



## LIFEPORT TERMS AND CONDITIONS OF PURCHASE

### 1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

(a) This Contract shall be deemed to have been accepted by any of the following: (i) SELLER's acknowledgement of the Contract; or (ii) Seller's commencement of performance of Work under the Contract;

(b) The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit or describe the scope or the intent of the provisions of this Contract.

### 2. APPLICABLE LAWS

(a) This Contract and any matter arising out of or related to this Contract shall be governed by the laws of the State of Washington, without regard to its conflicts of laws provisions. SELLER, in the performance of this Contract shall comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority. SELLER, at its expense, shall provide reasonable cooperation to BUYER in conducting any investigation regarding the nature and scope of any failure by SELLER or its personnel to comply with applicable local, state, and federal laws, orders, rules, regulation, and ordinances that may affect the performance of SELLER's obligations under this Contract.

(b) SELLER is responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules and obligations including but not limited to, employer's obligations under laws relating to: payroll, income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to BUYER hereunder is, as applicable, on the Toxic Substances Control Act (TSCA) Chemical Substances inventory compiled by the United States Environmental Protection Agency pursuant to TSCA (15 U.S.C. Sec. 2607(b)) as amended and implemented in 40 CFR Part 710; and is designated as "active" pursuant to the TSCA Inventory Notification Rule (codified by amendments to 40 CFR Part 710 effective August 11, 2017).



(d) SELLER shall make available to BUYER all Safety Data Sheets for any material provided to BUYER, or brought or delivered to BUYER or its customer's premises in the performance of this Contract as required by applicable law, such as the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

(e) Work delivered by SELLER under this Contract may be incorporated into deliverable goods for use in the European Economic Area (EEA) and subject to the European Union Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH); the Classification, Labeling and Packaging Regulation (EC) No. 1272/2008 (CLP); and the Biocidal Products Regulation (EU) 528/2012 (BPR). SELLER shall timely and accurately fulfill obligations under all applicable chemical substance laws and/or regulations including but not limited to REACH, CLP, and BPR. SELLER shall immediately provide written notice and disclose to BUYER sufficient information of any Product and/or Service, including raw materials and components within, which contain substances regulated, controlled and/or specified by the REACH, CLP and BPR. SELLER shall bear all costs, charges and expenses related to pre-registration, registration, evaluation, authorization, reporting, and approval under REACH, CLP, and BPR.

(f) SELLER shall comply with the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and its implementing regulations. SELLER has in place a supply chain policy and processes to undertake a reasonable inquiry into the country of origin of Conflict Minerals incorporated into Goods it provides BUYER as necessary to determine if Conflict Minerals sourced from the DRC countries directly or indirectly support unlawful conflict there. SELLER shall provide BUYER the results of said inquiry upon BUYER's request and in a format acceptable to BUYER.

### **3. ASSIGNMENT**

Any assignment of SELLER's Contract rights or delegation of SELLER's duties shall be void, unless BUYER gives prior written consent. Nevertheless, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if BUYER is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupments for any present or future claims of BUYER against SELLER. BUYER shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

### **4. CHANGE IN CONTROL OF SELLER**

Prior to the potential change of control of SELLER and at least ninety (90) days prior to the proposed effectiveness of such change of control, SELLER will promptly notify BUYER in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as BUYER may request, consistent with applicable law and confidentiality restrictions.



## 5. CHANGES

(a) The BUYER Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) Drawings, designs, or specifications; (ii) Method of shipping or packing; (iii) Place of inspection, acceptance, or point of delivery; and (iv) Delivery schedule.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, BUYER shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly.

(c) SELLER must assert its right to an equitable adjustment under this clause within thirty (30) days from the date of receipt of the written change order from BUYER.

(d) Failure to agree to any adjustment shall be resolved in accordance with "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse seller from proceeding without delay in the performance of this Contract as changed.

## 6. CONTRACT DIRECTION

(a) Only the BUYER Procurement Representative has authority on behalf of BUYER to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.

(b) BUYER engineering and technical personnel may from time to time render assistance, give technical advice, discuss, or effect an exchange of information with SELLER's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

(c) Except as otherwise provided herein, all notices to be furnished by SELLER shall be in writing and sent to the BUYER Procurement Representative.

## 7. COUNTERFEIT WORK

(a) the following definitions apply to this clause:

"Counterfeit Work" means Work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Work



represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

“Suspect Counterfeit Work” means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work part is authentic.

