

WOLFSPEED

FOUNDRY SERVICES TERMS AND CONDITIONS

Unless otherwise specifically agreed in writing by Seller, these Foundry Services Terms and Conditions ("Terms and Conditions") will apply to any and all orders placed by Buyer for foundry services to be performed by Seller. In these Terms and Conditions, the term "Seller" refers to Wolfspeed, Inc. and the term "Buyer" refers the party to whom Seller's written quotation ("Quotation") is addressed. As used herein, "foundry services" refers to the services described in any mutually agreed statement of work ("SOW") or if a separate SOW does not exist, in the Quotation, which services may include one or more of the following: CAD or design support and training, circuit design, mask generation, wafer fabrication, PCM testing of wafers, electrical and visual screening, singulation, dicing, and/or delivery of advanced RF and microwave devices.

1. ACCEPTANCE OF ORDERS. Upon Seller's acceptance of Buyer's purchase order, an agreement will be formed consisting of Seller's Quotation (which incorporates these Terms and Conditions), any SOW, Seller's order acknowledgement ("Acknowledgement"), and any provisions in Buyer's purchase order that are consistent with and not different from or in addition to the provisions in the Quotation, SOW and/or Acknowledgement (collectively, the "Agreement"). In the event of any inconsistency between the various documents that comprise the Agreement, the order of precedence will be these Terms and Conditions, the other provisions of the Quotation, the SOW, and finally any provisions included from Buyer's purchase order. Buyer's purchase orders must reference Seller's Quotation and will be accepted by Seller as a matter of administrative convenience only, without constituting Seller's agreement to any provisions in Buyer's purchase order that are different from or in addition to the provisions in the Agreement.

Seller's acceptance of all orders and all offers and sales by Seller are subject to and expressly conditioned upon Buyer's assent to the provisions in the Agreement exactly as offered by Seller. Any provisions stated on Buyer's purchase orders or any other documents provided by Buyer that are different from or in addition to those contained in the Agreement are hereby rejected by Seller and will be of no effect unless specifically agreed to in writing by Seller as amending or supplementing the Agreement. Seller's commencement of performance or its provision of any deliverables will not be construed as acceptance of any of Buyer's terms and conditions which are different from or in addition to those contained in the Agreement. If a contract is not earlier formed by mutual agreement in writing, acceptance by Buyer of the foundry services or deliverables furnished by Seller pursuant to the Agreement will be deemed Buyer's assent to all of the terms and conditions of the Agreement.

2. PRICES. The prices stated in the Agreement do not include transportation, insurance or any sales, use, excise, value-added or other taxes, duties, fees or assessments imposed by any jurisdiction with respect to the foundry services or the provision of any deliverables. All applicable taxes will be paid by Buyer, unless Buyer provides Seller with appropriate tax exemption certificates. Any amounts paid at any time by Seller that are the responsibility of Buyer will be

invoiced to Buyer and reimbursed to Seller. Seller reserves the right to adjust prices for any reason for foundry services not yet performed, including but not limited to increases in the cost of fuel raw materials or other production-related inputs. All prices and other terms are subject to correction for typographical or clerical errors.

3. TERMS OF PAYMENT. All payments will be in U.S. dollars. Invoices will be issued in accordance with the Quotation upon the furnishing of deliverables or completion of other milestones, and payment will be due in full within thirty (30) days from the invoice date or by such other date specified in the Quotation. Seller reserves the right to require payment in advance or other reasonable assurances of payment if Seller, in its sole discretion, decides that Buyer is not credit-worthy.

Amounts not paid when due will be subject to interest at the rate of one and one-half percent (1½%) per month or, if less, the maximum rate permitted by law.

In the event of the bankruptcy or insolvency of Buyer, or the filing of any proceeding by or against Buyer under any bankruptcy, insolvency or receivership law, or in the event Buyer makes an assignment for the benefit of creditors, Seller may, at its election and without prejudice to any other right or remedy, exercise all rights and remedies granted Seller in Section 7 below as in the case of a default by Buyer under the Agreement.

4. DELIVERY, TITLE AND RISK OF LOSS. The deliverables will be shipped from Seller's foundry facilities to any location designated by Buyer (subject to the Section 17 below regarding export control). Unless otherwise agreed to in writing by Seller, ownership of, title to, and risk of loss and/or damage for the deliverables will pass to Buyer upon Seller's delivery to a reputable transportation company at the shipping point. Unless otherwise agreed to in writing by Seller, all transportation charges and expenses will be paid by Buyer, including the cost of any insurance against loss or damage in transit which Seller may obtain at Buyer's written request. Seller reserves the right to ship deliverables freight collect.

