

**General Provisions and FAR Flowdown Provisions
For Subcontracts/Purchase Orders to a U.S. Government Contract
("General and FAR Provisions")**

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SECTION I: GENERAL PROVISIONS

1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- (a) Each purchase order issued by SERVO KINETICS, referencing these General and FAR Provisions, is an offer to SELLER for the purchase of goods and/or services and includes and is governed by these General and FAR Provisions, and if applicable DFARS Provisions. This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and, constitutes the entire agreement between the SELLER and SERVO KINETICS (the "Parties").
- (b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Contract.
- (c) Unless expressly accepted in writing by SERVO KINETICS, additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are objected to by SERVO KINETICS and have no effect.
- (d) SERVO KINETICS may modify these General and FAR Provisions with respect to Contracts at any time by posting revised terms to its web site at <http://www.servokinetics.com/home/vendor/GovernmentVendor.html>, and such revised terms will apply to all Contracts currently issued and issued thereafter.

2. APPLICABLE LAWS

- (a) This Contract shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to its conflicts of laws provisions, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.
- (b) (1) The Parties agree to 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.
- (2) If: (i) SERVO KINETICS' contract price or fee is reduced; (ii) SERVO KINETICS' costs are determined to be unallowable; (iii) any fines, penalties, withholdings, or interest are assessed on SERVO KINETICS; or (iv) SERVO KINETICS 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, SERVO KINETICS may proceed as provided for in (4) below.
- (3) 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 SERVO KINETICS' 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 SERVO KINETICS' 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) SERVO KINETICS' contract price or fee is reduced; (2) SERVO KINETICS' costs are determined to be unallowable; (3) any fines, penalties, withholdings, or interest are assessed on SERVO KINETICS; or (4) SERVO KINETICS incurs any other costs or damages; SERVO KINETICS may proceed as provided for in (4) below.
- (4) **Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraphs (2) and (3) above, SERVO KINETICS 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), SERVO KINETICS may withhold the same amount from SELLER under this contract.**
- (c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to SERVO KINETICS hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (d) SELLER shall provide to SERVO KINETICS with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated there under, or its state approved counterpart.

3. **ASSIGNMENT**

SELLER may not assign or delegate its obligations under this Contract without SERVO KINETICS' prior written consent. In the event of any approved assignment or delegation authorized by SERVO KINETICS, SELLER retains all responsibility for the Work, including all related warranties and claims, unless otherwise expressly agreed in writing by SERVO KINETICS.

4. **COMMUNICATION WITH SERVO KINETICS CUSTOMER**

SERVO KINETICS shall be solely responsible for all liaison and coordination with the SERVO KINETICS customer, including the U. S. Government, as it affects the applicable prime contract, this Contract, and any related contract.

5. **CONTRACT DIRECTION**

- (a) Only the SERVO KINETICS Procurement Representative has authority on behalf of SERVO KINETICS to make changes to this Contract. All amendments must be in writing and executed by the Parties.
- (b) SERVO KINETICS engineering and technical personnel may from time to time render assistance or give technical advice or 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 the SELLER shall be in writing and sent to the SERVO KINETICS Procurement Representative.

6. **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 and FAR Provisions, all referenced 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 document for the Work to be performed.
- (b) "DFARS Provisions" means the Defense Federal Acquisition Regulation Supplement flowdown clauses incorporated herein by reference, as applicable, to all SERVO KINETICS defense related contracts.
- (c) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (d) "SERVO KINETICS" means SERVO KINETICS, INC., acting through its companies or business units as identified on the face of this Contract. If a subsidiary or affiliate of SERVO KINETICS, INC. is identified on the face of this Contract then "SERVO KINETICS" means that subsidiary or affiliate.
- (e) "SERVO KINETICS Procurement Representative" means a person authorized by SERVO KINETICS' cognizant procurement organization to administer and/or execute this Contract.
- (f) "SELLER" means the party identified on the face of this Contract with whom SERVO KINETICS is contracting.
- (g) "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

7. **DISPUTES**

If any dispute arises between the Parties, the Parties will first consult with each other and undertake in good faith to settle all disputes between themselves. Failing settlement, any dispute or controversy between the Parties will be referred to arbitration pursuant to this Section.

