

## Lord Corporation FAR / DFARS Flowdowns for Non-Commercial Items (7/10)

### **LORD CORPORATION FAR AND DFARS FLOWDOWN PROVISIONS FOR PURCHASE ORDERS FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT**

The terms and conditions contained herein supplement the *Lord Corporation Standard Terms and Conditions* and apply to Lord Corporation Purchase Orders—under a U.S. Government Prime Contract—for items that do NOT meet the Commercial Items definition at FAR 2.101. To the extent that the Commercial Item definition applies to Work under the Purchase Order, then SELLER agrees that *Lord Corporation FAR/DFARS Flowdowns for Commercial Items* shall be applicable, in lieu of these terms and conditions, effective as of the date of the Purchase Order.

#### **SECTION I: GENERAL PROVISIONS**

##### **1. ADHERENCE TO APPLICABLE LAWS**

(a) If: (i) LORD CORPORATION's contract price or fee is reduced; LORD CORPORATION's cost are determined to be unallowable; (iii) any fines, penalties, withholdings, or interest are assessed on LORD CORPORATION; or (iv) LORD CORPORATION incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, LORD CORPORATION may proceed as provided for in (c) below.

(b) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon LORD CORPORATION's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on LORD CORPORATION's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or, if (v) the U.S. Government alleges any of the foregoing; and, as a result, (1) LORD CORPORATION's contract price or fee is reduced; (2) LORD CORPORATION's costs are determined to be unallowable; (3) any fines, penalties, withholdings, or interest are assessed on LORD CORPORATION; or (4) LORD CORPORATION incurs any other costs or damages; LORD CORPORATION may proceed as provided for in (c) below.

**(c) Upon the occurrence of any of the circumstances, other than withholdings identified in paragraphs (a) and (b) above, LORD CORPORATION may make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded. In the case of withholding(s), LORD CORPORATION may withhold the same amount from SELLER under this contract.**

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### **2. DEFINITIONS**

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "PO," "Purchase Order," or other such type designation, including all referenced documents, exhibits and attachments.
- (b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations. The regulation and its supplements can be found at Website <http://farsite.hill.af.mil/>
- (c) "LORD CORPORATION" means Lord Corporation, acting through its business units as identified on the face of this Contract.
- (d) "LORD CORPORATION Procurement Representative" means a person authorized by LORD CORPORATION's cognizant procurement organization to administer and/or execute this Contract.
- (e) "PO" or "Purchase Order" means this Contract.
- (f) "SELLER" means the party identified on the face of this Contract with whom LORD CORPORATION is contracting.
- (g) "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

### **3. DISPUTES**

All disputes under this Contract which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by LORD CORPORATION.

### **4. EXPORT CONTROL**

- (a) SELLER agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C.2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, SELLER agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to SELLER or SELLER's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- (b) SELLER agrees to notify LORD CORPORATION if any deliverable under this Contract is restricted by export control laws or regulations.

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(c) SELLER shall immediately notify the LORD CORPORATION Procurement Representative if SELLER is, or becomes, listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

(d) If SELLER is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, SELLER represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

(e) Where SELLER is a signatory under a LORD CORPORATION export license or export agreement (e.g., TAA, MLA), SELLER shall provide prompt notification to the LORD CORPORATION Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the SELLER's performance under this Contract.

**(f) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.**

### 5. GRATUITIES/KICKBACKS

(a) No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given by SELLER, to any employee of LORD CORPORATION for the purpose of obtaining or rewarding favorable treatment as a supplier.

**(b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.**

### 6. PRIORITY RATING

If so identified, this Contract is a "rated order" certified for national defense use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

### 7. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of LORD CORPORATION.

### 8. COUNTERFEIT WORK

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(a) For purposes of this clause, Work consists of those parts delivered under this Contract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). “Counterfeit Work” means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.

(b) SELLER agrees and shall ensure that Counterfeit Work is not delivered to LORD Corporation.

(c) SELLER shall only purchase products to be delivered or incorporated as Work to LORD CORPORATION directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by LORD CORPORATION.

