

## **General Provisions and FAR/DFARS Flowdown Provisions for Subcontracts/Purchase Orders for Commercial and Non Commercial Items Ordered Under a U.S Government Prime Contract**

### **Introduction to Suppliers**

The Purchase Order (PO) or subcontract, ("this Contract", or "Contract"), is entered between Whistler Technology Ltd ("WTX" or "Purchaser") and Seller/Supplier in support of a U.S Government (USG) Prime Contract.

This Annex is applicable to any Contract / PO that includes items or services where the ultimate end user is the U.S Government.

This Annex includes USG provisions and flowdown requirements applicable to this subcontract or Purchase Order.

#### **a. Commercial vs. Non-Commercial**

This Annex includes two main sections:

Section 1 - *Non Commercial*, and

Section 2 - *Commercial Items*.

If the deliverables under this Contract have been represented by Seller to be a Commercial Item as defined by FAR 2.101, the clauses listed in Section 2 of this Annex are incorporated herein and form a part of this Contract.

If the deliverables under this Contract are not Commercial Items, the clauses listed in Section 1 of this Annex are incorporated herein and form a part of this Contract.

"Commercial Item" means a 'commercial item' as defined in FAR 2.101. All other contracts are considered 'Non-Commercial'. Typically, commercial items are those customarily used by the general public or by nongovernmental entities for purposes other than government purposes and are sold or offered for sale to the general public. As an example, processors, memory chips, electronic components, and software operating systems are usually considered as commercial items.

#### **b. FAR/DFARS flowdowns acceptance**

The Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses referenced below are incorporated herein by reference, and are applicable with the same force and effect as if they were given in full text. ,

If any of the following clauses do not apply to this Contract, as defined in the respective FAR or DFARS provision, such clauses are considered to be non-applicable.

By accepting this Contract from WTX, Seller certifies compliance with the relevant USG terms and provisions, including compliance with the FAR/DFARS and mandatory Certifications and Representations.

Accordingly, Seller shall indemnify WTX against and hold WTX harmless from all expenses, losses, claims, arising out of performance of this Contract by Seller 's and Seller's failure to comply with the applicable U.S Government FAR/DFARS clauses and other rules, regulations, and standards.

#### **c. Priority Rating (DPAS)**

If DPAS rating is identified on this Contract than this Contract is a "rated order" certified for national defense use, and Seller shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation.

Under DPAS regulations, if this Contract supports the U.S. Government, is DX or DO Rated, and exceeds \$50,000.00, the Seller must acknowledge acceptance of DX-Rated orders within ten (10) days, and DO-Rated orders within fifteen (15) days of receipt hereof.

Commencement of performance of the Work called for by this Contract in the absence of Seller's written acknowledgement thereof shall be deemed acceptance of this Contract as written.

**d. Conflict Minerals**

WTX's policy is to use "conflict-free" minerals in its products. As part of our conflict minerals compliance policy, WTX requires that suppliers of raw materials or products shall provide any information requested by WTX (in sufficient detail), with written certifications thereof, to enable WTX to timely comply with all of WTX's and WTX's customer's due diligence, disclosure and audit requirements under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") and Rule 13p-1 and Form SD under the Securities Exchange Act of 1934, and all similar, applicable statutes and regulations, including due inquiry of Seller's supply chain (and certifications by such suppliers) identifying conflict minerals (as defined in Section 1502(e)(4) of the Dodd-Frank Act) contained in each product and the country of origin of such conflict minerals (or, following due inquiry, why such country of origin cannot be determined). Noncompliance with any element of this section is a default for purposes of the Termination for Default article of this Contract.

**e. U.S Government Subcontract**

The following notes applies to the clauses referenced below:

1. "Commercial Item" means a 'commercial item' as defined in FAR 2.101. All other contracts are considered 'Non-Commercial'.
2. "Contractor "and "Offeror" means Seller.
3. "Prime Contract" means the contract between WTX and the USG or between WTX and its higher-tier contractor in support of a prime contract with the USG.
4. "Subcontract" means Seller's subcontractor at any tier under this Contract.
5. In each FAR/DFARS clause as may be applicable, substitute "WTX" after "Government" or "United States" or "Contracting Agency", and "WTX Procurement Representative" for "Contracting Officer" or "ACO".
6. In each FAR/DFARS clause as may be applicable, Insert "and WTX" after "Government" or "Contracting Officer", as appropriate, throughout this clause.

The Contract Disputes Act shall not be applicable to the Contract. Any reference to a "Disputes" clause shall mean the Disputes clause of the Contract.

NOTE: the below clauses relate to FFP (Firm Fixed Price) type contracts.

