

**3M COMPANY – US GOV-U  
ORDERS/SUBCONTRACTS –  
FEDERAL ACQUISITION REGULATION (FAR) AND DEFENSE FEDERAL ACQUISITION REGULATION  
SUPPLEMENT (DFARS) - FLOW-DOWN CLAUSES FOR PURCHASE OF COMMERCIAL ITEMS  
IN SUPPORT OF U.S. GOVERNMENT CONTRACTS**

**A. U.S. GOVERNMENT SUBCONTRACT**

This purchase order (“**Order**”) is entered into by the parties as a subcontract in support of a U.S. Government Prime Contract.

Whenever the term “**3M**” is used in this Form US GOV-U, it means 3M Company, the buyer of the goods and/or services purchased under this Order.

Whenever the term “**Seller**” or “**Supplier**” is used in this Form US GOV-U, it means the party identified on the face of this Order with whom 3M is contracting, acting as the immediate subcontractor to 3M, and that is furnishing to 3M the goods and/or services purchased under this Order.

Whenever the term “**Special Provisions**” is used in this Form US GOV-U, it means the additional clauses attached to or otherwise incorporated in this Order, which are not included in this Form US GOV-U, that are required to be included in this Order in accordance with the terms and conditions of 3M’s Government Prime Contract.

Whenever the term “**Prime Contract**” is used in this Form US GOV-U, it means the contract between 3M and the Government, or the higher-tier subcontract issued to 3M by a Government prime contractor that has a contract directly with the Government, or the subcontract issued to 3M by a higher-tier subcontractor, respectively.

Whenever the term “**Government**” is used in this Form US GOV-U, it means the U.S. Government.

**B. INCORPORATION OF FAR AND DFARS CLAUSES**

“**FAR**” means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.

“**DFARS**” means the Defense Federal Acquisition Regulation Supplement, issued as Chapter 2 of Title 48, Code of Federal Regulations.

The FAR clauses referenced below and, if this Order is issued under a U.S. Department of Defense Prime Contract, the DFARS clause referenced below, including any explanatory notes following the clause citations, and related Certifications and Representations set forth below, shall apply to this Order and are incorporated by reference into this Order with the same force and effect as if they were given in full text. The FAR and DFARS clauses may be found at <http://farsite.hill.af.mil/farsite.html>.

As used in the FAR and DFARS clauses referenced below and in any other FAR and DFARS clauses included in this Order:

1. The term “**commercial item**” means a commercial item as defined in FAR 2.101.

2. The terms “**commercially available off-the-shelf item**” and “**COTS item**” mean a “commercially available off-the-shelf (COTS) item” as defined in FAR 2.101.

3. The term "**contract**" means this Order.

4. The term "**Contracting Officer**" means the Government Contracting Officer for 3M’s Government Prime Contract under which this Order is issued or, if this Order is a subcontract entered into under a higher-tier subcontract awarded to 3M by a Government prime contractor, “Contracting Officer” means the Government Contracting Officer for the Government prime contractor’s Prime Contract.

5. The terms “**Contractor**” and “**Offeror**” mean the Seller, which is the party identified on the face of this Order with whom 3M is contracting, acting as the immediate subcontractor to 3M.

6. The term “**Government**” means the U.S. Government.

7. The term "**subcontract**" means any purchase order placed by Seller or its lower-tier subcontractors under this Order to furnish goods and/or services for performance of this Order.

The Contracts Disputes Act of 1978 shall have no application to this Order, and nothing in this Order provides Seller a direct claim or cause of action against the Government. Any reference to a "Disputes" clause in a FAR or DFARS clause shall mean the Dispute Resolution provision contained in 3M Purchase Order Terms Form 80-131 in this Order.

### **C. NOTES (Explanatory for applicability purposes)**

The following notes apply to the FAR and DFARS clauses incorporated by reference below only when the notes are specified in the parenthetical phrase following the clause title and date.

1. Substitute "3M" for "Government" or "United States" throughout this clause.

2. Substitute "3M Sourcing Representative" for "Contracting Officer" throughout this clause.

3. Insert "and 3M" after "Government" throughout this clause.

4. Insert "or 3M" after "Government" throughout this clause.

5. Communication/notification required under this clause from/to Seller to/from the Contracting Officer shall be through the 3M Sourcing Representative.