- (a) Matters referred to arbitration will be (i) referred to a single arbitrator if the Parties can agree on such arbitrator within seven (7) days after notice of one party to the other of its intentions to arbitrate or will be (ii) referred to three arbitrators as follows: after the expiration of such initial seven (7) day period, both SERVO KINETICS and SELLER will within seven (7) days appoint their respective arbitrator and the two (2) arbitrators thus chosen will together, within seven (7) days of their appointment, nominate a third arbitrator. If the two (2) arbitrators fail within such seven (7) days of their selection to select a third arbitrator, upon the written request of any party, the third arbitrator will be appointed by the American Arbitration Association. If a party fails to appoint an arbitrator as required, the arbitrator appointed will be the sole arbitrator of the matter referred to arbitration. The arbitrator(s) shall be knowledgeable in Government procurement matters related to the types of supplies and services provided pursuant to this Contract.
- (b) The decision of the arbitrator(s) will be made within seven (7) days of the close of the hearing in respect of the arbitration (or such longer time as may be agreed to by the Parties) and when reduced to writing and signed will be final, conclusive, and binding upon the Parties hereto and may be enforced in any court, federal or state, having jurisdiction.
- (c) The arbitration will be held in such location in the Detroit metropolitan area as will be mutually agreed upon, and will be conducted in accordance with the Commercial Rules of Arbitration of the American Arbitration Association.
- (d) The arbitrator(s) will determine who will assume the expense of arbitration or the proportion of such expenses which each party will bear. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by SERVO KINETICS.

8. **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.

9. **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 SERVO KINETICS if any deliverable under this Contract is restricted by export control laws or regulations.
- (c) SELLER shall immediately notify the SERVO KINETICS 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 SERVO KINETICS export license or export agreement (e.g., TAA, MLA), SELLER shall provide prompt notification to the SERVO KINETICS 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 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.**

10. **EXTRAS**

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.

11. **FURNISHED PROPERTY**

- (a) SERVO KINETICS may provide to SELLER property owned by either SERVO KINETICS or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in SERVO KINETICS 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 SERVO KINETICS of, any loss or damage. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- (d) At SERVO KINETICS' 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 SERVO KINETICS.
- (e) The Government Property Clause contained in Section II shall apply in lieu of paragraphs (a) through (d) above with respect to Government-furnished property, or property to which the Government may take title under this Contract.

12. **GRATUITIES/KICKBACKS**

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

13. **INDEPENDENT CONTRACTOR RELATIONSHIP**

- (a) 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 SERVO KINETICS.
- (b) **SELLER shall be responsible for and hold harmless SERVO KINETICS and its successors and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising 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 Contract.**

14. **INFORMATION OF SERVO KINETICS**

- (a) Information, including but not limited to any processes, drawings, special instructions, and specifications, provided by SERVO KINETICS to SELLER remains the exclusive property of SERVO KINETICS. SELLER agrees to comply with the terms of any proprietary information agreement with SERVO KINETICS and to comply with all proprietary information markings and restrictive legends applied by SERVO KINETICS to anything provided hereunder to SELLER.
- (b) SELLER agrees not to use any SERVO KINETICS provided information for any purpose except to perform this Contract and such information shall not be used with, including but not limited to, valves, pump, motors, or other hydraulic subassemblies or parts ("Hydraulic Units") provided by third parties. SELLER further agrees not to disclose or disseminate such information to third parties without the prior written consent of SERVO KINETICS. SELLER shall maintain data protection processes and systems sufficient to adequately protect SERVO KINETICS' information.
- (c) Since unauthorized disclosure of any information provided by SERVO KINETICS to SELLER may cause immediate irreparable harm to SERVO KINETICS for which monetary damages may be inadequate, SERVO KINETICS shall be entitled to equitable relief in addition to monetary damages, including without limitation, a temporary and permanent injunction if SELLER threatens or actually breaches its duty not to disclose or disseminate such information to third parties.

15. **INFORMATION OF SELLER**

SELLER shall not provide any proprietary information to SERVO KINETICS without prior execution of a proprietary information agreement by the Parties.