## **Section 1 - Non Commercial Items**

### **1.1. FAR/DFARS clauses flowdown**

**52.204-2 SECURITY REQUIREMENTS** - Applies if the Work requires access to classified information

**52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL** - Applies where SELLER will have physical access to a Federally-controlled facility or access to a Federal information system.

**52.211-5 MATERIAL REQUIREMENTS**

**52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENT**

**52.214-26 AUDIT AND RECORDS- SEALED BIDDING** – applies for awards made under sealed bidding

**52.214-27 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS – SEALED BIDDING**

**52.214-28 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS – SEALED BIDDING**

**52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA**

Rights and obligations under this clause shall survive completion of the Work and final payment.

**52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS**

Rights and obligations under this clause shall survive completion of the Work and final payment.

**52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS**

**52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS**

**52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA**

**52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS**

**52.222-1 NOTICE OF GOVERNMENT LABOR DISPUTES**

**52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT**

**52.222-21 PROHIBITION OF SEGREGATED FACILITIES** – *Not Applicable for Non-U.S Contractors (\*)*

(\*) This clause apply to this Contract, if Work under the Contract will be performed in the US or Seller recruits employees in the US to Work on the Contract

**52.222-26 EQUAL OPPORTUNITY** - *Not Applicable for Non-U.S Contractors (\*)*

(\*) This requirement is part of (22.810) the Equal Employment Opportunity law (Executive Order 11246) pertaining to nondiscrimination in employment by contractors. Applicability (22.807 (b)(2)) - the Equal Employment Opportunity requirements DON'T apply for work outside the United States, by employees not recruited in the United States.

**52.222-41 SERVICE CONTRACT ACT OF 1965** *Not Applicable for Non-U.S Contractors (\*)*

(\*) applies if this Contract is for services subject to the Service Contract Act. Applicability: only to subcontracts subject to the SCA, and accordingly doesn't apply to contracts performed outside the US

**52.222-50 COMBATING TRAFFICKING IN PERSONS**

**52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION:** *Not Applicable for Non-U.S Contractors (\*)*

**52.223-6 Drug Free Work Place.**

**52.223-11 OZONE-DEPLETING SUBSTANCES – *Not Applicable for Non-U.S Contractors (\*)***

(\*) Applies if the Work was manufactured with or contains ozone-depleting substances when any work under the Purchase Order will be performed in the United States.

**52.224-2 / 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA –**  
applies if this contract involves hazardous materials**52.225-1 BUY AMERICAN ACT—SUPPLIES** - Applies if the Work contains other than domestic components**52.225-5 TRADE AGREEMENTS-** applies if the Work contains other than domestic components**52.225-8 DUTY FREE ENTRY** - Applicable to Purchase Orders for supplies that may be imported into the US.**52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**

**52.227-1 AUTHORIZATION AND CONSENT AND Alternate I** - Applies only if the Prime Contract contains this clause. Include Alternate I if it is included in the prime contract. These clauses relate to authorization on usage of US patents. They are prohibited in Purchase Orders when both complete performance and delivery are outside the United States and may require pre approval by the contracting officer.

**52.227-9 REFUND OF ROYALTIES**

**52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER** - Applies if the Work or any patent application may cover classified subject matter

**52.227-11 PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR** – applies (refer to 27.303 (b)(1)) unless an alternative Patent Rights Clause applies to this contract. An alternative clause can be applied for DOD contracts other than for small business (in such DoD contracts 27.303 (d) allows use of **252.227-7038**). Additionally, FAR 52.227-13 applies in lieu of 52.227-11 if SELLER is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government.

**52.227-13 PATENT RIGHTS-OWNERSHIP BY THE GOVERNMENT** – applies if this Contract is for experimental, developmental or research work and Seller is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government.

**52.227-14 RIGHTS IN DATA – GENERAL** - Does not apply if DFARS 252.227-7013 applies).

**52.228-3 WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT)**

**52.228-5 INSURANCE – WORK ON A GOVERNMENT INSTALLATION** Applies if this Contract involves Work on a Government installation

**52.229-6 TAXES – FOREIGN FIXED PRICE CONTRACTS**

**52.230-2 COST ACCOUNTING STANDARDS** - full CAS Coverage applies unless an exception has been granted.

**52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES** applies only when referenced in this or in a higher tier contract that modified CAS coverage applies.

**52.230-4 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES FOR CONTRACTS AWARDED TO FOREIGN CONCERNS** - applies only when referenced in this Contract or a higher tier contract that modified CAS coverage applies.

**52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS** - applies if FAR 52.230-2, FAR 52.230-3, FAR 52.230-4 or FAR 52.230-5 applies.