6. Insert "and 3M" after "Contracting Officer" throughout the clause.

7. Insert "or 3M Sourcing Representative" after "Contracting Officer" throughout the clause.

8.. This clause does not apply to work performed under this Order outside the United States by employees who were not recruited within the United States. For purpose of this clause, the term “United States” (U.S.) means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

### **D. PROVISIONS OF THE FEDERAL ACQUISITION REGULATION (FAR) INCORPORATED BY REFERENCE**

The following Federal Acquisition Regulation (“FAR”) clauses apply to this Order and are incorporated by reference:

**FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020)** (Applies if this Order is expected to exceed \$150,000)

**FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (JUN 2020)** (Applies if this Order exceeds \$6 million and the period of performance is more than 120 days. All disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.)

**FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (JUN 2020)** (Applies if this Order exceeds \$250,000.)

**FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)**

**FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUN 2020)** (Applies if this Order is a first-tier subcontract for \$30,000 or more. Subparagraph (d)(2) does not apply. If Seller meets the thresholds specified in paragraphs (d)(3) and (g)(2) of the FAR 52.204-10 clause, Seller shall report its required executive compensation by posting the information at <http://www.fsrs.gov> for this Order. All information posted will be available to the general public. In accordance with paragraph (a) of FAR 52.204-10, the term “first-tier subcontract” (1) means a subcontract awarded directly by 3M to Seller for the purpose of acquiring supplies or services (including construction) for performance of a Prime Contract directly between 3M and the Government, and (2) does not include 3M’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that would benefit multiple contracts and/or the costs of which are normally applied to 3M’s general and administrative expenses or indirect cost.)

**FAR 52.204-21 BASIC SAFEGUARDING OF COVERED SYSTEMS INFORMATION (JUN 2016)** (Applies to this Order when the Seller may have “Federal contract information” (as defined in the FAR 52.204-21 clause) residing in or transiting through its “information system” (as defined in the FAR 52.204-21 clause). Not applicable if this Order is solely for COTS items.)

**FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018)**

**FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 2020)** (Applies if this Order exceeds \$35,000 except it does not apply if this Order is for commercially-available-off-the-shelf items. Copies of notices provided by Seller to the Contracting Officer shall be provided to the 3M Sourcing Representative.)

**FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)** (Applies if this Order offers further subcontracting opportunities. If the Order (unless this Order is with a small business concern) exceeds \$700,000 (\$1.5 million for construction of any public facility) as required in FAR 52.219-9 (d) (9), the Seller must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities. Not applicable if this Order, together with all of its subcontracts, will be performed entirely outside of the United States and its outlying areas. For purpose of FAR 52.219-8, “United States” means the 50 States and the District of Columbia, and the term “outlying areas” means Puerto Rico, the Northern Mariana

Islands, American Samoa, Guam, the U.S. Virgin Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, the Midway Islands, Navassa Island., Palmyra Atoll and Wake Atoll.)

**FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES** (APR 2015) (Note 8 applies.)

**FAR 52.222-26 EQUAL OPPORTUNITY** (SEP 2016) (Note 8 applies)

**FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS** (JUN 2020) (Applies if this Order is for \$150,000 or more. Note 8 applies. Seller shall abide by the requirements of 41 CFR 60–300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered subcontractors and suppliers to employ and advance in employment qualified protected veterans.)

**FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES** (JUN 2020) (Applies if this Order is expected to exceed \$15,000. Note 8 applies. Seller shall abide by the requirements of 41 CFR 60–741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered subcontractors and suppliers to employ and advance in employment qualified individuals with disabilities.)

**FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS** (JUN 2020) (Applies if this Order is for \$150,000 or more. Note 8 applies.)

**FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT** (DEC 2010) (Applies if this Order exceeds \$10,000 and will be performed wholly or partially in the United States. For purposes of this clause, “United States” means the 50 States, the district of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

**FAR 52.222-41 SERVICE CONTRACT LABOR STANDARDS** (AUG 2018) (Applicable if this Order is subject to the Service Contract Labor Standards statute. The Service Contract Labor Standards statute applies to service contracts and subcontracts performed in the United States, the principal purpose of which is to furnish services in the United States through the use of service employees. For purposes of FAR 52.222-41, the term “United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*), but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession within a foreign country (29 CFR 4.112).) Each service employee employed in the performance of this Order by Seller or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in the wage determination attached to this Order. Seller shall indemnify, defend and hold 3M and its officers, directors and employees harmless for all losses, costs, claims, causes of action, damages, liabilities and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising out of or related to the failure of Seller or its subcontractors or suppliers at any tier to comply with the requirements of the Service Contract Labor Standards statute.)

**FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS** (OCT 2020) (Paragraphs (a) through (g) of this clause apply to this Order in all cases. Paragraph (h) of this clause applies only to any portion of this Order (if any) that (1) is for supplies, other than commercially available off-the-shelf (COTS) items, acquired outside the United States, or services to be performed outside the United States; and (2) has an estimated value that exceeds \$550,000.) (Note 2 applies. In paragraph (e), Note 3 applies.)