Confiscation or destruction of or damage to deliverables during transit will not release, reduce or in any way affect the liability of Buyer. In the event Buyer rejects or revokes acceptance of any deliverables for any reason, all risk of loss and/or damage to such deliverables will nonetheless remain with Buyer unless and until the same are returned at Buyer's expense to such place as Seller may designate in writing.

All deliverables must be inspected upon receipt and claims filed by Buyer with the transportation company when there is evidence of shipping damage, either concealed or external.

5. PERFORMANCE. Seller will use commercially reasonable efforts to perform on or before the dates specified in the Agreement or such later dates as may be agreed to by Buyer for delivery or other performance related to the foundry services. Seller will not be liable for any delays in its performance or its failure to perform resulting from

occurrences beyond Seller's reasonable control or attributed to Buyer's fault or negligence. Such occurrences will include but not be limited to: acts of God, strike, lockout, riot, war, terrorism, civil unrest, fire, accident, delays caused by any subcontractor or supplier or by Buyer, technical difficulties, failure or breakdown of machinery or components necessary for fabrication of deliverables, inability to obtain or substantial rises in the price of labor or materials or manufacturing facilities, curtailment of or failure to obtain sufficient electrical or other energy supplies, or compliance with any law, regulation, order or direction, whether valid or invalid, of any governmental authority or instrumentality thereof, in either its sovereign or contractual capacity. Seller will promptly notify Buyer if Seller has knowledge that any occurrence is delaying or threatens to delay the timely performance of the Agreement.

Buyer agrees that any delay in delivery or failure to deliver or perform any part of the Agreement will not be considered a material default by Buyer or provide grounds for Buyer to terminate or refuse to comply with any provisions hereof and no liability of any kind will be effective against Seller for such delay or failure regardless of the cause. However, if the delay or failure extends beyond six (6) months from the originally scheduled date for performance, either party may, by written notice to the other, terminate the Agreement without further liability for the unperformed part of the Agreement.

6. ACCEPTANCE. All deliverables provided under the Agreement will be deemed accepted by Buyer as conforming to the Agreement, and Buyer will have no right to revoke any acceptance unless written notice of the claimed nonconformity is received by Seller within twenty (20) days of delivery thereof. Notwithstanding the foregoing, any use of a deliverable by Buyer, its agents, employees, contractors, customers or licensees, for any purpose, after delivery thereof, will constitute acceptance of that deliverable by Buyer, provided that, acceptance will not constitute a waiver of any of Buyer's rights provided under Seller's limited warranty in Section 11 below. For the avoidance of doubt, inspection and test of the deliverables does not constitute "use" as used in this Section.

7. DEFAULT AND TERMINATION. Either party may terminate the Agreement if the other party materially defaults in the performance of its obligations under the Agreement and fails to cure such default within sixty (60) days after written notice thereof from the non-defaulting party. Such termination and Buyer's rights provided under Seller's patent indemnity set forth in Section 8 below and Seller's limited warranty set forth in Section 11 below will be Buyer's sole and exclusive remedies in the event of a default by Seller.

Except as provided in Section 21 below, Buyer will be deemed in material default under the Agreement if Buyer fails to pay any amounts when due, cancels or attempts to cancel the Agreement prior to delivery, or refuses delivery or otherwise fails to perform any of its obligations under the Agreement or fails to pay Seller any sums due from Buyer under any other agreement or otherwise. In the event of a material default by Buyer, Seller may, upon written notice to Buyer, (1) suspend its performance and withhold deliverables, in whole or in part, (2) terminate the Agreement, and/or (3) declare all sums owing to Seller immediately due and payable. Exercise of any of the foregoing remedies by Seller will not preclude exercise of any of the others, and neither the existence nor exercise of such

remedies will be construed as limiting, in any manner, any of the rights or remedies available to Seller under applicable laws.

8. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS. The provision of foundry services and the furnishing of deliverables pursuant to the Agreement do not convey any express or implied license under any patent, copyright, trademark or other proprietary rights owned or controlled by Seller, whether relating to the deliverables provided or to any foundry service or other matter. All rights under any such patent, copyright, trademark or other proprietary rights are expressly reserved by Seller. Furthermore, Buyer agrees not to infringe, directly or indirectly, any patents of Seller or its subsidiaries with any combination or system incorporating a deliverable provided pursuant to the Agreement.

Seller will defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that the deliverables or the process used to fabricate the deliverables infringe any U.S. patent issued as of the date of shipment of the deliverables where such claimed infringement is not a result of Seller's compliance with Buyer's designs, specifications or instructions, provided Seller is promptly notified in writing of such suit or proceeding and is given full authority, information and assistance by Buyer for such defense. Seller will pay all damages and costs based on such claim of infringement which are finally awarded against Buyer in any such suit or proceeding or paid by way of settlement, but Seller will have no liability whatsoever with respect to any settlement made by Buyer without Seller's prior written consent, which Seller may withhold in its sole discretion. If any deliverable, or the process used to fabricate any deliverable, is held to infringe any U.S. patent based on such claim of infringement and its use or sale by Buyer is enjoined, or if in the opinion of Seller any deliverable is likely to become the subject of such a claim of infringement, Seller may, in its sole discretion and at its own expense, either procure a license which will protect Buyer against such claim without cost to Buyer, replace such deliverables with non-infringing deliverables, or require return of such deliverables and refund an equitable portion of the compensation paid by Buyer to Seller for the foundry services performed under the Agreement.

The foregoing states Seller's entire liability and Buyer's sole and exclusive remedies for any claim based upon or related to any alleged infringement of any patent or other intellectual property rights. Seller will have no liability for any claim of infringement or damages based on a combination of deliverables furnished under the Agreement with products, equipment or materials not furnished by Seller, or based upon any items made with the deliverables furnished under the Agreement.

Buyer will defend and hold Seller harmless against any expense, loss, costs or damages resulting from any claimed infringement of patents, trademarks or other intellectual property rights arising out of compliance by Seller with Buyer's designs, specifications or instructions.

9. CONFIDENTIALITY; RIGHTS IN MASK SETS; OWNERSHIP OF DESIGN AND PROCESS. The exchange of confidential information by the parties will be governed by and subject to the terms and conditions of a separate mutual non-disclosure agreement ("NDA") and a Process Design Kit

Agreement (“PDK Agreement”). Notwithstanding any contrary provision in the NDA, the term of any NDA applicable to the exchange of confidential information under the Agreement at the start of performance by Seller shall be extended until completion of Seller’s performance under the Agreement. To the extent provided in the SOW (if a separate SOW does not exist, then as provided in the Quotation), Seller will generate any mask set needed to fabricate devices to be included in the deliverables (the “Mask Set”). Conditional upon payment by Buyer of all amounts due to Seller under the Agreement, Buyer will have the following rights relating to the Mask Set: (i) Seller will not use the Mask Set or copies thereof to produce deliverables for any third party without Buyer’s prior written consent; (ii) at Buyer’s request, Seller will provide foundry services using the Mask Set (if not yet destroyed as provided below) to fabricate additional deliverables for Buyer upon terms acceptable to both parties; and (iii) Seller will provide Buyer with certain circuit lay-out files (the “Lay-Out Files”) that correspond to the mask levels that define the physical realization of the circuit and the interface with the active device. The Lay-Out Files will not include internal details of the active device layout or other proprietary information of Seller developed outside of the Agreement.

The parties agree and understand that the Mask Set embodies confidential and proprietary information of Seller relating to transistor and circuit design and topology that was developed outside the Agreement. Accordingly, Seller will retain title and ownership to the Mask Set and all copies of the Mask Set will remain within Seller’s possession and control. Buyer is not entitled to review, inspect, or receive a copy of the Mask Set except to the extent shown in the Lay-Out Files.