(d) SELLER shall immediately notify LORD CORPORATION with the pertinent facts if SELLER becomes aware or suspects that it has furnished Counterfeit Work. When requested by LORD CORPORATION, SELLER shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.

(e) In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable for all costs related to the removal and replacement of Counterfeit Work, including without limitation LORD CORPORATION’s costs of removing Counterfeit Work, or reinserting replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies LORD CORPORATION may have at law, equity or under other provisions of this Contract.

(f) This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.

(g) SELLER shall include paragraphs (a) through (d) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to LORD CORPORATION.

## **SECTION II: FAR / DFARS FLOWDOWN PROVISIONS**

### **A. INCORPORATION OF FAR / DFARS CLAUSES**

## **Lord Corporation FAR / DFARS Flowdowns for Non-Commercial Items (7/10)**

The Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Contract. Any reference to a "Disputes" clause shall mean the "Disputes" Clause of this Contract.

### **B. GOVERNMENT SUBCONTRACT**

This Contract is entered into by the parties in support of a U.S. Government contract. As used in the FAR / DFARS clauses referenced below and otherwise in this Contract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means the LORD CORPORATION Purchase Order and its referenced and incorporated terms and conditions.
3. "Contracting Officer" shall mean the U.S. Government Contracting Officer for LORD CORPORATION's government prime contract under which this Contract is entered.
4. "Contractor" and "OFFEROR" means the SELLER, as defined in the LORD CORPORATION Purchase Order incorporating the terms and conditions herein, acting as the immediate (first tier) subcontractor to LORD CORPORATION.
5. "Prime Contract" means the contract between LORD CORPORATION and the U.S. Government or between LORD CORPORATION and its higher-tier contractor who has a contract with the U.S. Government.
6. "Subcontract" means any contract placed by the contractor or lower-tier subcontractors under this Contract.

### **C. NOTES**

1. Substitute "LORD CORPORATION" for "Government" or "United States" throughout this clause.
2. Substitute "LORD CORPORATION Procurement Representative" for "Contracting Officer," "Administrative Contracting Officer," and "ACO" throughout this clause.
3. Insert "and LORD CORPORATION" after "Government" throughout this clause.
4. Insert "or LORD CORPORATION" after "Government" throughout this clause.

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5. Communication/notification required under this clause from/to the Contractor to/from the Contracting Officer shall be through LORD CORPORATION.

6. Insert “and LORD CORPORATION” after “Contracting Officer,” throughout the clause.

7. Insert “or LORD CORPORATION PROCUREMENT REPRESENTATIVE” after “Contracting Officer,” throughout the clause.

### **D. AMENDMENTS REQUIRED BY PRIME CONTRACT**

Contractor agrees that upon the request of LORD CORPORATION it will negotiate in good faith with LORD CORPORATION relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as LORD CORPORATION may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the “Changes” clause of this Contract.

### **E. PRESERVATION OF THE GOVERNMENT’S RIGHTS**

If LORD CORPORATION furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that LORD CORPORATION, acting on its own behalf, may modify or limit any rights the Government may have to authorize the Contractor’s use of such Furnished Items in support of other U. S. Government prime contracts.

### **F. FAR / DFARS FLOWDOWN CLAUSES**

#### **REFERENCE      TITLE**

#### **1. The following FAR clauses apply to this Contract:**

(a) 52.211-5 MATERIAL REQUIREMENTS (AUG 2000) (Note 2 applies.)

(b) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (Note 2 applies.)

(c) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Note 2 applies.)