**FAR 52.222-51 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT – REQUIREMENTS** (MAY 2014) (See FAR 52.222-41 above for the applicable definition of “United States.”)

**FAR 52.222-53 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR CERTAIN SERVICES - REQUIREMENTS** (MAY 2014) (See FAR 52.222-41 above for the applicable definition of “United States.”)

**FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION** (OCT 2015) (Applies if this Order is for commercial or noncommercial services or construction, includes work performed in the United States, and exceeds \$3,500, except for commercial services or construction that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item. For purposes of FAR 52.222-54, the term “United States” means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.)

**FAR 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658** (NOV 2020) (Applies if this Order is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and if this Order is to be performed in whole or in part in the United States. See FAR 52.222-41 above for the applicable definition of “United States.”)

**FAR 52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706** (JAN 2017) (Applies if this Order is: (1) subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and (2) is to be performed in whole or in part in the United States. See FAR 52.222-41 above for the applicable definition of “United States.”)

**FAR 52.224-3 PRIVACY TRAINING** (JAN 2017) (Applies to this Order if Seller employees will (1) have access to a system of records; (2) create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) design, develop, maintain, or operate a system of records. In paragraph (d), Note 6 applies.)

**FAR 52.225-26 CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES** (OCT 2016) (Applies when work is performed outside the United States in areas of (1) combat operations, as designated by the Secretary of Defense; or (2) other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area.)

**FAR 52.227-1 AUTHORIZATION AND CONSENT** (JUN 2020) (Applies only if the Prime Contract contains this clause, this Order exceeds \$250,000, and performance and delivery are entirely within the U.S.)

**FAR 52.227-1 AUTHORIZATION AND CONSENT (Alternate I)** (APR 1984) (Applies only if the Prime Contract contains this clause, this Order exceeds \$250,000, and performance and delivery are entirely within the U.S.)

**FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT** (JUN 2020) (Note 5 applies.)

**FAR 52.227-14 RIGHTS IN DATA – GENERAL** (MAY 2014) (Applies if this Order is issued under a Prime Contract with a Government civilian agency when “technical data” and/or “computer software” (as those terms are defined in the FAR 52.227-14 clause) will be produced, furnished, or acquired under the Order. Does not apply if this Order is issued under a U.S. Department of Defense Prime Contract. DFARS 252.227-7015 and DFARS 252.227-7013 will apply instead.)

**FAR 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS** (DEC V 10\_Dec\_2021)

2013) (Applies only if the Prime Contract contains this clause and Seller is a domestic small business concern. Note 1 applies. This clause does not apply if 3M does not receive accelerated payments under the Prime Contract. Not all federal agencies provide accelerated payments.)

**FAR 52.242-15 STOP-WORK ORDER (AUG 1989) (Notes 1 and 2 apply.)**

**FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2020)**

**FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)**

(Applicable only if the supplies being transported by ocean vessel under this Order are: (1) items 3M is reselling or distributing to the Government without adding value. (Generally, the prime contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (2) shipped in direct support of U.S. military (a) contingency operations; (b) exercises; or (c) forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations. If this Order is issued under a U.S. Department of Defense Prime Contract, DFARS 252.247-7023, TRANSPORTATION OF SUPPLIES BY SEA – BASIC, applies in lieu of FAR 52.247-64.)

**NASA FARs 1852.246-74 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE**

(AUG 2020) (Applies only if the Prime Contract is with NASA and the contractor is supplying electronic parts under the contract). An “Electronic Part” is defined in the regulation as “a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or mission critical application (section 823 (d)(2) of Pub L. 115-10).”

#### **E. TERMINATION FOR 3M’S CONVENIENCE**

(a) 3M reserves the right to terminate this Order, or any part thereof, for its sole convenience. 3M shall terminate by delivering to Seller a notice of termination specifying the extent of termination and the effective date. In the event of such termination, the Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Order, the Seller shall be paid a percentage of the Order price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of 3M, using Seller’s standard record keeping system, have resulted from the termination. The Seller shall not be required to comply with the Government Cost Accounting Standards or FAR Part 31 cost principles for this purpose. This paragraph does not give 3M or the Government any right to audit Seller’s records. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(b) If this Order is terminated in whole or in part for 3M’s convenience, in no event shall 3M be liable for special, incidental, consequential or other indirect damages, lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any amount in excess of the total Order price.