**52.233-3 PROTEST AFTER AWARD** and Stop Work procedure pursuant to FAR 33.1 In the event Buyer's customer has directed Buyer to stop performance of the work under which this Contract is issued

pursuant to FAR 33.1, Buyer may direct Seller to stop performance of the work called for by this Contract. In paragraph (f) add after "33.104(h) (1)" the following: "and recovers those costs from WTX"

## **52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION**

### **52.242-15 STOP-WORK ORDER**

### **52.243-1 CHANGES - FIXED PRICE**

### **52.246-2 INSPECTION OF SUPPLIES - FIXED PRICE**

### **52.246-4 INSPECTION OF SERVICES - FIXED PRICE**

**52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS** – applies to Orders that involve international air transport

**52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS** This clause applies to subcontracts for "Commercial Items" when the Prime Contract is not for a Commercial Item. This clause prescribes 9 mandatory FAR flow-downs applicable to all subcontracts for commercial items at all tiers.

**52.245-1 GOVERNMENT PROPERTY** applicable if the Seller uses any Government Property

### **52.245-17 Special Tooling**

### **52.245-18 Special Test Equipment**

### **52.246-16 RESPONSIBILITY FOR SUPPLIES**

### **52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS**

**52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)** –Insert "or WTX" after "Government" in this clause in paragraphs (b)(4) and (b)(6), it applies to all of paragraph (b)(8) and it applies to the second time "Government" appears in paragraph (d). In paragraph (n) "Government" means "WTX and the Government". In paragraph (c) "120 days" is changed to "60 days." In paragraph (d) "15 days" is changed to "30 days," and "45 days" is changed to "60 days." In paragraph (e) "1 year" is changed to "6 months." Paragraph (j) is deleted. In paragraph (l) "90 days" is changed to "45 days." Settlements and payments under this clause may be subject to the approval of the USG Contracting Officer.)

**52.249-8 DEFAULT (FIXED PRICE SUPPLY AND SERVICE)** - Substitute "WTX" for "Government" or "United States" or "Contracting Officer" throughout this clause, except for paragraph (c). Insert "or ESA" after the second and third time "Government" appears in paragraph (e). Timely performance is a material element of this Contract.

**252.204-7000 Disclosure of Information** - applies to Purchase Orders when Seller will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.

**252.204-7008 REQUIRMENTS FOR CONTRACTS INVOLVING EXPORT-CONTROLLED ITEMS** –Note: Israel is a Qualified Country

**252.211-7003 ITEM IDENTIFICATION AND VALUATION** - Applies if this Contract requires the Work to contain unique item identification (UID).

**252.215-7000 PRICING ADJUSTMENTS** - Applies if FAR 52.215-12 or 52.215-13 applies to this Contract

### **252.215-7002 COST ESTIMATING SYSTEM REQUIREMENTS**

**252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN** Not Applicable for Non-U.S Contractors (\*)

The Seller's subcontracting plan is incorporated herein by reference. (\*) Applies if FAR 52.219-9 applies to this Contract. The Small Business Subcontracting Program (FAR 19.9, 52.219-9) requires Subcontracting Plans; however they are NOT required for contracts that will be performed entirely outside of the United States (FAR 19.701 (c) (3))

**DFARS 252.222-7006 RESTRICTION ON THE USE OF MANDATORY ARBITRATION AGREEMENTS-**  
The certification in paragraph (b)(2) applies to both Seller in its own capacity and to Seller's covered subcontractors.)

**252.223-7001 HAZARD WARNING LABELS** - applies for goods that require submission of hazardous material data sheets (see FAR 23.302(c).

**252.223-7002 SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVE** – applies only if the articles furnished under this Contract contain ammunition or explosives, including liquid and solid propellants.

**252.223-7003 CHANGE IN PLACE OF PERFORMANCE AMMUNITION AND EXPLOSIVES**

**DFARS 252.223-7007 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES** - Applies if this Contract is for the development, production, manufacture, or purchase of arms, ammunition, and explosives or when arms, ammunition, and explosives will be provided to SELLER as Government Furnished Property.

**252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM**

**252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS** Applies to orders that may require, a Seller to treat or dispose of non-DoD-owned toxic or hazardous materials

**252.225-7001 BUY AMERICA ACT AND BALANCE OF PAYMENTS PROGRAM CERTIFICATE** – Not Applicable for Non-U.S Contractors –

(\*) Applies for US companies and if the Work contains other than domestic components. Applies in lieu of FAR 52.225-1.

**252.225-7002 Qualifying Country Sources as Subcontractors**

**252.225-7007 PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES** -. Applies if Seller is supplying items on the U.S. Munitions list.

**252.225-7008 RESTRICTION ON ACQUISITION OF SPECIALTY METALS** – note that Israel is a Qualified Country. Applicable to Purchase Orders for the delivery of specialty metals as end items or to the extent necessary to ensure compliance of the end products that Buyer will deliver to the Government when DFARS clause 252.225-7009 is in the prime contract.