(d) 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

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- (e) 52.222-19 CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (AUG 2009)
- (f) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
- (g) 52.222-26 EQUAL OPPORTUNITY (MAR 2007)
- (h) 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009) (Note 2 applies. In paragraph (e) Note 3 applies.)
- (i) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
- (j) 52.227-14 RIGHTS IN DATA - GENERAL (JUN 1987)
- (k) 52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994) (Notes 1 and 2 apply.)
- (l) 52.242-13 BANKRUPTCY (JUL 1995) (Notes 1 and 2 apply.)
- (m) 52.242-15 STOP-WORK ORDER (AUG 1989) (Notes 1 and 2 apply.)
- (n) 52.243-1 CHANGES - FIXED PRICE (AUG 1987) (Notes 1 and 2 apply.)
- (o) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2009)
- (p) 52.246-2 INSPECTION OF SUPPLIES - FIXED PRICE (AUG 1996) (Note 2 applies. Note 3 applies, except in paragraph (b) the second time “Government” appears; (f), (h), (j), and (l) where Note 1 applies.)
- (q) 52.246-4 INSPECTION OF SERVICES - FIXED PRICE (AUG 1996) (Note 3 applies, except in paragraphs (e) and (f) where Note 1 applies.)
- (r) 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)
- (s) 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (MAY 2004) (Notes 1 and 2 apply. Note 4 applies to the first time “Government” appears 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 “LORD CORPORATION 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 Contracting Officer.)

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(t) 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984) (Notes 1 and 2 apply, except Note 1 is not applicable to paragraph (c). Note 4 applies to the second and third time “Government” appears in paragraph (d). Timely performance is a material element of this Contract.)

### **2. The following FAR clauses apply to this Contract if the value of this Contract exceeds \$3,000:**

(a) 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009) (Applies to Services and Construction only)

### **3. The following FAR clauses apply to this Contract if the value of this Contract exceeds \$10,000:**

(a) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(b) 52.222-99 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEVIATION 2010-O0013) (JUN 2010)

### **4. The following FAR clauses apply to this Contract if the value of this Contract exceeds \$100,000:**

(a) 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)

(b) 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)

(c) 52.215-2 AUDIT AND RECORDS-NEGOTIATION (MAR 2009) (Applicable if: (1) Contractor is required to furnish cost or pricing data, or (2) the Contract requires Contractor to furnish cost, funding, or performance reports. Note 3 applies.)

(d) 52.215-14 INTEGRITY OF UNIT PRICES (OCT 1997) (Delete paragraph (b) of the clause.)

(e) 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

(f) 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

(g) 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) (Note 2 applies. Delete paragraph (e).)



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(h) 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) (Notes 2 and 4 apply.)

(i) 52.248-1 VALUE ENGINEERING (FEB 2000) (Note 1 applies, except in paragraphs (c)(5) and (m), where Note 3 applies and except in (b)(3) where Note 4 applies, and where “Government” precedes “cost” throughout. Note 2 applies.)

### **5. The following FAR clauses apply to this Contract if the value of this Contract exceeds \$550,000:**

(a) 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008) (Applicable if the Contractor is not a small business. Note 2 is applicable to paragraph (c) only. The Contractor's subcontracting plan is incorporated herein by reference.)

### **6. The following FAR clauses apply to this Contract if the value of this Contract exceeds \$650,000:**

(a) 52.214-26 AUDIT AND RECORDS—SEALED BIDDING (OCT 1997)  
(Applicable if not otherwise exempt under FAR 15.403.)

(b) 52.214-28 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)  
(Applicable if not otherwise exempt under FAR 15.403.)

(c) 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)  
(Applicable if not otherwise exempt under FAR 15.403.)

(d) 52.215-13 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Applicable for modifications if not otherwise exempt under FAR 15.403.)

### **7. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$5,000,000:**

(a) 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008) (Applicable if the period of performance is more than 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)

(b) FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007) (Contact LORD CORPORATION Procurement Representative for the location where posters may be obtained if not indicated elsewhere in the Contract.)

### **8. The following FAR clauses apply to this Contract as indicated:**

(a) 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work requires access to classified information.)

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(b) 52.204-9, PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007) (Applicable where the Contractor will have physical access to a federally-controlled facility or access to a Federal information system.)

(c) 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997) (Applicable if submission of cost or pricing data is required. Notes 2 and 4 apply except the first time “Contracting Officer” appears in paragraph (c)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)

(d) 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Applicable if submission of cost or pricing data is required for modifications. Notes 2 and 4 apply except the first time “Contracting Officer” appears in paragraph (d)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)

(e) 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004) (Applicable if this Contract meets the applicability requirements of FAR 15.408(g). Note 5 applies.)

(f) 52.215-16 FACILITIES CAPITAL COST OF MONEY (JUN 2003) (Applicable only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and the Contractor proposed facilities capital cost of money in its offer.)