(c) Seller's termination claim shall be submitted to the 3M Sourcing Representative within ninety (90) days from the effective date of the termination.

(d) If this Order is terminated in part for 3M’s convenience, Seller shall continue all work not terminated.

#### **F. TERMINATION FOR CAUSE (DEFAULT)**

(a) 3M may terminate this Order, or any part hereof, for cause in the event of any default by the Seller, or if the Seller fails to comply with any terms and conditions of this Order, or fails to provide 3M, upon request, with adequate assurances of future performance.

(b) In the event of termination for cause, 3M shall not be liable to the Seller for any amount for supplies or services not accepted, and the Seller shall be liable to 3M for any and all rights and remedies provided

by law and under this Order.

(c) If it is determined that 3M improperly terminated this Order for cause (default), such termination shall be deemed a termination for convenience.

**G. PROVISIONS OF THE DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS)  
INCORPORATED BY REFERENCE**

If this Order is issued in support of a U.S. Department of Defense Prime Contract, the following DFARS clauses apply to this Order and are incorporated by reference:

**DFARS 252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)**

**DFARS 252.204-7008 COMPLIANCE WITH SAFEGUARDING COVERED DEFENSE INFORMATION CONTROLS (OCT 2016)** (Applies if this Order is for “operationally critical support,” or for which subcontract performance will involve “covered defense information,” as those terms are defined in DFARS 252.204-7008.)

**DFARS 252.204-7009 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION** (OCT 2016) (Applies if this Order is for services that include support for the Government’s activities related to safeguarding “covered defense information” (as defined in the DFARS 252.204-7009 clause) and cyber incident reporting.)

**DFARS 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING** (DEC 2019) (Applies if this Order is for “operationally critical support,” or for which Order performance will involve “covered defense information” as those terms are defined in DFARS 252.204-7012. Seller shall rapidly report “cyber incidents” (as defined in DFARS 252.204-7012) directly to DoD at <http://dibnet.dod.mil> and to the 3M Sourcing Representative. The Seller shall notify the 3M Sourcing Representative when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of the DFARS 252.204-7012 clause. The Seller shall provide the incident report number, automatically assigned by DoD, to the 3M Sourcing Representative as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of the DFARS 252.204-7012 clause. Similarly, the Seller shall require its subcontractors, at all tiers, to (i) notify the Seller (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of the DFARS 252.204-7012 clause; and (ii) provide the incident report number, automatically assigned by DoD, to the Seller (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD, as required in paragraph (c) of the DFARS 252.204-7012 clause.

**DFARS 252.204-7014 LIMITATIONS ON THE USE OR DISCLOSURE OF INFORMATION BY LITIGATION SUPPORT CONTRACTORS** (MAY 2016) (Applies only if this Order requires Seller to provide litigation support in the form of administrative, technical, or professional services under this Order in support and for the U.S. Government during or in anticipation of such litigation.)

**DFARS 252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT** (MAY 2016)

**DFARS 252.211-7003 ITEM UNIQUE IDENTIFICATION AND VALUATION** (MAR 2016) (Applies if this Order requires the items to be delivered under this Order to contain unique item identification. Note 2 applies. Items subject to unique item identification are identified elsewhere in this Order. All reports required to be submitted under this clause shall be submitted to the 3M Sourcing Representative.)

**DFARS 252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM** (JUN 2013) (Note 2 applies.)

**DFARS 252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS** (DEC 2019) (Applies if the items to be delivered under this Order contain “specialty metals” (as defined in DFARS 252.225-7009). Paragraphs (d) and (e)(1) are deleted.)

**DFARS 252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES** (DEC 2017)

**DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA -- NONCOMMERCIAL ITEMS** (FEB 2014) (Applies whenever any technical data for noncommercial items or for commercial items developed in any part at Government expense is to be delivered under this Order for delivery to the Government under the Prime Contract. DFARS 252.227-7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and DFARS 252.227-7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.) (Applies instead of FAR 52.227-14, Rights in Data – General.)

**DFARS 252.227-7015 TECHNICAL DATA -- COMMERCIAL ITEMS** (FEB 2014) (Applies whenever any technical data pertaining to commercial items developed in any part at private expense will be delivered under this Order for delivery to the Government under the Prime Contract. DFARS 252.227-7015 will



govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and DFARS 252.227-7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.) (Applies instead of FAR 52.227-14, Rights in Data - General.)

**DFARS 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA** (SEP 2016)

(Applies if the delivery of technical data is required under this Order.)