**252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS**, Applicable to orders for items containing specialty metals to the extent necessary to ensure compliance of the end products that Buyer will deliver to the Government.

**252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES**

**252.225-7013 DUTY FREE ENTRY** – Not Applicable for Non-U.S Contractors

The prime contract number and identity of the Contracting Officer are contained elsewhere in this contract. If this information is not available, contact ESA's Procurement Representative

**252.225-7014 Preference for Domestic Specialty Metals** and Alternate I are applicable to orders for items containing specialty metals that the Buyer will deliver to the Government under prime contracts awarded before July 29, 2009 and that do not specifically incorporate a different specialty metals clause

**252.225-7016 RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS** Applies if Work supplied under this Contract contains ball or roller bearings

**252.225-7025 Restriction on the Acquisition of Forgings**

**252.225-7027 Restriction on Contingent Fees for Foreign Military Sales**



**252.225-7028 Exclusionary Policies and Practices of Foreign Governments** - Applicable only to orders under international military education training and FMS prime contracts.

**252.225-7021 TRADE AGREEMENTS** Applies if the Work contains other than U.S.-made, qualifying country, or designated country end products. Applies in lieu of FAR 52.225-5. Note: Israel is a qualifying country.

**252.225-7032 and 7033 WAIVER OF UNITED KINGDOM LEVIES EVALUATION OF OFFERS** Applies if this Contract is with a United Kingdom firm

**252.225-7037 Duty Free Entry – Eligible End Products**

**252.225-7043 ANTI-TERRORISM/FORCE PROTECTION FOR DEFENSE CONTRACTORS OUTSIDE THE US**

**252.227-7013 RIGHTS IN TECHNICAL DATA - NON-COMMERCIAL ITEMS** - applies to solicitations and resulting contracts when Seller's technical data will be provided to Buyer for delivery to the USG. Applies in lieu of FAR 52.227-13.

**252.227-7014 RIGHTS IN NON-COMMERCIAL COMPUTER SOFTWARE AND NON-COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION** - Applies to solicitations and resulting contracts when Seller may deliver computer software or computer software documentation to Buyer for delivery to USG. Applies in lieu of FAR 52.227-14.

**252.227-7015 Technical Data - Commercial items**

**252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION** – Applicable to solicitations and resulting contracts that will include DFARS clause 252.227-7013, 252.227-7014, or 252.227-7018

**252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions** - Applicable to solicitations and resulting contracts that will include DFARS 252.227-7013, 252.227-7014, or 252.227-7018

**252.227-7018 RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE-SMALL BUSINESS INNOVATION RESEARCH (SBIR)**

**252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE**

**252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS**

**252.227-7026 DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE**

**252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE**

**252.227-7028 TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED** The definitions for "contract" and "subcontract" shall not apply herein, except for the first reference to contract.

**252.227-7030 TECHNICAL DATA - WITHHOLDING OF PAYMENT** - Applicable to solicitations and resulting contracts that include DFARS clause 252.227-7013 or 252.227-7018

**252.227-7032 Rights in Technical Data and Computer Software (Foreign).**

**252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA**

**252.227-7038 PATENT RIGHTS - OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS)**

**252.228-7001 Ground and Flight Risk** – applicable only to contracts involving acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft

**252.228-7005 ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES**

**DFARS 252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES** Applies if this Contract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system. Seller shall provide notifications to WTX and the contracting officer identified to Seller.)

**252.227-7015 Technical Data – Commercial Items** - Applicable when technical data related to commercial items developed at private expense will be provided under this contract to Buyer for delivery to the Government.

**252.231-7000 SUPPLEMENTAL COST PRINCIPLES** Applicable for contracts that are subject to the principles in FAR subparts 31.1, 31.2, 31.6, or 31.7

**252.235-7003 FREQUENCY AUTHORIZATION** Applies if this Contract requires developing, producing, constructing, testing, or operating a device requiring a frequency authorization

**252.243-7001 PRICING OF CONTRACT MODIFICATIONS**

**252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DoD)**

**252.246-7001 WARRANTY OF DATA, ALTERNATE II** - applies when the prime contract include DFARS 252.227-7013

**I (a). Additional clauses applicable to Contracts whose value exceeds \$ 10,000**

**52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES** - Not Applicable for Non-U.S. Contractors (\*)

(\*)This clause apply(52.222-36 (d)) to this Contract, if Work under the Contract will be performed in the US or Seller recruits employees in the US to Work on the Contract

**I (b). Additional clauses applicable to Contracts whose value exceeds \$ 25,000**

**52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS** -

If Seller meets the thresholds specified in paragraphs (c)(2) and (d) of the clause, he shall report required executive compensation by posting in Government's Central Contractor Registration (CCR) database at <http://www.ccr.gov> . All information posted will be available to the general public