(b) SELLER shall use only original equipment manufacturers or original component manufacturers (OEM/OCM) or OEM/OCM authorized dealers or distributors. For assemblies containing electronic components, SELLER shall verify all documents that provide chain of custody to the OEM/OCM for each lot in a shipment and deliver such document to BUYER upon BUYER’s request. For components, SELLER shall verify and provide all documents that provide chain of custody to the OEM/OCM.

(c) SELLER shall maintain counterfeit risk mitigation processes in accordance with industry-recognized standards and with any other specific requirements identified in this Contract.

(d) SELLER will not provide any Products that contain material known to be suspect, or counterfeit. This includes any material labeled or marked in a misrepresentative manner. SELLER will immediately notify BUYER if it becomes aware or suspects any parts furnished under the Order are counterfeit. If suspect or counterfeit parts are discovered in Products furnished by SELLER under this Order, SELLER shall promptly replace such parts with parts acceptable to BUYER. SELLER is liable for any costs associated with the removal and replacement of any suspect or counterfeit parts it provides under the Order.

(e) SELLER shall incorporate the substance of this clause in all subcontracts in places pursuant to the Contract.

## **8. DEFINITIONS**

The following terms shall have the meanings set forth below:

(a) “Contract” means the instrument of contracting, such as “Purchase Order”, “PO”, “Subcontract”, or other such type designation, including these General Provisions, all reference documents, exhibits, and attachments. If these terms and conditions are incorporated into a “master” agreement that provides for releases, (in the form of a Purchase Order or other such document) the term “Contract” shall also mean the release documents for the Work to be performed.

(b) “BUYER” means LifePort, LLC as identified on the face of this Contract.

(c) “BUYER Procurement Representative” means a person authorized by BUYER’s cognizant procurement organization to administer and/or execute this Contract.



(d) "SELLER" means the party identified on the face of this Contract with whom BUYER is contracting.

(e) "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

## **9. DELIVERY/TIMELY PERFORMANCE**

(a) SELLER's timely performance is a critical element of this Contract.

(b) Delivery is to be made both in quantities and at times specified on the purchase order. If SELLER's delivery shall fail to meet schedule for reasons unrelated to BUYER's acts or omissions, BUYER, without limiting its other rights or remedies, may direct expedited routing at SELLER's expense.

(c) Unless BUYER has authorized advance shipment in writing, BUYER may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

(d) Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

(e) SELLER shall provide BUYER status of performance of this Contract when requested. In addition, if SELLER becomes aware of an impending labor dispute involving SELLER or any lower tier subcontractor, or any other difficulty in performing the Work, SELLER shall timely notify BUYER, in writing, giving pertinent details. These notifications will not change any delivery schedule.

(f) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by BUYER.

## **10. DISPUTES**

(a) All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Each party hereby irrevocable waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Contract.

(b) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by BUYER.



## **11. DPAS RATED CONTRACTS**

SELLER shall comply with BUYER's customer requirement, including DPAS ratings (DO or DX). It is the responsibility of the SELLER to understand the DPAS requirements per the Department of Commerce 15 CFR 700. BUYER Purchase Orders that contain DPAS rated requirements will have the rating on the Purchase Order.

## **12. ELECTRONIC CONTRACTING**

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.

## **13. EXPORT CONTROL**

(a) The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Contract, including but not limited to the Export Administration Regulations ("EAR") of the U.S. Department of Commerce, the International Traffic in Arms Regulation ("ITAR") of the U.S. Department of State, Directorate of Defense Trade Control, and the US Department of the Treasury, Office of Foreign Assets Control (collectively, "Trade Control Laws").

(b) SELLER shall control the disclosure of, and access to, controlled items or technical data provided by BUYER related to performance of the Contract in compliance with all applicable Trade Control Laws. SELLER shall not transfer (to include transfer to Foreign persons employed by or associated with, or under contract to SELLER, or SELLER's sub-tier suppliers or SELLER's non-U.S. subsidiaries) any export controlled item, data or services, without providing advance notice to BUYER and obtaining the requisite export and/or import authority.

(c) Subject to applicable Trade Control Laws, SELLER shall provide BUYER with the export control classification of any commodity or technology including software.

(d) SELLER represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Laws. A copy of process control documents and other documents reasonably requested by BUYER related to SELLER's compliance with applicable Trade Control Laws shall be made available to BUYER upon request.