**DFARS 252.239-7009 REPRESENTATION OF USE OF CLOUD COMPUTING** (SEPT 2015) (Applicable for the acquisition of commercial items)

**DFARS 252.239-7010 CLOUD COMPUTING SERVICES** (OCT 2016) (Applicable if this Order involves or may involve cloud services)

**DFARS 252.239-7018 SUPPLY CHAIN RISK** (FEB 2019) (Modified)

(a) This clause applies to Orders for the acquisition of Information Technology, whether acquired as a service or as a supply, that is a Covered System, is a part of a Covered System, or is in support of a Covered System, as defined in this clause.

(b) The Seller shall mitigate *Supply Chain Risk* in the provision of supplies and services to 3M and the Government.

(c) Definitions. As used in this clause:

(1) "*Covered System*" means a national security system, as that term is defined at 10 U.S.C. 2339a. It is any information system, including any telecommunications system, used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency:

(i) The function, operation, or use of which:

a. Involves intelligence activities;

b. Involves cryptologic activities related to national security;

c. Involves command and control of military forces;

d. Involves equipment that is an integral part of a weapon or weapons system; or

e. Is critical to the direct fulfillment of military or intelligence missions, but this does not include a system that is to be used for routine administrative and business applications, including payroll, finance, logistics, and personnel management applications; or

(ii) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

(2) "*Information Technology*" (see 40 U.S.C 11101(6)) means, in lieu of the definition at FAR 2.1, any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the Government agency.

(i) For purposes of this definition, equipment is used by a Government agency if the equipment is used by the Government agency directly or is used by a Contractor under a contract with the Government agency that requires—

a. Its use; or

b. To a significant extent, its use in the performance of a service or the furnishing of a product.

(ii) The term "*Information Technology*" includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(iii) The term "*Information Technology*" does not include any equipment acquired by a Contractor incidental to a contract.

(3) The term "*Supply Chain Risk*" means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a Covered System so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system (see 10 U.S.C. 2339a).

#### **DFARS 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (OCT 2020)**

**DFARS 252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013)** (Applies if this Order 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 the required notifications to 3M and the Contracting Officer identified to Seller by 3M.)

**DFARS 252.246-7007 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (AUG 2016)** (Applies if this Order is for electronic parts or assemblies containing electronic parts. The requirements in this clause apply in addition to those in DFARS 252.246-7008 below. The first sentence in DFARS 252.246-7007 is deleted in its entirety, which begins “The following paragraphs (a) through (e) of this clause do not apply unless the Contractor is subject to the Cost Accounting Standards”. Only paragraphs (a) through (e) of DFARS 252.246-7007 apply to this Order. In paragraph (c)(2), Note 3 applies. To the extent this clause conflicts with other provisions in this Order, this clause shall control. In addition, Section 8.3 e) of the 3M Purchase Order Terms Form 80-131 applicable to this Order prohibits any type of counterfeit Goods. In that Section 8.3 e), Seller is obligated to include the substance of certain identified sections in its lower-tier subcontracts and supplier agreements for procurement of all Goods, or items, materials or components used in Goods, for delivery to 3M. In any case where Seller is aware or becomes informed that a subcontractor or supplier refuses to accept flow down of these terms and conditions, Seller shall promptly notify the 3M Sourcing Representative and seek guidance.)

**DFARS 252.246-7008 SOURCING OF ELECTRONIC PARTS (MAY 2018)** (Applies if this Order is for electronic parts or assemblies containing electronic parts, including commercial items, unless the Seller is the original manufacturer. The requirements in this clause apply in addition to those in DFARS 252.246-7007 above. In paragraph (c)(2) of DFARS 252.246-7008, Note 3 applies. In addition, Section 8.3 e) of the 3M Purchase Order Terms Form 80-131 applicable to this Order prohibits any type of counterfeit Goods. In that Section 8.3 e), Seller is obligated to include the substance of certain identified sections in its lower-tier subcontracts and supplier agreements for procurement of all Goods, or items, materials or components used in Goods, for delivery to 3M. In any case where Seller is aware or becomes informed that a subcontractor or supplier refuses to accept flow down of these terms and conditions, Seller shall promptly notify the 3M Sourcing Representative and seek guidance.

NOTE: In addition to the requirements in the DFARS 252.246-7007 and DFARS 252.246-7008 clauses above, Seller is required to comply with 3M’s anti-counterfeiting terms and conditions listed under “Counterfeit Goods” at [3M.com/supplierregspecs](https://www.3m.com/supplierregspecs) as stated in 3M Purchase Order Terms Form 80-131 , Article 8, Compliance with Laws & Product Content, Section 8.3 e).