Any device design supplied by Buyer will be the proprietary information and property of Buyer, and except as required for the performance of the Agreement, Seller may not use, execute, reproduce, display, perform, distribute, or prepare derivative works based upon such design without Buyer’s prior written approval. If the foundry services include device design services provided by Seller, then upon payment by Buyer of all amounts due to Seller under the Agreement, Buyer will be considered the owner of any device design first developed and delivered by Seller during the performance of the foundry services under the Agreement and, except as required for the performance of the Agreement, Seller may not use, execute, reproduce, display, perform, distribute, or prepare derivative works based upon such design without Buyer’s prior written approval. Except as provided in the foregoing sentence, all inventions, mask works, and works of authorship, and all designs, drawings and data made or developed by Seller in the course of performing the foundry services or previously made or developed by Seller (including but not limited to the MMIC process/es used in fabricating any deliverables) or lawfully acquired by Seller independent of the Agreement, and all rights therein under any patent, copyright or other law protecting intellectual property, will be and remain Seller’s property. Notwithstanding the foregoing, the Quotation is a non-exclusive offer by Seller to provide foundry services to Buyer and nothing herein prohibits Seller from performing foundry services for third parties, including developing device designs for a third party that are similar or identical to device designs developed by Seller for Buyer provided that Seller does not violate its confidentiality obligations to Buyer or Buyer’s ownership rights in its designs.

In the course of performing the foundry services, Seller may process more wafers and/or complete more devices using the Mask Set than are necessary to fulfill Buyer’s purchase order. Subject to the restriction on sale to third parties provided above, Seller will own all extra wafers and devices, which will be available for purchase by Buyer upon terms acceptable to both parties. Unless otherwise agreed in writing by the parties, Seller will retain the Mask Set and any extra wafers or devices for at least three (3) years after fulfillment of the Quotation and may destroy the Mask Set and any extra wafers or devices after such period without prior notice to Buyer.

10. SHARED MASK SETS. If the Quotation contemplates that the foundry services will be performed using a shared Mask Set, then, in addition to any other SOW mutually agreed upon by the parties, the terms and conditions in the version of Seller’s “Statement of Work: Wolfspeed GaN Shared Mask MMIC Fabrication” in effect on the date of the Quotation (or later Quotation revision date, if any), will apply. If not otherwise supplied to Buyer, a copy of this document is available upon request.

11. LIMITED WARRANTY. Seller warrants that the foundry services will be performed by qualified personnel in a professional, workman-like manner conforming to generally accepted industry standards and practices for quality work, that it will use process control monitor (PCM) testing to insure process stability, and that the deliverables provided by Seller will be PCM “good” as that term is defined in the PCM table of parameters developed by Seller, a confidential copy of which is available upon request. The foregoing warranty is the sole and exclusive warranty provided by Seller to Buyer under the Agreement. Buyer acknowledges the developmental nature of the foundry services and understands that there can be no guarantee that any target specifications will be achieved or that commercially usable devices will result from this undertaking.

The deliverables to be provided under the Agreement are not goods or products of Seller and, except as expressly set forth in the preceding paragraph, are provided “AS IS”, without warranty of any kind. Seller provides no warranty, guarantee or other assurance of any kind regarding the manufacturability, yield, or performance of any design or deliverable to be provided under the Agreement.

Notwithstanding the foregoing, Seller will have no obligation based on any claimed breach or defect attributed to a modification of or damage to a deliverable by someone other than Buyer, or the combination, operation, or use of a deliverable with products, equipment or materials not provided by Seller.

Seller will have no liability under the foregoing warranty unless Seller is given written notice of the claimed breach or defect and a description thereof within ninety (90) days after the foundry service is rendered or the defective deliverable is received. Seller’s entire liability and Buyer’s sole and exclusive remedy under this warranty will be limited to the provision of such remedial or replacement foundry services as Seller reasonably determines necessary to correct the breach or defect. Buyer’s remedies for any breach of warranty are limited to those provided in this Section to the exclusion of all other remedies, including, without limitation, incidental or consequential damages.

THE FOREGOING WARRANTY PROVISIONS ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY AGAINST INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

No warranty or agreement varying or extending the foregoing warranty and limitation of remedy provisions may be relied upon by Buyer unless it is in a separate written document signed by the President or a Vice President of Seller, which document, if any, will reference the Agreement and expressly indicate the parties intent to modify and/or extend the foregoing warranty and limitation of remedy provisions. No other representation or affirmation of Seller, whether by words or action, will be construed as a warranty. If any model or sample was shown to Buyer, such model or sample was used merely to illustrate the general type and quality of the deliverables and not to represent that the deliverables would necessarily conform to the model or sample.