16. **INSURANCE/INDEMNIFICATION**

- (a) SELLER will maintain, and require its subcontractors to maintain, the insurance coverage listed below or in additional amounts as may be reasonably requested by SERVO KINETICS or SERVO KINETICS' customer(s), in each case naming SERVO KINETICS and its affiliates and customer(s) as "additional insured." SELLER will furnish to SERVO KINETICS a certificate showing compliance with this requirement or certified copies of all insurance policies within 10 days of SERVO KINETICS' written request. The certificate will provide that SERVO KINETICS (and, if applicable, SERVO KINETICS' customers) will receive 30 days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage.

The existence of insurance does not release SELLER of its obligations or liabilities under the Contract. Minimum coverage is as follows:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workers compensation	Statutory
Employer's liability policy limit, disease each employee	US\$500,000 / each accident, disease
Comprehensive general liability insurance, including contractual liability coverage	US\$5,000,000 / each occurrence, general aggregate, products & completed operations aggregate
Comprehensive automobile liability insurance combined single limit	US\$1,000,000 / each occurrence,

- (b) **To the fullest extent permitted by law, SELLER will defend, indemnify and hold harmless SERVO KINETICS, SERVO KINETICS' customers (both direct and indirect), and dealers and users of the products sold by SERVO KINETICS and all of their respective officers, directors, employees, shareholders, affiliates, agents, successors and assigns, against all damages, losses, claims, liabilities and expenses (including reasonable attorneys' and other professional fees, settlements and judgments) arising out of or resulting from any defective Work, or from any negligent or wrongful act or omission of SELLER or SELLER's agents, employees or subcontractors, or any breach or failure by SELLER to comply with any of SELLER's representations or other terms and conditions of a Contract (including any part of these General and Far Provisions). If SELLER performs any work on SERVO KINETICS' or SERVO KINETICS' customer's premises or utilizes the property of SERVO KINETICS or SERVO KINETICS' customer, whether on or off SERVO KINETICS' or SERVO KINETICS' customer's premises: (a) SELLER will examine the premises to determine whether they are safe for the requested services and will advise SERVO KINETICS promptly of any situation it deems to be unsafe; (b) SELLER's employees, contractors, and agents will comply with all regulations that apply to the premises and may be removed from SERVO KINETICS' premises at SERVO KINETICS' discretion; (c) SELLER's employees, contractors, and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises; and (d) to the fullest extent permitted by law, SELLER will indemnify and hold SERVO KINETICS and SERVO KINETICS' customer, and their respective officers, directors, employees, shareholders, affiliates, agents, successors and assigns, harmless from and against any liability, claims, demands or expenses (including reasonable attorneys' and other professional fees, settlements and judgments) for damages to the property of or personal injuries to SERVO KINETICS, its customer, their respective agents, or any other person or entity to the extent arising from or in connection with SELLER's work on the premises or SELLER's use of SERVO KINETICS' or SERVO KINETICS' customer's property, except to the extent caused by SERVO KINETICS' sole gross negligence.**

17. **LIENS**

SELLER shall keep its Work free and clear of all liens and encumbrances (including, but not limited to, mechanic's liens), in any way arising from performance of this subcontract by SELLER or any of its vendors and subcontractors. SERVO KINETICS may reasonably require SELLER to provide a satisfactory release of liens as a condition of final payment.

18. **INTELLECTUAL PROPERTY**

- (a) **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. Except to the extent that the U.S. Government assumes liability therefor, SELLER**

agrees to defend, hold harmless and indemnify SERVO KINETICS, its successors and customers against claims of direct or contributory infringement or inducement to infringe any proprietary right (including, without limitation, any patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secret) and against any resulting damages or expenses, including attorneys' and other professional fees, settlements and judgments, arising in any way in relation to Work provided by SELLER (including, without limitation, their manufacture, purchase, use or sale), including such claims where SELLER has provided only part of Work, and SELLER expressly waives any claim against SERVO KINETICS that such infringement arose out of compliance with SERVO KINETICS' specification.