**52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment** – applicable for each proposed subcontract exceeding \$ 30,000 other than for COTS items. Seller agrees it is not debarred, suspended, or proposed for debarment by the Federal Government. Seller shall disclose to Buyer, in writing, whether as of the time of award of this contract, Seller or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

**I (c). Additional clauses applicable to Contracts whose value exceeds \$ 100,000**

**52.222-35 EQUAL OPPORTUNITY FOR VETERANS** - Not Applicable for Non-U.S Contractors.

**52.222-37 EMPLOYMENT REPORTS ON VETERANS** - Not Applicable for Non-U.S Contractors.

**I (d). Additional clauses applicable to Contracts whose value exceeds \$ 150,000 (the Simplified Acquisition Threshold)**



**52.203-3 GRATUITIES****52.203-5 COVENANT AGAINST CONTINGENT FEES****52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT****52.203-7 ANTI-KICKBACK PROCEDURES****52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY****52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

**52.215-2 AUDIT AND RECORDS-NEGOTIATION** - applies if Seller is required to furnish cost or pricing data, funding, or performance reports, or this is an incentive or redeterminable type.

**52.215-14 INTEGRITY OF UNIT PRICES****52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS** - Not Applicable for Non-U.S Contractors

(\*)

(\*) As prescribed in 19.704 (a)(9) each subcontractor will include the clause at 52.219-8, Utilization of Small Business Concerns in all lower tier subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 to adopt a plan that complies with the requirements of the clause at 52.219-9, Small Business Subcontracting Plan. The Small Business Subcontracting Program (FAR 19.9, 52.219-9) requires Subcontracting Plans; however they are NOT required for contracts that will be performed entirely outside of the United States (FAR 19.701 (c) (3))

**52.244-5 COMPETITION IN SUBCONTRACTING****FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING** - Not Applicable for Non-U.S Contractors

Applies if this Contract exceeds \$3,000 and only if Work under the Contract will be performed in the US.

**52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -OVERTIME COMPENSATION** - Not Applicable for Non-U.S Contractors

Applicable to Purchase Orders that (i) require or involve the employment of laborers and mechanics at any tier and (ii) when any work under the Purchase Order will be performed in the United States.

**52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT** - Not Applicable for Non-U.S Contractors

This clause apply to this Contract, if Work under the Contract will be performed in the US or Seller recruits employees in the US to Work on the Contract

**52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT****52.227-3 Patent Indemnity****52.242-13 BANKRUPTCY****52.248-1 VALUE ENGINEERING****252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES****252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY GOVERNMENT OF TERRORIST COUNTRY**

**52.247-7023 TRANSPORTATION OF SUPPLIES BY SEA** Applies in lieu of FAR 52.247-64 in all Contracts for ocean transportation of supplies. Paragraph (f) and (g) shall not apply if this Contract is at or below \$150,000.

**DFARS 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA** - Applicable if this

**I (e). Additional clauses applicable to Contracts whose value exceeds \$ 550,000-700,000**

**252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIANOWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS- DOD CONTRACTS -**  
Applies if the Contract exceeds \$ 550,000.

**52.219-9 or 52.219-7003 (DoD Contracts) SMALL BUSINESS SUBCONTRACTING PLAN** Not Applicable for Non-U.S Contractors

The Seller's subcontracting plan is incorporated herein by reference. The Small Business Subcontracting Program (FAR 19.9, 52.219-9) requires Subcontracting Plans; however they are NOT required for contracts that will be performed entirely outside of the United States (FAR 19.701 (c) (3)).

**DFARS 252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REEDUCTION** - Applies if this Contract exceeds \$650,000. Substitute WTX for Contracting Officer and ACO. Delete paragraph (d) (1) and the first five words of paragraph (d) (2).

**52.215-12 SUBCONTRACTOR COST OR PRICING DATA** - applies if this Contract exceeds \$700,000 and is not otherwise exempt under FAR 15.403

**52.215-13 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS**

**52.215-23 LIMITATION ON PASS-THROUGH CHARGES**

**252.225-7006 QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE US** Paragraph (f) is deleted

**I (f). Additional clauses applicable to Contracts whose value exceeds \$ 1,500,000 or \$ 5,000,000**

**252.211-7000 ACQUISITION STREAMLINING** – applicable for Contracts above \$ 1,500,000

**52.203-13 and DFARS 252.203-7003 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT** applicable above \$ 5,000,000 Disclosures made under this clause shall be made directly to the Government

**52.203-14 or DFARS 252.203-7004 DISPLAY OF HOTLINE POSTERS** - Not Applicable for Non-U.S Contractors Applies to subcontracts exceeding \$ 5,000,000 unless they are for commercial items or performed entirely outside the United States (52.203-14 (b)(1)).