(e) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expenses, arising from any act or omission of the SELLER, its officers, agents, employees, suppliers or subcontractors at any tier, in the performance of any of its obligations under this clause.



(f) SELLER shall incorporate the substance of this clause in all subcontracts it places pursuant to the Contract.

#### **14. FURNISHED PROPERTY**

(a) BUYER may, by written authorization, provide to the SELLER property owned by either BUYER or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain with BUYER or its Customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify BUYER of any loss or damage to Furnished Property. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with applicable law, the requirements of this Contract and good commercial practice.

(d) At BUYER's request, and/or upon completion of this Contract, SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by BUYER.

#### **15. GRATUITIES/KICKBACKS**

SELLER shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a BUYER supplier.

#### **16. INDEMNITY**

SELLER shall defend, indemnify, and hold harmless BUYER, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractor at any tier, in the performance of any obligations under this Contract.



## **17. INDEPENDENT CONTRACTOR RELATIONSHIP**

SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to BUYER.

## **18. INFORMATION ASSURANCE**

(a) Information provided by BUYER to SELLER remains the property of BUYER. SELLER shall comply with the terms of any proprietary information agreement with BUYER and comply with all proprietary information markings and restrictive legends applied by BUYER to anything provided hereunder to SELLER. SELLER shall not use any BUYER provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of BUYER. SELLER shall maintain data protection processes and systems sufficient to adequately protect BUYER provided information and comply with any law or regulation applicable to such information.

(b) If SELLER becomes aware of any compromise of information used in the performance of this Contract or provided by BUYER to SELLER, its officers, employees, agents, suppliers, or subcontractors (an "Incident"), SELLER shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including notification within seventy-two (72) hours to BUYER after learning of the Incident. As used in this clause, "compromise" means that information has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the Work. SELLER shall provide reasonable cooperation to BUYER in conducting any investigation regarding the nature and scope of any incident. Any costs incurred in investigating or remedying incidents shall be borne by SELLER.

(c) Any BUYER provided information identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) if transmitted via the Internet, or (ii) during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users.

(d) The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in proprietary information agreement between the parties.

## **19. INFORMATION OF SELLER**

SELLER shall not provide any proprietary information to BUYER without prior execution of a proprietary information agreement by the parties.





## 20. INSPECTION AND ACCEPTANCE

(a) BUYER and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

(b) No such inspection shall relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. BUYER's final inspection and acceptance shall be at destination.

(c) If SELLER delivers non-conforming work, BUYER may, in addition to any other remedies available at law or at equity; (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work; or (iii) Require SELLER, at SELLER's cost, to make all repairs, modifications, or replacements at the direction of BUYER necessary to enable such Work to comply in all respects with Contract requirements.

(d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

## 21. INSPECTION AND AUDIT RIGHTS

(a) SELLER (which, for the purposes of this Section, includes SELLER's suppliers, subcontractors and business partners) shall at any time, and after reasonable notice by BUYER, (i) grant to BUYER, BUYER's Customers and/or to any competent regulatory authority, unrestricted access to (or if requested by BUYER, provide to BUYER copies of) SELLER's books, records and documentation (including, without limitation, inspection of those pertaining to quality, testing of Goods and Services, security and data protection procedures, ethics and compliance programs and any other requirement or obligation under the Order, but excluding financial books and records), wherever such books and records may be located (including third-party repositories and at facilities of SELLER's suppliers, subcontractors, and business partners used in connection with the Order), and (ii) provide BUYER, BUYER's Customers and/or any such authority the right to access, and to perform any type of inspection, test, audit or investigation at SELLER's premises, including without limitation, manufacturing and test locations and the facilities of SELLER's suppliers, subcontractors and business partners used in connection with the Order for the purpose of enabling BUYER to verify compliance with the requirements set forth in the Order or for any other purpose indicated by BUYER's Customers and/or said authority in connection with the design, development, certification, manufacture, sale, use, and/or support of the Goods. SELLER and its suppliers, subcontractors and business partners shall cooperate with BUYER and BUYER's Customers and/or any such authority to furnish all reasonable facilities for and assist with the safe performance of inspections, tests, audits and/or investigation in connection with any Order and Goods and Services thereunder.