**DFARS 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA – BASIC (FEB 2019)** (Applicable only if the supplies are being transported by ocean vessel under this Order and the supplies are: (1) items 3M is reselling or distributing to the Government without adding value. (Generally, the prime contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); (2) shipped in direct support of U.S. military contingency operations, exercises; or forces deployed in humanitarian or peacekeeping operations; or (3) are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643. Revise the first sentence in paragraph (g) to read “If this Order exceeds \$250,000 and the final invoice does not include the required representation, 3M will reject and return it to the Seller as an improper invoice for the purposes of the payment clause of this Order.” Notes 1 and 2 apply to paragraph (g). Paragraphs (f) and (g) shall not apply if this Order is at or below \$250,000. This clause applies in lieu of FAR 52.247-64.)

## H. PRIORITY RATING

(a) **FAR 52.211-15 DEFENSE PRIORITY AND ALLOCATION SYSTEM (APR 2008)** (This clause applies ONLY IF a DPAS priority rating (e.g. DO-A1, DX-A4, DO-H1) appears in this Order, together with the statement: “This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).”

For rated orders invoking the Health Resources Priorities and Allocations System (HRPAS), the statement will provide:

“This is a rated order certified for national defense use, and you are required to follow all the provisions of the Health Resources Priorities and Allocations System regulation at 45 CFR part 101.”

(b) Seller’s Notification Requirements Applicable upon Receipt of a Rated Order

(1) In accordance with 15 C.F.R. 700.13(d), (under DPAS) or 45 C.F.R. 101.33(d) (under HRPAS), except as provided in (b)(2) below, the Seller must accept or reject a rated order in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO-rated order and within ten (10) working days after receipt of a DX-rated order. If the Seller rejects a rated order, the Seller must provide to the 3M Sourcing Representative, in writing (hard copy) or in electronic format, the Seller’s reasons for the rejection, in accordance with paragraphs (b) and (c) of 15 C.F.R. 700.13 (under DPAS) or paragraphs (b) and (c) of 45 C.F.R. 101.33 (under HRPAS).

(2) Under DPAS, 15 C.F.R. 700.13(d)(2) provides that if a rated order is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements and the rated order includes the statement set forth in 15 C.F.R 700.12(b), the Seller must accept or reject the rated order and transmit to the 3M Sourcing Representative the acceptance or rejection in writing (hard copy) or in an electronic format within the time specified in the rated order.

(3) In accordance with 15 C.F.R. 700.13(d)(3), (for DPAS) or 45 C.F.R. 101.33(d)(2) (for HRPAS), if the Seller has accepted a rated order and subsequently finds that shipment or performance will be delayed, the Seller must notify the 3M Sourcing Representative immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written (hard copy) or electronic confirmation must be provided within one working day of the verbal notice.

## I. CERTIFICATIONS AND REPRESENTATIONS

Seller acknowledges that 3M will rely upon Seller’s certifications and representations contained in this clause and in any Seller offer, proposal or quote, or company profile submission provided to 3M that results in the award of this Order.

Seller shall immediately notify the 3M Sourcing Representative in writing of any change of status regarding any such certification or representation. The certifications and representations made by Seller in connection with this Order are material certifications and representation of fact upon which 3M’s reliance was placed when making award of this Order. If it is later determined that the Seller knowingly rendered an erroneous certification or representation in connection with this Order, in addition to other remedies available to 3M, 3M may terminate this Order for default, as set forth in the Termination for Cause (Default) clause in Section F above.

### **1. FAR 52.209-5 CERTIFICATION THAT NEITHER SELLER NOR ANY OF ITS PRINCIPALS ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT (AUG 2020)** (Applies if this Order exceeds the simplified acquisition threshold)

(NOTE: If Seller cannot make the certification below, it shall immediately notify the 3M Sourcing Representative in writing.)

(a) By entering into or beginning performance of this Order, Seller hereby certifies, to the best of its knowledge and belief, that, as of the date of award of this Order, neither Seller nor any of its Principals is debarred, suspended, or proposed for debarment by the Federal Government.

(b) "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).

(c) This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code.

(d) Seller shall provide immediate written notice to the 3M Sourcing Representative if, at any time prior to completion of performance of this Order, Seller learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award of this Order. If it is later determined that Seller knowingly rendered an erroneous certification, in addition to other remedies available to 3M, 3M may cancel this Order for default.

**2. FAR 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007) (Applies if this Order exceeds \$150,000)**

(a) Definitions. As used in this provision:

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

(ii) 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 Order titled "Limitation on Payments to Influence Certain Federal Transactions" (FAR 52.203-12).

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

(c) Certification. By entering into or beginning performance of this Order, the 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 Order.