- (b) SELLER further agrees to waive any claim against SERVO KINETICS, including, without limitation, any hold-harmless or similar claim, in any way related to a third party claim asserted against SELLER or SERVO KINETICS for infringement of any proprietary right (including, without limitation, any patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secret).
- (c) SELLER's obligation to defend, indemnify, and hold harmless SERVO KINETICS and its successors and customers under Paragraph (a) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to SERVO KINETICS' Prime Contract for infringement of a U.S. patent and SERVO KINETICS and its successors and customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorneys' fees by a third party.
- (d) In addition to the Government's rights in data and inventions SELLER agrees that SERVO KINETICS and its subcontractors and direct or indirect customers, shall have an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of and prepare derivative, and authorize others to do any, some or all of the foregoing, any and all, inventions, discoveries, improvements, maskworks and patents as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, generated or delivered in performance of this Contract.
- (e) SELLER further agrees to promptly disclose in an acceptable form to SERVO KINETICS all such inventions, discoveries or improvements and to cause its employees to sign any papers necessary to enable SERVO KINETICS to obtain title to and to file applications for patents throughout the world, and to the extent that the Contract is issued for the creation of copyrightable works, that the works will be considered "works made for hire," and to the extent that the works do not qualify as such, to assign to SERVO KINETICS upon delivery thereof all right, title and interest in all copyrights and moral rights therein (including any source code).
- (f) Except as expressly agreed by SERVO KINETICS in a signed writing, all Work or other deliverables provided under this Contract (including without limitation computer programs, technical specifications, documentation and manuals) will be original to SELLER and will not incorporate any intellectual property rights (including copyright, patent, trade secret or trademark rights) of any third party. Except as expressly agreed by SERVO KINETICS in a signed writing, all Work or other deliverables provided under this Contract, and all related intellectual property rights, are owned solely by SERVO KINETICS. SELLER will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section. At no additional cost, SELLER will grant SERVO KINETICS a license to use any intellectual property owned by SELLER that is necessary or incident to the reasonably intended use or application of the Work.

19. **OFFSET CREDIT/COOPERATION**

This Contract has been entered into in direct support of SERVO KINETICS' international offset programs. All offset benefit credits resulting from this Contract are the sole property of SERVO KINETICS to be applied to the offset program of its choice. SELLER agrees to assist SERVO KINETICS in securing appropriate offset credits from the respective country government authorities.

20. **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 SERVO KINETICS Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number. SELLER will reimburse SERVO KINETICS for any expenses incurred as a result of improper packing, marking, routing, or shipping.
- (c) Except as otherwise expressly stated in the Contract, the price of Work includes storage, handling, packaging, shipping and all other expenses and charges of SELLER. Incoterms 2000 will apply to all shipments except those entirely within the USA. All international shipments will be delivered D.D.P. to the destination specified in the Contract and otherwise in accordance with the Contract. All shipments entirely within the USA, will be delivered FOB to the destination specified in the Contract and otherwise in accordance with the Contract. The total price also includes all duties and taxes except for any governmentally imposed value added tax (VAT), which must be shown separately on SELLER's invoice for each shipment. SERVO KINETICS is not responsible for any business activity taxes, payroll taxes or taxes on SELLER's income or assets. SELLER will pay all premium freight costs over normal freight costs if SELLER needs to use an expedited shipping method to meet agreed delivery dates due to its own acts or omissions. SELLER will pay any costs incurred by SERVO KINETICS, including costs charged by SERVO KINETICS' customer(s) to SERVO KINETICS, as a result of SELLER's failure to comply with shipping or delivery requirements.

21. **PARTS OBSOLESCENCE/SHELF LIFE**

- (a) SERVO KINETICS may desire to place additional orders for Work purchased hereunder. SELLER shall provide SERVO KINETICS with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any Work purchased under this Contract.
- (b) SELLER, if applicable, must identify the remaining shelf life for any Work, as SERVO KINETICS will only accept Work with at least 75% of its shelf life remaining.

22. **PAYMENTS, TAXES, AND DUTIES**

- (a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following:
 - (i) SERVO KINETICS' receipt of SELLER's proper invoice;
 - (ii) scheduled delivery date of the Work;
 - (iii) actual delivery of the Work.
- (b) Each payment made shall be subject to reduction to the extent of amounts which are found by SERVO KINETICS or SELLER not to have been properly payable, and shall also be subject to reduction for overpayments. SELLER shall promptly notify SERVO KINETICS of any such overpayments found by SELLER.
- (c) SERVO KINETICS shall have a right of setoff against payments due or at issue under this Contract or any other contract between the Parties.
- (d) Payment shall be deemed to have been made as of the date of mailing SERVO KINETICS' 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.