(b) SELLER shall maintain complete inspection records for all Goods which shall be available to BUYER during performance of an Order and until the later of: (i) final resolution of any dispute involving the



Goods delivered hereunder, (ii) the latest time required by an Order, (iii) the latest time required by applicable laws and regulations, (iv) the latest time required by QA-100-001 version effective as of the date of the Order, or (v) as otherwise directed by BUYER.

(c) Any corrective action requested by BUYER, BUYER's Customers and/or any said authority following any such inspection, test, audit or investigation shall be implemented by SELLER at SELLER's cost.

(d) In addition to any other inspection or audit rights granted to BUYER hereunder, BUYER may inspect and audit, on reasonable notice, SELLER's financial books and records if the Order: (i) is a time and material order, (ii) is a cost-based order, or (iii) provides for advance or progress payments based on costs incurred by SELLER.

(e) The SELLER shall ensure that their employees are aware of their contribution to product safety or service conformity, and the importance of ethical behavior.

## **22. INSURANCE**

(a) SELLER and its subcontractors shall maintain for the performance of this Contract the following insurances: (i) Workers' Compensation Insurance meeting the statutory requirements where Work will be performed; (ii) Employer's Liability (EL) in the amount of \$1 million per each accident or per each employee for disease; (iii) Commercial General Liability (CGL) including Products Liability and Completed Operations Liability in the amount \$5 million per occurrence, or in such higher amounts as BUYER may require; (iv) if SELLER is performing Professional Services on behalf of BUYER, Professional Liability Insurance with a limit of no less than \$5 million; Automobile Liability (AL) insurance covering third party bodily injury and property damage with a minimum of \$1 million per occurrence limit, or in such higher amounts as BUYER may require; and (vi) such other insurance as BUYER may require.

(b) SELLER shall provide BUYER thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to maintain the required insurance. SELLER shall have its insurers name BUYER as an additional insured on the CGL and AL policies for the duration of this Contract. If requested, SELLER shall provide a "Certificate of Insurance" evidencing SELLER's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of BUYER and is not contributory with any insurance which BUYER may carry. "Subcontract" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations herein for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Contract.



### 23. INTELLECTUAL PROPERTY

Paragraph (a) is NOT applicable for commercial off-the-shelf Work unless such Work is modified or redesigned pursuant to this Contract.

(a) SELLER agrees that BUYER shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of SELLER. SELLER hereby assigns and agrees to assign all right, title, and interest in the foregoing to BUYER, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at BUYER's request and expense, all documentation necessary to perfect title therein in BUYER. SELLER shall maintain and disclose to BUYER written records of, and otherwise provide BUYER with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of BUYER and subject to the protection provisions of the clause entitled "Information Assurance." SELLER shall assist BUYER, at BUYER's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.

(b) SELLER warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER shall defend, indemnify, and hold harmless BUYER, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

(c) To the extent that any pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials are used, included or contained in the Work or deliverable items and not owned by BUYER pursuant to this or a previous agreement with SELLER, SELLER grants to BUYER an irrevocable, nonexclusive, world-wide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, transfer computer software, and prepare derivative works based upon, such pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials and derivate works thereof; and (ii) authorize others to do any, some or all of the foregoing.

(d) The tangible medium storing copies of all reports, memoranda or other materials in written form including machine-readable form, prepared by SELLER and furnished to BUYER pursuant to this Contract shall become the sole property of BUYER.



(e) No other provision in this Contract, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties under this clause.

#### **24. INVOICING**

SELLER shall promptly invoice BUYER for work performed in conjunction with BUYER's Purchase Order. BUYER reserves the right to reject any SELLER invoice not received by BUYER within ninety (90) days of the delivery of goods or completion of services, as contracted by BUYER.

#### **25. LIMITATION OF LIABILITY**

In no event shall BUYER be liable for loss of anticipated profits or for special, incidental or consequential damages. BUYER's liability on any claim of any kind for loss or damage shall not exceed the amount of the contract.