(d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the Seller with respect to this Order, the Seller shall complete and submit, with its offer to 3M, a completed copy of OMB Standard Form LLL, "Disclosure of Lobbying Activities," to provide the name of the registrants. The Seller need not report regularly employed officers or employees of the Seller 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 Order 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.

**3. FAR 52.222-56 CERTIFICATION REGARDING TRAFFICKING IN PERSONS COMPLIANCE PLAN (OCT 2020) (Modified)** (Applies to the portion (if any) of this Order that: (1) is for supplies, other than commercially available off-the-shelf (COTS) items, to be acquired outside the United States, or services to be performed outside the United States; and (2) has an estimated value that exceeds \$500,000.)

(a) The term “commercially available off-the-shelf item” is defined in the FAR 52.222-50 clause titled “Combating Trafficking in Persons (MAR 2015),” in this Order.

(b) By entering into or beginning performance of this Order, the Seller hereby certifies that—

(1) It has implemented a Trafficking in Persons Compliance Plan to prevent any prohibited activities identified in paragraph (b) of the clause at FAR 52.222-50, “Combating Trafficking in Persons,” and to monitor, detect, and terminate the Seller’s subcontracts with its subcontractors and Seller’s contracts with its agents who are engaging in prohibited activities identified at paragraph (b) of the clause at FAR 52.222-50, “Combating Trafficking in Persons”; and

(2) After having conducted due diligence, either—

(i) To the best of the Seller’s knowledge and belief, neither it nor any of its proposed agents, subcontractors, or their agents is engaged in any such activities listed in 52.222.50 (b); or

(ii) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found (e.g., engaging in severe forms of trafficking in persons during performance of this Order; charging employees recruitment fees), the Seller or its proposed agent, subcontractor, or subcontractor agent has taken the appropriate remedial and referral actions.

(3) During the performance of this Order, the Seller shall provide to the 3M Sourcing Representative annual certifications of compliance with the requirements in paragraphs (b) (1) and (b) (2) above.

#### **4. REQUIREMENT FOR SELLER TO PROVIDE 3M DIVERSITY STATUS AND BUSINESS SIZE CERTIFICATION**

(a) If Seller meets the definition of a “small business,” “small disadvantaged business,” “veteran-owned small business,” “service-disabled veteran-owned small business,” “HUBZONE small business,” or “women-owned small business” concern as defined in paragraph (a) of FAR 52.212-3, “Offeror Representations and Certifications -- Commercial Items (OCT 2018),” for the NAICS code and corresponding size standard that best describes the principal purpose of this Order, Seller shall provide the 3M Sourcing Representative a copy of the 3M Diversity Status and Business Size Certification (the “Certification”) at the time of initial supplier setup and at least annually thereafter. The Certification shall also be provided to the 3M Sourcing Representative with Seller’s offer for this Order.

(b) If Seller no longer qualifies for the small business status set forth in its latest Certification due to a change in Seller’s circumstances (e.g. a merger or acquisition), Seller shall promptly provide the 3M Sourcing Representative a revised Certification that shows the Seller’s current small business status.

(c) To the extent no event under subsection (b) has taken place, the Seller agrees to provide a Certification no less frequently than on an annual basis.

(1) The Certification shall be completed and signed by an authorized representative of Seller each time it is provided to the 3M Sourcing Representative.

(2) Seller's size and socioeconomic status as a "small business," "small disadvantaged business," "veteran-owned small business," "service-disabled veteran-owned small business," "HUBZone small business," or "woman-owned small business" concern shown in Seller's Certification shall be current, complete and accurate as of the date of signature by Seller's authorized representative.

(3) The Certification form is located at [www.3M.com/suppliervgov](http://www.3M.com/suppliervgov).

#### **5. FAR 52.204-24 and FAR 52.204-26 CERTIFICATION REGARDING THE DELIVERY OF COVERED TELECOMMUNICATIONS EQUIPMENT OF SERVICES (OCT 2020)**

(a) The FAR 52.204-25 clause titled "Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment" prohibits a Government contractor from providing covered telecommunications equipment or services to the Government or using such products or services as defined within the clause. In addition to other warranties, Supplier warrants that: (1) no products delivered to or on behalf of 3M pursuant to this Agreement use or contain any Covered Telecommunications Equipment or Services; (2) no services delivered to or on behalf of 3M pursuant to this Agreement shall have been carried out using any Covered Telecommunications Equipment or Services. As used in these warranties, "Covered Telecommunications Equipment or Services" has the meaning provided in FAR 52.204-25. For more information, see <https://www.acquisition.gov/far/52.204-25>.