(g) 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997) (Applicable only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and the Contractor did not propose facilities capital cost of money in its offer.)

(h) 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005) (Applicable if this Contract meets the applicability requirements of FAR 15.408(j). Note 5 applies.)

(i) 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) (Applicable if this Contract meets the applicability requirements of FAR 15.408(k). Note 5 applies.)

(j) 52.215-23 LIMITATION ON PASS-THROUGH CHARGES (OCT 2009) (Applicable if the Prime Contract to which this contract relates is with DoD. Applies to subcontracts in excess of \$650,000 except those that meet the criteria of 15.408(n)(2)(i)(B)(2). Notes 4 and 6 apply.)

(k) 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 2005) (Applicable if the Contract may require or involve the employment of laborers and mechanics.)

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- (l) 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (Applicable if this Contract involves hazardous material. Notes 2 and 3 apply, except for paragraph (f) where Note 4 applies.)
- (m) 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (Applicable to Work containing covered radioactive material. In the blank insert “30.” Notes 1 and 2 apply.)
- (n) 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
- (o) 52.225-1 BUY AMERICAN ACT—SUPPLIES (FEB 2009) (Applicable if the Work contains other than domestic components. Note 2 applies to the first time “Contracting Officer” is mentioned in paragraph (c).)
- (p) 52.225-5 TRADE AGREEMENTS (AUG 2009) (Applicable if the Work contains other than U.S. made or designated country end products as specified in the clause.)
- (q) 52.225-8 DUTY FREE ENTRY (FEB 2000) (Applicable if supplies will be imported into the Customs Territory of the United States. Note 2 applies.)
- (r) 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007) (Applicable only if the Prime Contract contains this clause.)
- (s) 52.227-9 REFUND OF ROYALTIES (APR 1984) (Applicable when reported royalty exceeds \$250. Note 1 applies except for the first two times “Government” appears in paragraph (d). Note 2 applies.)
- (t) 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (APR 1984) (Applicable if the Work or any patent application may cover classified subject matter.)
- (u) 52.227-11 PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR (DEC 2007) (Applicable if this Contract includes, at any tier, experimental, developmental, or research Work and contractor is a small business concern or domestic nonprofit organization. Reports required by this clause shall be filed with the Government agency identified in this Contract. If no Government agency is identified, contact the LORD CORPORATION Procurement Representative identified on the face of this Contract.)
- (v) 52.228-5 INSURANCE – WORK ON A GOVERNMENT INSTALLATION (JAN 1997) (Applicable if this Contract involves Work on a Government installation. Note 2 applies. Note 4 applies to paragraph (b). Unless otherwise specified by this contract, the minimum kinds and amount of insurance shall be as described in FAR 28.307-2.)

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(w) 52.230-2 COST ACCOUNTING STANDARDS (OCT 2008) (When referenced in this Contract, full CAS coverage applies. "United States" means "United States or LORD CORPORATION." Delete paragraph (b) of the clause.)

(x) 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2008) (When referenced in this Contract, modified CAS coverage applies. "United States" means "United States or LORD CORPORATION." Delete paragraph (b) of the clause.)

(y) 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008) (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)

(z) 52.233-3 PROTEST AFTER AWARD (AUG 1996) (In the event LORD CORPORATION's customer has directed LORD CORPORATION to stop performance of the Work under the Prime Contract under which this Contract is issued pursuant to FAR 33.1, LORD CORPORATION may, by written order to Contractor, direct Contractor to stop performance of the Work called for by this Contract. "30 days" means "20 days" in paragraph (b)(2). Note 1 applies except the first time "Government" appears in paragraph (f). In paragraph (f) add after "33.104(h)(1)" the following: "and recovers those costs from LORD CORPORATION.")

(aa) 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (APR 1984) (Applicable if Work is performed on a Government installation. Note 2 applies. Note 4 applies to the second time "Government" appears in the clause.)

(bb) 52.243-6 CHANGE ORDER ACCOUNTING (APR 1984) (Applicable if the Prime Contract requires Change Order Accounting. Note 2 applies.)