23. **PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (i) face of the Purchase Order and/or Task Order, release document or schedule, (including any continuation sheets), as applicable, including any special provisions; (ii) these General and FAR Provisions; (iii) the DFARS Provisions, as applicable; and (iv) statement of Work.

24. **PRIORITY RATING**

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

25. **PROHIBITED SOFTWARE**

- (a) This clause only applies to Work that includes the delivery of software.
- (b) As used herein, “Prohibited License” means the General Public License (“GPL”) or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as “GPL Compatible, Free Software License.”
- (c) As used herein, “Prohibited Software” means software that incorporates or embeds software in, or uses software in connection with, as part of bundled with, or alongside any (1) open source, publicly available, or “free” software, library or documentation, or (2) software that is licensed under a Prohibited License, or (3) software provided under a license that (a) subjects the delivered software to any Prohibited License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates SERVO KINETICS to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.
- (d) Unless SELLER has obtained SERVO KINETICS’ prior written consent, which SERVO KINETICS may withhold in its sole discretion, SELLER shall not use in connection with this Contract, or deliver to SERVO KINETICS, any Prohibited Software.
- (e) **SELLER agrees to defend, indemnify, and hold harmless SERVO KINETICS, its successors, customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys’ fees, relating to use in connection with this Contract or the delivery of Prohibited Software.**

26. **QUALITY CONTROL**

- (a) SELLER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.
- (b) Records of all quality control inspection work by SELLER shall be kept complete and available to SERVO KINETICS and its successors and customers.
- (c) SELLER, or any of its assignees or delegates, agrees to quality inspections by SERVO KINETICS’ Governmental Industrial Quality Inspector at any time as he deems necessary.

27. **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 SERVO KINETICS.

28. **SEVERABILITY**

Each clause, paragraph and sub-paragraph 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.

29. **SURVIVABILITY**

The obligations of SELLER to SERVO KINETICS, and those U. S. Government flowdown provisions that by their nature should survive, shall survive termination of this Contract, except as otherwise agreed by the Parties.

30. **TIMELY PERFORMANCE**

- (a) SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by SERVO KINETICS, SERVO KINETICS may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If SELLER becomes aware of difficulty in performing the Work (including, but not limited to, any actual or potential labor disputes), SELLER shall timely notify SERVO KINETICS, in writing, giving pertinent details. This notification shall not change any delivery schedule. SELLER agrees to insert the substance of this clause, including this sentence, into all relevant lower-tier subcontracts.
- (d) 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 SERVO KINETICS.

31. **WAIVERS, APPROVALS, AND REMEDIES**

- (a) Failure by either party to enforce any 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) SERVO KINETICS' 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.

32. **WARRANTY**

SELLER expressly warrants and guarantees to SERVO KINETICS, to SERVO KINETICS' successors, assigns and customers, that all Work delivered to SERVO KINETICS will: (a) conform to the specifications, standards, drawings, samples, descriptions and revisions as furnished to or by SERVO KINETICS; (b) conform to all applicable laws, orders, regulations and standards in countries where Work or vehicles or other products incorporating Work are to be sold; (c) be merchantable and free of defects in design, materials and workmanship; (d) be selected, designed, manufactured and assembled by SELLER based upon SERVO KINETICS' stated use and be fit and sufficient for the purposes intended by SERVO KINETICS; and (e) be free and clear of all liens and encumbrances (including, but not limited to, mechanic's liens), in any way and SERVO KINETICS may require

SELLER to provide a satisfactory release of liens as a condition of final payment. The warranty period is the longest of: (i) one year from the date SERVO KINETICS accepts the Work; (ii) the warranty period provided by applicable law; or (iii) the warranty period offered by SERVO KINETICS or SERVO KINETICS' customer to end-users for goods incorporating the Work. For all services, SELLER further warrants that its work will be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed on with SERVO KINETICS and otherwise consistent with industry standards. SELLER will immediately notify SERVO KINETICS in writing when it becomes aware of any ingredient, component, design or defect in Work that is or may become harmful to persons or property. SERVO KINETICS' approval of any design, drawing, material, process or specifications will not relieve SELLER of these warranties.

33. **HEADINGS**

The title or headings of the various paragraphs hereof are intended solely for convenience or reference and are not intended and shall not be deemed to modify or explain any of the provisions of this Contract.