## **1.2 Certifications and Representations (non Commercial)**

The clauses listed below contain certifications and representations that are material representations of fact upon which Whistler will rely in making awards to Seller in support of a US Government contract.

By submitting its offer, or accepting any Contract from WTX, Seller certifies its compliance and/or duly submittal of the representations and certifications as set forth below in this clause. Seller shall immediately notify WTX of any change of status with regard to these certifications and representations.

The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to this Contract and any associated purchase orders.

### **(a) Certifications applicable for every Contract**

#### **1. FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions - (Applicable to solicitations and contracts exceeding \$150,000)**

(a) Definitions. As used in this provision--

"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).

The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) Certification. Seller hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract. 11

(d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, Seller shall complete and submit, with its offer, to ESA OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Seller need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

#### **2. FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters**

(a)(1) Seller certifies, to the best of its knowledge and belief, that--

(i) Seller and/or any of its Principals--

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

(ii) Seller has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(D) Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples. (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to 12 further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(2) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment; and similar positions).

(b) Seller shall provide immediate written notice to Whistler Technology Ltd if, at any time prior to contract award, Seller learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that Seller knowingly rendered an erroneous certification, in addition to other remedies available, Whistler Technology Ltd may terminate this contract for default.

**(b) Certifications applicable for US suppliers - Not Applicable for Non-U.S Contractors (\*)**

**3. FAR 52.222-22 Previous Contracts and Compliance Reports**

(a) Seller represents that if Seller has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26): (a) Seller has filed all required compliance reports and (b) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(b) Paragraph (a) applies only to the extent (1) Seller performs work in the United States, or (2) recruits employees in the United States to Work on this Contract.

**4. FAR 52.222-25 Affirmative Action Compliance**

(a) Seller represents: (a) that Seller has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) that in the event such a program does not presently exist, Seller will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.

(b) Paragraph (a) applies only to the extent (1) Seller performs work in the United States, or (2) recruits employees in the United States to Work on this Contract.

**(c) Other Certifications applicable – applicability as specifically defined below**

**52.230-1 Cost Accounting Standards (CAS) Notices and Certification:** to the extent that Seller is not exempt from CAS requirements, the "Cost Accounting Standards Notices and Certification" in the form provided in 52.230-1 shall be completed by Seller, as applicable for each Seller.

Applicability: Any contract in excess of \$700,000 will be subject to Cost Accounting Standards Board (48 CFR Chapter 99) requirements, unless an exemption is applicable per 48 CFR Subpart 9903.201-1. Specifically, Non US Suppliers are subject to modified CAS coverage: i.e. CAS 401 and 402 only as defined in FAR 52.230-4.

**15.403-4 Certificate of Current Cost or Pricing Data:** Seller's certification that the cost or pricing data (as defined in FAR 2.101 and required under FAR 15.403-4) as submitted is accurate, complete and current.

Applicability: for any proposal or contract exceeding the threshold of \$700,000, unless an exception under 15.403-1(b) applies (most commonly competition or Commercial item).

**Certification Regarding Political Contributions, Fees, and Commissions** Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act. In compliance with 22 C.F.R. 130, neither Seller nor its subcontractors at any tier have paid, offered or agreed to pay, or will pay or offer or agree to pay, in respect to the Work which is to be provided to Buyer under any Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.

**Certification of Toxic Chemical Release Reporting (FAR 52.223-13) - *Not Applicable for Non-U.S Contractors*** - applicable to contracts which exceed \$100,000. (Note that the Seller is exempt from the form filling requirement under this Certification when the facility is not located in the United States)

**1.3 Truth in Negotiations (TINA) – Certified Cost and Pricing Data****Additional Requirements for sole-source non-commercial subcontracts exceeding \$700,000****1. Proposal Phase**

Unless exempt under FAR Part 15.403 (typically for contracts awarded under competition or for commercial items), Seller shall submit a FAR Part 15 compliant cost proposal (complying with the instructions in FAR 15.408 Table 15-2) which shall be updated throughout the negotiation process.

At the conclusion of negotiations, and regardless of any prior certification, Seller must certify as to the accuracy, currency and completeness of its information in accordance with the FAR 15.406-2 required Certificate of Current Cost or Pricing Data.

**2. Indemnification**

If any price (including profit or fee) negotiated in connection with the prime contract between the Government and the Buyer or any cost that is reimbursable under said contract is reduced because cost or pricing data furnished by the Seller in connection with any proposal submitted by the Buyer relating to said contract or in connection with this Purchase Order was not accurate, complete, or current, the Seller shall indemnify the Buyer in the amount of said reduction, plus simple interest and penalty equal to the amount of the overpayment, if the Seller knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current.