#### **26. NEW MATERIALS**

The Work to be delivered hereunder shall consist of new materials, not used, reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

#### **27. OBSOLESCENCE**

SELLER shall be responsible for monitoring component obsolescence and providing written notification within a reasonable time to BUYER of any impending obsolescence during the life of the Order. SELLER shall be responsible for all costs incurred due to component obsolescence, including but not limited to component lifetime purchases, storage of components, and non-recurring engineering/redesign efforts. SELLER shall provide timely written notification to BUYER of any imminent lifetime purchases. BUYER may direct SELLER to procure additional quantities of components deemed necessary to support program objectives beyond the Order term. BUYER shall be responsible for the mutually agreed upon cost of any additional quantities of components procured by SELLER beyond the Order term. If SELLER determines a component to be at risk of obsolescence after the effective Order term, then SELLER shall provide timely written notification to BUYER with funding requirements for a lifetime purchase and a cutoff date to support component order placement or, if necessary, funding requirements for a redesign effort.

#### **28. OFFSET CREDIT/COOPERATION**

This Contract has been entered into in direct support of BUYER's international offset programs. All offset benefit credits resulting from this Contract are the sole property of BUYER to be applied to the offset



program of its choice. SELLER shall assist BUYER in securing appropriate offset credits from the respective country government authorities.

## **29. PACKING AND SHIPMENT**

(a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

(b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the BUYER Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

(c) Unless otherwise specified, delivery shall be DAP BUYER's facility (Incoterm 2020)

## **30. PAYMENTS, TAXES AND DUTIES**

(a) Unless otherwise provided, terms of payment shall be net ninety (90) days from latest of the following: (i) BUYER's receipt of SELLER's proper invoice; (ii) scheduled completion of performance date of the Work; (iii) actual completion of performance of the Work.

(b) Each payment made shall be subject to reduction to the extent of amounts which are found by BUYER or SELLER not to have been properly payable, to include overpayments. SELLER shall promptly notify BUYER of any such overpayments found by SELLER.

(c) BUYER shall have a right of setoff against payments due or at issue under this Contract or any other Contract between the parties.

(d) Payments shall be deemed to have been made as of the date of mailing BUYER's payment or electronic funds transfer.

(e) Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

## **31. PLACE OF PERFORMANCE**

If SELLER intends to change the place of performance of Work under this Contract, from the place(s) identified in SELLER's proposal, SELLER shall provide prior written notice to BUYER. SELLER shall provide notification of changes to the place of performance from within the United States to a location outside the United States to BUYER at least six months in advance.



### **32. PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) LifePort Supplemental Terms and Conditions for US Government Contracts (applicable only for USG contracts); (2) Face of the Purchase Order and/or Task Order, release document, or schedule, (including any continuation sheets), as applicable, including any special terms and conditions; (3) these Terms and Conditions of Purchase; (4) Statement of Work; (5) QA-100-001.

### **33. QUALITY CONTROL SYSTEM**

(a) SELLER shall comply in full with the requirements of QA-100-001 unless expressly stated otherwise on the face of the Purchase Order and/or Task Order.

(b) SELLER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirement identified in this Contract or QA-100-001.

(c) Records of all quality control inspection work by SELLER shall be kept complete and available to BUYER and its customers.

### **34. RELEASE OF INFORMATION**

Unless a longer period is specified in this Contract by law or regulation, SELLER shall retain all records related to this Contract as specified on QA-100-001. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost SELLER shall provide timely access to such records to the U.S. Government and/or BUYER upon request.

### **35. RETENTION OF RECORDS**

Unless a longer period is specified in this Contract or by law or regulation, SELLER shall retain all records related to this Contract as specified on QA-100-001. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, SELLER shall timely provide access to such records to the U.S. Government and/or BUYER upon request.

### **36. SEVERABILITY**

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.



### **37. STANDARD OF BUSINESS ETHICS AND CONDUCT**

BUYER will conduct its business fairly, impartially, and in an ethical and proper manner. SELLER shall conduct its business fairly, impartially, and in an ethical and proper manner and in doing so SELLER shall adhere to its own published code of ethics. SELLER shall not engage in any personal, business, or investment activity that may be defined as a conflict of interest, whether real or perceived. If SELLER has cause to believe that BUYER or any employee or agent of BUYER has behaved improperly or unethically under this Agreement, SELLER is required to report such behavior when warranted. SELLER will ensure that employees and sub-tier suppliers working on its behalf are aware of the importance of ethical behavior. This clause shall be flowed to subordinate suppliers at all tiers.

### **38. STOP WORK**

(a) SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from BUYER, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Within such period, BUYER shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provisions(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

### **39. SURVIVABILITY**

All rights, obligations and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of this Contract, including but not limited to warranties, indemnifications, intellectual property (including rights to and protection of intellectual property and proprietary information), and product support obligations shall survive the expiration or termination of this Contract.

