vendor shall maintain a

process that complies with the most recent version of SAE standard AS 6496 - Fraudulent/Counterfeit Electronic Parts: Avoidance, Detection, Mitigation, and Disposition - Authorized/Franchised Distribution. If Vendor is not an OCM/OEM or an OCM/OEM-authorized distributor, Vendor shall comply with the most recent revision of SAE standard 6081 - Fraudulent/Counterfeit Electronic Parts: Avoidance, Detection, Mitigation, Disposition – Distributors. In the event of any irreconcilable conflict between this clause and DFARS 252.246-7007 and 252.246-7008, the DFARS shall have precedence.

When requested by Draper, Vendor shall provide OCM/OEM certificates of conformance and documentation that demonstrates an unbroken chain of custody of the affected items from the applicable OCM/OEM to Vendor, including without limitation the name and location of any supply chain intermediaries from the OCM/OEM to the source supplying directly to Vendor. Upon reasonable notice, Draper may audit or inspect Vendor's records or internal processes to determine compliance with this clause or DFARS 252.246-7007, if applicable.

In the event that Work delivered under these Terms constitutes or includes Counterfeit Work, Vendor shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Order. Notwithstanding any other provision in this Order, Vendor shall be responsible and liable for all of Draper's internal and external costs relating to the removal and replacement of Counterfeit Work, including without limitation Draper's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies Draper may have at law, equity or under other provisions of these Terms.

Vendor shall include this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to Draper.

38. USE OF OPEN SOURCE SOFTWARE. This Section applies if Vendor uses or embeds Open Source Software into the Work being delivered to Draper.

For purposes of this Section, "Open Source Software" shall mean (a) any software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any open source, publicly available or "free" software, library or documentation, including, without limitation, the General Public License ("GPL"), the Lesser/Library GPL (LGPL), the Affero GPL ("APL"), the Apache license, the Berkeley Software Distribution ("BSD") license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License ("MPL"), or variations thereof, including without limitation licenses referred to as "Free Software License," "Open Source License," "Public License," or "GPL Compatible License"; (b) software that is licensed under an Open Source Software License; or (c) software provided under a license that subjects the delivered software to any Open Source Software license, requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or obligates Draper to sell, loan, distribute, disclose, or otherwise make available or accessible to any third party the delivered software, or any portion thereof, in object code and/or source code formats, or any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

Vendor shall obtain Draper's prior written consent before using or embedding any Open Source Software into the Goods. If Vendor fails to obtain such written authorization, Vendor shall indemnify and defend Draper Indemnitees in accordance with Section 17 (Indemnification) from and against any Claims relating to Draper Indemnitees use of the Open Source Software.

39. ENVIRONMENTAL HEALTH & SAFETY SERVICES. This Section applies if the Vendor will be providing Environmental Health & Safety ("EHS") Services pertaining to and performed on the Premises (including services involving asbestos, hazardous waste, remediation, wastewater, fire safety, and toxic gas monitoring).

Vendor shall perform the EHS services under these Terms consistent with the level of care and skill ordinarily exercised by EHS professionals under similar circumstances. Vendor represents and warrants that Vendor has the capability, experience, expertise, and means required to perform the EHS services contemplated under these Terms and that all services shall be performed using personnel, equipment, and material qualified and/or suitable to complete the services. Vendor shall immediately inform Draper of the discovery of any spill or release that, pursuant to environmental laws, must be immediately reported. Vendor will be solely responsible for the disposal of any sample contaminated material taken offsite by Vendor.

40. FEDERAL GOVERNMENT FLOW-DOWN PROVISIONS. This Section applies if the Order is issued pursuant to a prime contract between Draper and the U.S. Government (as indicated on the face of the PO).

Vendor shall comply with all applicable Federal flow-down provisions in Attachment A.

41. U.S. GOVERNMENT PRIORITY RATING. This Section applies if the Order is issued pursuant to a Defense Priorities Allocation System (DPAS) rated prime contract between Draper and the U.S. Government (as indicated on the face of the PO).

This order is issued pursuant to a U.S. government prime contract subject to a rating under the DPAS regulations at 15 CFR §700. DPAS is used to prioritize national defense-related contracts/orders throughout the U.S. supply chain in order to support military, energy, homeland security, emergency preparedness, and critical infrastructure requirements. Vendor acknowledges and agrees that

this Order requires preferential treatment for fulfillment in accordance with DPAS. The applicable DPAS priority rating is identified on the face of the Order, and Subcontractor agrees to be bound by such priority rating.

However, under the authority of 15 CFR §700.17(f), Draper is not required to place a priority rating on an order for less than \$75,000, or one half of the Simplified Acquisition Threshold (defined at FAR 2.101), whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating. As such, Vendor may disregard the “DPAS Rtg” field listed above if it can provide delivery in a timely fashion without the use of the priority rating.