SECTION II: FAR FLOWDOWN PROVISIONS

A. **INCORPORATION OF FAR CLAUSES**

The Federal Acquisition Regulation (FAR) 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 clauses referenced below and otherwise in this Contract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this Contract.
3. "Contracting Officer" shall mean the U.S. Government Contracting Officer for SERVO KINETICS' government prime contract under which this Contract is entered.
4. "Contractor" and "Offeror" means SELLER, as defined in Section I, 6(e) herein, acting as the immediate (first-tier) subcontractor to SERVO KINETICS.
5. "Prime Contract" means the contract between SERVO KINETICS and the U.S. Government or between SERVO KINETICS 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 "SERVO KINETICS" for "Government" or "United States" throughout this clause.
2. Substitute "SERVO KINETICS Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.

3. Insert "and SERVO KINETICS" after "Government" throughout this clause.
4. Insert "or SERVO KINETICS" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to the Contractor to/from the Contracting Officer shall be through SERVO KINETICS.
6. Insert "and SERVO KINETICS" after "Contracting Officer", throughout the clause.
7. Insert "or SERVO KINETICS Procurement Representative" after "Contracting Officer", throughout the clause.

D. **AMENDMENTS REQUIRED BY PRIME CONTRACT**

Contractor agrees that upon the request of SERVO KINETICS it will negotiate in good faith with SERVO KINETICS relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof as SERVO KINETICS 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 SERVO KINETICS furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information ("Furnished Items") to which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that SERVO KINETICS, 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 FLOWDOWN CLAUSES**

REFERENCE	TITLE
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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) |
| (e) | 52.222-21 | PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) |
| (f) | 52.222-26 | EQUAL OPPORTUNITY (APR 2002) (Only subparagraphs (b) (1)-(11) applies.) |
| (g) | 52.225-13 | RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006) |
| (h) | 52.227-14 | RIGHTS IN DATA - GENERAL (JUN 1987) |
| (i) | 52.234-1 | INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994) (Notes 1 and 2 apply.) |

- (j) 52.242-13 BANKRUPTCY (JUL 1995) (Notes 1 and 2 apply.)
 - (k) 52.242-15 STOP-WORK ORDER (AUG 1989) (Notes 1 and 2 apply.)
 - (l) 52.243-1 CHANGES - FIXED PRICE (AUG 1987) (Notes 1 and 2 apply.)
 - (m) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2006)
 - (n) 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.)
 - (o) 52.246-4 INSPECTION OF SERVICES - FIXED PRICE (AUG 1996) (Note 3 applies, except in paragraphs (e) and (f) where Note 1 applies.)
 - (p) 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)
 - (q) 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 "SERVO KINETICS 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.)
 - (r) 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 equals or exceeds \$10,000:**
- (a) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
3. **The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$25,000:**
- (a) 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)
 - (b) 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)
4. **The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:**
- (a) 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)
 - (b) 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENT TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2005)

- (c) 52.203-12 LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2005)
 - (d) 52.215-2 AUDIT AND RECORDS-NEGOTIATION (JUN 1999) (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.)
 - (e) 52.215-14 INTEGRITY OF UNIT PRICES (OCT 1997) (Delete paragraph (b) of the clause.)
 - (f) 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (SEPT 2000)
 - (g) 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)
 - (h) 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) (Note 2 applies. Delete paragraph (e).)
 - (i) 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996) (Notes 2 and 4 apply.)
 - (j) 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 equals or exceeds \$500,000:**
- (a) 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JUL 2005) (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 equals or exceeds \$550,000:**
- (a) 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) (Applicable if not otherwise exempt under FAR 15.403.)
 - (b) 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 as indicated:**
- (a) 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work requires access to classified information.)
 - (b) 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2006) (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) 52.222-4 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.)
- (k) 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.)
- (l) 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.)
- (m) 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
- (n) 52.225-1 BUY AMERICAN ACT—SUPPLIES (JUN 2003) (Applicable if the Work contains other than domestic components. Note 2 applies to the first time “Contracting Officer” is mentioned in paragraph (c).)
- (o) 52.225-5 TRADE AGREEMENTS (JUN 2006) (Applicable if the Work contains other than U.S. made or designated country end products as specified in the clause.)
- (p) 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.)
- (q) 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995) (Applicable only if the Prime Contract contains this clause.)
- (r) 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.)