### **40. TERMINATION FOR CONVENIENCE**

(a) BUYER reserves the right to terminate this Contract, or any part hereof, for its convenience. BUYER 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, 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 Contract, SELLER shall be paid a percentage of the Contract price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges SELLER can





demonstrate to the satisfaction of BUYER, using its standard record keeping system, have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.

(b) In no event shall BUYER be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination

(c) SELLER shall continue all Work not terminated.

#### **41. TERMINATION FOR DEFAULT**

(a) BUYER by written notice, may terminate this Contract for default, in whole or in part, if SELLER (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) Becomes insolvent or suffers a material adverse change in financial conditions. SELLER shall have ten (10) days (or such longer period as BUYER may authorize in writing) to cure any such failure after receipt of notice from BUYER. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.

(b) Following a termination for default of this Contract, SELLER shall be compensated only for Work actually delivered and accepted. BUYER may require SELLER to deliver to BUYER any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. BUYER and SELLER shall agree on the amount of payment for these other deliverables.

(c) Upon the occurrence and during the continuation of a default, BUYER may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Contract. If after termination for default under this Contract, it is determined that SELLER was not in default, such termination shall be deemed a termination for convenience.

(d) SELLER shall continue all Work not terminated or cancelled.

#### **42. TRAVEL COSTS**

(a) All Travel incurred by SELLER in the performance of this Contract is included within the Contract price and shall not be separately reimbursed by BUYER unless such travel is expressly authorized in writing in advance by BUYER's Procurement Representative.





(b) When travel is authorized under this Contract, SELLER shall be reimbursed only for necessary, reasonable, and actual travel expenses for transportation, lodging, meals and incidental expenses only to the extent that they do not exceed the maximum per diem rate in effect at the time of travel, as set forth in the United States Federal Travel Regulations for the area of travel authorized under this Contract. Air travel shall be reimbursed for coach class only. SELLER shall provide a detailed summary of all such costs by category of expense with each invoice. SELLER shall provide a legible receipt for each claimed individual expense.

#### **43. U.S. GOVERNMENT SUBCONTRACTS**

The flow down of additional clauses, including those of the Federal Acquisition Regulation (FAR) or the Defense Federal Acquisition Supplement (DFARS) may be required for contracts issued under prime contracts with the U.S. Government or subcontracts at any tier under U.S. Government contracts. The following supplemental terms and conditions are hereby incorporated by reference: LEG-400-301 LifePort Supplemental Terms and Conditions for U.S. Government Contracts, whether on or after the effective date of this Contract, which can be found at <https://lifeport.com/pages/supplier-information>.

#### **44. WAIVERS, APPROVALS, AND REMEDIES**

(a) Failure by either party to enforce any of the provisions of this Contract or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such provision or Law.

(b) BUYER's approval of documents shall not relieve SELLER of its obligation to comply with the requirements of this Contract.

(c) The rights and remedies of either party in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

#### **45. WARRANTY**

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to the applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of three (3) years. If any nonconforming Work is identified within the warranty period, SELLER, at BUYER's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work, return of nonconforming Work, and reperformance of Work shall be at SELLER's expense. If repair, or replacement, or reperformance of Work is not timely, BUYER may elect to return, reperform, repair, replace, or repro cure the non-conforming Work at SELLER's expense. All warranties shall run to BUYER and its customers.



#### **46. WORK ON BUYER AND THIRD PARTY PREMISES**

(a) "Premises" as used in this clause means premises of BUYER, its customers, or other third parties where Work is being performed.

(b) SELLER or SELLER's employees, agents or subcontractors shall observe all security requirements including citizenship/immigrant status, all plant safety, plant protection, and traffic regulations. SELLER shall defend, indemnify, and hold BUYER harmless from all claims, actions, demands, loss, and causes of action, arising from injury, including death, to any person, or damage to any property, when such injury or damage results in whole or in part from the acts or omission of SELLER, SELLER's employees, agents, or subcontractors, except when such damage, injury or death is caused by the gross negligence of BUYER.

(c) Prior to entry on Premises, SELLER shall coordinate with BUYER to gain access. SELLER shall provide information reasonably required by BUYER to ensure proper identification of personnel, including, but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status.

(d) BUYER may, at its sole discretion, have SELLER remove any specified employee of SELLER from Premises and require that such employee not be reassigned to any premises under this Contract.