**3. Contract Changes**

When pricing any contract changes, Seller shall submit the cost and pricing for any change or other modification to this contract which involves increases and/or decreases in costs and profit expected to exceed the threshold for submission of cost or pricing data, and shall certify that the data accordingly.



## **Section II - Commercial Item Contracts**

### **2.1 FAR/DFARS flowdown clauses**

**52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS** – the clause provides general terms and conditions applicable for acquisition of Commercial Items. This clause applies to all subcontracts when the Prime Contract is for "commercial Item".

**52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS** – the clause provides applicable FAR provisions to acquisitions of commercial Items. In sub-contracts for commercial items only the 8 mandatory flow-down clauses listed in 52.212-5 (e)(1) shall apply to all sub contractors at all tiers. These clauses are listed directly below this clause. Other FAR clauses from 52.212-5 (a), (b), (c) and (d) shall apply if included in the Prime Contract.

**52.222-26 EQUAL OPPORTUNITY** *Not Applicable for Non-U.S Contractors (\*)*

(\*) This requirement is part of (22.810) the Equal Employment Opportunity law (Executive Order 11246) pertaining to nondiscrimination in employment by contractors. Applicability (22.807 (b)(2)) - the Equal Employment Opportunity requirements DON'T apply for work outside the United States, by employees not recruited in the United States.

**52.222-35 EQUAL OPPORTUNITY FOR VETERANS** - *Not Applicable for Non-U.S Contractors (\*)*

(\*) Applicability (52.222-35 (6)): This clause apply to this Contract, if Work under the Contract will be performed in the US or Seller recruits employees in the US to Work on the Contract

**52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES** - *Not Applicable for Non-U.S Contractors*

Applicability (per 52.222-36 (d)): This clause apply to this Contract, if Work under the Contract will be performed in the US or Seller recruits employees in the US to Work on the Contract

**52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT** *Not Applicable for Non-U.S Contractors (\*)*

(\*) This clause apply to this Contract, if Work under the Contract will be performed in the US or Seller recruits employees in the US to Work on the Contract

**FAR 52.222-41 SERVICE CONTRACT ACT OF 1965** - *Not Applicable for Non-U.S Contractors (\*)*

Applies if this Contract is for services subject to the Service Contract Act. (\*) Applicability: only to subcontracts subject to the SCA, and accordingly doesn't apply to contracts performed outside the US.

**FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS**

**FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION** - *Not Applicable for Non-U.S Contractors (\*)*

Applies if this Contract exceeds \$3,000, except for commercial services that are part of the purchase of a COTS item. (\*) This clause apply to this Contract, if Work under the Contract will be performed in the US or Seller recruits employees in the US to Work on the Contract

**FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS**

**52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment** – applicable for each proposed subcontract exceeding \$ 30,000 other than for COTS items. Seller agrees it is not debarred, suspended, or proposed for debarment by the Federal Government. Seller shall disclose to Buyer, in writing, whether as of the time of award of

this contract, Seller or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

**52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS -** applies if the Contract exceeds \$ 150,000.

**52.203-13 and DFARS 252.203-7003 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT** Applicable above \$ 5,000,000, disclosures made under this clause shall be made directly to the Government.

**52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL** - Applies where SELLER will have physical access to a federally-controlled facility or access to a Federal information system.

**52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS -** If Seller meets the thresholds specified in paragraphs (c)(2) and (d) of the clause, he shall report required executive compensation by posting in Government's Central Contractor Registration (CCR) database at <http://www.ccr.gov> . All information posted will be available to the general public

**52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA**

**52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS**

**52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS - *Not Applicable for Non-U.S Contractors (\*)***

As prescribed in 19.704 (a)(9) each subcontractor will include the clause at 52.219-8, Utilization of Small Business Concerns in all lower tier subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 to adopt a plan that complies with the requirements of the clause at 52.219-9, Small Business Subcontracting Plan.

(\*) The Small Business Subcontracting Program (FAR 19.9, 52.219-9) requires Subcontracting Plans; however they are NOT required for contracts that will be performed entirely outside of the US (FAR 19.701 (c) (3))

**52.222-21 PROHIBITION OF SEGREGATED FACILITIES - *Not Applicable for Non-U.S Contractors (\*)***

(\*) This clause apply to this Contract, if Work under the Contract will be performed in the US or Seller recruits employees in the US to Work on the Contract

**52.223-11 OZONE-DEPLETING SUBSTANCES – *Not Applicable for Non-U.S Contractors (\*)***

Applies if the Work was manufactured with or contains ozone-depleting substances when any work under the Purchase Order will be performed in the United States.