(b) In accordance with these clauses, 3M requires each subcontractor and supplier subject to these terms to inform 3M if it supplies covered telecommunications equipment or services to 3M.

(c) These representations must be continuously updated, and Seller agrees to immediately inform 3M of any update to the representations required by these clauses.

#### **6. DFARS 252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services (JAN 2021)**

The supplier agrees that it will not provide covered defense telecommunications equipment services as defined within DFARS 252.204-7018 to 3M. In the event the Contractor identifies covered defense telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system that is sold to 3M, the Contractor shall immediately report this to 3M, who may then need to report this to the Department of Defense.

#### **7. DFARS 252.204-7019 and DFARS 252.204-7020 CERTIFICATION REGARDING COMPLIANCE WITH NIST SP 800-171 (NOV 2020)**

(a) Collectively, DFARS 252.204-7019 and DFARS 252.204-7020 require certain prime contractors and subcontractors to certify compliance with NIST SP 800-171 (or non-compliance and a date when compliance will be achieved with a summary action plan) within the Government's Supplier Performance Risk System (SPRS).

(b) The requirement to utilize SPRS is dependent on whether the prime or subcontractor has a "covered contractor information system" and is utilizing such a system in performance of this contract. In that

instance, the DFARS requires that the subcontractor input compliance information into SPRS and provide that information to 3M at the time of offer.

(c) Should DoD conduct a Medium or High Assessment, the subcontractor agrees to make its books, records, systems, employees, and facilities available as required under the DFARS clauses.

#### **8. DFARS 252.204-7021 CYBERSECURITY MATURITY MODEL CERTIFICATION (NOV 2020)**

(a) The Cybersecurity Maturity Model Certification (CMMC) requires contractors and subcontractors under covered contracts obtain a CMMC certification at the level required by the Department of Defense at the time of award.

(b) Should a CMMC certification be required, 3M will inform the subcontractor of such a requirement (either with a separate flowdown or separate communication) along with the level required. If required, the subcontractor will be required to certify that it has obtained a certification at the required level.

(c) If a CMMC certification is required, the subcontractor will be required to flowdown that requirement to its subcontractors and certify that it did so.

#### **J. NOTICE TO 3M'S CURRENT SUBCONTRACTORS REGARDING FAR 52.203-19, "PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS" (JAN 2017)**

(a) The FAR 52.203-19 clause titled "Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements" prohibits a Government contractor from requiring its employees and subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting its employees and subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(b) The FAR 52.203-19 clause also requires the Government contractor to notify its current employees and subcontractors that the prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by the FAR 52.203-19 clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of the clause, are no longer in effect.

(c) The FAR 52.203-19 clause includes the following definition:

***"Internal Confidentiality Agreement or Statement"*** means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency."

(d) In accordance with the requirements of the FAR 52.203-19 clause, 3M hereby notifies its current subcontractors that the prohibitions and restrictions of any of 3M's preexisting internal confidentiality agreements or statements covered by the FAR 52.203-19 clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of the FAR 52.203-19 clause, are no longer in effect.



## **K. DISPUTE RESOLUTION.**

The first sentence in Section 16, "Dispute Resolution," in 3M Purchase Order Form 80-131 is revised to read as follows:

"Any claim or dispute arising from, or relating to, a Good, Service, or an Order (including these Terms) shall be: (a) governed by the laws of the State of Minnesota, United States of America, without regard to its conflicts of law provisions. except that any clause in this Order that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (FAR); or (ii) incorporated in full text or by reference from the Defense FAR Supplement (DFARS), or; (iii) that is substantially based on any such FAR or DFARS clause, shall be construed and interpreted according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies, boards of contracts appeals; and (b) must only be litigated in a federal or state court of competent jurisdiction in Ramsey County, Minnesota."

## **L. CONFLICTS IN THIS ORDER**

In the event of a conflict between the terms and conditions in this Form US GOV-U and the terms and conditions in 3M Purchase Order Form 80-131, the terms and conditions in this Form US GOV-U shall take precedence. In addition, if there is a conflict between the U.S. Government clauses in this Form US GOV-U and those clauses in a negotiated agreement signed by authorized representatives of both parties, the clauses in the negotiated agreement will control and supersede those in this Form US GOV-U.

## **M. ADDITIONAL FLOW DOWN CLAUSES IN THIS ORDER**

In addition to these Flow-Downs, the Government Prime Contract issued to 3M may require "Special Provisions," including additional FAR and/or DFARS clauses, as applicable, to be incorporated by reference into this Order.

3M may unilaterally update these Flow-Downs to the extent required by the Government Prime Contract.