(cc) 52.245-1 GOVERNMENT PROPERTY (JUN 2007) (ALT1) (JUN 2007) ("Contracting Officer" means "LORD CORPORATION" except in the definition of Property Administrator and in paragraphs (h) (1) (iii) where it is unchanged, and in paragraphs (c) and (h) (4) where it includes LORD CORPORATION. "Government" is unchanged in phrases "Government property" and "Government furnished property" and where elsewhere used except in paragraph (d) (1) where it means "LORD CORPORATION" and except in paragraphs (d) (2) and (g) where the term includes LORD CORPORATION. The following is added as paragraph (n) "SELLER shall provide to LORD CORPORATION immediate notice if the Government or other contractor (i) revokes its assumption of loss under any direct contracts with SELLER, or (ii) makes a determination that SELLER's property management practices are inadequate, and/or present an undue risk, or that SELLER has failed to take corrective action when required.")

(dd) 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003) (Applicable if this Contract involves international air transportation.)

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### **9. The following DFARS clauses apply to this Contract as indicated:**

(a) 252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991) (Applicable if the Prime Contract contains this clause.)

(b) 252.204-7008 REQUIREMENTS FOR CONTRACTS INVOLVING EXPORT-CONTROLLED ITEMS (JUL 2008) (Applicable if the Prime Contract contains this clause.)

(c) 252.211-7003 ITEM IDENTIFICATION AND VALUATION (AUG 2008) (Applicable if this Contract requires the Work to contain a unique item identification. In (c)(3)(i), (c)(4)(i), (d), (e), and (f) “Contractor” shall mean “Subcontractor”; all reports required to be submitted under this clause shall be submitted to LORD CORPORATION at a location to be provided; delete paragraph (g) and insert the following in lieu thereof: “(g) Lower-Tier Subcontracts. SELLER shall include this clause, including this paragraph (g), in all lower-tier subcontracts issued under this Subcontract for the acquisition of components identified herein as requiring UID.”)

(d) 252.211-7007 REPORTING OF GOVERNMENT-FURNISHED EQUIPMENT IN THE DOD ITEM UNIQUE IDENTIFICATION (UID) REGISTRY (NOV 2008) (Applicable if this Contract requires Government property in SELLER’s possession to contain unique item identification.)

(e) 252.215-7000 PRICING ADJUSTMENTS (DEC 1991) (Applicable if FAR 52.215-12 or 52.215-13 applies to this Contract.)

(f) 252.215-7004 EXCESSIVE PASS-THROUGH CHARGES (MAY 2008) (Applicable unless this contract is a fixed price contract, including fixed-price subcontracts with economic price adjustment, awarded on the basis of adequate price competition. Note 5 applies. In paragraph (e) Note 6 applies. If the Contracting Officer determines excessive pass-through charges included in SELLER’s prices, LORD CORPORATION shall make an adjustment to this contract to exclude such charges.)

(g) 252.219-7003 SMALL SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (APR 2007) (Applicable if FAR 52.219-9 applies to this Contract. Delete paragraph (g).)

(h) 252.223-7001 HAZARD WARNING LABELS (DEC 1991) (Applicable if this Contract requires the delivery of hazardous materials.)

(i) 252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993) W/ALT 1 (NOV 1995) (Applicable if Contract requires work on a DoD installation.)