12. LIMITATION OF LIABILITY AND CLAIMS. THIS LIMITATION OF LIABILITY PROVISION APPLIES IN THE AGGREGATE AND NOT ON A PER CLAIM BASIS, WHETHER ANY DAMAGES ARE CHARACTERIZED IN TORT, NEGLIGENCE, CONTRACT, OR OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY DAMAGES, AND IRREPECTIVE OF ANY FAILURE OF ESSENTIAL PURPOSE OF A LIMITED REMEDY. SELLER'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE WILL IN NO EVENT EXCEED THE AMOUNT, IF ANY, RECEIVED BY SELLER PURSUANT TO THE AGREEMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL LOSS OR DAMAGES OF ANY KIND, HOWEVER CAUSED, OR ANY PUNITIVE, EXEMPLARY OR OTHER DAMAGES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE AGREEMENT OR DELIVERABLES OR SERVICES FURNISHED BY SELLER MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUED.

13. ATTORNEY'S FEES. In the event of default in payment of any compensation for the foundry services, Buyer agrees to pay all expenses incurred by Seller in enforcing payment thereof, including reasonable attorney's fees and expenses and all other costs or expenses incurred in connection with any arbitration or judicial proceeding.

14. CHOICE OF LAW. The Agreement will be governed by the laws of the State of North Carolina as if made and to be performed entirely within such state and, unless expressly agreed in writing by Seller prior to the start of its performance, will not be subject to any foreign or international commercial laws including without limitation the UN Convention on the International Sale of Goods.

15. ARBITRATION. Any controversy or claim (including, without limitation, any claim based on negligence, misrepresentation, strict liability or other basis) arising out of or relating to the Agreement or its performance or breach that cannot be amicably resolved by the parties and involves an amount in excess of \$50,000 (exclusive of interest and costs)

will be settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, if arbitration is demanded by either party. The location of the arbitration will be the City of Raleigh, North Carolina. The decision in such arbitration will be final and binding and any award rendered thereon may be entered in any court having jurisdiction.

16. ASSIGNMENT. Buyer will not assign or transfer any rights or claims under the Agreement without the prior written consent of Seller, and any purported assignment made without such consent will be void. The Agreement will be binding upon and will inure to the benefit of the successors and permitted assigns of the parties.

17. EXPORT CONTROL. Seller's export of the deliverables, and any technical information related thereto, may be subject to United States and/or other national or international (e.g., UN) laws and regulations controlling the export and re-export of technical data and products, or limiting the export of certain products to specified countries (e.g., embargo regulations). Seller will not be obligated under the Agreement to export, transfer or deliver any deliverables or related technical information to Buyer if prohibited by applicable law or until all necessary governmental authorizations have been obtained. Seller will not be liable under the Agreement for any expenses or damages resulting from failure to obtain or delays in obtaining any required government authorizations. Buyer will comply fully with all export administration and control laws and regulations of the U.S. government and/or other national or international (e.g., UN) laws and regulations as may be applicable to the export, re-export, resale or other disposition of any deliverables received from Seller.

18. SAFETY. Buyer will comply fully with all industry safety standards applicable to and all safety-related laws, rules and regulations of any governmental body having jurisdiction to regulate the manufacture, distribution or sale of items incorporating the deliverables supplied by Seller, including all marking, labeling, and supplemental user and service information (if any) required by the applicable standards, laws, rules and regulations. Buyer will obligate all persons and entities buying such items from Buyer (other than end users) to comply with such industry standards, laws, rules or regulations applicable to such person or entity. Buyer will defend and hold Seller harmless against any expense, loss, costs or damages relating to any claimed failure by Buyer to comply with such industry standards, laws, rules or regulations or from any bodily injury, illness or property damage resulting from items manufactured by Buyer which incorporate the deliverables provided by Seller.

19. ENTIRE AGREEMENT. The Agreement constitutes the entire agreement of the parties and supersedes all prior negotiations, proposals, agreements and understandings, whether oral or written, relating to the foundry services and deliverables to be provided thereunder or otherwise relating to the subject matter of the Agreement other than any pre-existing NDA and/or PDK Agreement. Any representation, warranty, course of dealing or trade usage not expressly contained or referenced herein will not be binding on Seller.