- (s) 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.)
- (t) 52.227-11 PATENT RIGHTS-RETENTION BY THE CONTRACTOR (SHORT FORM) (JUN 1997) (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 agency identified in this Contract. If no agency is identified, contact the SERVO KINETICS Procurement Representative identified on the face of this Contract.)
- (u) 52.227-12 PATENT RIGHTS-RETENTION BY THE CONTRACTOR (LONG FORM) (JAN 1997) (Applicable if this Contract includes, at any tier, experimental, developmental, or research Work and contractor is a large business concern. Reports required by this clause shall be filed with the agency identified in this Contract. If no agency is identified, contact the SERVO KINETICS 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.)
- (w) 52.230-2 COST ACCOUNTING STANDARDS (APR 1998) (When referenced in this Contract, full CAS coverage applies. “United States” means “United States or SERVO KINETICS.” Delete paragraph (b) of the clause.)
- (x) 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998) (When referenced in this Contract, modified CAS coverage applies. “United States” means “United States or SERVO KINETICS”. Delete paragraph (b) of the clause.)
- (y) 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 2005) (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)
- (z) 52.233-3 PROTEST AFTER AWARD (AUG 1996) (In the event SERVO KINETICS’ customer has directed SERVO KINETICS to stop performance of the Work under the Prime Contract under which this Contract is issued pursuant to FAR 33.1, SERVO KINETICS 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 SERVO KINETICS”.)
- (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) 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (MAY 2004) (Applicable if Government property is furnished in the performance of this Contract. Except for paragraphs (i) and (j), Note 1 applies except in the phrases “Government property,” “Government-furnished property,” and in references to title to property. Note 2

applies. The following is added as paragraph (m) "Seller shall provide to Servo Kinetics immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the Government of property control system." Disposition of property under paragraphs (i) and (j) shall be coordinated with Servo Kinetics.)

- (dd) 52.245-17 SPECIAL TOOLING (MAY 2004) (Applicable if this Contract involves the use of Special Tooling. Note 2 applies, except paragraph (b). Note 1 applies to paragraph (d)(1) and (d)(3) and (m) where "Government" appears the last time and in paragraph (f)(1). In paragraph (j) change "180 days" to "240 days" and "90 days" to "150 days". In (j)(ii) remove "prime" before "Contractor" in the last sentence.)
- (ee) 52.245-18 SPECIAL TEST EQUIPMENT (FEB 1993) (Applicable if this Contract involves the acquisition or fabrication of Special Test Equipment. Note 2 applies to paragraphs (b) and (d). Note 5 applies. In paragraphs (b) and (c), change "30 days" to "60 days".)
- (ff) 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003) (Applicable if this Contract involves international air transportation.)

G. CERTIFICATIONS AND REPRESENTATIONS

(1) **This clause contains certifications and representations that are material representations of fact upon which SERVO KINETICS will rely in making awards to Contractor. By submitting its written offer, or providing oral offers/quotations at the request of SERVO KINETICS, or accepting any Contract, Contractor certifies to the representations and certifications as set forth below in this clause and in the Annual Seller's Representations and Certifications to Servo Kinetics, Inc. Regarding Government Subcontracts. 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 SERVO KINETICS. Contractor shall immediately notify Carol Hewitt, by Fax at 734-668-6630, of any change of status with regard to these certifications and representations before proceeding with this Contract, or as soon as Contractor becomes aware of any change of status if performance under this Contract has already begun.**

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

(1) The definitions and prohibitions contained in the clause at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions are hereby incorporated by reference in paragraph (b) of this certification.

(2) Contractor certifies that to the best of its knowledge and belief that on and after December 23, 1989--

(a) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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 his or her

behalf in connection with a solicitation or order, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, in accordance with its instructions, and

- (c) Contractor will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (3) Submission of this certification and disclosure is a prerequisite for making or entering into a contract as imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.
- (b) **FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.**

- (1) Contractor certifies that, to the best of its knowledge and belief, that CONTRACTOR and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.
- (2) Contractor shall provide immediate written notice to SERVO KINETICS if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

- (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 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 12969, August 8, 1995.
- (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

- (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.