## **Lord Corporation FAR / DFARS Flowdowns for Non-Commercial Items (7/10)**

- (j) 252.225-7001 BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (JUN 2005) (Applicable if the Work contains other than domestic components. Applicable in lieu of FAR 52.225-1.)
- (k) 252.225-7007 PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (SEP 2006) (Applicable if SELLER is supplying items on the U.S. Munitions List.)
- (l) 252.225-7008 RESTRICTION ON APPLICATION OF SPECIALTY METALS (JUL 2009) (Applicable if Work requires delivery of specialty metals as “end items”)
- (m) 252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (JUL 2009) (Applicable if the Work to be furnished contains specialty metals. Paragraph (d) is deleted.)
- (n) 252.225-7013 DUTY FREE ENTRY (DEC 2009) (Notes 1 and 2 apply in subparagraph (c). Applies in lieu of 52.225-8. Contact the LORD Corporation Procurement Representative for Prime Contract number and name of the Contracting Officer.)
- (o) 252.225-7016 RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (MAR 2006) (Applicable if Work supplied under this Contract contains ball or roller bearings. Note 2 applies.)
- (p) 252.225-7021 TRADE AGREEMENTS (JUL 2009) (Applicable if the Work contains other than U.S.-made, qualifying country, or designated country end products. Applicable in lieu of FAR 52.225-5.)
- (q) 252.225-7033 WAIVER OF UNITED KINGDOM LEVIES (APR 2003) (Applicable if this Contract is with a United Kingdom firm. Note 2 applies. Note 3 applies to (c)(3).)
- (r) 252.225-7043 ANTI-TERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (MAR 2006) (Applies where Contractor will be performing or traveling outside the U.S. under this Contract. For paragraph (c), see applicable information cited in DFARS 225.7401.)
- (s) 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, AND INDIAN-OWNED ECONOMIC ENTERPRISES AND HAWAIIAN SMALL BUSINESS CONCERNS (SEPT 2004) (This clause is applicable only when included in the Prime Contract and if this Contract is more than \$500,000. In f (1), “Contractor” shall mean “LORD CORPORATION.” Note 2 applies to (c) the first time “Contracting Officer” appears. LORD CORPORATION shall have no liability to SELLER for any incentive payment under this clause unless and until the Government provides said incentive payment to LORD CORPORATION.)

**Lord Corporation FAR / DFARS Flowdowns for Non-Commercial Items (7/10)**

- (t) 252.227-7013 RIGHTS IN TECHNICAL DATA - NON-COMMERCIAL ITEMS (NOV 1995) (Applicable in lieu of FAR 52.227-14.)
- (u) 252.227-7014 RIGHTS IN NON-COMMERCIAL COMPUTER SOFTWARE AND NON-COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (JUN 1995) (Applicable in lieu of FAR 52.227-14.)
- (v) 252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION (JUN 1995)
- (w) 252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE (JUN 1995)
- (x) 252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (JUN 1995) (For paragraph (c)(1), note 3 applies.)
- (y) 252.227-7026 DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988) (Note 1 applies.)
- (z) 252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988) (Note 1 applies.)
- (aa) 252.227-7028 TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995) (The definitions for “contract” and “subcontract” shall not apply herein, except for the first reference to contract. Note 4 applies.)
- (bb) 252.227-7030 TECHNICAL DATA - WITHHOLDING OF PAYMENT (MAR 2000) (Notes 1 and 2 apply to (a); Note 4 applies to (b).)
- (cc) 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 1999)
- (dd) 252.227-7038 PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (DEC 2007) (Applicable if (1) Contractor is not a small business or nonprofit organization subject to FAR 52.227-11, and (2) the contract is for experimental, developmental, or research work.)
- (ee) 252.228-7005 ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (DEC 1991) (In paragraph (a) note 5 applies. In paragraph (b) note 3 applies.)
- (ff) 252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

## **Lord Corporation FAR / DFARS Flowdowns for Non-Commercial Items (7/10)**

(gg) 252.235-7003 FREQUENCY AUTHORIZATION (DEC 1991) (Applicable if this Contract requires developing, producing, constructing, testing, or operating a device requiring a frequency authorization. Note 2 applies.)

(hh) 252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

(ii) 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (MAR 2000)

(jj) 252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES (JAN 2007) (Applicable 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. Contractor shall provide notifications to LORD CORPORATION and the contracting officer identified in the Contract.

(kk) 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000) (Applicable if this Contract meets the criteria set forth in paragraph (b) (2) (ii) of the clause. Notes 1 and 2 apply.)

### **10. The following DFARS clauses apply to this Contract if the value of this Contract exceeds \$100,000:**

(a) 252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT RELATED FELONIES (DEC 2008) (In this clause, the terms “contract,” “contractor,” and “subcontract” shall not change in meaning in paragraphs (a) thru (d). Delete paragraph (g). Note5 applies.)