20. GENERAL. No modification, amendment, rescission, waiver or other change in the Agreement will be binding on Seller unless agreed in writing by Seller. The invalidity or unenforceability, in whole or in part, of any provision herein will

not affect the validity or enforceability of any other provision herein. Failure or delay on the part of either party to exercise any right, power, privilege or remedy herein will not constitute a waiver thereof. The section headings contained herein are for convenience of reference only and are not to be used in the construction or interpretation of the Agreement. All notices, consents, waivers, and other communications required or permitted by the Agreement will be in writing and will be deemed given to a party when received by the party at the address set forth in the Quotation, in the case of Seller, or the purchase order, in the case of Buyer, or such other address designated in writing by a party from time to time. The parties agree that the delivery of a copy of any executed documents constituting the Agreement in electronic portable document format (.pdf) or via facsimile will be legal and binding and will have the same full force and effect as if an original executed copy of such documents had been delivered.

21. GOVERNMENT CONTRACT TERMS. If the deliverables received from Seller are to be used by Buyer in the performance of a U.S. government contract or subcontract, the following terms apply.

A. No government requirements or regulations will be binding upon Seller unless specifically agreed to by Seller in writing or included below in this Section 21.

B. Buyer may request changes within the general scope of the foundry services to the extent required by Buyer's contract with the government. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the Agreement, the parties will agree in writing to an equitable adjustment in the price and/or delivery schedule, and the Agreement will be modified accordingly. If the adjustment includes the cost of property made obsolete or excess by the change, Buyer will have the right to prescribe the manner of disposition of the property. No change will become effective unless and until approved in writing by Seller, including Seller's agreement to additional charges, if any, resulting from such change. Seller may not unreasonably withhold its approval of changes required by Buyer's contract with its customer.

C. If the government cancels the portion of the work relating to the deliverables to be provided under the Agreement, the Agreement may be terminated by Buyer giving written notice to Seller. Upon receipt of a notice of termination and except as otherwise mutually agreed, Seller will:

- (i) Stop work under the Agreement on the effective date of the notice of termination; and
- (ii) Submit a termination claim within sixty (60) days after the effective date of the termination notice incorporating all claims of Seller. The amount that Seller will be entitled to upon termination of the Agreement will be determined as follows:
 1. Payment of an amount equal to the Agreement price multiplied by a percentage reflecting the percentage of the work performed prior to the effective date of termination;
 2. A fair and reasonable allowance for any reasonable cancellation charges due to material commitments made by Seller with Seller's suppliers or subcontractors;
 3. A fair and reasonable allowance for any inventory held by Seller for delivery to or use in fabrication of

deliverables for delivery to Buyer under the Agreement, which cannot readily be used for any other customer, in which case Seller will transfer title and possession of said inventory to Buyer in accordance with Buyer's instructions; and

4. Any other amounts that are mutually acceptable to Buyer and Seller as being fair and reasonable.

Notwithstanding the foregoing, the parties may mutually agree to a partial termination of the Agreement provided such agreement: (1) equitably revises the price for work remaining to be performed by Seller thereafter; (2) equitably revises all such other rights, risks, obligations and/or responsibilities as may be affected by such partial termination; and (3) is evidenced by a formal modification to the Agreement signed by both parties.

D. The following Federal Acquisition Regulations (FAR) and DOD FAR Supplement (DFARS) clauses, to the extent required by Buyer's contract with the government and to the extent applicable according to their terms, as in effect on the effective date of the Agreement are incorporated into these Terms and Conditions, with the term "Contractor" as used therein deemed to refer to Seller:

1. The clauses required to be included in the Agreement pursuant to part (c)(1) of FAR 52.244-6 Subcontracts for Commercial Items, to the extent applicable.
2. The clauses required to be included in the Agreement pursuant to DFARS 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts), to the extent applicable.

If funding for Buyer's payments under the Agreement is provided under the American Reinvestment and Recovery Act of 2009 ("ARRA"), Seller will provide the information required under FAR 52-204-11(d)(10)(i), (ix), and (x) upon request by Buyer, and the following additional clause will be incorporated into the Agreement:

52.203-15 Whistleblower Protections under ARRA

E. IF THE DELIVERABLES RECEIVED FROM SELLER ARE TO BE USED BY BUYER IN THE PERFORMANCE OF A U.S. GOVERNMENT CONTRACT OR SUBCONTRACT, OR IF FUNDING FOR BUYER'S PAYMENTS UNDER THE AGREEMENT IS PROVIDED UNDER ARRA, BUYER WILL PROMINENTLY NOTE SUCH FACTS IN ITS PURCHASE ORDER.