**52.225-1 BUY AMERICAN ACT—SUPPLIES** Applies if the Work contains other than domestic components

**52.225-5 TRADE AGREEMENTS** - applies if the Work contains other than domestic components

**52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**

**52.227-19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS**

**52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS** This clause applies to subcontracts for "Commercial Items" when the Prime Contract is not for a Commercial Item. This clause prescribes 9 mandatory FAR flow-downs applicable to all subcontracts for commercial items at all tiers.

**52.245-1 GOVERNMENT PROPERTY** applicable if the Seller uses any Government Property

**252.204-7008 REQUIRMENTS FOR CONTRACTS INVOLVING EXPORT-CONTROLLED ITEMS –Note:** Israel is a Qualified Country

**252.211-7003 ITEM IDENTIFICATION AND VALUATION** Applies if this Contract requires the Work to contain unique item identification (UID).

**252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM**

**252.225-7001 BUY AMERICA ACT AND BALANCE OF PAYMENTS PROGRAM CERTIFICATE** – Not Applicable for Non-U.S Contractors.

Applies for US companies and if the Work contains other than domestic components. Applies in lieu of FAR 52.225-1.

**252.225-7007 PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES** - applies if Seller is supplying items on the U.S. Munitions list.

**252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS**, Applicable to orders for items containing specialty metals to the extent necessary to ensure compliance of the end products that Buyer will deliver to the Government.

**252.225-7021 TRADE AGREEMENTS** - applies if the Work contains other than U.S.-made, qualifying country, or designated country end products. Note: Israel is a Qualified Country. Applies in lieu of FAR 52.225-5

**252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS- DOD CONTRACTS.**  
Applies if the Contract exceeds \$ 500,000.

**252.227-7013 RIGHTS IN TECHNICAL DATA - NON-COMMERCIAL ITEMS** - applies to solicitations and resulting contracts when Seller's technical data will be provided to Buyer for delivery to the USG. Applies in lieu of FAR 52.227-13.

**252.227-7014 RIGHTS IN NON-COMMERCIAL COMPUTER SOFTWARE AND NON-COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION** - Applies to solicitations and resulting contracts when Seller may deliver computer software or computer software documentation to Buyer for delivery to USG. Applies in lieu of FAR 52.227-14.

**252.227-7015 Technical Data – Commercial Items** - Applicable when technical data related to commercial items developed at private expense will be provided under this contract to Buyer for delivery to the Government.

**252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE**

**252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA**

**252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES** - Applies if this Contract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system. Seller shall provide notifications to WTX and the contracting officer identified to Seller.

**252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA** - Applies in lieu of FAR 52.247-64 in all Contracts for ocean transportation of supplies. Paragraph (f) and (g) shall not apply if this Contract is at or below \$150,000.

**252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION** - Applies if this Contract exceeds \$650,000. Substitute WTX for Contracting Officer and ACO. Delete paragraph (d) (1) and the first five words of paragraph (d) (2).

## **2.2 Certifications and Representations (Commercial Items)**

The clauses listed below contain certifications and representations that are material representations of fact upon which Whistler will rely in making awards to Seller in support of a US Government contract.

By submitting its offer, or accepting any Contract from WTX, Seller certifies its compliance and/or duly submittal of the representations and certifications as set forth below in this clause. Seller shall immediately notify WTX of any change of status with regard to these certifications and representations.

The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to this Contract and any associated purchase orders.

### **(a) Certifications applicable for every Contract**

#### **1. FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions - (Applicable to solicitations and contracts exceeding \$150,000)**

(a) Definitions. As used in this provision--

"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).

The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) Certification. SELLER hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract. 11

(d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, SELLER shall complete and submit, with its offer, to ESA OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Seller need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

#### **2. FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters**

(a)(1) Seller certifies, to the best of its knowledge and belief, that--

(i) Seller and/or any of its Principals--

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

(ii) Seller has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(D) Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples. (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

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(2) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment; and similar positions).

(b) Seller shall provide immediate written notice to Whistler Technology Ltd if, at any time prior to contract award, Seller learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that Seller knowingly rendered an erroneous certification, in addition to other remedies available, Whistler Technology Ltd may terminate this contract for default.

#### **(b) Certifications applicable for US suppliers - Not Applicable for Non-U.S Contractors (\*)**

### **3. FAR 52.222-22 Previous Contracts and Compliance Reports**

(a) Seller represents that if Seller has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26): (a) Seller has filed all required compliance reports and (b) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

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### **4. FAR 52.222-25 Affirmative Action Compliance**

(a) Seller represents: (a) that Seller has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) that in the event such a program does not presently exist, Seller will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.

(b) Paragraph (a) applies only to the extent (1) Seller performs work in the United States, or (2) recruits employees in the United States to Work on this Contract.