(b) 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAY 2002) (Applicable in lieu of FAR 52.247-64 in all Contracts for ocean transportation of supplies. In the first sentence of paragraph (g), insert a period after “Contractor” and delete the balance of the sentence. Paragraph (f) and (g) shall not apply if this Contract is at or below \$100,000. Notes 1 and 2 apply to paragraph (g).)

### **11. The following DFARS clauses apply to this Contract if the value of this Contract exceeds \$550,000:**

(a) 252.225-7006 QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (MAY 2007) (Paragraph (f) is deleted.)

(b) 252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (DEC 2006) (Note 2 applies. Delete paragraph (d) (1) and the first five words of paragraph (d) (2).)



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(c) 252.222-7999 ADDITIONAL REQUIREMENTS AND RESPONSIBILITIES RESTRICTING THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEVIATION) (FEB 2010) (Applies to Contracts issued after February 17, 2010 utilizing funds appropriated by the Fiscal Year 2010 Defense Appropriations Act)

**12. The following DFARS clauses apply to this Contract if the value of this Contract exceeds \$1,000,000:**

(a) 252.211-7000 ACQUISITION STREAMLINING (DEC 1991) (Note 1 applies.)

**13. The following FAR clauses are modified as shown below:**

(a) FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004) (DEVIATION) (For DoD-related purchases, the version of this clause in DoD Class Deviation 2009-O0009 applies in lieu of the standard FAR version of the clause.)

(b) FAR 52.245-1 GOVERNMENT PROPERTY (JUN 2007) (DEVIATION) (For DoD-related purchases, the version of this clause in DoD Class Deviation 2007-O0012 applies in lieu of the standard FAR version of the clause.)

### **G. CERTIFICATIONS AND REPRESENTATIONS**

**1. This clause contains certifications and representations that are material representations of fact upon which LORD CORPORATION will rely in making awards to Contractor. By submitting its written offer, or providing oral offers/quotations at the request of LORD CORPORATION, or accepting any Contract, Contractor certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document, or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by LORD CORPORATION. Contractor shall immediately notify LORD CORPORATION of any change of status with regard to these certifications and representations.**

(a) **FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions** (Applicable to solicitations and contracts exceeding \$100,000)

(1) Definitions. As used in this provision—

“Lobbying contact” has the meaning provided in 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 entitled “Limitation on Payments to Influence Certain Federal Transactions” (FAR 52.203-12).

## **Lord Corporation FAR / DFARS Flowdowns for Non-Commercial Items (7/10)**

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

(3) Certification. Contractor hereby certifies to the best of its knowledge and belief that no Federal appropriate 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.

(4) 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, Contractor shall complete and submit, with its offer, to LORD CORPORATION OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Contractor need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(5) 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 failure.

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

(1) Contractor certifies to the best of its knowledge and belief, that:

(i) Contractor and/or 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 judgement rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, 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 government entity with commission of any of the offenses enumerated in subdivision (1)(i)(B) of this provision; and

## **Lord Corporation FAR / DFARS Flowdowns for Non-Commercial Items (7/10)**

(ii) Contractor 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 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 the 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

## **Lord Corporation FAR / DFARS Flowdowns for Non-Commercial Items (7/10)**

business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

(3) Contractor shall provide immediate written notice to LORD CORPORATION if, at any time prior to contract award, Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(4) The certification in paragraph (1) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to other remedies available, LORD CORPORATION may terminate this contract for default.

### **(c) FAR 52.222-22 Previous Contracts and Compliance Reports.**

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

### **(d) FAR 52.222-25 Affirmative Action Compliance.**

Contractor represents (1) that Contractor 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 (2) that in the event such a program does not presently exist, Contractor 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.

### **(e) FAR 52.223-13 Certification of Toxic Chemical Release Reporting** (Applicable to competitive solicitations/contracts which exceed \$100,000)

(1) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 13148, April 21, 2000.

(2) Contractor certifies that—

a) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), Contractor will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

## **Lord Corporation FAR / DFARS Flowdowns for Non-Commercial Items (7/10)**

b) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons:

(i) The facility does not manufacture, process or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) The facility does not fall within Standard Industrial Classification Code (SIC) codes or their corresponding North American Industry Classification System (NAICS):

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) The facility is not located in the United States or its outlying areas.